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OPINION* OF THE THIRD CIRCUIT
(OCTOBER 11, 2018)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

AFOLUSO ADESANYA,

v.

NOVARTIS PHARMACEUTICALS CORP,

Afoluso Adesanya, *Adenekan Adesanya,
Appellants.

No. 17-2368

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-13-cv-05564)
District Judge: Honorable Susan D. Wigenton

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 12, 2018

Before: GREENAWAY, JR., BIBAS and ROTH,
Circuit Judges.

PER CURIAM

* (Pursuant to Rule 12(a), Fed. R. App. P)

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

* (Pursuant to Rule 12(a), Fed. R. App. P)

Afoluso Adesanya ("Adesanya") and her husband, Adenekan ("Adenekan"),[1] appeal the District Court's order dismissing Adesanya's claims as a sanction, granting Appellee summary judgment on its counterclaims against Adesanya, and sanctioning Adenekan. For the reasons below, we will affirm the District Court's order.

The procedural history of this case and the details of Appellants' claims are well known to the parties, set forth in the District Court's August 15, 2016 opinion, and need not be discussed at length. Briefly, Adesanya was hired by Appellee in March 2010. During the application process, she misrepresented her employment history by inflating her salary, creating phony supervisors, and misstating her prior work experience. During her employment with Appellee, she violated her employee agreement by holding other employment which conflicted with her work for Appellee. She also failed to relocate after accepting funds to do so. She was eventually terminated in September 2013 after failing to come into the office three days a week as required.

Adesanya filed a counseled[2] complaint alleging employment discrimination, and Appellee filed counterclaims based on the above-described behavior it discovered after her termination. During discovery, Adesanya failed to turn over evidence and gave false responses to interrogatories and false deposition testimony. Her husband, Adenekan, failed to provide

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[1] For clarity, we will hereinafter refer to Adenekan Adesanya as "Adenekan." No disrespect is intended by use of his first name.

[2] Counsel withdrew during the discovery process due to "ethical concerns."

documents requested by subpoena, refused court orders to do so, and gave false testimony. Both were extremely evasive during their depositions and refused to answer questions or claimed a lack of recall.

Frustrated by their obstructive behavior, Appellee filed a motion for sanctions and for summary judgment on its counterclaims. The District Court granted Appellee's motion for sanctions and dismissed Adesanya's claims as a sanction. It also granted Appellee's motion for sanctions against Adenekan for refusing to turn over documents, giving false testimony at his deposition, and submitting false certifications. The District Court granted summary judgment for Appellee on its counterclaims against Adesanya in the amount of over $1.3 million. It also granted Appellee's motion for fees and costs in the amount of $457K against Adesanya and $23K against Adenekan. Adesanya and Adenekan filed a pro se notice of appeal. We have jurisdiction under 28 U.S.C. § 1291.

Dismissal of Adesanya's Claims

In response to the District Court's dismissal of her claims as a sanction, Adesanya argues that an employer is still liable for discrimination despite later-discovered evidence of misdeeds that would have supported the employee's termination. *See McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352, 359-60 (1995). However, while the evidence of Adesanya's later-discovered misdeeds was the basis for Appellee's counterclaims, it was not the basis of the dismissal of Adesanya's complaint. Rather, the District Court dismissed her claims based on her misdeeds during the litigation process: her false testimony at her deposi-

tion, false responses to discovery requests, and refusal to turn over documents.

Notably, in her opening brief, Adesanya does not dispute the District Court's descriptions of her behavior during the litigation, challenge its authority to dismiss her claims as a sanction, or criticize its analysis in dismissing her claims as a sanction.[3] If, as here, a party fails to raise an issue in her opening brief, the issue is waived. A passing reference is not sufficient to raise an issue. *Laborers' Int'l Union of N. Am. v. Foster Wheeler Corp.*, 26 F.3d 375, 398 (3d Cir. 1994). And raising an issue in a reply brief is insufficient to preserve it for review. *Garza v. Citigroup Inc.*, 881 F.3d 277, 284-85 (3d Cir. 2018); *see also Gambino v. Morris*, 134 F.3d 156, 161 n.10 (3d Cir. 1998) (refusing to consider arguments raised in pro se reply brief).[4]

Adesanya challenges the District Court's denial of her request to amend her complaint to add claims arising under Title VII as well as claims of retaliation. In its August 15, 2016 opinion, the District Court noted that in her brief in opposition to Appellee's motions in the District Court, Adesanya had requested to

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[3] We agree with the District Court's conclusion that dismissal as a sanction was an appropriate remedy for Adesanya's unacceptable behavior.

[4] In her reply brief, Adesanya argues that she should not have been sanctioned because she was represented by an attorney during most of the litigation. However, it was she, and not her attorney, who refused to turn over documents and gave false testimony at her deposition. *See Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984) (listing six factors to be considered before dismissing claims as a sanction, including the extent of the party's personal responsibility).

amend her complaint. The District Court denied this request, observing that there was no formal motion to amend and the time to amend had long passed.[5]

Even if Adesanya had properly requested to amend her complaint, justice did not require the District Court to give her leave to amend after three years of litigation and her abuses of the discovery process. *See* Fed. R. Civ. P. 15(a)(2) (after time to amend has expired, party may amend with consent of opposing party or leave of court, which should be given when justice requires). The District Court did not abuse its discretion by not allowing Adesanya to amend her complaint. Moreover, as noted above, Adesanya does not challenge the District Court's dismissal of her claims as a sanction. Thus, even if she had amended her complaint to add additional claims, those claims would have been subject to dismissal as well.

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[5] Adesanya argues that the District Court erred in stating that there was no motion to amend. She cites to two District Court pleadings included in her appendix with highlighted portions. At the end of a six-page single-spaced pleading entitled "Certification to Oppose Motion to Compel Discovery, for Sanctions, for Cross Motion to Quash Subpoena and Protective Order" (docket entry 97) under the heading "Motion for Sanctions," she stated "I respectfully request that [Dr. Riva] be added as additional defendant and held liable in this case." At the end of her four-page single-spaced "Brief in support of Agenda Items," she requested the District Court to "allow to hold [sic] both Drs. Riva and Annick Krebs liable in this case." (docket entry 102). Even with the liberal construction of pro se pleadings, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam), neither pleading contained a sufficient motion to amend the complaint. *See United States ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 493-94 (3d Cir. 2017) (denial of cursory request to amend complaint within brief in opposition to motion to dismiss not an abuse of discretion).

Discovery

Appellants allege that the District Court had ex parte communications with Appellee. To support this contention, they refer to a transcript of a hearing at which this communication was discussed:

> [Appellee's counsel]: [D]uring this period of time when there were so many filings, we went to the Magistrate and we said: We don't even know what we're suppose to [sic] respond to at this point, there's so many things. Can we set up a mechanism whereby if the Court wants us to respond to something they can tell us. Because literally we were getting an informal request everyday [sic]. So in response to that, the Magistrate said: Yes. What we will do is, we will set up a mechanism where I will issue a text order so that if you have to respond to something, that will be part of a text order.

Tr. 1/7/16 at 17. The Magistrate Judge and Appellee's counsel were simply seeking a way to manage the numerous pro se discovery requests Appellants had filed. A judge may permit ex parte communication for scheduling or administrative purposes if the communication does not address substantive matters and no party would gain an advantage. Code of Conduct for U.S. Judges Canon 3 § (A)(4)(b); *see In re Sch. Asbestos Litig.*, 977 F.2d 764, 789 (3d Cir. 1992) ("[Ex parte communications] are tolerated of necessity, however, where related to non-merits issues, for administrative matters, and in emergency circumstances.")

Appellants claim that this communication gave Appellee a "tactical advantage" because its discovery

motions were acted on more quickly by the District Court. They point to docket entries 93 and 128 to support this argument. However, in docket entry 93, a letter from Adesanya to the District Court, she merely makes vague allegations of fraud and obstruction by Appellee and its attorneys. In docket entry 128, the District Court granted Adesanya's motion for the Court to review Appellee's privilege log and ordered Appellee to file a supplemental certification regarding its work product log. Appellants have not shown that they were prejudiced by any alleged ex parte communications.

Adesanya also takes issue with the time allowed for depositions of Appellee's employees. She notes that Fed. R. Civ. P. 30(d)(1) allows for depositions of one day of 7 hours. She appears to believe that because the deponents were deposed for less than 7 hours by her former counsel, they could be called back for more questioning by Adesanya acting pro se. However, Rule 30(d)(1) allows for one day of questioning, not 7 hours over multiple days. She vaguely contends that this prevented her from obtaining unspecified critical evidence and testimony. This argument is without merit.

Appellants also complain that they were ordered to comply with multiple depositions. This is because Appellants obstructed their depositions by refusing to turn over discovery, refusing to answer questions, and providing false answers. Rule 30(d) provides that the District Court may allow additional time if the deponent impedes the deposition.

Judgment on Appellee's Counterclaims

Adesanya argues that the District Court erred in granting Appellee's motion for summary judgment on its counterclaims. In her opening brief, she contends that the District Court rewrote "policies, job descriptions, pay grades" and provided "other provisions not part of initial agreements between [Adesanya] and [Appellee]." However, she does not specify which claims she is referring to or which parts of the agreements were rewritten. Likewise, she vaguely argues, without citation to cases in support, that the granting of fees to Appellee conflicts with this Court's caselaw as well as precedent from the Supreme Court.

During her employment with Appellee, Adesanya earned approximately $500K by working for another pharmaceutical company, Astellas. The District Court concluded that this was in violation of her employee agreement with Appellee. She was paid this money through a corporate entity, DansetH LLC d/b/a Ron Nuga LLC ("Ron Nuga"). In calculating the damages Adesanya owed Appellee for breaching her duty of loyalty, the District Court included the money she earned working for Astellas. In her opening brief, Adesanya does not challenge the District Court's conclusion that she breached a duty of loyalty, or its decision to award her earnings as a remedy. Rather, she argues that the District Court did not have jurisdiction to order Ron Nuga to disgorge the funds. However, the District Court did not order Ron Nuga to pay. In its opinion, it stated that "*Plaintiff* is therefore disgorged of $497,907.56 in profits she obtained from Biomedical/Auxilium and Astellas, which shall be payable to Novartis."

Sanctions Against Adenekan

Adenekan argues that the sanctions against him were inappropriate because the subpoenas he refused to honor should have been directed towards the corporations for which he was a statutory officer and not towards him in his personal capacity. However, he does not explain how this would excuse his refusal to turn over the documents or be grounds for vacating the sanctions against him for disobeying court orders and for giving false testimony. Adenekan is correct when he states that a non-attorney cannot represent another party. *See Osei-Afriyie v. Med. Coll. of Pa.*, 937 F.2d 876, 882-83 (3d Cir. 1991) (non-lawyer parent cannot represent interests of children). When a party is a corporation, partnership, or other organization or association, that party may appear and be represented only by a licensed attorney. *See Simbraw v. United States*, 367 F.2d 373, 373 (3d Cir. 1966) (per curiam); *see also Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02 (1993). However, the subpoenas at issue did not require any legal representation of the corporate entities; the subpoenas required only that Adenekan turn over the requested documents that were in his custody.

For the above reasons, we will affirm the District Court's judgment. Appellee's motion to seal the supplemental appendix is granted. *See Publicker Indus. Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984) (party seeking closure must show material is type that courts protect and there is good cause for sealing). Appellants' request to deny Appellee costs for the supplemental appendix is denied.

OPINION OF THE DISTRICT COURT OF NEW JERSEY (JUNE 5, 2017)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AFOLUSO ADESANYA,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS CORPORATION,

Defendants.

Case No. 2:13-cv-5564 (SDW) (SCM)

Before: Susan D. WIGENTON,
United States District Judge.

WIGENTON, District Judge.

Before this Court is Defendant Novartis Pharmaceuticals Corporation's ("Novartis" or "Defendant") application for reasonable attorneys' fees and costs and damages to be paid by *pro se* Plaintiff Dr. Afoluso Adesanya ("Plaintiff"), and her husband, Adenekan Hezekiah Adesanya ("Mr. Adesanya") (collectively, the "Adesanyas") which was filed on September 9, 2016. The Adesanyas opposed Novartis's application on October 12, 2016 and requested a stay pending appeal of the Court's August 15, 2016 Order granting Defendant's motion for sanctions and granting, in part,

Defendant's motion for summary judgment. After considering the parties' written submissions, and for the reasons set forth below, this Court GRANTS Novartis's application subject to reductions, with Plaintiff to pay $457,040.22 and Mr. Adesanya to pay $23,714.00; GRANTS damages totaling $1,393,918.23; and DISMISSES AS MOOT the Adesanyas' motion to stay.

I. Background and Procedural History

As the parties are intimately familiar with the facts surrounding this case, this Opinion will address only those relevant to the present motion. This Court incorporates the August 15, 2016 Opinion as the relevant factual and procedural background. (Dkt. No. 251). At issue is Novartis's fee application which requests an award of attorneys' fees and costs amounting to $1,927,801.09 for representation by McCusker, Anselmi, Rosen & Carvelli, P.C. (hereinafter "the MARC Firm") and $4,002,190.38 in damages. (Dkt. Nos. 253, 270). After finding that Plaintiff willfully deceived Novartis and this Court in bad faith and manipulated the judicial process, this Court dismissed the Complaint, granted Novartis's motion for summary judgment as to Counts One, Three, Four, Five and Eight of its Counterclaims, and awarded sanctions against the Adesanyas. (Dkt. No. 252). The Adesanyas immediately filed an appeal with the Third Circuit which was denied because this Court had "not yet calculated the amount of damages" nor "the amount of monetary sanctions." (Dkt. Nos. 255, 264). In sum, the Order was not "final and appealable." (Dkt. No. 264).

In connection to Novartis's success, this Court provided the following Order:

> [Novartis] shall submit a certification of attorneys' fees and costs as it relates to the dismissal of Plaintiff's claims; . . . and a certification of attorneys' fees and costs incurred as to [Novartis's] motion for sanctions against Mr. Adesanya. Plaintiff and Mr. Adesanya shall submit any opposition within fifteen (15) days of the filing of [Novartis's] certification and [Novartis] shall have seven (7) days to reply. (Dkt. No. 252).

Novartis initially sought "$1,833,959.02 in attorneys' fees and costs" against Plaintiff and $138,234.79 against Mr. Adesanya. (Dkt. No. 253, Ex. A and C). Upon referral of this matter to Magistrate Judge Mannion for review, Novartis was directed to file a supplemental affidavit or declaration including "detailed timesheets for each attorney with descriptions of work performed and hours billed on each date for the fees and costs respectively sought against Plaintiff Adesanya and her husband Mr. Adesanya." (Dkt. No. 265). This Court also ordered Novartis to indicate the amount of billed and unbilled fees and costs. (*Id.*).

On February 28, 2017, Novartis submitted the Certification of John McCusker (hereinafter "McCusker Certification") which "supersedes and updates the amount of attorney's fees and costs [initially] requested." (Dkt. No. 270 ¶ 2). At present, Novartis seeks $1,789,566.30 ($1,569,416.83 in billed fees plus an additional $220,149.47 in unbilled fees) to be paid by Plaintiff, and the same $138,234.79 to be paid by Mr. Adesanya. (Dkt. No. 270 ¶ 8).

For damages incurred in connection to the dismissal of Plaintiff's claims Novartis requests $4,002, 190.38. (Dkt. No. 253-4 ¶ 3). Specifically, Novartis seeks

$1,670,323.80 on Count One (employment application and resume fraud); $25,818.71 on Count Three (breach of Relocation Agreement); $210,403 for Count Four (breach of Annual Incentive Plan or "AIP"); $1,670,323.80 on Count Five (breach of the duty of good faith and fair dealing); and $497,907.56 as to Count Eight (breach of duty of loyalty and Defendant's Conflict of Interest Policy). (Dkt. No. 253 Ex. B ¶¶ 10-14).

II. Discussion & Analysis

Novartis seeks $1,927,801.09 in attorneys' fees and costs ($1,789,566.30 to be paid by Plaintiff and $138,234.79 to be paid by Mr. Adesanya), and a damage award of $4,002,190.38.[1] This Opinion will first assess the reasonableness of Novartis's fee application, then determine the damage award, and lastly address the Adesanyas' motion to stay. Based on the below analysis which is summarized in Section III, this Court concludes that $480,754 in fees and costs shall be paid by the Adesanyas; that $1,393,918 in damages shall be awarded; and that the motion to stay is dismissed as moot.

A. Novartis's Fee Application

i. Legal Standard

The law requires attorneys' fees or costs to be reasonable. *See* FED. R. CIV. P. 37. The reasonableness of fees is determined by examining the attorney's

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[1] This Court notes that although Novartis seeks reimbursement of fees and costs, the application itself does not provide for fees separate from costs. Consistent with the evidence provided, the total award is provided as a single figure representing both fees and costs to be paid by Plaintiff and Mr. Adesanya.

reasonable hourly rate and the number of hours expended on the litigation. *See Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 703 n.5 (3d Cir. 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). To determine the amount of fees, the Court must calculate the "lodestar" amount by multiplying the attorney's hourly rate by the number of hours spent performing the work. *Id.* As the moving party, Novartis bears the burden of proving its requested hourly rates and the hours it claims are reasonable. *Id.* (citing *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d. Cir. 1990)). If the burden is sustained, the Adesanyas must rebut the reasonableness of the proposed fees with competent evidence. *See id.* If "the adverse party raises specific objections to the fee request, the district court has a great deal of discretion to adjust the award in light of those objections." *Blakey v. Cont'l Airlines*, 2 F. Supp. 2d 598, 602 (D.N.J. 1998) (internal citations omitted). "Determining an appropriate award is not an exact science" and "[t]he facts of each individual case drive the amount of any award." *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998).

ii. Hourly Rates

Novartis bears the burden of establishing its requested hourly rates are reasonable. In satisfying this initial burden, attorneys may not rest on their own affidavits to support a party's claim of reasonable fees. Rather, they must submit evidence that the requested rates fall within the norm of attorneys in the relevant community. *See Rode*, 892 F.2d at 1183. A reasonable hourly rate is determined in reference to the prevailing market rates in the relevant community. *See Interfaith*, 426 F.3d at 708 (internal citation omitted). The "prevailing market rates in the relevant community" are

determined by "assess[ing] the experience and skill of the prevailing party's attorneys and compar[ing] their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation" at the time the fee petition was filed. *L.J. v. Audubon Board of Educ.*, 373 F. App'x 294, 296 (3d Cir. 2010) (internal citation omitted). Accordingly, this Court only considers whether the present rates set forth in the McCusker Certification are reasonable. "Once a district court finds that the prevailing party has failed to sustain its burden with respect to a reasonable market rate, it must use its discretion to determine the market rate." *Id.* at 297 (internal citation omitted). If the initial burden is met, the opposing party can contest the rate with record evidence. *Id.* at 296.

The McCusker Certification outlines the fees sought for partners, John B. McCusker, Esq. ("McCusker") at $395/hour and Patricia Prezioso, Esq. ("Prezioso") at $390/hour; of counsel, Suzanne M. Murphy, Esq. ("Murphy") at $275/hour; and associates, Patrice LeTourneau, Esq. ("LeTourneau") at $250/hour, and Bianca M. Olivadoti, Esq. ("Olivadoti") at $185/hour. (Dkt. No. 270 ¶¶ 5-7). In opposition, the Adesanyas argue that the hourly rates set forth in the fee application are inconsistent because "no reasons were given" for the "substantial increase" in legal fees. (Dkt. No. 274-1 at 4). They also contend that while the supporting certification pertains to attorneys McCusker, Prezioso, Murphy, LeTourneau and Olivadoti, the accompanying time records show that "up to [seven] attorneys . . . plus external counsel" billed for this matter. (*Id.* at 5).

This Court finds that although hourly rates increased over the course of this litigation, the increases were not substantial. Furthermore, this Court only considers whether the present rates set forth in the McCusker Certification are reasonable because attorneys' prevailing market rates are assessed at the time the fee petition is filed. *See L.J.*, 373 F. App'x at 296 (emphasis added). Novartis only seeks to recover fees for McCusker, Prezioso, Murphy, LeTourneau and Olivadoti. The additional attorneys who billed for this matter will not be considered.

Here, the McCusker Certification does not detail the prevailing rates for New Jersey attorneys comparable to those in this case. However, this Court exercises its discretion to fix a reasonable hourly rate by looking to recent cases in this District that have determined prevailing market rates. This Court's research reveals that Novartis's requested rates are consistent with comparable New Jersey attorneys of similar experience and skill, and fall below prevailing rates. *See Boles v. Wal-Mart Stores, Inc.*, No. 12-1762, 2015 U.S. Dist. LEXIS 102920, at *15-16 (D.N.J. Aug. 5, 2015) (approving rates of $400/hour for an employment and labor law attorney with over sixteen years' of experience and $250/hour for associate attorneys as "consistent with rates . . . that other courts in this District have approved") *aff'd*, 650 F. App'x 125 (3d Cir. 2016); *see also Chaaban v. Criscito*, No. 08-1567, 2013 U.S. Dist. LEXIS 58051, at *34-35 (D.N.J. Apr. 3, 2013) (finding that the requested hourly billing rates "ranging from $350-$500 for partners; $225-$300 for associates; and $105-$130 for paralegals are well within, if not below, the prevailing rates of New Jersey").

The McCusker Certification sufficiently outlines that McCusker is the Director/Partner of the MARC Firm who specializes in employment litigation and has practiced law since 1982; that Prezioso, also an experienced attorney since 1988, has focused on employment litigation and has been a partner at the firm for nine years; and that Murphy, who is of counsel, and LeTourneau and Olivadoti, both associates, assisted with this matter. (Dkt. No. 270 ¶¶ 5-7). Since no contesting evidence is provided by the Adesanyas, this Court approves the requested hourly rates ranging from $390-395 for partners and $185-$275 for of counsel and associates as they are comparable to the prevailing rates of New Jersey attorneys with similar experience and skill.

iii. Time Expended

Having found the requested hourly rates reasonable, this Court must next consider whether the number of hours spent on the litigation are reasonable. "Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary" and should be excluded. *Rode*, 892 F.2d at 1183 (internal citations omitted). In opposition, the Adesanyas contend that the fee application is "riddled with misrepresentations, false entr[ies], illegal acts, redactions, duplications, and non-attorney work." (Dkt. No. 274-1 at 3). This contention is without merit, as the documents submitted by the MARC Firm support the instant fee application. This Opinion shall address the reasonableness of the time claimed for the services performed in relation to the dismissal of Plaintiff's claims and the motion for sanctions against Mr. Adesanya. *See Maldonado v. Houstoun*, 256 F.3d 181, 185 (3d Cir. 2001).

In making this determination, the Court is mindful that fees and costs incurred during litigation are not usually recoverable. *See Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n*, 434 U.S. 412, 415 (1978) ("It is the general rule in the United States that in the absence of legislation providing otherwise, litigants must pay their own attorney's fees.") (citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975)). One exception to this general rule is when "a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (internal marks omitted). "In this regard, if a court finds that fraud has been practiced upon it, or that the very temple of justice has been defiled, it may assess attorney's fees against the responsible party." *Id.* at 46 (internal marks omitted).

While discovery was at all times "contentious and marked by delay," in large part, this Court will not award fees and costs that were incurred while Plaintiff was represented by counsel. Plaintiff's attorney, Ari Karpf ("Karpf"), relied upon Plaintiff's misrepresentations in prosecuting her case. This continued until May 2015, at which time he received documents that caused him to doubt Plaintiff's truthfulness.[2] (Dkt. Nos. 251 at 17, 232 at 25-26). Beyond that time, Plaintiff's claims had little chance of success yet she continued to thwart Novartis's efforts, "forc[ing] Defendants to issue and defend third-party subpoenas and incur additional effort and expense to obtain information that Plaintiff possessed and should have

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[2] Karpf moved to withdraw on July 20, 2015. From August 28, 2015 forward, Plaintiff proceeded *pro se* in this matter. (Dkt. No. 251 at 7).

provided." (Dkt. No. 251 at 13-14). For these reasons, the fees and costs incurred prior to May 2015 are recoverable only in part because ultimately, Plaintiff's dogged pursuit of baseless claims and fraud led to the dismissal of the Complaint.[3] With respect to Mr. Adesanya, the fees and costs sought from him prior to his counsel's withdrawal on September 29, 2015 are included in Plaintiff's fees and costs and cannot also be paid by him. (Dkt. No. 103). This Opinion focuses on the fees and costs incurred in relation to Mr. Adesanya's false testimony and his failure to comply with Defendant's document demands. It is within this backdrop that this Court addresses the Adesanyas' objections that counsel provided "vague time entries" and that the MARC Firm performed duplicative work in light of "the simplicity of legal questions involved." (Dkt. No. 274-1 at 5-7, 10-12).

As explained more fully below, Novartis's fee application presents some concerns due to the generic manner in which tasks were billed by multiple attorneys and the lack of detail pertaining to the fees and costs sought from Plaintiff versus the fees and costs sought from Mr. Adesanya. *See Blakey*, 2 F. Supp. 2d at 604 (noting that "[t]he presentation of billable hours should be in sufficient detail to permit the Court to determine how the hours were divided among various attorneys"); *see also Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 181 (3d Cir. 2001) (internal citation omitted). This Court therefore considers the initial September 2016 fee certification in addition to the

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[3] This general proposition does not apply to Novartis's fees and costs incurred as a result of the Adesanyas' obfuscation of discovery. As outlined in Section A(v), a portion of the fees and costs leading up to May 2015 are subject to reimbursement.

superseding McCusker Certification which "updates the amount of attorney's fees and costs [initially] requested." (Dkt. No. 270 ¶ 2).

Notwithstanding, performing an entry-by-entry analysis remains unmanageable. *Cf. Evans v. Port Authority of N.Y. & N.J.*, 273 F.3d 346, 362 (3d Cir. 2001) (stating that fee requests are subject to a "thorough and searching analysis" requiring the Court to "go line, by line, by line" through the billing records). Instead, this Court reviewed the billing invoices containing monthly cumulative totals, considered whether tasks were necessary in relation to the Adesanyas' objections, and determined the number of hours reasonably needed to perform the work. *See Maldonado*, 256 F.3d at 186-88. Presently, the MARC Firm billed approximately 7,702 hours, but as shown in Section III of this Opinion, 3,594 hours were reasonably expended to obtain dismissal of Plaintiff's claims and an award of sanctions against Mr. Adesanya.

iv. Vague Time Entries

The Adesanyas challenge the hours expended based upon "extraordinarily" redacted and "vague time entries." (Dkt. No. 274-1 at 5-7). "The Court may . . . deduct hours that are inadequately documented." *Blakey*, 2 F. Supp. 2d at 604 (internal citation omitted). A fee petition must "be specific enough to allow the district court to determine if the hours claimed are unreasonable for the work performed." *Loughner*, 260 F.3d at 181 (internal citation omitted).

While certain redactions are necessary to protect privileged or confidential information, a portion of Novartis's billing records are heavily redacted or do not contain enough specificity to allow this Court to

assess the reasonableness of the hours claimed for the work performed. For example, numerous entries bill for internal meetings, team strategy sessions, and "legal research" but only provide general descriptions. As a result, this Court reviewed each invoice from May 2015 through November 2016 and totaled the redacted or otherwise vague entries. (Dkt. Nos. 270-22 Ex. V through 270-31 Ex. EE). The table below demonstrates that 223.4 hours in vague billing entries will be deducted from Novartis's recovery, amounting to a total deduction of $53,818 ($26,909 to be deducted from the fees and costs owed by Plaintiff; $26,909 to be deducted from fees and costs owed by Mr. Adesanya).

Month	**Hours Billed**	**Hours Deducted**	**Hours Reasonably Spent**
May 2015	447.9	25.4	422.5
June 2015	325.6	33.9	291.7
July 2015	498.3	13.8	484.5
August 2015	261.8	22.5	239.3
September 2015	302.7	24.0	278.7
October 2015	268.7	27.4	241.3
November 2015	148.3	23.4	124.9
December 2015	128.7	10.8	117.9
January–August 2016	841.2	29.3	811.9
August–November 2016	85.9	12.9	73.0

Total	3309.1	223.4	3085.7

v. Discovery Misconduct

Contrary to the Adesanyas' general arguments that Novartis blocked discovery, this Court previously found that both Plaintiff and Mr. Adesanya interfered with the discovery process and provided false and misleading testimony. (Dkt. Nos. 274-1 at 12, 16, 251 at 13-16). Notably, the Adesanyas' misconduct forced Defendants to issue and defend third-party subpoenas and incur additional effort and expense to obtain information that Plaintiff possessed and should have provided. Although fees and costs incurred prior to May 2015 discovery are generally not recoverable because they were incurred in the normal course of litigation, this Court finds that the additional fees and costs sustained and caused by the Adesanyas' obfuscation of discovery are subject to reimbursement.

Discovery began in this case in September 2014. Upon review of the billing records, Novartis expended approximately 2,590 hours and incurred $768,496 from October 1, 2014 to May 30, 2015. (Dkt. Nos. 270-15 Ex. O through 270-22 Ex. V). The majority of Novartis's expenses for this time period were incurred in the normal course of these particularly litigious proceedings. However, it is important to note that during this time, Plaintiff's refusal to produce documents forced Novartis to spend additional resources in connection with the following: issuing a subpoena to Mr. Adesanya to obtain documents concerning Plaintiff's joint ownership of Global Drug Safety & Surveillance, Inc. a/k/a LaRon Pharma, Inc. ("LaRon") and membership in Ron Nuga, LLC ("Ron Nuga"); filing applications with the court in attempts to obtain

Plaintiff's compliance with discovery; addressing challenges to, and issuing, third-party subpoenas to Klein Hersh, the employment agency used by Plaintiff during her employment, Ron Nuga's insurance broker, the Adesanyas' tax preparer, Ronald Kamens ("Kamens"), and Wells Fargo for financial documents that should have been produced; and reviewing tax documents which had previously been denied under oath. (Dkt. No. 253 Ex. A ¶¶ 9-11).

Based upon a line-by-line analysis, Novartis expended 143.2 additional hours as a result of Plaintiff's discovery misconduct. Plaintiff is therefore responsible for $40,098 in fees and costs she caused Novartis to expend to obtain information she possessed and should have provided.

Month	**Recoverable Hours**
October 2014	19.8
November 2014	15.9
December 2014	10.8
January 2015	10.2
February 2015	8.3
March 2015	29.4
April 2015	16.4
May 2015	32.4
TOTAL	**143.2**

Novartis also incurred additional expenses due to Mr. Adesanya's interference with discovery. Mr. Adesanya is responsible for a portion of the $40,237 in fees and costs incurred from September 1, 2015 to

October 31, 2015 which are presently sought by Novartis. (Dkt. No. 253 Ex. C ¶ 8). During this time period, Mr. Adesanya falsely certified that he and his wife did not possess any relevant documents regarding LaRon or Ron Nuga even though thousands were located in their home. (Dkt. No. 209-4 ¶¶ 109, 112, 132-133). This Court also ordered Mr. Adesanya to produce the subpoenaed documents on October 6, 2015 and October 30, 2015 yet he did not comply. (Dkt. Nos. 109, 115). As a result of his actions, Novartis was forced to issue a supplemental subpoena to Wells Fargo to obtain Ron Nuga's financial documents that were in the Adesanyas' possession; engage a tax expert to assist in analyzing Wells Fargo's documents; and submit requests to the court to hold Mr. Adesanya in contempt and/or impose sanctions against him. (Dkt. No. 253 Ex. C ¶ 8). For this work, Novartis reasonably spent 114.1 hours and $35,599.75 is reimbursable. (Dkt. Nos. 270-26 Ex. Z, 270-29, Ex. AA). Accounting for these adjustments, the $40,237 in fees and costs sought from Mr. Adesanya will be reduced by $4,637.25, resulting in a net amount due by Mr. Adesanya of $35,599.75.[4]

Month	**Recoverable Hours**
September 2015	50.6
October 2015	63.5
TOTAL	**114.1**

[4] Accordingly, this Court will deduct $35,599.75 from the total amount of fees and costs to be paid by Plaintiff so as to not duplicate Novartis's recovery. (*See infra* p. 26.)

vi. Excessive, Duplicative, or Unnecessary Expenditures

The Adesanyas maintain that in light of the "simplicity of the legal questions involved" and Plaintiff's ultimate status as a *pro se* litigant, Novartis's "massive defense team" of four to six attorneys was excessive and resulted in duplicative efforts throughout this litigation. (Dkt. No. 274-1 at 10-12). A reduction for duplicative work "is warranted only if the attorneys are unreasonably doing the same work." *Rode*, 892 F.2d at 1187 (emphasis added) (internal citation omitted). The Third Circuit has held that deductions for overstaffing are warranted and "should not be included in a request for counsel fees from an adversary" because "in many cases, the attendance of additional counsel representing the same interests as the lawyers actually conducting the deposition is wasteful." *Planned Parenthood of Central N.J. v. Attorney Gen. of N.J.*, 297 F.3d 253, 272 (3d Cir. 2002) (quoting *Halderman v. Pennhurst State Sch. & Hosp.*, 49 F.3d 939, 943 (3d Cir. 1995)).

While a private client may wish to pay for multiple attorneys to merely attend hearings on that client's behalf, this practice is not necessarily reasonable when they are to be paid by the other party to the proceedings. *Halderman*, 49 F.3d at 943. However, where the case involves complex legal questions and the declarations submitted in support of the fee application demonstrate various attorneys were assigned specific tasks, claims of overstaffing have been rejected. *See Planned Parenthood of Central N.J.*, 297 F.3d at 272. "Even if the attorneys had worked on similar tasks, this would not be per se duplicative" because "careful preparation often requires collaboration and rehearsal." *Id.* (internal citations omitted).

1. Court Conferences

While the Adesanyas do not provide specific examples to support their position that four to six attorneys litigating against Plaintiff was excessive, this Court's review of the billing records reveals that reductions to the lodestar are warranted for overstaffing court appearances. In total, three to four attorneys billed for a total of 159 hours or $45,120 in connection to five court appearances. In May, July, and August of 2015, Novartis expended over 86 hours and billed for $25,066 with respect to two court appearances. (Dkt. Nos. 270-22 Ex. V, 270-24 Ex. X, 270-25 Ex. Y). While "careful preparation often requires collaboration and rehearsal," this Court finds that the attendance of two associates (LeTourneau and Olivadoti) was unnecessary where two partners (McCusker and Prezioso) were present. For example:

- For a May 5, 2015 status conference, McCusker, LeTourneau, Prezioso, and Olivadoti billed $8,956 for 28.8 hours of work. All attorneys except Olivadoti attended the conference. (Dkt. No. 270-22 Ex. V).
- The same four attorneys spent 17.3 hours or $4,466 preparing for a July 2015 conference which was ultimately adjourned to August 28, 2015. (Dkt. No. 77). Counsel spent an additional 40 hours or $11,644 preparing for the new conference date. (Dkt. No. 270-25 Ex. Y). Again, all attorneys except Olivadoti appeared in court. For this work, counsel spent over 57 hours and billed $16,110. (*Id.*).

Novartis may have agreed to pay for multiple attorneys to attend hearings on their behalf, but it is not

necessarily reasonable for the Adesanyas to bear this extra expense. *See Halderman*, 49 F.3d at 943. For these reasons, this Court deducts additional counsels' (LeTourneau and Olivadoti) attendance as well as their time spent preparing and strategizing for the outlined conferences as duplicative of McCusker and Prezioso's work. After adjusting for additional counsels' attendance and preparation, this Court concludes that 31 out of 86 hours were reasonably expended in connection with the May 5, 2015 and August 28, 2015 conferences (15 and 16 hours, respectively). Plaintiff's fees and costs shall be reduced by $12,835, with $3,072 appropriated from the May 5, 2015 conference and $9,763 from the August 28, 2015 conference.

Similarly, for conferences held after Plaintiff entered her *pro se* appearance, this Court finds that only one partner's attendance (either McCusker or Prezioso) and the work of one additional attorney to prepare for the below conferences was reasonably necessary. Following Karpf's withdrawal, this Court conservatively estimates that Novartis spent over 73 hours preparing for, and attending three court conferences which cost $20,053.

- The Court held oral argument on Novartis's motion to compel discovery on October 2, 2015. Three attorneys (McCusker, Prezioso, Olivadoti) spent 16 hours preparing, strategizing, and attending the conference which lasted 90 minutes. (Dkt. No. 270-27 Ex. AA). This cost approximately $5,218. Together, McCusker and Prezioso billed for 6.5 hours to prepare for, and attend, the conference.
- McCusker, Prezioso, and Olivadoti spent over 26 hours at $6,898 preparing for a November 6,

2015 status conference that lasted 120 minutes. Both partners (McCusker and Prezioso) attended and billed for a total of 8.2 hours. (Dkt. No. 270-28 Ex. BB).

- In January 2016, three attorneys (Prezioso, Olivadoti, Murphy) spent 31 hours totaling $7,937 in preparation for a court conference which was attended by Prezioso and lasted for 95 minutes. (Dkt. No. 199). Together Prezioso and Murphy billed for 14.5 hours. (Dkt. Nos. 270-29 Ex. CC, 270-30 Ex. DD).

With regard to the October 2015, November 2015, and January 2016 conferences, Novartis reasonably and respectively spent: 6.5 hours ($2,561) by McCusker and Prezioso; 8.2 hours ($4,204) by McCusker and Prezioso; and 14.5 hours ($4,884) by Prezioso and Murphy. In total, Novartis reasonably spent 29 hours such that $11,650 is reimbursable. Accordingly, a total deduction of $8,403 shall be evenly split from the fees and costs owed by Plaintiff and Mr. Adesanya.

2. Depositions

The Adesanyas argue that counsel "wasted" 7.2 hours preparing for the deposition of Dr. Alessandro Riva ("Dr. Riva"), Novartis's Global Head of Oncology, and another 11.2 hours attending his deposition which lasted just 40 minutes. (Dkt. Nos. 274-1 at 14-15). This Court disagrees. A review of the billing records reveals that together, McCusker and LeTourneau spent *under* 9 hours preparing for, and conducting, Dr. Riva's deposition, the purpose of which was to develop the facts of this case. (Dkt. No. 270-15 Ex. O) (emphasis added). This time was reasonably spent and a deduction is therefore inappropriate.

Upon further review of the billing records; however, a reduction in time is warranted for overstaffing three or more attorneys at the depositions of Valerie Acito ("Acito"), Novartis's Global Head of Human Resources, Annick Krebs ("Krebs"), Plaintiff's Manager, and Kamens, the Adesanyas' Tax Preparer. Three to four attorneys spent over 153 hours preparing, strategizing, and attending the depositions of these individuals and billed $44,332.

- From May to June 2015, up to four attorneys (McCusker, Prezioso, LeTourneau, Olivadoti) interviewed Acito, prepared for, conducted, and attended Acito's deposition. (Dkt. Nos. 270-22 Ex. V, 270-23 Ex. W). For this work, counsel spent over 72 hours or $20,841.
- In May 2015, four attorneys (McCusker, Prezioso, LeTourneau, Olivadoti) spent over 49 hours or $13,513 with respect to the deposition of Krebs. (Dkt. No. 270-22 Ex. V).
- For the Kamens deposition in October 2015, McCusker, Prezioso, and Olivadoti expended 32 hours and billed for $9,978. (Dkt. No. 270-27 Ex. AA).

Based on the number of sophisticated attorneys and the nature of the legal issues involved, only two attorneys were reasonably needed to prepare for, conduct, and provide assistance at the depositions of Acito, Krebs, and Kamens. Beyond the two attorneys who deposed the witnesses and thus performed the majority of the work, the billing records demonstrate that the remaining one or two attorneys duplicated preparation and strategizing efforts. For these reasons, this Court finds that 119 hours or $36,186 was reasonably spent in

connection with the depositions of: (1) Acito, 64.9 hours ($19,469) by McCusker and LeTourneau; (2) Krebs, 31.8 hours ($10,531) by McCusker and LeTourneau; and (3) Kamens, 22.8 hours ($6,186) by Prezioso and Olivadoti. Subject to these adjustments, Plaintiff's fees and costs shall be reduced by $4,354 in connection to the Acito and Krebs depositions. Mr. Adesanya's fees and costs shall be reduced by $3,792 for the Kamens deposition.

vii. Invoices Reflecting Flat Fee Payments

The Adesanyas argue that billing invoices containing flat fee payments for the periods of December 17, 2015 to January 7, 2016 and January 8, 2016 to August 16, 2016 conflict with the actual amount Novartis billed. (Dkt. No. 274-2 Ex. A at 13-14). They also argue that any time billed after March 2016 should be ignored because discovery was completed and motions for summary judgment were submitted. (*Id.*). While the Adesanyas' contentions are without merit, Defendant cannot recover for any unbilled costs. *See Maldonado*, 256 F.3d at 184 ("[h]ours that would not generally be billed to one's own client are not properly billed to an adversary").

Novartis was not billed for $220,149.47 in fees and costs. "Due to the extraordinarily litigious nature of this case," the MARC Firm "absorbed $54,569.09 in attorneys' fees and costs incurred from December 1, 2015, through December 16, 2015." (Dkt. No. 270 ¶ 4). Novartis and the MARC Firm also entered into two flat fee arrangements for legal services rendered between December 17, 2015 and January 7, 2016 ($45,000 flat fee) and January 8, 2016 to August 16, 2016 ($50,000 flat fee). (Dkt. No. 270 ¶ 4). The "true cost of the services provided" during these two time periods amounted

to $35,989.82 and $224,590.56, respectively, totaling $220,149.47 in unbilled services (cost of services less the flat fee payments). (Dkt. No. 270 ¶ 4). Since Novartis and the MARC Firm chose to enter into two flat fee agreements rather than bill and pay for the true costs of services, Novartis cannot now recover the $220,149.47 unbilled costs from Plaintiff.

On balance, this Court finds that $480,754, with $457,040 apportioned to Plaintiff and $23,714 apportioned to Mr. Adesanya, reasonably compensates Novartis for the fees and costs incurred regarding the dismissal of Plaintiff's claims and sanctions against Mr. Adesanya. While this Court is cognizant of the extensive efforts Novartis expended in litigating against Plaintiff's frivolous claims and enduring Mr. Adesanya's impeding conduct, $480,754 is the product of a reasoned assessment of the fees and costs incurred based on the evidence and certifications submitted for review.[5] In addition to the above analysis, an outline of the fees and costs to be paid by the Adesanyas is set forth in Section III of this Opinion.

B. Damages

Novartis seeks $4,002,190.38 in damages resulting from Plaintiff's employment application and resume fraud (Count One); breach of Relocation Agreement (Count Three); breach of AIP (Count Four); breach of the duty of good faith and fair dealing (Count Five); and breach of the duty of loyalty and Novartis's Conflict of Interest Policy (Count Eight). (Dkt. No. 253, Ex. B ¶ 3).

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[5] Notably, this Court could not distinguish the work each attorney performed in relation to the fees and costs sought from Plaintiff as opposed to the fees and costs sought from Mr. Adesanya.

With respect to Counts One and Five, Novartis requests $1,140,178 in cash compensation and $530,144 in company benefits. (*Id.* ¶¶ 10, 13). Based on the evidence submitted, this Court cannot clearly deduce what Novartis considered in arriving at these figures. For example, while it is evident that insurance and retirement benefits constitute "company benefits," other aspects of Plaintiff's total compensation package are not as obvious. The accompanying certification does not lessen the ambiguity as it only states the total amounts sought. To the best of this Court's ability, Plaintiff's payroll earnings, W-2s, and total compensation package were considered in determining the damages award. For the reasons that follow, this Court awards $1,393,918.23 for Novartis's successful Counterclaims.

i. Count I–Fraud (Employment Application and Resume)

Novartis seeks a full return of $1,670,323.80 ($1,140,178.85 in cash compensation plus $530,144.95 in company benefits) paid over the course of Plaintiff's tenure as a result of her fraud. (*Id.* ¶ 10). "New Jersey . . . recognizes benefit-of-the-bargain damages in fraud cases." *McConkey v. Aon Corp.*, 804 A.2d 572, 588 (N.J. 2002). "In a case involving the fraudulent inducement of an employment contract, under "the benefit-of-the-bargain" damage rule "the defrauded [employer] is entitled to such damages as will most nearly approximate the benefits he would have realized under the contract had the representations which induced him to contract been true." *Id.* at 587 (internal citations omitted); *see also Shulton, Inc. v. Optel Corp.*, 698 F. Supp. 61, 64 (D.N.J. 1988) (explaining that the "benefit of the bargain formula" is "the difference

between the fraud induced price and the price plaintiff would have received absent the fraud").

Here, while Novartis is entitled to damages it suffered for hiring and paying Plaintiff more than her experience warranted, Plaintiff is also entitled to the reasonable value of her services. *See* Restatement (Second) of Agency, § 469, comment c ("[a]n agent who obtains h[er] employment by fraud, as by misrepresenting that [s]he has had experience, is not entitled to compensation at the contract rate, although [s]he may be entitled to the reasonable value of h[er] services"). In this case, Plaintiff conferred a benefit to Novartis as a "cross-disciplinary team" member who "worked on different aspects of drugs in various stages of development," and she is entitled to the reasonable value of the services she rendered. (Dkt. No. 209-4 ¶ 17); *see Weichert Co. Realtors v. Ryan*, 608 A.2d 280, 285 (N.J. 1992) (explaining that a party who confers a benefit with a reasonable expectation of payment is entitled to recoup the reasonable value of services rendered). While it is nearly impossible to delineate between Plaintiff's reasonable compensation and the money Novartis lost by relying on her misrepresentations, the following analysis most nearly approximates the benefits Novartis would have realized had the representations which induced it to hire Plaintiff been true. *See McConkey*, 804 A.2d at 587 (internal citations omitted).

Under the benefit-of-the-bargain approach, this Court finds that determining the supplemental salary Novartis paid to Plaintiff as a result of her falsification of information is an appropriate starting point. In fashioning Plaintiff's base salary of $243,000 in 2010, Novartis relied on her exaggerated prior salaries

($315,000 annual income at LaRon) and misrepresentations of her previous experience. (Dkt. Nos. 209-4 ¶¶ 9, 11, 15, 253 Ex. B ¶ 6). Specifically, Novartis increased Plaintiff's signing bonus from $25,000 to $35,000 and paid another $10,000 due to her representations that she was "leaving money on the table" at LaRon. (Dkt. No. 209-4 ¶ 15). In reality, Plaintiff did not earn any income from LaRon, other than $127,500 in 2008. (Dkt. No. 209-4 ¶ 11).

Based on this evidence, this Court calculates the salary that Novartis would have paid to Plaintiff is a $198,000 base salary in 2010 ($243,000 less the $35,000 signing bonus and $10,000 competitive offer). This Court then accounted for annual increases in the contract rate of 1.5%, 2%, and 1% in the first three years, respectively, and thereafter adjusted Plaintiff's base salary amount for each subsequent year. In addition to the annual salary increases, the table[6] below illustrates the money actually paid to Plaintiff (contract rate), the salary that would have been paid to her absent her misrepresentations (projected salary), and the benefit she received because of her fraud (difference). In sum, Novartis is entitled to recover $184,317 it paid to Plaintiff in reliance on her false statements.

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[6] The numbers in this table were generated from Plaintiff's base salary which was pulled from Plaintiff's Total Compensation Package. (Dkt. No. 253 Ex. B ¶ 6).

	Increase in Salary	Compensation Paid (Contract Rate)	Projected Salary	Difference
2010		$ 243,000.00	$ 198,000.00	$ 45,000.00
2011	$ 3,645.00 (1.5%)	$ 246,645.00	$ 200,970.00	$ 45,675.00
2012	$ 4,933.00 (2.0%)	$ 251,578.00	$ 204,989.48	$ 46,588.52
2013	$ 2,516.00 (1.0%)	$ 254,094.00	$ 207,039.56	$ 47,054.44
Total	**$ 11,094.00**	**$ 995,317.00**	**$ 810,999.04**	**$ 184,317.96**

Plaintiff must also repay the annual increase in cash compensation received from 2010 to 2013, which equals $11,094. (*Id.* ¶ 16). This is necessary given that Novartis "would not have hired Plaintiff if it knew about the numerous, significant misrepresen-

tations in Plaintiff's application for employment and resume." (Dkt. No. 209-4 ¶ 16). Novartis is therefore entitled to repayment of $45,000 (signing bonus plus competitive offer), $184,317 (the benefit Plaintiff received as a result of her fraud), and $11,094 (total increase in salary), totaling $240,411 in cash compensation. Given the lack of clarity as to what Novartis considered in fashioning the cash compensation it seeks, $240,411 best approximates what Novartis would have received absent Plaintiff's fraud. This amount does not entitle Plaintiff to compensation at the contract rate and importantly, returns the benefit she received while accounting for the reasonable value of services she performed.

Next, this Court concludes that Novartis is entitled to $418,377 for retirement and other company benefits paid. Upon review of Plaintiff's total compensation package for 2010 through 2013, this Court totaled the amount in benefits Novartis contributed on Plaintiff's behalf and adjusted for the amounts Plaintiff contributed. Accordingly, Novartis is entitled to full reimbursement of $212,347 in equity, $4,000 in additional company benefits ($1,000 paid per year), and $40,156 for Plaintiff's Defined Contributed Plan (an investment funded 100% by Novartis). (Dkt. No. 253 Ex. B ¶ 6, citing Ex. 3). Plaintiff did not contribute in any form to these savings. By comparison, Plaintiff did contribute to her insurance and retirement benefits. After adjusting for Novartis's contribution to Plaintiff's insurance and retirement benefits, Plaintiff shall also pay $161,873 as detailed in the immediately succeeding table.

	Contributed by Novartis	Contributed by Plaintiff	Difference
Insurance Benefits	$ 15,724.24	$ 3,172.85	
Retirement Benefits	$ 25,362.10	$ 22,295.10	
2010 Total	$ 41,086.34	$ 25,467.95	$ 15,618.39
Insurance Benefits	$ 21,384.75	$ 3,832.54	
Retirement Benefits	$ 52,983.35	$ 23,597.23	
2011 Total	$ 74,368.10	$ 27,429.77	$ 46,938.33
Insurance Benefits	$ 21,844.00	$ 4,124.00	
Retirement Benefits	$ 55,785.00	$ 24,292.00	
2012 Total	$ 77,629.00	$ 28,416.00	$ 49,213.00
Insurance Benefits	$ 23,444.00	$ 4,491.00	
Retirement Benefits	$ 58,380.00	$ 27,229.00	
2013 Total	$ 81,824.00	$ 31,720.00	$ 50,104.00
TOTAL	**$ 274,907.44**	**$ 113,033.72**	**$ 161,873.72**

For damages suffered by hiring and paying Plaintiff more than her experience warranted, Novartis shall be reimbursed $240,411 in cash compensation plus $418,377 in company benefits amounting to $647,694.

ii. Count III–Breach of Contract (Relocation Agreement)

Novartis hired Plaintiff with an understanding that she would relocate closer to its Florham Park office and offered her money to do so. (Dkt. No. 209-4 ¶ 18). Under the Relocation Agreement, Plaintiff accepted $26,818.71, told Novartis she intended to relocate, and failed to do so. (*Id.* ¶ 19, 250 Ex. B ¶ 11 citing Ex. 1 and 4). Due to Plaintiff's breach, Defendant lost the relocation funds it paid to her and did not receive the anticipated benefit of having Plaintiff closer to its desired office. Thus Novartis shall be refunded $26,818.71 as to Count Three.

iii. Count IV–Breach of Contract (Annual Incentive Plan or "AIP")

Subject to Plaintiff's "adherence to and compliance with" Novartis's rules and policies, bonuses were available and paid to the Plaintiff under the AIP. (Dkt. No. 209-4 ¶¶ 6-7). This Court previously found that Plaintiff was in violation of these policies from the very start of her employment and breached the AIP by accepting outside employment positions with Biomedical/Auxilium and Astellas. (Dkt. No. 251 at 3-4, 20). Under the AIP, "any breach . . . requires return of the funds paid, permits the company to sue for 'recovery of such proceeds on the basis of breach of contract' and exposes the breaching party to pay Novartis's 'reasonable attorneys' fees and costs in recovering such amounts.'" (Dkt. No. 209-4 Ex. 6). Notwithstanding the requested fees and costs addressed in Section A of this Opinion, Novartis paid a total of $210,403 ($57,605 in 2011; $70,343 in 2012; and $82,455 in 2013) in bonuses to Plaintiff under the AIP. (Dkt. No. 253 Ex. B

¶ 12). Plaintiff's bonuses were conditioned upon her compliance with Novartis's internal rules and policies, including the Conflicts Policy, and she was in violation of these policies at the outset of her employment. Novartis is therefore entitled to full repayment of the $210,403 in bonuses paid to Plaintiff during her tenure.

iv. Count V–Breach of Duty of Good Faith and Fair Dealing

Novartis requests $1,670,23.80 ($1,140,178.85 in cash compensation plus $530,144.95 in retirement and other company benefits) paid to Plaintiff as a result of her breach of the duty of good faith and fair dealing. (*Id.* ¶¶ 10, 13). In granting summary judgment on Count Five of Defendant's Counterclaims, this Court held that Plaintiff violated her duty to act in good faith and to deal fairly with Novartis by "actively seeking out additional competing employment during her tenure . . . in violation of her contractual obligations" and "fail[ing] to provide her employer with her full attention, efforts and time." (Dkt. No. 251 at 22). This conduct comports with the conduct that resulted in Plaintiff's breach of the Relocation Agreement (Count Three) and AIP (Count Four). As this Court has already awarded damages resulting from Plaintiff's breach of both agreements, constructing a damages award for her breach of the implied covenant of good faith and fair dealing would impermissibly result in a duplicative damages award. *See Kurnik v. Cooper Health Sys.,* No. A-4686-06T1, 2008 N.J. Super. Unpub. LEXIS 2267, at *63-64 (Super. Ct. App. Div. July 24, 2008) (finding that the lower court erred by allowing the jury to award separate damages for breach of contract and breach of the implied covenant of good faith and fair dealing

"where the two breaches arose from . . . identical conduct"); *see also Wade v. Kessler Inst.*, 778 A.2d 580 (N.J. 2001), *aff'd as modified*, 798 A.2d 1251 (N.J. 2002). Thus, an assessment of separate damages as to Count Five is not proper. The total damages already awarded adequately compensate Novartis for Plaintiff's breach of duty of good faith and fair dealing.

v. Count VIII–Breach of Duty of Loyalty and Conflict of Interest Policy

As a result of Plaintiff's breach of her duty of loyalty, Defendant seeks the profits she earned from Biomedical/Auxilium and Astellas while she was employed at Novartis. An employee's breach of the duty of loyalty can result in a variety of relief on behalf of the wronged employer, including "profits the employee earned in another enterprise while still employed" and "disgorgement of the disloyal employee's past compensation." *See Cameco, Inc. v. Gedicke*, 157 N.J. 504, 518 (1999); *Kaye v. Rosefielde*, 223 N.J. 218, 222 (2015). The Restatement (Second) of Agency § 403 provides: "[i]f an agent receives anything as a result of h[er] violation of a duty of loyalty to the principal, [s]he is subject to a liability to deliver it, its value, or its proceeds, to the principal." *See also Cameco*, 157 N.J. at 518 (noting that the employer may recover the value of the "secret profit" earned by a disloyal employee).

This Court previously recognized that Novartis was harmed by Plaintiff's breach of her duty of loyalty by losing the money it paid her to work full time. (Dkt. No. 251 at 23). Without Defendant's knowledge, Plaintiff actively solicited and accepted two consulting positions with Novartis's competitors and earned secret profits amounting to $497,907.56 ($41,783 from Biomedical/

Auxilium, and a total of $456,124.56 from Astellas). (Dkt. No. 253 Ex. B ¶ 14). With regard to Plaintiff's breach of her duty of loyalty, Novartis seeks the wrongful profits she earned for the time she did not commit to the company. Plaintiff is therefore disgorged of $497,907.56 in profits she obtained from Biomedical/Auxilium and Astellas, which shall be payable to Novartis.

C. The Adesanyas' Motion to Stay

On September 13, 2016, Plaintiff and Mr. Adesanya filed a motion to stay this matter pending appeal of this Court's August 15 Order to the Third Circuit. (Dkt. No. 257). On December 21, 2016, the Third Circuit denied the Adesanyas' appeal as this Court had "not yet calculated the amount of damages" nor "the amount of monetary sanctions," thus the Order was not yet "final and appealable." (Dkt. Nos. 255, 264). Since no appeal is pending, the motion to stay this matter is moot and will be dismissed accordingly.

III. Conclusion

For the reasons stated herein, and outlined in detail below, this Court GRANTS Novartis's fee application with modifications in connection with the dismissal of Plaintiff's claims; GRANTS Novartis's motion for sanctions against Mr. Adesanya in the amount of $23,714.00; GRANTS damages in the amount of $1,393,918.23, and DISMISSES AS MOOT the Adesanyas' motion to stay. An Order consistent with this Opinion follows.

Total Hours Billed = 7,702.4

Deductions	
September 2013 to January 2014 Invoice	420.7
February to May 2014 Invoice	456.3
June to September 2014 Invoice	502.4
October 2014 to January 2015 Invoice	1,014.1
February to March 2015 Invoice	623.8
April to May 2015 Invoice	729
Vague Billing	223.4
Overstaffing at Court Conferences	99.1
Overstaffing at Depositions	34.3 Hrs.
	4,103.1

Recoverable Hours = 3,599.4

(Total Hours Billed Less Deductions)

Total Fees and Costs Sought	$ 1,927,801.09
Total Fees and Costs Sought From Plaintiff	$ 1,789,566.30
Costs Sought From Mr. Adesanya	$ 138,234.79

Deductions	Plaintiff	Mr. Adesanya
Sep-2013 to Jan 2014 Invoice	$ 92,559.20	–
February to May 2014	$ 99,448.50	–
June to September 2014	$ 108,071.16	–
October 2014 to January 2015	$ 296,846.00	–
February to March 2015	$ 185,455.75	–
April to May 2015	$ 246,096.00	$ 46,091.79
June to August 2015		$ 28,889.00
Vague Billing	$ 26,909.00	$ 26,909.00
Overstaffing		
Court Conferences	$ 17,036.75	$ 4,201.75
Depositions	$ 4,354.50	$ 3,792.00
September to October 2015	$ 35,599.75	$ 4,637.25
Unbilled Fees and Costs	$ 220,149.47	
	$ 1,332,526.08	**$ 114,520.79**

Total Fees and Costs Owed = $ 480,754.22

Total Fees and Costs To
Be Paid by Plaintiff = $ 457,040.22

Total Fees and Costs To
Be Paid by Mr. Adesanya = $ 23,714.00

Damages Awarded

Count I	$ 658,788.96
Count III	$ 26,818.71
Count IV	$ 210,403.00
Count V	$ 0.00
Count VII	$ 497,907.56
Total	**$ 1,393,918.23**

/s/ Susan D. Wigenton
United States District Judge

ORDER OF THE THIRD CIRCUIT DENYING SUR PETITION FOR REHEARING EN BANC (NOVEMBER 14, 2018)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

AFOLUSO ADESANYA,

v.

NOVARTIS PHARMACEUTICALS CORP,

Afoluso Adesanya, *Adenekan Adesanya,
Appellants.

No. 17-2368

(D.C. Civil Action No. 2-13-cv-05564)

Before: SMITH, Chief Judge,
MCKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE,
SHWARTZ, KRAUSE, RESTREPO, BIBAS
and ROTH*, Circuit Judges.

The petition for rehearing filed by APPELLANTS in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of

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* (Pursuant to Rule 12(a), Fed. R. App. P)

* Vote of the Honorable Jane R. Roth limited to panel rehearing only.

the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ Jane R. Roth
Circuit Judge

Dated: November 14, 2018

Additional material from this filing is available in the Clerk's Office.