

STATE OF NORTH CAROLINA
PITT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CVS000772-730

TAMMY FLYNN; HEISHA LYNCH;
J.L., a minor, through her mother,
HEISHA LYNCH; DEAN SWINSON;
BRANDON CANNON; BRITTANY
MOORE; ANNAIA MCLAMB;
CYNTHIA MEADOWS; SUZANNE
ABRAMS; LATASHA WILLIAMS;
BILLY ROBINSON; JOSEPH
SAWYER; SAMANTHA
RICHARDSON; LORI POWERS;
JASON POWERS; GENEVIEVE
JONES; ELAINE QUITTKAT; and
MARY SHELDON,

Plaintiffs,

v.

EASTERN RADIOLOGISTS, INC.,
Defendant.

**ORDER AND MEMORANDUM OF
DECISION DEFERRING PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES
AND EXPENSES AND APPOINTING
REFEREE**

1. This matter is before the Court on Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, filed on 26 September 2025, (ECF No. 46), and on the Court's own initiative pursuant to Rule 53 of the North Carolina Rules of Civil Procedure.

2. This is a putative data breach class action proceeding involving the consolidation of sixteen (16) separate cases filed in Pitt County Superior Court. (ECF No. 11).

3. After protracted negotiations and a few false starts, Plaintiffs filed an unopposed amended motion for preliminary approval of a class action settlement in

this action, followed by a corrected unopposed motion for approval, in June 2025. (ECF Nos. 41, 41.1, 42, and 42.2).

4. As counsel for all parties conceded during hearings before the Court, there is no evidence that any settlement class member has suffered any material harm from the purported data breach at issue in this case, such that the alleged harm is purely technical in nature at this point.

5. On 15 July 2025, following its review of the motion, the proposed settlement agreement, and all other appropriate matters of record, the Court entered an Order preliminarily approving the proposed settlement, conditionally certifying a class for settlement purposes, and requiring Plaintiffs to file a motion for fees, expenses, and service awards no later than 26 September 2025. (ECF No. 45). In connection with the hearing and other proceedings, the Court explained to Plaintiffs' counsel that it was not, at that time, making any determination as to the reasonableness of the requested attorneys' fees or expenses.

6. On 26 September 2025, Plaintiffs filed their fee motion, along with a supporting memorandum and joint declaration. (ECF Nos. 46, 47, and 48). With their motion, Plaintiffs sought (i) an award of attorneys' fees in the amount of \$1,500,000.00 (despite a total settlement fund of only \$3,200,000.00), (ii) payment of out-of-pocket costs and expenses of \$27,934.06, and (iii) service awards to each named Plaintiff in the amount of \$2,500.00. (ECF No. 46).

7. However, in support of their motion, Plaintiffs filed a single declaration by attorney Joel Rhine¹ that asserts that Plaintiffs' counsel have "accrued a total lodestar of \$972,391.70" in fees through 25 September 2025. (ECF No. 47, ¶ 13).

8. The declaration asserts in conclusory fashion that the unspecified hourly rates for Plaintiffs' "attorneys and staff" are commensurate with similar rates charged around the country and that, based on unidentified surveys and data, Plaintiffs' counsel believe that their rates are reasonable. (ECF No. 46, ¶¶ 13–15).

9. The declaration lacks the specific hourly rates for individual attorneys, description or itemization of the particular work performed by any individual attorney, description or itemization of the amount of time devoted by any specific attorney to a particular task, or any other non-conclusory evidence justifying an award of fees. (ECF No. 46). Rather, the declaration relies on attorney Rhine's opinion premised in large part on unspecified third-party data. (ECF No. 46).

10. The declaration also lacks itemization of the \$27,934.06 in purported out-of-pocket expenses that class counsel seek to recover. (ECF No. 46 at 2).

11. In their supporting memorandum, Plaintiffs assert that fees of \$1,500,000.00 are reasonable because they represent approximately one-third of the purported total value of \$4,500,000.00 provided to the settlement class based on:

- A \$3,200,000.00 settlement fund;

¹ Though the declaration is purportedly a "Joint Declaration in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards" on behalf of "counsel for Plaintiffs and the Settlement Class" and provides that "*We declare under penalty of perjury...*," it is only electronically signed by attorney Rhine and, thus, is only a declaration of attorney Rhine. (ECF No. 47 at 1, 8 (emphasis added)).

