

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

PAUL R. WALLACE
JUDGE

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RE: *River Valley Ingredients, LLC, et al. v. American Proteins, et al.*
C.A. No. N19C-12-160 PRW CCLD
Plaintiffs' Rule 54 Motion for Costs

Dear Counsel:

This Letter Decision and Order addresses Plaintiffs' Rule 54 Motion for Costs (D.I. 717). For the reasons set forth briefly below, the Motion is **GRANTED** in part and **DENIED** in part.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

This motion stems from a lengthy five-year litigation, arising from the acquisition of poultry rendering facilities by Plaintiffs—collectively referred to as Tyson—from Defendants, formerly operating as American Proteins, Inc. (“API”).² Tyson sought entry into the competitive poultry rendering market of the southeastern United States.³ API ultimately agreed to sell two plants pursuant to an Asset Purchase Agreement (“APA”) executed in 2018 for approximately \$865.8 million.⁴ Following closing, Tyson discovered operational and profitability issues with the purchased properties and alleged that Defendants had fraudulently induced the transaction by concealing material information—most notably, those plants’ prior use of SPN stickwater⁵ in production and a contemporaneous process change to

¹ Because the facts and procedural history relevant to this motion are identical to those set forth in the Court’s prior letter decision denying Tyson’s motion for attorney’s fees and costs, the Court reuses and incorporates much of the factual and procedural background here rather than restating it. *See River Valley Ingredients, LLC v. Am. Proteins*, 2026 WL 1182418 (Del. Super. Ct. Apr. 30, 2026) (“*River Valley Ingredients I*”).

² *See generally River Valley Ingredients, LLC v. Am. Proteins, Inc.*, 2025 WL 3094942 (Del. Super. Ct. Nov. 5, 2025) (“*River Valley Ingredients I*”) (Decision After Trial (D.I. 706)). Plaintiffs are River Valley Ingredients, LLC, Tyson Poultry, Inc., and Tyson Farms, Inc. River Valley is a subsidiary of Tyson Poultry, and Tyson Poultry is a subsidiary of Tyson Foods. For the sake of convenience and clarity, the Court will use “Tyson” when referring to the Plaintiff(s).

³ *River Valley Ingredients I*, 2025 WL 3094942, at *3.

⁴ *Id.* at *5.

⁵ As the Court noted in its decision, “[i]n poultry processing, ‘SPN’ generally refers to Secondary Processing Nutrients. These are byproducts of wastewater treatment at poultry

remove it before due diligence.⁶ Tyson further alleged breaches of contractual representations and warranties within the APA.⁷ Defendants denied wrongdoing and asserted a series of counterclaims, including fraudulent inducement, tortious interference, unfair competition, and related theories.⁸

A trial was held.⁹ At the close of Plaintiffs' case-in-chief, the Court granted in part Defendants' motion under Rule 41(b), dismissing certain discrete warranty claims.¹⁰ The matter then proceeded through the remainder of trial and post-trial briefing, after which the Court undertook its role as factfinder.¹¹

Tyson proved, by a preponderance of the evidence, that API fraudulently induced the transaction through deliberate concealment of its historical use of SPN stickwater and the rushed removal of that practice to inflate apparent profitability.¹² The Court further concluded that API breached certain representations and

processing plants that can be collected, treated, and rendered into other usable feed materials." *Id.* at *3 n.25. "In most instances its usage seems, at best, disfavored." *Id.* at *4.

⁶ *Id.* at *3–5.

⁷ *Id.* at *10–14.

⁸ *Id.*

⁹ *See generally id.*

¹⁰ *Id.* at *2.

¹¹ *See generally id.*

¹² *See generally id.*

warranties under the APA—specifically those concerning past practices and contractual compliance—thereby triggering indemnification obligations.¹³ Tyson didn’t prevail on all asserted contractual breaches, including claims relating to books and records, regulatory compliance, and alleged nondisclosure of the Reid Report.¹⁴ Conversely, Defendants failed to carry their burden on any of their counterclaims.¹⁵

Tyson was awarded \$55 million in damages, reflecting the contractual cap and representing the benefit-of-the-bargain loss caused by Defendants’ misrepresentations.¹⁶

Having prevailed on significant claims and secured a substantial monetary judgment, Tyson then sought an award of attorney’s fees as the prevailing party of the litigation, urging adoption of its interpretation of the APA’s indemnity provisions.¹⁷ That motion was denied because the APA contained no contractual provision providing a basis for departing from the American Rule and shifting fees.¹⁸

Following that ruling, the parties each submitted a proposed final judgment to

¹³ *See generally id.*

¹⁴ *See generally id.*

¹⁵ *See generally id.*

¹⁶ *Id.* at *18–20.

¹⁷ D.I. 707.

¹⁸ *See River Valley Ingredients II*, 2026 WL 1182418.

the Court on May 15, 2026.¹⁹ On May 21, 2026, Tyson filed this Motion for Costs pursuant to Superior Court Civil Rule 54(d).²⁰

II. PARTIES' CONTENTIONS

Tyson seeks the following costs:

- filing and recording fees in the amount of \$15,394.43; deposition transcript and court reporter fees in the amount of \$57,565.10; trial transcript costs in the amount of \$11,025.00; meal expenses in the amount of \$8,887.96; witness lodging expenses in the amount of \$4,643.91; and technology-support expenses incurred during trial in the amount of \$2,028.62;
- trial-technology expenses associated with relocating the trial from Wilmington to Dover in the amount of \$22,405.13;
- expert witness support team lodging expenses in the amount of \$3,439.88 and trial-team lodging expenses in the amount of \$10,527.27;
- trial-support services provided by Fulcrum Legal Graphics in the amount of \$16,441.60;
- lodging expenses attributable to its Rule 30(b)(6) corporate representative—requested to attend by API—in the amount of \$1,164.00;
- lodging expenses attributable to experts Matthew Bell and Jon Pesicka in the amounts of \$1,078.08 and \$1,078.08, respectively;
- expert witness fees attributable to Timothy Hart and Avram Tucker in the amount of \$107,164.00 for the entirety of their attendance during trial; and

¹⁹ Tyson's Proposed Final Judgment (D.I. 715); Def.'s [proposed] final judgment (D.I. 716).

²⁰ Tyson's Rule 54 Motion for Costs (D.I. 717).

- lodging expenses attributable to experts Timothy Hart and Avram Tucker in the amounts of \$1,151.08 and \$1,137.92.²¹

API opposes Tyson's motion and argues that the requested costs should be denied in their entirety.²² API first contends that the Court already rejected Tyson's request for litigation costs in its prior ruling on Tyson's motion for attorney's fees and costs, and that the present motion constitutes an improper attempt to relitigate issues already decided.²³ API further argues that the motion is premature because no final judgment has yet been entered.²⁴ On the merits, API contends that Tyson does not qualify as the prevailing party under Rule 54 because Tyson prevailed on only a limited portion of its claims and recovered only a fraction of the damages it sought.²⁵ Finally, API argues that many of the costs sought by Tyson are not recoverable under Delaware law, including expenses related to trial-support personnel, technology services, attorneys and litigation staff, certain expert-related expenses, and other costs that API characterizes as ordinary litigation expenses

²¹ See generally Tyson's Rule 54 Motion for Costs; Tyson's Rule 54 Motion for Costs Aff.

²² API's Response to Tyson's Rule 54 Motion for Costs with Certificate of Service (D.I. 718) [hereinafter "API's Resp."].

²³ API's Resp. 2–3.

²⁴ *Id.* at 3–4.

²⁵ *Id.* at 4–5.

rather than taxable costs.²⁶ Accordingly, API requests that the Court deny Tyson’s motion or, alternatively, substantially reduce any award of costs.²⁷

III. APPLICABLE LEGAL STANDARDS

Superior Court Civil Rule 54(d) provides that, “[e]xcept when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court otherwise directs.”²⁸ Although costs are generally recoverable under 10 *Del. C.* § 5101,²⁹ the Court retains authority under Rule 54(d) to determine whether costs should be awarded and, if so, the amount of recoverable costs.³⁰

²⁶ *Id.* at 6–13.

²⁷ *See generally id.*

²⁸ Del. Super. Ct. Civ. R. 54(d).

²⁹ DEL. CODE ANN. tit. 10, § 5101 (2025); *Payne v. Home Depot*, 2009 WL 659073, at *7 (Del. Super. Ct. Mar. 12, 2009).

³⁰ *Moore v. Garcia*, 1995 WL 945553, at *1 (Del. Super. Ct. July 10, 1995); *Sammons v. Kang*, 2013 WL 4492779, at *2 (Del. Super. Ct. Aug. 2, 2013), as corrected (Aug. 14, 2013); *Envolve Pharmacy Solutions, Inc. v. Rite Aid Hdqtrs. Corp.*, 2023 WL 5604201, at *4 (Del. Super. Ct. August 30, 2023) (“Awarding costs is a matter of judicial discretion, but, generally, the prevailing party is entitled to costs.”) (internal citation omitted); *Martin v. Nixon*, 2022 WL 1123389, at *2 (Del. Super. Ct. Apr. 13, 2022), *aff’d*, 295 A.3d 136 (Del. 2023) (“Civil Rule 54 entitles the prevailing party to its costs ‘unless the Court otherwise directs.’ The ‘otherwise directs’ exception confers ‘discretion’ on the Court to determine appropriate costs.”); *Meuser v. Sowiak*, 2001 WL 258644, at *1 (Del. Super. Ct. Feb. 21, 2001) (“The numerous opinions of this Court concerning costs demonstrate how that discretion has been exercised in a number of ways and probably not always consistently.”); *Donovan v. Delaware Water & Air Res. Comm’n*, 358 A.2d 717, 722–23 (Del. 1976) (“Determining when costs are awarded and when they are not is, in our judgment, a

Recoverable costs are “*costs of the suit*”³¹ which can include expert witness fees,³² filing fees, and service fees³³ as authorized by statute and applicable Delaware law.

IV. ANALYSIS

A. API’S PROCEDURAL OBJECTIONS DO NOT BAR CONSIDERATION OF TYSON’S MOTION.

The Court begins by addressing two preliminary matters raised by API in response to Tyson’s request for costs: (1) the manner in which Tyson presented its request, and (2) the procedural posture of the case.

First, Tyson initially filed a motion seeking attorney’s fees and costs—saying they were due by contract—while reserving in a footnote its right under Rule 54 to pursue a separate request for costs should that motion prove unsuccessful.³⁴ The Court denied that motion, and API contends that because of *that* denial, *this* request

matter of judicial discretion under the statute. That conclusion is consistent with Superior Court Civil Rule 54(d) . . .”).

³¹ DEL. CODE ANN. tit. 10, § 5101 (2025) (emphasis added).

³² *Id.*, § 8906 (“The fees for witnesses testifying as experts or in the capacity of professionals in cases in the Superior Court, the Court of Common Pleas and the Court of Chancery, within this State, shall be fixed by the Court in its *discretion*, and such fees so fixed shall be taxed as part of the costs in each case and shall be collected and paid as other witness fees are now collected and paid.”) (emphasis added).

³³ *Nygaard v. Lucchesi*, 654 A.2d 410, 412 (Del. Super. Ct. 1994).

³⁴ Tyson’s Dec. 19 Motion for Attorneys’ Fees and Costs 5 n.26 (D.I. 707) (“If the Court denies Tyson’s Motion for Attorneys’ Fees and Costs, or otherwise declines to award any costs sought via this motion that would also be recoverable under *Super. Ct. Civ. R. 54*, Tyson reserves the right to seek reimbursement of those costs through a separate motion pursuant to *Super. Ct. Civ. R. 54*.”).

should be denied under either the law-of-the-case doctrine or principles of waiver.³⁵

Tyson’s present request isn’t barred. Tyson expressly reserved its right to seek costs under Rule 54, and the Court’s prior order denying attorney’s fees did not adjudicate that rule-based claim for costs. And sometimes a supplementary application for might be permitted when brought under a distinct theory of recovery.³⁶ Accordingly, neither the law-of-the-case doctrine nor waiver principles preclude consideration of the present motion.³⁷

Second, API argues that Tyson’s motion is premature because Rule 54(d) permits an award of costs only after the entry of final judgment, and no final judgment has yet been entered.³⁸ The extant dispute over costs shouldn’t be delayed

³⁵ API’s Resp. 1–3. The Court, at the conclusion of its prior letter opinion denying Tyson’s request for attorney’s fees and costs under the APA, stated that “Tyson must bear its own attorney’s fees, costs, and expenses incurred during this litigation.” *River Valley Ingredients II*, 2026 WL 1182418, at *7. To the extent the language suggested a more encompassing disposition, it swept more broadly than the Court intended; the Order wasn’t meant to foreclose any separate application for costs under Rule 54.

³⁶ *Cf. Dover Historical Soc., Inc. v. City of Dover Planning Comm’n*, 902 A.2d 1084, 1092–94 (Del. 2006) (holding that “mootness” and “*res judicata*” didn’t bar consideration of a second application for costs).

³⁷ The Court reviewed the cases cited in API’s Resp. 3 (citing *State v. Wright*, 131 A.3d 310, 321 (Del. 2016); *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 894-95 (Del. 2015), as revised (Mar. 27, 2015)). While the cases are related to the law-of-the-case doctrine, they are not sufficient to bar an application on a wholly new legal theory reserved for later determination.

³⁸ API’s Resp. 3–4.

in this instance.³⁹ At this point, the only issue remaining between the parties is Tyson’s request for costs.⁴⁰ Which came to head when the parties quibbled over the form and contents of the final order of judgment. The costs issue has been fully briefed, and neither API nor the Court has identified any authority requiring the Court to delay its ruling under these circumstances.⁴¹ So the Court will address Tyson’s application on its merits now.

B. TYSON IS THE PREVAILING PARTY IN THIS LITIGATION.

A Rule 54(d) award is only given “to the prevailing party.”⁴² “Whether a party is a ‘prevailing party’ for purposes of receiving costs under Rule 54(d) is a ‘purely legal question’ to be decided by the Court.”⁴³ Under Delaware law, the standard is “predominance in the litigation,”⁴⁴ and as oft explained “[t]o achieve predominance,

³⁹ It is true, a Rule 54(d) costs motion is triggered by—and typically must follow—the entry of final judgment. Del. Super. Ct. Civ. R. 54(d) (“costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court otherwise directs.”).

⁴⁰ Tyson and API both filed proposed orders of final judgment. *See* Tyson’s Letter of Proposed Final Judgment (D.I. 715); API’s Letter of Proposed Final Judgment (D.I. 716). Both letters submitted by the parties make clear that the proposed orders are substantively identical but for the disagreement regarding the award of costs.

⁴¹ *Cf. Emerald Partners v. Berlin*, 811 A.2d 788, 790 (Del. 2001) (“We are persuaded that the pendency of a motion for costs should not delay the finality of a judgment on the merits.”).

⁴² Del. Super. Ct. Civ. R. 54(d).

⁴³ *Cooke v. Murphy*, 2013 WL 6916941, at *3 (Del. Super. Ct. Nov. 26, 2013), *aff’d*, 99 A.3d 226 (Del. 2014) (citing *Graham v. Keene*, 616 A.2d 827, 828 (Del. 1991)).

⁴⁴ *Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, at *2, 4 (Del. Ch. Apr. 27, 2004) (using

a litigant should prevail on the case’s ‘chief issue.’”⁴⁵ Still, where multiple issues are presented and each party prevails on some but not others, there may be no ultimate “prevailing party” for an award to be given.⁴⁶

But there is here. Tyson is the prevailing party. It prevailed on the central claims driving the litigation. API fraudulently induced Tyson to enter the APA by concealing its prior SPN stickwater practices and the rushed pre-diligence project to remove SPN stickwater from its process.⁴⁷ API breached APA Article 4.26 because removing SPN stickwater was a substantial change from API’s past practice, and breached Article 4.21(b) because API’s prior use of SPN stickwater violated contractual commitments to at least one customer.⁴⁸ Those breaches triggered API’s indemnification obligations and resulted in a \$55 million award.⁴⁹

the “predominance in the litigation standard” for both the contractual and Rule 54(d) claim); *cf. Bako Pathology LP v. Bakotic*, 288 A.3d 252, 281 (Del. 2022) (“Having chosen the common term ‘prevailing party,’ the parties can be presumed to have intended that that term would be applied by the court as it has traditionally done so. That traditional application is an all-or-nothing approach involving an inquiry into which party predominated in the litigation, as opposed to a claim-by-claim or other partial basis approach.”) (internal citations omitted) (cleaned up).

⁴⁵ *Bako Pathology LP*, 288 A.3d at 281 (quoting *2009 Caiola Family Tr. v. PWA, LLC*, 2015 WL 6007596, at *33 (Del. Ch. Oct. 14, 2015)); *Navient Sols., LLC v. BPG Office Partners XIII Iron Hill LLC*, 2023 WL 3120644, at *16 (Del. Super. Ct. Apr. 27, 2023).

⁴⁶ *Duncan v. STTCPL, LLC*, 2020 WL 829374, at *15 (Del. Super. Ct. Feb. 19, 2020); *Vianix Delaware LLC v. Nuance Commc’ns, Inc.*, 2010 WL 3221898, at *28–29 (Del. Ch. Aug. 13, 2010).

⁴⁷ *River Valley Ingredients I*, 2025 WL 3094942, at *7–8.

⁴⁸ *Id.* at *8–10.

⁴⁹ *See generally id.*

And API lost on every counterclaim: fraudulent inducement, tortious interference, unfair competition, rescission, indemnification, breach of the TSA, and civil conspiracy.⁵⁰ Of course, Tyson did not prevail on every subsidiary theory, including its books-and-records, Reid Report, and regulatory-compliance complaints.⁵¹ But the decision was overwhelmingly in Tyson’s favor and Tyson can rightly be deemed the prevailing party as a matter of law.

C. THE COURT AWARDS CERTAIN COSTS AND DENIES OTHERS.

Since any proper award for costs is ripe for determination, the Court turns to that very issue now. Under the “American Rule” and Delaware law, litigants are responsible for paying their own litigation costs unless some legal basis for fee shifting is available.⁵² Here, Tyson claims that it is entitled to its costs under Rule 54. And so, the Court considers two things thereunder. First, the requested expenses

⁵⁰ *See generally id.*

⁵¹ *See generally id.*

⁵² *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242, 245 (Del. 2007); *see Sternberg v. Nanticoke Memorial Hosp., Inc.*, 62 A.3d 1212, 1218 (Del. 2013) (“It has been long practice of American courts to enforce the so-called ‘American Rule’—which requires each party to pay his or her own legal costs, even the prevailing party.”). *See In re Delaware Pub. Schs. Litig.*, 312 A.3d 703, 716 (Del. 2024) (“Delaware recognizes only a limited number of exceptions to the American Rule. For example, fees may be shifted if: (i) recovery of fees is provided by statute or court rule; (ii) there is a contractual provision regarding entitlement to attorneys’ fees; (iii) a party has acted in bad faith in connection with the conduct of the litigation process; (iv) a party fails to abide by a court order or is held in contempt; and (v) the action results in the creation, protection or distribution of a common fund or confers a corporate benefit.”).

must fall within the categories of costs recoverable under Rule 54 and applicable law. Second, the requested amounts must be reasonable.⁵³ And again, when engaging in this examination, the Court remains mindful that “whether to award [any particular] costs typically is a matter of judicial discretion.”⁵⁴

1. The uncontested costs

The Court begins with the uncontested costs, namely filing and recording fees, deposition transcript and court reporter fees, trial transcript expenses, meals, witness lodging, and technology-support expenses incurred during trial. API does not separately challenge the recoverability or reasonableness of these categories of costs, apart from its threshold objections to any award.⁵⁵ Such expenses have been generally deemed recoverable under Rule 54,⁵⁶ and there’s no basis to depart from

⁵³ *Rash v. Moczulski*, 2017 WL 4640136, at *1 (Del. Super. Ct. Oct. 16, 2017) (“[T]he amount of those costs are subject to the definition of ‘costs’ under Rule 54, which definition embeds the rule of reasonableness.”); *Mahani*, 935 A.2d at 245–46; *Gerlofs v. Citizens Bank, N.A.*, 2024 WL 1855354, at *8 (Del. Super. Ct. Apr. 29, 2024).

⁵⁴ *LG Elecs. Inc. v. Invention Inv. Fund I, L.P.*, ___ A.3d ___, ___, 2026 WL 935618, at *16 (Del. Apr. 7, 2026) (citing *Donovan*, 358 A.2d at 722–23).

⁵⁵ See generally API’s Resp. API does contest the fee award as a whole on grounds already mentioned, but API doesn’t contest that these fees are recoverable under Rule 54 or otherwise unreasonable in this case.

⁵⁶ See *Envolve Pharmacy Sols., Inc.*, 2023 WL 5604201, at *20 (“Court fees, filing fees, and electronic service fees are generally recoverable. . . . [And t]his Court permits recovery of reasonable trial technology fees.”); *Nygaard*, 654 A.2d at 414 (“Travel expenses, including meals and lodging are generally recoverable by the prevailing party.”).

that practice here. Accordingly, Tyson's request for these costs is **GRANTED**.⁵⁷

2. The additional costs that resulted from conducting the trial to Dover

Next are the costs Tyson seeks as a result of the trial's relocation from Wilmington to Dover. Due to scheduling conflicts and circumstances beyond the Court's control, it was required to conduct this trial in Dover if it was to occur without further delay. After conferring with the parties, all agreed to relocate the trial to Dover to keep it on schedule. Tyson now seeks to recover expenses associated with that relocation, including costs "for physical technology devices and related expenses as a result of the trial moving from Wilmington to Dover."⁵⁸ That request is **DENIED**. Tyson agreed to proceed in Dover to keep the preferred trial schedule and accepted the attendant logistical consequences. It must bear any resulting additional expense.

3. Tyson's trial team expenses

Tyson also seeks to recover expenses for expert witness support staff⁵⁹ and its

⁵⁷ These costs—specifically—are filing and recording fees (\$15,394.43), deposition transcript and court reporter fees (\$57,565.10), trial transcripts (\$11,025.00), meals (\$8,887.96), witness lodging (\$4,643.91), and trial technology-support expenses (\$2,028.62). *See generally* Tyson's Rule 54 Motion for Costs Aff.

⁵⁸ Tyson's Rule 54 Motion for Costs 6.

⁵⁹ Those costs are for its "Expert Witness Support Team", Brendon Semien, Laura Smith, and Carolyn Whitoff, which sum \$3,439.88 in lodging costs. Tyson's Rule 54 Motion for Costs Aff. 2.

attorneys' lodging.⁶⁰ Delaware courts have previously rejected attempts to shift the costs of support personnel to the opposing party.⁶¹ The same result follows here. This Court's rules also provide that "[n]o appearance fees for attorneys will be permitted or taxed as costs in any action or cause in the Superior Court."⁶² Thus, lodging expenses incurred on behalf of attorneys in connection with their participation in this litigation can rightly be placed outside the category of taxable

⁶⁰ Tyson also seeks to recover \$10,527.27 in lodging from "tech support staff, expert witnesses support staff, and attorneys." Tyson's Rule 54 Motion for Costs 4 (emphasis added); *see Peterson Enterprises, Inc. v. Brace Indus. Contracting, Inc.*, 224 A.3d 574 (Del. 2020) ("Where a party asserts more than one claim and is entitled to recover costs for one or more but not others, the party must make a good faith effort to segregate costs between those claims for which it is entitled to recover costs and those it is not."); *see also Walker v. Bozeman*, 243 F. Supp. 2d 1298, 1309 (N.D. Fla. 2003) ("[P]laintiff lumped nontaxable amounts with amounts that might have been recoverable, making a determination of the taxable amount impossible. Because the burden is on plaintiff to support his claim, I have rejected entries with these defects.").

⁶¹ In any case, "[g]enerally, the prevailing party may only recover those expert witness fees associated with time spent testifying or waiting to testify, along with reasonable travel expenses." *Payne*, 2009 WL 659073, at *7 ("The amount to be awarded for expert witness testimony is a matter of the trial court's discretion."). The Court doesn't find it reasonable to award fees for support staff used in aiding expert witnesses. *Barnett v. Braxton*, 2003 WL 21976411, at *1–3 (Del. Super. Ct. Aug. 15, 2003); *Comrie v. Enterasys Networks, Inc.*, 2004 WL 5366650, at *5 (Del. Ch. Apr. 27, 2004), *aff'd*, 864 A.2d 929 (Del. 2004); *see also Payne v. Home Depot*, 2009 WL 659073, at *9 (Del. Super. Ct. Mar. 12, 2009) (citing *Kerr v. Onusko*, 2004 WL 2744607, at *2 (Del. Super. Ct. Oct. 20, 2004)) ("The cost of a trial consulting service is not one 'necessarily incurred' to assert a party's rights, and reimbursement for such services is not authorized by statute. Similar costs have been held nonrecoverable on the basis that they were incurred 'for the use of the party and not for use by the court.'").

⁶² Del. Super. Ct. Civ. R. 54(i); *see Martin*, 2022 WL 1123389, at *3 ("Attorney's fees are not recoverable as 'costs' under Rule 54."); *Hutchinson v. Fish Eng'g Corp.*, 204 A.2d 752, 753 (Del. Ch. 1964), *aff'd*, 213 A.2d 447 (Del. 1965) ("[Defendant] seeks reimbursement for travel expenses These are all expenses which in the ordinary case in American state law are borne by the party who incurs them.").

costs. Accordingly, Tyson's request for these costs is **DENIED** in its entirety.

4. Trial technology support

Next, Tyson requests costs for its trial-support services provided by Fulcrum Legal Graphics in the amount of \$16,441.60.⁶³ This Court's rules permit taxable costs for trial technology support if those services significantly aided in the presentation of evidence at trial and the factfinder's navigation and understanding thereof.⁶⁴ They did here. Tyson's request for these costs is **GRANTED** as reasonable.

5. The Rule 30(b)(6) corporate representative

Tyson seeks to recover \$1,164.00 in lodging expenses incurred for Josh McClelland, Tyson's Rule 30(b)(6) corporate designee.⁶⁵ Mr. McClelland attended

⁶³ Tyson's Rule 54 Motion for Costs 6.

⁶⁴ See *Envolve Pharmacy Sols., Inc.*, 2023 WL 5604201, at *20; *NewWave Telecom & Techs., Inc. v. Jiang*, 2024 WL 4564150, at *7 (Del. Super. Ct. Oct. 24, 2024); see, e.g., *In re Bracket Hldg. Corp. Litig.*, 2020 WL 764148, at *13 ("The Court will allow recovery only to the extent of the cost of technology support services that were provided during trial."); *TranSched Sys. Ltd. v. Versyss Transit Sols., LLC*, 2012 WL 1415466, at *5 (Del. Super. Ct. Mar. 29, 2012) (awarding \$14,801 as "technical support staff" costs because plaintiff's "trial technology support person was critical to the trial presentation and the viewing of the numerous exhibits introduced in this case"), *superseded on other grounds*, *Noranda Aluminum Hldg. Corp. v. XL Ins. Am., Inc.*, 269 A.3d 974 (Del. 2021); *Salt Meadows Homeowners Assoc., Inc. v. Zonko Builders, Inc.*, 2023 WL 1370997, at *7 (Del. Super. Ct. Jan. 31, 2023) (awarding \$16,258.45 as "computer exhibit operator" fees because the "operator helped to keep the multitude of documents organized and readily available for witnesses").

⁶⁵ Tyson's Rule 54 Motion for Costs Aff. 3; Trial Tr. Nov. 27, 2024, Mr. McClelland's 30(b)(6) Deposition Played into the Record, 58.

trial at the insistence of API.⁶⁶ API now seeks to limit Tyson's taxable costs from Mr. McClelland's lodging on the basis that he never testified.⁶⁷ That argument is unpersuasive; these lodging expenses are taxable Rule 54 trial costs under the circumstances presented.⁶⁸ Accordingly, Tyson's request for \$1,164.00 in lodging costs for Mr. McClelland is **GRANTED**.

6. Expert Witnesses: Jon Pesicka and Matthew Bell

In footnote 4 of its motion, Tyson represents that it is not seeking to recover costs associated with its expert witnesses, Jon Pesicka and Matthew Bell.⁶⁹ Yet the accompanying affidavit includes \$2,156.16 in lodging expenses attributable to those same experts.⁷⁰

Those expenses will not be taxed as costs under Rule 54. Messrs. Pesicka and Bell testified exclusively in support of claims upon which Tyson did not prevail.⁷¹

⁶⁶ Trial Tr. Nov. 27, 2024, Mr. McClelland's 30(b)(6) Deposition Played into the Record, 58.

⁶⁷ API's Resp. 10–11. API objects on the additional ground that McClelland, as Tyson's Rule 30(b)(6) corporate representative, should be treated as a party for purposes of travel and lodging expenses and therefore may not recover such costs. *Id.* The Court doesn't find denial of costs on that basis persuasive in this circumstance.

⁶⁸ Del. Super. Ct. Civ. R. 54(d); DEL. CODE ANN. tit. 10, § 5101 (2025); *cf. NewWave Telecom & Techs., Inc. v. Jiang*, 2024 WL 4564150, at *7 (Del. Super. Ct. Oct. 24, 2024) (discussing an expert witness "[t]he amount sought to be recovered is consistent with the lodging expense while waiting to be called to testify in rebuttal on April 13, 2023.").

⁶⁹ Tyson's Rule 54 Motion for Costs 5 n.4.

⁷⁰ Tyson's Rule 54 Motion for Costs Aff. 3.

⁷¹ *Compare* Trial Tr. Nov. 21, 2024, Matthew Bell, 294–13; Trial Tr. Nov. 22, 2024, Matthew

Rule 54 permits discretion in determining what costs should be taxed,⁷² and the Court finds it inappropriate to award expert-related lodging expenses associated solely with unsuccessful claims of which Tyson itself represents are not being sought. Accordingly, the requested costs attributable to Messrs. Pesicka and Bell are **DENIED**.

7. Expert Witnesses: Avram Tucker and Timothy Hart.

The remaining expert costs concern Avram Tucker and Timothy Hart. The Delaware Code permits fee recovery for witnesses testifying as experts.⁷³ “Generally, the prevailing party may only recover those expert witness fees associated with time spent testifying or waiting to testify, along with reasonable travel expenses.”⁷⁴ “Fees for ‘orientation’ or consulting or advising a party during trial are not recoverable, nor are any activities in preparation for trial.”⁷⁵

Bell, 8–15; Trial Tr. Nov. 22, 2024, Jon Pesicka, 15–114 *with River Valley Ingredients I*, 2025 WL 3094942.

⁷² *LG Elecs. Inc.*, __ A.3d __, __, 2026 WL 935618, at *16; *Martin*, 2022 WL 1123389, at *2 (“Civil Rule 54 entitles the prevailing party to its costs ‘unless the Court otherwise directs.’ The ‘otherwise directs’ exception confers ‘discretion’ on the Court to determine appropriate costs.”).

⁷³ DEL. CODE ANN. tit. 10, § 8906 (2025) (“The fees for witnesses testifying as experts or in the capacity of professionals in cases in the Superior Court . . . shall be fixed by the Court in its *discretion* . . .”) (emphasis added).

⁷⁴ *Payne*, 2009 WL 659073, at *7; *Nygaard*, 654 A.2d at 413; DEL. CODE ANN. tit. 10, § 8906 (2025).

⁷⁵ *Spencer v. Wal-Mart Stores E., LP*, 2007 WL 4577579, at *1 (Del. Super. Ct. Dec. 5, 2007).

Tyson is seeking \$107,164.00 related to its expert witnesses, Messrs. Tucker and Hart.⁷⁶ Mr. Tucker’s hourly rate is \$950, and Mr. Hart’s hourly rate is \$875.⁷⁷ Tyson seeks to attribute costs to them for 58.72 hours—*i.e.* the full duration of the trial.⁷⁸

Exercising its discretion, the Court finds that an award encompassing the entirety of the trial is not due.⁷⁹ Instead, the reasonable measure of recoverable costs is limited to the days on which the experts appeared and testified.⁸⁰ The record reflects Mr. Hart testified on three of the eight days of trial (Days 5, 6, and 8), and Mr. Tucker testified on two (Days 5 and 8).⁸¹ Recoverable costs are limited to the hours Messrs. Hart and Tucker attended on those days (including breaks).⁸²

⁷⁶ Tyson’s Rule 54 Motion for Costs 2.

⁷⁷ *Id.* at 5.

⁷⁸ *Id.*

⁷⁹ DEL. CODE ANN. tit. 10, § 8906 (2025) (“The fees for witnesses testifying as experts or in the capacity of professionals in cases in the Superior Court . . . shall be fixed by the Court in its *discretion* . . .”) (emphasis added).

⁸⁰ *NewWave Telecom & Techs., Inc.*, 2024 WL 4564150, at *6; *see Payne*, 2009 WL 659073, at *7; *Nygaard*, 654 A.2d at 413.

⁸¹ Trial Tr. Nov. 22, 2024, Timothy Hart, 260–287; Trial Tr. Nov. 25, 2024, Timothy Hart, 12–78; Trial Tr. Nov. 27, 2024, Timothy Hart, 103–30; Trial Tr. Nov. 27, 2024, Avram Tucker, 69–103; Trial Tr. Nov. 22, 2024, Avram Tucker, 164–260.

⁸² Day 5 commenced at 8:45 a.m. and adjourned at 4:33 p.m. (totaling 7.8 hours). *See* Trial Tr. Nov. 22, 2024. Day 6 commenced at 8:45 a.m. and adjourned at 4:15 p.m. (totaling 7.5 hours). *See* Trial Tr. Nov. 25, 2024. Day 8 commenced at 8:45 a.m., and the matter was submitted for decision following post-trial briefing at 2:58 p.m. (totaling 6.2 hours). *See* Trial Tr. Nov. 27, 2024. At \$875 per hour, for Days 5, 6, and 8, Mr. Hart billed 21.5 hours, totaling \$18,812.50. At \$950 per hour,

Accordingly, Tyson may recover \$18,812.50 for Mr. Hart, representing 21.5 hours at his hourly rate of \$875, and \$13,300.00 for Mr. Tucker, representing 14 hours at his hourly rate of \$950. Thus, the Court **GRANTS** those costs but **DENIES** any other related fee award.

The requested lodging expenses attributable to Messrs. Hart and Tucker, in the amounts of \$1,151.08 and \$1,137.92, respectively, are reasonable travel expenses and taxable;⁸³ they are therefore **GRANTED**.

V. CONCLUSION

For the foregoing reasons, the Court orders the following:

- Tyson's *uncontested* request for filing and recording fees in the amount of \$15,394.43; deposition transcript and court reporter fees in the amount of \$57,565.10; trial transcript costs in the amount of \$11,025.00; meal expenses in the amount of \$8,887.96; witness lodging expenses in the amount of \$4,643.91; and technology-support expenses incurred during trial in the amount of \$2,028.62 is **GRANTED**.
- Tyson's request for trial-technology expenses associated with relocating the trial from Wilmington to Dover in the amount of \$22,405.13 is **DENIED**.
- Tyson's request for expert witness support team lodging expenses in the amount of \$3,439.88 and trial-team lodging expenses in the amount of \$10,527.27 is **DENIED**.

for Days 5 and 8, Mr. Tucker billed 14 hours, totaling \$13,300.00.

⁸³ *Nygaard*, 654 A.2d at 414.

- Tyson's request for trial-support services provided by Fulcrum Legal Graphics in the amount of \$16,441.60 is **GRANTED**.
- Tyson's request for lodging expenses attributable to its Rule 30(b)(6) corporate representative in the amount of \$1,164.00 is **GRANTED**.
- Tyson's request for lodging expenses attributable to experts Matthew Bell and Jon Pesicka in the amounts of \$1,078.08 and \$1,078.08, respectively, is **DENIED**.
- Tyson's request for expert witness fees attributable to Timothy Hart and Avram Tucker in the amount of \$107,164.00 is **GRANTED** in part and **DENIED** in part—reducing the sum to \$32,112.50.
- Tyson's request for lodging expenses attributable to experts Timothy Hart and Avram Tucker in the amounts of \$1,151.08 and \$1,137.92, respectively, is **GRANTED**.

Accordingly, of the \$265,132.06 Tyson seeks in costs, the Court awards \$151,552.12. Tyson's Rule 54 Motion for Costs is **GRANTED** in part and **DENIED** in part. The parties shall confer and submit for the Court's signature an order of final judgment that integrates these awards on or before **August 3, 2026**.

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge