

STATE OF NORTH CAROLINA  
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 1233

PREGEL AMERICA, INC.,

Plaintiff,

v.

MARCO CASOL and TANIA  
SOVILLA,

Defendants.

**ORDER ON DEFENDANT MARCO  
CASOL'S PETITION FOR EXPENSES**

1. **THIS MATTER** is before the Court upon Defendant Marco Casol's Petition for Expenses (the "Petition") in the above-captioned case.<sup>1</sup>

2. Having considered the Petition, the parties' briefs in support of and in opposition to the Petition, and the arguments of counsel at the hearing on the Petition, and other appropriate matters of record, the Court, in the exercise of its discretion, hereby **GRANTS in part** and **DENIES in part** the Petition, **ENTERS** the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, and **ORDERS** relief as set forth below.

I.

FINDINGS OF FACT

3. On 1 December 2023, the Court entered its Order and Opinion on Cross-Motions for Partial Summary Judgment (the "Order" or the "Summary Judgment

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<sup>1</sup> (Marco Casol's Pet. Expenses [hereinafter "Fee Pet."], ECF No. 55.)

Order”) in the above-captioned case.<sup>2</sup> In that Order, the Court granted summary judgment on Defendant Marco Casol’s (“Casol”) claim for mandatory indemnification under N.C.G.S. § 55-8-52, declaring that Casol is presently entitled to indemnification from Plaintiff PreGel America, Inc. (“PreGel”) for his reasonable expenses incurred in defense of the Federal Action<sup>3</sup> under N.C.G.S. §§ 55-8-52 and 55-8-56 and for his reasonable expenses incurred in obtaining court-ordered indemnification as provided under N.C.G.S. §§ 55-8-54(1) and 55-8-56. *Pregel Am., Inc. v. Casol*, 2023 NCBC LEXIS 161, at \*16 (N.C. Super. Ct. Dec. 1, 2023).<sup>4</sup>

4. The Court established a schedule in the Order for the briefing and presentation of evidence on Casol’s anticipated petition for expenses. Casol timely filed the Petition on 11 January 2024,<sup>5</sup> PreGel filed its opposition on 31 January 2024,<sup>6</sup> and Casol filed his reply on 12 February 2024.<sup>7</sup>

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<sup>2</sup> (Order and Op. Cross-Mots. Partial Summ. J., ECF No. 48; *Pregel Am., Inc. v. Casol*, 2023 NCBC LEXIS 161 (N.C. Super. Ct. Dec. 1, 2023).)

<sup>3</sup> The “Federal Action” refers to PreGel’s earlier action against Casol in the United States District Court for the Western District of North Carolina. *See Pregel Am., Inc. v. Casol*, Case No. 3:20-CV-00470-MOC-DSC (W.D.N.C.).

<sup>4</sup> “Expenses” are defined in N.C.G.S. § 55-8-50 as “expenses of every kind incurred in defending a proceeding, including counsel fees.”

<sup>5</sup> (Fee Pet.)

<sup>6</sup> (PreGel America’s Mem. Law Opp’n Def. Marco Casol’s Pet. Expenses [hereinafter “PreGel’s Br. Opp’n”], ECF No. 60.)

<sup>7</sup> (Reply Br. Supp. Marco Casol’s Pet. Expenses, ECF No. 63.)

5. Casol supports the Petition with four affidavits from his counsel of record in this action—three from Edward B. Davis (“Davis”)<sup>8</sup> and one from Lacey M. Duskin.<sup>9</sup> These affidavits attach and reference billing statements documenting all tasks and time worked, as well as costs incurred, for which Casol seeks recovery of attorneys’ fees and related expenses (the “Billing Statements”) under the Court’s Order.<sup>10</sup> Each Billing Statement is highlighted to identify the time for which a fee award is sought and contains the date of the hours billed, the attorney or paralegal who conducted the respective task, a brief description of the task, the hours spent on the task, the rate charged for the task, and the total amount charged.

6. After full briefing, the Court held a hearing on the Petition on 15 February 2024, at which all parties were represented by counsel (the “Hearing”).<sup>11</sup> Thereafter, the Court permitted the parties a thirty-day period to attempt to resolve the disputed issues in the Petition before issuance of this Order.<sup>12</sup> The parties advised the Court on 15 March 2024 that they were unable to resolve those issues.<sup>13</sup> The Petition is therefore ripe for resolution.

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<sup>8</sup> (Aff. Edward B. Davis Supp. Pet. Expenses, dated Jan. 11, 2024 [hereinafter “Davis Aff.”], ECF No. 53; Suppl. Aff. Edward B. Davis Supp. Pet. Expenses, dated 12 February 2024 [hereinafter “2d Davis Aff.”], ECF No. 62; Second Suppl. Aff. Edward B. Davis Supp. Casol’s Pet. Expenses, dated Feb. 15, 2024 [hereinafter “3d Davis Aff.”], ECF No. 64.)

<sup>9</sup> (Aff. Lacey M. Duskin Supp. Pet. Expenses [hereinafter “Duskin Aff.”], ECF No. 54.)

<sup>10</sup> (See Davis Aff. Exs. 1, 3–6, ECF Nos. 53.1, .3–.6.; Duskin Aff. Exs. 4–5, 9, ECF Nos. 54.4–.5, .9.)

<sup>11</sup> (Notice Hr’g, ECF No. 61.)

<sup>12</sup> (Fourth Am. Case Management Order ¶ 3(b), ECF No. 65.)

<sup>13</sup> (Joint Status Report, ECF No. 66.)

## II.

### CONCLUSIONS OF LAW

7. As noted above, the Court has determined that Casol is entitled to recover his expenses, including attorneys' fees, incurred in the defense of the Federal Action and in obtaining court-ordered indemnification. *Pregel Am., Inc.*, 2023 NCBC LEXIS 161, at \*16.

8. Generally, an award of attorneys' fees requires "that the trial court enter 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. Priv. Diagnostic Clinic*, 146 N.C. App. 658, 672 (2001). Where, as here, recovery for expenses incurred is mandated by statute, the trial court is without "discretion with regard to the award of attorneys' fees in such actions beyond the discretion to determine whether the rates and hours were reasonable." *Martin v. Landfall Council of Ass'ns*, 2020 N.C. App. LEXIS 326, at \*33 (N.C. Ct. App. Apr. 21, 2020) (unpublished).

9. The amount of attorneys' fees to be awarded is left to the trial 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). A trial court will only be held to have abused its discretion "where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *E. Brooks Wilkins Fam. Med., P.A. v. WakeMed*, 244 N.C. App. 567, 578 (2016) (quoting *Couch*, 146 N.C. App. at 667–68).

10. The reasonableness of attorneys' fees in this State "is governed by the factors found in Rule 1.5 of the Revised Rules of Professional Conduct of the North Carolina State Bar." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 96 (2011). Rule 1.5 establishes eight factors through which to evaluate the reasonableness of requested attorneys' fees:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.<sup>14</sup>

11. Casol seeks attorneys' fees and costs in the total amount of \$426,877.87, plus interest at the legal rate.<sup>15</sup>

12. Casol identifies the time worked and attorneys' fees incurred in defense of the Federal Action, which covers the period from 5 October 2020 through dismissal of the action on 10 March 2023, in the total amount of \$228,875.00<sup>16</sup> as follows: (i) \$26,650.00 for 64.5 hours of work by Edward B. Davis, a partner with twenty-four years of experience, at hourly rates of \$400 (for time incurred before 24 March 2022) and \$425 (for time incurred after 24 March 2022); (ii) \$173,495.00 for 511.5 hours of

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<sup>14</sup> N.C. Rev. R. Prof. Conduct 1.5(a).

<sup>15</sup> (*See* 3d Davis Aff. ¶ 22.)

<sup>16</sup> The Court notes that the amount Casol requests, \$228,875.00, is \$10.00 less than the sum of the individual timekeeper figures set forth in this paragraph.

work by Lacy M. Duskin, a partner with twenty years of experience, at hourly rates of \$300 (for time incurred before 24 March 2022) and \$350 (for time incurred after 24 March 2022); (iii) \$6,357.50 for 21.5 hours of work by Kevin J. Roak, an associate with ten years of experience, at hourly rates of \$275 (for time incurred before 24 March 2022) and \$300 (for time incurred after 24 March 2022); (iv) \$2,010.00 for 13.4 hours of work by Kylie Payne, a paralegal, at an hourly rate of \$150, and (v) \$1,000.00 for 8 hours of work by Susannah Cook, a legal assistant, at an hourly rate of \$125. Casol also seeks an additional \$19,372.50 for 72.1 hours of work by five other timekeepers at hourly rates ranging from \$150 to \$300 but does not identify these timekeepers by name or otherwise provide any information about them.<sup>17</sup>

13. Casol has proposed a “5% (\$11,443.75) discount off the total fees incurred in defense of the Federal Court Action” due to time spent “on the singular defense of Defendant Sovilla,” resulting in a total attorneys’ fee request for the defense of the Federal Action of \$217,431.25.<sup>18</sup> Adding Casol’s request for compensable expenses of \$30,363.69,<sup>19</sup> Casol seeks a total of \$247,794.94 in expenses (attorneys’ fees and costs) for the defense of the Federal Action.<sup>20</sup>

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<sup>17</sup> Given this absence of evidence, the Court cannot determine the reasonableness of the hours worked or rates charged by these timekeepers. As a result, the Court will exclude the fees sought for these timekeepers in the fees awarded hereunder.

<sup>18</sup> (Davis Aff. ¶¶ 28–29; Davis Aff. Ex. 1.)

<sup>19</sup> (Davis Aff. ¶ 22.) Casol initially requested compensable expenses of \$30,634.11 but later agreed to eliminate \$270.42 in post-dismissal expenses as non-compensable. (*See* Davis Aff. Ex. 3; Duskin Aff. Ex. 6, ECF No. 54.6.)

<sup>20</sup> (*See* 3d Davis Aff. ¶ 22(a).)

14. Casol also seeks interest from the date of judgment in the Federal Action (10 March 2023) at the legal rate until paid. *See, e.g., Clark v. Burnette*, 2022 NCBC LEXIS 29, at \*17–18 (N.C. Super. Ct. Apr. 18, 2022) (awarding applicable pre- and post-judgment interest to a claim for indemnification); *see also Longphre v. KT Fin., LLC*, 2024 N.C. App. LEXIS 133, No. COA23-660, at \*8–10 (N.C. Ct. App. Feb. 20, 2024) (applying statute assessing interest on attorney fee award). PreGel does not object to Casol’s interest calculation.

15. Casol identifies the time worked and attorneys’ fees incurred in obtaining court-ordered indemnification, which covers the period from 10 March 2023 through 15 February 2024, in the total amount of \$176,655.60<sup>21</sup> as follows: (i) \$18,147.50 for 42.7 hours of work by Mr. Davis at an hourly rate of \$425; (ii) \$99,330.00 for 283.8 hours of work by Ms. Duskin at an hourly rate of \$350; (iii) \$56,250.00 for 187.5 hours of work by Mr. Roak at an hourly rate of \$300; (iv) \$255.00 for 1.7 hours of work by Ms. Payne at an hourly rate of \$150, and (v) \$587.50 for 4.7 hours of work by Ms. Cook at an hourly rate of \$125. Casol also seeks an additional \$2,280.00 for 7.6 hours of work by an unidentified timekeeper (“CAI”) at an hourly rate of \$300.<sup>22</sup> Adding

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<sup>21</sup> (3d Davis Aff. ¶ 22(c).) The Court notes that the amount Casol requests, \$176,655.60, is \$194.40 less than the sum of the individual timekeeper figures set forth in this paragraph.

<sup>22</sup> (Davis Aff. ¶¶ 33–38; Davis Aff. Exs. 4–6; Duskin Aff. Ex. 5; 2d Davis Aff. Ex. 1, ECF No. 62.1.; 3d Davis Aff. Ex. 1, ECF No. 64.1.) It appears from a review of the Billing Statements that the unidentified timekeeper is Clara A. Ignich. Because Casol has failed to provide any evidence concerning Ms. Ignich, however, he has failed to carry his burden to show either that the time incurred or the rates charged by this timekeeper are reasonable. As a result, the Court will exclude the \$2,280.00 sought for Ms. Ignich from the attorneys’ fees awarded hereunder.

Casol's request for compensable expenses of \$2,427.33,<sup>23</sup> Casol seeks a total of \$179,082.93 in expenses (attorneys' fees and costs) incurred in obtaining court-ordered indemnification. Casol also seeks interest at the legal rate on the above amounts from the date court-ordered indemnification was ordered (10 January 2024) until paid. PreGel does not object to this request.

A. Reasonableness of Rates

16. The Court first considers the reasonableness of the hourly rates sought by Casol's counsel and support staff, all of whom work at the law firm of Bell, Davis and Pitt, PA in Charlotte, North Carolina. The trial court notes that it may take judicial notice of the rates customarily charged by local attorneys for the same tasks, *Simpson v. Simpson*, 209 N.C. App. 320, 327–28 (2011), and may consider the services rendered by paralegals, *United Lab'ys., Inc. v. Kuykendall*, 335 N.C. 183, 195 (1993).

17. Casol supports the reasonableness of his counsel's requested rates with affidavit testimony from Davis.<sup>24</sup> PreGel does not object to the hourly rates Casol's attorneys have charged. Based on Casol's counsel's affidavits, previous holdings of the North Carolina state and federal courts,<sup>25</sup> and this Court's knowledge of the

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<sup>23</sup> (See Davis Aff. Ex. 6; Duskin Aff. Ex. 5; Duskin Aff. Ex. 9, ECF No. 54.9; 2d Davis Aff. Ex. 1; 3d Davis Aff. Ex. 1.)

<sup>24</sup> (Davis Aff. ¶¶ 5–14; 2d Davis Aff. ¶¶ 5–13; 3d Davis Aff. ¶¶ 9–16.)

<sup>25</sup> See, e.g., *Woodcock v. Cumberland Cnty. Hosp. Sys.*, 2023 NCBC LEXIS 54, at \*11, \*14 (N.C. Super. Ct. Apr. 3, 2023) (approving hourly rates of \$600 and \$550 for partners and \$375 and \$325 for associates); *Bank of Am., N.A. v. Klaussner Furniture Indus., Inc.*, 2023 NCBC LEXIS 168, at \*9–10 (N.C. Super Ct. Dec. 15, 2023) (approving hourly rates between \$600 and \$700 for partners, \$350 and \$500 for associates, and \$265 for paralegals); *Chambers v. Moses H. Cone Mem'l Hosp.*, 2022 NCBC LEXIS 122, at \*14 (N.C. Super. Ct. Oct. 19, 2022) (observing that “numerous recent decisions have determined that typical fees charged in North Carolina for handling complex commercial litigation exceed \$250 and often range as



hourly rates of local attorneys providing similar services in Cabarrus County and in the North Carolina Business Court, the Court concludes that the rates Casol's attorneys and support staff have charged are reasonable, clearly not excessive, and within those "customarily charged in [Cabarrus County and in cases in the North Carolina Business Court] for similar legal services." N.C. Rev. R. Prof. Conduct. 1.5(a)(3).

B. Time and Labor Expended by Casol's Counsel

18. The Court next evaluates the time and labor expended by Casol's counsel. See N.C. Rev. R. Prof. Conduct 1.5(a)(1). While PreGel does not challenge Casol's counsel's specific time entries, the company raises several broad objections to Casol's request. The Court will address each in turn.<sup>26</sup>

19. First, PreGel contends that Casol unreasonably delayed in bringing his motion to dismiss the Federal Action for lack of subject matter jurisdiction until two years after the Federal Action was filed, thereby inflating Casol's recoverable fees and expenses. PreGel ignores however, that "lack of subject matter jurisdiction may be raised by any party 'at any time, even for the first time on appeal[,]'" *State v.*

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high as \$550 per hour."); *W&W Partners, Inc. v. Ferrell Land Co.*, 2020 NCBC LEXIS 35, at \*10 (N.C. Super. Ct. Mar. 23, 2020) (approving attorney hourly rate of \$526.50); *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 58, at \*19–20, \*32–36 (N.C. Super. Ct. Sept. 5, 2019) (approving attorney hourly rates between \$250 and \$450); *Bradshaw v. Maiden*, 2018 NCBC LEXIS 98, at \*12 (N.C. Super. Ct. Sept. 20, 2018) (concluding that hourly rates between \$250 and \$475 were reasonable); see also, e.g., *Miriam Equities, LLC v. LB-UBS 2007-C Millstream Rd., LLC*, 2022 NCBC LEXIS 115, at \*7–10 (N.C. Super. Ct. July 8, 2022) (approving a paralegal rate of \$250 per hour); *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2018 NCBC LEXIS 69, at \*21–23 (N.C. Super. Ct. July 6, 2018) (approving paralegal rates of \$150 to \$250 per hour).

<sup>26</sup> (PreGel's Br. Opp'n.)

*Briggs*, 257 N.C. App. 500, 502 (2018) (quoting *State v. Kostick*, 233 N.C. App. 62, 72 (2014)), and, in any event, PreGel chose the improper federal forum, not Casol. Moreover, Casol advised PreGel in January 2023 that the Federal Action lacked subject matter jurisdiction and sought PreGel’s consent to a discovery stay to permit a determination of the jurisdictional issue without incurring further discovery costs, but PreGel refused.<sup>27</sup> PreGel can hardly be heard to complain about Casol’s inflated expenses in circumstances that are entirely of PreGel’s own making.

20. Next, PreGel contends that Casol is not entitled to recover his fees and costs incurred in the defense of PreGel’s claims in the Federal Action that were based on Casol’s conduct when he was an employee, but not an officer, of PreGel. N.C.G.S. § 55-8-52 provides as follows:

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

21. PreGel’s attempt to impose a “claim-by-claim” construction on this provision is not supported by the plain and unambiguous language of the statute. The statute’s focus is on whether a director incurred expenses “in the defense of any proceeding to which he was a party because he is or was a director of the corporation.” If so, indemnification is appropriate. It matters not whether the director was sued for his conduct solely as a director or, as here, for his conduct both as an employee and as a

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<sup>27</sup> (See *Duskin Aff. Exs. 1–3*, ECF Nos. 54.1–.3; PreGel’s Br. Opp’n 3.)

director. The critical inquiry is whether the action arose because Casol was a director. It is undisputed that PreGel has sued Casol in this action for his conduct as a director. Indemnification is therefore proper under section 55-8-52, and PreGel's statutory argument is without merit.

22. Next, PreGel agrees with Casol that he is not entitled to recover for time and expenses associated with Sovilla's defense in the Federal Action but contends that a 20% reduction of Casol's fee request—rather than Casol's suggested 5% reduction—is appropriate to account for the fees attributable to Sovilla's defense. While PreGel acknowledges that “most of the alleged misconduct in this case may be Casol's,” it argues that it has alleged “claims concerning misconduct [Sovilla] herself committed . . . including Sovilla's unauthorized use of company credit cards and exploitation of PreGel America employees for her own personal benefit.” Having made that charge, however, PreGel offers no explanation or rationale to support its proposed 20% reduction other than to criticize Casol's 5% reduction as “anything but fair.”<sup>28</sup>

23. In contrast, Casol offers Davis's testimony that while “there was some work performed in the Federal Court Action that was arguably solely for Sovilla,” that work was “limited to drafting Sovilla's responses to Plaintiff's discovery requests, which were almost identical to those served upon Casol, and the preparation for and defense of Sovilla during her deposition.”<sup>29</sup> Given the limited amount of work that was

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<sup>28</sup> (PreGel's Br. Opp'n 6.)

<sup>29</sup> (Davis Aff. ¶ 21.)

performed solely for Sovilla, who was only a party because of her relationship to Casol, Casol argues that a 5% reduction of his total fees incurred for the Federal Action is “more than fair.”<sup>30</sup>

24. The Court’s careful review of the Billing Statements in the Federal Action reveal that Casol’s \$11,443.75 reduction in his fee request is indeed “more than fair” in these circumstances.

25. First, the Federal Action focused on Casol’s alleged misuse of his power and authority as an officer of PreGel, including by permitting Sovilla to misappropriate company funds. It is unsurprising therefore that the vast bulk of Casol’s counsel’s time incurred during the Federal Action was for tasks associated with the defense of both Defendants. This time would have been incurred regardless of whether Sovilla was a party to the litigation.<sup>31</sup>

26. Moreover, the Billing Statements support Davis’s testimony that the work performed solely for Sovilla was limited to preparing her discovery responses and preparing for and defending her deposition. A review of those billing entries also makes clear that Casol’s proposed 5% reduction is reasonable. First, the total amount of time incurred in the preparation of *both* Casol’s and Sovilla’s nearly identical

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<sup>30</sup> (Br. Supp. Marco Casol’s Pet. Expenses 20, ECF No. 56.) To support his use of an estimated percentage discount, Casol relies upon *Zaman v. Amedeo Holdings, Inc.*, 2008 Del. Ch. LEXIS 60, at \*112–13 (Del. Ch. May 23, 2008) (reducing fee request by a percentage discount where little additional work was performed on behalf of defendants for whom indemnity was not sought).

<sup>31</sup> (Davis. Aff. ¶¶ 20–21, 28–29.)

discovery responses was 22.1 hours (\$7,735.00).<sup>32</sup> Because the responses were jointly prepared, the vast majority of this time would have been incurred regardless of whether Sovilla was a party to the litigation. In addition, the total amount of time incurred in preparing for and defending Sovilla's deposition was 14.5 hours (\$4,475.00).<sup>33</sup> Given that the total amount of time devoted solely to Sovilla's defense in the Federal Action is likely no more than \$6,000.00, Casol's agreement to reduce his fee request by \$11,443.75 is generous and will be accepted by the Court for the purposes of this Order.

27. The Court further notes that PreGel has not disputed the reasonableness of the time and labor Casol expended in obtaining court-ordered indemnification.

28. The Court has carefully reviewed Casol's Billing Statements, and except as adjusted above, the Court concludes, in the exercise of its discretion, that no other adjustments to Defendants' requested attorneys' fees and costs for the defense of the Federal Action and for obtaining court-ordered indemnification are necessary or appropriate and that, as adjusted, the attorneys' fees and costs incurred by Casol in connection with his defense of the Federal Action and in obtaining court-ordered indemnification were reasonable under the circumstances.

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<sup>32</sup> (See Davis Aff. Ex. 1 (4/18/2022 – Duskin 7.1 hours (\$2,485.00); 4/28/2022 – Duskin 1.1 hours (\$385.00); 4/29/22 – Duskin 8.5 hours (\$2,975.00); 5/3/2022 – Duskin 5.4 hours (\$1,890.00))).

<sup>33</sup> (See Davis Aff. Ex. 1 (1/12/2023 – Duskin 1.1 hours (\$385.00); 1/12/2023 – Payne 2.3 hours (\$345.00); 1/13/2023 – Duskin estimated 2.0 of 7.5 hours (\$700.00); 1/13/2023 – Payne .7 hours (\$105.00); 1/16/2023 – Duskin 8.4 hours (\$2,940.00))).

C. Remaining N.C. Rev. R. Prof. Conduct 1.5 Factors

29. To the extent an examination of the remaining factors set forth in Rule 1.5(a) of the Revised Rules of Professional Conduct is necessary in the context of mandatory statutory indemnification, the Court concludes that those factors weigh in favor the award of attorneys' fees awarded hereunder.

30. As to that portion of the N.C. Rev. R. Prof. Conduct 1.5(a)'s first factor considering "the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly," the Court finds that the work required in connection with defending against the Federal Action and obtaining court-ordered indemnification was challenging and required a high degree of skill, experience, and specialized knowledge. Accordingly, this factor weighs in favor of the attorneys' fees awarded hereunder.

31. Considering N.C. Rev. R. Prof. Conduct 1.5(a)'s seventh factor—"the experience reputation, and ability of the lawyer or lawyers performing the services"—the Court finds that Defendants' attorneys have significant experience in complex business litigation matters and have shown great ability in defending against the Federal Action and in obtaining court-ordered indemnification. The Court concludes that this factor also weighs in favor of the Court's award of attorneys' fees hereunder.

32. Finally, the Court has considered the remaining factors of N.C. Rev. R. Prof. Conduct 1.5(a) and finds that the attorneys' fees awarded hereunder are reasonable in light of these factors as well. In particular, the fourth factor—"the amount involved and the results obtained"—favors the award of attorneys' fees hereunder because

Casol was able to obtain both the dismissal of the Federal Action and court-ordered indemnification.

33. Accordingly, based on the above, the Court concludes, in the exercise of its discretion, that PreGel shall be ordered to pay Casol's reasonable expenses in the total amount of \$405,225.37, plus interest at the legal rate, as follows:

- a. \$198,058.75 for attorneys' fees incurred in the defense of the Federal Action;<sup>34</sup>
- b. \$30,363.69 for costs incurred in the defense of the Federal Action;
- c. \$174,375.60 for attorneys' fees incurred in obtaining court-ordered indemnification;<sup>35</sup>
- d. \$2,427.33 for costs incurred in obtaining court-ordered indemnification; and
- e. Interest at the legal rate on the amounts awarded hereunder for expenses incurred in the defense of the Federal Action from 10 March 2023 until paid and in obtaining court-ordered indemnification from 10 January 2024 until paid.

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<sup>34</sup> To summarize, Casol initially sought \$228,875.00 for attorneys' fees incurred in the defense of the Federal Action. Casol then applied, and the Court accepted, a reduction of \$11,443.75 to account for the work performed solely for Sovilla. As explained above, the Court further reduced the fee award to exclude \$19,372.50 sought for 72.1 hours of work performed by five unknown timekeepers in the defense of the Federal Action.

<sup>35</sup> As noted above, Casol seeks \$176,655.60 in attorneys' fees incurred in obtaining court-ordered indemnification, and the Court has excluded \$2,280.00 sought for 7.6 hours of work performed by Ms. Ignich.

III.

CONCLUSION

34. **WHEREFORE**, the Court, for the foregoing reasons and in the exercise of its discretion, hereby **GRANTS in part** and **DENIES in part** Casol's Petition as set forth above and hereby **ORDERS** PreGel to pay Casol's reasonable expenses in the total amount of \$405,225.37, plus interest at the legal rate as set forth above, no later than 28 May 2024.

**SO ORDERED**, this the 26th day of April, 2024.

/s/ Louis A. Bledsoe, III

Louis A. Bledsoe, III  
Chief Business Court Judge