- An aggregate total payment of up to \$200,000.00 for out-of-pocket costs actually incurred by class members (in the unlikely event any such costs are identified); and
- Class members' eligibility for CyEx Medical Shield, a medical account monitoring program purportedly sold at a retail cost of \$179.40 per year and with an assumed redemption rate of one percent (1%)—for a purported fair market or retail value of approximately \$1,587,573.39 to the class, despite no clear actual or monetary value to class members.²

(ECF No. 48 at 5, 7 n.2).

12. Notwithstanding these numbers, however, Plaintiffs' counsel ultimately conceded during the final approval hearing that Defendants obtained a bulk discount for CyEx Medical Shield and that the total cost paid to cover all class members seeking coverage was only \$50,000.00—representing barely three percent (3%) of the total amount of attorneys' fees for which Plaintiffs' counsel ask the Court to credit them on behalf of the class with respect to CyEx.³

13. After reviewing the materials submitted, the Court held a hearing regarding Plaintiffs' motion for final approval of the class action settlement and

² The total number of estimated class members is 884,935, one percent (1%) of which is 8,849.35. That number, or approximately that amount, was then multiplied by \$179.40. (ECF No. 48 at 5, 7 n.2).

³ If the Court were to use the actual amount paid by Defendants rather than Plaintiffs' inflated retail or fair market value calculation and if the Court reduced Plaintiffs' counsel's fee request on a commensurate basis, the purported fees attributable to the CyEx monitoring would be reduced from approximately \$523,899.22 to approximately \$16,500.00—a reduction of more than \$500,000.00.

their motion for attorneys' fees and expenses on 15 December 2025. (ECF Nos. 46 and 49).

14. As the Court informed counsel during the hearing, while the Court anticipates approving the final settlement (which is not contingent on the amount of attorneys' fees or expenses, if any, recovered by class counsel), the drastic asymmetry between the amount of fees and expenses requested by class counsel and the putative recovery by class members gives the Court ample reason for concern that class counsel initiated and proceeded in this action not in a manner necessarily in the best interests of the settlement class but in a manner whereby class counsel could maximize the requested attorneys' fees with the least amount of work.⁴ This is even more of a concern under the specific circumstances of this case in which the attorneys' fees to be paid, if any, are set to be disbursed from the common fund, from which costs of administration and the minimal settlement class distributions are also to be paid.

15. Thus, in view of these circumstances and having reviewed attorney Rhine's declaration, the Court informed class counsel—both during the hearing and

⁴ For example, the Court notes that class counsel's primary public-facing, readily discernable work in this case consisted of (i) filing a complaint, (ii) filing a motion to dismiss that was never heard because the parties reached a proposed settlement before the motion was argued or resolved, and (iii) appearing in two substantive hearings before the Court—one on preliminary approval and one on final approval, both of which involved lead counsel rather than all of the attorneys of record in this case. And, for that, counsel seek \$1,500,000.00 in attorneys' fees. See N.C. R. Prof. Conduct 1.5 ("A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee or charge or collect a clearly excessive amount for expenses."); setting forth as factors in determining the reasonableness of fees). The factors used to determine the reasonableness of such fees are the same factors provided under Rule 1.5. See *In re Newbridge Bancorp S'holder Litig.*, 2016 NCBC LEXIS 91, *38 (Super. Ct. Nov. 22, 2016) (citation omitted).

in a subsequent order—that the requested fees and expenses were “unsupported by sufficient competent, non-conclusory evidence in the record.” (ECF No. 54, ¶ 5).

16. As the Court explained, though this is a class-action proceeding, the Court would ordinarily expect counsel to “provide an attorney-by-attorney itemization or similar breakdown of their requested attorneys’ fees . . . the specific number of hours worked by each attorney for whom fees are requested, and substantive evidence in support of the reasonableness of the hourly rates . . . among other things” to adequately support their request for \$1,500,000.00 in attorneys’ fees. (ECF No. 54, ¶ 5).

