

1 DCRR  
2 Attorney's Name  
3 Attorney's Bar Number  
4 Attorney's Firm Name  
5 Attorney's Address  
6 Attorney's Phone Number  
7 Attorney's E-mail Address  
8 Party Attorney Represents

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 \*,  
10 Plaintiff(s),  
11 v.  
12 \*, et al.,  
13 Defendant(s).

CASE NO. A---C  
DEPT NO.

Date of Hearing: \*, 202\_  
Time of Hearing: \_\_\_\_\_ a.m.

**DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

**INSTRUCTIONS: SUBMITTING COUNSEL TO FILL OUT THE INFORMATION REQUESTED IN YELLOW BELOW. ALL OTHER MATTERS BELOW MUST BE LEFT FOR THE COURT TO FILL OUT.**

Party/Attorney appearing for Plaintiff(s): **[LIST]**

Party/Attorney appearing Defendant(s): **[LIST]**

On **[HEARING DATE]**, the parties to the above-captioned matter appeared before the Honorable Discovery Commissioner **[Erin Lee Truman / Adam Ganz]** by and through their counsel listed above, on Movant's **[INSERT FULL TITLE OF MOTION]** (the "Motion"). The Court reviewed the Motion and **[LIST ALL OTHER PLEADINGS]**, and entertained oral argument made by the parties. For good cause appearing, the Discovery Commissioner hereby makes the following findings and recommendations:

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

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

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

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

22 *Id.* (internal quotation marks omitted). **[IN FAMILY LAW CASES ADD THE FOLLOWING**  
23 **LANGUAGE]**: In addition to the *Brunzell* factors, the court must evaluate the disparity of  
24 income between parties to family law matters. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970  
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27 <sup>1</sup> The court must determine the reasonable rates for all persons for whose time a party seeks reimbursement,  
28 including partners, associates, paralegals, and law clerks, etc. See *LVMPD v. Yeghiazarian*, 129 Nev. 760, 770,  
312 P.3d 503, 510 (2013).

1 P.2d 1071, 1073 (1998).

2 The court can follow any rational method so long as it applies the *Brunzell* factors; it is  
3 not confined to authorizing an award of attorney fees exclusively from billing records or hourly  
4 statements. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Shuette v. Beazer*  
5 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based  
6 on a “lodestar” amount, as well as a contingency fee arrangement). Although the court must  
7 “expressly analyze each factor”, no single factor should be given undue weight. *Logan v. Abe*,  
8 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33.  
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11 After determining the reasonable value of an attorney’s services analyzing the factors  
12 established in *Brunzell*, the court must then provide sufficient reasoning and findings  
13 concerning those factors in its order. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,  
14 865, 124 P.3d 530, 549 (2005). The court’s decision must be supported by “substantial  
15 evidence”. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).  
16

17 Substantial evidence supporting a request for fees must be presented to the court by  
18 “affidavits, unsworn declarations under penalty of perjury, depositions, answers to  
19 interrogatories, [or] admissions on file”. EDCR 2.21(a). Sworn statements submitted pursuant  
20 to EDCR 2.21(a) must be sufficient to satisfy NRCP 56(e). EDCR 2.21(c). Unsworn  
21 statements of counsel and conclusory statements in pleadings not otherwise presented in  
22 compliance with EDCR 2.21(a) may not be considered by the court. The Supreme Court has  
23 confirmed that the *Brunzell* factors must be presented by affidavit or other competent evidence.  
24 *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen.*  
25 *Improvement Dist.*, 452 P.3d 411 (Nev. 2019), *cert. denied*, 141 S. Ct. 253, 208 L. Ed. 2d 26  
26 (2020) (citing *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762,  
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1 765 (1989) (holding that an affidavit documenting the hours of work performed, the length of  
2 litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable  
3 the court to make a reasonable determination of attorney fees, even in the absence of a detailed  
4 billing statement); *Cooke v. Gove*, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding  
5 an award of attorney fees based on, among other evidence, two depositions from attorneys  
6 testifying about the value of the services rendered)). An award that is not based on such  
7 substantial evidence is subject to reversal, as the court will have no factual basis on which to  
8 base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).  
9  
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11 In the instant matter, Movant provided the court with the following sworn testimony and  
12 other evidence: [LIST SWORN STATEMENT(S) AND ALL OTHER EVIDENCE RELIED  
13 UPON]. Movant argues each *Brunzell* factor as follows:  
14

15 **1. The Qualities of the Advocate**

16  
17 **2. The Character of the Work**

18  
19 **3. The Work Performed**

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21 **4. The Result**

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23 **5. Disparity in Income (Only in family law matters)**

24 In response, [NON-MOVING PARTY] argues [SUMMARIZE].  
25

26 **B. SUMMARY OF FEES SOUGHT**

27 Movant provided evidence suggesting [NAME OF ADVOCATE] spent [NUMBER OF  
28

1 **HOURS]** at the rate of \$\_\_\_\_\_ per hour on matters related to the activities for which the court  
2 ordered an award of fees. **[REPEAT FOR EACH ADVOCATE]**. Movant asks the court for an  
3 award of \$\_\_\_\_\_ in attorney fees. **[ALTERNATIVELY, USE LODESTAR,**  
4 **CONTINGENCY FEE ANALYSIS, ETC.]**  
5

6 The court has reviewed **[LIST SWORN STATEMENT(S) AND ALL OTHER**  
7 **EVIDENCE RELIED UPON IN SUPPORT OF REQUEST FOR FEES]**, as well as any  
8 response thereto and finds:

9 \_\_\_\_\_ Movant has adequately addressed the factors required by *Brunzell* and its  
10 progeny. Movant has detailed the qualities of the advocate, the character of the work  
11 performed, the actual work performed by the attorney, including skilled time and attention given  
12 to the work, and the result. Movant has provided competent evidence in support of Movant's  
13 request for fees.  
14

15 \_\_\_\_\_ Movant has not adequately addressed the factors required by *Brunzell* and its  
16 progeny. Movant has not detailed the qualities of the advocate, the character of the work  
17 performed, the actual work performed by the attorney, including skilled time and attention given  
18 to the work, and the result sufficiently or Movant referenced the same but not by competent  
19 evidence as required by the Supreme Court, depriving the court here of an evidentiary upon  
20 which to grant the request.<sup>2</sup> Movant has not provided sufficient competent evidence in support  
21 of Movant's request for fees.  
22

23 \_\_\_\_\_ Movant failed to file a timely Memorandum of Costs and Fees, precluding an  
24 order granting the same.  
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27 \_\_\_\_\_  
28 <sup>2</sup> 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).

1 The court finds the analysis required under [INCLUDE ALL THAT APPLY] *Brunzell*  
2 *v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579,  
3 668 P.2d 268 (1983); *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)

4 \_\_\_\_\_ was satisfied. The factors addressed by [THAT/THOSE] case(s), prerequisite to  
5 an award of attorney fees, were set forth in the Motion with specificity as addressed above.  
6

7 \_\_\_\_\_ was not satisfied.

8 The court finds the fees charged by Movant's counsel in this matter:

9 \_\_\_\_\_ were necessary to the matter and are reasonable in the marketplace given the  
10 experience and qualities of the advocates in the amount granted by the court.  
11

12 \_\_\_\_\_ were not proven necessary and/or reasonable.

13 **C. MOVANT SEEKS AN AWARD OF COSTS [OMIT IF COSTS ARE NOT**  
14 **SOUGHT]**

15 Movant seeks an award of costs pursuant to [INSERT STATUTE, RULE, OR  
16 **CONTRACT]**. [INSERT STATUTE, RULE, OR CONTRACT] allows for an award of fees in  
17 the following circumstances [LIST].  
18

19 Courts have broad discretion to award costs. *Cadle Co. v. Woods & Erickson, LLP*, 131  
20 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). A memorandum of costs must be supported by an  
21 affidavit. *See* NRS 18.110. Further, any documentary evidence required to prove that the costs  
22 were actually incurred, necessary, and related to the action, must be presented by affidavit or  
23 other competent evidence. EDCR 2.21(a). Parties may not simply estimate a reasonable  
24 amount of costs, but must provide the court with proof that the costs were actually incurred.  
25 *Cadle*, 131 Nev. at 120, 345 P.3d at 1054 (citing *Gibellini v. Klindt*, 110 Nev. 1201, 1205–06,  
26 885 P.2d 540, 543 (1994) (holding that a party may not estimate costs based on hours billed)).  
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1 Without competent evidence to “determine whether a cost was reasonable and necessary, a  
2 district court may not award costs.” *Cadle*, 131 Nev. at 121, 345 P.3d at 1054 (citing *Bobby*  
3 *Berosini, Ltd.*, 114 Nev. at 1353, 971 P.2d at 386).

4  
5 “‘[R]easonable costs’ must be actual and reasonable, ‘rather than a reasonable estimate  
6 or calculation of such costs.’” *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d  
7 383, 385 (1998). Movant must “demonstrate how such [claimed costs] were necessary to and  
8 incurred in the present action.” *Id.*, 114 Nev. at 1352-53, 971 P.2d at 386. Conclusory  
9 arguments, or even statements in sworn testimony, that the costs were “reasonable and  
10 necessary” do not suffice. An award of costs based on such a conclusory statement is subject to  
11 reversal, as the court will lack “evidence on which to judge the reasonableness or necessity of  
12 each [cost]”. *Cadle*, 131 Nev. at 121, 345 P.3d at 1054-55. Rather than merely *telling* the  
13 court the costs were reasonable and necessary, counsel’s affidavit must attach “justifying  
14 documentation” verifying the costs were incurred and must *demonstrate* how those costs were  
15 both reasonable and necessary to the matter at issue. *Id.* (citing *Bobby Berosini, Ltd.*, 114 Nev.  
16 at 1352-53, 971 P.2d at 386). Without “justifying documentation” **and** counsel’s explanation,  
17 there is “no way [for the court to] determined whether the cost was reasonable or necessary.”  
18 *Id.*, 131 Nev. at 121-22, 345 P.3d at 1055.

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21 The court has reviewed [LIST SWORN STATEMENT(S) AND ALL OTHER  
22 EVIDENCE RELIED UPON IN SUPPORT OF REQUEST FOR COSTS]. Movant argues  
23 [SUMMARIZE]. In response, [NON-MOVING PARTY] argues [SUMMARIZE].

24  
25 The court finds:

26 \_\_\_\_\_ Movant has adequately demonstrated through sworn testimony and “justifying  
27 documents” how the claimed costs were actually incurred, and were “reasonable and necessary”  
28



1 to the action.

2 \_\_\_\_\_ Movant has not adequately *demonstrated* through sworn testimony and  
3 “justifying documents” how the claimed costs were actually incurred, and/or were “reasonable  
4 and necessary” to the action. Conclusory statements do not suffice. Accordingly, an award of  
5 costs is DENIED.  
6

7 \_\_\_\_\_ Movant has not provided the court with receipts or other “justifying documents”  
8 introduced by competent testimony; thus, there is “no way [for the court to] determined whether  
9 the cost was reasonable or necessary.” *Cadle*, 131 Nev. at 121-22, 345 P.3d at 1055.  
10

11 \_\_\_\_\_ Movant failed to file a timely Memorandum of Costs and Fees, precluding an  
12 order granting the same.

13 **II. RECOMMENDATIONS**

14 IT IS THEREFORE RECOMMENDED [INSERT RECOMMENDATIONS  
15 REGARDING THE UNDERLYING MOTION]  
16

17 IT IS FURTHER RECOMMENDED, consistent with the findings herein,  
18 \_\_\_\_\_ an award of attorney fees is GRANTED against \_\_\_\_\_ the amount of  
19 \$\_\_\_\_\_.  
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21 \_\_\_\_\_ an award of attorney fees is DENIED.

22 [ONLY INCLUDE THE FOLLOWING LANGUAGE IF COSTS ARE BEING SOUGHT]

23 IT IS FURTHER RECOMMENDED, consistent with the findings herein,

24 \_\_\_\_\_ an award of costs is the amount of \$\_\_\_\_\_ is GRANTED.

25 \_\_\_\_\_ an award of costs is DENIED.

26 IT IS FURTHER RECOMMENDED the award must be paid within \_\_\_\_ days of entry  
27 of an order affirming and adopting these Recommendations.  
28

1           The Discovery Commissioner, having met with counsel for the parties, discussed the  
2 issues noted above, and having reviewed any materials proposed in support thereof, hereby  
3 submits the above recommendations.  
4

5  
6 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

7  
8  
9 \_\_\_\_\_  
DISCOVERY COMMISSIONER

10 [CASE NAME AND CASE NUMBER]

11 Submitted by:

12 \_\_\_\_\_  
13 Attorney's Name  
14 Attorney's Firm Name  
15 Attorney's Address  
16 Attorney's E-mail Address  
17 Counsel for \_\_\_\_\_

18 Approved as to form and content by:

19 \_\_\_\_\_  
20 Attorney's Name  
21 Attorney's Firm Name  
22 Attorney's Address  
23 Attorney's E-mail Address  
24 Counsel for \_\_\_\_\_  
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**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 \_\_\_\_\_ 20\_\_.**

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

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_:

\_\_\_\_\_ Electronically filed and served counsel on \_\_\_\_\_, 20\_\_, Pursuant to NEFCR, Rule 9.

By: \_\_\_\_\_  
COMMISSIONER DESIGNEE

1 ORDR  
Attorney's Name  
2 Attorney's Bar Number  
Attorney's Firm Name  
3 Attorney's Address  
4 Attorney's Phone Number  
Attorney's E-mail Address  
5 Party Attorney Represents

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA  
8

9 \*,

10 Plaintiff(s),

11 v.

CASE NO. A  
DEPT NO.

12 \*, et al.,

13 Defendant(s).  
14  
15

HEARING DATE:  
HEARING TIME:  
16  
17

18 ORDER  
19 RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

20 The court, having reviewed the above report and recommendations prepared by the Discovery  
21 Commissioner and,

22 \_\_\_\_\_ No timely objection having been filed,  
23

24 \_\_\_\_\_ After reviewing the objections to the Report and Recommendations and good cause  
25 appearing,  
26

27 \* \* \*  
28

CASE NAME:  
CASE NO:

AND

\_\_\_\_\_ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

\_\_\_\_\_ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner.  
(attached hereto)

\_\_\_\_\_ IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for reconsideration or further action.

\_\_\_\_\_ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for \_\_\_\_\_, 20\_\_, at \_\_\_\_\_:\_\_\_\_\_ a.m.

\_\_\_\_\_