STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23 CVS 17361
CHARLES SCHWAB & CO., INC., Plaintiff, v. LAUREN ELIZABETH MARILLEY and PETER JOSEPH MARILLEY, Defendants.	**ORDER ON DEFENDANT LAUREN ELIZABETH MARILLEY'S MOTION FOR SANCTIONS**

1. **THIS MATTER** is before the Court on Defendant Lauren Elizabeth Marilley's Motion for Sanctions pursuant to North Carolina Rule of Civil Procedure 11, and for attorneys' fees pursuant to section 6-21.5 of the North Carolina General Statutes (the Motion), (ECF No. 78).

2. For the reasons stated below, the Court concludes that the Motion should be **GRANTED in part** and **DENIED in part**.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. by Thomas G. Hooper and David Blue, and Baritz & Colman LLP by Neil S. Baritz, for Plaintiff Charles Schwab & Co., Inc.

Spengler & Agans, PLLC by Eric Spengler, for Defendant Lauren Elizabeth Marilley.

Krueger-Andes Law, PLLC by Matthew Krueger-Andes, for Defendant Peter Joseph Marilley.

Earp, Judge.

I. FINDINGS OF FACT[1]

3. This father–daughter dispute between Ms. Marilley and Mr. Marilley concerns funds that Dr. Ralph Marilley, Ms. Marilley's grandfather and Mr. Marilley's father, gave Ms. Marilley. At various times since 2016, Mr. Marilley has attempted to establish that he is the owner of at least some of these funds.

4. Dr. Marilley irrevocably gifted funds under the Uniform Transfers to Minors Act (UTMA) to Ms. Marilley, making them subject to a statutory custodianship until she turned twenty-one. For the last seven or so years of that custodianship, Mr. Marilley was the custodian responsible for stewarding the gifted funds for Ms. Marilley's benefit. During the time the law imposed duties on Mr. Marilley to act as Ms. Marilley's fiduciary with respect to the funds, he instructed her to transfer tens of thousands of dollars into a joint brokerage account in both of their names (the Joint Account). Then, when Ms. Marilley sought to gain rightful control over the funds after turning twenty-one (the UTMA age of majority), Mr. Marilley thwarted that effort by instructing Charles Schwab (then TD Ameritrade) to freeze the assets.

5. When by happenstance Ms. Marilley succeeded in moving her assets to a Schwab account in her name alone, Mr. Marilley contested that move, resulting in

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[1] The Court must make findings of fact and conclusions of law in determining whether to award attorneys' fees as a sanction under Rule 11, *see Lowry v. Lowry*, 99 N.C. App. 246, 255 (1990) (requiring trial court to make findings of facts and conclusions of law in ruling on Rule 11 sanctions), and under section 6-21.5, N.C.G.S. § 6-21.5 (2026). The Court intends for any finding of fact more appropriately considered a conclusion of law to be considered as such and vice versa.

Schwab's restraining the funds (the Restrained Assets). Thereafter, Mr. Marilley filed an arbitration action in Florida to compel his daughter to release certain of the funds to him and order Schwab to pay him damages for its handling of the situation. In response to his arbitration action, Schwab filed the interpleader action underlying this Motion in which Schwab requested resolution of the ownership issue.

6. The Court has determined that the undisputed facts support a judgment that Ms. Marilley, not her father, owns the Restrained Assets. *See Charles Schwab & Co., Inc. v. Marilley*, 2026 NCBC LEXIS 15, at *45–47, 53 (N.C. Super. Ct. Jan. 23, 2026). Only this Motion remains.

7. The events underlying this case began in March 2005, when Dr. Marilley transferred funds into a brokerage account in his own name as UTMA custodian for Ms. Marilley under the New York UTMA (the UTMA Account). (Lauren Elizabeth Marilley's First-Am. Cross-cl. Against Def. Peter Joseph Marilley ¶ 5, ECF No. 18 [Am. Cross-cl.]; Peter Joseph Marilley's Resp. Lauren Marilley First-Am. Cross-cl. ¶ 5, ECF No. 56 [Answer Am. Cross-cl.].) He later transferred some, but not all, of the funds from this UTMA Account into a 529 education savings account held with CollegeInvest (the Original CollegeInvest Account). (Cross-cl. & Answer Ex. C, Ex. 4, at 1–4, ECF No. 4 [Original CollegeInvest Account Statement]; Mot. Summ. J. Ex. M, Ex. 2, at Peter Marilley 0212, ECF No. 74.2 [Text Messages].)

8. Mr. Marilley replaced his father as UTMA custodian in 2009. (Am. Cross-cl. ¶ 19; Answer Am. Cross-cl. ¶ 19.) The UTMA Account initially stated that Dr. Marilley was the UTMA custodian for Ms. Marilley under the New York UTMA.

(Reply Br. Supp. Mot. Sanctions Ex. B, at 1, ECF No. 126.3 [UTMA Account Statements].) Sometime in late 2009 or early 2010, around the time Mr. Marilley took over as custodian from Dr. Marilley, the UTMA Account name changed to specify that it was then governed by the Florida UTMA. (UTMA Account Statements 1–3.)

9. In August 2016, before she reached age twenty-one, Mr. Marilley instructed his daughter to sign a document that purported to convert the UTMA Account (held in his name as UTMA custodian for her) into a joint account in both of their names. (Mot. Summ. J. Ex. M. ¶¶ 17–18, ECF No. 74.2 [8/4/2025 L. Marilley Aff.]; Cross-cl. & Answer Ex. D, ECF No. 4 [UTMA Conversion Appl.] (showing UTMA Account title in 2016 as "Peter Joseph Marilley Custodian Lauren Elizabeth Marilley UNIF Tran"); UTMA Account Statements 14 (showing UTMA Account title in 2016 as "PETER JOSEPH MARILLEY CUSTODIAN LAUREN ELIZABETH MARILLEY UNIF TRANS TO MINORS ACT FL").) Thereafter, Schwab processed the application, and the UTMA Account became the Joint Account. (8/4/2025 L. Marilley Aff. ¶ 19.)

10. Ms. Marilley used some, but not all, of the funds in the Original CollegeInvest Account to pay for her undergraduate education at Niagara University, where she received an undergraduate degree in 2017. (8/4/2025 L. Marilley Aff. ¶¶ 4, 30; Am. Cross-cl. ¶ 65; Answer Am. Cross-cl. ¶ 65; Mot. Stay Arbitration Ex. K ¶ 11, ECF No. 15.2 [12/7/2023 L. Marilley Aff.]; Text Messages, at Peter Marilley 0122–23; Original CollegeInvest Account Statement 1–4; Mot. Stay Arbitration Ex. J, ECF No. 15.1 [Personal CollegeInvest Account Statements].)