17. The Court also explained that the initial filings lacked “detail supporting [counsel’s] requested out-of-pocket expenses, . . . hav[ing] not provided sufficient evidence regarding how these totals were reached, instead simply listing lump sums.” (ECF No. 54, ¶ 6).

18. Finally, the Court noted that Plaintiffs’ counsel had failed to present the Court with an agreed upon *cy pres* recipient, information that was necessary to permit the Court to evaluate and rule on the motion for final approval since the proposed settlement agreement is non-reversionary and contemplates the potential use of an (at that time) unidentified *cy pres* recipient. (ECF No. 54, ¶ 7).

19. Rather than deny the motion outright, in an effort to obtain sufficient information to evaluate class counsel’s request for fees, expenses, and other relief, and to determine whether the proposed *cy pres* recipient would be appropriate, the

Court therefore ordered that counsel to file and serve “**at least** the following additional information” by 16 January 2026:

- a. Reasonable and adequate evidence detailing (i) the names, (ii) the biographies, (iii) the hourly rate(s) or effective hourly rate(s), and (iv) number of hours worked, or specific work performed, during the course of this action by each attorney for whose work compensation is sought as part of Plaintiffs’ request for attorneys’ fees in this action;
- b. Reasonable and adequate evidence, preferably with verified market data, supporting the contention that the hourly rates (or, if there are no hourly rates, the effective hourly rates, considering the hours worked and amounts requested) are consistent with standard market rates for similarly situated attorneys handling similar matters or that the rates are otherwise reasonable;
- c. Reasonable and adequate evidence supporting and justifying Plaintiffs’ lodestar calculations and requests;
- d. Reasonable and adequate evidence, including a proposed Bill of Costs (AOC-CV-382), itemizing and substantiating the reasonableness and recoverability of the costs comprising each of the costs and categories of costs for which Plaintiffs or their counsel seek to recover; and
- e. Identification of the proposed *cy pres* recipient agreed upon by the parties with respect to the Amended Settlement Agreement for this action.

(ECF No. 54, ¶ 9 (emphasis in original)).

20. As a courtesy to counsel, the Court also identified, “[b]y way of example,” a prior Business Court Case in which counsel provided, and the Court considered, many of the types information that the Court expects in this case. (ECF No. 54, ¶ 5 n.2).⁵ Among other things, in that case, counsel submitted detailed invoices and itemized descriptions of work to the Court for *in camera* review in conjunction with

⁵ Though the case was not in the class action context, the information considered nonetheless provides a reasonable baseline for the Court’s consideration in the class-action context as well.

counsel's affidavit, then-current third-party market data setting forth standard hourly rates for fees, and myriad other information. (ECF No. 135.1, ¶ 27 & unnumbered exhibits (noting that counsel had provided "*invoices and [a] summary . . . to this Court for in camera review*" and attaching biographies of each attorney for which time was requested) (emphasis added); *see also* ECF No. 54, 54, ¶ 5 n.2 (citing specific docket entries as examples)).

21. On 14 January 2026, shortly before the Court-ordered deadline to submit the supplemental information requested by the Court in support of their request for fees and expenses, Plaintiffs' counsel requested an extension of time to submit the supplemental information. (ECF No. 55). The Court granted the request, (ECF No. 57), and counsel subsequently filed certain supplemental information on 23 January 2026. (ECF Nos. 58 and 59).

22. The supplemental information consisted of an affidavit from attorney John Hughes of Wallace and Graham, P.A., (ECF No. 59), and declarations submitted on behalf of fifteen (15) firms who are counsel of record for one or more of the named Plaintiffs in this action. (ECF Nos. 58.2–58.16).

23. While they are a step in right direction, these documents do not fully comply with the Court's Order, nor do they provide adequate information to substantiate the requested attorneys' fees in this action or to approve the proposed settlement agreement.

