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9 ADAM FULTON, JARED JENNINGS and
LOGAN WILLSON

10
11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 LINDSEY LICARI, an individual,
14
15 Plaintiff,

16 vs.

17 JENNINGS AND FULTON LTD, a Nevada
Corporation, SHUMWAY VAN LTD, a
18 Nevada Corporation, ADAM FULTON, an
individual, JARED JENNINGS, an
19 individual, LOGAN WILLSON, an
individual, GRAYSON MOULTON, an
20 individual, GARRETT CHASE, an
individual, STATE BAR OF NEVADA, A
21 Nevada Corporation; DOES I through X,
inclusive.,
22 Defendants.

CASE NO. A-20-820446-C
Dept. No.: XX

HEARING REQUESTED

**DEFENDANTS' MOTION FOR FEES
AND COSTS**

23 Defendants JENNINGS AND FULTON LTD, ADAM FULTON, JARED JENNINGS
24 and LOGAN WILLSON ("Defendant," "JENNINGS AND FULTON" or "J&F"), by and through
25 their attorneys of record, Murchison & Cumming, LLP, file their Motion for Fees and Costs
26 pursuant to NRCP 68, NRCP 54 and NRS 18.010 et seq.

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1 This Motion is based on the Memorandum of Points and Authorities, all the pleadings
2 and papers on file herein, attached exhibits, and such argument as the Court may allow at the
3 hearing of this Motion.

4 DATED: December 21, 2021

5 **MURCHISON & CUMMING, LLP**

6
7 By /s/ Tyler N. Ure
8 Michael J. Nuñez, Esq.
9 Nevada Bar No. 10703
10 Tyler N. Ure, Esq.
11 Nevada Bar No. 11730
12 350 South Rampart Boulevard, Suite 320
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DECLARATION OF TYLER N. URE, ESQ.

I, Tyler N. Ure, declare as follows:

1. I am a senior associate at Murchison & Cumming, LLP, counsel of record for Defendants JENNINGS AND FULTON LTD, ADAM FULTON, JARED JENNINGS and LOGAN WILLSON.

2. I make this declaration in support of Defendants Jennings and Fulton LTD, Adam Fulton, Jared Jennings, and Logan Willson's Motion for Fees and Costs

3. I am the attorney primarily responsible for handling of this matter at the firm; I am familiar with the facts of this case; the facts stated herein; I reviewed the Matter Worked Detail Report re Fees; I know the contents thereof; and that the same is true of my own knowledge except for those matters stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury the foregoing facts are true and correct.

DATED: December 21, 2021

MURCHISON & CUMMING, LLP

By /s/ Tyler N. Ure
Michael J. Nuñez, Esq.
Nevada Bar No. 10703
Tyler N. Ure, Esq.
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ADAM FULTON, JARED JENNINGS and
LOGAN WILLSON

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **INTRODUCTION**

4 This case legal malpractice claim that was filed simply to harass Defendants. This
5 lawsuit is one of many others that Plaintiff has filed against J & F. A vexatious litigation order
6 has already been issued by this court due to the amount of frivolous lawsuits filed by Plaintiff.

7 II.

8 **LEGAL STANDARD**

9 **A. Legal Standard to Award Fees Under NRS 18.010.**

10 NRS 18.010(2) states that "the court may make an allowance of attorney's fees. . ."

11 (b) Without regard to the recovery sought, when the court finds that the claim,
12 counterclaim, cross-claim or third-party complaint or defense of the opposing
13 party **was brought or maintained without reasonable ground or to harass**
14 **the prevailing party**. The court shall liberally construe the provisions of this
15 paragraph in favor of awarding attorney's fees in all appropriate situations. It is
16 the intent of the Legislature that the court award attorney's fees pursuant to this
17 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
18 Civil Procedure in all appropriate situations to punish for and deter frivolous or
19 vexatious claims and defenses because such claims and defenses overburden
20 limited judicial resources, hinder the timely resolution of meritorious claims and
21 increase the costs of engaging in business and providing professional services
22 to the public. (Emphasis added.)

23 In determining the amount of reasonable attorney's fees, the Nevada Supreme Court
24 found a district court can multiply "the number of hours reasonably spent on the case by a
25 reasonable hourly rate."¹ In determining whether the amount is reasonable, the court must
26 also consider (1) the qualities of the advocate, i.e., his ability, training, education, experience,
27 professional standing, and skill; (2) the character of the work to be done; (3) the work actually
28 performed by the lawyer; and (4) the result (the "Brunzell Factors").²

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28 ¹ Herbst v. Humana Ins. of Nevada, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989).

² Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 **B. Legal Standard to Award Fees Under NRCP 54.**

2 (a) **Definition; Form.** "Judgment" as used in these rules includes a decree and
3 any order from which an appeal lies. A judgment should not include recitals of
4 pleadings, a master's report, or a record of prior proceedings.

4 (d) **Attorney Fees.**

5 (1) **Reserved.**

6 (2) **Attorney Fees.**

7 (A) **Claim to Be by Motion.** A claim for attorney fees must be made
8 by motion. The court may decide a postjudgment motion for attorney fees
9 despite the existence of a pending appeal from the underlying final judgment.

10 (B) **Timing and Contents of the Motion.** Unless a statute or a court
11 order provides otherwise, the motion must:

12 (i) be filed no later than 21 days after written notice of entry of
13 judgment is served;

14 (ii) specify the judgment and the statute, rule, or other grounds
15 entitling the movant to the award;

16 (iii) state the amount sought or provide a fair estimate of it;

17 (iv) disclose, if the court so orders, the nonprivileged financial
18 terms of any agreement about fees for the services for which the claim
19 is made; and

20 (v) be supported by:

21 (a) counsel's affidavit swearing that the fees were
22 actually and necessarily incurred and were reasonable;

23 (b) documentation concerning the amount of fees
24 claimed; and

25 (c) points and authorities addressing the appropriate
26 factors to be considered by the court in deciding the motion.

27 **III.**

28 **LEGAL ARGUMENT**

1 **A. Under NRCP 54, Defendant Jennings & Fulton, LTD Request Their Damages**
2 **Under Their Malpractice Claim Be All Attorney's Fees and Costs Incurred With a**
3 **Treble Calculation for the Fraud Claims.**

4 NRCP 54 allows a prevailing party to move their fees and costs, after judgment is
5 entered. Here, this Court granted Defendants' motion for summary judgment on their fraud in
6 the inducement and trespass claim – it was unopposed. This application is timely and
7 appropriate. The nature and quality of the work conducted is outlined below, as required under
8 NRCP 54.

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1 **B. Defendants Are Entitled to Attorney's Fees and Costs Incurred Since the**
2 **Inception of the Current Matter Pursuant to NRS 18.010.**

3 Plaintiff's case was "brought or maintained without reasonable ground" and "to harass
4 the prevailing party." Plaintiff's complaints seems to arise out of a cluster of legal actions that
5 Plaintiff was previously involved in. The current complaint alleges legal malpractice among
6 other causes of action that arise from a real estate transaction Plaintiff was involved in and a
7 defamation action Plaintiff retained the services of J & F to defend.

8 The Complaint was meritless and that Plaintiff filing this simply to harass Defendants
9 has become abundantly clear when this court sees she has not been actively involved in this
10 case. This court has already found Plaintiff to be engaging in a "pattern of harassing and
11 threatening behavior directed at the litigants and other employees of J&F, both in person at
12 the offices of J&F and through electronic means." See Order Granting Motion for Temporary
13 Restraining order and Motion for Injunctive Relief.

14 Plaintiff did not file an opposition to Defendants' motion for summary judgment filed
15 October 4, 2021 that was granted on November 10, 2021.

16 The current complaint lacks any basis and while a single complaint having completely
17 meritless claims could arguably considered excusable for a Pro Se Litigant, this court should
18 consider the fact this lawsuit is merely one of many filed by Plaintiff against J&F and other
19 parties that are meritless, and on that basis, fees and costs pursuant to NRS 18.010 should
20 be granted.

21 **C. Defendants' Fees and Costs are Reasonable and Customary as Considered Under**
22 **the Brunzell Factors.**

23 Nevada Courts have adopted the analysis outlined in Brunzell to determine whether the
24 attorneys' fees and costs requested by a law firm are reasonable and customary. Brunzell v.
25 Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31 (1969). The following proves the attorneys'
26 fees and costs requested here are reasonable and customary should this court grant
27 Defendants' motion for attorneys' fees and costs.

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1 **1. Quality of counsel's advocacy.**

2 **(a) Michael Nuñez, Esq.**

3 Mr. Nuñez is a Senior Partner and the Partner-in-Charge of Murchison & Cumming's
4 Las Vegas office; he is AV-rated and is licensed to practice in Nevada since 2007. Mr. Nuñez
5 is also licensed in California. Mr. Nuñez successfully argued dozens of cases before the
6 California Court of Appeals and the United States Appellate Court for the Ninth Circuit and
7 received published opinions from the Nevada Supreme Court. As a trial attorney, Mr. Nuñez
8 has litigated – and taken to verdict – multiple personal-injury and premises liability matters.

9 **(b) Tyler Ure, Esq.**

10 Tyler Ure is a Senior Associate at Murchison & Cumming since 2015. Tyler Ure was
11 admitted to practice in 2009. Tyler Ure has worked on numerous high-profile, high-value
12 personal injury, wrongful death, business litigation, insurance litigation cases, professional
13 liability and commercial general liability. He has taken cases to trial throughout his professional
14 career. Tyler Ure was recently recognized by "The Best Lawyers in America 2022."

15 **2. Character of the work to be done.**

16 This matter involves a malpractice suit against Defendants arising from a family law
17 matter Defendants represented Plaintiff in and that Plaintiff obtained an unfavorable outcome
18 in. This lawsuit is one of many other lawsuits Plaintiff has filed against others where the
19 charges are alleged to be frivolous. Plaintiff has filed such an extraordinary amount of
20 questionably frivolous lawsuits that she has been issued a vexatious litigant order by the Eighth
21 Judicial District Court of Clark County requiring any lawsuit she files with this court to first be
22 reviewed by the Chief Judge.

23 **3. The work actually done.**

24 The fees requested by Defendants are exclusive to work performed by counsel on
25 behalf of Defendants in this case and limited to the defense of Plaintiff's frivolous claims. All
26 the work was performed in a reasonable, diligent and thorough fashion. A paralegal/law clerk-
27 which has an hourly rate- was utilized where practicable.

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1 **4. The results obtained.**

2 Defendants successfully secured judgment in their favor via the granting of a motion
3 for summary judgment that dismissed all claims.

4 **D. Defendants Seek a Reasonable Fee for the Work Performed.**

5 Once an entitlement to a fees and cost award is established, the Court must determine
6 the amount. Nevada courts have discretion in selecting the method to determine the amount
7 of attorneys' fees to be awarded provided that it is reasonable and fair. See Schuette v. Beazer
8 Homes Holdings Corp., 124 P.3d 530, 548-549 (Nev. 2005) (granting discretion to trial court
9 to determine method but noting that the Brunzell factors should be analyzed as part of the
10 determination).

11 A reasonable hourly rate is calculated according to the current, prevailing market rates
12 in the community charged by attorneys "of reasonably comparable skill, experience and
13 reputation." Blum v. Stenson, 465 U.S. 886, 895-896, n. 11 (1984).

14 Here, the rate for Michael J. Nuñez was \$250 per hour; the rate for Tyler N. Ure was
15 \$250 per hour; and the rate for Manuel R. Gurule was \$100 per hour as a law clerk and \$250
16 per hour as a licensed attorney. The Court may look to a firm's own rate for evidence of the
17 comparable rate: the fact "[t]hat a lawyer charges a particular hourly rate, and gets it, is
18 evidence bearing on what the market rate is, because the lawyer and his clients are part of the
19 market." Carson v. Billings Police Dep't, 470 F.3d 889, 892 (9th Cir. 2006). These rates are
20 reasonable for the market.

21 In this case, Defendants request the maximum attorneys' fees allowed under NRS
22 18.010 of \$64,715.00 and costs of \$704.28 in the total amount of \$65,419.28. To support this
23 request, M&C's relevant billing records and invoices will be supplemented for this Court's
24 review. See Declaration of Tyler Ure.

25 In considering the number of years that attorneys Michael Nuñez, and Tyler Ure, the
26 number of cases tried, and skill-set they and the firm developed over the years by practicing
27 in both State and Federal Court in this jurisdiction and others, the rate charged and total
28

1 amount incurred in attorneys' fees is reasonable, if not slightly below market for defense hourly
2 rates.

3 **IV.**

4 **CONCLUSION**

5 For the reasons stated herein, Defendants respectfully request this court award
6 Defendants' attorneys' fees in the amount of \$64,715.00 and an award of costs in the amount
7 of \$704.28, for a total award of \$65,419.28. Defendants further request the total awarded be
8 multiplied by a factor of 3 as treble damages for Plaintiff's frivolous fraud claims against
9 Defendant, for a grand total of \$196,257.84, against Plaintiff LINDSEY LICARI.

10 DATED: December 21, 2021

11 **MURCHISON & CUMMING, LLP**

12 By /s/ Tyler N. Ure

13 Michael J. Nuñez, Esq.

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