11. Around 3 March 2017, Ms. Marilley opened a separate CollegeInvest Account in her own name (the Personal CollegeInvest Account). (12/7/2023 L. Marilley Aff. ¶¶ 5–8; Personal CollegeInvest Account Statements.) She funded the Personal CollegeInvest Account with the $147,361.21 remaining in the Original CollegeInvest Account, (12/7/2023 L. Marilley Aff. ¶ 5; Personal CollegeInvest Account Statements), money that had originated with her grandfather's UTMA gift. (Text Messages, at Peter Marilley 0212; Original CollegeInvest Account Statement 1–4.)

12. On 23 May 2023, before this case began, Mr. Marilley's counsel sent a demand letter to Ms. Marilley. (Cross-cl. & Answer Ex. C, Ex. 2, at 1–2, ECF No. 4 [Demand Letter].) The letter accused Ms. Marilley of unlawful conduct, including fraud and conversion of the Restrained Assets when she moved them from the Joint Account to her own individual Schwab account. (Demand Letter 2.) It included a demand that Ms. Marilley return the Restrained Assets to the Joint Account or Mr. Marilley would sue for a declaration that she was "not entitled to any of them." (Demand Letter 3.) Mr. Marilley also threatened to stop supporting his daughter financially and to disinherit her if she did not comply with his demands. (Demand Letter 3–4.)

13. In June 2023, Mr. Marilley filed a FINRA arbitration claim against both Schwab and Ms. Marilley. (Cross-cl. & Answer Ex. A, at 1–2, 8, ECF No. 4 [FINRA Claim].) In that action he falsely claimed that he had opened the Joint Account out of concern for Ms. Marilley's financial well-being and that he had funded it entirely

himself. (FINRA Claim 3.) The FINRA claim, like the demand letter, sought the return of all the Restrained Assets from Ms. Marilley's individual account to the Joint Account. (FINRA Claim 6.) It also requested an order prohibiting Ms. Marilley from taking any action with respect to the Joint Account without her father's "express written consent[.]" (FINRA Claim 6.)

14. On 2 October 2023, Mr. Marilley filed an amended FINRA arbitration claim. (Cross-cl. & Answer Ex. C, at 1, 17–18, ECF No. 4 [Am. FINRA Claim].) He alleged that he and Dr. Marilley deposited a check for approximately $76,000 from the Marilley Family Limited Partnership on 5 December 2016, months after conversion of the UTMA Account to the Joint Account. (Am. FINRA Claim 5.) In reality, that referenced check, written by Dr. Marilley to the order of his granddaughter, Ms. Marilley, cleared the UTMA Account in January 2016, about nine months before the conversion to the Joint Account. (UTMA Account Statements 9; Cross-cl. & Answer Ex. C, Ex. 10, ECF No. 4 [Marilley Family L.P. Check].) Mr. Marilley later acknowledged this fact. (Mot. Summ. J. Ex. P, Reqs. Admiss. ¶ 23, ECF No. 74.5 [Reqs. Admiss.].)[2]

15. The Amended FINRA Claim asserted that approximately $147,000 remained in the Original CollegeInvest Account when Ms. Marilley transferred its balance to the Personal CollegeInvest Account in spring 2017 before she graduated.

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[2] References to Mr. Marilley's responses to Ms. Marilley's requests for admission and interrogatories are to Mr. Marilley's late responses to this written discovery, which he submitted after they were already deemed admitted. His late responses appear on the docket as Exhibit P to Ms. Marilley's Motion for Summary Judgment, (ECF No. 74.5).

(Am. FINRA Claim 6; 8/4/2025 L. Marilley Aff. ¶ 21.) Mr. Marilley further alleged that, after Ms. Marilley completed her undergraduate degree, Dr. Marilley and Mr. Marilley "sought the return" of the remaining CollegeInvest funds. (Am. FINRA Claim 6.) Mr. Marilley admitted that he directed Schwab to impose no-trading and no-funds-out restrictions on a different account, the Joint Account, "[b]ased upon [Ms. Marilley's] behavior in refusing to return the [approximately $147,000 remaining in the Personal CollegeInvest Account] to her grandfather[.]" (Am. FINRA Claim 6.)

16. The Amended FINRA Claim alleged that Ms. Marilley had been unjustly enriched in an amount over $650,000. (Am. FINRA Claim 10.) Mr. Marilley asserted that this unjust enrichment arose from (1) the CollegeInvest funds spent on her undergraduate education, (2) the amount remaining in the Personal CollegeInvest Account after she completed her undergraduate degree, (3) the approximately $76,000 paid by check from the Marilley Family Limited Partnership,[3] and (4) the funds Ms. Marilley transferred from the Joint Account to her individual account. (Am. FINRA Claim 10.)

17. In addition, Mr. Marilley claimed to have been damaged in the amount of approximately $147,000, the amount by which he claimed Dr. Marilley had "overfunded" the Original CollegeInvest Account. (Am. FINRA Claim 10.) Mr. Marilley claimed he would use the damages awarded "to reimburse his father[.]"

[3] In fact, these allegations counted the approximately $76,000 twice because Ms. Marilley later transferred the funds deposited into the UTMA Account into her individual account. (UTMA Account Statements 9; 8/4/2025 L. Marilley Aff. ¶¶ 16–19, 33; Marilley Family L.P. Check.)

(Am. FINRA Claim 10.) At the same time, Mr. Marilley sought an order to compel Ms. Marilley to transfer $147,361 from her individual account to him personally. (Am. FINRA Claim 12.)

18. Mr. Marilley alleged that benefits Mr. Marilley personally conferred on Ms. Marilley, by virtue of their being "joint tenant owner[s]" of the Joint Account, had unjustly enriched her. (Am. FINRA Claim 15.) The theory underlying some or all of these claims was that Florida law presumed that Mr. Marilley owned fifty percent of the assets placed into the Joint Account. (Am. FINRA Claim 16.)

19. Mr. Marilley exerted control over the Joint Account after the UTMA custodianship ended to punish his daughter because she would not give him any of the CollegeInvest assets. (*See, e.g.*, 8/4/2025 L. Marilley Aff. ¶ 29; Text Messages, at Peter Marilley 0197–0200.)

20. In December 2016, shortly after the purported account conversion, Mr. Marilley pressed his daughter to remove the UTMA designation from the Original CollegeInvest Account. (Mot. Summ. J. Ex. M, Ex. 1, at Peter Marilley 0075, ECF No. 74.2 [12/6/2016 Letter]; Mot. Summ. J. Ex. M, Ex. 1, at Peter Marilley 0076–81, ECF No. 74.2 [12/2016 UTMA Removal Form].) When Ms. Marilley asked why she needed to sign the forms Mr. Marilley presented to her, Mr. Marilley told her that the documents would "remove the UGMA [sic] assignment only[,]" because she "[was] no longer under 21 years of age[.]" (Text Messages, at Peter Marilley 0107–09.) He did not share with Ms. Marilley that removing the UTMA designation would facilitate

his ability to take the funds for himself. Perhaps sensing something was amiss, Ms. Marilley did not sign the form.

21. In April 2017, Mr. Marilley sent his daughter another form, this one authorizing the transfer of her remaining CollegeInvest funds to Dr. Marilley, and he instructed her to execute it. (Mot. Summ. J. Ex. M, Ex 1, at Peter Marilley 0087, ECF No. 74.2 [4/18/2017 Letter]; Mot. Summ. J. Ex. M., Ex. 1, at Peter Marilley 0083–86, ECF No. 74.2 [4/2017 Account Information Change Form].) He repeated this attempt in December 2017, by telling Ms. Marilley that she was "required" to transfer the remaining CollegeInvest funds to Dr. Marilley. (Mot. Summ. J. Ex. M, Ex. 1, at Peter Marilley 0088, ECF No. 74.2 [12/29/2017 Letter].)

22. In June 2017, Mr. Marilley blocked Ms. Marilley's access to the funds in the Joint Account. (Text Messages, at Peter Marilley 0197–0200; Cross-cl. & Answer Ex. F, ECF No. 4 [6/2017 Emails].) When Ms. Marilley discovered the restriction, she made repeated, unsuccessful efforts to have the restriction lifted and Mr. Marilley removed from the Joint Account so that she alone had control of the funds. (*See, e.g.*, Text Messages, at Peter Marilley 0197–0204; 8/4/2025 L. Marilley Aff. ¶¶ 24–29.)

23. In September 2021, Mr. Marilley again refused to lift the restrictions on the Joint Account because Ms. Marilley was "in receipt of CollegeInvest funds that belong[ed] to [Dr. Marilley]." (Text Messages, at Peter Marilley 0201–02.) In July 2022, Mr. Marilley again attempted to force Ms. Marilley to agree to give him the money he demanded by preventing her from accessing funds in the Joint Account. (Text Messages, at Peter Marilley 0202–17.)

24. Mr. Marilley's Amended FINRA Claim admits his strategy. (Am. FINRA Claim 6 (alleging Mr. Marilley sought to restrict funds in the Joint Account "[b]ased upon [Ms. Marilley's] behavior in refusing to return [the approximately $147,000 remaining in the Personal CollegeInvest Account] to her grandfather").)

25. Well before this case began, Mr. Marilley knew the funds in the CollegeInvest Account were subject to the irrevocable gift and custodial requirements of the UTMA. The CollegeInvest Account statements, which Mr. Marilley attached to his Amended FINRA Claim before this suit began, identify the account under Ms. Marilley's name with the "UGMA/UTMA" designation immediately beneath. (*E.g.*, Original CollegeInvest Account Statement 1–4.) In January 2017, Mr. Marilley sent Ms. Marilley a text message in which he referred to "[her] gifted funds[.]" (Text Messages, at Peter Marilley 0118.) In a July 2022 text message, Mr. Marilley told his daughter that "[t]he only reason we had to open a Colleg[e]Invest account in your name is because [Dr. Marilley] made the mistake of funding your CollegeInvest sub-account with UTMA funds!" (Text Messages, at Peter Marilley 0212.)

26. CollegeInvest informed Mr. Marilley by letter that "[t]he UGMA/UTMA assignment stays with the account." (Cross-cl. & Answer Ex. C, Ex. 5, ECF No. 4 [7/10/2018 CollegeInvest Letter].) The letter went on to say that Ms. Marilley would have to "transfer ownership back to [Dr. Marilley]" for Dr. Marilley "to have control over the funds without the UGMA/UTMA assignment[.]" (7/10/2018 CollegeInvest Letter.) Indeed, in the December 2017 letter to Ms. Marilley, Mr. Marilley informed his daughter that she had to relinquish ownership of her Personal CollegeInvest

Account "[i]n order to return account ownership to [Dr. Marilley]." (12/29/2017 Letter.)

27. Mr. Marilley also understood before this case began that Ms. Marilley was entitled to sole ownership of any remaining UTMA funds upon reaching age twenty-one. Nevertheless, Mr. Marilley falsely represented to Ms. Marilley that he and Dr. Marilley equally funded the Joint Account. (Text Messages, at Peter Marilley 0215 ("[Dr. Marilley] and I invested funds for you . . . ! Some were UTMA funds – *you own at age 21* and some placed in regular brokerage accounts! I. E. TDA[.]" (emphasis added)).) On 15 July 2022, Mr. Marilley sent Ms. Marilley a text message in which he said, "[Dr. Marilley] and I equally funded the referenced joint (PJM/LEM) account @ TDA." (Text Messages, at Peter Marilley 0202–03.) Ms. Marilley produced an affidavit in which she testified that Mr. Marilley repeatedly represented to her that he and Dr. Marilley "equally funded" the Joint Account. (8/4/2025 L. Marilley Aff. ¶ 7.)

28. When he made those representations, Mr. Marilley knew that he did not equally fund the Joint Account. One of Ms. Marilley's interrogatories asked Mr. Marilley to "[s]tate the basis for [his] contention that [he] and Dr. Marilley 'equally funded' the Joint Account." (Mot. Summ. J. Ex. P, Interrogs. ¶ 11, ECF No. 74.5 [Interrogs.].) Mr. Marilley's late response to this interrogatory in July 2025 said only that he made "[n]o contention of 'equally funded' [sic] 'the Joint Account.' " (Interrogs. ¶ 11.) In his brief opposing this Motion, Mr. Marilley again recognized that he did not equally fund the Joint Account. (Def. Peter Jospeh Marilley's Resp. Opp'n Lauren

Elizabeth Marilley's Mot. Sanctions 9, ECF No. 107 [Br. Opp'n Mot. Sanctions] ("Peter has agreed he did not equally fund the Joint Account[.]").)

29. The record shows that Mr. Marilley and Ms. Marilley have long had a highly strained relationship. (Def. Peter Joseph Marilley's Am. Resp. Opp'n Lauren Elizabeth Marilley's Mot. Partial Summ. J., Ex. A ¶ 2, ECF No. 104.2 [10/1/2025 P. Marilley Aff.]; 8/4/2025 L. Marilley Aff. ¶¶ 8–10.) They both concede that fact. (10/1/2025 P. Marilley Aff. ¶ 2; 8/4/2025 L. Marilley Aff. ¶¶ 8–10.) Control of Dr. Marilley's gifts to Ms. Marilley—including the Restrained Assets—has contributed to that strain. (*E.g.*, Text Messages, at Peter Marilley 0107–09, 0117–27, 0197–0218.)

30. Mr. Marilley asserts that his purpose for convincing Ms. Marilley to sign the form that purported to convert the UTMA Account into a Joint Account (in both Mr. Marilley's and Ms. Marilley's names) was to give him access to the money so that he could recover what he deemed to be excess CollegeInvest funds gifted by Dr. Marilley to his granddaughter. (10/1/2025 P. Marilley Aff. ¶¶ 3–4; Interrogs. ¶ 19.) He also contends that the Restrained Assets, which were transferred from the Joint Account (not a CollegeInvest Account) "should be returned to the [J]oint [A]ccount." (Interrogs. ¶ 4.)

II. CONCLUSIONS OF LAW

A. The UTMA

31. Under the UTMA, delivery of funds into an account so named is a UTMA transfer governed by the law of the state named on the account. *E.g.*, N.Y. Est. Powers & Trusts Law §§ 7-6.2(a) (2026) (applying New York UTMA to transfers that invoke that law), 7-6.9(a)(1) to (2) (prescribing form of transfer that invokes New York

UTMA to effect New York UTMA transfer); Fla. Stat. §§ 710.103(1), .111(1)(a)–(b) (2026) (same for Florida); *see also* Unif. Transfers to Minors Act § 2 cmt. (Unif. L. Comm'n 1986) ("The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under SECTION 9(a). . . . This Act continues to govern . . . despite subsequent relocation of the parties or the property.").

32. In this case, either New York or Florida law governs all the UTMA transfers, depending on when the transfer into the UTMA Account occurred. The UTMA Account designated the UTMA of one of those two states from its inception until Ms. Marilley reached the UTMA age of majority and the custodianship terminated. The UTMA enactments in New York and Florida are consistent with respect to the relevant provisions. *Compare* N.Y. Est. Powers & Trusts Law §§ 7-6.1 to .26, *with* Fla. Stat. §§ 710.101–.126.

33. The custodial property is indefeasibly vested in the minor when the transferor makes the gift, but the custodian retains control over the custodial property until the minor reaches the UTMA age of majority, twenty-one. N.Y. Est. Powers & Trusts Law § 7-6.11 (discussing vesting, rights, and powers concerning custodial property); Fla. Stat. § 710.113 (same for Florida); N.Y. Est. Powers & Trusts Law § 7-6.1(k) (defining "[m]inor" for UTMA purposes as person under twenty-one); Fla. Stat. § 710.102(12) (same for Florida).

34. While the custodian controls the funds, the UTMA imposes a fiduciary duty on him. N.Y. Est. Powers & Trusts Law §§ 7-6.12 to .13; Fla. Stat. §§ 710.114–.115. And once the minor turns twenty-one, the custodianship terminates, and the

custodian must transfer the funds to the minor. N.Y. Est. Powers & Trusts Law § 7-6.20(a); Fla. Stat. § 710.123(1)(a).

35. The UTMA provides for irrevocable transfers to a single custodian for the benefit of a single minor. N.Y. Est. Powers & Trusts Law §§ 7-6.9 to .11; Fla. Stat. §§ 710.111–.113; *see also* Sarah Moore Johnson, 53 *Univ. of Miami L. Ctr. on Est. Planning* ¶ 903.2(D) ("The only limitation [on creation of FUTMA custodial property] is that the transfer must be irrevocable."). A transfer of money to a brokerage account held for a minor's benefit under the UTMA creates custodial property. N.Y. Est. Powers & Trusts Law § 7-6.9(a)(2); Fla. Stat. § 710.111(1)(b).

36. Furthermore, "custodial property is created and a transfer is made whenever . . . money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor . . . [or] an adult other than the transferor . . . followed in substance by the words: 'as custodian for _____ (name of minor) under the New York Uniform Transfers to Minors Act'." N.Y. Est. Powers & Trusts Law § 7-6.9(a)(2) (citation modified); *see also* § 7-6.9(a)(1)(i); Fla. Stat. § 710.111(1)(a)(1), (b).

37. The New York or Florida UTMA law followed the assets until Ms. Marilley reached the age of twenty-one because the UTMA provides that the law governing the assets does not change when the assets or parties change location. N.Y. Est. Powers & Trusts Law § 7-6.2(a); Fla. Stat. § 710.103(1). Therefore, the funds in

the CollegeInvest Account remained subject to the UTMA custodianship even after being transferred. N.Y. Est. Powers & Trusts Law § 7-6.11(b); Fla. Stat. § 710.113(2).

38. The funds deposited by check from the Marilley Family Limited Partnership into the UTMA Account became an irrevocable UTMA gift to Ms. Marilley once deposited in the UTMA Account because that account was in the name of Mr. Marilley as Florida UTMA custodian for Ms. Marilley. (UTMA Conversion Appl. 1; UTMA Account Statements 14.)

B. Attorneys' Fees

39. "Although attorneys' fees generally are not recoverable under the common law, our legislature has enacted provisions allowing for the recovery of attorneys' fees . . . ." *Woodcock v. Cumberland Cnty. Hosp. Sys., Inc.*, 384 N.C. 171, 176 (2023) (citing *Sunamerica Fin. Corp. v. Bonham*, 328 N.C. 254, 257 (1991)). The courts strictly construe statutes authorizing the award of attorneys' fees because they are in derogation of the common law. *Bryson v. Sullivan*, 330 N.C. 644, 665 (1992) (citing *Sunamerica*, 328 N.C. at 257).

40. The party seeking sanctions bears the burden of establishing his entitlement by a preponderance of the evidence. *Jonna v. Yaramada*, 273 N.C. App. 93, 113 (2020) (discussing burden of persuasion and standard of proof governing Rule 11 motions); *Adams v. Bank United of Tex. FSB*, 167 N.C. App. 395, 401–02 (2004) (holding preponderance of evidence standard governs sanctions in civil cases). Here, Ms. Marilley relies on two sources of legal authority to support her Motion: Rule 11 and section 6-21.5 of the North Carolina General Statutes.

41. As a preliminary matter, Mr. Marilley contends that he should not be subject to sanctions or otherwise held to be liable for attorneys' fees because he "has not filed any claims or affirmative allegations against anyone in [this] case." (Br. Opp'n Mot. Sanctions 5.) However, as an interpleader defendant, he bears the burden of persuasion to establish his right to the Restrained Assets. *Travelers Ins. Co. v. Keith*, 283 N.C. 577, 580 (1973). In addition, Mr. Marilley finds himself in this position because he contested ownership of the funds in the arbitration action he filed against both Schwab and his daughter.

42. Rule 11 governs the filing of any "pleading," N.C. R. Civ. P. 11(a), which includes "an answer to a crossclaim," N.C. R. Civ. P. 7(a). Likewise, section 6-21.5 applies to "any pleading." N.C.G.S. § 6-21.5. Therefore, Mr. Marilley's argument that his position as an interpleader defendant insulates him from Ms. Marilley's Motion is unavailing.

43. Mr. Marilley's denials of Ms. Marilley's claim to sole ownership of the funds at issue in this case are the reason this litigation has persisted. Indeed, he "has sought . . . to defend himself against [Ms. Marilley's] claims[,]" (Br. Opp'n Mot. Sanctions 6), by staking out an adverse legal position, and that position subjects him to potential sanctions under Rule 11 or a fee award under section 6-21.5.

44. Moreover, under Rule 8, the party filing a responsive pleading must "admit or deny the averments upon which the adverse party relies[,]" or else state that "he is without knowledge or information sufficient to form a belief as to the truth of an averment," which "has the effect of a denial." N.C. R. Civ. P. 8(b). "When a

pleader intends in good faith to deny only a part of or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder." *Id.* Averments not denied "are admitted[.]" N.C. R. Civ. P. 8(d).

45. Mr. Marilley's wholesale denials of paragraphs of allegations in Ms. Marilley's crossclaim violate Rule 8 if only some of those allegations are false.

1. Rule 11

46. Rule 11 requires a party (or his attorney) to sign "[e]very pleading, motion, and other paper[.]" N.C. R. Civ. P. 11(a).[4] This signature represents a certification that, among other things, the pleading, motion, or other paper "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[.]" *Id.*

47. If the Court finds that a party signed a pleading in violation of the Rule, then it *must* impose "an appropriate sanction" on "the person who signed it, a represented party, or both[.]" N.C. R. Civ. P. 11(a); *Turner v. Duke Univ.*, 325 N.C. 152, 165 (1989) (discussing Rule 11(a)'s "mandatory sanctions"). The sanctions "may include an order to pay to the other party . . . the amount of the reasonable expenses incurred because of the filing of the pleading . . . , including a reasonable attorney's fee." N.C. R. Civ. P. 11(a).

[4] In this case, Mr. Marilley, acting *pro se*, signed the Answer to Ms. Marilley's Amended Crossclaim himself.

48. Whether a pleading violates Rule 11 is a question of law, and the particular sanction imposed is a matter of the Court's discretion. *Turner*, 325 N.C. at 165. The purpose of Rule 11 sanctions is to "prevent abuse of the legal system[.]" *Grover v. Norris*, 137 N.C. App. 487, 495 (2000).

49. From these provisions, our Supreme Court has determined that a violation of Rule 11 arises upon the filing of a pleading that is (1) factually insufficient, (2) legally insufficient, or (3) filed for an improper purpose. *Dodd v. Steele*, 114 N.C. App. 632, 635 (1994) (first citing N.C. R. Civ. P. 11(a); and then citing *Bryson*, 330 N.C. at 655). Violation of any one of the three requires the Court to impose Rule 11 sanctions. *Bryson*, 330 N.C. at 655. Because Ms. Marilley argues that sanctions are appropriate on all three grounds, the Court addresses each in turn.

a. Factual Sufficiency

50. Factual sufficiency turns on whether Mr. Marilley "undertook a reasonable inquiry into the facts and . . . after reviewing the results of his inquiry, reasonably believed that his position was well grounded in fact." *Riggan v. Andrews*, 298 N.C. App. 730, 741 (2025) (quoting *In re Thompson*, 232 N.C. App. 224, 230 (2014)). "An inquiry is reasonable if '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 existing law[.]' " *Static Control Components, Inc. v. Vogler*, 152 N.C. App. 599, 604 (2002) (quoting *Bryson*, 330 N.C. at 661–62).

51. Ms. Marilley challenges the factual sufficiency of some of Mr. Marilley's denials in his Answer to the Amended Crossclaim. (Br. Supp. Lauren Elizabeth

Marilley's Mot. Sanctions 11–14, ECF No. 79 [Br. Supp. Mot. Sanctions].) The Court considers each of them below.

52. Ms. Marilley first challenges Mr. Marilley's denial of the following allegations in her Amended Crossclaim:

> Dr. Marilley irrevocably gifted to Lauren custodial property under the FUTMA, by transferring funds to Lauren's UTMA Account between 2005 and 2016.

(Am. Cross-cl. ¶ 113; Answer Am. Cross-cl. ¶ 113; Br. Supp. Mot. Sanctions 11–12.)

> Upon reaching the age of majority, Lauren was entitled to the absolute right to the entire custodial property, which was indefeasibly vested in her, as an irrevocable gift from Dr. Marilley.

(Am. Cross-cl. ¶ 114; Answer Am. Cross-cl. ¶ 114; Br. Supp. Mot. Sanctions 11–12.)

53. Mr. Marilley argues that these are legal conclusions, not facts, and cannot be admitted or denied. (Br. Opp'n Mot. Sanctions 8.) He cites cases for the proposition that legal conclusions "require the 'exercise of judgment' in making a determination or 'the application of legal principles.' " (Br. Opp'n Mot. Sanctions 7–8 (quoting *Sheffer v. Rardin*, 208 N.C. App. 620, 624 (2010)).) However, Mr. Marilley never explains why he should not have to respond to an allegation that involves the application of law to facts and why those responses should not be subject to Rule 11.

54. North Carolina law recognizes that pleadings frame facts with respect to their legal significance, and denials must "fairly meet the substance of the averments denied." N.C. R. Civ. P. 8(b). In *Clary v. Alexander County Board of Education*, our Supreme Court ruled that allegations that a defendant waived its

immunity from liability for torts "alleged facts" requiring admission or denial under Rule 8. 286 N.C. 525, 529 (1975). And in *Mabe v. Dillon*, our Court of Appeals treated allegations of citizenship, residence, ownership, and wrongful possession in the same manner. *See* 46 N.C. App. 340, 341–42 (1980) (affirming deemed admission resulting from failure to deny such allegations). Therefore, the Court rejects Mr. Marilley's contention and concludes that Rule 8 required that he respond to each of the allegations at issue.

55. Rather than parsing through them, Mr. Marilley denied all of the allegations in full. But contrary to these wholesale denials, the uncontroverted evidence shows that the entirety of paragraph 113 is true. Dr. Marilley *did* make irrevocable gifts to Ms. Marilley under the FUTMA during the alleged timeframe, including the 2016 deposit of a check from the Marilley Family Limited Partnership into the UTMA Account, which by then was in Mr. Marilley's name as FUTMA custodian for Ms. Marilley. A reasonable inquiry into the facts would have revealed the truth of this allegation, especially given Mr. Marilley's personal familiarity and involvement with the UTMA transfers into accounts for which he was custodian.

56. Likewise, Mr. Marilley had no factual basis to deny paragraph 114. Once Ms. Marilley reached the age of majority, she was entitled to possession of the custodial property. Even assuming Mr. Marilley's denial rested on his erroneous belief that the age of majority was not twenty-one, there is no basis in fact to deny that the custodial property was indefeasibly vested in Ms. Marilley. The vesting occurred once Dr. Marilley deposited the money, not when Ms. Marilley reached age

twenty-one. A reasonable inquiry into these facts would have revealed the truth of this allegation.

57. Ms. Marilley next challenges the factual basis for Mr. Marilley's denial of paragraph 62 of her Amended Crossclaim:

> Peter has intentionally misrepresented to Lauren that he and Dr. Marilley "equally funded" the Joint Account at TD Ameritrade. In fact, the custodial property in the UTMA Account—directly, and indirectly, through the CollegeInvest Account—was the **sole** source of funds into the Joint Account.

(Am. Cross-cl. ¶ 62; Answer Am. Cross-cl. ¶ 62; Br. Supp. Mot. Sanctions 12–13.) The record, including Mr. Marilley's own pre-suit text messages, establishes that Mr. Marilley knew or should have known that he did, in fact, make that representation to Ms. Marilley. Mr. Marilley's own 15 July 2022 text message included that assertion, (Text Messages, at Peter Marilley 0202–03), and Ms. Marilley's uncontradicted affidavit reinforces it, (8/4/2025 L. Marilley Aff. ¶ 7).

58. Contrary to that representation, the record, including Mr. Marilley's own written discovery responses, establishes that he did not, in fact, equally fund the Joint Account with Dr. Marilley. (Interrogs. ¶ 11; Br. Opp'n Mot. Sanctions 9.)

59. Despite that concession, Mr. Marilley contends that his flat denial of the entire paragraph was appropriate because he contested other parts of that paragraph, such as the allegation that the Joint Account's assets derived entirely from custodial property. (Br. Opp'n Mot. Sanctions 8–9.) But under Rule 8, Mr. Marilley bore the responsibility to address each part of each allegation. His contention that Rule 8 permitted him to deny an entire paragraph merely because he contested a single phrase is simply false.

60. Mr. Marilley's brief identifies the check from the Marilley Family Limited Partnership to support his denial that *all* funds in the Joint Account came from custodial property. (Br. Opp'n Mot. Sanctions 9.) However, his argument rests on the false assertion that the check from the partnership was deposited in December 2016, after the purported conversion of the UTMA Account to the Joint Account. The undisputed facts show that these funds were actually deposited in the UTMA Account in January 2016, *before* that purported conversion. Consequently, the funds were custodial property under the UTMA by virtue of that deposit.

61. A reasonable inquiry into the facts (including by looking at the UTMA Account statements during the period when Mr. Marilley was under a fiduciary obligation to account for the funds) would have revealed that denying this allegation was without a basis in fact. The Court therefore concludes that Mr. Marilley did not conduct a reasonable inquiry into the factual basis for this denial and could not have had a reasonable belief that his denial of the allegations in paragraph 62 in their totality was well-grounded in fact.[5]

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[5] Mr. Marilley also argues that, regardless of whether his statements to Ms. Marilley about equal funding were true, no evidence demonstrates he intentionally misrepresented that information. (Br. Opp'n Mot. Sanctions 9.) But even if he subjectively believed that he participated in contributing from the Family Limited Partnership to the UTMA account, that fact alone is not sufficient to support a contention that he was an *equal* source of the funds in the Joint Account.

Further, the record supports a conclusion that Mr. Marilley made these representations for the improper purpose of inducing Ms. Marilley to relinquish some of the custodial funds. (Text Messages, at Peter Marilley 0202–04.) One of Mr. Marilley's claims that he equally funded the Joint Account occurred in text messages to Ms. Marilley in which he also made clear that he was preventing disbursement of Joint Account funds so that Ms. Marilley would be forced to recognize his ownership of them. (Text Messages, at Peter Marilley 0202–04.) Mr. Marilley fails to rebut this evidence.

62. Next, Ms. Marilley challenges Mr. Marilley's denial of paragraph 159 of her Amended Crossclaim:

> Peter owed Lauren a fiduciary duty in his role as custodian of the UTMA Account, [sic] during the period she was a minor-beneficiary of the UTMA Account and continuing until he transferred all the custodial property to Lauren.

(Am. Cross-cl. ¶ 159; Answer Am. Cross-cl. ¶ 159; Br. Supp. Mot. Sanctions 13.) Mr. Marilley argues that (1) this allegation is a legal conclusion that did not require a response, (2) this allegation concerns Ms. Marilley's now-dismissed tort claims and is irrelevant, and (3) "the custodial property was not all transferred to Lauren based on the conversion to the Joint Account." (Br. Opp'n Mot. Sanctions 9.) All of these arguments fail.

63. First, Mr. Marilley's Answer flatly denied this allegation rather than stating that it was a legal conclusion that did not require a response. His belated argument about his intentions does not save the day.

64. Second, the fact that Ms. Marilley dismissed her tort claims is irrelevant to whether Mr. Marilley had a reasonable belief that his denial was well-grounded in fact at the time he filed his pleading. *Bryson*, 330 N.C. at 656 (holding "violation of [Rule 11] is complete when paper is signed").

65. Third, as discussed at length above, Mr. Marilley's obligation under Rule 8 was to meet the substance of the allegations by admitting what was true, denying what was false, and stating which parts fell outside his knowledge. Rule 8 did not permit Mr. Marilley to flatly deny paragraph 159 based on his belief that the

purported conversion relieved him of his custodial responsibility for the money at issue.

66. Furthermore, Mr. Marilley must have known, after reasonable inquiry, that he was under a fiduciary obligation to Ms. Marilley with respect to the custodial property. He served as UTMA custodian, a *de jure* fiduciary, for almost ten years. The Court concludes that Mr. Marilley lacked a reasonable belief that his denial of this entire paragraph was well-grounded in fact.

67. Ms. Marilley's last argument on factual sufficiency concerns Mr. Marilley's denial of paragraph 133 of her Amended Crossclaim:

> Lauren has not engaged in any relevant conduct that conceivably could be considered "outrageous," fraudulent, malicious, willful, or wanton.

(Am. Cross-cl. ¶ 133 (citation omitted); Answer Am. Cross-cl. ¶ 133; Br. Supp. Mot. Sanctions 13–14.) Mr. Marilley again contends that this allegation amounts to a legal conclusion, (Br. Opp'n Mot. Sanctions 9–10), but he did not identify it as such in his pleading. Nevertheless, the Court, under the circumstances of this case, does not conclude that Mr. Marilley lacked a reasonable belief that this denial was well-grounded in fact.

68. Except with respect to paragraph 133, the Court finds that Mr. Marilley did not undertake a reasonable inquiry into the facts discussed above (paragraphs 62, 113, 114, and 159) when he answered Ms. Marilley's Amended Crossclaim and further finds that he did not have a reasonable belief that these complete denials were well-grounded in fact. The Court therefore concludes that Rule 11's factual sufficiency requirement has not been met.

b. Legal Sufficiency

69. An analysis of legal sufficiency for Rule 11 purposes proceeds in two parts. *Bryson*, 330 N.C. at 661. First, the Court determines whether the pleading is facially plausible under "existing law as of the time it was signed." *Id.*

70. If the pleading is not facially plausible, the Court must determine "whether to the best of the signer's knowledge, information, and belief formed after reasonable inquiry . . . the pleading was warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." *See id.* (first quoting *DePasquale v. O'Rahilly*, 102 N.C. App. 240, 246 (1991); and then quoting N.C. R. Civ. P. 11(a)). The Court analyzes reasonableness here using the same objective standard that governs the signer's reasonable inquiry into a pleading's factual sufficiency. *See id.*

71. Ms. Marilley argues that Mr. Marilley's changing, and sometimes contradictory, legal theories demonstrate he had no cognizable legal basis for his Answer. (Br. Supp. Mot. Sanctions 10.) She further contends that Mr. Marilley's admission that she was entitled to the UTMA property once she reached the age of majority demonstrates that he knew, but disregarded, the law when he filed his Answer to her Amended Crossclaim. (Br. Supp. Mot. Sanctions 10–11.)

72. Mr. Marilley responds with various theories regarding his alleged entitlement to at least some of the custodial funds. (Br. Opp'n Mot. Sanctions 10.) Among them are that (1) as a partner in the Family Limited Partnership that contributed to Ms. Marilley's UTMA account, he was the source of some of the Restrained Assets, (2) Ms. Marilley agreed to return $147,361 in "excess" funds to

support the education of Dr. Marilley's other relatives but then repudiated that agreement, and (3) he was immediately entitled to an undivided fifty percent interest in the funds in the Joint Account upon the conversion of the UTMA Account to the Joint Account in August 2016. (Br. Opp'n Mot. Sanctions 10–11.)

73. As the Court has discussed above, the notion that Mr. Marilley was a source of any of the Restrained Assets presupposes that Mr. Marilley, as a limited partner of a family partnership that made an irrevocable gift to Ms. Marilley, has a claim to the funds so gifted. There is no evidence in the record to support the conclusion that Dr. Marilley lacked authority to deposit a check from the Family Limited Partnership into Ms. Marilley's UTMA Account. Consequently, Mr. Marilley's claim lacks a legal (or factual) foundation.

74. The remaining two theories fare no better. With respect to Ms. Marilley's alleged promise, Mr. Marilley never attempted a claim for breach of contract. His attempted theory of unjust enrichment failed because it was both futile and came too late. With respect to the "Joint Account" theory, the attempted conversion in August 2016 occurred before Ms. Marilley reached the age of majority and was able to authorize it. Neither theory is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

75. The Court concludes that Mr. Marilley lacked a legally sufficient basis to assert ownership over the funds at issue.

c. Improper Purpose

76. "The improper purpose prong of Rule 11 is separate and distinct from the factual and legal sufficiency requirements." *Bryson*, 330 N.C. at 663. "The

relevant inquiry is whether the existence of an improper purpose may be inferred from the alleged offender's objective behavior." *Static Control Components*, 152 N.C. App. at 605 (citation modified) (quoting *Mack v. Moore*, 107 N.C. App. 87, 93 (1992)). "The existence of an improper purpose is determined from the totality of the circumstances." *Jonna*, 273 N.C. App. at 113 (citing *Mack*, 107 N.C. App. at 93–94).

77. The weakness of a pleading's underlying factual or legal basis can be evidence of an improper purpose. *See Coventry Woods Neighborhood Ass'n Inc. v. City of Charlotte*, 213 N.C. App. 236, 242 (2011) ("[W]hether or not a pleading has a foundation in fact or is well grounded in law will often influence the determination of the signer's purpose." (quoting *In re Kunstler*, 914 F.2d 505, 518 (4th Cir. 1990))). And when the evidence shows both proper and improper purposes for filing a pleading, Rule 11 requires the Court to impose sanctions only if the improper purpose overwhelms the proper purpose. *See id.* (citing *In re Kunstler*, 914 F.2d at 518).

78. Rule 11 provides a non-exhaustive list of purposes that are improper and require the Court to impose sanctions. N.C. R. Civ. P. 11(a). The listed improper purposes are "to harass or to cause unnecessary delay or needless increase in the cost of litigation." *Id.* However, fundamentally, "an improper purpose is 'any purpose other than one to vindicate rights or to put claims of right to a proper test.' " *Mack*, 107 N.C. App. at 93 (citation modified) (quoting Gregory P. Joseph, *Sanctions: The Federal Law of Litigation Abuse* § 13(C) (1989 & Supp.1992)); *McKinnon v. CV Indus., Inc.*, 228 N.C. App. 190, 194 (2013) (quoting *Mack*, 107 N.C. App. at 93).

79. Mr. Marilley's stated purpose for this litigation has been to press "his contention that [Ms. Marilley] should return the overfunded portion of funds she received so that those funds can be used to support the education of her other relatives." (Br. Opp'n Mot. Sanctions 12.) According to Mr. Marilley, Dr. Marilley meant to give Ms. Marilley only enough money to complete her undergraduate studies, and Ms. Marilley should be required to return any "excess." (Br. Supp. Def. Peter Joseph Marilley's Mot. Leave Amend Answer Def. Lauren Elizabeth Marilley's First-Am. Cross-cl. 11, ECF No. 132.)

80. But in this case, rather than assert a claim to the CollegeInvest funds (or even for damages in the amount of the alleged overfunding), Mr. Marilley has instead asserted a claim to custodial assets that were in the UTMA Account. He acted as his daughter's fiduciary with respect to this money. He has pursued his position because he believes Ms. Marilley had a moral obligation to return some of the funds she was given by her grandfather.

81. In other words, by his own admission, Mr. Marilley is pressing a claim to the Restrained Assets as a proxy for his real, but unstated claim for damages arising from Dr. Marilley's alleged loss of the CollegeInvest funds. He is not putting his actual claim to a proper test. Consequently, Mr. Marilley violated Rule 11 when he signed his Answer to Ms. Marilley's Amended Crossclaim in this litigation.

82. Mr. Marilley's conduct also leads the Court to conclude that his purpose in this litigation was to harass his daughter and cause her unnecessary delay and needless cost. He has held up Ms. Marilley's access to assets in the Joint Account in

an effort to extract concessions from her regarding the Personal CollegeInvest Account. This approach to litigation hinders the parties' ability to frame the issues, discover pertinent materials, and reach a final resolution of the actual controversy between them, whether by agreement or judgment. It obscures what is really at stake. None of this is the "inherent byproduct" of putting a claim to a proper test. *See Coventry Woods*, 213 N.C. App. at 246–47.

83. The fundamental weakness of the legal and factual bases underlying Mr. Marilley's litigation position also supports the Court's conclusion that his purpose in interposing his Answer to Ms. Marilley's Amended Crossclaim was improper. *See id.* at 242 (quoting *In re Kunstler*, 914 F.2d at 518).

84. In sum, the Court concludes that the evidence, viewed objectively, establishes that Mr. Marilley had an improper purpose when he filed his Answer to Ms. Marilley's Amended Crossclaim. He intended to harass, cause unnecessary delay, and needlessly increase the cost of this litigation.

85. Because the Court concludes that Mr. Marilley violated all three of Rule 11's requirements when he filed his Answer to the Amended Crossclaim, Rule 11 mandates the imposition of sanctions.

86. The Court, in its discretion, concludes that requiring Mr. Marilley to pay Ms. Marilley's attorneys' fees is the appropriate sanction in this case. The Court reserves ruling on the amount of fees he shall be required to pay pending Ms. Marilley's filing of a petition and supporting documentation. *See In re Cranor*, 247 N.C. App. 565, 569 (2016) (addressing trial court's "order for attorneys' fees which did

not set the amount of the fee award, instead leaving the issue for later determination" (emphasis omitted)).

87. However, the proper amount of attorneys' fees will be those "incurred because of the filing" of the Answer to the Amended Crossclaim. *See* N.C. R. Civ. P. 11(a). That amount shall not include fees already awarded or those incurred in litigating Mr. Marilley's appeal of the Court's 20 February 2024 Order. *See Hill v. Hill*, 173 N.C. App. 309, 318 (2005) (holding that Rule 11 sanctions may not include "attorney's fees . . . incurred after [appealing party]'s filing of notice of appeal and due directly to his appeal").

2. North Carolina General Statutes Section 6-21.5

88. Section 6-21.5 of the North Carolina General Statutes authorizes the Court to award attorneys' fees to a prevailing party when it finds "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. A justiciable issue "is real and present as opposed to imagined or fanciful." *Woodcock*, 384 N.C. at 177 (quoting *Sunamerica*, 328 N.C. at 257–58).

89. Liability under the statute can arise when a party either (a) initially files his pleading, *Brooks v. Giesey*, 334 N.C. 303, 313 (1993) (affirming fee award under section 6-21.5 when no justiciable issue existed in complaint "from the initiation of th[e] suit"), or (b) "persists 'in litigating the case after a point where he should reasonably have become aware that the pleading he filed no longer contained a justiciable issue[,]' " *id.* at 310 (quoting *Sunamerica*, 328 N.C. at 258).

90. In this case, the core questions are whether (a) there was a complete absence of a justiciable issue presented by Mr. Marilley's Answer to Ms. Marilley's

Amended Crossclaim, or (b) Mr. Marilley persisted in litigating the case after the point when he should reasonably have become aware that his pleading presented no justiciable issue.

91. The Court may find a complete absence of a justiciable issue in a pleading when it "conclusively appear[s] that such issues are absent even giving the pleadings the indulgent treatment they receive on motions for summary judgment or to dismiss." *Woodcock*, 384 N.C. at 177 (quoting *Sunamerica*, 328 N.C. 257–58).

92. In addition, section 6-21.5 imposes "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) (citation modified). In other words, when the losing party continues litigating "in the face of events substantially establishing that the pleadings no longer present[ ] a justiciable controversy[,]" an award under section 6-21.5 is proper. *Sunamerica*, 328 N.C. at 259.

93. For example, our Supreme Court has held that "it is . . . possible that a pleading which, when read alone sets forth a justiciable controversy, may, when read with a responsive pleading, no longer present[ ] a justiciable controversy." *Id.* at 258 (upholding fee award when meritorious statute of limitations defense asserted in answer revealed lack of justiciable issue yet litigation persisted).

94. When determining whether a party has persisted in litigation despite the absence of a justiciable issue, the Court must evaluate the reasonableness of the party's belief that his position had a sufficient factual and legal basis. *See Brooks*,

334 N.C. at 310 (analyzing whether losing party "persist[ed] 'in litigating the case after a point where he *should reasonably have become aware* that the pleading he filed no longer contained a justiciable issue' " (emphasis added) (quoting *Sunamerica*, 328 N.C. at 258)). Section 6-21.5 also provides that, although granting summary judgment "is not in itself a sufficient reason for the court to award attorney's fees, [it] may be evidence to support the court's decision to make such an award." N.C.G.S § 6-21.5.

95. Finally, the statute expressly authorizes the Court to award attorneys' fees, but that decision remains within the Court's discretion. *Id.* (stating court "*may* award" attorneys' fees (emphasis added)); *see Woodcock*, 384 N.C. at 179 (applying abuse of discretion standard to trial court's order on attorneys' fees under section 6-21.5).

96. In this case, Mr. Marilley's admissions foreclosed serious argument on the merits of his claim to ownership of the Restrained Assets. His subsequent motions to withdraw, amend, or strike some or all of those admissions presented legal arguments for the Court's consideration that were ultimately rejected but were, at least, colorable.

97. However, once the Court rejected Mr. Marilley's request to withdraw, amend, or strike the deemed admissions in its 8 October 2025 Order, *Charles Schwab & Co., Inc. v. Marilley*, 2025 NCBC LEXIS 135, at *12 (N.C. Super. Ct. Oct. 8, 2025), Mr. Marilley should reasonably have known that no justiciable issue remained for him to litigate. Indeed, it appears he *did know* that no justiciable issue remained at

that point: as part of his request to undo the effect of his admissions, Mr. Marilley recognized that allowing the admissions to stand would "effectively decide the merits on [Ms. Marilley's] declaratory judgment claim" and "practically eliminate any presentation of the merits of the case[.]" (Br. Supp. Def. Peter Joseph Marilley's Verified Mot. Withdraw or Amend Admiss.; or Alternative, Mot. Extend Time Respond Admiss. 6, ECF No. 93.)

98. Mr. Marilley's attempt to add timeliness defenses grounded in the Schwab Account Agreement was also meritless. Months before, the Court ruled that ownership of the Restrained Assets did not arise out of or relate to that agreement, *Charles Schwab & Co., Inc. v. Marilley*, 2024 NCBC LEXIS 27, at *17–18 (N.C. Super. Ct. Feb. 20, 2024), and our Supreme Court affirmed that decision, *Charles Schwab & Co., Inc. v. Marilley*, 387 N.C. 185 (2025) (per curiam). Still, Mr. Marilley pressed on. Ultimately, the Court granted Ms. Marilley's Summary Judgment Motion with respect to her claim for a declaratory judgment against Mr. Marilley. *Charles Schwab*, 2026 NCBC LEXIS 15, at *45–47, 53.

99. For all these reasons, the Court concludes, in its discretion, that an award of attorneys' fees under section 6-21.5 of the North Carolina General Statutes is appropriate in this case, but only for the attorneys' fees that Ms. Marilley incurred after the Court's 8 October 2025 Amended Order on Defendant Peter Marilley's Motion to Strike and Motion to Withdraw or Amend Admissions, (ECF No. 111).

III. CONCLUSION

100. **WHEREFORE**, the Court **ORDERS** as follows:

a. Ms. Marilley's Motion is **GRANTED** to the extent it seeks an award of attorneys' fees pursuant to Rule 11;

b. In addition, the Court, in its discretion and pursuant to section 6-21.5 of the North Carolina General Statutes, **GRANTS** Ms. Marilley's Motion to the extent it seeks an award of attorneys' fees incurred after the Court's 8 October 2025 Order;

c. The Court **RESERVES** ruling on the appropriate amount of attorneys' fees to award pending Ms. Marilley's petition for fees and supporting documentation within thirty days; and

d. The Court otherwise **DENIES** the Motion.

SO ORDERED, this the 30th day of January 2026.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases