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Attorneys for Plaintiff ANDREA COLLIER, as
trustee of the JACT TRUST

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: April 10, 2025

Time of Hearings: 9:00 a.m.

APPEARANCES:

Attorney for Plaintiff: Timothy Elson, 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 (appearing on March 13, 2025)

On April 10, 2025, 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 motions (collectively

referred to as the “Motions To Compel”): 1) Collier’s Motion to Compel K.G.D.O. Holding Company, LLC, d/b/a Terra West Management Services’ Written Discovery Responses And Documents And Request For Attorneys’ Fees And Costs; 2) Collier’s Motion to Compel Carmen Eassa’s Written Discovery Responses And Documents And Request For Attorneys’ Fees And Costs; and 3) Collier’s Motion to Compel Anthem Highlands Community Association’s Written Discovery Responses And Documents And Request For Attorneys’ Fees And Costs. Upon the Court’s review of the Motions To Compel, the parties’ opposition thereto, the parties’ reply, the Memorandum of Attorneys’ Fees And Costs Re Motions To Compel (which included Mr. Elson’s Declaration); Defendants’ Opposition to Plaintiff Andrea Collier’s Memorandum of Attorney’s Fees And Costs Re: Motions To Compel; 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 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 Motions To Compel, which were largely granted and requires for an apportionment of the reasonable expenses (fees and costs) related to the motions. 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 March 27, 2025. The court made clear that untimely submissions would not be considered. Collier timely submitted the Memorandum. Defendants' submitted an opposition on April 7, 2025.

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).

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).

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. *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 and staff, including Mr. Elson, Megan Wessel, and Erin Wood, are experienced attorneys and legal professionals, which Defendants did not dispute.

2. The Character of the Work – Collier argues that the character of the involved significant discovery issues, including the failure to timely respond and produce all required information. The discovery issues dealt with Anthem’s responses to requests for production and interrogatories, Eassa’s responses to requests for production and interrogatories, and Terra West’s responses to requests for production and interrogatories.

3. The Work Performed – Collier argues that the work performed included, but is not limited to, drafting the motions, drafting letters for and the participation in the EDCR 2.34 conferences, time spent in the hearings, and drafting the status reports.

4. The Result – Collier argues that her result was successful, as the Court granted the three motions to compel, which addressed over 100 discovery requests between the three parties.

In response, Defendants argued that the billing on the matter was excessive related to the matters at issue and the outstanding discovery issues.

///

B. Summary Of Fees Sought

Collier provided documentation showing Mr. Elson, Ms. Wessel, and Ms. Wood spent significant time as set forth in the Declaration and billings records at various rates (\$435.00 - \$445.00 per hour for Mr. Elson, \$300.00 per hour for Ms. Wessel, and \$100.00 for Ms. Wood). Collier asked the Court for an award ^{elt} of ~~Motion tasks the Court for an award~~ of \$36,479.72 in attorney fees. 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. 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 ^{awarded below elt} ~~charged by Collier XXXXXX~~ 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 the time spent on the various tasks at issue and the issues involved in the Motions to Compel. Any award of fees is limited to tasks for drafting the motions, drafting letters for and the participation in the EDCR 2.34 conferences, time spent in the hearings, and drafting the status reports.

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

1 affidavit or other competent evidence. EDCR 2.21(a). Parties may not simply estimate a reasonable
2 amount of costs, but must provide the court with proof that the costs were actually incurred. *Cadle*,
3 131 Nev. at 120, 345 P.3d at 1054 (citing *Gibellini v. Klindt*, 110 Nev. 1201, 1205–06, 885 P.2d 540,
4 543 (1994) (holding that a party may not estimate costs based on hours billed)).

5
6 Without competent evidence to “determine whether a cost was reasonable and necessary, a
7 district court may not award costs.” *Cadle*, 131 Nev. at 121, 345 P.3d at 1054 (citing *Bobby Berosini*,
8 *Ltd.*, 114 Nev. at 1353, 971 P.2d at 386). “[R]easonable costs’ must be actual and reasonable, ‘rather
9 than a reasonable estimate or calculation of such costs.’” *Bobby Berosini, Ltd. v. PETA*, 114 Nev.
10 1348, 1352, 971 P.2d 383, 385 (1998). Movant must “demonstrate how such [claimed costs] were
11 necessary to and incurred in the present action.” *Id.*, 114 Nev. at 1352-53, 971 P.2d at 386. Conclusory
12 arguments, or even statements in sworn testimony, that the costs were “reasonable and necessary” do
13 not suffice. An award of costs based on such a conclusory statement is subject to reversal, as the court
14 will lack “evidence on which to judge the reasonableness or necessity of each [cost]”. *Cadle*, 131 Nev.
15 at 121, 345 P.3d at 1054-55. Rather than merely telling the court the costs were reasonable and
16 necessary, counsel’s affidavit must attach “justifying documentation” verifying the costs were
17 incurred and must demonstrate how those costs were both reasonable and necessary to the matter at
18 issue. *Id.* (citing *Bobby Berosini, Ltd.*, 114 Nev. at 1352-53, 971 P.2d at 386). Without “justifying
19 documentation” and counsel’s explanation, there is “no way [for the court to] determined whether the
20 cost was reasonable or necessary.” *Id.*, 131 Nev. at 121-22, 345 P.3d at 1055.

21
22 The Court reviewed Mr. Elson’s declaration and billing statements detailing the costs. Collier
23 argued that it was entitled to costs for filing fees for filings that were actually filed and for transcripts
24 from hearings that were actually ordered and docketed. Defendants did not dispute the costs awarded.
25 The court finds Collier has adequately demonstrated through sworn testimony and “justifying
26
27
28

documents” how the claimed costs were actually incurred and were “reasonable and necessary” to the action.

II. RECOMMENDATIONS:

IT IS THEREFORE RECOMMENDED:

1. That Collier is awarded \$9,570.00 in attorneys’ fees.
2. That Collier is awarded \$236.70 in costs.
3. The total award is \$9,860.70, which is due payable to Collier via a check made payable 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 7th day of May, 2025.



THE HONORABLE ERIN TRUMAN
DISCOVERY COMMISSIONER

Respectfully Submitted by:

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/s/ Timothy Elson

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

Approved as to Form and Content

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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 May 21, 2025.

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

 Mailed by United States Postal Service, postage prepaid, on , 2025
to the parties listed below at their last known address(es):



Electronically e-filed and e-served to all registered counsel and parties on
May 7, 2025, Pursuant to N.E.F.C.R. Rule 9.

By

Nathalie Simonetti

Commissioner Designee



Tim Elson <tim@elsonlawoffices.com>

RE: Collier v. Mossett-Puhek et al.

ted <ted@boyacklaw.com>

Tue, May 6, 2025 at 7:44 AM

To: Derek Noack <Derek.Noack@fmglaw.com>, Tim Elson <tim@elsonlawoffices.com>

I confirm as well.

Sent from my T-Mobile 5G Device

----- Original message -----

From: Derek Noack <Derek.Noack@fmglaw.com>

Date: 5/5/25 2:01 PM (GMT-08:00)

To: Tim Elson <tim@elsonlawoffices.com>, Ted Boyack <ted@boyacklaw.com>

Subject: RE: Collier v. Mossett-Puhek et al.

Thanks Tim, this updated version is acceptable to affix my e-signature.

Derek Noack

Senior Counsel

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From: Tim Elson <tim@elsonlawoffices.com>
Sent: Saturday, May 3, 2025 11:01 AM
To: Ted Boyack <ted@boyacklaw.com>; Derek Noack <Derek.Noack@fmglaw.com>
Subject: Collier v. Mossett-Puhek et al.

Caution: This email originated from outside of the FMG organization. **Do not click links** or **open attachments** unless you recognize the sender and know the content is safe.

Ted and Derek,

Happy Saturday. See attached for an updated DCRR. Please see Section I(B) at the last sentence. Note, similar language was also included in the prior DCRR. If this works, please review the DCCR and confirm authority to affix your e-signature. Thank you.

Best,

Tim Elson



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