**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

PAUL R. WALLACE
JUDGE

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Decided: August 25, 2026

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RE: *Arvinder ("Sonny") Kakar, et al. v. Octo Consulting Group, LLC*
C.A. Nos. N22C-01-104 PRW CCLD and 2022-0437-PRW
Defendants/Counterclaim Plaintiffs' Request for Attorney's Fees and Costs

Dear Counsel:

This Letter Decision and Order addresses Octo's request for attorney's fees and certain costs (D.I. 184). For the reasons explained now, the request is **GRANTED**.

At summary judgment and trial, Octo proved that Mr. Kakar breached several provisions of his Executive Employment Agreement ("EA") and that it was the prevailing party under the EA. The EA has a fee-shifting provision covering breaches of certain sections. Now, Octo seeks fees and costs for enforcing the EA. Octo proposes that the Court split the total fees in the action and award Octo about 12% of its total fees in this action and the parallel Court of Chancery dispute. Since the EA claim largely intertwines with the Chancery action and Octo has shown its fee rates are reasonable, the Court should grant the motion for fees and costs.

I. BACKGROUND

This dispute arises from Octo's purchase of Mr. Kakar's Sevatec.[1] After the purchase, Octo members and Mr. Kakar disagreed on the business's operation and, importantly, the combined entity's name.[2] These disagreements led Mr. Kakar to breach several EA provisions.[3] Upon Mr. Kakar's breach of the EA's non-disparagement provision, Octo repurchased Seva Holdings' Seva shares.[4]

Upon a triggering event, Octo could repurchase Seva's shares.[5] A triggering

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1 *See generally Kakar v. Octo Consulting Grp., LLC*, 2026 WL 880551 (Del. Super. Ct. Mar. 31, 2026) (*Kakar I*).

2 *See generally id*.

3 *See generally id*.

4 *See generally id*.

5 *Seva Holdings Inc. v. Octo Platform Equity Holdings, LLC*, 2024 WL 3982187, at *2 (Del. Ch. Aug. 29, 2024) (*Seva I*).

event occurred if there was:

> a material breach by Mr. Kakar of any of the restrictive covenants with respect to confidentiality (but only in the event such breach causes or results in demonstrable material harm to [Octo Platform] or any of its Subsidiaries), non-competition, non-solicitation, non-interference or non-disparagement obligations in either his [EA] or his Non-Competition Agreement.[6]

At summary judgment in the Chancery action, the Court held that a triggering event occurred because Mr. Kakar breached EA Section 9's non-disparagement clause.[7] At trial, the Court concluded that Octo properly repurchased the Seva shares.[8]

Also at trial, Octo proved that Mr. Kakar breached EA Section 3 by not performing his duties to the best of his abilities.[9] The Court recognized that the EA contains a fee-shifting provision for the prevailing party in actions to enforce EA Sections 8 and 9.[10] In full, the fee-shifting provision reads:

> Additionally, in the event the Company Group brings an action to enforce **Section 7, Section 8, Section 9 or Section 11** of this Agreement and is the prevailing party in such action, the Company Group shall be entitled to its reasonable attorneys' fee and costs incurred in such action. Conversely, in the event the Company Group brings an action to

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6 *Id*. at *3.

7 *Id*. at *8–9.

8 *Kakar I* at *12.

9 *Id*. at *17.

10 *Id*. at *19.

> enforce **Section 7, Section 8, Section 9 or Section 11** of this Agreement and is not the prevailing party in such action, Executive shall be entitled to, and the Company Group shall promptly pay to Executive, Executive's reasonable attorneys' fees and costs incurred in such action.[11]

The Opinion's Conclusion and Verdict stated:

> Octo Consulting is also entitled to reasonable attorney's fees and costs arising from litigating the EA counterclaim. If the parties are unable to agree on an amount, Octo Consulting may move to quantify the fees and costs award.[12]

II. PARTIES' CONTENTIONS

Octo argues that it is entitled to $947,974.14 in attorney's fees—slightly less than 12% of its total fees in this action—and $47,232.80 in costs.[13] Octo goes through several of the Delaware Lawyers' Rules of Professional Conduct 1.5(a) factors and asserts that its fee request is: (1) prudent and appropriate; (2) based on reasonable staffing; and (3) based on reasonable rates.[14] Octo attaches affidavits to its Motion showing each attorney's total hours, fees, and highest hourly rate, and attests that these figures are reasonable.[15] Those affidavits also include each

[11] EA § 12.

[12] *Kakar I* at *22.

[13] *See generally* Octo Op. Br. at 9–17 (D.I. 184).

[14] *See generally id*. at 10–14.

[15] D.I. 184 (unless otherwise stated, the docket numbers are in reference to the Superior Court docket).

attorney's background, experience, and abilities.[16]

In response, Mr. Kakar insists Octo isn't entitled to any fees as the EA's fee-shifting clause doesn't cover EA Section 3.[17] Alternatively, Mr. Kakar avers that Octo fails to demonstrate that its fees are reasonable because some fees overlap with the Virginia Action and uncovered claims in the Delaware Actions.[18] Mr. Kakar largely relies on this Court's letter decision in *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*.[19]

Octo replies that Mr. Kakar waived any argument that Octo isn't entitled to fees since Mr. Kakar never mentioned this in its post-trial briefing or during the Parties' meetings after trial.[20] Octo alternatively counters that it did succeed on claims covered by the EA's fee-shifting provision.[21] Lastly, Octo reiterates its fee request is reasonable and points out that the Parties stipulated to share discovery in the Virginia Action with the Delaware Actions.[22]

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[16] D.I. 184.

[17] *See generally* Kakar Opp'n at 8–10 (D.I. 186).

[18] *See generally id*. at 10–15.

[19] 2025 WL 3232923, at *1 (Del. Super. Ct. Nov. 19, 2025).

[20] *See generally* Octo Reply at 2–5 (D.I. 188).

[21] *See generally id*. at 5–6.

[22] *See generally id.* at 6–10.

III. APPLICABLE LEGAL STANDARDS

The Court has considerable discretion in determining the reasonableness of an award of attorneys' fees.[23] The party seeking an award of attorney's fees and expenses shoulders the burden of establishing that the amount sought is reasonable.[24] In reviewing a fee award under a prevailing-party contract provision, the Court will "generally exclude excessive, redundant, duplicative, or otherwise unnecessary hours[.]"[25] For a court to assess reasonableness, Delaware precedent "directs a judge to consider the factors set forth in the Delaware Lawyers' Rules of Professional Conduct."[26] The Rule 1.5(a) factors are:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) The fee customarily charged in the locality for similar legal services;

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[23] *Mahani v. EDIX Media Corp.*, 935 A.2d 242, 245 (Del. 2007); *Gerlofs v. Citizens Bank, N.A.*, 2024 WL 1855354, at *8 (Del. Super. Ct. Apr. 29, 2024) ("As noted, the Court has substantial discretion on these issues because determining a reasonable fee is necessarily an imprecise exercise." (quotations omitted)).

[24] *Roma Landmark Theaters, LLC v. Cohen Exhibition Co. LLC*, 2021 WL 5174088, at *3 (Del. Ch. Nov. 8, 2021).

[25] *All Pro Maids, Inc. v. Layton*, 2004 WL 3029869, at *5 (Del. Ch. Dec. 20, 2004).

[26] *Mahani*, 935 A.2d at 246.

(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.[27]

IV. DISCUSSION

First, Mr. Kakar didn't waive his argument that the EA's fee-shifting provision doesn't shift fees. Although Mr. Kakar failed to raise this contention in his post-trial briefing, the Court held that the Parties were to either agree to a fee award or brief the issue upon a motion for fees and costs. Since the Court deferred this issue to after trial, Mr. Kakar didn't waive his argument.

Either way, the EA's fee-shifting provision covers all Octo fees incurred in litigating its breach-of-contract counterclaim, as that counterclaim included enforcement of the non-disparagement clause in EA Section 9. And the fee-shifting clause shifts fees in an action to enforce those sections, not in an action that solely enforces those sections. So, while the fee-shifting provision doesn't cover EA Section 3 by itself, it does cover actions brought to enforce covered sections.

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[27] *Id*. at 245.

Finally, Octo has shown that its fee request is reasonable. The Chancery Action is intertwined with the non-disparagement clause because it triggered the repurchase of the Seva shares. And Octo demonstrated at summary judgment that Mr. Kakar breached the non-disparagement clause. Because these claims are intertwined, apportionment of the total fee is appropriate. Also, unlike in *Surf's Up*, the Court can determine what Octo's counsel charged and has more information about those rates. Since these rates are reasonable, Octo has shown its request is reasonable.

A. MR. KAKAR DIDN'T WAIVE THE ARGUMENT THAT THE FEE-SHIFTING PROVISION DOESN'T COVER OCTO'S COUNTERCLAIMS.

"Issues not briefed are deemed waived."[28] But prejudice is the touchstone for determining whether a right has been waived.[29] And if the opposing party had an opportunity to respond, it is less likely that an argument has been waived.[30]

Here, although Octo argued in its post-trial brief that it was entitled to fees under EA Section 12, Mr. Kakar responded that Octo was not entitled to fees because Mr. Kakar didn't breach the EA. Mr. Kakar didn't alternatively have to argue that,

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[28] *Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999).

[29] *Mack v. Rev Worldwide, Inc.*, 2020 WL 7774604, at *15 (Del. Ch. Dec. 30, 2020).

[30] *See id.* at *15–16 (considering that opposing party had an opportunity to respond and finding that an argument wasn't waived).

even if he breached, the fee-shifting provision doesn't cover the EA sections he breached. Also, Octo addressed this argument in its reply brief. So, Octo isn't prejudiced; it responded to this argument. Accordingly, Mr. Kakar didn't waive this argument.

B. BUT OCTO PROVED THAT MR. KAKAR BREACHED THE NON-DISPARAGEMENT PROVISION, WHICH THE FEE-SHIFTING CLAUSE COVERS.

Still, Octo is entitled to fees incurred in enforcing both the covered and non-covered EA sections because they were all incurred in the "action" to enforce both types of sections.

Delaware courts enforce agreements to shift fees.[31] Absent "qualifying language that fees are to be awarded claim-by-claim or on some other partial basis, a contractual provision entitling the prevailing party to fees will usually be applied in an all-or-nothing manner."[32] Where fee-shifting provisions contain language requiring a prevailing party, the Court must permit recovery after determining the provision's intent.[33] To do this, the Court must interpret the provision to execute the

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[31] *Navient Solutions, LLC v. BPG Office Partners XIII Iron Hill LLC*, 2023 WL 3120644, at *16 (Del. Super. Ct. Apr. 27, 2023); *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 280 (Del. 2022).

[32] *Navient Solutions*, 2023 WL 3120644, at *16 (quoting *AFH Hldg. & Advisory, LLC v. Emmaus Life Scis., Inc.*, 2014 WL 1760935, at *2 (Del. Super. Ct. Apr. 16, 2014)).

[33] *Duncan v. STTCPL, LLC*, 2020 WL 829374, at *15 (Del. Super. Ct. Feb. 19, 2020).

parties' intent.[34]

Here, the EA's fee-shifting provision shifts fees to Octo:

> in the event the Company Group brings an action to enforce **Section 7, Section 8, Section 9 or Section 11** of this Agreement and is the prevailing party in such action, the Company Group shall be entitled to its reasonable attorneys' fees and costs incurred in such action.

This provision doesn't say that the action to enforce the sections must *only* enforce the mentioned sections. Instead, it says that if Octo sues to enforce those sections, the fee-shifting applies to the entire action.

Granted, if Octo had only enforced a breach of EA Section 3, then the fees would not have shifted because Octo wouldn't have sued to enforce Sections 7, 8, 9, or 11. But Octo successfully demonstrated a breach of EA Section 9's non-disparagement clause at summary judgment in this consolidated action to justify its repurchase. And proving that a triggering event occurred was essential for Octo to succeed in the Chancery Action. Resultingly, EA Section 12 covers Octo's entire action to enforce the EA.

C. FEE APPORTIONMENT IS APPROPRIATE HERE BECAUSE THE EA COUNTERCLAIMS ARE INTERTWINED WITH THE CHANCERY ACTION AND OTHER DEFENSES IN THIS ACTION.

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34 *Id.*

When a party achieves mixed success on claims that arise from a common factual predicate, the court may award a flat percentage of the overall fees.[35] For instance, when a party is only partially successful in litigation based on a common factual predicate, the court can award a fraction of the total fee.[36]

Here, Octo was partially successful in both the litigation as a whole and its EA enforcement action. As discussed, Octo's EA Section 9 enforcement was intertwined with its defense in the Chancery Action. A portion of the total fee amount is thus appropriate because so much of the entire litigation is based on the same common factual predicate. With that, it makes sense that Octo should receive its fees and costs based on the percentage of the litigation that involved enforcing the EA.[37]

D. OCTO HAS DEMONSTRATED THAT ITS FEES WERE REASONABLE.

Finally, Octo has shown that its fees request is reasonable. To support its

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[35] *RE: Neem Int'l CV et al. v. Vadim Shulman et al.*, 2026 WL 2199211, at *3 (Del. Ch. July 30, 2026) (Will, V.C.).

[36] *See Sorrento Therapeutics, Inc. v. Mack*, 2025 WL 2172268, at *19 (Del. Ch. July 31, 2025).

[37] *See SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 353 n.111 (Del. 2013) (affirming award of fees when the Vice Chancellor found "that only one-third of PharmAthene's arguments, time, and expense related to the bases of liability and form of relief I have found and ordered, respectively.").

motion, Octo submitted an affidavit showing: (1) the total fees and costs sought; (2) the deductions taken from that amount; and (3) each attorney's total hours, total fees, and highest hourly rate (from these, the Court can deduce the average hourly rate of each attorney).[38] As lead counsel, Attorney Paul Werner's hourly rate was about $1,206.[39] Attorney Imad Matini's hourly rate was about $825, Attorney Hannah Wigger's hourly rate was about $830, Attorney Maria-Laura Coltre's hourly rate was about $673, Attorney Angelo Pavone's hourly rate was about $565, and Attorney Kathryn Ryan's hourly rate was about $591.[40] With this, the Court can determine that the hourly rate and total hours spent on the matter is reasonable.[41] Potter Anderson & Corroon LLP served as Octo's Delaware counsel and seeks $74,858.98 out of its total $571,312.50 in fees and costs.[42] Too, Octo managed to defend its repurchase by proving a breach of the EA involving $57,255,199.59 in

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[38] D.I. 184.

[39] *See* Paul Werner Aff. (D.I. 184).

[40] *See id*.

[41] Octo posits in its affidavit that it has taken a generous deduction from what its total fees based on how many pages the Court spent on different issues in the Post-trial Opinion. But this statistic is irrelevant to the work by the attorneys on each count and does nothing to show that the fee request is reasonable. Still, about 12% of the total fees is reasonable as the breach-of-the-EA Counterclaim was one of the 13 Superior Court counterclaims, and the EA played a crucial role in the entire Chancery Action.

[42] Brian C. Ralston Aff. (D.I. 184).

reserved funds, and secured dismissal of Mr. Kakar's own breach-of-the-EA claim.[43] Octo's fee request is less than 2% of the reserved funds.

Surf's Up is distinguishable. There, the party seeking fees submitted only information about the total fees sought and not the rate at which those fees accrued. In fact:

> the motion's exhibit shows the incurred fees but does not address reasonableness. It lacks information regarding the hours worked on any specific aspect of the case or assignment. In turn, the Court can't analyze whether the number of hours devoted to any assignment was excessive, redundant, duplicative, or otherwise unnecessary. Also, based on what has been submitted, the Court cannot assess the time and labor required to perform the legal services properly or if there were any time limitations imposed by the client or by the circumstances.[44]

Here, the Court can discern the hours worked on the case and the average rate of those hours for each attorney. Also, this was a complex case that has taken several years, involved several stages of motion practice, involves litigation in several jurisdictions, had a five-day bench trial, and has been contentious. Octo had to show that Mr. Kakar breached the EA to pay out over $50 million in funds after IBM bought Octo. Octo's attorneys are experienced practitioners and counsels' fees are

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[43] Chancery D.I. 41.

[44] *Surf's Up*, 2025 WL 3232923, at *4.

comparable to law firms in these respective locations.[45] Approximately 12% of the total fee, based on a reasonable hourly rate and total hours worked, is reasonable.[46]

Finally, Mr. Kakar suggests Octo shouldn't be permitted to recover fees spent in the Virginia Action and isn't entitled to fees and costs relating to uncovered claims. But the parties agreed to share discovery in all actions to keep costs down and save time.[47] This demonstrates just how interrelated these actions are. And again, the breach-of-the-EA counterclaim and the facts underpinning it are crucial to the litigation in all actions. Octo has otherwise reasonably deducted costs and fees from the rest of the litigation that was unrelated to the EA.[48] Thus, Octo has shown that its fee request is reasonable.

V. CONCLUSION

For these reasons, Octo's Fee and Costs Application is **GRANTED**. The

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[45] *See* Amanda Robert, *This City has the Highest Billing Rates for Litigators in Nation, Survey Shows*, ABA JOURNAL (July 15, 2024), https://www.abajournal.com/news/article/dc-litigators-have-the-highest-billing-rates-in-nation-survey-shows (noting that a quarter of full-time litigators in Washington, D.C., who responded to a survey, reported billing rates of $951 to more than $1,300 in 2023).

[46] "The trial court need not address each Rule 1.5 factor individually." *Miller v. Silverside*, 2016 WL 4502012, at *8 (Del. Super. Ct. Aug. 26, 2016).

[47] Octo Reply Exs. A–C (D.I. 188).

[48] *See AFH Holding & Advisory, LLC v. Emmaus Life Scis., Inc.*, 2014 WL 1760935, at *5 (Del. Super. Ct. Apr. 16, 2014) (Johnston, J.) (reducing fees and costs award when certain litigation expenses weren't related to claims covered by a fee-shifting provision).

Parties shall submit and agreed-upon form of implementing order no later than September 15, 2026.

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge

cc: All Counsel via File and Serve