

Prepared by the Court

XENOSEP TECHNOLOGIES, LLC,

Plaintiff,

vs.

APPLIED SEPARATIONS, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MORRIS COUNTY
DOCKET NO. MRS-L-00356-19

CIVIL ACTION

FINAL JUDGMENT

FILED

FEB 21 2025

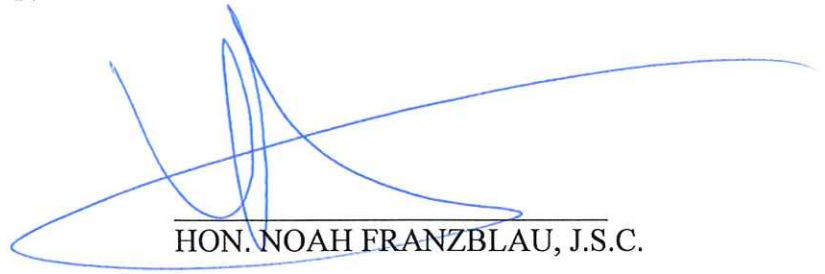
**NOAH FRANZBLAU, J.S.C.
SUPERIOR COURT OF NJ**

THIS MATTER having been brought before the Court by John Fialcowitz, Esq., attorney for Plaintiff Xenosep Technologies, LLC, for an order to amend the judgment issued following trial to include an award of attorneys' fees and costs, and the Court having considered the matter and the opposition filed Defendant Applied Separations, Inc.'s attorney, Zachary Wellbrock, Esq., and for good cause shown:

It is on this **21st** day of **February 2025** ordered as follows:

1. Judgment shall be entered against Defendant and in favor of Plaintiff for damages in the amount of **\$6,338,107.00**, as determined by the jury.
2. The reasonable and necessary lodestar for Plaintiffs' attorneys' fees and costs are held to be \$383,354.05
3. Judgment shall be entered against Defendant and in favor of Plaintiff in the amount of **\$6,721,461.05**

4. The Court's submission of a copy of this Order onto eCourts will constitute service upon all counsel of record.



HON. NOAH FRANZBLAU, J.S.C.

See attached statement of reasons.

STATEMENT OF REASONS

Xenosep Technologies, LLC v. Applied Separations Inc.
MRS-L-356-19

On February 1, 2019, Xenosep Technologies, LLC (“Plaintiff” or “Xenosep”) filed a complaint against Applied Separations, Inc (“Defendant” or “ASI”). On June 15, 2021, Xenosep filed an Amended Complaint, which included the following ten counts: (I) Breach of Contract and Oral Modified Payment Obligations; (II) Breach of Contract (Post-Termination Obligations); (III) Violation of the Sales Representative Rights Act (“SRRA”); (IV) violation of the Lanham Act; (V) Theft of Trade Secrets/Violation of New Jersey Trade Secrets Act (“NJTSA”); (VI) Conversion; (VII) Common Law Unfair Competition; (VIII) Violation of New Jersey’s Unfair Compensation Act; (IX) Unjust Enrichment; and (X) imposition of a Constructive Trust.

The case was designated as a track 4 complex commercial matter. Following four extensions of discovery and ten trial adjournments, the case was tried before a jury over the course of seven days. On January 23, 2025, the jury rendered a verdict in favor of Xenosep on Counts I, II, III, IV, and V of Xenosep’s Amended Complaint.¹

¹ Counts I and II of Xenosep’s Amended Complaint were consolidated generally as Xenosep’s claim for breach of contract—Count I on the Jury Verdict Sheet.

In constructing the jury charge and verdict sheet, this court was cognizant of the fact that Xenosep's breach of contract claim was based, in part, upon Defendant's alleged: (a) failure to pay commissions to Xenosep on the sale of Xenosep products; (b) use of Xenosep's trademarks after termination of the parties' contract; and (c) misappropriation of Xenosep's trade secrets.

This court recognized and discussed with the parties during the charge conference that Defendant's alleged breaches of contract ((a), (b) and/or (c) above)), if proven, may be compensable both as a breach of contract and independently under other Counts. More specifically, if Xenosep proved that Defendant breached the contract by failing to pay sales commissions, Defendant also may be liable for violating the SRRA (Count III). Likewise, if Xenosep proved that Defendant breached the contract by using Xenosep's trademarks after termination of the parties' contract, Defendant also may be liable for violating the Lanham Act (Count IV). Finally, if Xenosep proved that Defendant breached the contract by misappropriating Xenosep's trade secrets, Defendant also may have been liable for violating NJTSA (Count V).

In the event that Xenosep prevailed on its breach of contract claim and the other related and overlapping statutory claims (i.e. Counts III, IV and V), to ensure that Xenosep would not be awarded duplicative damages for the same injury(ies), the court identified the various categories of damages that a jury could award to

Xenosep if the jury determined that Defendant breached the parties' contract. In so doing, Question 1.d on the verdict sheet was as follows:

d. What amount of damages will fairly compensate Plaintiff Xenosep for Defendant ASI's breach of the contract (itemize damages based upon each category listed below that you find applicable)?

i. Damages for unpaid commissions and other compensation due, including unpaid profits, from Defendant ASI, if any.

\$ _____

ii. Damages for unpaid wages due from Defendant ASI to Ms. Patricia Stefkovich, if any.

\$ _____

iii. Damages related to Defendant ASI's use of Plaintiff's Trademarks after termination of the contract, if any.

\$ _____

iv. Damages related to Defendant ASI's use of "collaboration inventions" and/or trade secrets after termination of the contract, if any.

\$ _____

v. Damages related to Defendant ASI's failure to return personal property (inventory, work in progress and raw materials) to Plaintiff Xenosep after termination of the contract, if any.

\$ _____

TOTAL DAMAGES:

(add amounts from 1d(i) through 1d(v))

\$ _____

Vote: _____

5-1

6-0

In this manner, if the jury determined that Defendant breached the contract and also violated the SRRA, the Lanham Act and/or NJTSA, the court would be able to mold the verdict to ensure that Xenosep was not awarded duplicative damages for the same harm(s).

Following deliberation, the jury determined that Defendant breached its contract with Xenosep and awarded Xenosep with damages on its breach of contract claim. Those damages were broken down as follows:

- d. What amount of damages will fairly compensate Plaintiff Xenosep for Defendant ASI's breach of the contract (itemize damages based upon each category listed below that you find applicable)?
 - i. Damages for unpaid commissions and other compensation due, including unpaid profits, from Defendant ASI, if any.

\$1,238,010.00
 - ii. Damages for unpaid wages due from Defendant ASI to Ms. Patricia Stefkovich, if any.

\$ 0
 - iii. Damages related to Defendant ASI's use of Plaintiff's Trademarks after termination of the contract, if any.

\$377,468.00
 - iv. Damages related to Defendant ASI's use of "collaboration inventions" and/or trade secrets after termination of the contract, if any.

\$4,694,973.00

- v. Damages related to Defendant ASI’s failure to return personal property (inventory, work in progress and raw materials) to Plaintiff Xenosep after termination of the contract, if any.

\$27,656.00

TOTAL DAMAGES:

(add amounts from 1d(i) through 1d(v))

\$6,338,107.00

Vote: _____ X
 5-1 6-0

In connection with the jury’s findings that Defendant breached the contract by: (a) failing to pay Xenosep all commissions due in connection with its sale of Xenosep products (d.i above); (b) using Xenosep’s trademarks following termination of the parties’ contract (d.iii above); and (c) using ASI’ trade secrets after the termination of the parties contract (d.iv above), the jury likewise concluded that Defendant violated: (i) the SRRA by failing to pay Xenosep all commissions due (Count III); (ii) the Lanham Act by using Xenosep’s trademarks without authorization (Count IV); and (iii) the NJTSA by misappropriating Xenosep’s trade secrets (Count V). Moreover, in concluding that Defendant violated the Lanham Act, the jury specifically concluded by a vote of 6-0 that “Defendant ASI intentionally and knowingly use[d] Plaintiff Xenosep’s trademarks in connection with its sale of Xenosep products following the termination of the parties’ contract.” (Verdict Sheet, Question 6d). Likewise, in concluding that Defendant violated the NJTSA, the jury specifically concluded by a vote of 6-0

that “ASI engaged in willful and malicious misappropriation of Xenosep’s trade secrets.” (Verdict Sheet, Question 7d). However, the jury allocated no damages to Xenosep on the jury verdict sheet in connection with Counts III, IV, and V.

Plaintiff seeks an award of attorneys’ fees and costs under the SRRA (Counts III), the Lanham Act (Count IV), and the NJTSA (Count V) in the total amount of \$383,354.05. As noted below, each statute specifically provides for an award of attorneys’ fees to a prevailing party.

The SRRA states that “a principal [in this case ASI] who violates or fails to comply with the provisions of section 2 [C.2A:61A-2] of this act shall be liable to the sales representative [in this case Xenosep] for all amounts due the sales representative . . . and all attorney’s fees actually and reasonably incurred by the sales representative in the action and court costs.” N.J.S.A. 2A:61A-3. Likewise, in connection with a violation of the Lanham Act, “the court in exceptional cases may award reasonable attorney fees to the prevailing party.” 115 U.S.C. § 1117

(a). Finally, the NJTSA provides that:

The court may award to the prevailing party reasonable attorney’s fees and costs, including a reasonable sum to cover the service of expert witnesses, if:

- a. willful and malicious misappropriation exists;
- b. a claim of misappropriation is made in bad faith; or
- c. a motion to terminate an injunction is made or resisted in bad faith.

For purposes of this section, “bad faith” is that which is undertaken or continued solely to harass or maliciously injure another, or to delay or prolong the resolution of the litigation, or that which is without any reasonable basis in fact or law and not capable of support by a good faith argument for an extension, modification or reversal of existing law.

[N.J.S.A. 56:15-6.]

In connection with the foregoing, Xenosep’s attorney has submitted a certification of attorney services supporting attorneys’ fees and costs in the total amount of \$383,354.05.

Defendant opposes Xenosep’s attorneys’ fee request asserting, among other reasons, that: (i) the jury awarded no compensatory damages to Plaintiff under Counts III, IV or V—therefore, Xenosep is not a prevailing party under the SRRA, Lanham Act or NJTSA; (ii) this is not an “exceptional case” warranting attorneys’ fees under the Lanham Act; and (iii) Defendant’s misappropriation of Xenosep’s trade secrets under the NJTSA was not “willful and malicious.”² Finally, Defendant argues that since attorneys’ fees may potentially be awarded only as a result of Defendant’s violation of the SRRA, no fees should be granted to Xenosep because Xenosep’s fee request is not reasonable as recompense under the SRRA (Count III) alone. More specifically, Defendant argues that the fees charged were

² The court does not address this argument from Defendant, because the jury, in answering Question 7d, specifically concluded that Defendant’s misappropriation of Xenosep’s trade secrets in violation of the NJTSA was “willful and malicious.”

not exclusively incurred by Plaintiff in connection with prosecution of its SRRA claim.³

The court rejects Defendant's arguments in opposition to Xenosep's entitlement to an award of attorneys' fees. With respect to Defendant's contention that this court cannot award attorneys' fees to Xenosep on Counts III, IV and V, because Xenosep is not a prevailing party, this court rejects that argument insofar as the jury specifically concluded that Defendant's violated the SRRA, the Lanham Act, and the NJTSA. Further, this court observes Kasick v. Milwaukee Elec. Tool Corp., 120 N.J. 130, 135 (1990), which states:

That deference to a jury's findings is reflected also in the general rule that a trial court may not "mold" a jury verdict according to its perception of the jury's view. See Pressler, Current New Jersey Court Rules (1989), comment to R. 4:39-2. **A verdict may be "molded in consonance with the plainly manifested intention of the jury,"** Turon v. J. & L. Constr. Co., 8 N.J. 543, 552 (1952) **Moreover, molding a verdict is most appropriate when it pertains to form rather than substance.** Gilday v. Hauchwit, 91 N.J.Super. 233, 238 (App.Div.1966), rev'd on other grounds, 48 N.J. 557 (1967); Poland v. Parsekian, 81 N.J. Super. 395, 402 (App.Div.1963), certif. denied, 41 N.J. 520 (1964); Neumann v. Wildermann, 35 N.J.Super. 562, 566 (App.Div.1955). [(emphasis added).]

³Xenosep's attorney asserts that its total fee request is reasonable in that it is only approximately six-percent of the total jury award (\$383,354.05 compared to total award of \$6,338,107.00). In response, Defendant argues that fees are only potentially awardable for Defendant's SRRA violation, and the fees requested (\$383,354.05) are approximately thirty-one-percent of the damage award for unpaid commissions (\$1,238,010.00), an amount Defendant contends is unreasonable.

Here, it is patently obvious that the jury did not award damages on Counts III, IV, and V solely because the jury believed that awarding damages under those Counts would be duplicative of the damages awarded to Xenosep on its claim for breach of contract (Count I). In point of fact, the jury did conclude that Defendant violated the SRRA, the Lanham Act, and the NJTSA, and the jury also identified the specific damages incurred by Plaintiff with respect to each of those counts.

With respect to Count III, the court reaches this conclusion, because the jury answered “yes” to question 2, thereby confirming that Defendant violated the SRRA by failing to pay commissions due and owing to Xenosep. It is further evident from the jury’s response to question 1.d.i. (regarding Defendant’s breach of contract) that Xenosep suffered damages in the amount of \$1,238,010 as a result of Defendant’s failure to pay sales commissions due to Xenosep. Although the jury awarded no damages in response to question 2b, the court finds this to be “form over substance” and molds the verdict to reflect damages of \$1,238,010.00 “in consonance with the plainly manifested intention of the jury.” Id. Concomitantly, this court concludes that Xenosep is a prevailing party entitled to statutory attorneys’ fees under the SRRA.

With respect to Count IV, the court reaches the same conclusion, because the jury answered “yes” to question 6.a, 6.b and 6.d, thereby confirming that Defendant engaged in the unauthorized use of Xenosep’s trademarks and that

Defendant's actions in misusing Xenosep's trademarks were knowing and intentional. It is further evident from the jury's response to question 1.d.iii. (regarding Defendant's breach of contract) that Xenosep suffered damages in the amount of \$377,468.00 as a result of Defendant's trademark infringement. Although the jury awarded no damages in response to question 6c, the court finds this to be "form over substance" and molds the verdict to reflect damages of \$377,468.00 "in consonance with the plainly manifested intention of the jury." Id. As a result, the court concludes that Xenosep is a prevailing party entitled to statutory attorneys' fees under the Lanham Act.

With respect to Count V, the court reaches the same conclusion, because the jury answered "yes" to question 7a and 7b, thereby confirming that Defendant misappropriated Xenosep's trade secrets. It is further evident from the jury's response to question 1.d.iv (regarding Defendant's breach of contract) that Xenosep suffered damages in the amount of \$4,69,973.00 as a result of Defendant's misappropriation of Xenosep's trade secrets. Although the jury awarded no damages in response to question 7.c, the court finds this to be "form over substance" and molds the verdict to reflect damages of \$4,69,973.00 "in consonance with the plainly manifested intention of the jury." Id. Therefore, the court concludes that Xenosep is a prevailing party entitled to statutory attorneys' fees under the NJTSA.

Finally, with respect to Defendant's contention that this is not an "exceptional case" warranting attorneys' fees under the Lanham Act, the court rejects that argument. An exceptional case includes "when (a) there is an unusual discrepancy in the merits of the positions taken by the parties; or (b) the losing party has litigated the case in an 'unreasonable manner.'" Fair Wind Sailing, Inc. v. Dempster, 764 F.3d 303, 315 (3d Cir. 2014). "Whether litigation positions or litigation tactics are 'exceptional' enough to merit attorneys' fees must be determined by [] courts in the case-by-case exercise of their discretion, considering the totality of the circumstances." Id. (internal quotations and citation omitted). Culpability, while not a prerequisite for finding a case exceptional, may factor into the court's analysis. Id. Culpable conduct includes "bad faith, fraud, malice or knowing infringement." Securacomm Consulting, Inc. v. Securacomm, Inc., 224 F.3d 273, 280 (3d Cir. 2000).

Here, Defendant was permitted to use Xenosep's trademarks during the term of the parties' written contract (P-1). On September 15, 2018, Xenosep sent a clear notice of material breaches and a demand that Defendant cure said breaches (P-70). Thereafter, Xenosep sent Defendant a notice of termination of the contract based upon Defendant's failure to cure the previously, identified, material breaches. (P-71). That letter specifically stated, "pursuant to Sections 11.2 and 11.3, the Agreement is now terminated." Likewise, that letter also specifically advised

Defendant to “cease and desist from using or selling any products bearing any Xenosep trademarks, including, but not limited to, Xenosep®, XenoMax® and ValuSep®. “Once a license has expired or is terminated, use of the formerly licensed trademark constitutes infringement.” United States Jaycees v. Philadelphia Jaycees, 639 F. 2d 134, 143 (3d Cir. 1981).

During trial, Defendant failed to deny that it had breached its obligations under the contract. In this regard, Defendant failed to provide any proofs that it complied with the contract or cured the breaches following its receipt of P-70, by providing, among other things, account statements to Xenosep and allowing Xenosep to audits ASI’s books and records, all as required by the parties’ contract.

Consistent with the jury’s determination, it is clear that Defendant failed to cure the material breaches in accordance with the contract and, therefore the contract terminated as of December 18, 2018. Moreover, despite the undeniable termination of the contract as of December 18, 2018, it was acknowledged during trial that Defendant continued to use Xenosep’s trademarks until December 31, 2020, and thereafter. On that basis, this court reaches the incontestable conclusion that Defendant’s continued use the Xenosep’s trademarks after the December 18, 2018 (and following Defendant’s receipt of the cease and desist notice from Xenosep) was knowing, intentional and constitutes bad faith.

Consistent with the foregoing, this court concludes that Xenosep is a prevailing party under the SRRA, the Lanham Act, and the NJTSA, and is entitled to attorneys' fees for each of the foregoing statutory claims within Counts III, IV, and V.

Analysis

“New Jersey has a strong policy disfavoring shifting of attorneys' fees.” N. Bergen Rex Transp. V. Tailer Leasing Co., 158 N.J. 561, 569 (1999) (citing McGuire v. City of Jersey City, 125 N.J. 310, 326 (1991)). New Jersey courts “have generally adhered to the so-called ‘American Rule,’ meaning that ‘the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.’” Id. (quoting Rendine v. Pantzer, 141 N.J. 292, 322 (1995)). “Although the basic approach and philosophy regarding the allowance of counsel fees has been ‘that sound judicial administration is best advanced if litigants bear their own counsel fees,’” exceptions to the general rule have been incorporated into Rule 4:42-9. Id. at 569-70 (quoting Department of Env'tl. Protection v. Ventron Corp., 94 N.J. 473, 504 (1983)).

As applied to this case, Rule 4:42-9(a)(8) specifically permits an award of attorneys' fees in all cases where said fees “are permitted by statute.” As noted above, each the SRRA, Lanham Act, and the NJTSA all provide for an award of counsel fees to the prevailing party.

New Jersey Courts regularly employ the "lodestar" method of calculation, which equals the “number of hours reasonably expended by the attorney, multiplied by a reasonable hourly rate.” Packard-Bamberger v. Collier, 167 N.J. 427, 445 (2001). However, all fee applications, including those for contingency fees, must be reasonable. See RPC 1.5(a)(8) (recognizing that even contingency fees may be awarded under the rule).

In this case, Plaintiff’s counsel seeks attorneys’ fees and costs in the amount of \$383,354.05, which amount is broken down as follows:

Attorneys’ Fees for John A. Fialcowitz, LLC and Sean Collier, Esq.....	\$346,669.59
Court Reporter Fees paid by Xenosep.....	\$3,017.55
Document Production/Exhibit Costs paid by Xenosep.....	\$6,004.41
Expert Fees paid by Xenosep.....	\$27,662.50

The SRRA specially provides the prevailing party with an award of court costs incurred in addition to attorney’s fees. Likewise, the NJTSA provides the prevailing party with the cost to cover expert witnesses in addition to attorneys’ fees.

With respect to Xenosep’s request for attorneys’ fees, RPC 1.5(a) catalogues the factors to be considered in determining the reasonableness of a fee, which include the following:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite 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;
- (8) whether the fee is fixed or contingent.

[See also Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 22 (2004).]

Those “factors must inform the calculation of the reasonableness of a fee award in this and every case.” Furst, 182 N.J. at 22. “[A] trial court may exercise its discretion to exclude” from the lodestar calculation hours not reasonably expended. Rendine, 141 N.J. at 336.

In connection with Xenosep’s attorney’s fee request, this court must determine the reasonableness of the fees requested pursuant to the factors set forth in RPC 1.5.

Beginning with RPC factor one, Xenosep's claims primarily stem from Defendant's breach of the contract, and, more specifically from Defendant's failure to pay all commissions due thereunder, Defendant's improper use of Xenosep's trademarks after the termination of the contract and Defendant's improper use of Xenosep's trade secrets. While these misdeeds were all breaches of contract, they were equally the foundation of the jury finding Defendant liable for violating the SRRA (Count III), the Lanham Act (Count IV), and the NJTSA (Count V).

This litigation was complex and took more than five years to complete and required exceptional expertise by Xenosep's attorneys to be well versed in the law supporting the multitude of Xenosep's claims. This litigation also was extremely document-intensive requiring Xenosep's attorneys to have substantial recall of voluminous documents in order to establish, present and prove its case. In this regard, Xenosep entered into evidence more than one-hundred exhibits.

As to factor two, as indicated above, this litigation was complex and document intensive. After the passage of more than five-years from the filing of Xenosep's initial complaint, the case was tried over the course of approximately seven days. Fialcowitz LLC is a small firm consisting of John Fialcowitz, Esq. As his firm is small, he certified that he was required to contract Sean Collier, Esq. for assistance in handling the case and trial. Mr. Fialcowitz also certified that he

turned away work as a result of the demands of this case, which this court finds plausible based upon the demands of a case this size on a small firm.

As to factor three, the hourly rate for Mr. Fialcowitz, discounted to \$300.00, is reasonable and less than rates customarily charged for similar legal services in this locality. Likewise, the contracted fee from Mr. Collier was \$150. In fact, these rates are below market for attorneys handling a case of this complexity in Morris County, New Jersey. The court also notes that Defendant's opposition does not challenge the reasonableness of the hourly rates charge by Mr. Fialcowitz or Mr. Collier.

Regarding factor four, the amount involved, and the results obtained, judgment was entered in favor of Xenosep in the amount of \$6,338,107.00. The jury rejected only one small amount of damages claimed by Xenosep—unpaid salary for Patricia Stefkovich. Aside from that, for all intents and purposes, the jury awarded Xenosep with all amounts sought and unequivocally rejected Defendant's trial contentions.

As to factor five, in viewing Xenosep's attorneys' invoices, this court concludes that the time billed by Xenosep's attorneys was reasonable and necessary when viewed in the context of the complexity of the claims brought in this litigation. The court likewise concludes that the amounts billed were reasonable and necessary when viewed in terms of the volume of discovery that

had to be obtained, reviewed, and analyzed in order for Xenosep's attorneys to establish proofs supporting Plaintiff's claims.

Plaintiff's counsel did not address factor six. However, Mr. Fialcowitz has represented Xenosep from the inception of this case, so his relationship with Xenosep has lasted for at least six years.

With respect to factor seven, and consistent with factor three above, Mr. Fialcowitz and Mr. Collier have significant legal experience, providing them with the necessary expertise to handle this complex matter. Both attorneys demonstrated superior ability prior to and during trial, including in connection with pretrial submissions and trial advocacy. Both attorneys have strong reputations.

Finally, as to factor eight, Mr. Fialcowitz certified that his fee was fixed.

Consistent with the foregoing, this court concludes that the time expended by Xenosep's attorneys in connection with this litigation was reasonable, and therefore, this court approves Xenosep's attorneys' fee request in the amount of \$346,669.59. In reaching this award, the court finds said amount reasonable and places great weight on factors one through five, seven and eight and notes that no factor weighs against the fee award.

Likewise, this court concludes that the fee award is extremely reasonable based upon the time actually expended by Xenosep's attorneys and the hourly rates charged when considering with the herculean tasks involved in bringing this large-

scale and complex litigation and seeing it all the way through a jury trial. Finally, the court notes that fees awarded are reasonable in light of the damages suffered by Xenosep, which damages, as noted above, are directly attributable to Counts III, IV, and V. See Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 616 (App. Div. 1990) (quoting Riverside v. Rivera, 477 U.S. 561, 574 (1986)) (“Although there is no requirement that an award of attorneys’ fees be proportionate to damages, ‘the amount of damages a plaintiff recovers is certainly relevant to the amount of attorney’s fees to be awarded’”).

Consistent with the NJTSA, this court also awards Xenosep with expert fees incurred in the amount of \$27,662.50. The expert fees paid to June Toth by Xenosep also are reasonable in view of her experience and her comprehensive and credible analysis of voluminous financial documents produced by Defendant. In this context, the court cannot ignore that the jury’s assessment of damages coincided with the testimony of Ms. Toth, reflecting the importance of her work to Xenosep’s success on its NJTSA claim. Although Ms. Toth’s expert testimony also was relevant to other statutory claims that do not provide for reimbursement of expert fees, this court finds it appropriate to award Xenosep with the full cost of Ms. Toth’s fees, because the jury awarded the lion’s share of damages to Xenosep on its NJTSA claim. In this regard, of the \$6338,107 of damages awarded by the

jury, \$4,694,973 of those damages were directly attributable to Defendant's misappropriation of Xenosep's trade secrets in violation of the NJTSA (Count V).

The court likewise finds Xenosep's requests for court costs reasonable in the context of the volume of documents that had to be produced, copied and presented to witnesses and the court during trial. To the extent that Defendant claims that it is not reasonable for Xenosep to seek fees and costs related to the de bene esse deposition of Richard Beeferman, CPA in January 2025, because Xenosep subsequently and successfully move to bar his testimony, this court disagrees.

Mr. Beeferman was deposed as a result of Defendant's production of a late supplemental report. At the time that Mr. Beeferman's deposition was taken, Xenosep was not yet aware of the court's ruling on its motion to bar Mr. Beeferman from presenting his supplemental opinions; accordingly, it was reasonable for Xenoxep's attorneys to prepare for the possibility that Mr. Beeferman's testimony regarding his supplemental report would be admissible. Further, the court did not bar Mr. Beeferman from testifying at trial; the court only barred Mr. Beeferman from testifying regarding the opinions in his supplemental report, produced approximately sixteen days before trial. Ultimately, it was Defendant's decision not to call Mr. Beeferman to testify regarding his opinions contained in his initial report.