

and “Federal Rule of Civil Procedure 53 empower[ing] the Court to appoint a master, provide for the master’s compensation, and specify the master’s powers,” *Agostino v. Quest Diagnostics, Inc.*, No. 04-4362, 2012 WL 2344865, at *1 (D.N.J. June 20, 2012);

and Rule 53(a)(1) providing, in relevant part, that “[u]nless a statute provides otherwise, a court may appoint a master only to . . . (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by (i) some exceptional condition; or (ii) the need to perform an accounting or resolve a difficult computation of damages; or (C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district”;

and the Third Circuit having indicated that a district court may use a master “to perform some specialized matters of account or difficult computation of damages . . . or some other time consuming or detailed tasks that the district court judge or a magistrate judge would be less efficient in accomplishing,” *see Prudential Ins. Co. of Am. v U.S. Gypsum Co.*, 991 F.2d 1080, 1085 (3d Cir. 1993);

and the Court finding that the circumstances in this matter and the resources required to address the aforementioned issues—i.e., to articulate why the costs were reasonably incurred in the prosecution of the case against Honeywell and to address the issue of commingled expenses—constitute exceptional circumstances and/or a specialized matter of accounting that is time consuming and detailed to an extent that the Undersigned and the Magistrate Judge would be less efficient in accomplishing than a master;

and the Court accordingly finding that the Settlement Classes—who have yet to be provided their *pro rata* share of the Net Settlement Fund (*see, e.g.*, D.E. No. 459)—would benefit from the efficiency associated with the appointment of a special master¹;

and the Court *sua sponte* electing to appoint the Hon. Garrett E. Brown, Jr. (Ret.), JAMS, 620 Eighth Avenue, New York, NY 10018² as a master for the aforementioned tasks;

and the Court having issued an Order on July 31, 2017 constituting the required notice under Rule 53(b)(1) and providing ample opportunity for the parties to express any objections in writing to the Court;

and the Court having received numerous submissions thereafter as summarized in its October 16, 2017 Letter Order (*see* D.E. No. 466);

and, on October 24, 2017, Class Counsel having objected—for the first time—to the Court’s intended course of appointing a special master (the “October 24 Objection”) (*see* D.E. No. 467);

and the Court having carefully considered the October 24 Objection and noting Class Counsel’s suggestion that accomplishing the Third Circuit’s directive on remand is a simple task (*see id.* at 2 (“[T]he Third Circuit simply asked this Court to spell out in greater detail its reasoning for its award of expenses, because documentation of expenses was submitted *in camera.*”); *id.* at 3 (“[T]he Third Circuit simply asked the Court to elaborate its reasoning.”));

¹ Cf. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 201 n.6 (3d Cir. 2000) (“At all events, whatever approach district courts choose to adopt they must safeguard the plaintiffs and class members’ interests . . .”).

² Judge Brown may be reached at 973-715-8993.

and the Court finding that the purported simplicity of effecting the Third Circuit’s directive on remand undercuts Class Counsel’s complaint that appointing a special master will result in unreasonable delay and expense (*see id.* at 3)³;

and the Court further finding that Class Counsel’s representations in the October 24 Objection concerning the remand directive—as well as the various submissions placed on the docket—can be presented to a Special Master (*see, e.g., id.* at 2 (“Class Counsel’s recent filings, including a detailed proposed order, are meant to supply facts and reasoning not present in the Opinion, which will permit the Court to fulfill the Third Circuit’s mandate.”); *id.* at 3 (“As Class Counsel have articulated, the expenses sought from the Settlement Fund were advanced for services that benefited the Honeywell Classes, including fact and expert discovery necessary to develop and support the claims against Honeywell.”));

and the Court having “consider[ed] the fairness of imposing the likely expenses on the parties” and its obligation to “protect against unreasonable expense or delay” pursuant to Rule 53(a)(3);

and, in light of the foregoing, the Court basing its appointment—over the October 24 Objection—*not* simply on docket congestion or the complexity of factual and/or legal issues, but in the interests of efficiency in light of the task at hand (in particular, “address[ing] the issue of commingled expenses, including, if appropriate, by requiring additional information from counsel or the parties,” *Halley*, 861 F.3d at 501);

³ *See also Beazer East, Inc. v. Mead Corp.*, 412 F.3d 429, 441 (3d Cir. 2005) (“Accountings and other damages computations may be referred without the parties’ consent because they generally do not call for any peculiar judicial talent or insight.”) (citation omitted).

IT IS on this 26th day of October 2017,

ORDERED that a proposed Order shall promptly be submitted to the Court appointing the Hon. Garrett E. Brown, Jr. (Ret.) as a master; and it is further

ORDERED that any such proposed Order appointing the Hon. Garrett E. Brown, Jr. (Ret.) as a master shall address the requirements under Federal Rule of Civil Procedure 53(b)(2) and compensation under Federal Rule of Civil Procedure 53(g); and it is further

ORDERED that an affidavit shall be obtained from the Hon. Garrett E. Brown, Jr. (Ret.) “disclosing whether there is any ground for disqualification under 28 U.S.C. § 455” and promptly submitted to the Court; and it is further

ORDERED that all submissions pursuant to this Order shall be submitted to the Court via the ECF System.

s/ Esther Salas
Esther Salas, U.S.D.J.