

STATE OF NORTH CAROLINA
LENOIR COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 343

ARMISTEAD B. MAUCK and
LOUISE CHERRY MAUCK

Plaintiffs,

v.

CHERRY OIL CO., INC.,

Defendant.

**ORDER ON PLAINTIFFS'
APPLICATION FOR COSTS**

THIS MATTER is before the Court on Plaintiffs Armistead B. Mauck and Louise Cherry Mauck's (collectively, the "Maucks") Application for Costs ("Costs Application," ECF No. 176).

FACTUAL AND PROCEDURAL BACKGROUND

1. A complete discussion of the factual and legal issues previously addressed by the Court in this case can be found in its Order and Opinion on Motion to Dismiss Second Amended Complaint, *see Mauck v. Cherry Oil Co.*, 2022 NCBC LEXIS 39 (N.C. Super. Ct. May 2, 2022), as well as in the Court's Order and Opinion on Defendants' Motion for Summary Judgment and Motion in the Cause for Court Supervision of Call of Shares, *see Mauck v. Cherry Oil Co.*, 2023 NCBC LEXIS 112 (N.C. Super. Ct. Sept. 15, 2023).

2. In a nutshell, the Maucks are minority shareholders of Cherry Oil Company, Inc. ("Cherry Oil") who have been removed from their prior roles as part of the company's management team and are presently in the process of having their

shares bought out by the company (against their will) pursuant to a “call” provision in a shareholders’ agreement.

3. Earlier in this lawsuit, the Maucks asserted numerous claims for relief against the majority shareholders of Cherry Oil—Julius P. “Jay” Cherry, Jr. and his wife Ann B. Cherry (collectively, the “Cherrys”). Following two and a half years of contentious and protracted litigation, the Court ultimately granted summary judgment in favor of the Cherrys as to all claims for monetary relief asserted by the Maucks. (ECF No. 113.)

4. On 25 August 2023, the Plaintiffs filed a motion seeking leave to file a third amended complaint for the primary purpose of adding a records inspection claim pursuant to N.C.G.S. § 55-16-04—seeking an order from the Court permitting them to inspect certain records of Cherry Oil in their capacities as shareholders. (ECF No. 108.)

5. The Court entered an Order on 14 November 2023 allowing them to instead file a supplemental complaint against Cherry Oil for purposes of their inspection claim. (ECF No. 125.)

6. Pursuant to that Order, on 4 December 2023, the Plaintiffs filed a Supplemental Complaint in which they asserted an inspection claim under N.C.G.S. § 55-16-04. (Suppl. Compl. ¶¶ 34–44, ECF No. 128.)

7. On 18 December 2023, Cherry Oil filed a Motion to Dismiss, seeking dismissal of the Supplemental Complaint in its entirety. (ECF No. 131.)

8. On 14 June 2024, this Court entered an Order and Judgment on Plaintiffs' Supplemental Complaint that granted partial relief to Plaintiffs on their inspection claim. ("14 June Order," ECF No. 175.)

9. In the 14 June Order, the Court ruled that the Maucks were not entitled to inspection of the following three of four categories of documents for which inspection was sought because such documents were not encompassed by N.C.G.S. § 55-16-02:

[Category 1:] All records regarding the uses of funds received by the Company since 1 January 2022 from the United States Government, the State of North Carolina, or any other governmental entity, through grant programs or otherwise;

[Category 2:] All tax returns and other correspondence and filings since 1 January 2020 with the United States Internal Revenue Service and/or the North Carolina Department of Revenue, including informational schedules and K-1s for each shareholder of the Company

...

[Category 4:] Current Real Estate Rent Roles [sic] showing terms of leases between [Cherry Oil] and tenants ("rentanniv" excel file).

Mauck v. Cherry Oil Co., 2024 NCBC LEXIS 83, at *19–22 (N.C. Super. Ct. June 14, 2024) (alterations in original).

