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Attorneys for Plaintiff ANDREA COLLIER, as
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DISTRICT COURT
CLARK COUNTY, NEVADA

ANDREA COLLIER, as trustee of the JACT
 TRUST,

Plaintiff,

v.

PENNIE MOSSETT-PUHEK, individually;
 ANTHEM HIGHLANDS COMMUNITY
 ASSOCIATION, a Nevada Non-Profit Corporation;
 CARMEN EASSA, an individual; K.G.D.O.
 HOLDING COMPANY, LLC d/b/a TERRA
 WEST MANAGEMENT SERVICES, a Nevada
 limited liability company; DOES I through X and
 ROE BUSINESS ENTITIES I through X,
 inclusive,

Defendants.

Case No.: A-22-852032-C
 Dept.: 8

**DISCOVERY COMMISSIONER'S
 REPORT AND RECOMMENDATIONS**

Date of Hearings: February 19, 2026
 Time of Hearing: 9:00 a.m.

APPEARANCES:

Attorney for Plaintiff: Ely Markarian, Esq., of The Law Offices of Timothy Elson
Attorney for Defendant Pennie Mossett-Puhek: Derek Noack, Esq., of Freeman Mathis &
 Gary, LLP
**Attorney for Defendants Anthem Highlands Community Association, Carmen Eassa,
 and K.G.D.O. Holding Company, LLC, d/b/a Terra West Management Services:**
 Edward Boyack, Esq., of Boyack Orme & Murdy

On February 19, 2026, Plaintiff Andrea Collier ("Collier"), Defendant Pennie Mossett-Puhek ("Mossett-Puhek"), and Defendants Anthem Highlands Community Association ("Anthem"), Carmen Eassa ("Eassa"), and K.G.D.O. Holding Company, LLC, d/b/a Terra West Management Services ("Terra West") appeared via electronic means before the Honorable Erin Lee Truman on the award of attorneys' fees and costs to Collier pertaining to the following motion:

Collier's Motion for Sanctions for Terra West's Willful Discovery Misconduct (Doc ID #160; the "Motion for Sanctions"). Upon the Court's review of the Motion for Sanctions, Terra West's opposition thereto, Collier's reply, the Memorandum of Attorneys' Fees And Costs Re Motion for Sanctions (which included Mr. Timothy Elson's Declaration); Terra West's Opposition to Plaintiff Andrea Collier's Memorandum of Attorney's Fees And Costs Re Motion for Sanctions; and oral arguments made by the parties, for good cause appearing, the Discovery Commissioner **GRANTS** the award of fees and costs, and makes the following Report:

I. FINDINGS

A court may not award attorney fees or costs unless authorized to do so by a statute, rule, or contract. *U.S. Design & Const. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002). Collier seeks an award of reasonable attorney fees and costs.

A. Collier Seeks An Award Of Attorney Fees.

The Motion for Sanctions seeks an award of attorney fees pursuant to NRCP 37(a)(5), which allows for an award of fees where motions are filed to compel disclosure and discovery responses. The court here has determined that an award of attorney fees is appropriate, subject to proof, under NRCP 37(a)(5) because Collier was successful as it relates to the Motion for Sanctions, which was largely granted and requires for an apportionment of the reasonable expenses (fees and costs) related to the motion. Having determined that Collier is entitled to an award of fees, the court next turns its attention to the amount of the award. The court required Collier to provide a Memorandum of Fees and Costs consistent with *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Collier's Memorandum of Fees and Costs was due on or before January 22, 2026. The court made clear that untimely submissions would not be considered. Collier timely submitted the Memorandum on January 22, 2026. Defendant Terra West submitted an opposition on January 28, 2026.

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The court has great discretion regarding its decision to award fees and regarding the amount of fees granted. The court's discretion is "tempered only by reason and fairness." *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006) (quoting *University of Nevada v. Tarkanian*, 110 Nev. 581, 591, 879 P.2d 1180, 1186 (1994)).

"In determining the amount of fees to award, the [district] court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the" *Brunzell* factors. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citing *Haley v. Eighth Judicial Dist. Court*, 128 Nev. 171, 273 P.3d 855, 860 (2012) (internal quotations omitted)).

The Supreme court in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969) gave guidance on how a court is to determine the reasonable value of the work performed by a movant's counsel.¹ *Brunzell* directs courts to consider the following when determining a reasonable amount of attorney fees to award:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Id. (internal quotation marks omitted).

The court can follow any rational method so long as it applies the *Brunzell* factors; it is not confined to authorizing an award of attorney fees exclusively from billing records or hourly statements.

¹ The court must determine the reasonable rates for all persons for whose time a party seeks reimbursement, including partners, associates, paralegals, and law clerks, etc. See *LVMPD v. Yeghiazarian*, 129 Nev. 760, 770, 312 P.3d 503, 510 (2013).

Logan v. Abe, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based on a “lodestar” amount, as well as a contingency fee arrangement). Although the court must “expressly analyze each factor”, no single factor should be given undue weight. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33.

