

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

KATHLEEN M. MILLER
JUDGE

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Re: *US WorldMeds Partners, LLC v. Supernus Pharms., Inc.*
C.A. No.: N25C-07-121 KMM CCLD

Dear Counsel:

This letter addresses post-summary judgment decision issues.

I. *Background*¹

US WorldMeds Partners, LLC (“US WorldMeds”) sold assets to Supernus Pharmaceuticals, Inc. (“Supernus”), pursuant to the terms of a Sale and Purchase Agreement (the “Agreement”).² The purchase price included an upfront cash payment and the possibility of additional compensation through milestone payments

¹ The full factual background is set forth in the Court’s June 5, 2026 Memorandum Opinion. *US WorldMeds P’ners, LLC v. Supernus Pharm., Inc.*, 2026 WL 2098302 (Del. Super. June 5, 2026).

² Compl., Ex. A (the Agreement). D.I. 1.

if certain products reached the specified milestone metrics.³ When a milestone was satisfied in April 2025, Supernus owed US WorldMeds a \$30 million milestone payment.⁴ Supernus, however, did not make payment in full, asserting a right to withhold a portion of the payment based on its purported right of set-off.

US WorldMeds filed an action on May 21, 2025, in the Court of Chancery seeking to recover the full payment. After Supernus filed a motion to dismiss for lack of subject matter jurisdiction, on July 15 the parties stipulated to a dismissal without prejudice. This action was filed two weeks later.

After Supernus filed an answer, the parties cross-moved for summary judgment.

Resolution of the motions required the Court to construe the parties' contract. In its June 5, 2026 Memorandum Opinion (the "Opinion") the Court ruled that Supernus had no right to set-off against the milestone payment and it breached the Agreement. The Court noted that the complaint sought to recover \$27,705,241.80. The undisputed facts showed that after this action was filed Supernus made an additional payment of \$1,862,018.22 towards the milestone payment on August 8,

³ Agreement, § 4.

⁴ Agreement, §§ 4.6(iv), 4.6.2(i); Answer to Complaint, ¶ 30. D.I. 11.

2025 (the “August 8 Payment”),⁵ thereby reducing the principal amount to \$25,843,223.58.⁶

The Court also found that US WorldMeds was entitled to pre- and post-judgment interest at the contract rate.⁷ Under the prevailing party fee-shifting provision of the Agreement, Supernus was responsible for US WorldMeds’ fees and expenses.⁸ The Court directed US WorldMeds to file its fee application within 10 days and the parties to confer on a form of proposed final judgment.⁹

II. *US WorldMeds’ Fee Motion*

US WorldMeds filed its Motion for Attorneys’ Fees, Costs and Expenses (the “Fee Motion”) on June 22, 2026.¹⁰ The Fee Motion seeks an award of \$1,848,105.45 in fees and \$49,913.64 in costs and expenses billed by Gibson, Dunn & Crutcher LLP (“Gibson Dunn”)—US WorldMeds’ lead counsel—and \$118,737 in fees and \$13,610.68 in expenses billed by Delaware counsel—McCarter & English, LLP (“McCarter”). Gibson Dunn’s fees are supported by the Affidavit of Jonathan D. Fortney,¹¹ which attaches Gibson Dunn’s time records for the period covered by the

⁵ *US WorldMeds P’ners*, 2026 WL 2098302, at n.45.

⁶ *Id.* at *4.

⁷ *Id.* at *12-13.

⁸ *Id.* at *12.

⁹ *Id.* at *13.

¹⁰ Plaintiff’s Motion for an Award of Attorneys’ Fees, Costs, and Expenses. D.I. 57.

¹¹ July 24, 2026, Affidavit of Jonathan D. Fortney, Esq. in Support of Plaintiff’s Motion (“Initial Fortney Aff.”). D.I. 69.

Fee Motion. McCarter's fees are supported by the Affidavit of Sarah Delia, to which McCarter's billing statements are attached.¹²

Gibson Dunn billed 1,267.1 hours and McCarter billed 180.5 hours.¹³ The Fee Motion covered the period April 30, 2025 through April 29, 2026 for Gibson Dunn and May 17, 2025 through June 4, 2026 for McCarter.¹⁴ The Fee Motion expressly did not include fees and expenses relating to the preparation and filing of the motion, although the motion reserved the right to seek such fees and expenses.

US WorldMeds' proposed final judgment allocates the August 8 Payment so that \$864,175.83 of the \$1,862,018.22 paid is applied to pre-judgment interest and the remainder is applied to reduce the principal balance to \$26,707,399.41.¹⁵

Supernus challenges the reasonableness of the fees and the allocation the August 8 Payment.¹⁶ Supernus' opposition, supported by the Affidavit of John Stoviak of Saul Ewing LLP ("Saul Ewing"),¹⁷ counters that the large disparity in the number of hours each side spent on this matter—1,447.6 for US WorldMeds versus

¹² June 22, 2026, Affidavit of Sarah Delia, Esq. in Support of Plaintiff's Motion for an Award of Attorneys' Fees, Costs, and Expenses ("Initial Delia Aff."). D.I. 57.

¹³ Initial Fortney Aff., ¶ 6; Initial Delia Aff., ¶ 5.

¹⁴ Initial Fortney Aff., Ex. A; Initial Delia Aff., Ex. 1.

¹⁵ Fee Motion, ¶ 4.

¹⁶ Defendant Supernus Pharmaceuticals, Inc.'s Opposition to Plaintiff's Motion for an Award of Attorneys' Fees, Costs and Expenses ("Supernus Opposition"). D.I. 64.

¹⁷ Supernus Opposition ¶ 22; July 22, 2026, Affidavit of John F. Stoviak in Support of Opposition to Motion for Award of Attorneys' Fees, Costs, and Expenses ("Stoviak Aff."). D.I. 67.

609.9 for Supernus—shows that US WorldMeds’ fees are unreasonable.¹⁸ Supernus requests a reduction in fees of approximately \$750,000..¹⁹

In its reply brief, US WorldMeds seeks to increase its fee award by \$233,879.84, comprised of \$219,229.20 in fees and \$542.14 in expenses for Gibson Dunn for the period of May 4, 2026 through July 23, 2026 (a few days before the reply brief was filed) and \$13,948 in fees and \$160.50 in expenses for McCarter for the period of June 5 through July 24, 2026 (the “Supplemental Fee Application”).²⁰

III. *Legal Standard*

“Where the parties have determined an allocation of fees by private agreement, ‘deference to [the] agreement is warranted.’”²¹ “In the absence of ‘any 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

¹⁸ Stoviak Aff., ¶¶ 6-8.

¹⁹ Supernus asks for two specific fee reductions: \$449,812.35 representing time billed prior to July 15 and \$298,714.50 for alleged overbilling my Mr. Mixon, for a total of \$748,526.85. Supernus Opposition, at p. 14 ¶¶ (c)-(d).

²⁰ July 28, 2026, Supplemental Affidavit of Jonathan D. Fortney, ¶¶ 2, 6; Supplemental Affidavit of Sarah E. Delia, ¶ 5. D.I. 70.

²¹ *AFH Holding & Advisory, LLC v. Emmaus Life Sciences, Inc.*, 2014 WL 1760935, at *2 (Del. Super. Apr. 16, 2014) (quoting *West Willow–Bay Court, LLC v. Robino–Bay Court Plaza, LLC*, 2009 WL 458779, at *8 (Del. Ch. Feb. 23, 2009)); *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 280 (Del. 2022) (“In contract litigation, where the contract contains a fee-shifting provision, we will enforce that provision.”) (citation omitted).

be applied in an all-or-nothing manner.”²² The court must interpret the fee shifting provision “to execute the parties’ intent.”²³

Delaware courts have broad discretion in determining the amount of fees and expenses to award.²⁴ The court is guided by the factors enumerated in Delaware Lawyers’ Rules of Professional Conduct, Rule 1.5.²⁵

The party seeking an award of fees and expenses bears the burden of establishing the reasonableness of the amount sought.²⁶ The court will “‘generally exclude excessive, redundant, duplicative, or otherwise unnecessary hours[.]’”²⁷ “Determining reasonableness does not require [the] Court [to] examine individually

²² *AFH Holding & Advisory, LLC v. Emmaus Life Sciences, Inc.*, 2014 WL 17600935, at *2 (Del. Super. Apr. 16, 2014) (quoting *West Willow–Bay Court, LLC*, 2009 WL 458779, at *8).

²³ *Arvinder (“Sonny”) Kakar v. Octo Consulting Gp., LLC*, 2026 WL 2497322, at *4 (Del. Super. Aug. 25, 2026) (citing *Duncan v. STTCPL, LLC*, 2020 WL 829374, at *15 (Del. Super. Feb. 19, 2020); *Bako Pathology LP*, 288 A.3d at 280 (applying contract interpretation principles to determine plain and ordinary meaning of fee shifting provision)).

²⁴ *Gener8, LLC v. Castanon*, 2025 WL 88889, at *2 (Del. Ch. Jan. 14, 2025); *Arvinder (“Sonny”) Kakar*, 2026 WL 2497322, at *2.

²⁵ *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242, 246 (Del. 2007). The factors in Rule 1.5 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; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

The court need not address each factor individually. *Miller v. Silverside*, 2016 WL 4502012, at *8 (Del. Super. Aug. 26, 2016).

²⁶ *Arvinder (“Sonny”) Kakar*, 2026 WL 2497322, at *2.

²⁷ *Id.* (quoting *All Pro Maids, Inc. v. Layton*, 2007 WL 3029869, at *5 (Del. Ch. Dec. 20, 2004)).

each time entry and disbursement” or “assess independently whether counsel appropriately pursued and charged for a particular motion, line of argument, area of discovery, or other litigation tactic.”²⁸ ““Just because the court will not review each line item individually[, however,] ... does not mean that the party seeking [attorneys’ fees] can play fast and loose [C]ounsel must make a good faith determination regarding the fees and expenses to which its clients are entitled.””²⁹

A court may find ““[a] party’s expenses are reasonable if they were actually paid or incurred, were thought prudent and appropriate in the good faith professional judgment of competent counsel, and were charged at rates, or on a basis, charged to others for the same or comparable services under comparable circumstances.””³⁰

IV. Discussion

A. Request for Attorneys’ Fees and Expenses

1. Fees incurred prior to the Superior Court action

Supernus argues that the fees and expenses incurred prior to litigation in this court should be excluded, including the fees and expenses for the Court of Chancery action. US WorldMeds responds that it is entitled to recover fees for its “investigation” and fees and expenses relating to the filing in the Court of Chancery.

²⁸ *Gener8*, 2025 WL 88889, at *2.

²⁹ *Sorrento Therapeutics, Inc. v. Mack*, 2026 WL 906110, at *2 (Del. Ch. Apr. 2, 2026) (quoting *Weil v. VEREIT Operating P’ship, L.P.*, 2018 WL 834428, at *12 (Del. Ch. Feb. 13, 2018)).

³⁰ *Gener8*, 2025 WL 88889, at *2 (quoting *Weil*, 2018 WL 834428, at *12).

The starting point is the parties' agreement. Section 11.1 of the Agreement contains the fee-shifting provision, which states:

In the event that the Seller shall pursue legal action against the Purchaser with respect to improper use of this right of set-off and the Seller ultimately prevails against the Purchaser with respect *to such legal action*, then the Purchaser agrees to reimburse the Seller for the total cost of any legal fees, costs and expenses incurred by the Seller in connection with *such legal action*.³¹

The scope of recoverable fees is determined by the scope of the prevailing party provision. Fees that fall outside the provision are not recoverable.³²

Some of the time included in Gibson Dunn's time records falls outside the prevailing party provision. Its fees for communications regarding the dispute prior to filing a legal action were not incurred in connection with the legal action in which US WorldMeds prevailed, and therefore, are not recoverable. These fees total \$80,732.29.³³

Similarly, Gibson Dunn's fees for preparation and communications with investors were not incurred in connection with the litigation. The Court will reduce the fees by \$7,326 for these tasks.

³¹ Agreement, § 11.1 (emphasis added).

³² See *All Pro Maids, Inc.*, 2004 WL 3029869 at *3, 6 (where agreement contained fee shifting "for all court costs and attorney's fees *necessary to enforce*" the agreement, court reduced award for fees "not reasonably necessary." (emphasis added)).

³³ These fees cover the period from April 30, 2025 to May 15, 2025.

Between May 16 and July 15, Gibson Dunn's fees include time for drafting the complaint, redactions and confidentiality issues, working on a litigation hold, and working on the motion for summary judgment. Supernus argues that these fees are not recoverable because US WorldMeds did not prevail in the Court of Chancery action. While that is true, US WorldMeds has shown (*via* a redline comparison) that the changes between the Court of Chancery complaint and the Superior Court complaint were *de minimis*. Thus, the time spent on these tasks was transferable to the Superior Court action and are recoverable. There was, however, some time spent on the unsuccessful Court of Chancery case that was specific to that action and not recoverable. As a reasonable estimate of fees incurred solely for the Court of Chancery action, the Court will reduce the fees by \$8,000 for this time.

McCarter started working on the matter in May 2025. It billed time related for drafting and filing of the Court of Chancery complaint and related documents, and redactions for the public version of the complaint. As with Gibson Dunn's fees, the Court finds that most of the time spent on the Court of Chancery case streamlined the filing process in the Superior Court. Again, there was some time specific to that action in which US WorldMeds was not successful. As a reasonable estimate of fees incurred solely for the Court of Chancery action, the Court will reduce McCarter's fees by \$3,500.

2. Reasonableness of amount of time billed

Supernus' main challenge to the Fee Motion is the amount of time US WorldMeds' counsel billed on the matter. Supernus argues that fees of over \$2 million are unreasonable because this case was resolved on a motion for summary judgment, with no discovery. Comparing time spent by defense counsel, Supernus takes issue with US WorldMeds' lead attorney, Mark Mixon, who billed 478.7 hours. This is approximately the same amount of time as the top three billing attorneys on the defense team, and overall, US WorldMeds billed more than twice as much time as Supernus.

Supernus also questions a Gibson Dunn associate billing 99.4 hours researching and drafting a brief "in less than two weeks over the [year-end] holidays," which "raises its own red flags."³⁴ Finally, Supernus takes issue with Mr. Mixon, who is "Of Counsel," billing so many hours when less expensive associates were available to perform work, relying on *Concord Steel, Inc. v. Wilmington Steel Processing Co.*³⁵

"[T]he fact that the [plaintiff's] litigation team was larger and billed more time than [defense] counsel does not necessarily mean that the [plaintiff's] approach was unreasonable."³⁶ "Second-guessing an attorney's judgment as to whether work was

³⁴ Supernus Opposition, at pp. 5, 12-13.

³⁵ 2010 WL 571934 (Del. Ch. Feb. 5, 2010).

³⁶ *Gener8*, 2025 WL 88889, at *4.

necessary or appropriate ‘is hazardous and should whenever possible be avoided.’”³⁷

And, the Court will not impute some bad faith motive or improper billing merely because an attorney worked long hours in the days leading up to holidays or year-end.

Supernus focuses on the December 20 to January 15 time-period, when Gibson Dunn was working on its final brief. This brief was a combined reply on US WorldMeds’ motion and answering brief in response to Supernus’ motion for summary judgment. Supernus’ arguments were based, in part, on litigations pending in Kentucky and the District of Delaware. As a result, US WorldMeds also submitted a 15-page affidavit detailing the claims in those cases, which accounts, in part, for the number of hours spent on the combined brief.

In *Concord Steel*, the court reduced the three senior partners’ fees by 20%, finding use of senior partners (who billed 98% of the hours on the matter) to be excessive when an associate was available to perform the work at a lower rate.³⁸ In contrast here, the partners billed 12%, Mr. Mixon billed 38%, and associates billed 48% of the hours. The Court finds that Gibson Dunn did not over staff the matter with senior attorneys.

³⁷ *Id.* at *6; *Sorrento Therapeutics, Inc. v. Mack*, 2026 WL 906110, at *2 (Del. Ch. Apr. 2, 2026) (“Delaware courts, however, generally eschew second-guessing an attorney’s judgment as to whether work was necessary or appropriate.”) (quoting *Arbitrium (Cayman Is.) Handels AG v. Johnston*, 1998 WL 155550, at *4 (Del. Ch. Mar. 30, 1998), *aff’d*, 720 A.2d 542 (Del. 1998)).

³⁸ *Concord Steel, Inc.*, 2010 WL 571934, at *4.

The Court also finds that the time billed by McCarter was reasonable.

Supernus' objection based on this ground is overruled.

3. Hourly Rate

Supernus challenges the rate charged for Mr. Mixon, a tenth-year attorney. His rate in 2025 was \$1,471.50 and it increased to \$1,719 per hour in 2026. Supernus compares these rates to its most senior attorney (with 50 years' experience) on the matter, whose rate was \$1,160.25 in 2025 and \$1,258, in 2026.³⁹

The rates charged by Gibson Dunn are its customary rates for its attorneys and the rate increase was the result of an "ordinary course annual rate" increase.⁴⁰ These are the rates applied by Gibson Dunn and paid by US WorldMeds. The fact that a more junior attorney for one party charges more per hour than a senior attorney for the other party does not necessarily mean that the junior attorney's rate is excessive or unreasonable. The rates charged by Gibson Dunn are its customary rates and are comparable to the rates deemed appropriate by Delaware courts.⁴¹ Supernus' objection based on this ground is overruled.

³⁹ Supernus does not challenge McCarter's rates and the Court finds that its rates are comparable with rates for Wilmington firms.

⁴⁰ Initial Fortney Aff., ¶ 7.

⁴¹ See *Roma Landmark Theaters LLC v. Cohen Exhibition Co. LLC*, 2021 WL 5174088, at *5 (Del. Ch. Nov. 8, 2021) (finding that partner's hourly rate of \$1,645 was reasonable); see also *In re TransPerfect Global, Inc.*, 2021 WL 1711797, at *23-24 (Del. Ch. Apr. 30, 2021) *aff'd* 278 A.3d 630 (Del. 2022) (finding partner rates in 2019-2020 in the range of \$1,225 to \$1,775 and \$1,200 for "counsel" to be reasonable). The Court is aware that law firms often raise their rates on an annual basis.

4. Reasonableness of Expenses

Gibson Dunn submitted expenses of \$49,913.64. Its sole substantiation of these expenses is that they include “legal research, specialized research services, and document retrieval.”⁴² With no breakdown or further explanation of these expenses, the Court is unable to conclude that they are reasonable.⁴³ Therefore, these expenses are excluded on that basis.

McCarter lists the categories of expenses and the amount for each. The Court finds that these expenses are reasonable.

* * *

“If a party cannot be certain that it will be able to shift expenses at the time the expenses are incurred, the prospect that the party will bear its own expenses provides ‘sufficient incentive to monitor its counsel’s work and ensure that counsel [does] not engage in excessive or unnecessary efforts.’”⁴⁴ US WorldMeds had “an incentive to monitor [its] counsel’s efforts, and the bills [it] has paid provide an initial ‘rough cut’ of a commercially reasonable fee.”⁴⁵ The Court carefully

⁴² Initial Fortney Aff., ¶ 8.

⁴³ See *Gener8*, 2025 WL 88889, at *6 n.80 (citing *Lynch v. Gonzalez*, 2020 WL 5587716, at *9 (Del. Ch. Sept. 18, 2020) (reducing a fee award where the court could not conclude that “expenses [we]re reasonable on their face” because the defendants “who [bore] the burden of justifying the[] expense[s],” failed to substantiate them).

⁴⁴ *Daneberg v. Fittracks Inc.*, 58 A.3d 991, 997 (Del. Ch. 2012) (quoting *Aveta Inc. v. Bengoa*, 2010 WL 3221823, at *6 (Del. Ch. Aug. 13, 2010)).

⁴⁵ *Id.* at 998 (citing *State of Wisconsin Inv. Bd. v. Bartlett*, 2002 WL 568417, at *6 (Del. Ch. Apr. 9, 2002), *aff’d*, 808 A.2d 1205 (Del. 2002)).

reviewed Gibson Dunn's and McCarter's time entries and except for the reductions identified above, finds the fees and expenses reasonable and appropriate.

B. *Supplemental Fee Application*

The Fee Motion covers a period ending in April 2026, and therefore does not include time for work on the Fee Motion and proposed final order. Although fees billed up to the filing of the Fee Motion could have been included (as counsel did for the reply brief), US WorldMeds chose not to do so.⁴⁶ Thus, Supernus did not have an opportunity to assess the time records for work on the Fee Motion and proposed final order.⁴⁷

The Court conducted a detailed review of the time records covered by the Supplemental Fee Application. Gibson Dunn's time records show 125.5 hours billed from May 5 through July 23, 2026. The time records reflect that 13.8 hours were billed up to June 8, relating to matters other than the Fee Motion.⁴⁸ Subtracting that time leaves 111.70 hours on the Fee Motion, reply brief/supplemental fee application, and the proposed final order. Of that time, Mr. Mixon billed 67.1 hours and Mr. Fortney, a partner, billed 25.7 hours, for a total of 92.8 hours. In contrast, the associates billed just 17.3 hours. Thus, the senior attorneys billed 83% of the

⁴⁶ Fees for the reply brief were included in the Supplemental Fee Application.

⁴⁷ The Court does not condone filing an application for fees without providing the opposing party an opportunity to object. In the Court's view, a party that saves the entirety of its fee application for its reply brief runs the risk of having the entire application denied. The Court chose not to do so here.

⁴⁸ The fees in this period total \$27,022.40.

time. It appears from the time records that Messrs. Mixon and Fortney drafted the fee application, compiled the supporting documents, and conducted legal research. Much of the work could have been conducted by more junior attorneys.

US WorldMeds filed a 12-page opening brief and a 10-page reply brief. The Court had already determined US WorldMeds' entitlement to fees, so the focus of the briefs was reasonableness. Interest calculations presumably were substantially completed as Mr. Mixon sent Supernus a letter each month with an updated interest calculation and attorneys' fees US WorldMeds intended to assert if successful. While additional documents and affidavits had to be compiled and drafted, the Court finds 111.70 hours to be excessive.

The Court will apply a one-third reduction to Gibson Dunn's fees of \$192,206.80,⁴⁹ as a reasonable reduction for the overstaffing and excessive hours, resulting in an award of \$155,160.26 for the work covered by the Supplemental Fee Application.⁵⁰

The Court finds McCarter's fees and expenses in the Supplemental Fee Application period to be reasonable.

Accounting for the deductions detailed above, US WorldMeds award of fees and expenses is calculated as follows:

⁴⁹ \$219,229.20 - \$27,022.40.

⁵⁰ Gibson Dunn also seeks expenses of \$542.14, but again fails to adequately substantiate the expenses and therefore, they are denied on that basis.

Gibson Dunn Fee Motion Request	\$1,898,019.09
Fees prior to litigation	(\$80,732.29)
Fees not covered by prevailing party provision	(\$7,326)
Fees related to Court of Chancery action	(\$8,000)
Unsubstantiated expenses	(\$49,913.64)
Total	\$1,752,047.16
Gibson Dunn Supplemental Fee Application	\$219,771.34
Unsubstantiated expenses	(\$542.14)
Reasonableness reduction	(\$64,068.94)
Total	\$155,160.26
Grand Total	\$1,907,207.42

McCarter Fee Motion Request	\$132,347.68
Fees related to Court of Chancery action	(\$3,500)
Total	\$128,847.68
McCarter Supplemental Fee Application	\$14,108.50
Grand Total	\$146,456.18
Total Award	\$2,053,663.60

C. Allocation of August 8 Payment

In April 2025, Supernus owed a milestone payment of \$30 million. It paid only \$2,294,758.20.⁵¹ In the complaint, US WorldMeds requested judgment in the amount of \$27,705,241.80.⁵² Supernus made another payment on August 8, 2025, after this action was filed, in the amount of \$1,862,018.22.⁵³ US WorldMeds

⁵¹ *US WorldMeds P'ners*, 2026 WL 2098302, at 4.

⁵² Compl. at 16, Prayer for Relief ¶ (b).

⁵³ Plaintiff's Reply in Further Support of Plaintiff's Motion for an Award of Attorneys' Fees, Costs, and Expenses ("RB."), ¶ 16. D.I. 71.

acknowledged this payment in its opening brief in support of its motion for summary judgment.⁵⁴ In its combined opening and answering brief, Supernus noted that US WorldMeds' breach of contract was based on the withholding of \$25,843,233.60, which applied the August 8 Payment to the principal balance.⁵⁵ US WorldMeds did not address this contention in its reply brief.

In the Opinion, the Court stated that "US WorldMeds requests judgment in its favor in the amount of \$25,843,223.58, plus an award of attorneys' fees and expenses under the prevailing party provision, and interest at the contractual rate."⁵⁶

In US WorldMeds' proposed form of Order and Final Judgment, it allocated a portion of the August 8 Payment to interest (which it calculates to be \$864,175.83), thereby reducing the principal amount to \$26,707,399.41.⁵⁷

Supernus argues that US WorldMeds cannot wait to raise its alternative damages calculation until after the Court's ruling on summary judgment. It further argues that if US WorldMeds believed the Court was mistaken about the principal amount, its remedy was to seek reconsideration under Rule 59 or 60. Having failed to do so, Supernus argues that US WorldMeds cannot now challenge the Court's finding.

⁵⁴ Plaintiff's Opening Brief in Support of Its Motion for Summary Judgment, at p. 11. D.I. 24.

⁵⁵ Defendant's Answering Brief, at p. 24. D.I. 39.

⁵⁶ *US WorldMeds P'ners*, 2026 WL 2098302 at *4.

⁵⁷ RB, ¶ 16.

US WorldMeds responds that it did not request a specific dollar amount in its motion for summary judgment and therefore, the Court was ruling on Supernus' liability, but not the amount of that liability.

In the Opinion, the Court acknowledged the August 8 Payment, but was not intending to decide how interest was to be applied. The Court did not rule on allocation of the August 8 Payment or pre-judgment interest. Supernus does not argue that US WorldMeds' allocation calculation was incorrect.⁵⁸ Supernus' objection on this ground is overruled.

D. *Form of Final Order*

US WorldMeds included several paragraphs in its proposed order that "Supernus shall pay US WorldMeds" the stated amount and that "Supernus shall pay or cause to be paid to US WorldMeds, within fourteen (14) calendar days," the stated amount. But there is no basis for such provisions. When a party obtains a money judgment, as US WorldMeds has done here, the court cannot compel payment, but rather, the judgment-creditor's enforcement mechanism is through a writ of execution. While the court may compel payment in certain types of order, obtaining

⁵⁸ Supernus could not have been surprised by US WorldMeds' allocation. Each month during this litigation, US WorldMeds sent Supernus a letter with updated interest calculations.

a money judgment does not fall within this category.⁵⁹ This has long been the practice in Delaware, as made clear in *Woolley*:

If the regular judgment of the court, after the decision of the suit, be not suspended, superseded or reversed ..., the next and last step is the execution of the judgment or putting the sentence of the law in force. Execution, in civil actions, is the mode of obtaining the debt or damages recovered by the judgment.⁶⁰

Chancellor Allen explained the process in a case where the moving party, who held a monetary judgment for movant's attorneys' fees against the defendant, sought to hold the defendant in contempt for failing to pay the judgment:

While I find it deplorable that defendant RDIS, Inc. has apparently failed to meet its obligations as established by the October order (no appeal was filed), I do not think that contempt of court is the appropriate remedy for failure to satisfy a judgement for money. The law supplies execution process for this purpose. For practical as well as theoretical reasons that is the appropriate way, in my opinion, for this matter to be resolved.⁶¹

Thus, “[f]or the most part, judgments for money or for the possession of property are enforced by writs of execution, today as at common law.”⁶²

⁵⁹ The court in *Biggs v. Strauss*, 1988 WL 55343 at *2 (Del. Super. May 17, 1988) explained that an order compelling payment is distinguishable from a judgment. *See also Gandhi-Kapoor v. Hone Cap. LLC*, 305 A.3d 707, 715-17 (Del. Ch. 2023) (explaining that in certain circumstances where collection mechanisms are inadequate, the court may order additional relief).

⁶⁰ *Biggs*, 1988 WL 55343 at *2 (quoting 2 *Woolley on Delaware Practice* § 948, at 657 (1906)).

⁶¹ *Vanderzeyde v. RDIS Corp.*, 1996 WL 33167791, at *1 (Del. Ch. June 6, 1996).

⁶² *In re Mobilactive Media, LLC*, 2018 WL 5046282 at *3 (Del. Ch. June 28, 2018) (quoting *Biggs*, 1988 WL 55343 at *2).

Accordingly, “[a]s a general rule, a party that holds a money judgment must resort to collection mechanisms.”⁶³

US WorldMeds won judgment in its favor on its breach of contract claim. A judgment in the amount owed on the milestone payment, plus interest, and attorneys’ fees and expenses will be entered in its favor. If Supernus fails to pay the judgment, post-judgment interest will continue to accrue and US WorldMeds may pursue collection remedies. There is no suggestion that collection mechanisms are inadequate. The Court will not compel payment of the judgment. Therefore, references to ordering Supernus to pay must be removed from the proposed order.

Paragraphs 12 and 13 of the proposed order are to be deleted. If the judgment is not paid, US WorldMeds may, when permitted by the rules, seek to enforce it through the execution process. The Court will make no finding about that process before it is employed by a party. Similarly, the Court makes no ruling about recording the judgment in the Prothonotary’s Judgments Office.

The proposed order is to be revised to reflect the rulings in this letter decision on fees and expenses.

Finally, paragraphs 14 and 15 seem inconsistent. Paragraph 14 purports to retain jurisdiction in the event this is a dispute over the interest calculation and

⁶³ *Gandhi*, 305 A.3d 707, 715.

paragraph 15 states that the order is a “final judgment resolving all claims in this action.”⁶⁴

To obviate the need for paragraph 14, within 3 days, US WorldMeds is to provide its interest calculation to Supernus. If an objection is raised that cannot be resolved within 5 days, each party may file a letter, limited to 3 pages, stating its position. The Court will resolve any such dispute and enter a final order.

IT IS SO ORDERED.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge

⁶⁴ *Blanch v. Stone & Paper, Investors, LLC*, 295 A.3d 1099 (TABLE) (Del. Apr. 6, 2023) (“An order is deemed final and appealable if the trial court has declared its intention that the order be the court’s final act in disposing of all justiciable matters within its jurisdiction.”).