10. However, as to the third category of documents,—"[a]ll balance sheets, general ledgers (including annual and YTD detailed trial balance), income/profit loss statements, and cash flow statements for [Cherry Oil] for the periods beginning 1 January 2020"—the Court concluded that such documents were subject to inspection by shareholders, such as the Maucks, under N.C.G.S. § 55-16-02(b)(2) and (4) as "accounting records" and "financial statements." *Id.* at *18–19. The Court, however,

limited such inspection rights to the three-year statutory “look-back” period for maintaining corporate records. *Id.*

11. In response to the parties’ dispute over whether Cherry Oil’s refusal to allow the Maucks’ inspection request was justified, the Court stated the following:

Although . . . the Court finds that Cherry Oil was not only justified, but also legally correct, in refusing to allow the Maucks to inspect certain categories of the requested documents, the Court nevertheless determines that Cherry Oil has failed to make documents available for inspection in response to other significant portions of their requests (namely, the requests for the company’s financial statements and accounting records for the last three fiscal years) without a reasonable basis for doubt as to the Maucks’ right to inspect them.

Id. at *22–24.

12. Therefore, the Court directed the Maucks to file a request for costs and fees incurred in obtaining the relief granted pursuant to N.C.G.S. § 55-16-04. *Id.* at *24–25.

13. The Maucks subsequently filed the Costs Application on 28 June 2024 seeking reimbursement for \$65,761.73 in costs and attorneys’ fees. Contemporaneously therewith, the Maucks submitted to the Court for *in camera* review portions of their attorneys’ billing records that were relevant to the costs being sought, along with an affidavit from Walter L. Tippett, Jr.¹ (ECF No. 177.1.)

14. Cherry Oil, in turn, filed a brief in opposition to Plaintiffs’ Costs Application on 16 July 2024. (ECF No. 181.)

¹ The billing records were submitted *in camera* based on Plaintiffs’ belief that the time entries contained information subject to the attorney/client privilege. At the Court’s direction, Plaintiffs subsequently submitted redacted copies of the billing records to Cherry Oil’s counsel. (ECF No. 179.)

15. Having been fully briefed, this matter is now ripe for resolution.

ANALYSIS

16. In North Carolina, attorneys' fees are recoverable only "if such a recovery is expressly authorized by statute." *Robinson v. Robinson*, 210 N.C. App. 319, 336 (2011) (internal citations omitted). This Court has previously stated as follows:

If the Court orders inspection and copying of records for a shareholder under N.C.G.S. § 55-16-04, the Court must also "order the corporation to pay the shareholder's costs (including reasonable attorneys' fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded."

Beam v. Beam Rest Home, Inc., 2014 NCBC LEXIS 45, at *12–13 (N.C. Super. Ct. Sept. 25, 2014) (internal citations omitted).

17. "A trial court, in making an award of attorneys' fees, must explain why the particular award is appropriate and how the court arrived at the particular amount." *Dunn v. Canoy*, 180 N.C. App. 30, 49 (2006). Generally, this means that the trial court must make "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. Private Diagnostic Clinic*, 146 N.C. App. 658, 672 (2001).

18. This Court has previously observed the following when assessing a fee application by a party who obtained partial (as opposed to complete) relief:

The court must consider these factors in a way that accounts for [the plaintiff's] limited success. If a plaintiff brings multiple claims arising from a common nucleus of facts, and succeeds on some claims but not others, the court is not necessarily required to allocate fees between the

successful and unsuccessful claims. At the same time, where the fee requested and the success achieved are incongruous, an adjustment must be made to assure that the fee awarded is reasonable.

Out of the Box Devs., LLC v. Doan L., LLP, 2014 NCBC LEXIS 39, at *23 (N.C. Super. Ct. Aug. 29, 2014) (cleaned up); *see also Erwin v. Myers Park Country Club, Inc.*, 2022 NCBC LEXIS 67, at *8 (N.C. Super. Ct. June 9, 2022) (noting that in assessing fee applications under N.C.G.S. § 55-16-04, “[a] trial court [may] exercise its discretion in reducing claimed attorneys’ fees awarded especially if such a reduction is necessary to make the award reasonable in relation to the plaintiff’s overall success” (cleaned up)).

19. A trial court’s determination as to the amount of attorneys’ fees to be awarded is left to the 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).

20. With these principles in mind, the Court will now address those factors most pertinent to a fee application under N.C.G.S. § 55-16-04, focusing on the specific objections raised by Cherry Oil in response to Plaintiffs’ Costs Application.²

A. Reasonableness of Rates

² The Court deems it appropriate to remind litigants that although trial courts have a general duty to ensure that fee awards are reasonable, they are not required to independently comb through each entry—item by item—to discern possible concerns. Rather, it is the burden of the party opposing the fee award to identify with specificity those portions of the time entries at issue believed to be unreasonable. Nevertheless, in the present case, the Court has found it necessary to review Plaintiffs’ time entries one by one in order to assess their reasonableness under the circumstances presented in this case. As reflected in the attached Appendix, the Court has reduced, or disallowed entirely, certain time entries that it finds to be unreasonable as submitted by Plaintiffs.

21. A trial court may take judicial notice of the rates customarily charged by local attorneys for the same tasks, *Simpson v. Simpson*, 209 N.C. App. 320, 328 (2011), and may consider the services rendered by paralegals, *United Lab'ys, Inc. v. Kuykendall*, 335 N.C. 183, 195 (1993).

22. The hourly rates and compensable time sought by Plaintiffs' counsel and paralegals are as follows:

Name	Title	Hourly Rate	Hours Sought
Walter L. Tippet, Jr.	Partner	\$550.00	68.3
Zachary S. Buckheit	Senior Associate	\$435.00	26.6
Katarina Wong	Senior Associate	\$300.00	21.7
Killian Wyatt	Junior Associate	\$290.00	21.8
Jessica Phipps	Junior Associate	\$290.00	2.0
Laura Twine	Paralegal	\$275.00	11.1
Timothy Shail	Paralegal	\$243.00	0.5
"AMM"	Unknown	\$300.00	0.2

23. Cherry Oil does not expressly challenge the reasonableness of the rates charged by Plaintiffs' attorneys. Indeed, similar rates have been found reasonable for North Carolina attorneys practicing complex commercial litigation. *See, e.g., McManus v. Gerald O. Dry, P.A.*, 2023 NCBC LEXIS 69, at *6–8 (N.C. Super. Ct. May 5, 2023) (recognizing that “hourly rates have risen since many of the North Carolina state cases that speak to reasonable rates were decided” and awarding fees at a rate of \$700 per hour for a senior partner, \$350 per hour for an associate, and \$225 per hour for paralegals); *Green v. Emmergeortho, P.A.*, 2024 NCBC LEXIS 102, at *9–11

(N.C. Super. Ct. Aug. 2, 2024) (awarding fees at an hourly rate of \$725 for a senior partner; \$500 for a senior associate; \$325 for a junior associate; and \$239 for paralegals and support staff); *Woodcock v. Cumberland Cnty. Hosp. Sys.*, 2023 NCBC LEXIS 54, at *14 (N.C. Super. Ct. Apr. 3, 2023) (awarding fees at an hourly rate of \$600 for a partner and \$375 for a mid-level associate).

24. However, as to the hourly rate of Twine, the Court finds that the claimed rate is unreasonable. The Court, in its discretion, will reduce the hourly rate for Twine to \$250.00.

25. Finally, as to timekeeper “AMM,” Plaintiffs have not identified this timekeeper, provided a description of that person’s role in the litigation, or included any information that would allow this Court to determine that individual’s reasonable rate.³ Therefore, the Court, in its discretion, will not award fees for work attributable to timekeeper “AMM.”

B. Applicable Window of Time for Billing Entries

26. Cherry Oil contends that all of the time entries of Plaintiffs’ counsel incurred prior to 20 November 2023 (the date Plaintiffs’ counsel began “[i]nitial preparation of [the] supplemental complaint”) and after 12 April 2024 (the date of the hearing on the Costs Application) should be excluded from the calculation of fees. (Def.’s Br. at 11.) In essence, Cherry Oil’s argument is that the drafting of the

³ The only information in the record regarding timekeeper “AMM” is a single billing entry on 10 August 2023 for 0.2 hours spent on a “[p]hone call with Katie Wong regarding strategy and considerations for separate shareholder inspection proceeding; [and] follow-up email to Katie Wong regarding relevant Business Court shareholder inspection act.” (Ex. B, ECF No. 180.2.)

Supplemental Complaint is the “start date” and the Court’s hearing is the “end date” for all work “incurred to obtain the order” granting relief under N.C.G.S. § 55-16-04(c).

27. In response, Plaintiffs contend that Cherry Oil’s proposed time limitations have no basis in either the statute itself or the applicable case law and fail to take into account the particular circumstances of this litigation.

i. Start Date

28. The Court has not identified any decisions from North Carolina’s appellate courts that expressly address this issue.

29. The Court finds Cherry Oil’s position to be unduly restrictive. Plaintiffs’ filing of the Supplemental Complaint did not occur in a vacuum. Instead, it was done at the direction of the Court following Plaintiffs’ earlier attempt to amend their existing Complaint to add an inspection claim after Cherry Oil had refused to allow Plaintiffs to inspect the bulk of the documents requested. Notably, subsections (a) and (b) of N.C.G.S. § 55-16-04 only authorize a shareholder to seek judicial intervention either once a corporation refuses a proper inspection request or if the corporation fails to comply with a valid inspection request within a reasonable period of time. N.C.G.S. § 55-16-04(a)–(b).

30. Therefore, under the unique circumstances of this case, the Court finds that the most logical “start date” regarding the accrual of Plaintiffs’ recoverable costs is 8 August 2023—that is, the date of Cherry Oil’s letter formally denying Plaintiffs’

inspection request. Based on this letter, Plaintiffs obtained the status of aggrieved shareholders for purposes of N.C.G.S. § 55-16-04.

ii. End Date

31. As a general proposition, there appears to be a split of authority in the applicable case law as to whether costs incurred in actually preparing an application for attorneys' fees are properly encompassed in a fee award. *Compare W&W Partners, Inc. v. Ferrell Land Co.*, 2020 NCBC LEXIS 35, at *19 (N.C. Super. Ct. Mar. 23, 2020) (awarding attorneys' fees for time spent preparing the fee application), *with Out of the Box Devs., LLC*, 2014 NCBC LEXIS 39, at *31 (declining to award attorneys' fees for time spent preparing the fee application).

32. Based on a careful reading of N.C.G.S. § 55-16-04(c), it appears that the "order" that is being referenced with regard to the award of attorneys' fees is the order granting the request for inspection and copying of the records at issue. Here, that would be the Court's 14 June Order. Therefore, because all of Plaintiffs' work in connection with obtaining a ruling on their Costs Application ended following the 12 April hearing, the Court will exclude all costs incurred by Plaintiffs after 12 April 2024.

C. Redacted Entries

33. Cherry Oil next objects to the fact that several billing entries at issue are redacted. Cherry Oil asserts that because the redactions "leave[] the Court unable to conclude the billed time was related" to obtaining the 14 June Order, those time entries should be excluded from Plaintiffs' fee award. (Def.'s Br. at 14 (quoting

Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC, 2018 NCBC LEXIS 69, at *20 (N.C. Super. Ct. July 6, 2018)).)

34. However, unlike in *Insight Health Corp.*, Plaintiffs—as noted above—have provided the Court with *unredacted* copies of the billing entries for *in camera* review. Therefore, the Court rejects Cherry Oil’s argument on that ground.

D. Block Billing

35. Cherry Oil asserts that “the vast bulk of the time entries for which Plaintiffs seek compensation represent so-called ‘block billing[.]’” (Def.’s Br. at 12.) Cherry Oil contends that “[m]yriad entries” make “no attempt to distinguish inspection-related work from other work[.]” and that only “ten of the time entries . . . even attempt to account for the block billing of unrelated tasks” through “*post hoc* guesses[.]” (Def.’s Br. at 13–14.)

36. In their reply brief, Plaintiffs assert that “in nearly all cases . . . those ‘blocks’ relate exclusively to Plaintiffs’ pursuit of documents” and “should be reimbursed.” (Pls.’ Br. at 6.) Plaintiffs contend that “[i]n the few instances where a ‘block’ of time included non-document-related work, Plaintiffs noted as such . . . and reduced the amount sought for reimbursement by a commensurate amount.” (Pls.’ Br. at 6.)

37. “While block-billing is not prohibited *per se*, the practice limits the Court’s ability to determine whether the time expended on each particular task was reasonable.” *Ford v. Jurgens*, 2022 NCBC LEXIS 59, at *12 (N.C. Super. Ct. June 15, 2022) (citations omitted). When “time entries include compensable and non-

compensable time . . . the Court [may] estimate the hours expended for each separate compensable task in the[] block-billing entries in the reasonable exercise of the Court’s discretion.” *Vitaform, Inc. v. Aeroflow, Inc.*, 2024 NCBC LEXIS 21, at *11–12 (N.C. Super. Ct. Feb. 5, 2024) (citations omitted).

38. The Court has spent a significant amount of time going through each of the block billing entries one by one for the relevant time period. Based on the Court’s thorough review of those entries coupled with its institutional familiarity with the procedural history of this case, the Court has determined which portions of those time entries are recoverable and which are not. Those time entries that the Court has either disallowed entirely or has reduced in amount are set out in the attached Appendix.

E. Excess and Duplicative Billing and Client Consultations

39. Cherry Oil further argues that Plaintiffs’ fee award improperly seeks compensation for “duplicative and unproductive time.” (Def.’s Br. at 14–15.) Specifically, Cherry Oil asserts that Plaintiff should not be awarded fees for time (1) entered by attorneys who never made formal appearances in the case; (2) spent between multiple attorneys working on the same task; and (3) spent conducting client communications and internal attorney conferences.

40. As to the first of these categories, Cherry Oil objects to the billing entries by attorneys Wyatt and Phipps. However, Cherry Oil cites no caselaw and makes no persuasive argument in support of the proposition that attorneys’ fees may only be awarded for time spent by attorneys who have made formal appearances in the

action. As long as the time was legitimately spent on tasks for which recovery under N.C.G.S. § 55-16-04 is permitted, the fact that neither Wyatt nor Phipps entered an appearance in this case as counsel for Plaintiffs on the Court's electronic docket does not preclude those time entries from being included in an award of costs.

41. With regard to the second category, there is no *per se* rule against more than one attorney working on the same task. Although the Court by no means condones the practice of multiple attorneys unnecessarily billing clients for tasks that could—and should—have been performed by a single attorney, there are many tasks in the course of litigation that benefit from the input of more than one attorney.

42. As for the third category, the Court is unable to say that time entries relating to communications with clients are inherently precluded from reimbursement pursuant to N.C.G.S. § 55-16-04. After all, it is the client who possesses first-hand knowledge of the records being sought and controls the actions of its attorneys. However, routine calls to clients are not properly included in an award of costs. *See Rogers v. Astrue*, 2015 U.S. Dist. LEXIS 168913, at *9 (W.D.N.C. Dec. 17, 2015) (noting that “merely ministerial” calls to client to provide a short update on the case were not recoverable). Moreover, while, in theory, the potential exists for unnecessarily duplicative billing for internal attorney conferences, good-faith billing for the time of multiple attorneys who meaningfully participate in such conferences is not *per se* excluded from recovery.

43. Here, the Court has gone through each of the relevant time entries and determined the extent to which they reflect recoverable fees. Those entries that the

Court has either disallowed entirely or has reduced in amount are set out in the attached Appendix.

F. Billing for Clerical Work

44. Cherry Oil next objects to the inclusion of billing entries “of non-attorneys performing clerical tasks.” (Def.’s Br. at 15.) Cherry Oil appears to be contending that all billing entries attributable to paralegals Twine and Shail involve noncompensable clerical work.

45. As an initial matter, our Supreme Court has made clear that trial courts possess discretion regarding the extent to which tasks performed by paralegals or legal assistants are recoverable. *Lea v. N. Carolina Bd. of Transp.*, 323 N.C. 691, 695 (1989).

46. Courts have held that “[m]any clerical tasks should be subsumed in a law firm’s overhead, rather than billed even at a firm’s rate for paralegal work, because the most basic of clerical tasks—filing, transcription, and document organization—are part of the cost of doing business.” *Triplett v. N.C. Dep’t of Pub. Safety*, CASE NO. 5:15-CV-00075-RLV-DCK, 2017 U.S. Dist. LEXIS 142088, at *16 (W.D.N.C. Sept. 1, 2017); *see, e.g., Missouri v. Jenkins*, 491 U.S. 274, 288, n.10 (1989) (stating that the dollar value of non-legal work “is not enhanced just because a lawyer does it” (citation omitted)); *Topness v. Cascadia Behav. Healthcare*, No. 3:16-cv-2026-AC, 2017 U.S. Dist. LEXIS 218426, at *16 (D. Or. Oct. 17, 2017) (holding that “the court may reduce an attorney’s hours for time spent performing clerical work”).

47. As this Court has previously noted, “[t]he precise boundary between legal tasks and clerical ones may be debated, but there is indeed a line between such tasks.” *Ford v. Jurgens*, 2022 NCBC LEXIS 59, at *14 (N.C. Super. Ct. June 15, 2022); *see, e.g., Gorrell v. Wake Cnty.*, No. 5:21-CV-00129-M, 2022 U.S. Dist. LEXIS 141068, at *23 (E.D.N.C. Aug. 8, 2022) (defining clerical tasks as “filing documents with the court, issuing summonses, scanning and mailing documents, reviewing files for information, printing pleadings, organizing documents, creating notebooks or files, assembling binders, emailing documents, and making logistical telephone calls” (internal citation omitted)); *see also Dewotan v. Kijakazi*, No. 2:21-CV-20-RJ, 2023 U.S. Dist. LEXIS 47189, at *4 (E.D.N.C. Mar. 17, 2023) (holding that billing for “files received, reviewed and processed from referral source for attorney review” and “doc[ument]s prepared for client completion” are clerical in nature).

48. After a careful review of each of the billing entries attributable to Twine and Shail, the Court finds some, but not all, of their entries are for merely clerical tasks that should be excluded from the fee award. Other time entries, however, are recoverable as non-clerical. In the attached Appendix , the Court has identified which of these entries are not recoverable.

G. Relief Obtained

49. Finally, Cherry Oil argues that Plaintiffs’ requested award is unreasonable and “must be reduced based on the Plaintiffs’ limited success.” (Def.’s Br. at 9–10.) Specifically, Cherry Oil notes that (1) “Plaintiffs originally sought [twenty-two] categories of documents,” which was subsequently reduced to ten

categories and then to just four (Def.'s Br. at 9); and (2) the Court ultimately determined that Plaintiffs were only entitled to inspect one of those four categories. Therefore, Cherry Oil contends, Plaintiffs' award should be apportioned to reflect the fact that Plaintiffs were only partially successful.

50. Plaintiffs argue in response that their fee award should not be apportioned because (1) the expansive scope of their inspection requests was necessitated by Cherry Oil's own "path of zero cooperation" (Pls.' Reply Br. at 2); (2) their success was not as limited as described by Cherry Oil; and (3) their requests were so inextricably interwoven with each other that apportionment would be inappropriate.

51. The parties' competing arguments on this issue implicate several principles of law. As our Court of Appeals has recognized, "where 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." *Whiteside Ests., Inc. v. Highlands Cove, LLC*, 146 N.C. App. 449, 467 (2001) (cleaned up). The Court of Appeals further emphasized that "reasonableness, not arbitrary classification of attorney activity, is the key factor under all our attorneys' fees statutes in awarding fees for attorney activity[.]" *Id.*

52. However, in a decision that has been applied by North Carolina courts, the United States Supreme Court has held as follows:

If . . . a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount.

...

There is no precise rule or formula for making these determinations. The [trial] court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment.

Hensley v. Eckerhart, 461 U.S. 424, 436–37 (1983); see *Out of the Box Devs., LLC*, 2014 NCBC LEXIS 39, at *24 (noting that “[t]he North Carolina Court of Appeals has regularly followed *Hensley*”); see also *Sharman v. Fortran Corp.*, 2018 NCBC LEXIS 27, at *30 (N.C. Super. Ct. Apr. 2, 2018) (holding that “the Court will not award . . . costs and fees incurred in the . . . pursuit of the [r]equests [for shareholder inspection under N.C.G.S. § 55-16-04] the Court has disallowed”).

53. Based on these principles, this Court has articulated the appropriate process for determining the reasonable relationship between a plaintiff’s success and the amount of fees awarded as follows:

First, the court inquires whether the fees reflected by the invoices are for services directly related to the claims upon which Plaintiff prevailed, whether they were undertaken by attorneys with the requisite and appropriate skill, and whether they were for work done with reasonable efficiency. The court makes necessary adjustments to limit the number of hours to include in any lodestar. Second, the court determines the reasonable hourly fee to apply to the remaining time to be included in calculating an award. Third, the court applies a percentage adjustment to account for Plaintiff’s degree of success.

Out of the Box Devs., LLC, 2014 NCBC LEXIS 39, at *27–28 (cleaned up).

54. In the present case, it is not possible to arrive at an appropriate reduction percentage with mathematical certainty. This is particularly so given the numerous incarnations of this litigation and the degree of overlap in the way the parties’ various issues have been presented to the Court. But the Court can

consider—and has very carefully considered—certain factors that are most relevant to this issue.

55. First, it cannot be disputed that Plaintiffs significantly narrowed the scope of the documents it sought to inspect between its original demand to Cherry Oil and the four discrete categories of documents it ultimately asked the Court to rule upon. Second, Plaintiffs achieved success on only one of those four categories. However, that one category was a very significant one as it encompassed all of Cherry Oil's financial statements and accounting records for the past three fiscal years. Third, Cherry Oil has not disputed Plaintiffs' assertion that their claimed right to inspection of all four of the categories of documents addressed in the 14 June Order arose from a common nucleus of facts.

56. Based on its consideration of these factors and in the exercise of its discretion, the Court has applied a thirty-five percent reduction to account for Plaintiffs' degree of success.

57. Accordingly, although Plaintiffs have sought a total of \$65,761.73 in their Costs Application, the Court determines that a reasonable award under all of the circumstances discussed above is \$29,198.98.

CONCLUSION

THEREFORE, based on the exercise of the Court's discretion, Plaintiffs' Costs Application is **GRANTED** in part and **DENIED** in part. The Court **CONCLUDES** that Cherry Oil shall pay Plaintiffs' reasonable costs in the amount of **\$29,198.98** within twenty (20) days of the date of this Order.

SO ORDERED, this the 8th day of November, 2024.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
For Complex Business Cases

APPENDIX

Date	Timekeeper	Task	Amount Sought	Amount Awarded
8/25/23	Tippett	Telephone conference with client and co-counsel regarding status; Final preparation and filing of response to second motion in the cause, motion to amend, amended complaint, and supporting brief; related communications with co-counsel.	\$1,650.00	\$770.00
9/5/23	Tippett	REDACTED	\$385.00	\$165.00
9/6/23	Tippett	REDACTED	\$165.00	\$55.00
9/11/23	Tippett	Final review and edit of Reply Brief in support of Motion to Supplement; related communications with clients and co-counsel.	\$660.00	\$330.00
9/28/23	Wong	Draft and revise response to court directive.	\$390.00	\$0.00
10/3/23	Tippett	Emails with client, court, and opposing counsel regarding upcoming hearing; telephone conference with client regarding same.	\$165.00	\$55.00
10/25/23	Twine	Review and assemble all documents needed for hearing binder on all pending motions.	\$907.50	\$425.00
10/26/23	Twine	Draft Consent Motion to Continue Hearing.	\$220.00	\$0.00
10/26/23	Twine	Finalize hearing binder for all pending motions.	\$165.00	\$0.00

10/27/23	Twine	Revise Consent Motion to Continue Hearing; draft Proposed Order granting same.	\$110.00	\$0.00
10/27/23/	Twine	Multiple correspondence with NC Business Court and W. Tippettt regarding filing of Consent Motion to Continue Hearing and Proposed Order.	\$82.50	\$0.00
10/27/23	Twine	File Consent Motion to Continue Hearing and Proposed Order with NC Business Court via e filing site.	\$82.50	\$0.00
10/27/23	Twine	Review Order Continuing Hearing on All Pending Motions.	\$27.50	\$0.00
10/27/23	Twine	Correspondence to W. Tippettt and K. Wong regarding Order Continuing Hearing.	\$27.50	\$0.00
11/5/23	Tippettt	Email to client regarding upcoming hearing.	\$55.00	\$0.00
11/7/23	Tippettt	Emails with court, client, and opposing counsel regarding upcoming hearing; other preparation for hearing.	\$165.00	\$55.00
11/8/23	Tippettt	Preparation for hearing; related communications with Armistead Mauck and opposing counsel.	\$1,595.00	\$1,375.00
11/9/23	Tippettt	Extensive preparation for hearing; related office conference with clients; hearing; followup communications with clients.	\$3,740.00	\$3,300.00

11/14/23	Tippett	Receipt and review of Order from recent hearing; email to clients attaching and discussing same; further emails with Court, opposing counsel, and client regarding trial setting.	\$220.00	\$55.00
11/15/23	Tippett	Telephone conference with clients regarding recent order; emails with court regarding trial process.	\$330.00	\$0.00
11/21/23	Tippett	REDACTED	\$165.00	\$55.00
11/27/23	Tippett	Preparation of designation of appraiser; review of related Court order; email to clients attaching and discussing same; preparation of document complaint; related communications with Armistead Mauck.	\$825.00	\$385.00
11/28/23	Tippett	Final preparation and service of designation of appraiser; receipt and of same from opposing counsel; extensive preparation of records complaint; email to client and Jeffrey Batts attaching and discussing same; receipt and review of their comments; preparation of exhibits to Complaint; emails related to dismissals of counterclaims.	\$1,980	\$1,540.00
12/1/23	Tippett	Further preparation of supplemental complaint; correspondence to client attaching and discussing same.	\$495.00	\$385.00

12/4/23	Tippett	Final preparation and filing of supplemental complaint; correspondence with client regarding same.	\$330.00	\$220.00
12/18/23	Tippett	Receipt and review of motion to dismiss supplemental complaint; initial review and analysis of brief and cited statutes; email to client attaching and discussing same.	\$495.00	\$385.00
12/19/23	Phipps	REDACTED	\$580.00	\$435.00
1/15/24	Tippett	Trial preparation, including preparation of pre-trial disclosures of witnesses, exhibits, and deposition materials; preparation of trial exhibits; preparation of response brief regarding supplemental complaint; relate communications with client.	\$550.00	\$225.00
1/29/24	Tippett	Final preparation and filing of response to opposing motions in limine; review of reply brief in support of Motion to Dismiss; related communications with client.	\$550.00	\$330.00
3/5/24	Buckheit	Communicate regarding next steps before court status conference; arrange call with opposing counsel.	\$130.50	\$0.00
3/5/24	Buckheit	Participate in conference call to ensure that all parties are on the same page in advance of status conference with the Court.	\$174.00	\$0.00
3/6/24	Buckheit	Prepare for and attend status conference; discuss next steps following status conference.	\$435.00	\$0.00

3/6/24	Twine	Notice of Electronic Filing of Notice of Rescheduled Hearing on Defendant's Motion to Dismiss Supplemental Complaint.	\$28.50	\$0.00
3/8/24	Tippett	Conference call with client regarding recent hearing and anticipated settlement negotiations.	\$275.00	\$0.00
3/8/24	Buckheit	Discuss issues raised by status conference with client and prepare for taking next steps.	\$304.50	\$0.00
3/11/24	Tippett	Emails with client and co-counsel regarding documents issues and settlement terms.	\$220.00	\$165.00
3/12/24	Tippett	Telephone conference with client regarding settlement strategies.	\$165.00	\$0.00
3/13/24	Tippett	Telephone conference with client regarding settlement strategies.	\$220.00	\$0.00
3/13/24	Tippett	Email to client proposed settlement agreement; review of related documents.	\$220.00	\$110.00
3/14/24	Tippett	Telephone conference with client regarding settlement strategies.	\$220.00	\$0.00
3/14/24	Tippett	Telephone conferences and emails with clients and opposing counsel regarding settlement negotiations; preparation of draft settlement offer, email to clients regarding communications with opposing counsel, and attaching and discussing proposed settlement agreement.	\$1,155.00	\$0.00

3/15/24	Tippett	Further telephone conferences and emails with clients and opposing counsel regarding settlement negotiations; further preparation of draft settlement offer; email to clients regarding communications with opposing counsel and attaching updated proposed settlement offer.	\$880.00	\$0.00
3/18/24	Tippett	Telephone conference and emails with client regarding revised settlement offer and preparation of revised offer.	\$385.00	\$0.00
3/19/24	Tippett	Emails with client regarding revised settlement offer, telephone conference with opposing counsel regarding same, telephone conference with client regarding same, and final preparation and transmittal of settlement offer.	\$440.00	\$0.00
3/20/24	Tippett	Receipt and review of settlement offer; related emails and telephone conference with client.	\$220.00	\$0.00
3/21/24	Tippett	Office conference and emails with Zach Buckheit regarding upcoming hearing and related communications with client.	\$165.00	\$0.00
4/2/24	Tippett	Correspondence with opposing counsel and clients regarding settlement negotiations; related communications with Zach Buckheit.	\$275.00	\$0.00