After determining the reasonable value of an attorney’s services analyzing the factors established in *Brunzell*, the court must then provide sufficient reasoning and findings concerning those factors in its order. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005). The court’s decision must be supported by “substantial evidence”. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Substantial evidence supporting a request for fees must be presented to the court by “affidavits, unsworn declarations under penalty of perjury, depositions, answers to interrogatories, [or] admissions on file”. EDCR 2.21(a). Sworn statements submitted pursuant to EDCR 2.21(a) must be sufficient to satisfy NRCP 56(e). EDCR 2.21(c). Unsworn statements of counsel and conclusory statements in pleadings not otherwise presented in compliance with EDCR 2.21(a) may not be considered by the court. The Supreme Court has confirmed that the *Brunzell* factors must be presented by affidavit or other competent evidence. *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen. Improvement Dist.*, 452 P.3d 411 (Nev. 2019), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020) (citing *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an affidavit documenting the hours of work performed, the length of litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable determination of attorney fees, even in the absence of a detailed billing statement));

Cooke v. Gove, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among other evidence, two depositions from attorneys testifying about the value of the services rendered)). An award that is not based on such substantial evidence is subject to reversal, as the court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

In the instant matter, Collier provided the court with the following sworn testimony and other evidence: a Declaration from Timothy Elson, Esq., and billing records and statements. Collier argues each *Brunzell* factor as follows:

1. The Qualities of the Advocate – Collier’s attorneys, Mr. Elson and Mr. Markarian, are experienced and skilled attorneys. Defendant Terra West opposed the billing rates of Mr. Markarian and Mr. Elson. Terra West argued that Mr. Markarian’s billing rate was above average for a fifth-year attorney. Terra West further argued that Mr. Elson’s billing rate was above average for the local region, despite Mr. Elson’s years of experience.

2. The Character of the Work – The work performed by Collier’s counsel involved substantial discovery disputes arising from Terra West’s failure to comply with court-ordered financial discovery. The Motion for Sanctions addressed Terra West’s obligation to produce court-ordered financial information, including revenue, costs, and profitability calculations. The issues required counsel to review extensive discovery responses and productions, analyze deposition testimony and financial materials, and prepare motion practice addressing the alleged noncompliance with the Court’s discovery orders.

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3. The Work Performed – Collier’s counsel expended time reviewing Terra West’s discovery responses and productions, evaluating the adequacy of the financial information provided, and analyzing deposition testimony related to Terra West’s profitability calculations. Counsel also prepared correspondence and participated in meet-and-confer efforts regarding the outstanding discovery issues, reviewed the relevant discovery order and procedural history, and drafted the motion for sanctions and supporting materials. In addition, counsel reviewed Terra West’s opposition, drafted a reply motion, and prepared for and participated in the hearing before the Discovery Commissioner regarding the requested sanctions.

4. The Result – Collier’s Motion for Sanctions was granted in part and denied in part. The Court ordered Terra West to provide the remaining financial information at issue, while denying the remainder of the requested relief based on the representation that the other information had already been produced. In doing so, the motion secured the remaining discovery sought by Collier.

B. Summary Of Fees Sought

Collier provided documentation showing Mr. Elson and Mr. Markarian spent significant time as set forth in the Declaration and billings records at various rates (\$400/hr for Mr. Markarian and \$445.00/hr for Mr. Elson). Collier asked the Court for an award of \$8,857.00 in attorney fees.² Terra West argued that Collier’s counsel is entitled to no more than \$7,896.50. The court has reviewed the Memorandum, as well as any response thereto and finds Collier has adequately addressed the factors required by *Brunzell* and its progeny.

² Collier’s Memorandum of Fees and Costs originally sought \$11,577.00 in attorney’s fees and costs. Mr. Markarian noted during the February 19, 2026, hearing, however, that there was an inadvertent miscalculation. The correct amount sought in attorney’s and costs was \$8,857.00.

Collier has detailed the qualities of the advocate, the character of the work performed, the actual work performed by the attorney, including skilled time and attention given to the work, and the result. Collier has provided competent evidence in support of Collier's request for fees. The Court finds that the required analysis by *Brunzell* was satisfied.

The factors addressed by *Brunzell* were set forth in the Memorandum with specificity as set forth above. The Court further finds that the fees charged by Collier's counsel in this matter were necessary to the matter and are reasonable in the marketplace given the experience and qualities of the advocates in the amount granted by the Court. The Court further finds that a reduction in the fees is appropriate given a miscalculation.

C. Collier Seeks An Award Of Costs.

Collier seeks an award of costs pursuant to NRCP 37(a)(5) allows for an award of costs in this type of discovery dispute.

Courts have broad discretion to award costs. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). A memorandum of costs must be supported by an affidavit. *See* NRS 18.110. Further, any documentary evidence required to prove that the costs were actually incurred, necessary, and related to the action, must be presented by affidavit or other competent evidence. EDCR 2.21(a). Parties may not simply estimate a reasonable amount of costs, but must provide the court with proof that the costs were actually incurred. *Cadle*, 131 Nev. at 120, 345 P.3d at 1054 (*citing Gibellini v. Klindt*, 110 Nev. 1201, 1205–06, 885 P.2d 540, 543 (1994) (holding that a party may not estimate costs based on hours billed)).

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Without competent evidence to “determine whether a cost was reasonable and necessary, a district court may not award costs.” *Cadle*, 131 Nev. at 121, 345 P.3d at 1054 (*citing Bobby Berosini, Ltd.*, 114 Nev. at 1353, 971 P.2d at 386). “[R]easonable costs’ must be actual and reasonable, ‘rather than a reasonable estimate or calculation of such costs.’” *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). Movant must “demonstrate how such [claimed costs] were necessary to and incurred in the present action.” *Id.*, 114 Nev. at 1352-53, 971 P.2d at 386. Conclusory arguments, or even statements in sworn testimony, that the costs were “reasonable and necessary” do not suffice. An award of costs based on such a conclusory statement is subject to reversal, as the court will lack “evidence on which to judge the reasonableness or necessity of each [cost]”. *Cadle*, 131 Nev. at 121, 345 P.3d at 1054-55. Rather than merely telling the court the costs were reasonable and necessary, counsel’s affidavit must attach “justifying documentation” verifying the costs were incurred and must demonstrate how those costs were both reasonable and necessary to the matter at issue. *Id.* (*citing Bobby Berosini, Ltd.*, 114 Nev. at 1352-53, 971 P.2d at 386).

Without “justifying documentation” and counsel’s explanation, there is “no way [for the court to] determined whether the cost was reasonable or necessary.” *Id.*, 131 Nev. at 121-22, 345 P.3d at 1055.

The Court reviewed Mr. Elson’s declaration and billing statements detailing the costs. Collier argued that it was entitled to costs for filing fees in the amount of \$7.00. Defendants did not dispute the costs sought. The court finds Collier has adequately demonstrated through sworn testimony and “justifying documents” how the claimed costs were actually incurred and were “reasonable and necessary” to the action.

>Further, the Discovery Commissioner takes judicial notice of the \$7.00 in court filing fees for the electronic filing of the papers related to this motion. *elt*

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II. **RECOMMENDATIONS:**

IT IS THEREFORE RECOMMENDED:

1. That Collier is awarded \$6,960.00 in attorneys' fees.
2. That Collier is awarded \$7.00 in costs.
3. The total award is \$6,967.00, which is due payable to Collier via a check made payable Plaintiff and *elt* to The Law Offices of Timothy Elson within 30 days after the Report and Recommendation becomes an order of the District Court.

The Discovery Commissioner, having met with counsel for the parties, discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 26th day of March, 2026.



THE HONORABLE ERIN TRUMAN
DISCOVERY COMMISSIONER

Respectfully Submitted by:

THE LAW OFFICES OF TIMOTHY ELSON

/s/ Timothy Elson
Timothy Elson, Esq.
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Attorneys for Plaintiff Andrea Collier

Approved as to Form and Content

FREEMAN MATHIS & GARY, LLP

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Management Services

CASE NAME: Collier v. Mossett-Puhek et al.
CASE NUMBER: A-22-852032-C
Hearing Dates: April 10, 2025

NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on April 10, 2026.

A copy of the foregoing Discovery Commissioner's Report was:

 Mailed by United States Postal Service, postage prepaid, on , 20
to the parties listed below at their last known address(es):

☒ Electronically e-filed and e-served to all registered counsel and parties on
March 27, 2026, Pursuant to N.E.F.C.R. Rule 9.

By Natilie Simonetti
Commissioner Designee



Tim Elson <tim@elsonlawoffices.com>

Re: Collier v. Mossett-Puhek et al.

Tim Elson <tim@elsonlawoffices.com>

Thu, Mar 19, 2026 at 2:59 PM

To: Derek Noack <Derek.Noack@fmglaw.com>, Ted Boyack <ted@boyacklaw.com>

Good afternoon,

We did not hear back on this. Please immediately advise. We plan to submit it to the Discovery Commissioner today. Thank you.

Best,

Tim Elson

CAUTION: PRIVILEGED AND/OR CONFIDENTIAL COMMUNICATION

THE INFORMATION CONTAINED IN THIS INTERNET E-MAIL MESSAGE AND THE ATTACHMENTS, IF ANY, ARE PRIVILEGED, CONFIDENTIAL AND INTENDED SOLELY FOR THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR REPRODUCTION OF THIS COMMUNICATION, OR ANY PART HEREOF, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE LAW OFFICES OF TIMOTHY ELSON BY TELEPHONE (702) 874-8600 AND DELETE THE ORIGINAL MESSAGE.

On Wed, Mar 11, 2026 at 12:48 PM Tim Elson <tim@elsonlawoffices.com> wrote:

Derek and Ted,

Please find attached our proposed DCRR. We plan to submit it to the Discovery Commissioner no later than 3/18/26. If you have any proposed changes, please provide them to us at your earliest convenience. If you have no proposed changes, both the Discovery Commissioner and I would appreciate confirmation of the same / authority to affix your e-signature (even if it is to form only rather than substance). Alternatively, you can simply indicate that you do not plan to submit a competing DCRR. Thank you.

Best,

Tim Elson



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