STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 20355

THE AUTO CLUB GROUP and CAROLINA MOTOR CLUB, INC.,

Plaintiffs,

v.

FROSCH INTERNATIONAL TRAVEL, LLC, d/b/a FROSCH TRAVEL, and FROSCH-MANN, LLC,

Defendants.

ORDER ON MOTION FOR COSTS, ATTORNEYS' FEES, AND SANCTIONS
[Public][1]

1. **THIS MATTER** is before the Court on the 18 December 2022 filing of Defendants Frosch International Travel, LLC ("Frosch") and Frosch-Mann, LLC's (together with Frosch, "Defendants") Motion for Costs, Attorneys' Fees, and Sanctions (the "Motion"). (ECF No. 57 ["Mot."].) The Motion seeks an award of costs, attorneys' fees, and sanctions against Plaintiffs The Auto Club Group ("ACG") and Carolina Motor Club, Inc. ("CMC" and together with ACG, "Plaintiffs") pursuant to Rules 11(a) and 41(d) of the North Carolina Rules of Civil Procedure (the "Rules") and North Carolina General Statutes §§ 6-21.5, 66-152, and 75-1.1.[2] (Mot. 1.)

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[1] Recognizing that this Order cites to and discusses the subject matter of documents that the Court has allowed to remain under seal in this action, and out of an abundance of caution, the Court filed this Order under seal on 24 April 2023. (*See* ECF No. 110.) On 3 May 2023, the parties notified the Court that all parties conferred and agreed that there is no material in this Order that requires sealing. Accordingly, the Court now files this public version of the Order.

[2] While the Motion and the accompanying brief in support, (ECF No. 58), reference N.C.G.S. § 75-1.1 as the basis for Defendants' claim for costs and attorneys' fees, the statutory authority Defendants rely on is § 75-16.1.

2. Having considered the Motion, the briefs, and the evidence of record in this matter, the Court, in its discretion, **GRANTS** in part and **DENIES** in part the Motion for the reasons set forth herein.

I. FINDINGS OF FACT[3]

3. Plaintiffs initiated this action on 15 December 2021 with the filing of the Complaint. (ECF No. 3.) This matter was thereafter designated as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(a) on 18 January 2022. (ECF No. 1.) This case centered around Plaintiffs' contention that Defendants orchestrated the hiring of several of Plaintiffs' travel agents and caused those agents to provide Defendants with Plaintiffs' confidential, trade secret protected, and competitively valuable information regarding Plaintiffs' customers and vendors.

4. On 15 February 2022, Plaintiffs filed the Corrected Complaint. (ECF No. 10 ["Compl."].) The Corrected Complaint is identical to the Complaint but has attached to it the exhibits referenced in each document. (*See* ECF Nos. 10.1–10.2.) The Corrected Complaint alleges three claims for relief: (1) violations of the North Carolina Trade Secrets Protection Act (the "TSPA"), N.C.G.S. § 66-152 *et seq.*; (2) violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 (the "UDTPA"); and (3) conversion. (Compl. ¶¶ 45–67.)

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[3] "[W]hen the trial court in its discretion denies a motion for attorneys' fees, it need not make statutory findings required to support a fee award." *E. Brooks Wilkins Fam. Med., P.A. v. WakeMed*, 244 N.C. App. 567, 581 (2016). However, the trial court must make findings of fact and conclusions of law to support its denial of sanctions pursuant to Rule 11. *Tucker v. The Blvd. at Piper Glen LLC*, 150 N.C. App. 150, 155 (2002). With respect to this Order, the Court intends for any finding of fact that is more appropriately deemed a conclusion of law, to be so characterized, and vice-versa.

5. Plaintiffs alleged that Defendants recruited several of their top travel sales agents and "deliberately and intentionally caused the[agents] to disclose Plaintiffs' trade secrets and other confidential and proprietary information." (Compl. ¶ 3.) Further, Plaintiffs alleged that Defendants "coordinated with" those agents regarding "the misappropriation of Plaintiffs' trade secrets and ha[ve] orchestrated the concealment of what they have done." (Compl. ¶ 42.) Plaintiffs did not include any of their former travel agents as defendants in this lawsuit.

6. At the heart of this dispute, and the allegations in the Complaint, is evidence concerning former ACG travel agents Jennifer Brammer, Henry Dennis, Darlene McClung, Jessica Pinyan, and Michelle Younis's (together, the "Former ACG Agents") departures from ACG, the circumstances surrounding those departures and their subsequent employment at Frosch, and communications by the Former ACG Agents with their ACG travel clients while the agents were working at ACG prior to their departure, after their respective resignations, and while working at Frosch.

A. <u>Relevant Events Preceding this Litigation</u>

7. In January 2020, ACG merged with CMC and CMC became a wholly controlled subsidiary of ACG. (Compl. ¶ 8.)

8. Marc Kazlauskas ("Kazlauskas") is the President of the Leisure Division and U.S. Branch Operations Manager of Frosch. (Compl. ¶ 15 n.3.) Kazlauskas communicated with each of the Former ACG Agents prior to their resignation from ACG and participated in their hiring. Jennifer McGuigan ("McGuigan"), Vice

President of Leisure Development and Support at Frosch, also communicated with the Former ACG Agents. (Compl. ¶ 25.)

9. Michelle Younis ("Younis") began working for CMC on 4 August 1997. (Aff. Michelle Younis ¶ 2, ECF No. 53 ["Younis Aff."].) Following the merger of ACG and CMC, Younis reached out to Kazlauskas through Facebook to inquire about jobs outside of ACG. (Younis Aff. ¶ 36.) Beginning in December 2020 and throughout the Spring of 2021, Younis communicated via phone and email with Kazlauskas. (Younis Aff. ¶¶ 37–40.) On 20 May 2021, Younis communicated with Kazlauskas with the "intention of setting up a meeting with all of the [Former ACG Agents]" and she "organized a lunch meeting with the agents and Kazlauskas on July 15, 2021", (the "15 July Lunch"). (Younis Aff. ¶ 45.) Younis attended the 15 July Lunch, and following it, she emailed Kazlauskas and McGuigan her ACG sales, revenues, and commission information in the form of screenshots. (Younis Aff. ¶¶ 47, 49, 51–53; *see infra* ¶ 16.) Younis received an offer letter from Frosch on 30 August 2021 and accepted that offer on 4 September 2021. (Younis Aff. ¶¶ 60, 62.) On 14 September 2021, Younis emailed her manager at ACG a letter of resignation and began working at Frosch on 1 October 2021. (Younis Aff. ¶¶ 63, 65.)

10. Henry Dennis ("Dennis") began working for CMC in 1996. (Aff. Henry Dennis ¶ 3, ECF No. 50 ["Dennis Aff."].) On or about 10 December 2020, Dennis reached out to Kazlauskas through Facebook about "exploring options to see if something better might be out there", and the pair spoke on 21 December 2020. (Dennis Aff. ¶¶ 36–37.) Dennis also attended the 15 July Lunch organized by Younis.

(Dennis Aff. ¶ 43.) Frosch sent Dennis an offer letter on 20 September 2021, which he signed. (Dennis Aff. ¶ 52.) Dennis gave his ACG manager a letter of resignation on 5 October 2021 and began working at Frosch on 11 October 2021. (Dennis Aff. ¶¶ 54–55.)

11. Jennifer Brammer ("Brammer") began working for CMC in June 2007 and began looking for other jobs in August 2020. (Aff. Jennifer Brammer ¶¶ 2, 36, ECF No. 49 ["Brammer Aff."].) Brammer first spoke with someone at Frosch in February 2021, and she attended the 15 July Lunch with the other Former ACG Agents. (Brammer Aff. ¶¶ 36, 40.) Frosch offered Brammer a job on 17 August 2021, and she signed the offer letter on 7 September 2021. (Brammer Aff. ¶¶ 46, 52.) On 10 September 2021, Brammer resigned from ACG, and she began working at Frosch on 1 October 2021. (Brammer Aff. ¶¶ 53, 56.)

12. Darlene McClung ("McClung") also began working for CMC in 2007. (Aff. Darlene McClung ¶ 3, ECF No. 51 ["McClung Aff."].) McClung learned about Frosch through Dennis and Younis, and first met Kazlauskas at the 15 July Lunch. (McClung Aff. ¶¶ 35–37.) Following an additional conversation with Kazlauskas in August 2021, Frosch offered McClung a job in September 2021. (McClung Aff. ¶¶ 39–40.) On 5 October 2021, McClung gave her manager at ACG her two weeks' notice of resignation. (McClung Aff. ¶ 43.) McClung's start date at Frosch is unclear from the record.

13. Jessica Pinyan ("Pinyan") began working for CMC on 2 June 2014. (Aff. Jessica Pinyan ¶ 2, ECF No. 52 ["Pinyan Aff."].) In January 2021, Pinyan began

applying for other jobs and contacting past employers. (Pinyan Aff. ¶ 35.) She learned about Frosch through Dennis and Younis, and like McClung, Pinyan first met Kazlauskas at the 15 July Lunch. (Pinyan Aff. ¶¶ 36, 38.) On 19 July 2021, Pinyan emailed Kazlauskas two "excel spreadsheets" that she believed captured her "earning potential and would hold more weight than just sending [her] Sales, Revenue, and Commission numbers." (Pinyan Aff. ¶ 39.) Pinyan, Brammer, Younis, and Kazlauskas spoke over the phone on 20 August 2021, and following that call, Frosch sent Pinyan an offer letter on or about 30 August 2021. (Pinyan Aff. ¶¶ 42–45.) Pinyan resigned from ACG on 10 September 2021 and on 1 October 2021 she began working at Frosch. (Pinyan Aff. ¶¶ 47–48.)

14. On 27 July 2021, prior to being hired by Frosch and while still employed at ACG, Brammer emailed Kazlauskas about her 2019 sales and commissions as well as her future projections. (Church Aff. Ex. E, ECF No. 70 ["Church Aff. Ex. E"].) Brammer wrote, "I attached 2 photos of sales by vendor alphabetically. The totals for each are at the far right, but let me know if you need specific vendors broken down."[4] (Church Aff. Ex. E.)

15. On 20 August 2021, Pinyan, Brammer, and Younis had a phone call with Kazlauskas and McGuigan. (Church Aff. Ex. D, ECF No. 69.4 ["Church Aff. Ex. D"].) Following that phone call, Kazlauskas wrote, "[t]hank you again for a great call - we are all so excited for you to join the Frosch family. . . . Hoping Oct 1 works[.]" (Church

[4] The referenced photos were not produced with this email chain.

Aff. Ex. D.) Following Kazlauskas's email, McGuigan emailed Brammer, Pinyan, and Younis on 20 August 2021, writing in relevant part:

> It was great speaking with you on Friday and I'm excited about the opportunity to work with you!
>
> This Wed, 8/25 looks like a good day to schedule a call to show you commission levels. Please let me know what time works for the three of you. . . . I would love to hear the suppliers you're most interested in and I look forward to learning what you're each passionate about selling.
>
> Michelle, can you please send me examples of the reports you ladies like to see? As mentioned, we're currently reviewing our reports so it is perfect timing and we'd love your input because we want to motivate our advisors.

(Church Aff. Ex. D.)

16. In response to this email, Younis wrote, in relevant part:

> I've attached our weekly sales report. Based on our annual goal, the revenue we would have to bring in each week to meet that goal is listed on the excel sheet and we fill in the sales revenue each day so that we can keep up with whether or not we're on track to meet our goals.
>
> * * *
>
> There's another sheet where we keep up with things like how many prospecting calls we make per week and other things specific to [ACG] but the prospecting thing is just for them to monitor that we are "managing" our business. . . . The other report - which we don't fill out, but it's fairly automated - is our BI report. This takes into account cancellations received as well so we have a better idea of actual numbers throughout the year. It's set up to see our ytd revenue as well as our rolling 12 but since Frosch doesn't pay on a rolling 12 that one isn't as pertinent. It also shows us to see what we made month to month year over year - to compare past years/months which i personally like in order to see trends over the years.

(Church Aff. Ex. D.) The email displays text that would suggest there was an image included in the email, but the image of reports was not produced within the email

chain. (Church Aff. Ex. D.) However, the reports were later produced in this matter, and the production shows that the email does not have any obvious attachments but does have the referenced images contained and reviewable within the body of the email.[5] (Second Aff. Jared E. Gardner Ex. C, ECF No. 85.3.)

1. Former ACG Agents' Testimony

17. Following their resignations, several of the Former ACG Agents' travel clients requested to move their bookings from ACG or to release their bookings following those agents' move to Frosch. (*See, e.g.*, Church Aff. Ex. F, ECF No. 70.1; Church Aff. Ex. G, ECF No. 70.2; Church Aff. Ex. J, ECF No. 70.5.) For example, an email from 1 November 2021 was sent to an ACG employee, requesting to "transfer the two above referenced bookings from you/AAA to Henry Dennis at Frosch Travel Carolina." (Ex. A 2d Aff. Jared Gardner at Bates No. ACG00000179, ECF No. 85.2.)

18. Each of the Former ACG Agents testified by affidavit that they: (1) did not sign employment agreements with CMC or ACG, nor did they have restrictive covenants; (2) did not sign confidentiality agreements or other documents regarding CMC or ACG trade secrets or confidential information; (3) with the exception of McClung and Pinyan, understood there was a Code of Conduct, but they did not receive any training on it nor did they recall receiving the Code of Conduct; and (4) did not have access to their ACG email addresses following their resignations. (Brammer Aff. ¶¶ 3–4, 27–29, 53; Dennis Aff. ¶¶ 4–5, 29–31, 54; McClung Aff. ¶¶ 4–5, 19–21, 43; Pinyan Aff. ¶¶ 3–4, 25–27, 47; Younis Aff. ¶¶ 3–4, 14–16, 63.)

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[5] Younis testified that she "did not send any attachments – just the screenshots[.]" (Younis Aff. ¶ 55.)

19. The ACG Code of Conduct provides, in relevant part, that (1) "[a]ll information related to our business, employees, members, customers, clients and/or policyholders is considered confidential and proprietary"; (2) "[c]onfidential and nonpublic information cannot be disclosed without a valid business purpose and management approval"; and (3) [y]ou may not retain any Company-owned equipment, documents or copies of any business records, including customer records, which were in your possession once your employment with the Company ends." (Younis Aff. Ex. A at 5, ECF No. 53 ["Code of Conduct"].)

20. The Code of Conduct also refers to an "ACG Employment Policy Guide" and an "ACG Safeguarding Confidential & Sensitive Documents Policy". (Code of Conduct 5.) Only the ACG Employment Policy Guide is included in the record. (Am. Supp. Aff. of Michelle Younis Ex. F, ECF No. 56 ["ACG Employment Policy"].) The only related policy, though marginal, provided in the ACG Employment Policy Guide is that "[c]onverting any company property or property belonging to another individual to personal use" is misconduct. (ACG Employment Policy 65.)

21. Brammer also testified through her affidavit that, prior to her resignation and while she was planning to leave ACG, she forwarded ACG emails to her personal email address, including a "vendor form" and a "travel checklist" which she created, as well as emails from three ACG clients. (Brammer Aff. ¶¶ 54–55.) She also testified that she (1) "did not post on Facebook, Instagram, or any other form of social media" nor did she reach out to her former clients to let them know she was joining Frosch; (2) informed former clients, when they contacted her, that she "could answer their

booking-related questions" but "could not make any changes with respect to their ACG bookings"; and (3) "did not ever encourage or solicit any of [her] former clients to transfer their ACG bookings to Frosch." (Brammer Aff. ¶¶ 57–59.)

22. After the filing of her affidavit, Brammer was deposed on 9 March 2023 in the Pending Litigation, and counsel filed the deposition transcript in this matter for the Court's consideration in ruling on the Motion. (Dep. Jennifer Brammer, ECF No. 107.1 ["Brammer Dep."]; *see* ECF Nos. 108–09.)

23. Brammer testified at her deposition that, prior to leaving ACG, she forwarded three to four emails to her personal email address, but that other than those emails, she did not retain any business or customer records. (Brammer Dep. 72:5–73:7.) Brammer also testified that she *did* post on Facebook and Instagram that she left ACG, stating that the post "didn't refer to Frosch, but it referred to me leaving [ACG]." (Brammer Dep. 89:6–15, 127:15–19, 128:2–9.) At the time of her deposition, Brammer had not produced the Facebook or Instagram posts in discovery. (Brammer Dep. 127:15–21.)

24. Numerous communications between Brammer and ACG clients are included in the record. For example, on 17 September 2021, Brammer received an email from ACG client Steve Rowland at her personal email address. (Brammer Dep. 99:19–23.) On 7 October 2021, Brammer forwarded that email to her Frosch account, and stated that it concerned "a cruise booking [Mr. Rowland] booked with ACG[.]" (Brammer Dep. 99:19–100:9.) In his email, Mr. Rowland asked Brammer "whether he could transfer this cruise booking to Frosch" and Brammer testified that

she "advised him he could reach out to someone possibly. I don't recall giving him the information, but I told him he could try himself." (Brammer Dep. 104:7–9, 107:12–21.) Brammer went on to supply Mr. Rowland with an email address at Royal Caribbean. (Brammer Dep. 109:4–12.)

25. Brammer communicated with some ACG clients using Facebook Messenger. On 18 September 2021, Brammer messaged ACG client Debi Zipkin over Facebook, stating, "A[CG] is pretty mad about me leaving and threatening me, so just, please, don't say anything to them about me or contact the office yet about transferring the bookings. I would appreciate it." (Brammer Dep. 118:9–119:5.) Brammer sent nearly the same message, on the same day, to ACG client Susie Alpert.[6] (Brammer Dep. 158:21–159:1, 162:1–5.) On 19 October 2021, Brammer again messaged Ms. Alpert, stating "I'm working on book -- looking into the booking transfer. If you'd like to proceed, can you email me the Trafalgar confirmation and a note attached just stating that you want to continue working with me?" (Brammer Dep. 162:11–163:2.)

26. On 10 November 2021, Brammer messaged Ms. Zipkin on Facebook and asked, "can you forward me the email for your Royal and NCL cruises?" (Brammer Dep. 120:14–19.) When asked whether she was requesting Ms. Zipkin provide "information that would enable [Brammer] to transfer the bookings", Brammer responded, "I guess so. I'm not really sure." (Brammer Dep. 120:24–121:2.)

[6] Brammer wrote, "Okay. A[CG] is pretty mad about me leaving and threatening me. So just please don't say anything to them about me or contact the office yet about transferring the bookings. I would appreciate it." (Brammer Dep. 162:1–5.) Brammer clarified that she was not threatened physically but was threatened with legal action. (Brammer Dep. 124:8–11.)

Brammer was asked "[w]ould you agree that when you look at these Facebook Messenger posts, it would -- it would indicate that you were doing all the work involved in transferring the booking?" (Brammer Dep. 122:8–11.) Brammer responded, "I wouldn't agree necessarily to that. But it appears I had some part of it, yes." (Brammer Dep. 122:13–14.)

27. On 1 October 2021, her first day working at Frosch, Brammer wrote to ACG client Andrea Walker, stating "Hey, Andrea. I just started today. I have my new email, Jennifer.Brammer@Frosch.com. Yes, I believe it's possible to transfer bookings. And I will know more about the process next week." (Brammer Dep. 164:3–165:16.)

B. <u>Procedural History</u>

28. On 25 January 2022, following designation to the Business Court, the Certification of Payment of the Business Court Filing Fee was filed by Defendants pursuant to N.C.G.S. § 7A-305(a)(2) and Business Court Rule 2.1(d). (ECF No. 5.)

29. On 17 February 2022, Defendants filed an answer to the Corrected Complaint. (ECF No. 11.)

30. The Case Management Report was filed 31 March 2022. (ECF No. 26.) The Court thereafter held its BCR 9.3 Case Management Conference on 7 April 2022, (*see* ECF No. 23), and entered its Case Management Order the same day, (ECF No. 28 ["CMO"]). The Case Management Order set forth various deadlines for the pursuit of the case, including, in relevant part, that (1) initial expert disclosures were due 9 September 2022 and rebuttal expert disclosures were due 10 October 2022;

(2) initial mediation shall be completed by 1 September 2022; and (3) all discovery would conclude 8 November 2022. (CMO 5, 8.)

31. Defendants indicate that on 6 and 7 April 2022, Defendants' counsel provided Plaintiffs' counsel with affidavits of the Former ACG Agents. (Br. Supp. Defs.' Mot. 19, ECF No. 58 ["Br. Supp. Mot."]; *see* ECF Nos. 49–53 (affidavits of the Former ACG Agents, executed by the affiants between 25 March and 5 April 2022).) The affidavits of Dennis, McClung, and Younis were amended in December 2022 to correct typographical errors, and to provide additional evidence previously unavailable or otherwise excluded. (ECF Nos. 54–56.) As a general matter, the affidavits disclaimed any knowing violations of any of Plaintiffs' rights or other misconduct. (*See, e.g.*, *supra* ¶¶ 18, 21.)

32. The record indicates that, following Plaintiffs' filing of consent motions, the Case Management Order was twice amended to extend certain deadlines: (1) the deadline for initial mediation was extended through and including 7 September 2022, (2) the deadlines for expert disclosures were each extended thirty days,[7] and (3) the conclusion of all discovery, and the deadline for filing any post-discovery dispositive motions, was extended by thirty days. (ECF Nos. 39, 42.)

33. On 8 July 2022, Defendants' counsel Jared Gardner ("Mr. Gardner") requested that Plaintiffs' counsel postpone the depositions of Younis, Dennis,

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[7] The party bearing the burden of proof on an issue had to and including 10 October 2022 to exchange expert reports, with rebuttal expert reports being due on or before 9 November 2022. (ECF No. 42.) The parties agree that neither side designated experts.

Kazlauskas, and McGuigan. (Ellison Aff. Ex. B, ECF No. 67.2 ["Ellison Aff. Ex. B."].)

He wrote:

> I'd like to talk with you about postponing these around-the-country depositions until after initial mediation or, failing successful mediation, after a ruling on our motion for summary judgment that we'll file ASAP after we have your documents (please get them to us soon as you're able). The bases of our motion – including that nothing Frosch received from the agents constitutes an ACG trade secret, as a matter of law – does not implicate anything Frosch or any agent knows or could testify about. It would be an enormous waste of time, money, and jet fuel for you to take these depositions ahead of initial mediation or a decision on summary judgment.

(Ellison Aff. Ex. B.) Following internal discussion among Plaintiffs' counsel, Travis Hinman ("Ms. Hinman") responded to all counsel on 27 July 2022, requesting the availability for deposition of Younis, Dennis, Kazlauskas, and McGuigan, and stating that Plaintiffs "still plan" to take those depositions "before our initial mediation in September." (Ellison Aff. Ex. B.)

34. On 4 August 2022, Plaintiffs' counsel Brian Church ("Mr. Church") emailed all counsel and indicated that Plaintiffs' counsel was still awaiting availability for Dennis, Kazlauskas, and McGuigan. (Ellison Aff. Ex. B.) That same day, Jon Carroll ("Mr. Carroll"), as counsel for Younis and Dennis, indicated they were "no longer available in August" and that late-September dates were amenable for Younis. (Ellison Aff. Ex. B.) Following that email, Mr. Church responded, stating in relevant part:

> You may not be aware, but a primary reason ACG filed this case in the first place is because Frosch deceptively denied and then refused ACG's efforts to determine the extent to which your clients had provided to Frosch ACG information and taken and used that information after their departures. Creating the appearance that they will not timely

> answer questions about those same issues under oath will not bode well for the mediation . . . I appreciate your renewed efforts to work with us on a deposition schedule that we can complete in the next four weeks.

(Ellison Aff. Ex. B.)

35. On 8 August 2022, Mr. Church served Notices of Deposition to depose Younis and Dennis on 28 and 29 September 2022 respectively, Kazlauskas on 12 October 2022, and McGuigan on 19 October 2022. (Ellison Aff. Ex. B; Aff. Jared Gardner ¶ 7, ECF No. 59 ["Gardner Aff."].) On 11 August 2022, Defendants' counsel responded that Dennis and Younis were available, in the alternative, on 7–9 or 12–16 September 2022. (Ellison Aff. Ex. B.) On 12 August 2022, Mr. Carroll stated that Younis and Dennis "will not voluntarily appear" for their scheduled depositions, and again reaffirmed their September availability after the initial mediation. (Ellison Aff. Ex. B.) The depositions were cancelled and not re-scheduled.

36. On 7 September 2022, the parties attended mediation. (Gardner Aff. ¶ 8.) The Report of Mediator was filed with the Court on 8 September 2022 and the report indicated that the parties spent seven hours and eighteen minutes in that conference, with each side incurring a fee of $1,651.25. (ECF Nos. 43, 59.3.)

37. On 22 September 2022, Defendants served Rule 30(b)(6) Notices of Deposition to depose Plaintiffs on 27–28 October 2022. (Gardner Aff. ¶ 9.)

38. This action was thereafter voluntarily dismissed without prejudice on 12 October 2022. (ECF No. 47.) The action was re-filed the same day as Mecklenburg County Case No. 22-CVS-018097 (the "Pending Litigation"). The refiled complaint excluded the TSPA claim, and added Brammer, Dennis, and Younis as named

defendants. (Br. Opp. Mot. 13; Aff. Brian L. Church ¶¶ 4–6, ECF No. 68 ["Church Aff."].) The Pending Litigation is currently in discovery. (Church Aff. ¶ 9.)

39. The Motion was subsequently filed on 18 December 2022, (Mot.), and on 25 January 2023, the Motion for In Camera Review of Billing Invoices was filed, (ECF No. 76). On 18 January 2023, Plaintiffs delivered a check to Defendants in the amount of $3,048.75—the sum of the portion of the mediator fees and the Business Court filing fee paid by Defendants. (Church Aff. ¶ 24; Church Aff. Ex. L, ECF No. 69.5.) Defendants' counsel returned Plaintiffs' check. (Church Aff. ¶ 24.)

40. This matter was thereafter reassigned to the undersigned on 10 March 2023. (ECF No. 98.)

41. Following full briefing by the parties, the Court held a hearing on the Motion on 3 April 2023, where all parties participated through their respective counsel. (*See* ECF No. 101.)

42. The Motion is now ripe for resolution.

II. CONCLUSIONS OF LAW

43. "North Carolina follows the American Rule with regard to award of attorney's fees." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 94 (2011). Therefore, in general, a party cannot recover its attorney's fees "absent express statutory authority for fixing and awarding them." *United Artists Records, Inc. v. E. Tape Corp.*, 18 N.C. App. 183, 187 (1973) (citing *Bowman v. Chair Co.*, 271 N.C. 702 (1967)). Statutes that award attorney's fees are in derogation of the common law, and thus they must be strictly construed. *Barris v. Town of Long Beach*, 208 N.C. App. 718, 722 (2010)

(citing *Sunamerica Fin. Corp. v. Bonham*, 328 N.C. 254, 257 (1991)). Whether to award fees is a matter within the trial court's sound discretion. *See, e.g., Runnels v. Robinson*, 212 N.C. App. 198, 203 (2011).

44. Defendants rely on five statutes to support the Motion: N.C.G.S. §§ 1A-1, Rules 11(a) and 41(d), 66-152, 75-1.1, and 6-21.5. The Court reviews each basis in turn.

A. <u>Rule 11</u>

45. Rule 11 provides, in relevant part, that

> [t]he signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

N.C.G.S. § 1A-1, Rule 11(a). Thus, "[t]here are three parts to a Rule 11 analysis: (1) factual sufficiency, (2) legal sufficiency, and (3) improper purpose. A violation of any one of these requirements mandates the imposition of sanctions under Rule 11." *Dodd v. Steele*, 114 N.C. App. 632, 635, *disc. review denied*, 337 N.C. 691 (1994) (internal citations omitted).

46. “[W]hether the complaint meets the factual and legal certification requirements of Rule 11 requires a two-step analysis in each instance.” *McClerin v. R-M Indus.*, 118 N.C. App. 640, 643 (1995).

> [T]he court must first determine the facial plausibility of the paper. If the paper is facially plausible, then the inquiry is complete, and sanctions are not proper. If the paper is not facially plausible, then the second issue is (1) whether the alleged offender undertook a reasonable inquiry into the law, and (2) whether, based upon the results of the inquiry, formed a reasonable belief that the paper was warranted by existing law, judged as of the time the paper was signed. If the court answers either prong of this second issue negatively, then Rule 11 sanctions are appropriate.

Mack v. Moore, 107 N.C. App. 87, 91 (1992) (citing *Bryson v. Sullivan*, 330 N.C. 644 (1992)).

47. “The improper purpose prong . . . is separate from the inquiry as to factual or legal sufficiency. The question is whether the pleading was made for a purpose other than to vindicate the pleader’s rights”, which is measured objectively. *Velocity Solutions, Inc. v. BSG, LLC*, 2015 NCBC LEXIS 54, at **19 (N.C. Super. Ct. May 26, 2015) (citing *Bryson*, 330 N.C. at 663; *Ward v. Jett Props., LLC*, 191 N.C. App. 605, 609 (2008)). The burden is “on the movant to prove such improper purpose.” *Coventry Woods Neighborhood Ass’n, Inc. v. City of Charlotte*, 213 N.C. App. 236, 241 (2011) (citation omitted).

48. “[I]n determining compliance with Rule 11, courts should avoid hindsight and resolve all doubts in favor of the signer.” *Johnson v. Harris*, 149 N.C. App. 928, 938 (2002) (cleaned up).

49. Defendants argue that Plaintiffs failed to comply with Rule 11 under the factual sufficiency and improper purpose prongs of the analysis. Specifically, Defendants contend that Plaintiffs' claims fail (1) the factual sufficiency prong because the "hyperbolic allegations have no basis in reason or reality," and (2) the improper purpose prong because the lawsuit is an "improper method of competition", and it was brought and prosecuted to "harass and intimidate" Defendants. (Br. Supp. Mot. 26.)

1. Factual Sufficiency

50. In analyzing whether the Complaint meets the factual certification requirement to be facially plausible, "the court must make the following determinations: (1) whether the plaintiff undertook a reasonable inquiry into the facts and (2) whether the plaintiff, after reviewing the results of his inquiry, reasonably believed that his position was well grounded in fact." *McClerin*, 118 N.C. App. at 644. A reasonable inquiry is one where, "given the knowledge and information which can be imputed to a party, a reasonable person under the same or similar circumstances would have terminated his or her inquiry and formed the belief that the claim was warranted" under the existing facts. *Bryson*, 330 N.C. at 661–62.

51. The Complaint is facially plausible. Prior to the filing of the Complaint and Corrected Complaint, Plaintiffs undertook a reasonable inquiry and investigation into the facts, as demonstrated by a number of their allegations. This includes the allegations that: (1) "five of Plaintiffs' former agents left Plaintiffs for Frosch-Mann", (Compl. ¶ 19); (2) Defendants may have recruited those former agents as part of a

"plan to unfairly compete with Plaintiffs", (Compl. ¶ 20); (3) the Former ACG Agents had access to "sensitive and confidential financial information" stored "on Plaintiffs' network and Salesforce computer platform", which Plaintiffs use to manage customer information, (Compl. ¶ 21); (4) Plaintiffs uncovered an email chain from 20–25 August 2021, between Pinyan, Brammer, Younis, Kazlauskas and McGuigan, where McGuigan requested reports, and where Younis sent those reports or images of reports, (Compl. ¶¶ 25–29); and (5) Younis deleted a document titled "Top Clients" from "Plaintiffs' computer network on September 7, 2021, just days before submitting her two-weeks' notice", in addition to her 1,991 other deletions, (Compl. ¶¶ 31, 33).

52. Further, prior to the filing of this lawsuit, Plaintiffs sent several cease-and-desist letters to Defendants and the Former ACG Agents. (Compl. ¶¶ 36–41.) The second of those letters was mailed to Defendants on 7 October 2021, stating that "[o]n August 23, 2021, Mr. Kazlauskas and Ms. McGuigan requested ACG's confidential, proprietary, and trade secret information from ACG's then-employees" and that "[a]t least one of the then-ACG employees actually shared the requested information with Frosch the following day." (ECF No. 10.1.) The conduct asserted in this cease-and-desist letter, attached to the Corrected Complaint as an exhibit, is further evidence of a reasonable inquiry into the facts prior to the filing of the Complaint.

53. The Court concludes that Plaintiffs reviewed the results of their reasonable inquiry into the facts and reasonably believed that their position was well grounded in fact. This is evidenced by the response, or lack thereof, to their cease-and-desist letters, and the specificity of the allegations in the Complaint. (*See* ECF Nos. 10.1–

10.2 (the 7 October 2021 cease-and-desist letter and Frosch's response letter).) Therefore, the Court concludes that the Complaint is facially plausible. Given that conclusion, the inquiry as to the factual sufficiency prong is complete and Rule 11 sanctions are not warranted on that basis. *Mack*, 107 N.C. App. at 91.

2. Improper Purpose

54. "Even if the complaint is well grounded in fact and in law, it may nonetheless violate the improper purpose prong of Rule 11." *McClerin*, 118 N.C. App. at 644 (citing *Bryson*, 330 N.C. at 663). "[J]ust as the Rule 11 movant's subjective belief that a paper has been filed for an improper purpose is immaterial in determining whether an alleged offender's conduct is sanctionable, whether the conduct does in fact harass is also not relevant to the issue." *Mack*, 107 N.C. App. at 93 (internal citations omitted).

55. Defendants contend that Plaintiffs' improper purpose is evident from the following: that Plaintiffs did not sue the Former ACG Agents; that the allegations are that Frosch urged, induced, directed, or caused the Former ACG Agents to "steal" trade secrets, when it did the opposite; that Plaintiffs did not seek a temporary restraining order in this action, despite the alleged high value of the trade secrets; and that Plaintiffs voluntarily dismissed without prejudice, omitted the TSPA claim in the Pending Litigation, and incurred over $500,000 in fees and costs which Defendants contend they will now be unable to recover. (Br. Supp. Mot. 26–27.)

56. An objective analysis of the Complaint demonstrates that it was made for the purpose of vindicating Plaintiffs' rights. While Defendants contend that this

litigation was brought and maintained to "harass and intimidate" Defendants, the evidence demonstrates otherwise. The record amply discloses that Plaintiffs investigated the factual allegations surrounding this matter, that Plaintiffs attempted to resolve this dispute without need of filing an action with the Court through the sending of cease-and-desist letters, and that Plaintiffs were reasonably concerned about both the loss of additional clients and agents, and the misappropriation of its alleged trade secrets.

57. "[O]nce responsive pleadings or other papers are filed and the case has become meritless, failure to dismiss or further prosecution of the action may result in sanctions . . . under the improper purpose prong of [Rule 11]." *Bryson*, 330 N.C. at 658. However, an objective analysis of the events which occurred throughout this matter demonstrate that, despite Defendants' allegations, Plaintiffs maintained this action for a proper purpose.

58. Defendants contend that providing Plaintiffs with the Former ACG Agents' affidavits was plentiful evidence which tended to disprove Plaintiffs' claims such that Plaintiffs should have dismissed the action in April 2022, and that maintaining this action thereafter was improper. (Br. Supp. Mot. 26–27.) However, the evidence demonstrates otherwise. Brammer's deposition testimony in the Pending Litigation is informative in this regard.

59. Brammer testified in her affidavit that she did not reach out to her clients about joining Frosch; that she informed her former clients, when they contacted her, that she could not make any changes with respect to their ACG bookings; and that

she did not encourage or solicit those former clients to transfer an ACG booking to Frosch. (Brammer Aff. ¶¶ 57–59.) However, Brammer's testimony at her deposition demonstrated that she was in contact with ACG clients after her resignation from ACG, and while she was working at Frosch. Those communications also demonstrate that Brammer assisted, at least in part, with the transferring of ACG client bookings, potentially to Frosch.

60. Further, as described herein, Plaintiffs attempted to take depositions of Dennis, Younis, Kazlauskas, and McGuigan prior to the 7 September 2022 mediation, but depositions did not occur. The evidence shows that Plaintiffs were attempting to gather evidence and testimony from witnesses in order to have sufficient evidence to confirm the basis of their claims. This action was not meritless such that dismissal was required, but rather it was maintained to vindicate Plaintiffs' rights.

61. Under the circumstances, the Court concludes that this is not a case in which the imposition of Rule 11 sanctions would further the Rule's purpose of "prevent[ing] abuse of the legal system[.]" *Grover v. Norris*, 137 N.C. App. 487, 495 (2000). Therefore, the Motion is **DENIED** as to Defendants' request for sanctions pursuant to Rule 11(a) of the North Carolina Rules of Civil Procedure.

B. <u>N.C.G.S. § 66-154</u>

62. Defendants argue that they are entitled to their reasonable attorneys' fees under N.C.G.S. § 66-154(d) because Plaintiffs' claim for misappropriation of trade secrets was made in bad faith. (Br. Supp. Mot. 21–22.)

63. N.C.G.S. § 66-154 provides that "[i]f a claim of misappropriation is made in bad faith or if willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party." N.C.G.S § 66-154(d); *see Bruning & Federle Mfg. Co. v. Mills*, 185 N.C. App. 153, 157, *cert. denied*, 362 N.C. 86 (2007). "A finding of bad faith is inappropriate so long as the claimant had a good faith belief that the suit has legitimate basis." *AmeriGas Propane, L.P. v. Coffey*, 2016 NCBC LEXIS 17, at **4 (N.C. Super. Ct. Feb. 17, 2016) (cleaned up).

64. Defendants argue that Plaintiffs' claim for misappropriation of trade secrets was made in bad faith because Plaintiffs (1) continued to prosecute the lawsuit for more than six months after receiving the Former ACG Agents' affidavits; (2) could not show that Frosch received anything which could constitute a trade secret; (3) did not seek a temporary restraining order or preliminary injunction; and (4) did not re-file the TSPA claim in the Pending Litigation. (Br. Supp. Mot. 22–23.)

65. These arguments, however, are not evidence of bad faith. The affidavits of the Former ACG Agents are not conclusive evidence that there was no misappropriation of trade secrets by Defendants. In fact, Brammer's later deposition testimony was that she sent ACG emails to her personal email address, sent ACG client information to her Frosch email, and shared vendor information with Defendants prior to leaving ACG. The evidence also shows that Younis emailed McGuigan a screenshot of her ACG weekly sales report, and of her ACG BI report, which showed Younis's year-to-date revenue and her monthly commission income.

66. While the Court could have concluded at the summary judgment stage that the alleged information did not constitute trade secrets, the Court finds and concludes that Plaintiffs had a good faith basis for asserting the misappropriation claim. Similarly, the Court concludes that Plaintiffs' decision to dismiss the TSPA claim in this action, and not reassert that claim in the Pending Litigation, does not mandate a finding of bad faith in pursuing the claim in this action.

67. Plaintiffs sufficiently identified what they believed constituted trade secrets, and Plaintiffs sufficiently alleged measures taken to maintain the secrecy of that information, which suggests some efforts to keep that information confidential. Based on a review of the record in this matter, the Court finds that Plaintiffs' claim for misappropriation of trade secrets was made with a good faith belief that the claim had a legitimate basis.

68. Therefore, the Motion is **DENIED** as to the request for attorneys' fees pursuant to N.C.G.S. § 66-154.

C. <u>N.C.G.S. § 75-16.1</u>

69. N.C.G.S. § 75-16.1 provides that, for the Court to award Defendants attorneys' fees for Plaintiffs' wrongful prosecution of a claim under the UDTPA, Defendants must show "that (1) the plaintiff knew, or should have known, the action was frivolous and malicious; and (2) the attorney's fee awarded is reasonable." *McKinnon v. CV Indus., Inc.*, 228 N.C. App. 190, 199 (2013) (cleaned up). "A claim is frivolous if a proponent can present no rational argument based upon the evidence or law in support of [the claim]. A claim is malicious if it is wrongful and done

intentionally without just cause or excuse or as a result of ill will." *Id.* (citation omitted). "The decision whether or not to award attorney fees under [N.C.G.S. §] 75-16.1 rests within the sole discretion of the trial [court]." *Blankenship v. Town & Country Ford, Inc.*, 174 N.C. App. 764, 771 (2005).

70. Here, Defendants are the prevailing party by virtue of Plaintiffs' voluntary dismissal of this lawsuit without prejudice. *See Sloan v. Inolife Techs., Inc.*, 2017 NCBC LEXIS 45, at *21 (N.C. Super. Ct. May 22, 2017) ("Defendants are the prevailing party within the meaning of section 75-16.1 because Plaintiffs voluntarily dismissed the UDTP claim. . . . [and] the interpretation of 'prevailing party' under section 75-16.1 should be, and is the same as, that under section 6-21.5.").

71. Defendants argue that they should be awarded reasonable attorneys' fees in defending Plaintiffs' claim for violation of the UDTPA because Plaintiffs (1) continued prosecution of this lawsuit for more than six months after receiving the Former ACG Agents' Affidavits; (2) knew or should have known there were no trade secrets at issue; and (3) were malicious by bringing "baseless claims against a competitor with a 'rapidly growing business.' " (Br. Supp. Mot. 24 (quoting Compl. ¶ 20).)

72. First, as noted herein, the Court cannot conclude that Plaintiffs could present no rational argument in support of their claim for misappropriation of trade secrets—the basis of Plaintiffs' UDTPA claim—and the Court has already concluded that the record evidence fails to demonstrate that the TSPA claim was brought in bad faith. The same considerations motivating that conclusion apply to the Court's

conclusion here that the UDTPA claim was not frivolous because there was a rational argument, based upon the available evidence, to maintain the claim.

73. While Defendants contend that Plaintiffs acted maliciously by bringing claims against a competitor with a "rapidly growing business", this is not evidence of malice. For Defendants to show malice, they must present evidence that Plaintiffs' UDTPA claim was without just cause or as a result of ill will. *See McKinnon*, 288 N.C. App. at 199. The Court finds and concludes here, based on the record before it, that Plaintiffs' UDTPA claim was raised with just cause and an intent to protect what Plaintiffs reasonably believed were its trade secrets.

74. The Court concludes, in its discretion, that Defendants have failed to show that the UDTPA claim was frivolous and malicious. Therefore, the Motion is **DENIED** as to the request for attorneys' fees pursuant to N.C.G.S. § 75-16.1.

D. <u>N.C.G.S. § 6-21.5</u>

75. Pursuant to section 6-21.5, the Court "may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading." N.C.G.S. § 6-21.5. As explained by the Court of Appeals,

> [a] justiciable issue is one that is real and present, as opposed to imagined or fanciful. In order to find a complete absence of a justiciable issue it must conclusively appear that such issues are absent even giving the pleadings the indulgent treatment they receive on motions for summary judgment or to dismiss. Under this deferential review of the pleadings, a plaintiff must either: (1) reasonably have been aware, at the time the complaint was filed, that the pleading contained no justiciable issue; or (2) be found to have persisted in litigating the case after the point where [plaintiff] should reasonably have become aware

> that [the] pleading [plaintiff] filed no longer contained a justiciable issue.

McLennan v. Josey, 247 N.C. App. 95, 98–99 (2016)); *see also Burton Constr. Cleanup & Landscaping, Inc. v. Outlawed Diesel Performance, LLC*, 261 N.C. App. 317, 323 (2018).

76. "[U]nder N.C.G.S. § 6-21.5, the party against whom attorneys' fees are being considered has 'a continuing duty to review the appropriateness of persisting in litigating a claim which [is] alleged [to lack a justiciable issue].' " *Bryson*, 330 N.C. at 660 (quoting *Sunamerica*, 328 N.C. at 258) (alterations in original).

77. "N.C.G.S. § 6-21.5 requires review of all relevant pleadings and documents in determining whether attorneys' fees should be awarded." *Id.* "The decision to award or deny attorney's fees under Section 6-21.5 is a matter left to the sound discretion of the trial court." *W&W Partners, Inc. v. Ferrell Land Co., LLC*, 2019 NCBC LEXIS 104, at *11 (N.C. Super. Ct. Dec. 6, 2019) (quoting *Persis Nova Constr. v. Edwards*, 195 N.C. App. 55, 67 (2009)).

78. Defendants contend that the factual allegations in this matter were "imagined and fanciful from the start", claiming that "[t]here was no evidence to support those claims when they were made, and none emerged." (Br. Supp. Mot. 19.) Defendants argue that even if there were evidence of wrongdoing, that "Plaintiffs unquestionably knew the falsity of their claims no later than 6 and 7 April 2022" when Plaintiffs received the Former ACG Agents' affidavits. (Br. Supp. Mot. 19–20.)

79. Here, as discussed, the evidence of record suggests quite the opposite. The Complaint alleges that Younis deleted a document titled "Top Clients" from

"Plaintiffs' computer network on September 7, 2021, just days before submitting her two-weeks' notice [of resignation]", in addition to 1,991 other deletions. (Compl. ¶¶ 31, 33.) A justiciable issue remained as to whether Younis was acting as an agent of Defendants when she deleted those items, and whether that constituted conversion by wrongfully depriving Plaintiffs of its electronically stored information.[8] A justiciable issue also remained as to whether the BI report and weekly sales report that Younis emailed to McGuigan were trade secrets, and thus whether there was misappropriation by Frosch or a violation of the UDTPA.

80. Further, while Defendants rely on the affidavits of the Former ACG Agents as a basis for contending that Plaintiffs persisted in this litigation after they should have reasonably been aware that the pleadings no longer contained a justiciable issue, the veracity of Brammer's affidavit has been questioned. As discussed herein, Brammer was deposed in the Pending Litigation, and she testified to a number of events directly contradicting her prior affidavit. Brammer's deposition testimony suggests that it was appropriate for Plaintiffs to persist in this litigation. Thus, the Court finds and concludes that Plaintiffs were not continuing to pursue the litigation despite a lack of justiciable issue. Rather, Plaintiffs were persisting in the litigation in an effort to determine the justiciability of their claims.

81. Therefore, following a review of the pleadings and evidence of record in this matter, the Court cannot conclude that no justiciable issue remained as to the

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[8] Our Courts have recognized that "electronically stored information may qualify as personal property subject to a claim for conversion." *SQL Sentry, LLC v. ApexSQL, LLC*, 2017 NCBC LEXIS 107, at **5 (N.C. Super. Ct. Nov. 20, 2017) (citing *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 51, at *15–20 (N.C. Super. Ct. June 9, 2017)).

conversion claim, or the other two claims at issue in this action. Thus, the Motion is **DENIED** as to the request for attorneys' fees pursuant to N.C.G.S. § 6-21.5.

E. <u>Costs Pursuant to Rule 41(d)</u>

82. "A plaintiff who dismisses an action or claim under [Rule 41(a)] shall be taxed with the costs of the action unless the action was brought in forma pauperis." N.C.G.S. § 1A-1, Rule 41(d). "Costs which are to be taxed under Rule 41(d) include those costs enumerated in N.C. Gen. Stat. § 7A-305(d)." *Lewis v. Setty*, 140 N.C. App. 536, 538 (2000) (citation omitted).

83. Pursuant to N.C.G.S. § 7A-305(d), the Court has discretion to tax costs against Plaintiffs, as requested in the Motion, for: "(3) Counsel fees, as provided by law"; (7) "Fees of mediators . . . agreed upon by the parties"; and "(12) The fee assessed pursuant to subdivision (2) of subsection (a) of this section upon assignment of a case to a special superior court judge as a complex business case." N.C.G.S. § 7A-305(d)(3), (7), (12).

84. On 18 January 2023, Plaintiffs delivered a check to Defendants in the amount of $3,048.75—the sum of Defendants' portion of the mediator fee and the Business Court filing fee—which Plaintiffs contend was in compliance with Rule 41(d). (Church Aff. ¶ 24; Church Aff. Ex. L, ECF No. 69.5.) Defendants' counsel returned that check.[9] (Church Aff. ¶ 24.)

[9] According to Defendants, the check was returned because it was considered an "insufficient" payment given that the Motion requested fees in addition to the costs enumerated in this section. (Defs.' Reply Br. 13, ECF No. 84.)

85. Notwithstanding Defendants' rejection of Plaintiffs' check, the Court, in its discretion, concludes that pursuant to Rule 41(d) and N.C.G.S. § 7A-305(d), Plaintiffs shall deposit with the Clerk of Superior Court the costs for Defendants' portion of the mediator invoice for the 7 September 2021 mediation, $1,848.75, the $100.00 administrative fee charged to Defendants by the mediator, and the North Carolina Business Court designation filing fee, $1,100.00, in the total amount of $3,048.75. Therefore, the Motion is **GRANTED** in part as to the specified costs, and it is hereby **ORDERED** that Plaintiffs shall deposit the amount of $3,048.75 with the Mecklenburg County Clerk of Superior Court for the benefit of Defendants.

III. CONCLUSION

86. **THEREFORE**, the Court, in the exercise of its discretion, **GRANTS** in part and **DENIES** in part the Motion, as follows:

a. The Motion is **GRANTED** in part pursuant to § 7A-305(d)(7), (12), and the Court hereby **ORDERS** Plaintiffs to pay to the Mecklenburg County Clerk of Superior Court the total amount of $3,048.75 within thirty days of entry of this order;

b. The Clerk of Superior Court is directed to pay to Defendants' counsel the $3,048.75, following receipt of the funds from Plaintiffs; and

c. The Motion is otherwise **DENIED**.

87. As a result, Defendants' Motion for In Camera Review of Billing Invoices, (ECF No. 76), is **DENIED** as moot.

IT IS SO ORDERED, this the 3rd day of May, 2023.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases