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The Business Court of Texas,
1st Division

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| JOSEPH BEARD, *Plaintiff*<br>v.<br>HENRY ROSS PEROT, JR.; ANURAG JAIN; and PEROT JAIN, L.P., *Defendants* | §<br>§<br>§<br>§<br>§<br>§ | Cause No. 26-BC01B-0018 |

**MEMORANDUM OPINION AND ORDER**

[¶ 1] Before the court are: (i) defendants' October 19, 2026, Motion to Quash Notices of Deposition and for Protective Order (Motion to Quash) and (ii) plaintiff's October 20, 2026, Motion to Strike Defendants' Untimely Expert Disclosure (Motion to Strike). Defendants responded to the Motion to Strike, and plaintiff replied.[1]

[1] Business Court Local Rule 5(b) requires responses to opposed nondispositive motions to be filed ten days after the motion is filed, unless otherwise ordered by the court. Defendants' October 28, 2026, Motion to Strike response (and appendix) met that deadline. However, plaintiff has not responded to the Motion to Quash.

[¶ 2] The court considered the parties' above-mentioned submissions and arguments at a November 3rd discovery conference. The court tentatively ruled on the motions during that conference.

[¶ 3] Based on the materials on file and the parties' arguments, the court applies an abuse of discretion standard and makes the following findings, conclusions, and rulings:

## I. Background

[¶ 4] On April 2nd, defendants moved to dismiss plaintiff's claims pursuant to TEX. R. CIV. P. 91a. By party agreement, defendants later filed their motion to dismiss plaintiff's first amended petition on June 29th.[2]

[¶ 5] After considering the parties' submissions, the record, and the parties' arguments, the court granted defendants' motion on August 10th. But that order did not mention discretionary Rule 91a.7 attorneys' fees.

[2] On April 16, 2026, plaintiff filed a Notice of Rule 11 Agreement documenting the parties' agreement to several scheduling changes. One such change was that plaintiff's response to defendants' motion to dismiss would be due fourteen days after the court decided plaintiff's then-pending remand motion. The court denied the remand motion on June 2, 2026. On June 15th, plaintiff filed a Notice of Rule 11 Agreement documenting the parties' agreement to adjust schedules given plaintiff's since-filed first amended petition. Consistent with the parties' agreements, on June 29th defendants moved to dismiss plaintiff's first amended petition.

[¶ 6] On August 17th, plaintiff requested a written opinion regarding the court's dismissal order. *See* TEX. R. CIV. P. 360(a)(1).

[¶ 7] On September 22nd, the court issued its resulting seventy-two-page opinion. *Beard v. Perot*, 2026 Tex. Bus. 65, --- S.W.3d --- (1st Div.). Two days later—without saying whether the court would grant attorneys' fees—the court asked the parties to submit a joint plan addressing the issue.

[¶ 8] However, the parties failed to submit a plan, and on October 15th defendants moved for Rule 91a.7 based fees. Plaintiff followed by serving deposition notices for all defendants and Plaintiff's Second Set of Discovery Requests for Defendant Perot Jain, L.P.[3] In total, plaintiffs served eight requests for admissions, seven document requests, and seven interrogatories. Plaintiffs' corporate representative notice posited twenty deposition topics.[4]

[¶ 9] Thereafter, (i) defendants filed their Motion to Quash and (ii) plaintiff subsequently filed his Motion to Strike.[5]

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[3] *See generally* Appendix to Motion to Quash (Motion to Quash App.).

[4] *See* Motion to Quash App. at 22-35.

[5] By separate order, the court previously granted plaintiff's request to stay his deadline to respond to defendants' fees motion filed the same day as the Motion to Strike. *See* October 26, 2026, Order.

[¶ 10] Defendants' Motion to Quash sought to quash depositions notices directed to (i) Ross Perot, Jr.; (ii) Anurag Jain; and (iii) a corporate representative of Perot Jain, L.P. Specifically, Perot and Jain asked the court to quash the notices in their entirety because the claims against them were dismissed and they were not asserting counterclaims against plaintiff.[6] Perot Jain requested the same for deposition notice topics seven through twenty because they related to affirmative defenses that the court's previous Order and Opinion rejected.[7]

[¶ 11] The Motion to Strike argues that the appendix to defendants' motion for fees should be struck for being untimely under the court's April 6th Scheduling Order.[8]

[¶ 12] That scheduling order included the following deadlines:

i. Expert Designations by Parties with Burden of Proof: September 1, 2026

ii. Responsive Experts: October 15, 2026

iii. Rebuttal Experts: November 15, 2026

iv. Expert Discovery Closure: December 18, 2026

[6] Motion to Quash at 2-3.

[7] Motion to Quash at 3-4.

[8] Motion to Strike at 2.

## II. Discussion

[¶ 13] Defendants' April 24, 2026, Rule 194 and Rule 195 disclosures included a Rule 194.2(b)(3) disclosure that (i) plaintiff's claims lacked merit for the reasons stated in defendants' pending dismissal motion and (ii) Perot Jain asserted a counterclaim "seeking to recover its attorneys' fees as a result of Plaintiff's breaches of the Separation Agreement and the Release Agreement as more specifically described in its Original Counterclaim, as may be amended or supplemented from time to time."[9]

[¶ 14] Perot Jain further disclosed that its "damages will include the amount of attorneys' fees and related litigation costs and expenses it incurs in connection with this action. These amounts will continue to increase as this case proceeds. Perot Jain has not quantified the amount of its damages[,] and they will be subject to expert testimony." [10]

[¶ 15] Further, defendants designated Haynes and Boone, LLP attorneys Richard D. Anigian and Ronald W. Breaux as persons who may

[9] Appendix to Plaintiff's October 13, 2026, Motion for Summary Judgment on Perot Jain, L.P.'s Counterclaims (Pls' MSJ App.) at 57.

[10] Pls' MSJ App. at 58.

provide testimony regarding the reasonableness and necessity of attorneys' fees and expenses incurred regarding the lawsuit, including:

> (a) the legal work performed and to be performed relating to this lawsuit; (b) the fees and expenses incurred for the work performed and to be performed through trial of this lawsuit; (c) the fees and expense that would be incurred in the event of any post-verdict proceedings and appeals; (d) the reasonableness and necessity of the fees and expenses incurred through trial, and that would be incurred in the event of any and all post-verdict proceedings and appeals.[11]

[¶ 16] The disclosures further stated that:

> Mr. Anigian and/or Mr. Breaux is expected to testify that the Perot Jain Defendants' attorneys' fees are reasonable and necessary based on a lodestar method by multiplying the number of hours that are reasonable and necessary by the reasonable rates charged by its counsel and paralegal staff who have worked on this matter. Further, evidence for determining reasonable and necessary attorneys' fees including [sic]: (1) the particular services performed; (2) who performed those services; (3) when the services were performed; (4) the reasonable amount of time required to perform the services; and (5) the reasonable hourly rate for such persons performing the services.
>
> Mr. Anigian's and/or Mr. Breaux's opinions may rely on his review of copies of invoices to the Perot Jain Defendants for the services provided on the case, his personal knowledge as counsel for the Perot Jain Defendants, as well as the factors outlined above in issuing an opinion regarding the reasonableness of the Perot Jain Defendants' attorneys' fees.

[11] Pls' MSJ App. at 62.

> The Perot Jain Defendants reserve the right to supplement or amend this disclosure report as the case progresses.[12]

[¶ 17] Regarding things provided to, reviewed by, or prepared by or for Messrs. Anigian and Breaux in anticipation of their expert testimony, defendants disclosed that:

> Mr. Anigian and/or Mr. Breaux's opinions will be based, in part, on: (1) the pleadings, any discovery, depositions, and court hearings, redacted billing records or summaries of work performed and non-privileged correspondence in this lawsuit; (2) his knowledge, skill, education, experience and training as a licensed Texas attorney; (3) legal materials, including case law, statutory laws, rules, and ethics opinions; and (4) (a) the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly; (b) the likelihood, if apparent to the client, that acceptance of particular employment precludes the employment on other matters for the lawyer; (c) the fees customarily charged in the locality for similar services; (d) the amount involved and the results obtained; (e) the time limitations imposed by the client of the circumstances; (f) the nature and length of the professional relationship with the client; (g) the experience, reputation, and liability of the lawyer or lawyers performing the services; and (h) whether the fee is fixed or contingent on results obtained or the uncertainty of collection before legal services have been rendered. Overall, Messrs. Anigian and/or Williams's [sic] opinions will be based on *Rohrmoss Venture v. UTSW Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019). Messrs. Anigian and or Williams [sic] may also rely on TEX. DISC. R. PROF'L Conduct 1.04; *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812 (Tex. 1997); *El Apple I, Ltd. v. Olivas*,

[12] Pls' MSJ App. at 62-63.

3710 S.W.3d 757 (Tex. 2012); and *City of Laredo v. Montano*, 414 S.W.3d 731 (Tex. 2013).[13]

[¶ 18] The record does not reflect whether prior to October 14, 2026, plaintiff served a document request on defendants seeking the production of Haynes and Boone's invoices to defendants. Nor does the record reflect whether plaintiff requested that Messrs. Anigian or Breaux provide an expert report or sought to depose either person.

## III. Analysis

### A. Attorneys' Fees Disclosure

[¶ 19] The court denies plaintiff's Motion to Strike because defendants' attorneys' fees disclosures met the Rule 194 and 195 requirements. Alternatively, to the extent necessary, defendants have shown that plaintiff is not surprised nor prejudiced by defendants' attorneys' fees disclosures. *See* TEX. R. CIV. P. 193.6(a)(2).

#### 1. Disclosure Adequacy

[¶ 20] Rule 194 requires parties to make certain initial disclosures without waiting for a discovery request from the other side. TEX. R. CIV. P.

[13] Pls' MSJ App. at 63-64.

194.1. Rule 194.2(b) governs the content of those disclosures. And Rule 194.3 requires parties to make expert disclosures as provided by Rule 195.

[¶ 21] Rule 195 requires furnishing information described in Rule 195.5(a) ninety days before the close of discovery "[u]nless otherwise ordered by the court." TEX. R. CIV. P. 195.2.

[¶ 22] Defendants' Rule 194 disclosures, discussed above, fully disclosed that defendants would seek their attorneys' fees and litigation expenses in this case as damages and connected those claims to defendants' pending dismissal motion. Defendants said that (i) these amounts would increase throughout the case, (ii) Perot Jain had not quantified those sums, and (iii) those claims would be subject to expert testimony. This complied with Rule 194.2(b).

[¶ 23] Defendants' initial disclosures also complied with Rule 195's requirements. In particular, nothing in that rule required defendants to then specify an amount or produce invoices with their initial disclosure. *See* TEX. R. CIV. P. 195.5; *see also Cresson Interest, LLC v. Rooster*, No. 02-21-00366-CV, 2022 WL 3904968, at *11-12 (Tex. App.—2nd Dist. August 31, 2022, pet denied).

[¶ 24] Instead, as *Cresson* explains, defendants were allowed to supplement their fee statements as the issue became ripe. *See* 2022 WL 3904968, at *11 ("[T]he Beanes were not required to produce attorney's-fees evidence, their fee agreement, or counsel's billing statements until the fee issue—which is retrospective and depends on the course of litigation for the fees' necessity and reasonableness—was ripe for the trial court's determination.").

[¶ 25] More fully, *Cresson* refutes plaintiff's arguments that (i) defendants' initial Rule 194 disclosures were insufficient and (ii) defendants' later attorneys' fees disclosures included with their Rule 91a.7 attorneys' fees motion were untimely because they failed to comply with the court's April 6th Scheduling Order: [14]

> Cresson argues that Rule 194.2(f) disclosure requirements for attorney's-fees experts call for producing attorney's-fees evidence before the discovery cutoff, relying on *Rohrmoos Venture v. UTSW DVA Healthcare*, 578 S.W.3d 469 (Tex. 2019). But *Rohrmoos* involved what's needed to prove up fees, not the sufficiency of disclosures. *See id.* at 498. The same was true in Cresson's other case, *Yowell v. Granite Operating Co.,* 620 S.W.3d 335, 354–55 (Tex. 2020) (addressing proof of contingent appellate attorney's fees). Extending *Rohrmoos* and

[14] The *Cresson* court addressed the version of the rules effective until December 31, 2020. What was requested discovery under the old rule 194.2(f) is now mandatory under current Rule 195. The change in the rules does not alter the court's analysis in this case.

*Yowell* to expert disclosures would impose a new standard that far exceeds what the rule requires and is impractical in any event. When an attorney's-fees expert is disclosed, the costs of litigating through trial have not yet been incurred and depend on many variables such as the aggressiveness of discovery and the number and complexity of any dispositive motions. Until the case is at or after the trial stage, opining on the reasonableness and necessity of particular fees is impossible; ditto for appellate fees.

*Rohrmoos* did not undercut our earlier analysis of a fee-expert disclosure in *Kim v. Sanchez*, No. 02-12-00465-CV, 2014 WL 4364170 (Tex. App.—Fort Worth Sept. 4, 2014, pet. denied) (mem. op.). In *Kim*, the appellant complained of an allegedly deficient attorney's-fees expert disclosure, arguing that "[n]o information was provided concerning the amount of attorney's fees sought; the method of calculation of fees by hourly rate or contingency; or the number of anticipated hours expended in preparation for trial. Additionally, no documents were produced such as billing records or fee agreement as also required." *Id.* at *4. The disclosure itself had stated that the attorney was "expected to testify regarding the reasonable and necessary attorney fees that were necessary in prosecuting this case and in rebuttal to any attorney fee testimony offered by an expert on behalf of Defendant." *Id.* We held the disclosure sufficient "to give the 'general substance' of that expert's anticipated testimony, especially when, as here, the responding party is seeking fees for representation during the entire litigation, which are not determinable at the time of disclosure." *Id.*; *see also Frazer Transp., Inc. v. Transafe, Inc.*, No. 01-16-00824-CV, 2017 WL 3081243, at *3 (Tex. App.—Houston [1st Dist.] July 20, 2017, no pet.) (mem. op.) (holding that disclosure, made more than a year before trial, that attorney would testify "that the legal fees and costs Plaintiff incurred in this matter were reasonable and necessary" was "all that is required, substantively, of an expert designation on attorney's fees");

*Goldman v. Olmstead*, 414 S.W.3d 346, 364–65 (Tex. App.—Dallas 2013, pet. denied) (same).

As for Cresson's argument that the Beanes failed to disclose the documents "provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony," *see* TEX. R. CIV. P. 194.2(f)(4)(A), the Beanes' counsel attached his fee agreement, billing records, and affidavits from Rooster Beane and counsel to the Beanes' second summary-judgment motion seeking attorney's fees. At the hearing, the Beanes' counsel, in discussing his disclosure response, stated,

> At that point in time, 30 days after suit, there had been very little attorney's fees incurred, and certainly I had not developed a document which would not be developed until we were coming closer to trial as to what the attorney's fees were or what attorney's fees were actually incurred. I believe the rule -- the discovery rule says that you should provide documents when they have been prepared or reviewed by the expert in anticipation of trial or anticipation of the expert's testimony. That did not occur until August of this year. I had time and billing sheets that I had used for billing my clients but not for the purpose -- but had not reviewed them to -- to arrive at an opinion as to attorney's fees through trial until basically that testimony was needed in August of this year.

We are aware of nothing that requires a party to produce billing records on a rolling basis under Rule 194.2(f), or even to disclose a fee agreement under that rule. *See Carpenter v. Carpenter,* No. 02-10-00243-CV, 2011 WL 5118802, at *8 (Tex. App.—Fort Worth Oct. 27, 2011, pet. denied) (mem. op.) (noting that without specific request for production, fee agreement not required to be disclosed because not a document "provided to, reviewed by, or prepared in anticipation of the expert's testimony"). And as we noted, *Rohrmoos* did not affect or discuss Rule 194.2(f) disclosures.

*Id.* at 11-12 (footnotes omitted); *accord Colunga v. State Farm Mutual Automobile Ins. Co.,* No. 04-22-00423-CV, 2024 WL 3166093, at *4 (Tex. App.—4th Dist., June 26, 2024, pet. denied).

[¶ 26] Here, the 91a.7 attorneys'-fees issue became "ripe" on August 10th at the earliest, when the court granted the motion to dismiss. However, the court had not indicated by then whether it would consider fees. It was not until September 24th, four weeks after the September 1st Scheduling Order deadline, that the court requested a plan from the parties to address fees. At that point, the issue became ripe and defendants filed their motion a few weeks later.

[¶ 27] So, defendants' attorneys'-fees-related disclosures were timely, fulsome, and adequate. Moreover, it does not appear that plaintiff ever served a document request asking defendants to produce their billing records. Thus, the court denies plaintiff's Motion to Strike on in its merits without reaching whether defendants had to prove that a Rule 193.6 exception to automatic exclusion applies before they could rely on their expert disclosures.

**2. No Unfair Surprise and No Unfair Prejudice**

[¶ 28] Nonetheless, to the extent necessary, given the timing and fulsomeness of defendants' attorneys'-fees disclosures, the court finds and

concludes that defendants carried their burden to establish plaintiff's lack of unfair surprise or unfair prejudice. *See* TEX. R. CIV. P. 193.6.

[¶ 29] The court concludes that plaintiff is not surprised that defendants would rely on their counsel to provide expert testimony regarding defendants' reasonable and necessary attorneys' fees in this case based on Haynes and Boone's billing records and applicable lodestar factors analyses. Specifically, plaintiffs have known those facts since defendants' April 24, 2026, Rule 194 and Rule 195 disclosures, more than four months before this case's expert designation deadline.

[¶ 30] Moreover, plaintiff requested, without opposition, a forty-five-day extension to designate a rebuttal expert in response to defendants' 91a.7 fees motion, which the court granted. Thus, defendants' production of billing records supporting their Rule 91a.7 request for attorneys' fees and expenses did not prejudice plaintiff.

[¶ 31] Accordingly, the court denies plaintiff's Motion to Strike as to defendants' Rule 91a.7 attorneys' fees request.

**B. Motion to Quash**

[¶ 32] Plaintiff is entitled to conduct reasonable discovery regarding the reasonableness and necessity of Perot Jain's Rule 91a.7 attorneys' fees

request. To the extent the Motion to Quash objects to plaintiff's requested discovery directed at that limited issue, the court denies the motion.

[¶ 33] However, topics seven through twenty of plaintiff's corporate representative deposition notice are not so limited. Rather, those topics go the merits of plaintiff's claims that the court rejected as having no basis in law or fact. *See* 2026 Tex. Bus. 65. Because those claims are dismissed, discovery regarding them and their subject matter would exceed the scope of permissible discovery and subject defendants to waste, abuse, and unnecessary expense. So, the court grants defendants' request to quash regarding those topics. TEX. R. CIV. P. 192.6(b).

[¶ 34] Additionally, the court instructs that plaintiffs' discovery be conducted in these phases: (i) defendants will first respond to plaintiff's permitted written discovery; (ii) if additional discovery is required after that, plaintiff may depose Mr. Anigian (or Mr. Breaux depending on who defendant selects for that purpose) regarding the reasonableness and necessity of defendants' Rule 91a.7 attorneys' fees and expenses; and (iii) after that, plaintiff may ask the court for additional discovery.

[¶ 35] To avoid expensive motions or disputes regarding any such depositions, all such depositions will occur in the court's conference rooms so the court can promptly resolve any disputes without delay or additional costs.

It is so ORDERED.

BILL WHITEHILL
Judge of the Texas Business Court,
First Division

SIGNED: November 12, 2026

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