24. First, though the Court required the "[i]dentification of the *cy pres* recipient agreed upon by the parties" as referenced in the proposed amended

settlement agreement, (ECF No. 54, ¶ 9(e)), no such information was included in the supplemental filings. Thus, in the days after counsel’s supplemental filing, the Court, through its law clerk, emailed counsel and requested (again) that the proposed *cy pres* recipient be identified. Only then, after the already extended deadline to do so, did class counsel file a notice designating the proposed *cy pres* recipient on 28 January 2026. (ECF No. 60).

25. Second, and more pressingly for purposes of the assessment of the requested fees, the supplemental filings lack any itemization of the work performed by each attorney or legal professional from whom counsel seek to recover attorneys’ fees or any supplemental billing statements, work-tracking records, or similar documentation (whether filed on the docket or requested for *in camera* review).

26. Each of the fifteen (15) declarations provides, in a similar form, an overview of the work performed by each firm rather than each attorney or legal professional for whom fees are sought. The documents do not specify the attorneys, legal professionals, or administrative staff who performed specific tasks, instead compiling all work purportedly performed into vague, un-descriptive categories. (*E.g.*, ECF No. 58.2, ¶ 7 (“During the pendency of the matter in this litigation, *both attorneys and professional staff* at my firm performed the following activities, among others, for the benefit of the Settlement Class . . .” (emphasis added)); *see also* ECF Nos. 58.3–58.16) (containing substantially similar wording)). For example, attorney Rhine’s declaration that his firm performed “[c]ase

investigation,” “[d]rafted and/or edited complaint,”⁶ “[w]orked on consolidation and fee motions,” “[d]rafted opposition to motion to dismiss,” and “[p]resented to this Court at hearing.” (ECF No. 58.2, ¶ 7 (requesting \$107,645.00 in fees based on 122.1 hours for these five (5) vaguely described categories of work)).

27. Each declaration presents a chart in which each lawyer’s name, position, years of experience, aggregate hours worked on the matter, and hourly rate are listed. (See ECF No. 58.2, ¶ 8; *see generally* ECF Nos. 58.3–58.16 (containing similar charts for each firm)).⁷

28. While this information provides some of the information requested by the Court, it fails to identify the “specific work performed” by each attorney, leaving the Court to guess as to how much of each task performed should be attributed to each attorney’s or legal professional’s efforts (and related hourly rate) and, thus, how much an appropriate award of fees, if any, might be for having completed the task—a guessing game in which the Court declines to engage. (*E.g.*, ECF No. 54, ¶ 9(a)). In short, the Court expects that each attorney or other professional for whom compensation is sought has maintained a log of the work that individual has performed in this case and that reflects the work performed, the amount of time

⁶ The Court observes that there is a substantial difference between “drafting” a complaint and “editing” a complaint. In the specific declaration cited here, counsel’s use of “[d]rafted *and/or* edited complaint” unnecessarily obfuscates the actual work performed by the firm, much less an individual attorney. It is unclear whether the work performed was substantial initial drafting *or* mere cursory post-completion editing *or* both. Indeed, given the use of “and/or,” it is not apparent that *counsel* knows which work was performed or which attorney performed it. (ECF No. 58.2, ¶ 7).

⁷ The Court further notes that, despite the Court’s Order (and identification of a “template” case), fewer than half of the attorneys who seek fees provided firm biographies.

expended in performing the work, and the dollar amount attributable to that work based on the attorney's hourly rate. It is also the Court's expectation that such logs, whether maintained as billing records, internal timekeeper records, or other records, would be provided to the Court for analysis in determining whether to award fees and, if so, the amount of such fees. This is a not-unreasonable expectation for attorneys and firms whose practices are founded in large part upon convincing courts of the amount and reasonableness of the work that they have performed in a given case.

29. Further, in its December Order, the Court directed that counsel provide "[r]easonable and adequate evidence, preferably with verified market data, supporting the contention that the hourly rates . . . are consistent with standard market rates for similarly situated attorneys," (ECF No. 54, ¶ 9(b)), and that counsel provide "[r]easonable and adequate evidence supporting and justifying Plaintiffs' lodestar calculations and requests," (ECF No. 54, ¶ 9(c)).

30. In an effort to comply with this request, class counsel submitted the attorney Hughes's affidavit. (ECF No. 59). In that affidavit, attorney Hughes attested to the reasonableness of Plaintiffs' counsel's hourly rates based on his experience with class action litigation. (ECF No. 59).

31. However, the Hughes affidavit relies on dated cases that allowed hourly fees of up to \$650 per hour for attorneys working in class actions in North Carolina, while some fees requested by Plaintiffs' counsel in this particular case go up to \$1,600 per hour. (ECF No. 59, ¶¶ 10–16 (referencing cases in which courts approved

amounts of \$250-\$450, \$500, and \$500-\$650 an hour to be reasonable); ECF No. 58.14 (requesting attorneys' fees of \$1,600 per hour for attorney Laurence D. King)). Moreover, attorney Hughes cites to cases decided between 2004 and 2021, and relies primarily on fees approved in cases between the late 1990s and 2015—nearly all a decade ago or longer—in support of the fees requested by class counsel in this case. (ECF No. 59, ¶¶ 8, 11–17).

32. Third, the Court requested “[r]easonable and adequate evidence, *including a proposed Bill of Costs (AOC-CV-382)*, itemizing and substantiating the reasonableness and recoverability of the costs” and expenses requested by Plaintiffs’ counsel in addition to the requested attorneys’ fees. (ECF No. 54, ¶ 9(d) (emphasis added)). No such proposed Bill of Costs was filed with the Court, and the documents provided (i) do not match or otherwise align with the amount of costs or expenses requested in the motion and (ii) do not otherwise provide adequate evidence of the recoverability of those amounts.⁸

33. Instead, in the individual firm declarations, counsel generally submitted charts similar in presentation to those in which the attorneys’ fees and hourly rates were displayed, containing simply the expense name and the amount requested. (ECF No. 58.2, ¶ 16; ECF Nos. 52.5, 52.7, 52.8, 52.10, 52.12, 52.13, 52.14, and 52.15 (containing substantially similar charts)). One firm simply listed a total, without any breakdown of the costs at all. (ECF No. 58.3, ¶ 26 (citing to an unattached

⁸ While Plaintiffs’ counsel seek payment of expenses generally rather than “costs” within the narrower definition of N.C. Gen. Stat. § 7A-305, the Court requested a proposed Bill of Costs as a way of having the expenses at issue itemized and otherwise to permit the Court to more closely evaluate the expenses for which payment is sought.

“Exhibit B” for a breakdown of a total fee encompassing unspecified “fees related to initiating this action”). In another case, an attorney seeks \$405.00 for an “MDNC Filing Fee,” presumably in reference to a filing fee paid in the United States District Court for the Middle District of North Carolina—a court in which this action is not proceeding and for which there is no apparent reason that counsel would be entitled (or could reasonably expect) to recover costs or other expenses. (ECF No. 58.12, ¶ 15).

34. Ultimately, the information provided by class counsel is inadequate to justify the requested attorneys’ fees or lodestar calculation, particularly given the percentage of the overall common fund that the lodestar would represent. With no information as to the specific work performed by each attorney or the other legal professionals for whom counsel are seeking compensation and in light of the other deficiencies noted in this Order and the Court’s prior Order, it is within the Court’s discretion to deny the motion outright. However, in the exercise of its discretion and in the interests of justice, the Court declines to do so at this juncture and instead provides class counsel a final opportunity to substantiate at least a portion of the requested fees.⁹

⁹ As the Court informed counsel during a prior proceeding, to the extent that counsel seek recovery of approximately one-third of the more-than-\$500,000.00 purported fair market or retail “value” of the CyEx monitoring service that Defendant obtained at a cost of merely \$50,000.00 and for which it is undisputed that the vast majority of the class will not use and from which it will not otherwise benefit, it appears at this time that the overall fees requested in that respect are patently unreasonable. The Court, however, makes no determination at this time as to that issue.

35. At the same time, the Court also determines that it would not be efficient, appropriate, or otherwise in the interests of justice to devote its limited resources to teasing out from class counsel the information that the Court has on multiple occasions requested to substantiate the requested fees and expenses in this matter.

36. Pursuant to Rule 53 of the North Carolina Rules of Civil Procedure, the Court is vested with the discretion to refer “[a]ny or all of the issues in an action” to a referee (sometimes also referred to as a “special master”) upon the consent of the parties or, even when the parties do not agree, among other things, (i) “[w]here the trial of an issue requires the examination of a long or complicated account; in which case the referee may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein,” (ii) “[w]here the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect,” or (iii) “[w]here a question of fact arises outside the pleadings, upon motion or otherwise, at any stage of the action.” N.C. R. Civ. P. 53(a); *Trail Creek Invs. LLC v. Warren Oil Holding Co., LLC*, 2024 NCBC LEXIS 90, at *5 (N.C. Super. Ct. July 5, 2024) (appointing a discovery referee).

37. “The ordering of a reference is within the sound discretion of the court,” *Livermon v. Bridgett*, 77 N.C. App. 533, 536 (1985) (citing *Long v. Honeycutt*, 268 N.C. 33 (1966)), and North Carolina courts have recognized that Rule 53 may be appropriate in a wide variety of cases. *Synco, Inc. v. Headen*, 47 N.C. App. 109, 112 (1980).

38. Here, the Court finds that there are numerous questions of fact arising from Plaintiffs' motion for fees, expenses, and service awards, (ECF No. 46), and otherwise outside the pleadings.¹⁰ These questions include questions as to the work class counsel have performed, the specific attorney or legal professional who performed it, how much time each individual spent performing the work, the amount of fees reasonably attributable to that work, the specific expenses incurred by counsel, the amounts of those expenses, the person incurring the expenses, and the relationship between the expenses and this case.

39. Further, given the number of firms and attorneys in this action, and considering the documents submitted to this point, it is apparent that the resolution of the motion will involve a long, detailed, and complicated accounting of fees and expenses that is reasonably necessary for the Court's resolution of the motion. *See Grimes v. Beaufort Cnty.*, 218 N.C. 164, 164 (1940) (affirming order of reference where attorney sought to recover compensation for services rendered various different transactions and the determination of fees therefore required consideration of a "long account").

40. Thus, the Court has determined that it is appropriate to refer to a referee Plaintiffs' and their counsel's request for fees and expenses in this action, (ECF No.

¹⁰ *See* N.C. R. Civ. P. 7(a) (identifying documents that qualify as pleadings, which do not include the motion at issue).

46), with the referee to evaluate the motion and to provide a report and recommendation to the Court regarding the request.¹¹

41. On 17 February 2026, the Court held a conference with counsel for the parties to address the foregoing issues that the Court has observed with respect to the requested fees and expenses and the Court's expectation that a referee would be appointed to address such matters.

42. During the conference, counsel for the parties consented to the appointment of a referee for the purposes set forth in this Order.

43. Moreover, while compensation of a referee generally "shall be fixed by the court and charged in the bill of costs," N.C. R. Civ. P. 53(d), Plaintiffs' counsel agreed that the costs of a referee should not be borne by the class members in this case and instead expressly stipulated and agreed that Plaintiffs' counsel will bear the costs associated with the appointment of the referee.

44. Considering all appropriate matters of record, the Court therefore determines that it is appropriate to appoint a referee for the purposes set forth in this Order, to vest that referee with the requisite authority to take all actions as are reasonably necessary to provide an appropriate recommendation to the Court, and to have the costs associated with appointment of that referee taxed to Plaintiffs' counsel of record in this case, as they have agreed and stipulated.

¹¹ Though Plaintiffs' motion is for fees, expenses, and service awards, the Court will refer to the referee only the issue of fees and expenses. The referee need not address the issue of service awards.

45. Attorney, and former Business Court Judge, Gregory P. McGuire has agreed to serve as the referee contemplated by this Order at a rate of \$425.00 per hour, and the Court determines that this fee is reasonable and that he has the requisite qualifications and experience to serve as the referee pursuant to this Order. *See generally, e.g., Nakatsukasa v. Furiex Pharms., Inc.*, NCBC LEXIS 71 (N.C. Super. Ct. July 1, 2015) (entering order on final approval of class action settlement and attorneys' fees); *Strougo v. N. State Bancorp*, 2016 N.C. Super. LEXIS 80 (N.C. Super. Ct. June 8, 2016) (same); *Elliott v. KB Home N.C., Inc.*, 2017 NCBC LEXIS 38 (N.C. Super. Ct. Apr. 17, 2017) (same).

46. Therefore, in the exercise of judicial discretion, the Court **ORDERS** as follows:

a. The Court **DEFERS** at this time its own resolution of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, (ECF No. 46);

b. The Court **APPOINTS** Gregory P. McGuire to serve as referee at a rate of \$425.00 per hour for work performed as referee pursuant to this Order;

c. Except as to the issue of service awards, the Court **REFERS** to the Referee Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, (ECF No. 46), with the Referee to promptly evaluate the motion; conduct any reasonable or necessary accounting; find all facts necessary or appropriate to resolution of the request for fees, expenses, and other remaining issues in the motion; and, within a reasonable time, issue to the Court a written report and recommendation regarding the referred portion of the motion;

d. Subject to the Court's ability to order otherwise, the Referee is **AUTHORIZED** and **DIRECTED** to oversee and manage all proceedings referred to him, and to take such actions as are reasonably necessary in his reasonable discretion, to effectuate the terms of this Order, including conducting hearings, status conferences, meetings, and other proceedings; requiring the parties to submit further evidence, briefing, or other information; and recommend other, different, or further relief in this action;

e. The parties and their counsel are **DIRECTED** to cooperate in good faith and comply in all respects with the requests and directives of the Referee, including by promptly submitting all information requested by the Referee. If, however, any party objects to a request or directive of the Referee, the party shall file an objection with the Court within forty-eight (48) hours of the request or directive, and the party will then not be required to comply with the request or directive (or be deemed in violation of this Order for failure to comply) while such objection is pending or until the Court orders otherwise. Any party wishing to respond to an objection by another party shall file and serve the objection within forty-eight (48) hours of filing of the objection by the other party;

f. The Referee shall be compensated at a rate of \$425.00 per hour for services performed pursuant to this Order, and the Referee's fees shall be owed and timely paid by Plaintiffs' counsel, as agreed. The Referee is authorized, in his discretion, to invoice counsel monthly or promptly upon the conclusion of the Referee's services, and Plaintiffs' counsel shall pay all outstanding fees to the

Referee within fourteen (14) days of invoicing by the Referee unless otherwise agreed by the Referee;

g. The Referee may, in his and the Court's discretion, communicate *ex parte* with the Court without providing notice to the parties, including to assist the Court with legal analysis of the parties' positions, the nature of the activities of the Referee, management of proceedings, and other such matters. The Referee may not communicate *ex parte* about the substance of this matter with any party or counsel for any party without the express consent of the parties or their counsel or further order of this Court;

h. The Court retains full authority to review, modify, adopt, or reject any and all recommendations or reports of the Referee;

i. The Referee shall retain his authority under this Order until the earlier of (i) the Referee's submission to the Court of a final report and recommendation on the motion referred to him, (ECF No. 46), (ii) the Court's entry of an order fully resolving the motion at issue, (ECF No. 46) or (iii) other order of the Court discharging the Referee;

j. The Referee may, at any time, request by motion that the Court terminate this reference or otherwise discharge the Referee from his duties under this Order, and the Referee may similarly request by motion that the Court take other actions to facilitate the Referee's duties under this Order, including amendment of the operative case management order or deadlines in this action;

k. This Order may be amended at any time in the Court's discretion, and any party may move the Court to clarify or modify the terms of this Order at any time for good cause shown;

l. The Court may, in its discretion, terminate this reference or otherwise discharge the Referee at any time; and

m. This Order is effective upon entry, and the Referee is **AUTHORIZED** and **DIRECTED** to commence his duties forthwith.

SO ORDERED, this 26th day of February, 2026.

/s/ Matthew T. Houston

Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases