

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAIRWAY CHEVROLET
COMPANY,

Appellant,

vs.

ALLEN KELLEY,

Respondent.

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Supreme Court Case No.: 80160

District Court Case No.: A-13-674480-C

**JOINT APPENDIX
VOLUME 20**

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11	08/12/15	Notice of Entry of Stipulation and Order Regarding Witness Ashley Kelley	APP2054 – APP2058
25	08/21/19	Notice of Entry of Stipulation and Order to Have Plaintiff's Motion to Retax Defendant's Costs and Defendant's Motion for Attorney's Fees Heard Together on September 25, 2019 on the Court's Hearing Calendar and to Extend Opposition and Reply Dates	APP4467 – APP4472
21	02/07/19	Notice of Entry of Stipulation and Order to Release Cash Bond/Security for Appeal to Fairway Chevrolet Company	APP3997 – APP4002
25	08/08/19	Notice of Hearing regarding Motion for Attorneys' Fees	APP4463
23	07/22/19	Notice of Hearing Regarding Motion to Retax and Settle Costs	APP4155
20	12/01/16	Notice of Objection	APP3788 – APP3842

20	02/02/17	Notice of Posting Cash Deposit	APP3977 – APP3980
13	11/16/15	November 16, 2015 Minute Order	APP2497
19	11/03/16	November 3, 2016 Hearing Minutes	APP3691 – APP3692
19	10/06/16	Objection to Order to Submit Proposed Injunction	APP3595 – APP3597
19	10/20/16	October 20, 2016 Minute Order	APP3598
17	05/04/16	Opposition to Motion 1) to Amend Judgment; 2) Alternative Motion to Amend Findings of Fact and Conclusions of Law; and 3) Motion to Stay Enforcement of Judgment Pending Appeal and Countermotion to Require Posting of Supercedeas Bond Pending Appeal	APP3093 – APP3198
16	05/04/16	Opposition to Motion for Award of Attorneys' Fees and Costs	APP2929 – APP3092
3	02/19/15	Opposition to Motion for Class Certification	APP0387 – APP0405
7	07/06/15	Opposition to Motion for Summary Judgment and Countermotion in Limine to Preclude Defendant from Asserting Release and Right to Cure Defenses	APP1002 – APP1215
13	11/04/15	Opposition to Motion to Amend Findings of Fact and Conclusions of Law on Liability (First) Phase of Trial	APP2464 – APP2490
6	06/07/15	Opposition to Motion to Reconsider Order Granting Plaintiff's Countermotion for Partial Summary Judgment	APP0900 – APP0950
23	08/06/19	Opposition to Plaintiff Allen Kelley's Motion to Retax and Settle Costs	APP4156 – APP4167
27	11/20/19	Order Denying Defendant's Motion for Attorneys' Fees	APP4722 – APP4723
8	07/16/15	Order Denying Defendant's Motion for Reconsideration	APP1216 – APP1217
11	08/11/15	Order Denying Defendant's Motion for Summary Judgment and Order Granting Plaintiff's Countermotion in Limine	APP1888 – APP1890

6	05/01/15	Order Denying Motion for Class Certification	APP0848 – APP0849
15	12/16/15	Order Denying Motion to Amend Findings of Fact and Conclusions of Law on Liability (First) Phase of Trial	APP2779 – APP2780
21	12/21/18	Order Denying Rehearing	APP3991 – APP3992
21	07/15/19	Order Granting Defendant Fairway Chevrolet Company's Motion for Summary Judgment and Denying Plaintiff's Countermotion for Partial Summary Judgment on Plaintiff's Second Claim for Relief for Declaratory Relief	APP4032 – APP4036
27	11/20/19	Order Granting in Part and Denying in Part Plaintiff's Motion to Retax and Settle Costs	APP4724 – APP4725
20	01/18/17	Order Granting Motion for Award of Attorneys' Fees and Costs	APP3902 – APP3907
20	01/18/17	Order Granting Motion to Stay Injunction Pending Appeal and Order Granting Countermotion to Require Posting of Bond	APP3908 – APP3910
6	05/04/15	Order Granting Plaintiff's Countermotion for Partial Summary Judgment and Order Denying Defendant's Motion for Summary Judgment	APP0850 – APP0858
21	11/09/18	Order of Reversal and Remand	APP3988 – APP3990
15	12/16/15	Order re Second Phase of Trial	APP2781 – APP2783
21	07/15/19	Order Reversing and Vacating Final Judgment and Permanent Injunction, Related Orders, and Findings of Fact and Conclusions of Law	APP4029 – APP4031
21	02/04/19	Order Scheduling Status Check	APP3993
9	08/10/15	Partial Transcript of Proceedings – Trial Day 1, Excluding Testimony of Allen Kelley	APP1428 – APP1560
8	08/10/15	Partial Transcript of Proceedings – Trial Day 1, Testimony of Allen Kelley	APP1355 – APP1427
12	08/13/15	Partial Transcript of Proceedings – Trial Day 4, Excluding Judge's Ruling	APP2059 – APP2264
12	08/13/15	Partial Transcript of Proceedings – Trial Day 4, Judge's Ruling	APP2265 – APP2284

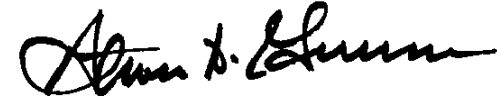
14	12/11/15	Partial Transcript of Proceedings – Trial Day 5, Excluding Findings of Fact, Conclusions of Law and Decision	APP2498 – APP2764
15	12/11/15	Partial Transcript of Proceedings – Trial Day 5, Findings of Fact, Conclusions of Law and Decision	APP2765 – APP2774
26	08/28/19	Plaintiff Allen Kelley’s Opposition to Defendant’s Motion for Attorney’s Fees	APP4473 – APP4621
26	09/15/19	Plaintiff Allen Kelley’s Reply in Support of Plaintiff’s Motion to Settle and Retax Costs	APP4622 – APP4636
27	09/30/19	Plaintiff Allen Kelley’s Supplement in Support of His Opposition to Fairway’s Motion for Fees Re New Precedential and Binding Authority on Issues of First Impression <i>vis-à-vis</i> Award of Fees Under NRS 18.010(2)(b)	APP4702 – APP4714
27	11/28/19	Plaintiff’s Case Appeal Statement on Cross Appeal	APP4758 – APP4767
23	07/20/19	Plaintiff’s Motion to Retax and Settle Costs	APP4107 – APP4154
27	11/28/19	Plaintiff’s Notice of Cross Appeal	APP4755 – APP4757
13	09/23/15	Plaintiff’s Notice of Phase 2 Trial Exhibits and Witnesses	APP2392 – APP2418
27	11/27/19	Plaintiff’s Notice of Posting Cash Deposit in Lieu of Supersedeas Bond	APP4751 – APP4754
4	02/19/15	Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment and Countermotion for Partial Summary Judgment on Plaintiff’s Second Claim for Relief for Declaratory Relief	APP0406 – APP0671
15	12/11/15	Plaintiff’s Phase 2 Trial Exhibit 1A – Redacted Settlement Agreement & Assurance of Discontinuance dated Oct. 2008	APP2775 – APP2776
15	12/11/15	Plaintiff’s Phase 2 Trial Exhibit 2A – Redacted Joint Stipulation for Class Action Settlement & Release of Claims dated Oct. 2009	APP2777 – APP2778
8	08/04/15	Plaintiff’s Pretrial Memorandum #2 on <i>Edwards</i> Factors	APP1260 – APP1267

8	08/04/15	Plaintiff's Pretrial Memorandum #3 re "Per Se" Violation of NAC 482.180(3) and Defendant's Non-Delegable Duty Under NAC 482.110	APP1268 – APP1276
19	11/01/16	Plaintiff's Supplement re Trial Court's Authority to Amend Findings of Fact and Conclusions of Law and the Judgment Pursuant to Rule 52(b)	APP3677 – APP3690
13	08/28/15	Plaintiff's Supplemental Trial Brief re: Admission of Facts, Evidence and Testimony Relating to Previous Lawsuits Filed Against Defendant	APP2340 – APP2390
9	08/10/15	Plaintiff's Trial Exhibit 10 – Declaration of Greg Heinrich in support of Defendant's MSJ dated January 28, 2015	APP1568
9	08/10/15	Plaintiff's Trial Exhibit 13 – AmeriCredit dealer agreement with Fairway dated May 30, 2007	APP1569 – APP1576
9	08/10/15	Plaintiff's Trial Exhibit 15 – GM Financial underwriting guidelines effective July 12, 2012, identified and produced at deposition of Mr. Urritia	APP1577 – APP1578
9	08/10/15	Plaintiff's Trial Exhibit 4 – My 2012 Closeout All Models 9.9% Flyer	APP1561
9	08/10/15	Plaintiff's Trial Exhibit 5 – Broadcast Copy from McCarthy Co.	APP1562
	08/10/15	Plaintiff's Trial Exhibit 6 – Video of "yearend clearance event" CD	Original exhibit transmitted to Nevada Supreme Court in the first appeal

	08/10/15	Plaintiff's Trial Exhibit 6A – Video of “yearend clearance event” CD	Original exhibit transmitted to Nevada Supreme Court in the first appeal
9	08/10/15	Plaintiff's Trial Exhibit 7 – Screen grab static facsimile of the “yearend clearance event”	APP1563
9	08/10/15	Plaintiff's Trial Exhibit 8 – Declaration of Terry Hoisington in support of Defendant's MSJ dated Jan. 15, 2015	APP1564 – APP1567
18	05/13/16	Reply in Support of Motion 1) to Amend Judgment; 2) Alternative Motion to Amend Findings of Fact and Conclusions of Law; and 3) Motion to Stay Enforcement of Judgment Pending Appeal	APP3311 – APP3325
17	05/11/16	Reply in Support of Motion for Award of Attorneys' Fees and Costs – Filed at 11:01 p.m.	APP3199 – APP3238
17	05/11/16	Reply in Support of Motion for Award of Attorneys' Fees and Costs – Filed at 11:21 p.m.	APP3239 – APP3278
5	02/25/15	Reply in Support of Motion for Summary Judgment and Opposition to Countermotion for Partial Summary Judgment	APP0697 – APP0712
8	07/21/15	Reply in Support of Motion for Summary Judgment and Opposition to Countermotion	APP1218 – APP1234
13	11/10/15	Reply in Support of Motion to Amend Findings of Fact and Conclusions of Law on Liability (First) Phase of Trial	APP2491 – APP2496
6	06/16/15	Reply in Support of Motion to Reconsider Order Granting Plaintiff's Countermotion for Partial Summary Judgment	APP0992 – APP1000
5	02/22/15	Reply in Support of Plaintiff's Motion for Class Certification	APP0672 – APP0696
18	05/26/16	Second Supplement in Support of Motion for Award of Attorneys' Fees and Costs	APP3412 – APP3442

18	09/16/16	September 16, 2016 Hearing Minutes	APP3457 – APP3458
11	08/11/15	Stipulation and Order Regarding Witness Ashley Kelley	APP1886 – APP1887
25	08/21/19	Stipulation and Order to Have Plaintiff's Motion to Retax Defendant's Costs and Defendant's Motion for Attorneys' Fees Heard Together on September 25, 2019 on the Court's Hearing Calendar and to Extend Opposition and Reply Dates	APP4464 – APP4466
21	02/06/19	Stipulation and Order to Release Cash Bond/Security for Appeal to Fairway Chevrolet Company	APP3994 – APP3996
17	05/12/16	Supplemental Time Sheet in Support of Motion for Award of Attorneys' Fees and Costs	APP3279 – APP3310
20	12/01/16	Third Amended Verified Time Sheet in Support of Motion for Award of Attorneys' Fees and Costs	APP3764 – APP3787
18	05/18/16	Transcript of Proceedings – All Pending Motions	APP3328 – APP3411
18	05/27/16	Transcript of Proceedings – All Pending Motions	APP3444 – APP3456
18	09/16/16	Transcript of Proceedings – All Pending Motions	APP3459 – APP3544
19	11/03/16	Transcript of Proceedings – All Pending Motions	APP3693 – APP3763
5	03/03/15	Transcript of Proceedings – Fairway Chevrolet Company's Motion for Summary Judgment; Plaintiff's Motion for Class Certification; Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Countermotion for Partial Summary Judgment	APP0714 – APP0847
8	08/05/15	Transcript of Proceedings – Fairway Chevrolet Company's Motion for Summary Judgment; Plaintiff's Opposition and Countermotion in Limine to Preclude Defendant from Asserting Release and Right to Cure Defenses	APP1278 – APP1334

20	12/08/16	Transcript of Proceedings – Motion to Stay Enforcement of Judgment Pending Appeal, Countermotion to Require Posting of Supersedeas Bond Pending Appeal	APP3860 – APP3900
10	08/11/15	Transcript of Proceedings – Trial Day 2	APP1720 – APP1878
11	08/12/15	Transcript of Proceedings – Trial Day 3	APP1891 – APP2053
21	02/19/19	Transcript of Status Check Regarding Remand	APP4003 – APP4006
27	09/25/19	Transcript Regarding Plaintiff’s Motion to Retax and Settle Costs; Defendant’s Motion for Attorney’s Fees	APP4661 – APP4701
21	06/05/19	Transcript Regarding Submission of Orders	APP4007 – APP4028
8	08/10/15	Trial Minutes – August 10, 2015; August 11, 2015; August 12, 2015, August 13, 2015; December 11, 2015	APP1352 – APP1354



CLERK OF THE COURT

MEMC
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Attorney for Plaintiff
ALLEN KELLEY

DISTRICT COURT
CLARK COUNTY, NEVADA

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiffs,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

PLAINTIFF'S THIRD AMENDED
VERIFIED TIME SHEET IN SUPPORT
OF PLAINTIFF'S MOTION FOR
AWARD OF STATUTORY
ATTORNEY'S FEES AND COSTS

DATE : December 8, 2016

TIME : 1:00 p.m.

DECLARATION OF GEORGE O. WEST III

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

I, George O. West, hereby certify :

I am the attorney of record for the Plaintiff and I am admitted to practice law in all of the courts of the State of Nevada and I have personal knowledge of the matters set forth herein, and if called as a witness, I would and could competently testify :

1. Below is a true and accurate itemization of previous costs incurred in this matter as set forth in Plaintiff's previous verified cost bill.

1. Depo trans (Ex 1)

a.	Depo of Terry Hoisington	\$ 1,164.65	
b.	Depo of Greg Hienrich	\$ 1,283.95	
c.	Depo of Thurston Simpson	\$ 334.90	
d.	Depo of Paul Benjamin	\$ 585.35	
e.	Depo of 30(b)(6) GM Financial	\$ 893.35	
f.	Depo of 30(b)(6) McCarthy Co.	\$ 826.10	
	Subtotal		\$ 5,088.30

2. Filing Fees :

a.	Complaint	\$ 280.00	
b.	Mot for Class Certification	\$ 349.00	
c.	Counter Mot for Part Summ Judg (ex 2)	\$ 200.00	
d.	E-filing fees (current 45 @ 3.50 (Ex. 3)	\$ 157.50	
e.	E-filing future	\$ 24.50 ¹	
	Subtotal		\$ 1,011.00

3. Hotel (Ex. 4)

a.	Hilton Garden Inn (Dallas TX)	\$291.16 ²	
b.	Hyatt House (Dallas TX)	\$ 146.90	
	Subtotal		\$ 438.06

4. Air Travel (Ex 5)

a.	R/T LV to DAL (May 2015)	\$ 325.00	
b.	R/T LV to DAL (Sept 2015)	\$ 345.70	
	Subtotal		\$ 670.70

¹ Includes 1) filing of the Findings and Conclusions on second phase, 2) this memo, 3) motion for fees pursuant to NRS 41.600(3)(c), 4) reply brief on mot for fees, 4) order on fee award, 5) notice of entry of order, 6) final judgment, and 7) notice of entry of final judgment.

² Plaintiff did not include any fees or costs the previously scheduled third day at \$ 125.00 plus applicable taxes, which came to a total of \$ 144.08. This was because Plaintiff could not take the 30(b)(6) deposition of McCarthy Co. on May 7th as noticed due to the filing of a motion to quash by McCarthy in Dallas County District Court the week before. However, Plaintiff still proceeded with 30(b)(6) deposition of GM Financial.

1	5.	Car Rental/Parking (Ex. 6)		
2	a.	Rental	\$ 79.89	
3	b.	Parking	<u>\$ 30.00</u>	
4		Subtotal		\$ 109.89
5	6.	Service Fees (Ex. 7)		
6	a.	TX SDT on McCarthy Co.	\$ 155.30	
7	b.	Skip trace on Paul Benjamin	\$ 125.00	
8	c.	Service on Paul Benjamin	<u>\$ 115.40</u>	
9		Subtotal		\$ 395.70
10	7.	Legal Fees & costs for Local TX counsel (Ex. 8)		
11	a.	James Foley	\$ 1,200.00	
12	b.	Jerry Jerzombek	<u>\$ 1,000.00</u>	
13		Subtotal		\$ 2,200.00
14	8.	Court transcription fees (Ex. 9)		
15	a.	DVD from 2/26/15 Cal Call	\$ 30.00	
16	b.	Trans from 2.26/15 Cal Call	\$ 58.40	
17	c.	Transcriber billing for trial	<u>\$ 505.00</u>	
18		Subtotal		\$ 593.40
19	9.	Trial exhibits (Ex. 10)		
20		Subtotal		\$ 404.88
21	10.	Copies (Ex. 11)		
22		Subtotal		<u>\$ 655.50</u>
23		TOTAL :		\$ 11,567.40

2. Attached as Exhibit "A" is a true and correct copy of my ***revised and updated*** time sheet since November 3, 2016, which was the last entry in my amended time sheet previously filed with the Court. All the newly incurred time is in *italics*. 2.2 additional hours have been or will incurred since November 3, 2016.

3. Pursuant to the Court's minute order on Plaintiff's Motion for Award of Fees and Costs, I have broken down and allocated my fees according the historical hourly rate that was in effect throughout different time periods of this litigation, which has been pending for almost four years.

5. I incurred 322.2 hours of time at \$ 350.00 per hour, which was my historical billing rate between January 1, 2010 through December 31, 2014, in the amount of \$ 112,770.00. I incurred 326.65 hours of time at \$425.00 per hour, which was my historical billing rate between January 1, 2015 and December 31, 2015, in the

1 amount of \$ 138,826.25. I incurred 120.70 hours of time at \$450.00 per hour between
2 January 1, 2016 through the present, which is my historical as well as current billing
3 rate, in the amount of \$ 54,315.00. ***Based on this calculation, per the attached***
4 ***revised time sheet I am seeking a total of \$ 305,911.25 in fees.*** All of the
5 items and time itemized on the attached amended time sheet were actually and
6 necessarily incurred and are believed to be reasonable in the prosecution of this action.
7

8 I certify that the aforementioned is true and correct under penalty of perjury
9 under the laws of the state of Nevada.

10 Executed this 1st day of December, 2016 Las Vegas, Nevada
11

12 /s/ George O. West III
13 George O. West III
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28 **PROOF OF SERVICE**

12/31/12	Initial meeting with client	.8
12/31/12	Begin draft of Comp	4.4
1/1/13	Cont draft of Comp	6.6
1/2/13	Cont draft finalize Comp (27 pages)	4.8
1/4/13	Courtesy email to Chris Rose, counsel for Def. Fairway ("CR") regarding initial filing of complaint against client, request to accept service	1.
1/8/13	Prep follow up email to	.1
1/9/13	Tel conf with CR regarding new pending case, facts, acceptance of service, nature of the violations	.4
1/9/13	Follow up email to CR regarding tel conf and legal issues discussed and Defendant's contention that there is no claim because there is damages sought	.5
1/10/13	Reply email to CR regarding acceptance of service of sum and comp via ack of service	.1
1/14/13	Follow up email to CR regarding acceptance of service	.1
1/28/13	Follow up email to CR regarding Def's accept of service via ack of service and deadline to file a response to Comp	.1
1/28/13	Prep ack and accept of service	.2
2/10/13	Email to CR regarding service of Def's resp to complaint via email	.1
2/15/13	Email to CR regarding Def's disqual of judge Behr and reassignment to judge Corey but deadline to file response is not changed due to dept reassignment	.1
2/16/13	Review and analyze Def's Mot to Dismiss	.5
2/18/13	Begin draft opp to Def's Mot to Dismiss	4.2
2/22/13	Cont draft opp to Def's Mot to Dismiss	3.1
2/25/13	Email to CR requesting extension to file opp to Def's mot to dismiss	.1
2/25/13	Cont draft opp to Def's Mot to Dismiss	5.5
2/27/13	Email to CR withdrawing req extension based upon Plaintiff's counsel's week of depositions being cancelled and rescheduled	.1
2/27/13	Reply email to CR agreeing to his request for continuing hearing date	.1
3/1/13	Email to CR regarding prep of stip and order on extending opp and reply brief filing deadlines on Def's mot to dismiss	.1
3/4/13	Cont draft opp to Def's Mot to Dismiss	2.2
3/8/13	Email to CR regarding stip to get thorough March 18 th for Plntf to file opp to Def's Mot to Dismiss	.1
3/9/13	Cont draft opp to Def's Mot to Dismiss	4.4
3/15/13	Cont draft opp to Def's Mot for Dismiss	3.0
3/18/13	Cont draft and finalize opp to Def's Mot to Dismiss (25 pages)	3.8
3/19/13	Prep Errata on Opp to Def's Mot to Dismiss	.3
3/26/13	Reply email to CR's request to move Def's Mot to Dismiss to enable them to file reply brief based on their entire system crashing, Plaintiff indicating not a problem if Plaintiff is entitled to file sur opp under the stip and order that was sought by Defendant given all the extra time they are getting in reply, and was done just in case they added any "new matter" on reply	.3
3/26/13	Reply email to CR regarding his application for continuance to not include a sur opp by Plaintiff given Defendants have received two extensions on the hearing date	.1
4/13/13	Review and analyze Def's Rply brief on Mot to Dismiss (20 pages)	.8
4/13/13	Begin prep of sur opp on Mot to Dismiss based on new matter brought up in Def's reply brief	5.3
4/14/13	Cont prep of sur reply and finalize sur reply brief (18 pages)	5.1
	Page sub total	58.4

4/14/13	Email/fax cover page to Dept 1 law clerk regarding Plntf's sur opp to Def's mot to dismiss based on new matter brought up on Def's reply brief	.1
4/17/13	Review and analyze Def's supp reply brief on Mot to Dismiss (13 pages)	.4
4/17/13	Prep for Def's Mot to Dismiss, review moving and opposing papers, prepare outline of arguments	1.2
4/18/13	Appear at Def's Mot to Dismiss	1.8
4/29/13	Review and execute proposed order denying Def's Mot to dismiss	.1
5/15/13	Prep notice of ECC	.1
6/1/13	Prep not of unavailability	.1
6/3/13	Review and analyze Def's Ans to Complaint, denials, affm defenses	.4
6/17/13	Prep Plntf initial disclosures	.5
6/17/13	Prep proposed JCCR	.5
6/18/13	Appear at ECC	1.1
6/25/13	Prep not of unavailability II	.1
7/12/13	Email to CR regarding receiving no docs within 14 days of ECC and signing of JCCR	.1
7/17/13	Review final JCCR	.2
7/17/13	Review Def's 16.1 disclosures	.2
7/19/13	Email to CR regarding deficient disclosures under 16.1 given the issues and witnesses known to exist in this case	.1
7/19/13	2.34 tel conf on Def's 16.1 disclosures	.4
7/19/13	Email to CR confirming and following up on 2.34 conf and other docs that needed to be produced pursuant to 16.1. and mot to compel compliance	.4
7/20/13	Begin prep of Mot to Compel Compliance with 16.1	3.4
7/23/13	Cont prep on Mot to Compel	3.8
7/24/13	Review disc scheduling order calendar dates	.2
7/24/13	Prep and finalize Mot to compel (15 pages)	4.1
7/26/13	Review initial trial setting order calendar dates	.2
8/8/13	Reply email to CR regarding granting extension to file his opp to Plntf's mot to compel compliance with 16.1 disclosure obligations	.1
8/14/13	Review and analyze Def's opp to mot to compel	.3
8/27/13	Prep for mot to compel, review moving and opp papers, prepare outline of argument	.5
8/28/13	Appear at Plntf's mot to compel compliance with 16.1 disclosure obligations	1.8
9/4/13	Prep 1 st set of interrogatories	2.7
9/4/13	Prep 1 st RFP	2.4
9/5/13	Prep not of depo and RFP for Terry Hoisingon ("TH") and Greg Heinrich ("GH")	.3
9/5/13	Prep 30(b)(6) depositions and PMK for two PMKs re various subject matters including advertising policies, dissemination and authorization of advertisements	.8
10/9/13	Rply email to CR regarding extension to file responses to Plntf's written discovery	.1
10/12/13	Review and analyze Def's resp to RFP request in depo notice and correlate references in response to bates numbers in previous disclosures to ensure Compliance with RFP	.7
10/12/13	Review and analyze Def's resp to 1 st rogs and correlate references in response to bates numbers in previous disclosures to ensure Compliance	.8
	Page sub total	30.0

10/12/13	Review and analyze Def's resp to 1 st RFP and correlate references in response to bates numbers in previous disclosures to ensure Compliance with RFP production	.6
10/12/13	Review and analyze Def's resp to RFP doc request in PMK depo notice	.2
10/16/13	Reply email to CR regarding moving depositions due to his trial schedule	.1
10/16/13	Prep 1 st amd depo notice for Terry Hoisington and Greg Heirnrich	.1
10/16/13	Prep 1 st amd depo notice of PMK depos	.1
10/18/13	Email to CR regarding rescheduling depos of Hoisington, Hienrich and Simpson due to Plnt's schedule	.1
10/20/13	Prep 2 nd amd depo notice for Terry Hoisington and Greg Heinrich & Thurston Simpson	.1
10/21/13	Email to CR trying to reschedule depos due to calendar conflicts	.1
12/4/13	Email to CR having to take Def's depos off cal and reschedule due to trial schedule	.1
12/7/13	Email to CR regarding rescheduling depos of Def's witness into January 2014	.1
12/20/13	Prep 2 nd amd depo notice for PMK depos	.1
1/23/14	Email to CR regarding 30(b)(6) designation by Fairway	.1
1/27/14	Prep for depo of Greg Hienrich, review rog responses, document production, draft depo question outline	3.2
1/28/14	Take depo of Greg Heinrich	7.7
1/28/14	Email to CR regarding subjects to 2.34 conference counsel will have after the depo of Thurston Simpson at Def's counsel's office	.3
1/28/14	Prep for depo of Thurston Simpson, salesman from Fairway involved in the transaction, prep question outline and documents	.8
1/29/14	Take depo of Thurston Simpson Fairway's salesman involved in the transaction	1.5
1/29/14	Research on GM Financial's website, download and review Q & A regarding dealer's responsibility for financing programs, advertising, other information on GM Financial's website in prep for PMK depo of Hoisington	.6
1/29/14	Email to CR regarding and clarifying document production of certain items including dealer lender agreement and Plntf's credit report	.1
1/29/14	Prep for depo of Terry Hoisington in both individual and PMK capacity on all subjects, review rog responses, document production (152 pages), draft depo question outline	4.5
1/30/14	Take depo of Terry Hoisington and PMK for Fairway	7.5
1/30/14	Prep Plntf's 1 st supp disclosure	.3
1/30/14	Review Def's 2 nd supplement	.1
1/30/14	Prep depo of Jim Sosman from Fairway	.1
1/30/14	Prep 2 nd rog to Defendant	.1
1/30/14	Email to CR regarding depos of Mr. Benjamin and Mr. Sossman and extending expert disclosure deadlines	.2
2/4/14	Conf call with CR regarding address of Paul Benjamin and cont expert discovery	.1
2/4/14	Follow up email to CR regarding 2.34 on address of Benjamin and ext exp disc	.1
2/5/14	Prep stip to modify disc scheduling order and to cont trial	.8
2/6/14	Review Def's revisions to proposed stip to cont sch order and trial	.1
2/11/14	Meet with client to respond to Def's 1 st rog and 1 st RFP to Plaintiff	3.3
2/12/14	Prep resp to Def's 1 st rogs to Plntf	2.3
2/12/14	Prep resp to Def's 1 st RFP to Plntf	2.7
	Page sub total	38.2

2/12/14	Email to CR regarding location info for Paul Benjamin, relevant witness and Def's request to take depo off	.4
2/12/14	Email to CR informing him of Plntf's intention of taking TPW 30(b)(6) witnesses GM Financial and McCarthy Company in Dallas TX and retention of local counsel	.1
2/13/14	WL research on TX law regarding issuance of TX SDT for pending out of state matters in TX statutes and case law to prepare app for issuance of TX subpoena based on foreign pending case	2.7
2/13/14	Email to CR regarding no requirement to give 30(b)(6) topics of GM Financial in TX in advance of Mr. Benjamin's depo, for which no service address has been produced and difference between 30(b)(1) depo and 30(b)(1) depo, of which Paul Benjamin is a 30(b)(1) depo.	.3
2/14/14	Conf call with James Foley Esq in Ft. Worth TX regarding retention as local counsel, nature of the case, case needs etc...	.8
2/14/14	Reply email to CR about scheduling Plaintiff's deposition	.1
2/14/14	Prep notice of 30(b)(6) depo of TPW GM Financial in TX and document request, topic categories for testimony etc...	1.2
2/14/14	Prep notice of 30(b)(6) depo of TPW McCarthy Company in TX and document request and topic categories for testimony etc...	.3
2/14/14	Prep out of state commission for depo of TPW GM Financial	.6
2/14/14	Prep out of state commission for depo of TPW McCarthy Company	.1
2/14/14	Prep doc request for TX SDT for GM Financial and 30(b)(6) topics for local atty to insert in TX SDT and notice of depo	2.6
2/15/14	Prep doc request for TX SDT for McCarthy & Co and 30(b)(6) topics for local atty to insert in TX SDT and notice of depo	2.1
2/17/14	Email from CR indicating they will not produce address of Paul Benjamin	.1
2/17/14	Email to CR taking depo of Paul Benjamin off due to inability to serve and locate him and will seek address from GM Financial doc production in TX	.1
2/19/14	Email to CR regarding supplementing for address of Josh Parsons who was identified as a witness on Def's initial disclosures	.1
2/20/14	Prep Plntf's 2 nd supp disclosure	.2
2/20/14	Email to CR requesting 2.34 conf on location information on Paul Benjamin and Fairway's knowledge of cell phone and him being a relevant witness	.3
2/23/14	Review Def's offer of judgment	.1
2/23/14	Conf call with client regarding Def's offer of judgment	.3
2/24/14	Email to CR again requesting 2.34 on moving expert disclosure deadlines and Paul Benjamin address	.1
2/25/14	Conf call with local Ft. Worth TX attorney James Foley re retention on filing apps for SDT in Tarrant and Dallas County for TPW GM Financial and McCarthy Co, discussion about case and TX law	.6
2/26/14	Prepare Application for Issuance SDT for oral deposition and production of docs regarding matter pending in foreign jdx	.3
2/26/14	Email to CR again regarding setting up 2.34 and acquiring location and contact information in Fairway's possession or knowledge	.1
2/26/14	Prep email to CR re clarification of Def's offer of judgement re the requested equitable relief. OJ only covered monetary component when there was no monetary component to the case. Did OJ include the requested equitable relief	.4
Page Sub Total		14.00

2/27/14	Tel conf with CR regarding clarification of Def's offer of judgment and doc request to Plaintiff regarding financial records	.4
2/27/14	Follow up email to CR's email refusing to clarify if the requested equitable relief is included in Def's OJ.	.1
2/27/14	Conf call with client regarding Def's offer of judgment and Def's anticipated mot to compel financial records	.5
2/27/14	Review email from CR and review and analyze case <i>Rock Bay</i> opinion re right to privacy of financial information (taxes etc...) regarding 2.34 conference regarding disc dispute about Plntf's financial records and relevance and privilege of those records	.8
2/28/14	Begin prep mot to strike Def's offer of judgment	.3.2
3/1/14	Email to CR regarding modifying sch order and mot to amend schd order due to DC rejecting previous stipulation	.3
3/2/14	Prep 1 st amd not of depo and doc production for TPW McCarthy company	.1
3/2/14	Prep 1 st amd not of depo and doc production to TPW GM Financial	.1
3/3/14	Cont prep of Mot to Strike Def's offer of judgment	4.6
3/4/14	Prep SDT for TPW Paul Benjimin local GM Financial rep	.1
3/4/14	Begin prep of Mot to Extend Disc and Trial date	2.7
3/4/14	Prep not of TPW depo for Paul Benjimin	.1
3/4/14	Prep trial subpoena for TPW Paul Benjimin	.1
3/5/14	Cont prep Mot to Extend Disc and Trial date	3.2
3/6/14	Prep POS for TPW SDT for out of state TX depositions	.1
3/6/14	Email to CR indicating that Plntf would still be traveling to Dallas to take TPW 30(b)(6) witness from GM Financial even though McCarthy will not allow its depo to be taken the day after in Dallas as previously noticed due to their objections to said deposition and doc production request	.2
3/7/14	Cont prep and finalize Mot to Strike Def's offer of judgment (18 pages)	3.1
3/8/14	Cont prep of Mot to Ext Disc and Cont Trial Date	1.6
3/10/14	Cont prep and finalize Mot to Ext Disc and Cont Trial date	3.9
3/13/14	Conf call to James Foley retained local Plntf TX counsel about status of service of TX SDT and notice of depositions on TPW	.3
3/15/14	Email to CR about newly identified witness, no mention of his knowledge or anticipated testimony and request for 2.34 on proper disclosure	.1
3/17/14	Follow up email to CR about newly identified witness, no mention of his knowledge or anticipated testimony and request for 2.34 on proper disclosure	.1
3/19/14	Prep email to Lisa Zastrow, counsel for Paul Benjamin, outlining in depth why he is a relevant witness regarding the incentive program at issue that served as the basis for the ad in question, his familiarity with the program, what it entailed, did not entail ect... as established by Fairway's depo testimony, and the requested continuance of his depo after he has been served with STD and to change depo location. Plaintiff willing to agree if certain conditions are met	.7
3/20/14	Conf call with Greg Stevens TX counsel for TPW GM Financial regarding TX SDT compliance and resetting of depo to get time for compliance	.4
3/20/14	Prep follow up email to Greg Stevens regarding confirmation of agreements in our tel con, doc production, continuance of depo, acceptance of amd SDT, scope of documents request, scope of discovery, and new depo dates	.7
3/21/14	Email to CR taking depo in Dallas TX of GM Financial 30(b)(6) witness off calendar based on request of their counsel for more time to get docs and witness prepared	.1
	Page Sub Total	27.6

3/24/14	Prep let to McCarthy Company re rescheduling of TPW 30(b)(6) depo in TX	.9
3/25/14	Prep follow up email to Greg Stevens counsel for GM Financial regarding alt dates for depo	.1
3/26/14	Prep 1 st amd not of depo for TPW Paul Benjamin	.1
3/26/14	Email to Greg Stevens counsel for GM Financial about alternative addl dates for depositions sometime in May 2014	.3
3/26/14	Prep 1 st amd not of depo for TPW out of state witness for GM Financial	.1
3/26/14	Prep 1 st amd not of depo for TPW out of state witness for McCarthy Co.	.1
3/27/14	Prep email to Chris Rose ("CR") regarding rescheduling depositions in TX and non cooperation from McCarthy and to try and schedule them back to back with GM Financial	.1
3/27/14	Email to Greg Stevens confirming new depo date, production of docs in advance and identification of 30(b)(6) witness	.2
3/27/14	Review Def's 4 th supplemental disclosures (144 pages)	.7
3/27/14	Prep client for deposition, review discovery responses, previous declarations etc...	4.8
3/28/14	Appear and cover Plaintiff's deposition	6.6
3/31/14	Review and analyze Def's Opp to Mot to Strike Def's offer of judgment	.4
3/31/14	Prep reply on Mot to Strike Def's offer of judgment	4.7
3/31/14	Review and analyze Def's Opp to Mot to Ext Disc and to Cont trial	.2
4/1/14	Prep email to Larry Freidman ("LF") counsel to TPW McCarthy Co re scheduling amended depo in Dallas TX	.1
4/1/14	Prep follow up email to LF regarding nature of the case, facts, current status of the case, issues involving his client, NV law	1.4
4/2/14	Email to Lisa Zastrow about scheduling depo for Paul Benjamin local GM Financial rep	.1
4/2/14	Prep email to Greg Stevens regarding signing of acceptance of service of amended SDT for GM Financial and logistical issues regarding depo at his office	.1
4/3/14	Follow up email to LF regarding acknowledgement of service of amd SDT	.1
4/4/14	Tel conf with John Sokatch ("JS") and LF regarding current depo scheduling, nature of the case, what Plaintiff seeks in the depo from McCarthy Co, scope of disc, document requests, location of depo, accept of service of Amd SDT	.5
4/5/14	Follow up email to JS regarding acceptance of service on amd SDT	.1
4/7/14	Prep 2 nd amd not of depo on Paul Benjamin GM Financial local rep	.1
4/11/14	Prep for Mot to Ext Disc and Trial Date, prep outline	.4
4/11/14	Appear at Mot to Ext Disc and Cont Trial	2.1
4/12/14	Email to LF again following up on ack of ser of amd SDT and issues involving service if not received and requirement to reserve in person if no ack of service is returned	.2
4/14/14	Prepare DCRR on Mot to ext disc and cont trial	.4
4/15/14	Conf call with JS regarding accept of service and "rule 11" agreement under local practice, in addition to "conditions of PMK appearance," and "rule 11" agreement that McCarthy will not be brought in as a defendant to the instant action which was not acceptable to Plaintiff	.4
4/15/14	Follow up email to JS regarding ack of ser of amd SDT	.1
	Page Sub Total	25.4

4/15/14	Email to CR regarding status of ser of amd SDT on McCarthy and mot to compel attendance of TPW McCarthy Co, and inability to get back to back depositions in Dallas to avoid a second trip due to McCarthy's refusal to appear at deposition under conditions that are not acceptable to Plaintiff	.7
4/15/14	Tel conf with JS regarding "conditions of appearance" for McCarthy to appear at depo set for May 7 th , mot for protective order, and conditions Plaintiff will not agree to including waiving any potential claims he may have against TPW McCarthy	1.1
4/16/14	Appear and take TPD of Paul Benjamin local rep for GM Financial	3.0
4/17/14	Prep revised DCRR on Mot to Ext Disc and to continue trial	.1
4/22/14	Review and analyze TPW GM Financial's resp to SDT doc request (14 pages)	.7
4/24/14	Review and analyze TPW McCarthy Co. Mot to Quash/Protective Order	.9
4/24/14	Prep Plntf 3 rd supplemental disclosure	.2
4/24/14	Conf call with new local counsel in Dallas Jerry Jerzombek regarding case, back ground, what is needed, TX procedure	.7
4/24/14	Email to CR regarding McCarthy Co. mot to quash/protective order on TPW SDT And depo is off cal and stayed until adjudicated by TX court	.1
4/25/14	Conf call with former local counsel in Dallas and Ft. Worth re substitution of local attorney Jerry Jerzombek	.2
4/27/14	Email to Greg Stevens re substitution of local TX counsel	.1
4/27/14	Email to LF and JS regarding McCarthy's motion to quash/protective order, their demand to waive any an all claims against McCarthy	.4
5/3/14	Prep 4 th supplemental disclosure	.1
5/3/14	Email to Greg Stevens regarding doc production and docs 30(b)(6) witness should be familiar with for depo, including the advertisement at issue, and addl Docs concerning advertising and previous testimony from Fairway's GM	.7
5/4/14	Review and analyze RFP production of docs from TPW GM Financial (139 pages) for prep for 30(b)(6) witness from GM Financial in TX, draft outline and questions	5.7
5/5/14	Travel to Dallas TX from LV for TPW deposition for GM Financial	6.0
5/5/14	Meet with retained local counsel Jerry Jerzombek to discuss TX civil procedure re depositions, and mot for protective orders, improper objections in TX, and local depo procedure, facts theories of the case, TPW McCarthy Mot pro order ect...	3.5
5/6/14	Take deposition of Mike Urrutia 30(b)(6) rep from GM Financial	6.0
5/8/14	Travel back to LV from Dallas	6.0
5/14/14	Review notice of entry of order denying Plntf's Mot to Strike	.1
5/16/14	Review highlight depo of Paul Benjamin (101) pages	1.8
5/18/14	Email to LF and JS regarding status of acquiring hearing date on TPW McCarthy's Mot to quash, which should be heard in June	.1
5/27/14	Email to CR about coordinating dates in the future on McCarthy Co in Dallas once TX court rules on their mot to quash and doc production	.1
6/4/14	Review amd trial setting order and cal dates	.2
6/8/14	WL research on TX law regarding motion to quash/mot for protective order, relevance, privilege, undue burden, proprietary confidential information, privilege log requirement,	3.7
6/12/14	Begin prep opp to TPW mot to quash/protective order	3.3
	Page sub total	45.5

6/16/14	Conf call with Jerry Jerzombek local counsel for Plntf in TX regarding meet and confer with TPW counsel LF and JS regarding depo of McCarthy and Co	.5
6/16/14	Prep email to LF and JS regarding all conditions for not filing opposition to TPW McCarthy's mot to quash	1.3
6/16/14	Prep follow up email to LF regarding discovery dispute on McCarthy availability	.1
6/18/14	Cont prep opp to TPW mot to quash/protective order	4.7
6/23/14	Cont prep opp to TPW mot to quash/protective order	2.5
6/24/14	Conf call with Jerry Zerzombek local TX counsel on draft on opp to TPW McCarthy mot to quash	.5
6/25/14	Review local counsel Jerry Jerzombek's edits to opp to TPW's mot to quash	.4
6/25/14	Conf call with Jerry Jerzombek local counsel on final draft of opposition	.3
6/28/14	Email to CR regarding continuing difficulty in noticing depo for McCarthy Co. in Dallas TX and attempting to coordinate new dates for the depo in TX	.3
6/30/14	Email to LF and JS regarding court denying TPW McCarthy mot to quash and rescheduling deposition, conditions of deposition, document production, scope of discovery	1.2
7/2/14	Email to LF and JS following up on confirming date certain for 30(b)(6) depo of McCarhty and doc production	.1
7/2/14	Follow up email to LF and JS regarding scheduling dispute of depo of McCarthy	.3
7/3/14	Prep 3 rd amd not of depo on 30(b)(6) wit for McCarthy Company	.2
7/15/14	Conf call with local counsel Jerry Jerzombek re hearing on TPW's mot to quash	.4
7/28/14	Prep notice of unavailability	.1 n/c
8/8/14	Review analyze TPW McCarthy's document production and privilege log (42 pages)	1.7
8/8/14	Email to LF and JS regarding evasive doc production responses and evasive improper privilege log, and demand for production of all docs unredacted	1.1
8/8/14	Follow up email regarding scheduling dispute re depo of McCarthy with LF and JS	.1
8/13/14	Email to CR regarding continued difficulty to get McCarthy to comply with court order to produce all requested documents and witness for depo and having to again continue the deposition due to McCarthy Co. not complying with Court's order and what the non compliance issue is	.4
8/13/14	Prepare Plaintiff's 5 th supplemental production	.1
8/14/14	Email to CR regarding Plnt' going forward to mot to compel compliance with Court's order vis-à-vis McCarthy and Co	.1
8/14/14	Email to JS regarding Plntf's mot to compel compliance with court's order compelling production of docs and scheduling of depo of McCarthy	.4
8/15/14	Addl WL research on priv log on TX law, work product regarding TPW McCarthy inadequate responses to TX SDT for 30(b)(6) depo of McCarthy and document production in depo notice	2.7
8/18/14	Begin prep of Mot to Compel to comply with Court order and inadequate privilege log and to compel further documents and compel court order, inadequate responses to SDT,	2.6
8/20/14	Email to JS taking McCarthy depo off due to inability to acquire docs per court order and filing of Plntf's Mot to Compel docs per court order	.2
	Page sub total	22.2

8/20/14	Tel conf with Jerry Jerzombek local Plntf TX counsel regarding work product privilege in TX and propriety of McCarthy's redactions and privilege log	.5
8/20/14	Reply email to LF regarding Plntif moving ahead with motion to compel and propriety of def's doc production	.4
8/21/14	Email to JS regarding depo production of docs, evasive production and responses and cancelling of depo pending Plntf's motion to compel compliance With court's order of production to to set depo on a date certain	.7
8/21/14	Review email from JS	.1
8/21/14	Cont prep and revisions of Mot to Compel to comply with Court order and inadequate privilege log and to compel further documents and compel court order, inadequate responses to SDT,	1.4
8/21/14	Review email from LF and prepare response email to his attempt to still go forward with depo on August 27 th in his office after Plntf took it off calendar due to McCarthy's non compliance with the Court's order	.2
8/22/14	Email to LF regarding status and pendency of Plnt's mot to compel and reasons for it and TPW McCarthy's insistence of still going forward on August 27 th after Plntf took it off calendar.	.3
8/22/14	Conf call with local counsel Jerry Jerzombek regarding mot to compel	.4
8/22/14	Review letter from local counsel Jerry Jerzombek to Court regarding mot to compel	.1
8/26/14	Review and analyze TPW McCarthy Co opp to mot to compel	.3
8/26/14	Conf call with Jerry Jerzombek local Plntf TX counsel regarding hearing and doc production	.6
8/26/14	Conf call with local counsel Jerry Jerzombek regarding TPW McCarthy Co's opp to mot to compel	.3
8/27/14	Email to CR coordinating renoticed depo for McCarthy Co in Dallas TX	.1
9/10/14	Prep 4 th amd not of depo for TPW McCarthy Co	.1
9/10/14	Prep amd SDT for TPW McCarthy Co	.1
9/10/14	Email to CR regarding and producing emails McCarthy was ordered to produce	.1
9/14/14	Email to JS regarding tv ad in question and to ensure Mr. McCarthy is aware questions will be asked about it	.2
9/15/14	Prep for depo of TPW 30(b)(6) witness from McCarthy Co, prepare outline and depo questions, review doc production form TPW	3.1
9/16/14	Travel to Dallas TX from Las Vegas for TPW depo of McCarthy Co	6.0
9/17/14	Take depo of TPW 30(b)(6) depo of McCarthy and Co.	3.8
9/17/14	Travel to LV from Dallas	6.0
9/30/14	Review and analyze Def's Mot to Compel rog and RFP responses	.4
10/1/14	Begin prep of opp to Def's Mot to compel	4.4
10/5/14	Email to CR requesting extension to file opp to Def's mot to compel	.1
10/5/14	Cont prep of opp to Def's Mot to compel	2.2
10/9/14	Cont prep of opp to Def's Mot to compel	3.5
10/12/14	Cont prep and finalize opp to Def's mot to compel (22 pages)	3.0
10/17/14	Review and analyze Def's rply brief on Def's mot to compel (15 pages)	.4
10/23/14	Prepare for Def's mot to compel, draft outline of argument	.8
10/24/14	Appear at hearing on Defendant's mot to compel	1.6
10/29/14	Email to CR regarding status of acquiring bank statements from over a year ago and when anticipated receipt from the bank should ge forth coming	.1
11/2/14	Review Def's proposed DCRR and Moto to compel and make changes	.2
	Page sub total	41.5

11/2/14	Email to CR re proposed changes for DCRR and the reasons for those changes	.4
11/3/14	Email to CR regarding final proposed changes to DCRR	.1
11/12/14	Prep Plntf's 6 th supp disclosure	.1
12/16/14	Review SDT of Def to TPW Gaudin Ford	.1
12/16/14	Review notice of depo and SDT to TPW Ashley Kelley	.1
11/22/14	Meet with client regarding supplemental responses	.8
11/22/14	Prep supp resp to rogs	.7
11/22/14	Prep supp resp to RFPs	.6
12/12/14	Email to CR setting forth copiously the reasons as to why Ashley Kelley's deposition is <i>not relevant and it harassing</i> , she has no knowledge of what occurred, this is advertising case she has no knowledge of, and DC ruled you can't get into her financial records, as she retains a privacy right in those ect...	.8
12/16/14	Follow up email to CR regarding reasons why Ashley Kelley will not be produced as a witness in the case without a court order	1.2
12/16/14	Review not of depo for Ashley Kelley	.1
12/16/14	Review SDT to Gaudin	.1
12/23/14	Email to CR requesting 2.34 conference with regard to Plaintiff's motion to quash and mot for protective order	.1
12/24/14	2.34 conference on Plntf mot to quash/protective order on Ashley Kelley	.3
12/24/14	WL research (federal) on untimely discovery, "good cause" to modify scheduling order, third party subpoena is discovery subject to scheduling order,	1.7
12/26/14	Begin prep of mot to quash/protective order re Ashley Kelly	3.5
12/26/14	Email to CR regarding status of obtaining signature page from jt tax return	.1 n/c
12/27/14	Con't prep of mot to quash/protective order re Ashley Kelly	4.4
12/28/14	Prep supp resp to RFP to include signature page for tax returns	.2
12/28/14	Cont prep of mot to quash/protective order re Ashley Kelley	3.2
12/29/14	Cont prep and finalize mot to quash/protective order re Ashley Kelley (18 pages)	.8
12/30/14	Begin prep of mot for class certification	1.8 n/c
12/30/14	Let to Comm Bulla re rescheduling conf call with disc comm	.1
1/3/15	Cont to prep mot for class certification	4.3 n/c
1/5/15	Cont to prep mot for class certification	5.4 n/c
1/6/15	Cont to prep mot for class certification	4.6 n/c
1/9/15	Cont to prep mot for class certification	3.0 n/c
1/10/15	Prep dec of plntf in support of mot for cert	.8
1/10/15	Tel conf with client re dec in support of mot for cert	.3
1/10/15	Prep dec of GOW in supp of mot for class cert	.7
1/10/15	Cont to prep finalize revise mot for class certification	2.7 n/c
1/13/15	Prep amd notice of Mot for class certification (35 pages)	.1 n/c
1/20/14	Prep fax to DC regarding hearing date on Plntf's mot to quash	.2
1/20/15	Review and analyze Def's Opp to Mot to Quash/protective order	.3
	Page sub total	21.7

1/23/15	Begin prep of reply on Mot to quash/protective order	3.3
1/24/15	Cont prep of reply on Mot to Quash/protective order	4.0
1/25/15	Cont prep and finalize revise Mot to quash/protective order (18 pages)	3.5
1/26/15	Review and analyze Def's Mot to Strike Jury Demand	.2
1/30/15	Review analyze Def's MSJ (25 pages)	.8
1/30/15	Email to CR regarding cont Def's MSJ hearing a week due to cal conflicts	.1
1/30/15	Read highlight depo of Michael Urritia 30(b)(6) witness from TPW GM Financial (137 pages)	2.3
1/31/15	Research on leg history on 2011 equitable amendments to NRS 41.600 via NV legislative website, review various committee meeting minutes and hearings on legislation to amend 41.600 to add equitable relief	2.7
2/1/15	Read highlight depo of Terry Hoisington for prep of sep stmt in opp of Def's MSJ (233 pages)	4.7
2/2/15	Email to CR regarding Plntf's anticipated filing of cnt mot for part sum judg on 41.600 and the reasons for doing it	.3
2/2/15	Read highlight depo of Greg Hienrich for prep of sep stmt in opp of Def's MSJ (202 pages)	3.4
2/2/15	Begin prep of opp to Def's MSJ and cnt mot for partial sum judg	3.8
2/3/15	Cont prep of opp to Def's MSJ and cnt mot for partial summ judg	5.4
2/3/15	Prep proposed stip for bench trial	.4
2/3/15	Begin prep of sep statement in opp to Def's MSJ correlate undisputed fact with items of proof in the record from depositions and other exhibits	2.4
2/4/15	Prep for argument on mot to quash/protective order re Ashley Kelley, make outline of arguments	.4
2/4/15	Appear at mot to quash/protective order	1.5
2/4/15	Cont prep of opp to Def's MSJ and cnt mot for partial sum judg	3.7
2/4/15	Cont prep sep stmt in opp to Def's MSJ, correlate undisputed fact with item of proof in the record from depositions and other exhibits	3.1
2/4/15	Review revisions from CR of proposed DCRR on Plntf's mot to quash	.1
2/5/15	Prep proposed stip and order re bench trial, coordinating Plnt's Mot for Cert with Defendant's MSJ	.5
2/5/15	Cont prep of sep stmt in opp to Def's MSJ, correlate undisputed fact with item of proof in the record from depositions and other exhibits	2.5
2/5/15	Cont prep of opp to Def's MSJ and cnt mot for part sum judg	4.2
2/5/15	Email to CR indicating Dept 1 will keep bench trial on current trial stack	.1
2/5/15	Prep stip to cont trial date	.4
2/5/15	Email to CR regarding his potential issues with keeping current stack	.1
2/8/15	Email to CR regarding any docs produced from SDT to Gaudin Ford and stip to continue mot for certification	.1
2/8/15	Prep let to Dept 1 regarding coordination of Plaintiff's Mot for Class cert with Def's MSJ	.4
2/9/15	Follow up email to CR regarding stip to cont trial date to end of stack	.1
2/10/15	Email to CR regarding addl changes to DCRR on mot to quash	.1
2/10/15	Prep dec of Plnt in opp to Def's MSJ	1.3
2/10/15	Prep dec of GOW in opp to Def's MSJ	1.1
2/11/15	Review final proposed DCRR on Def's Mot to Compel	.1
2/13/15	Email to RC regarding postponing final pre trial disclosures under 16.1(a)(1)(3)	.3
2/14/15	Cont prep of opp to Def's MSJ and cnt mot for partial sum judg	3.4
	Page sub total	60.8

2/15/15	Cont prep of set stmt in opp to Def's MSJ, correlate undisputed fact with item of proof in the record from depositions and other exhibits	1.6
2/15/15	Prep Plntf's 7 th supplemental disclosure	.3
2/17/15	Cont prep of opp to Def's MSJ and cnt mot for part sum judg	2.4
2/19/15	Cont prep and finalize revise MSJ and sep stmt in opp to Def's MSJ and cnt mot for part sum judg (67 pages of opp to MSJ, cnt mot and sep stmt total)	1.6
2/19/15	Prep fee disclosure for cnt mot for MSJ	.1
2/19/15	Review and analyze Def's opp to mot for certification (16 pages)	.6
2/19/15	Begin reply brief on mot for class cert (NO CHARGE)	4.6
2/21/15	Cont prep of reply brief on mot for class cert (NO CHARGE)	3.2
2/23/15	Cont prep and finalize revise reply brief on mot for class cert (16 pages)	2.4
2/25/15	Review and analyze Def's reply brief on Def's MSJ (12 pages)	.6
2/26/15	Attend Pre Trial Cal Call	1.8
2/27/15	Email to CR confirming his seeking continuance of the trial date to next stack he would not seek it as a basis so take depo of Ashley Kelley	.1
2/27/15	Follow up email on Def's continuing to seek depo of Ashley Kelley	.3
3/1/15	Prepare limited opp to DCRR on Def's Mot to Compel	2.2
3/2/15	Prep for Def's MSJ, Plntf's cnt mot for part sum judg and mot for class cert, prepare outline of argument synthesize over 100 pages of moving, opposition and reply papers	2.9 50%
3/3/15	Attend hearing on Def's MSJ, Plntf's cnt Mot. for Part Summ Judg and Mot for class certification	3.8 50%
3/13/15	Review and analyze Def's opp to Plntf's obj to DCRR on Def's mot to compel	.3
3/23/15	Email to CR regarding his denial of agreeing to not use continuing trial to the next trial stack as a basis to continue to seek depo of Ashley Kelley	1.7
3/23/15	Review not of entry of order on Plnt's obj to DCRR on Def's mot to compel	.1
3/23/15	Email to CR regarding authorization of service for trial subpoena for Hoisington and Hienrich	.1
3/30/15	Review and highlight transcript of MSJ hearing (133 pages) in order to prepare order on Plntf's cnt mot for partial MSJ and Def's MSJ	1.6
4/1/15	Begin prep of order on Plntf's cnt mot for summ judg and Def's MSJ	2.6
4/3/15	Cont prep of order on Plntf's cnt mot for summ judg and Def's MSJ	3.2
4/6/15	Cont prep and finalize and revise order on Plntf's cnt mot for summ judg and Def's MSJ	2.4
4/7/15	Prep mot for recon on upholding of DCRR on Def's mot to compel	2.1
4/14/15	Email to CR regarding proposed orders on Def's MSJ and Plntf's cnt mot for partial summ judg	.1
4/23/15	Let to Dept 1 regarding dispute regarding content of order granting plntf's cnt motion for partial sum judg and denying Def's MSJ	2.7
4/27/15	Review and analyze Def's opp to Plntf's Mot for Recon on DCRR on Def's Mot to Compel	.2
5/1/15	Email to CR following up on acceptance of service of subpoena for Hoisington and Hienrich or provide home addresses for proper service	.1
5/4/15	Email to CR following up (again) on acceptance of service of subpoena for Hoisington and Hienrich or provide home addresses for proper service	.1
5/5/15	Email to CR following up (again) on acceptance of service of subpoena for Hoisington and Hienrich or provide home addresses for proper service	.1
5/5/15	Prep not of entry of order on Plntf's cnt mot for part summ judg and Def's MSJ	.1
5/5/15	Review not of entry of order on Mot for class cert	.1
	Page sub total	34.95

5/5/15	Review not of entry of order on Mot for Recon on DCRR on Def's Mot to compel	.1
5/6/15	2.34 conf regarding address production or authorize of service on behalf of Hoisington and Hienrich	.2
5/18/15	Email to CR following up (again) on acceptance of service of subpoena for Hoisington and Hienrich or provide home addresses for proper service	.1
5/23/15	Review and analyze Def's mot for recon on the grant of Plntf's cnt mot for partial summ judg (13 pages)	.4
5/25/15	Begin opp to Def's Mot for Recon on grant of Plntf's mot for part summ judg	2.5
5/28/15	Cont opp to Def's Mot for Recon on grant of Plntf's mot for part sum judg	3.7
6/3/15	Cont opp to Def's Mot for Recon on grant of Plntf's mot for part summ judg	5.1
6/6/15	Cont opp to Def's Mot for Recon on grant of Plntf's mot for part summ judg	4.7
6/7/15	Cont opp, finalize, revise Mot for Recon on grant of Plntf's mot for part summ judg (18 pages)	3.4
6/8/15	Review and analyze Def's 2 nd MSJ (four months after dispo mot cut off) (12 pages)	.4
6/8/15	Prep stip and order to cont Def's 2 nd MSJ	.3
6/8/15	Email to CR regarding cont of Def's 2 nd MSJ due to Plntf's counsel's pre planned vacation	.1
6/20/15	Review analyze Def's reply on Mot for Recon on grant of Plntf's mot for part sum judg	.4
6/23/15	Begin prep of opp to Def's 2 nd MSJ and cnt mot in limine to preclude certain affirmative defenses	1.2
6/25/15	Cont prep of opp to Def's 2 nd MSJ and cnt mot in limine to preclude certain affirmative defenses	3.7
6/27/15	Cont prep of opp to Def's 2 nd MSJ and cnt mot in limine to preclude certain affirmative defenses	4.6
7/3/15	Prep order on Def's Mot for Recon on grant of Plntf's mot for part summ judg	.2
7/3/15	Cont prep of opp to Def's 2 nd MSJ and cnt mot in limine to preclude certain affirmative defenses	4.5
7/4/15	Cont prep of opp to Def's 2 nd MSJ and cnt mot in limine to preclude certain affirmative defenses	5.5
7/5/15	Cont prep of opp to Def's 2 nd MSJ and cnt mot in limine to preclude certain affirmative defenses	3.2
7/6/15	Cont prep, finalize revise to opp to Def's 2 nd MSJ and cnt mot in limine to preclude affirmative defense (35 pages)	2.8
7/7/15	Email to CR following up on proposed order denying Def's mot for recon of grant of Plnt's cnt mot and denial of Def's MSJ	.1
7/7/15	Review Def's 16.1(1)(a)(3) final pre trial disclosures	.2
7/7/15	Email to CR regarding coordination of date involving depo of Ashley Kelley	.1
7/13/15	Prep 16.1(a)(3) final pre trial disclosures	.4
7/13/15	Prep supp 16.1(a)(3) final pre trial disclosures	.1
7/13/15	Email to CR regarding continuance of Def's 2 nd MSJ	.3
7/16/15	Attend pre trial conference	1.4
7/16/15	Review depo of Michael Urritia TPW out of state from GM Financial regarding proffered testimony citations at trial via deposition to give to opp counsel for reading at trial (133 pages)	2.8
7/21/15	Review analyze Def's rply brief on Def's 2 nd MSJ and opp to Plntf's cnt mot (15 pages)	.4
	Page sub total	52.9

7/23/15	Attend 2.67 conference to draft pre trial memo, discuss exhibits, claims, affirmative defenses, out of state depo citations, witness list	1.6
7/24/15	Draft proposed joint pre trial memo	1.4
7/28/15	Prep Ashley Kelley for deposition	3.1
7/28/15	Appear at depo of Ashley Kelley TPW	2.7
7/29/15	Email to CR revising PTM to include exhibit doc produced by GM Financials 30(b)(6) witness	.1
7/30/15	Draft not of assoc of counsel	.1
7/30/15	Meet with Craig Friedberg ("CF") bring up to speed on case regarding association into case, assisting prepring and practicing opening, direct, cross, closing assistance at trial at all phases	5.4
7/30/15	Review depo of Tim McCarthy TPW out of state from McCarthy Company (advertiser) regarding proffered testimony citations at trial via deposition to give to opp counsel for reading at trial (135 pages)	2.7
7/31/15	Email to CR regarding any objections to Plaintiff's exhibits identified in PTM	.1
8/1/15	Email to CR regarding witness order and Def's witnesses and counter designations on Urritia and any on McCarthy	.2
8/1/15	Prep direct of Terry Hoisington 30(b)(6) witness and general manager for Fairway, review depo of TH, previous declarations, dry practice runs with CF	7.4
8/1/15	Review final pre trial memo	.5
8/2/15	Prep direct of Greg Hienrich, president of Fairway, review depo of GH, previous dec, dry run practice runs with CF	6.5
8/2/15	Review depo of Thurston Simpson for prep of direct exam at trial (33 pages)	.6
8/3/15	Prep direct of Thurston Simpson, salesperson from Fairway listed as witness on Fairway's witness list review deposition	1.4 ¹
8/3/15	Begin prep of opening statement, formulate rules etc...with CF and practice revise with CF	4.3
8/4/15	Prep PTM # 1 on definition of "knowing" violation under NDTPA	1.4
8/4/15	Prep PTM # 2 on Edwards and Edwards factors	2.8
8/4/15	Prep PTM # 3 on non delegable duty under NAC advertising regs	2.6
8/4/15	Prep for Def's 2 nd MSJ and Plntf's cnt mot in limine, prepare outline of arguments marshall over 100 pages of moving papers, opps and reply brief	2.4
8/4/15	Tel conf with CF regarding PTM and trial prep, opening and arguments for hearing on 2 nd MSJ	1.3 n/c
8/5/15	Appear at Def's 2 nd MSJ and Plntf's cnt motion in limine	3.5
8/5/15	Meeting with CF regarding court's ruling, trial strategy, witness examination, opening and exhibits	5.0
8/5/15	Email to CR regarding Plaintiff not wiaving opening statement	.1
8/6/15	Prep errata on PTM # 1	.1
8/6/15	Prep order on denying Def's 2 nd MSJ and Plntf's cnt mot in limine	1.8
8/7/15	Review Def's proposed order on Def's 2 nd MSJ and Plntf's cnt mot in limine	.1
8/7/15	Prep let to Dept 1 regarding competing orders denying Def's 2 nd MSJ	.3
8/7/15	Review Def's exhibit list and exhibits	.7
8/7/15	Email to CR regarding what witnesses they are calling at trial on their list	.1
	Page sub total	59.0

¹ Mr. Simpson was FAIRWAY's salesperson who interacted with the Plaintiff during the sales process. Plaintiff took his deposition. FAIRWAY continued to list Mr. Simpson as a witness for trial so even though not called by Defendant, Plaintiff had to prepare for his potential testimony.

8/7/15	Review highlight depo of Plaintiff for witness prep for trial and to formulate direct of Plaintiff at trial (227 pages)	3.9
8/7/15	Conf calls with CF regarding revisions to opp counsel on Def's proposed order, trial strategy and witness exam	1.7 n/c
8/8/15	Witness prep with client for trial, review depo testimony, dry run of direct, tweak Direct examination, practice and prepare with CF	7.7
8/9/15	Cont prep revise of opening, rules, dry run of opening, direct of Hoisington and Hienrich with CF	7.9
8/10/15	Trial	8.0
8/10/15	Review and analyze Def's trial brief (46 pages including legis history)	2.7
8/10/15	Review and analyze Def's supplement to trial brief	.3
8/10/15	Review and sign stip re testimony of Ashley Kelley for trial via depo	.1
8/10/15	Meet with CF and client re trial testimony and changes to trial strategy from Court's evidentiary rulings on first phase and prep for 2 nd day of trial	1.8
8/10/15	Tweak direct of Hoisington and Hienrich in light of Court's evidentiary ruling on use of prior evidence in previous actions in 1 st phase of trial	1.4
8/11/15	Trial	4.5
8/11/15	Trial prep with Urritia portions of depo at trial and exam cross of other trial wit	2.7
8/12/15	Trial	5.0
8/12/15	Prep closing arguments, marshal evidence and notes, dry run with CF	4.6
8/13/15	Trial	8.0
8/14/15	Begin prep of findings of fact and conclusions of law on first phase	3.4
8/15/15	Conf call with CF re possible settlement offer and strategy	.8 n/c
8/16/15	Prep email to CR regarding potential settlement after Plaintiff prevailed on first phase of trial	.5
8/17/15	Cont prep of findings of fact and conclusions of law on first phase	2.2
8/18/15	Prep not of entry of order denying Def's 2 nd MSJ and granting Plntf's cnt mot	.1
8/18/15	Begin supp brief in admissibility of evidence and facts involving in previous actions against Defendant under Edwards for 2 nd phase	3.3
8/19/15	Cont prep supp brief in admissibility of evidence and facts involving in previous actions against Defendant under Edwards for 2 nd phase	2.6
8/20/15	Conf supp brief in admissibility of evidence and facts involving in previous actions against Defendant under Edwards for 2 nd phase	4.1
8/22/15	Cont prep of findings of fact and conclusions of law on first phase	3.3
8/23/15	Cont prep of findings of fact and conclusions of law on first phase	3.4
8/24/15	Cont prep, revise findings of fact and conclusions of law on first phase	.8
8/25/15	Review let from Def's to Dept 1 regarding dispute over findings on 1 st phase of trial	.1
8/25/15	Prep email sending revised findings and conclusions on first phase	.4
8/25/15	Tel conf re submission to court regarding findings and conclusions and def's proposed findings and trial strategy for second phase of trial	.8 n/c
8/27/15	Prep cover let to Dept re findings and conclusions of law on first phase of trial and Defendant's unreasonable demand to wait additional time for them to submit their own findings (no proposed findings by Defendant were ever submitted to the court for review)	1.2
8/27/15	Conf call with CF regarding final draft of supp brief on admiss of evidence and facts in previous actions against Def under Edwards.	.5 n/c
	Page Sub total	84.00

8/28/15	Cont prep, revise supp brief in admissibility of evidence and facts involving in previous actions against Defendant under Edwards for 2 nd phase	3.8
8/28/15	Conf call with CF on final draft of supp brief on admiss of evidence	1.0 n/c
8/28/15	Review analyze Def's supp brief on admissibility of evidence from previous actions in second phase of trial (22 pages)	1.4
8/29/15	Conf call with CF regarding Def's supp brief and trial strategy for second phase	.6 n/c
8/31/15	Review min order from court on ruling on admissibility of evidence from previous actions	.1
9/1/15	Email regarding second phase as currently set will not be going due to trial conflict with trial court	.1
9/1/15	Tel conf with CR re prep of opening statement on second phase	.4 n/c
9/9/15	Prep let to Dept 1 regarding findings and conclusions on first phase	.4
9/16/15	Tel conf with CF regarding coordinating new date for second phase of trial	.2 n/c
9/18/15	Tel conf with CF on implications of evidentiary court rulings on admissibility of previous instances and violations for second phase	1.1
9/22/15	Prepare notice of witnesses and exhibits for second phase of trial	.3
9/23/15	Review Def's notice of exhibits and witnesses for second phase of trial	.1
9/24/15	Review Def's proposed order on ruling on admissibility of evidence in two previous actions.	.1
9/24/15	Prep Plaintiff's proposed order on ruling on admissibility of evidence in two previous actions	.3
9/24/15	Review Def's let to dept 1 regarding dispute over content of order on admissibility of evidence in second phase	.1
9/24/15	Prep proposed order on court's ruling on admissibility of evidence and facts involving previous actions	.4
9/24/15	Prep let to dept 1 regarding Plaintiff's proposed order regarding admissibility of evidence in second phase (2 pages)	1.4
9/24/15	Email to CR regarding proposed orders on denial on Def's 2 nd MSJ	.2
9/24/15	Tel conf with CR regarding ruling and proposed order and availability for new proposed trial date	.6 n/c
10/8/15	Review highlight transcript of Judge's ruling on 1 st phase of trial (21 pages)	.5
10/16/15	Review analyze Def's Mot to amend findings of fact and conclusions of law from first phase of trial	.3
10/16/15	Conf call with CF regarding Def's Mot to Amd findings of fact	.4 n/c
10/29/15	Email to dept 1 regarding Plntf's counsel unavailability for next set trial date on 2 nd phase of trial	.1 n/c
11/4/15	Prepare opp to Def's mot to modify findings on first phase	2.6
11/10/15	Review Def's reply on Def's mot to modify findings on first phase	.1
11/10/15	Conf call with CF regarding Def's reply brief and trial strategy for second phase	.4
11/27/15	Prep order denying Def's mot to modify findings of fact on first phase	.2
12/9/15	Prep for Plaintiff for second phase mostly for cross examination, review depositions, tweak direct or TH and GH, do dry runs with CF.	4.5
12/10/15	Prep closing argument, do practice dry runs, revise tweak closing, dry runs with CF	3.7
	Page Sub Total	22.10

12/11/15	Trial	6.0
12/17/15	Begin prep of findings of fact and conclusions of law on second phase of trial	1.7
12/22/15	Cont prep of findings of fact and conclusions of law on second phase of trial	2.1
12/27/15	Cont prep of findings of fact and conclusions of law on second phase of trial	.8
1/4/16	Cont prep of findings of fact and conclusions of law on second phase of trial	2.3
1/19/16	Cont prep of findings of fact and conclusions of law on second phase of trial	3.4
1/22/16	Cont prep of findings of fact and conclusions of law on second phase of trial	2.8
1/23/16	Cont prep, revise findings of fact and conclusions of law on second phase of trial	1.4
1/25/16	Email to CR regarding submission of findings and conclusions on second phase	.1
1/25/16	Conf call with CF regarding response to Def's need for another ten days to review Plaintiff's findings	.3 n/c
2/1/16	Prep Memo of costs	.5
2/1/16	Prep let to dept 3 regarding dispute of findings of fact on second phase	.3
2/8/16	Review Def's let to Dept 1 regarding extra time for prep of findings	.1 n/c
2/8/16	Conf call with CF regarding Def's request for extra time on findings on second phase	.2 n/c
2/8/16	Prep email to Dept 1 regarding extra time for prep of findings on second phase	.2
2/16/16	Review Def's proposed findings on second phase of trial	.6
2/22/16	Prep let to Dept 1 in resp to Def proposed interliniations on their findings on second phase	.5
3/2/16	WL research on atty fees prevailing party and Stalingrad defense and prevailing party on equitable relief.	.8
3/14/16	Prep notice of entry of findings on second phase and entry of injunction	.1
3/16/16	Begin prep of mot for atty fees	3.6
3/18/16	Cont prep of mot for atty fees	2.8
3/19/16	Cont prep of mot for atty fees	4.6
3/22/16	Cont prep of mot for atty fees	3.2
3/24/16	Cont prep of mot for atty fees	3.5
3/26/16	Cont prep of mot for atty fees	2.7
3/26/16	Prep revise dec of GOW in support of mot for fees	1.3
3/29/16	Cont prep revise final draft of mot for fees	2.9
4/4/16	Prep Email to L/C in Dept 1 about consolidating Plntf's Mot for Fees and Def's Motion for New trial to hearing cal	.1
4/4/16	Review Def's email to L/C dept one refusing to stip to consolidate motions for same date on hearing cal	.1
4/5/16	Prep Application to consolidate and cont Pltnf's Mot for fees and Def's Mot For New trial to hearing cal	.5
4/21/16	Begin opp to Def's Mot for new trial and for stay	3.4
4/23/16	Cont opp to Def's Mot for new trial and for stay	2.8
4/24/16	Cont opp to Def's Mot for new trial and for stay	2.2
4/25/16	Cont opp to Def's Mot for new trial and for stay	3.7
4/26/16	Cont opp to Def's Mot for new trial and for stay	4.3
4/28/16/	Cont opp to Def's Mot for new trial and for stay	3.3
5/1/16	Cont opp to Def's Mot for new trial and for stay	3.6
5/3/16	WL research on "private attorney general" actions for opp on Def's Mot for new trial and for stay and WL research on stay pending appeal, find and review cases	2.7
	Page Sub Total	64.30

5/11/16	Review revise Plnt's rply brief on Plntf's Mot for fees	1.1
5/18/16	Appear at mot for atty fees and Def's Mot for new trial	4.0
5/23/16	Review and revise amd findings and conclusions	.7
5/28/16	Prep for mot for atty fees	.4
5/28/16	Appear for mot for atty fees (con't from 5/18/16)	1.0
6/2/16	Conf call with Disc Comm Bulla re Dept 1 referral to DC re Plntf's mot for fees	.3
6/5/16	Prep let to Dept 1 re status of setting up hearing with disc comm	.5
6/6/16	Prep let to Disc Comm re referral on fees on Plntf's mot for fees	.8
6/6/16	Review not of dis conference re Plntf's mot for fees	.1
6/18/16	Prep demonstrative exhibits (timeline & facts) re Plntf's mot for fees for DC for hearing	1.3
6/30/16	Prep for DC hearing on mot for fees	.8
6/30/16	Attend DC hearing on mot for fees	2.6
6/30/16	Begin prep of DCRR	2.9
7/1/16	Cont prep of DCRR	5.4
7/2/16	Cont prep of DCRR	4.3
7/3/16	Finalize, revise prep of DCRR (16 pages)	2.3
7/7/16	Revise DCRR per conf with opp counsel	.2
7/8/16	Let to Disc Comm Bulla regarding DCRR	.4
7/11/16	Let to Dept 1 re status of DCRR	.5
7/25/16	Let to Disc Comm Bulla re revised DCRR	.2
8/10/16	Let to Dept 1 re submission of final DCRR	.5
8/13/16	Review analyze Def's obj to DCRR	.3
9/16/16	Prep for mot for fees	.4
9/16/16	Attend mot for fees	2.7
10/2/16	Begin prep of amended findings II	2.2
10/4/16	Cont prep of amended findings II	1.2
10/5/16	Finalize revise amended findings II	.9
10/7/16	Review Def's obj to amended findings	.1
10/7/16	Prep let to dept 1 regarding Def's refusal to submit amed findings	.5
10/16/16	Review and analyze court minute order on mot on fees and costs	.3
10/16/16	Prep let to dept 1 re clarification of minute order on mot for fees	.7
10/18/16	Review letter from opp counsel re Plntf's letter of 10/16/16 to Dept 1	.1
10/20/16	Conf call with Dept 1	.3
10/20/16	WL research of FRCP on Rule 52(b) and begin supp P & A	3.7
10/22/16	Cont supp P & A on Rule 52(b)	3.2
10/24/16	Cont supp P & A on Rule 52(b)	2.4
10/25/16	Finalize revise supp P & A on Rule 52(b)	1.2
10/26/16	Prep proposed order on mot for fees	.7
11/3/16	Prep for hearing on Def's Mot for Stay, Cnt Mot on Supercedeas, Supp P & A (est)	.5
11/3/16	Appear for hearings	2.2
12/8/16	Attend hearing on Def's Mot for Stay and Plntf's cnt mot for posting of supercedeas bond and for entry of final judgment (est)	1.5
12/?/16	Prep proposed order on Def's Mot for Stay and Plntf's cntr mot (est)	.5
12/?/?	Prep final judgment and entry of judgment (est)	.5
	Page Sub Total	56.4

Total hours billed	811.80
n/c hours	<u>-42.25</u>
Total hours charged	769.3
Billed hours incurred between 12/31/12 through 12/31/14	
332.20 hrs @ \$ 350.00 per hour	\$ 112,770.00
Billed hours incurred between 1/1/15 through 12/31/15 @ \$ 425.00	
326.65 hrs @ \$ 425.00	\$ 138,826.25
Billed hours incurred between 1/1/16 through present @ \$ 450.00	
120.70 hrs @ \$ 450.00 per hour	<u>\$ 54,315.00</u>
Total	\$ 305,911.25

1 On December 1, 2016 I served the forgoing document(s) described as 1) **PLAINTIFF'S**
2 **THIRD AMENDED VERIFIED TIME SHEET IN SUPPORT OF PLAINTIFF'S**
3 **MOTION FOR AWARD OF STATUTORY ATTORNEY'S FEES AND COSTS** on
interested party(ies) in this action by placing a true and correct copy and/or original
thereof enclosed in a sealed envelope addressed as follows :

4 **L. CHRISTOPHER ROSE, ESQ**
5 **WILLIAM URGAS, ESQ**
Jolly, Urga et al.
6 3800 Howard Hughes Pkwy, 16th floor
Las Vegas, NV 89169
7 lcr@juww.com
WRU@juww.com

8 ☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection
9 and processing correspondence for mailing. Under that practice it would be deposited
with the U.S. Postal service on that same day with first class postage thereon fully
10 prepaid at Las Vegas, NV in the ordinary course of business.

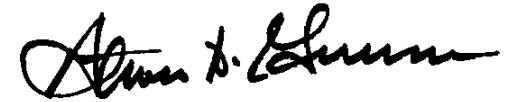
11 ☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office of the
addressee.

12 ☒ **(BY EMAIL SERVICE)** (Via Wiznet/Email) Pursuant to NRCP, Rule 5(b)(2)(D), I
13 hereby certify that service of the aforementioned document(s) via email to pursuant to
EDCR Rule 7.26(a), as set forth herein.

14 ☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify
15 that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule
7.26(a), as set forth herein.

16
17 Executed on this 1st day of December, at Las Vegas, Nevada

18 /s/ George O. West III
19 GEORGE O. WEST III
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CLERK OF THE COURT

1 NOTC
2 WILLIAM R. URGAL
3 Nevada Bar No. 1195
4 wru@juww.com
5 L. CHRISTOPHER ROSE, ESQ.
6 Nevada Bar No. 7500
7 lcr@juww.com
8 JOLLEY URGAL WOODBURY & LITTLE
3800 Howard Hughes Parkway, Suite 1600
Las Vegas, Nevada 89169
(702) 699-7500 Telephone
(702) 699-7555 Facsimile
Attorneys for Defendant Fairway Chevrolet Company

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ALLEN KELLEY, individually, and on) Case No. A-13-674480-C
12 behalf of all others similarly situated,) Dept No. I

13 Plaintiff,

14 vs.

15 FAIRWAY CHEVROLET COMPANY, a)
16 Nevada corporation, and DOES 1-100,)
17 inclusive,)

18 Defendants.
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NOTICE OF OBJECTION

JOLLEY URGAL WOODBURY & LITTLE
3800 Howard Hughes Parkway, 16th Floor, Las Vegas, Nevada 89169
Telephone: (702) 699-7500 Fax: (702) 699-7555

1 Defendant Fairway Chevrolet Company ("Fairway"), by and through its attorneys, Jolley
2 Urga Woodbury & Little, hereby files its notice of objection and the attached letters of Plaintiff's
3 counsel sent to the Court. Fairway objects to any letters to the extent they present substantive
4 content or argument that should have only been included in a motion, opposition or reply or in
5 other pleadings allowed under Nevada Rules of Civil Procedure. The letters are as follows:

- 6 Exhibit A: Letter dated April 23, 2015;
7 Exhibit B: Letter dated September 24, 2015;
8 Exhibit C: Letter dated February 22, 2016;
9 Exhibit D: Letter dated June 5, 2016;
10 Exhibit E: Letter dated June 6, 2016;
11 Exhibit F: Letter dated August 10, 2016;
12 Exhibit G: Letter dated October 7, 2016; and,
13 Exhibit H: Letter dated October 16, 2016.

14 Dated this 1st day of December, 2016.

15 JOLLEY URGa WOODBURY & LITTLE

16 /s/ L. Christopher Rose
17 WILLIAM R. URGa, ESQ., #1195
18 L. CHRISTOPHER ROSE, ESQ., #7500
19 3800 Howard Hughes Parkway, Suite 1600
20 Las Vegas, Nevada 89169
21 *Attorneys for Defendant*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Jolley Urga Woodbury & Little, 3800 Howard Hughes Parkway, 16th Floor, Las Vegas, Nevada, 89169.

On this day I served the **NOTICE OF OBJECTION** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

George O. West, III, Esq.
LAW OFFICES OF GEORGE O. WEST, III
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, Nevada 89121

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 1st, 2016, at Las Vegas, Nevada.

/s/ Kelly McGee

An employee of JOLLEY URG A WOODBURY &
LITTLE

EXHIBIT A

"Consumer Attorneys Against Auto Fraud"

Los Angeles

611 East Glenoaks Blvd.

Glendale, CA 91207

Email: gowesq@cox.net

Websites: www.caaf.net

www.americaautofraudattorney.com

George O. West III

Las Vegas

10161 Park Run Drive

Suite 150

Las Vegas, NV 89145

Phone: (702) 318-6570

Fax: (702) 664-0459

Reply to: Las Vegas Office:

**Inactive in California*

**Admitted Only in Missouri & Kansas*

Of Counsel

David Ludwig, Esq.

VIA COURTESY DROP BOX

April 23, 2015

HON. KENNETH CORY

Eighth Judicial District

Department 1

200 Lewis Ave

Las Vegas, NV 89101

ATTN: Law Clerk

RE: Proposed Order on competing MSJs
Case Name: *Kelley v Fairway*
Case No: A-13-674480-C

Dear Law Clerk:

Attached hereto is Plaintiff's proposed order on the grant of Plaintiff's Counter Motion for Summary Judgment and the denial of Defendant's Motion for Summary Judgment. The parties cannot agree on the content of the order. I have attached a copy of the minute order for your reference, a copy of Defendant's counsel's email setting forth their objections to the attached proposed order and the pertinent portions of the transcript from the MSJ hearing.

Defendant's first objection is with respect to section I setting forth a "factual introduction and procedural background" of the case. Essentially, Defendant's position is that, other than a preamble at the beginning setting forth the motion at issue, when it was heard and the end result of that motion, an order *granting* an MSJ can *only* contain findings of fact and conclusions of law.

Plaintiff's position is that while Rule 56(c) requires, at a bare minimum, findings of fact and conclusions of law, Rule 56(c) in no way proscribes or prohibits other relevant or pertinent matter being in the order granting an MSJ, if such matter is relevant to the order, and/or adds context and/or further clarity as to the underlying relevant nature of the case, and further context with respect to the reasons why the Court made the factual findings and conclusions of law it did.

Importantly, it must be noted that this ruling on Plaintiff's counter motion for summary judgment was a very important ruling of first impression and has wide ranging implications regarding equitable claims under Nevada's Deceptive Trade Practice Act (NRS 41.600). Consequently, if this order granting summary judgment is taken up by Defendant via a petition for writ, or otherwise an appeal after a merits decision, it is essential to have absolute clarity outlining the underlying reasons for the grant. Plaintiff wants a clear record, Defendants want a murky one.

Indeed, the procedural history of this case involving the same very narrow issue of law was vigorously raised at length by Defendant via their 12(b) Motion to Dismiss, in both summary judgments, as well as during the extensive oral argument during the MSJs. *Most importantly, everything in section I is 100% factually true.* Defendants have not made any issue of section I being inaccurate or misleading, rather, they claim the content of section I is "like a brief", and is being used as "a premise for the order." It is not mere "surplusage."

Contrary to Defendant's assertion, *there is no argument or advocacy whatsoever set forth in section I.* Section I sets forth the important and pertinent history of this case, what the very narrow issue of law is that has been at the crux of this case since its infancy, the statutes at issue, the equitable amendments which were added to 41.600 in 2011, and the interpretation of those amendments within the context of the statute as a whole.

Defendant claims that Plaintiff is using section I "as a premise for the order." Section I is absolutely being used as a primer to add further understanding and context to the Court's findings of fact and conclusions of law so that the basis for the Court's findings and conclusions are made with absolute clarity vis a vis any final appeal or writ petition that might be taken by Defendant. The last thing any appellate court needs or wants is to have to read "tea leaves" to gain a clear understanding of the basis for the Court's grant on summary judgment.

Defendant's next objection is that the issue of 41.600 being "ambiguous" was never argued or raised. *By definition*, when a Court looks to the Legislative History of a statute, there is ambiguity in the statute. See *In re City Center Constr. & Lien Master Litig.*, 129 Nev. Adv. Op. 70, 310 P.3d 574, 578 (2013) [holding when the language is clear and unambiguous the Court interprets the statute based on the statute's plain meaning, but when a statute is ambiguous, [the Court] consult[s] other sources, such as legislative history, reason, and the policy to identify and give effect to the Legislature's intent]. This was cited in Plaintiff's motion and is in Plaintiff's proposed order.

Indeed, it was not clear from the text of the 2011 equitable amendments, looking at them "in a vacuum," if damages were a prerequisite to having an equitable claim under 41.600, because 41.600 also provides for damages. This was precisely the issue *argued by Defendant*, and then countered by Plaintiff in his counter motion. Section I clearly explains what the precise narrow issue is, how it came to be, what the Court's focus was, how the issue was framed for purposes of the conclusions of law and findings of fact, why the issue is ripe for ruling, and gives necessary context and further understanding as to the findings of fact and conclusions of law, and why the Court ruled the way it did.

In fact, it was Defendants in their moving papers who took the lead in having the Court look at Legislative history with respect to the 2011 equitable amendments, wherein Defendant claimed that the Legislative history support their position that damages were a required prerequisite to have a claim under 41.600. *See page 22 of the MSJ hearing transcript at lines 21-25. Defendants also attached that Legislative history for the 2011 equitable amendments, albeit not all of it, to their moving papers.* If the statute was not ambiguous why did Defendants attach that Legislative history – yet Defendants now claim “ambiguity” was not at issue in ruling on the competing MSJs?

For Defendant to argue, after they initially brought up Legislative history in their moving papers with respect to interpreting what the Legislative objective was behind the equitable amendments read in conjunction with the statute as a whole, and then contend there was “no ambiguity” at issue with respect to 41.600 vis-à-vis the equitable amendments, *is simply disingenuous.* Indeed, Legislative history was a primary gravamen of Plaintiff’s counter motion and opposition which responded to Defendant bringing it up in the first place.

Moreover, Plaintiff countered with all of the pertinent Legislative history from the committee meetings. Those Legislative meetings concerning those 2011 amendments were raised in both sides’ moving papers, were *argued at great length by both sides*, and commented on and analyzed by the Court quite frequently during the hearing. *See MSJ transcript at pages 30, lines 11 through page 34 line 13, and page 51 beginning at line 14 through page 58, line 10.*

Per the minute order, all of the conclusions of law were straight out of Plaintiff’s brief and the findings of fact were from the moving papers, oral argument but most importantly, from Plaintiff’s Separate Statement. There is nothing untrue or not factual and all references to the admissible record were copiously stated along side those findings and conclusions.

Based on the aforementioned, Plaintiff believes the attached proposed order is accurate and proper and reflects the Court’s ruling, the basis for the ruling, and all of the pertinent conclusions of law and findings of fact that supported the Court’s grant of Plaintiff’s counter MSJ and the Court’s denial of Defendant’s MSJ.

Sincerely,

/s/ George O. West III

George O. West III

cc : Chris Rose, Esq

ORDR

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Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiffs,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**ORDER GRANTING PLAINTIFF'S
COUNTER MOTION FOR PARTIAL
SUMMARY JUDGMENT AND ORDER
DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

DATE : March 3, 2015

TIME : 9:00 a.m.

1 On March 3, 2015, Defendant FAIRWAY CHEVROLET's ("FAIRWAY") Motion
2 for Summary Judgment, and Plaintiff ALLEN KELLEY's Counter Motion for Partial
3 Summary Judgment on his second claim for relief for Declaratory Relief, ("Cntr. Mot.")
4 came on regularly for hearing. After reading the moving and opposing papers, and
5 after having heard the arguments of counsel, and after taking the matter under further
6 submission, the Court, based on the hereinafter mentioned reasons, hereby rules as
7 follows : Defendant's Motion for Summary Judgment is *denied*. Plaintiff's Counter
8 Motion for Partial Summary Judgment on his second claim for relief for Declaratory
9 Relief is *granted*.

11 I

12 **FACTUAL INTRODUCTION AND PROCEDURAL BACKGROUND**

13 Plaintiff's substantive claim in this case is exclusively predicated on statutory
14 consumer fraud pursuant to NRS 41.600 involving an alleged deceptive television
15 advertisement that was disseminated by Defendant, who is a licensed vehicle dealership.
16 *See Plntf's Complaint ("Comp.") at Exhibit 1 to Cntr. Motion.* Pursuant to NRS
17 41.600(2), it is statutory consumer fraud to violate any of the enumerated statutes
18 identified in 41.600(2), *infra*. The two enumerated subsections at issue in Plaintiff's
19 Complaint and before the Court in Plaintiff's Counter Motion were subsections (d) and
20 (e).

21
22 NRS 41.600(d) involves violations of NRS 482.351, which prohibit a vehicle
23 dealership from disseminating misleading or inaccurate advertising relating to goods
24 sold to the public.¹ *See Comp. at Ex. 1 to Cntr. Mot.*

26
27 ¹ NRS 482.315(1) states 1. No vehicle dealer or rebuilder may employ "bait and switch" advertising
28 or otherwise intentionally publish, display or circulate any advertising which is misleading or inaccurate
in any material particular or which misrepresents any of the products sold, leased, manufactured, handled
or furnished to the public.

1 NRS 41.600(2)(e) entails violations of certain provisions of the *Nevada Deceptive*
2 *Trade Practices Act* (Chapter 598 of the NRS ("NDTPA"). NRS 598.0923(3), which is
3 part of the NDTPA, is one of those provisions entailed under NRS 41.600(2)(e).²

4 It is undisputed that Plaintiff is not seeking nor did he sustain any monetary
5 damage or pecuniary loss as a result of the alleged deceptive television advertisement at
6 issue. *See Comp at Ex. 1 to Cntr. Mot.* Rather Plaintiff seeks purely equitable relief in
7 the form of injunctive relief against Defendant to enjoin it from further disseminating
8 any other alleged deceptive advertisements in the future, with emphasis on the
9 prohibitions of NAC 482.180(3).³ *See Comp at Ex. 1 to Cntr. Mot.*

11 Pursuant NRS 30.040, which falls under the *Nevada Uniform Declaratory Relief*
12 *Act*, Plaintiff's second claim for relief was for declaratory relief. Pursuant to Plaintiff's
13 Complaint, Plaintiff sought a declaratory judgment in his second claim for relief as to
14 whether a claimant could assert a statutory claim under NRS 41.600 for purely equitable
15 relief, without sustaining or seeking any monetary damages or pecuniary loss. *See*
16 *Comp. at Ex. 1 to Plntf's Cntr. Mot.* Defendant raised this issue of law in their previous
17 Rule 12(b)(5) Motion to Dismiss at the beginning of the action. The Court denied
18 Defendant's previous Motion to Dismiss without prejudice, as the Court wanted a more
19 factually developed record with respect to the Legislative history behind the equitable
20 provisions found in NRS 41.600(3)(b).

23 ² NRS 598.0923(3) states : A person engages in a "deceptive trade practice" when in the course of
24 his or her business or occupation he or she knowingly: [v]iolates a state or federal statute or regulation
25 relating to the sale or lease of goods or services. The state regulations relating to the sale of goods Plaintiff
26 asserted as being allegedly violated by Defendant are the advertising regulations set forth in Chapter 482
27 of the *Nevada Administrative Code* ("NAC") which specifically relate to a vehicle dealership advertising
28 vehicles for sale to the community. *See NAC 482.120 and 482.180(3).*

³ NAC 482.180(3) states : Advertised claims such as "everybody financed," "no credit rejected," "we
finance anyone" and other similar statements, are not permitted, since no dealer can be assured that
financing will be extended or obtained due to adverse credit background, length or lack of employment, or
bankruptcy.

1 The narrow issue of law now before the Court is whether a private party, under
2 NRS 41.600, can seek and assert purely equitable relief without seeking or sustaining
3 any monetary damage or loss. Put another way, is a showing of monetary damages or
4 pecuniary loss a required prerequisite for a party to be considered a "victim of consumer
5 fraud" to have a viable claim under NRS 41.600 ? Based on a review of the Legislative
6 history behind the 2011 equitable amendments to NRS 41.600(3), coupled with the
7 underlying objectives behind the statute as a whole, the Court finds that Plaintiff can
8 seek strictly equitable relief under 41.600(3)(b) for alleged violations of 41.600(2)(d)
9 and (e), without seeking or sustaining actual damages or pecuniary loss in relation to his
10 statutory claim for consumer fraud, which is predicated upon deceptive and/or
11 misleading advertising.
12

13 II

14 FINDINGS OF FACT

15 Based on Plaintiff's Counter Motion, the arguments of counsel, in conjunction
16 with Plaintiff's Separate Statement, submitted pursuant to Rule 56(c), the Court finds
17 the following facts to be undisputed:
18

- 19 1. Plaintiff saw the television advertisement at issue.
- 20 2. Plaintiff did not sustain any monetary damage or pecuniary loss as a result
21 of the television advertisement at issue.
- 22 3. Plaintiff seeks strictly equitable relief in the form of a mandatory and/or
23 prohibitory injunction against Defendant pursuant to 41.600(3)(b), which is based upon
24 alleged violations of 41.600(2)(d) and (e). *See Comp. at Ex. 1 to Cntr. Mot.*
- 25 4. The only alleged violations at issue in this case are based on various state
26 statutes and regulations that exclusively relate or regulate vehicle dealerships, and their
27 advertising activities. *See Comp. at Ex. 1 to Cntr. Mot.*
- 28 5. Defendant FAIRWAY was a vehicle dealership at the time the television
advertisement aired and still is a vehicle dealership. *See Ex. 2; video copy of
advertisement at issue and Dec. of Greg Hienrich in Def's Mot. for Summ. Judg.*

6. In December of 2012, FAIRWAY approved the actual dissemination of a television advertisement, part of which stated "EVERYONE GETS APPROVED FOR 9.9% APR " relating to the financed sale of vehicles to the community. *Sep. Stmt. # 21 and screen capture shot of the television advertisement at Exhibit 3 to Plntf's Cntr. Mot.*

7. Defendant FAIRWAY approved the content of the television advertisement, including the disclaimers. *Sep. Stmt. # 22, 23, 24, 27 and 28.*

8. The disclaimers with respect to the financing portion of the advertisement stated : "Special Rate Secured through GM Financial. With Approved Credit. Not all Buyer's will Qualify. Must have at least 500 Credit Score. See Dealer for Full Details." *Sep. Stmt. # 38.*

III

CONCLUSIONS OF LAW

1. NRS 30.010 through 30.160 is titled the *Nevada Uniform Declaratory Judgment Act* ("Act"). NRS 30.040, which is part of the Act is entitled "questions of construction or validity of instruments, contracts and statutes" NRS 30.010(1) states in pertinent part :

Any person interested ... whose rights, status or other legal relations are affected by a statute, ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder.

Nevada Rule of Civil Procedure, Rule 57, entitled “declaratory judgments” states in pertinent part :

The procedure for obtaining a declaratory judgment pursuant to statute, shall be in accordance with these rules ... The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

NRS 41.600 states in pertinent part:

1. An action may be brought by any person who is a victim of consumer fraud.

1 2. As used in this section, "consumer fraud" means:
2 (a) An unlawful act as defined in NRS 119.330
3 (b) An unlawful act as defined in NRS 205.2747
4 (c) An act prohibited by NRS 482.36661 to 482.36667 inclusive;
5 (d) *An act prohibited by NRS 482.351, or*
6 (e) *A deceptive trade practice as defined in NRS 598.0915 to*
7 *598.0925, inclusive.*

8 3. If the claimant is the prevailing party, the court shall award the
9 claimant:
10 (a) Any damages that the claimant has sustained;
11 (b) *Any equitable relief that the court deems appropriate; and*
12 (c) The claimant's costs in the action and reasonable attorney's fees.

13 2. It is clear that 41.600 provides for a claimant to be awarded actual
14 damages, if he or she is the prevailing party, and was damaged as a result of any of the
15 five categories of consumer fraud set forth in subsection 2, *supra*. However, prior to
16 2011, 41.600 made no express reference with respect to it providing for any claimant to
17 seek equitable remedies or relief as a result of an alleged violation of 41.600.
18 Additionally, when the equitable amendments were added to 41.600 by the Legislature
19 in 2011, it is not clear from the text of the amendments if those equitable remedies and
20 relief were merely attendant or supplemental to an actual damages claim, or did the
21 Legislature intend to allow claimants to also seek purely equitable relief and/or
22 remedies against an alleged violator without having to show monetary damages. A
23 reading of 41.600 does not make this entirely clear, consequently, 41.600 is ambiguous
24 requiring the Court to look to the Legislative history to ascertain the Legislature's intent
25 in passing the 2011 equitable amendments.

26 3. The party's rights, status and/or legal relationship in this action are
27 entirely predicated upon the interpretation of NRS 41.600. *See Comp. at Ex. 1 to Plntf's*
28 *Cntr. Mot.* Both parties submitted competing summary judgment motions seeking
 adjudication, as a matter of law, as to whether Plaintiff had a viable claim for relief
 under 41.600, because he had not sustained any actual damages, nor was he seeking any

1 monetary damages as part of his 41.600 claim, but rather, he was seeking strictly
2 equitable relief.

3 4. The Plaintiff's affirmative claim for relief for violation of 41.600, and
4 Defendant's concomitant affirmative defense of failure to state a claim, hinged entirely
5 upon an interpretation of NRS 41.600. The issue is ripe for decision. This Court has the
6 authority and jurisdiction under the Act and Rule 57 to render, as a matter of law, a
7 declaratory judgment with respect to an interpretation of 41.600, which includes, but is
8 not limited to the equitable relief and remedies which were added to 41.600 during the
9 2011 Legislative session.

11 5. Statutory interpretation is a pure issue of law expressly reserved for the
12 Court. See *Int'l Game Tech., Inc. v. Second Judicial Dist. Court* 124 Nev. 193, 198, 179
13 P.3d 556, 559 (2008). The ultimate goal of interpreting statutes is to effectuate the
14 Legislature's intent. See *Cromer v. Wilson*, 126 Nev. ———, ———, 225 P.3d 788, 790
15 (2010). When the language is clear and unambiguous the Court interprets the statute
16 based on the statute's plain meaning, but when a statute is ambiguous, [the Court]
17 consult[s] other sources, such as legislative history, reason, and the policy to identify
18 and give effect to the Legislature's intent]. See *In re City Center Constr. & Lien Master*
19 *Litig.*, 129 Nev. Adv. Op. 70, 310 P.3d 574, 578 (2013).

21 6. A review of the Legislative record of the committee hearings wherein the
22 objectives behind the proposed equitable amendments were discussed reveal the
23 following :

25 A. The Attorney General or the District Attorney are limited in their ability
26 to prosecute violators of the NDTPA (Chapter 598 of the NRS), and NRS
27 41.600 because of their limited resources. See *Ex. 9 to Plntf's Cntr. Mot.*
28 *at bates LEG HISTORY 016 and 017; testimony of Dan Wulz.*

- 1 B. Deceptive or other enumerated conduct that is prohibited under NRS
2 41.600 and the NDTPA is deleterious to both consumers and businesses
3 alike. *See Ex. 9 to Plntf's Cntr. Mot. at bates LEG HISTORY 016 and 017;*
4 *testimony of Dan Wulz.*
- 5 C. The Legislative intent and the objectives behind the introduction of the
6 proposed equitable amendments, and the ultimate passage of those
7 amendments, was intended to further expand the private enforcement of
8 NRS 41.600 and the NDTPA. *See Ex. 9 to Plntf's Cntr. Mot. at bates LEG*
9 *HISTORY 002 to 009 and 011 to 017, including testimony of John Sasser*
10 *and Dan Wulz before the committees.*
- 11 D. More specifically, a large part of the reasons and objectives underlying the
12 passage of the 2011 equitable amendments to 41.600(3) was to address
13 the situation wherein a wrongdoer or violator engaged in consumer fraud
14 and/or statutory deceptive trade practices, *but the consumer may not*
15 *have been damaged by the wrongful conduct.* One of the specific
16 examples given at the hearings was in the situation involving deceptive
17 advertising. More specifically with respect to vehicle dealerships
18 advertising "guaranteed financing," which is similarly at issue in the
19 instant action. *See Ex. 9 to Plntf's Cntr. Mot. at bates LEG HISTORY 002*
20 *to 009 and 011 to 017; specifically testimony of Dan Wulz at 016 and*
21 *017.*
- 22 E. Finally, the underlying objectives and reasons behind the equitable
23 amendments to NRS 41.600(3) were to specifically provide for any and all
24 appropriate equitable relief, which also specifically included injunctive
25 relief. *See Ex. 9 to Plntf's Cntr. Mot. at bates LEG HISTORY 002 to 009*
26 *and 011 to 017; specifically testimony of John Sasser and Dan Wulz from*
27 *bates 013 to 017.*

28 7. Based on the aforementioned, the Court finds Plaintiff is entitled to
summary judgment on his second claim for relief for declaratory relief, and that Plaintiff
can seek strictly equitable relief against the Defendant under 41.600 without having to
allege or otherwise sustain actual damages or pecuniary loss.

1 Finally, as part of Defendant's motion for summary judgment, Defendant also
2 contended that, as a matter of law, the television advertisement at issue was not
3 deceptive, false or misleading, and was otherwise not in violation of any of the predicate
4 statutes or regulations which served as the basis for Plaintiff's first claim for relief claim
5 for statutory consumer fraud under 41.600. Defendant also contended, as part of their
6 motion, that Plaintiff was not entitled to any type of injunction as a matter of law.
7 However, based upon Plaintiff's separate statement submitted in his opposition to
8 Defendant's motion, and the evidence supporting that separate statement, the Court
9 finds there are genuine issues of material fact with respect to these claims for relief, and
10 therefore denies the balance of Defendant's motion for summary judgment on that
11 basis.
12

13
14
15 Dated this _____ day of April, 2015

16 By _____
17 Judge of the District Court

18 Submitted by :

19 _____
20 George O. West III
21 **Attorney for Plaintiff**
22 **ALLEN KELLEY**
23
24
25
26
27
28

A-13-674480-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing

COURT MINUTES

March 16, 2015

A-13-674480-C

Allen Kelley, Plaintiff(s)

vs.

Fairway Chevrolet Company, Defendant(s)

March 16, 2015

All Pending Motions

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

- ALL PENDING

COURT ORDERED, Plaintiff's Motion for Class Certification DENIED.

COURT ORDERED, Fairway Chevrolet Company's Motion for Summary Judgment DENIED.

COURT FURTHER ORDERED, Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Counter Motion for Partial Summary Judgment on Plaintiff's Second Claim for Relief for Declaratory Relief GRANTED for the reasons explained in Plaintiff's briefing on the Countermotion for Partial Summary Judgment. Plaintiff's counsel to prepare the order, which must include finding of facts and conclusions of law.

CLERK'S NOTE: The above minute order has been distributed to: George West, III, Esq. and L.C. Rose, Esq. via e-mail. /mlt

PRINT DATE: 03/23/2015

Page 1 of 1

Minutes Date: March 16, 2015

APP003804

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

ALLEN KELLEY,	.	CASE NO. A-13-674480-C
	.	
Plaintiff,	.	DEPT. NO. I
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
FAIRWAY CHEVROLET COMPANY,	.	
	.	
Defendant.	.	
.		

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
FAIRWAY CHEVROLET COMPANY'S MOTION FOR SUMMARY JUDGMENT
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND COUNTER MOTION FOR PARTIAL SUMMARY JUDGMENT ON
PLAINTIFF'S SECOND CLAIM FOR RELIEF FOR DECLARATORY RELIEF

TUESDAY, MARCH 3, 2015

APPEARANCES:

FOR THE PLAINTIFF: GEORGE O. WEST, III., ESQ.
 CRAIG FRIEDBERG, ESQ.

FOR THE DEFENDANT: L. CHRISTOPHER ROSE, ESQ.
 WILLIAM R. URGAS, ESQ.

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 with the consumer fraud statute.

2 THE COURT: Um-hum.

3 MR. ROSE: In Betsinger the Nevada Supreme Court was
4 trying to decide what was the burden of proof to apply to a
5 statutory consumer fraud claim. And they decided that it
6 would be a preponderance of the evidence. And they adopted
7 Dunlap in saying, here's how we're going to interpret our
8 statute based on how Arizona interprets theirs.

9 Well, the Dunlap case says you have to show reliance
10 and you have to show damages. So I don't think the -- and we
11 also cite the legislative history, Your Honor.

12 THE COURT: Um-hum.

13 MR. ROSE: And they make a big issue stating that we
14 left parts out intentionally. The parts that they're accusing
15 us of leaving out I think are helpful to us, because the
16 legislative history shows that you have to have damages. It
17 shows that that equitable relief provision is intended to
18 allow the Court to rescind a deal. If there's a transaction
19 that is just unfair and should be fixed, rescision is -- is an
20 equitable remedy. And that's why they allowed that.

21 So we think the case law shows you have to be
22 damaged. We think the legislative history supports that. The
23 legislature certainly was concerned about abuse of this
24 statute. In fact, there was a provision to have statutory
25 damages of \$5,000 per violation. The legislature said, no,

1 the Governor vetoed it because they don't want this statute to
2 be abused.

3 So, Your Honor, that's -- that's the basis for our
4 Motion for Summary Judgment. That's the basis of the Edwards
5 case, and the facts that we've cited you, upon which you have
6 the ability, wide discretion, to say, not in my courtroom, not
7 now, not based on these facts. This kind of injunctive relief
8 is not appropriate.

9 And again, Your Honor, we can get into whether the
10 ad -- and they spent a lot of time in their opposition, a very
11 lengthy opposition. They spend about 13, 14, 15 pages talking
12 about, well, there's a question of fact because of this
13 statute, and there's a question of fact because of this
14 statute. And they cite I don't know how many statutes in
15 there.

16 And for purposes of this motion, Your Honor, again,
17 we didn't -- and certainly the ad was not intended to violate
18 all those statutes and we don't believe that it did. But
19 let's assume for purposes of this motion that the
20 advertisement just fell short. It doesn't change the fact
21 that he was not harmed, he's never been harmed, he never
22 intended to buy, and based on these facts, this plaintiff is
23 not entitled to invoke this Court's most extreme equity
24 powers.

25 //

1 then there is an issue that that might be a potential unique
2 defense if it is the centerfold of the case and takes over
3 with respect to (indiscernible). Based on what I've just read
4 to you, and based upon everything else, it's not.

5 And so that's how it's applicable with respect to
6 that. With respect to exercising the Court's discretion with
7 respect to injunctive relief, as far as credibility, Your
8 Honor, is concerned, this testimony with respect that they're
9 relying on simply is nebulous at best and didn't apply with
10 respect to that.

11 Going back to the issue of what you said in the very
12 beginning. And the defendants have switched gears here. And
13 if I can get some sort of clarification, if the Court wants to
14 hear arguments on it. And the big issue here is the first
15 threshold for this Court to determine, before we even get to
16 whether or not there's material issues of disputed fact, is
17 does the plaintiff have a claim for relief.

18 When we were here almost a year and a half ago, Your
19 Honor, and you wanted a better factually developed record with
20 respect to whether or not a plaintiff under 41.600 could
21 allege a 41.600 claim without alleging damages, and strictly
22 seek equitable relief, of which everyone knows, includes
23 injunctive relief.

24 And so you denied that motion to develop that
25 record. Well, we have that record. And the defendants say,

1 well, that record supports us. But as I set forth in our
2 opposition, the defendants submitted the record, but they
3 didn't want to get into the weeds of those records with
4 respect to those hearings that Mr. Wulz and Mr. Sasser
5 testified to, as to the exact reasons and objectives why we
6 needed the equitable amendments in 2011.

7 Now, if you're going to argue statutory
8 interpretation, and you're going to argue that there is an
9 ambiguity, as the Court said, well, yeah, there might be here,
10 so let's look at what the statutory interpretation is by
11 looking at the legislative record to see what their intentions
12 were in passing the 2011 equitable amendments.

13 They say, well, it really only had to do with
14 recision. Well, on page 10 of plaintiff's opposition, I'm
15 sure Your Honor read it, the big highlight is with Mr. Sasser,
16 at page 10 of my opposition where -- it's Exhibit 9 -- he
17 says, "An additional tool is the liability to seek equitable
18 relief. This usually refers to the Court's order that the
19 perpetrator cease and desist from committing that unfair and
20 deceptive trade practice."

21 And he -- that sounds like an injunction to me. I
22 don't know how much clearer it could be without using the word
23 "injunction". But Dan Wulz uses the word "injunction" in his
24 testimony before the Committee, on page 11, which is set
25 forth, and it's also attached as Exhibit 9. He goes off and

1 he actually makes the argument in front of the legislature as
2 to why we need these equitable amendments and expand 41,600
3 coverage for more private enforcement.

4 And what does he use for the example? He uses
5 deceptive advertising. He not only uses the issue of
6 deceptive advertising to otherwise justify the objectives
7 behind expanding 41,600 to equitable relief, he not only talks
8 about deceptive advertising, he talks about the type of
9 advertising exactly in this case. He says, quote, "But I do
10 -- under existing law, only the Attorney General and the
11 District Attorney is given the statutory power to stop such
12 practices with the remedy of equitable relief, i.e.
13 declaratory or injunctive relief. But I do not believe you'll
14 find anybody from the Attorney General's office of any
15 District Attorney who would say they have some resources to
16 police activities."

17 And here's the key: "As a result, they do not do
18 so. And as a consequence, deceptive advertising exists. How
19 many of us have heard ads guaranteeing to finance everyone?
20 Of course that claim is not true. Yet honest businesses no
21 doubt lose customers to businesses who cannot make those --
22 who make -- who make false claims. In addition to claims
23 involving false and deceptive advertising there are instances
24 where equitable relief would be the remedy in most
25 (indiscernible) in deceptive trade practices."

1 And he goes on and he talks about situations where
2 you can have a person who's not damaged.

3 THE COURT: Um-hum.

4 MR. WEST: There's a perpetrator. They engaged in
5 consumer fraud. They violated one of the five subsections of
6 41.600. But they're not damaged. So what's the remedy there?
7 What's the legislature trying to do here? Well, we're going
8 to give the power, private attorney and general enforcement,
9 not only with respect to the damages, but we're going to go
10 out there and we're going to let you seek equitable relief.

11 And that's exactly what they did. The Deceptive
12 Trade Practices Act has been expanded year, after year, after
13 year, every summer legislative session. It has never been
14 contracted. And that's exactly what they did here. So they
15 spent a lot of time, but the lynchpin argument is, if there's
16 no claim as a matter of law, Your Honor, and you interpret the
17 statutory interpretation with respect to the 2011 equitable
18 amendments as not indicative of, yes, a plaintiff can go out
19 and sue for pure equitable relief because they have amended
20 the statute to say, any and all appropriate equitable relief,
21 then we're done. We can pack up and go home now.

22 If Your Honor says, well, no, I think based on the
23 legislative history that I have in front of me in the record,
24 it's pretty clear that what the legislator -- what the
25 legislators intended on what to do with 41.600, with respect

1 to equitable relief. It wasn't an adjunct remedy. This was
2 something that they knew that was out there pervasive and it
3 needed to stop.

4 So with respect to the amendments, I think they're
5 pretty clear with respect to the plaintiff's ability to
6 actually have a claim for relief.

7 Given the fact also that the defendants didn't even
8 in any respect address the legislative history in their reply
9 brief, and they just tell the Court, well, just go look at
10 these 7 pages, you know? That speaks volumes with respect to
11 where their legislative history argument goes.

12 And, quite frankly, that to me is the -- was the
13 biggest issue.

14 The second issue is assuming there's a claim for
15 relief, we get over that hump, because the plaintiff's got a
16 lot of hurdles here, no doubt. The second issue becomes, are
17 there triable issues of genuine material fact for the Court to
18 determine, one, is there a deceptive trade practice here, and
19 if there is, two, is the injunctive relief the type of relief
20 that was authorized by the legislature that the Court has the
21 discretion to -- to impose if it chooses to decide so, not on
22 summary judgment, but after the hearing when respect to all of
23 the evidence comes in.

24 And I'd like to bring something up with the Court.
25 This is a blow-up of Exhibit C of the advertisement. And it

1 question of fact. And that's what we have here, and it's
2 insufficient.

3 Your Honor, I think it's interesting; we pointed out
4 in our reply brief that the plaintiff did not discuss the
5 Edwards factors. We all agree that Edwards controls. We all
6 agree that those are the factors. We agree that the question
7 of whether injunctive relief should issue is dispositive of
8 every issue in this case. It's dispositive of the claims,
9 it's dispositive of everything.

10 But they don't talk about that.

11 THE COURT: What year was Edwards?

12 MR. ROSE: Edwards was 2006. And it's -- the cite
13 is 122 Nev. 317.

14 THE COURT: And when was the legislation changed to
15 allow for --

16 MR. ROSE: Equitable relief?

17 THE COURT: I believe that was 2011.

18 MR. WEST: I concur.

19 MR. ROSE: So --

20 MR. WEST: No, no, it was a 2011 -- I concur, it's a
21 2011 amendments.

22 MR. ROSE: Right. So that's when --

23 THE COURT: So -- so what am I to make of this
24 language in the legislative history that was submitted to me
25 that says that, Attorney General's Office or the District --

1 various District Attorneys don't have the resources to police
2 such activities, so they don't. And that was part of the
3 reason why they wanted to insert, equitable relief, e.g.
4 declaratory and injunctive relief? Does that not, taken
5 together, seem to be a step away from Edwards?

6 MR. ROSE: No. The answer is, no.

7 THE COURT: Okay.

8 MR. ROSE: The Edwards factors are still in place.
9 Adding the ability to get equitable relief under the statute,
10 first of all --

11 THE COURT: Uh-huh.

12 MR. ROSE: -- you've got to remember that the
13 overwhelming weight of the legislative history is to show that
14 this is for rescission, because sometimes when someone actually
15 enters a transaction, which we don't have here --

16 THE COURT: Um-hum.

17 MR. ROSE: -- when someone enters a transaction,
18 sometimes damages are not sufficient, or they're -- they don't
19 amount to much. And the best thing for the Court to do is to
20 rescind --

21 THE COURT: Um-hum.

22 MR. ROSE: -- a transaction. Now, there is
23 testimony -- and plaintiff points --

24 THE COURT: Well, is that -- is that what he meant
25 when he says, as a consequence, deceptive advertising exists.

1 How many of us have heard, as guaranteeing to finance anyone?

2 MR. ROSE: No, no. I agree with that. What --
3 that's testimony from an attorney --

4 THE COURT: Right.

5 MR. ROSE: -- who does plaintiff consumer protection
6 legislation.

7 THE COURT: Okay. All right. So we can't give it
8 the same --

9 MR. ROSE: That's not the legislature speaking.

10 THE COURT: -- credence.

11 MR. ROSE: That is --

12 THE COURT: That's what the legislators intended.

13 MR. ROSE: That's exactly right, Your Honor. That
14 is testimony --

15 THE COURT: And of course they spoke eloquently and
16 at length for us so that we would all know what they meant.

17 MR. ROSE: Right. That --

18 THE COURT: And where is that then?

19 MR. ROSE: Where is the --

20 THE COURT: Well, where is -- where is some
21 legislator -- where's the -- the guy who put in this change to
22 allow equitable relief, where are his statements about why
23 he's putting it in, what he wants, and what he wants the
24 courts to do?

25 MR. ROSE: Well, there's discussion in the history

1 where they talk about adding the equitable relief.

2 THE COURT: Uh-huh.

3 MR. ROSE: They don't get into a detailed discussion
4 about --

5 THE COURT: Okay.

6 MR. ROSE: -- why they believe it's appropriate
7 other than considering the testimony that's submitted by some
8 of the people, including the plaintiff's consumer protection
9 attorney, Dan Wulz, who offered that testimony you just
10 offered.

11 THE COURT: Yeah.

12 MR. ROSE: So I think you have to look at it kind of
13 as a whole. You don't have someone from the legislature
14 saying, here's what we're going to do, and here's why. It's
15 more of a general discussion about, okay, you're asking for
16 equitable relief.

17 THE COURT: Uh-huh.

18 MR. ROSE: We understand that. You're asking for
19 statutory damages of \$5,000. They were concerned about that,
20 and that was rejected.

21 THE COURT: Uh-huh. Let me just interrupt and we
22 can go back to Mr. West.

23 Mr. West, where is there anything in the legislative
24 history that tells me that by inserting this, the legislature,
25 not someone testifying before it, but the legislature itself

1 intended to allow -- to broaden out the statute and its
2 applicability and usability to anything more than recision?

3 MR. WEST: Unless you have a legislature that
4 otherwise -- and to answer your question, it doesn't exist,
5 number one. That's why. Number two --

6 THE COURT: Why does that not surprise me?

7 MR. WEST: -- when the legislature doesn't come out
8 specifically and say, no, that's not what we're intending on
9 doing. That's why they have committee meetings. That's why
10 they have people come forward as to who sponsored the Bill.
11 As a matter of fact, the sponsor of the Bill, she says, I'm
12 willing to sponsor the Bill. I have very gallant people
13 coming here today to testify for its passage.

14 THE COURT: Um-hum.

15 MR. WEST: And there was plenty of discussion. And
16 if you look at those seven pages, there was a cornucopia of
17 discussion with respect to the \$5,000 per se. That was the --
18 that was the mainstay of that entire Committee meeting. They
19 didn't say "boo" about the issue with respect to the --

20 THE COURT: Equitable, right.

21 MR. WEST: -- equitable, because that was part of
22 the reason. And that was swept up in the legislation. It was
23 three things; it was 5,000 per se, it was equitable relief,
24 and then taking advantage of people that didn't understand the
25 transaction.

1 THE COURT: Um-hum.

2 MR. WEST: The first -- the latter two passed, the
3 last one failed.

4 So we have this -- that's his testimony, this is the
5 basis for the objectives, this is what they're giving the
6 legislature the reasons to pass the law.

7 So -- and Mr. Wulz, he's the executive director down
8 at LACSN. He's not plaintiff's guy. He's out there on there,
9 representing the people that can't get representation. So if
10 there's anybody who has credibility, it's Mr. -- it's Mr.
11 Wulz.

12 So in answer to your question, there's no legislator
13 that says, no, that's not what we meant to do. That was all
14 -- everything was there with respect to --

15 THE COURT: Okay.

16 MR. WEST: -- to those statements as to what they
17 were considering.

18 THE COURT: All right. Okay. Okay, Mr. Rose, I had
19 interrupted you.

20 MR. ROSE: No, no, I appreciate the questions. And
21 I just want to add that they -- they claim that we did not
22 talk about the legislative history in our reply brief, and
23 starting at page 11, we addressed the arguments that they
24 raise.

25 //

1 So we're not running from the legislative history.
2 And as you pointed out, the main remedy contemplated by this
3 provision for equitable relief is rescission.

4 THE COURT: Well, I wasn't intending to point it
5 out.

6 MR. ROSE: Well --

7 THE COURT: I was parroting your argument, that it
8 -- that it's rescission.

9 MR. ROSE: Understood, Your Honor.

10 THE COURT: And where do you get that? Where is
11 there anything in the legislative history that would seem to
12 say that it's for rescission only?

13 MR. ROSE: Because that's --

14 THE COURT: If that's the main thing they were
15 aiming at.

16 MR. ROSE: Yeah. I'm not saying rescission only.

17 THE COURT: Okay.

18 MR. ROSE: I'm saying, the testimony and the
19 discussion is, normally what you get in situations like this
20 is the ability to unwind a deal. I'm referring to --

21 THE COURT: Uh-huh.

22 MR. ROSE: -- the testimony of Jon Sasser, quote,
23 "The typical equitable relief in these situations would be a
24 court order to rescind, unwind the transaction."

25 THE COURT: Um-hum. Um-hum.

1 MR. ROSE: So am I saying that the legislature in
2 turn did only equitable relief or only recision? I'm not
3 going to go that far. But I will say, there was certainly no
4 intent to take away this Court's discretion to deny injunctive
5 relief when there is no harm, no damages, no ongoing conduct,
6 no one other than plaintiff complaining about this. That, the
7 legislature did not do.

8 And that's supported by the express terms of 41.600
9 where it says, equitable relief that this Court deems
10 appropriate.

11 So this Court, under the express terms, even with
12 the amendment to the statute of 41.600, that still preserves
13 all of the discretion that Edwards gives this Court, the
14 Edwards factors. All it does is clarify that someone who
15 really didn't suffer a lot of harm can maybe get recision or
16 something else that this Court is willing to grant.

17 So the amendment to the statute to add equitable
18 relief --

19 THE COURT: Um-hum.

20 MR. ROSE: -- doesn't take anything away from this
21 Court's discretion to grant or deny equitable relief,
22 especially when we're dealing with the invasive perpetual
23 mandatory and permanent injunction that's requested here.

24 I'm going to --

25 THE COURT: And let me -- I have another question

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VIA COURTESY DROP BOX

September 24, 2015

HON. KENNETH CORY

Dept I

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

ATTN: Jessie/Law Clerk Dept I

RE: Proposed order on second phase of bifurcated trial on
Kelley v Fairway
Case No: A-13-674480-C

Dear Judge Cory:

Attached is Plaintiff proposed order on your ruling on evidentiary issues involving the second phase of the trial in the above captioned matter. I have also attached the minute order for your review. The parties could not agree on the content of the order. It is the Plaintiff's position that Defendant's give a very expansive interpretation of the minute order interpreting it to mean the exclusion of any and all evidence "relating to" the previous lawsuits.

The minute order does not make reference to or state evidence "relating to" the two previous lawsuits. Rather, it says *"the Court will not admit any evidence of the prior lawsuits filed in 2008 and 2009, except two exhibits that included the terms of settlement agreements explaining Defendant Fairway's continuing obligations..."*

More significantly, if one were to assume there were no previous lawsuits against Fairway involving the previous internet and radio ads that are proffered by the Plaintiff, those previous incidents, advertisements and facts would be completely relevant to the *Edwards* factors. Indeed, none of the *Edwards* factors include or require the actual filing or existence of any previous lawsuits, or having an actual judgment on the merits rendered in making the determination of the likelihood of future violations under *Edwards*.

The fact that a previous lawsuit was filed involving those previous advertisements does **not** suddenly make those facts or previous incidents “non-existent” for purposes of *Edwards*. Indeed, it was the Defendant, who in their summary judgment, affirmatively contended it was the *Edwards* factors that controlled whether an equitable remedy should issue via an injunction. Now, after offensively attempting to assert *Edwards* in their MSJ, *which was denied, and of which Mr. Hoisington submitted a declaration in support of that motion which Plaintiff seeks to use in the second phase of the trial*, Fairway now contends that very same evidence which was “relevant” for purposes of their MSJ, should be excluded in the remedy phase of this trial. Defendant can’t have it both ways. If any party should be estopped, it should be the Defendant.

Defendant’s proposed order completely precludes the introduction of *any evidence whatsoever, for any purpose*, that may have been “related to” the two previous actions, *irrespective of what it is offered for*. Defendant’s interpretation is patently improper under *Edwards* and does not reflect the Court’s minute order. The Defendant can’t avoid or erase the “existence” of facts and transactions under the previously releases at issue, which is precisely what they are attempting to do with the way they have drafted their proposed order.

Furthermore, the minute order states “[n]o additional evidence will be admitted, other than exhibits already proposed **and subject to the rules of evidence...**” If Plaintiff’s exhibits submitted for the second phase of this trial are offered to show Defendant’s knowledge, notice or “heightened awareness” of the rule, and the affirmative choices Defendant made in approving certain previous advertisements that “guaranteed financing” with full knowledge of the rule, that is entirely relevant with respect to *Edwards*. Indeed that is one of the basis for the admission of the 2008 and 2009 assurances of discontinuance – the Defendant’s heightened and/or particularized awareness and knowledge of the rule and their promise never to do it again, **as far back as 2008**, and what the Defendant continued to do in spite of that knowledge. Again, that goes to *Edwards*.

Furthermore, if the exhibit is being offered for pure impeachment purposes, they should be admissible for that purpose. Mr. Hoisington’s declaration is offered for this purpose, and all references to the previous lawsuits have been redacted from his declaration. The previous advertisements are not being admitted to prove or show a previous lawsuit was filed, rather, they are used to impeach his credibility based on his previous declaration vis-à-vis the “guaranteed financing” advertisement found on Fairway’s website. Mr. Hoisington in his declaration stated under oath those references to “guaranteed financing” were “obscure,” that had a “difficult” time finding them on its website, and that it was only “descriptive in nature.” The static screen shots of the ten pages of that exhibit of Fairway’s website are relevant to entirely contradict Mr. Hoisington’s previous declaration, as well as with respect to the *Edwards* factors.

Plaintiff’s proffered exhibits in the second phase, which were filed with the Court yesterday, (bearing the original exhibit numbers as in the first phase), do not seek to admit evidence of the previous lawsuits i.e. the Complaints filed, the MSJ rendered in the previous lawsuit... etc... The previous releases in the two previous cases released claims and future litigation based on the facts of those two previous cases, they did not release “facts,” that are relevant under the *Edwards* factors for purposes of the remedy portion of this trial.

Again, Plaintiff will lay more than adequate foundation, and the reasons for the exhibit's introduction without any reference to the filing or the existence of the two previous lawsuits. This can be done with relative ease. The exhibits show previous similar advertising incidents engaged in by Fairway with full awareness of the rule. That is directly relevant to the *Edwards* factors.

Sincerely,

George O. West III

George O. West III

Enc.

cc : Chris Rose, Esq
 William Urga, Esq
 Craig Friedberg, Esq

EXHIBIT C

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Of Counsel

David Ludwig, Esq. +

VIA FAX

February 22, 2016

HON. KENNETH CORY

Dept I

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

ATTN : Jessie Ransom/Law Clerk Dept I

RE : Findings of Fact and Conclusions of Law on Second Phase of
Bifurcated trial in *Kelley v Fairway*
Case No : A-13-674480-C

Dear Judge Cory :

Plaintiff's counsel has received Defendant's proposed Findings of Fact and Conclusions of law regarding the liability (second) phase of the trial in the above captioned matter. Defendant's proposed order overlook the clear testimony that was elicited in the second phase which are set forth in Plaintiff's findings of fact. These included Mr. Hoisington's clear understanding of the rule, Fairway's continued "heightened awareness" of the rule and Mr. Hienrich's testimony about his clear understanding of what he was agreeing to on behalf of Fairway when he executed the two previous assurances of discontinuance.

This would also include facts concerning Fairway implementing written policies and practices for their sales, finance and insurance and service departments, and Fairway's commensurate policy to always have those written policies followed. However, Fairway did not implement a single written policy or practice involving disseminating advertisements to the community to ensure Fairway kept its previous promises, and to also ensure they did not continue to disseminate advertisements in violation of NAC 482.180(3).

All of these facts were testified to and established via the testimony elicited by Plaintiff in his case in chief during the second phase of the trial, and all of which were directly relevant to the *Edwards* factors. Defendant's proposed writ large changes to Plaintiff's proposed findings and their in depth "explanations" for such changes appears to essentially be a disguised pre-emptive attempt at a motion for new trial. Notwithstanding, the proposed competing orders have been submitted for the court's review and final decision on the matter.

Sincerely,

George O. West III

George O. West III

Enc.

cc : Chris Rose, Esq
 William Urga, Esq
 Craig Friedberg, Esq

EXHIBIT D

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Of Counsel

David Ludwig, Esq. +

VIA FAX ONLY

June 5, 2016

HON. KENNETH CORY

Dept I

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

ATTN: Jessie Ransom/Law Clerk Dept I

RE: Status check on Kelley v Fairway and setting of hearing with Disc.
Commissioner Bulla
Case No: A-13-674480-C

Dear Judge Cory:

This letter is to inform you that Plaintiff's and Defendant's counsel have discussed this matter with Commissioner Bulla. She has set this for her hearing calendar on the issue of the necessity and reasonableness of the discovery which Defendant's objected to in their opposition to Plaintiff's Motion for Fees on June 23, 2016 at 9:00 a.m.

Plaintiff would request the Court to set a hearing date out about two weeks after the June 23rd hearing in front of the Discovery Commissioner for this Court to rule on Plaintiff's Motion for Award of Statutory Fees and Costs. This should give ample time for the recommendations to be forthcoming from Commissioner Bulla on the issues before her.

On a related note, Plaintiff submitted their proposed Amended Findings and Conclusions to the Court on May 25, 2016 based on the granting of Defendant's Motion which was initially heard on May 18, 2016. To date, Defendants have **not** submitted their proposed version of the Amended Findings and Conclusions. Plaintiff would request the Court to issue a minute order giving Defendants a certain deadline in which to get their proposed Amended Findings and Conclusions lodged with the Court so that this matter can be finally adjudicated, and final judgment can be entered on all of the matters left pending before the Court.

Sincerely,

George O. West III

George O. West III

Enc.

cc : Chris Rose, Esq
William Urga, Esq
Craig Friedberg, Esq
Hon. Bonnie Bulla

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VIA COURTESY DROP BOX

June 6, 2016

HON. BONNIE BULLA

Discovery Commissioner

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

ATTN: Natalie/Mitos

RE : Hearing date on discovery fee issues set for June 23, 2016 at 9:00
a.m. on *Kelley v Fairway* ; Case No : A-13-674480-C

Dear Commissioner Bulla :

Enclosed, please find the following :

1. Conformed copy of Plaintiff's Motion for Award of Statutory Attorney's Fees and Costs, with tabbed exhibits, included highlighted portions of the objected to time by Defendants as set forth in the matrix attached to Defendant's Opposition at Exhibit "E."
2. Conformed copy of Plaintiff Reply Brief on Plaintiff's Motion for Fees and Costs, with tabbed Exhibits.
3. Conformed copies of the Findings of Fact and Conclusions of Law in both the first and second phases of the bifurcated trial in this matter. The Findings of Fact and Conclusions of Law for the second phase of the trial are being amended only insofar as to give the reviewing court better insight on the reasoning and basis for the Court's injunction. Defendant has still not submitted their proposed amended findings and conclusions to the trial Court. The Court has not changed in any way its legal conclusions that Plaintiff was the prevailing party in this action with respect to each and every one of his claims for relief, nor the basis for those findings, nor did the Court change or amend the nature and extent of the mandatory injunction it issued against on the Defendant.

4. Defendant's initial 16.1 disclosures.
5. Copies of the "bigger ticket" items Defendant objected to in their matrix attached at Exhibit "E" to their opposition. On the top of the first page of each item is the date of the corresponding time entry found on the itemized time sheet, and the total time incurred for that item. There are a total of 10 separate items enclosed herewith. Plaintiff is submitting these items to assist the Court in evaluating if the time that was expended for that item was necessary and reasonable given the work undertaken.

It is Plaintiff's understanding that pursuant to our conference call, they will be providing a copy of their opposition to Plaintiff's Motion for Fees and Costs.

Sincerely,

/s/ George O. West III

George O. West III

cc : Chris Rose, Esq
William Urga, Esq
Craig Friedberg, Esq

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Of Counsel

David Ludwig, Esq. +

VIA COURTESY DROP BOX

August 10, 2016

HON. KENNETH CORY

Dept I

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

ATTN: Jessie Ransom/Law Clerk Dept I

RE: Resetting of Plaintiff's Motion for Award of Attorney's Fees and
Costs on Kelley v Fairway
Case No: A-13-674480-C

Dear Judge Cory:

On June 30, 2016, Commissioner Bulla heard arguments on this Court's referral for recommendations on certain disputed pre trial discovery items contained in Plaintiff's cost bill relating to Plaintiff's pending Motion for Award of Statutory Fees and Costs. The referral was based on the fact that many of the disputed entries by Defendant in opposition to the motion were heavily based upon certain pre trial discovery that was conducted in the case, and any discovery motions related to that pre trial discovery.

After the JCCR being rejected for some formatting issues, Commissioner Bulla just issued her recommendations on the pre discovery fee issues. It is attached to this letter. Consequently, Plaintiff would like have Plaintiff's Motion for Statutory Fees and Costs ***placed back on calendar as soon as possible*** so a final judgment can be rendered in this action. It is Plaintiff's position that since Judge Cory is going to be ruling on the fee and cost issue, this matter can be immediately reset for hearing even though Defendant has a right to object to the recommendations. They can still lodge those objections with Judge Cory who can consider them at the fee hearing. I will be out of town August 22 through the 24, September 1, 7 and the 12th through the 14th. Other than those dates, my calendar is pretty open in the next month or so. This matter has already been fully briefed and is ready for adjudication by Judge Cory. Thank you for your time in this regard.

Sincerely,

/s/ George O. West III

George O. West III

cc : Chris Rose, Esq
 William Urga, Esq
 Craig Friedberg, Esq

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Of Counsel

*David Ladwig, Esq. **

SENT VIA FAX AND EMAIL ONLY

October 7, 2016

HON. KENNETH CORY

Dept I

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

ATTN: Donny/Law Clerk Dept I

RE: Amended findings of Fact and Conclusions of Law on Second Phase
of Bifurcated trial in *Kelley v Fairway*
Case No: A-13-674480-C

Dear Judge Cory:

Please find attached a true and correct copy of a recent email Plaintiff received from Defendant's counsel that unequivocally stated that Defendant will **not** be submitting any proposed amended findings and conclusions to the Court with respect to Defendant's Motion to Amend Findings of Fact and Conclusions of Law, **which this Court granted on May 18, 2016**. Apparently, it is the Defendant's position that the Court, on a Rule 52(b) motion, is limited to only adopting the moving party's requested amendments, or a version of them, and lacked the ability or authority to amend the findings or make additional findings and amend the injunction. The Defendant's position is entirely untenable under the express and unambiguous provisions of Rule 52(b). Rule 52(b) entitled "amendments" states in pertinent part:

"Upon a party's motion filed not later than 10 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly...."

The Court was well within its plenary authority to amend the findings, make additional findings, including the nature and extent of the injunction as there was no final judgment or order entered because this Court *granted* Defendant's Motion. This was the Defendant's motion, and not liking the results of their efforts, Defendant has now chosen and refused to submit any proposed amended findings and conclusions to the Court.

Your honor ordered during the hearing on September 16th that both parties should simultaneously submit, (in the blind), a proposed amended findings and conclusions no later to the Court on October 6, 2016. The Court then indicated that if there was any supplemental briefing on the issue of the proposed amendments, that briefing was to be simultaneously filed on October 26, 2016. The Court put over final argument on the content of the amended findings and conclusions, as well as Defendant's Motion to Stay and Plaintiff's Counter Motion to compel supersedes bond for November 10, 2016 at 9:00 a.m. Plaintiff believes the Court should be informed of this recent development and not expect any proposed amended findings and conclusions coming from Defendant.

Sincerely,

George O. West III

George O. West III

Enc.

cc : Chris Rose, Esq
William Urga, Esq
Craig Friedberg, Esq

EXHIBIT H

"Consumer Attorneys Against Auto Fraud"

*Los Angeles**

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Glendale, CA 91207

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Websites: www.caaaf.net

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Reply to: Las Vegas Office:

**Inactive in California*

**Admitted Only in Missouri & Kansas*

Of Counsel

David Ladwig, Esq. +

VIA FAX AND EMAIL ONLY

October 16, 2016

DONNY DAYTON

Law Clerk; Dept I

Eighth Judicial District

200 Lewis Ave

Las Vegas, NV 89101

RE : Minute order on Plaintiff's Motion for Award of Statutory
Fees and Costs
Case No : A-13-674480-C

Dear Donny :

Attached is the minute order regarding Plaintiff's Motion for Award of Statutory Fees and Costs. Plaintiff has some items of clarification, and we are seeking guidance on the avenue by which we should go about seeking this clarification before Plaintiff prepares a proposed formal order. One of the items consists of there being no mention of the Court granting plaintiff's verified cost bill. While there was no opposition to Plaintiff's cost bill by Defendants, it was affirmatively sought by the Plaintiff but not addressed in the minute order.

Secondly while discussing and argued at length at the hearing, as well as having been fully briefed in both the moving and opposing papers, there was no mention that the Court took into consideration all of the *Brunzell* factors in coming to the grant of the attorney fee award. Notwithstanding, there much case law to the effect that an attorney fee award without reference to the Court reviewing and considering *Brunzell* factors is per se reversible error.

Finally from what Plaintiff garners from the minute order is that it would appear that the court's decision was to award fees calculated on the hourly rate that was customarily billed ***at the time the various work was incurred throughout the four year pendency of the action.*** This would lead to a staggered hourly rate over the four year pendency of the action. That is very easy to break out and calculate to get to a final ascertainable number, and Plaintiff can submit a supplemental affidavit to that affect with an further amended time bill, which can be submitted to the Court on October 26th, which is the date both sides are file and lodge with the Court any supplemental briefing on the amended findings and conclusions.

Given these issues, does the Court want Plaintiff bring a noticed motion for further clarification on these issues and have it set on an OST basis for the current hearing date of November 10, 2016, or would the Court rather Plaintiff's include these items in a proposed order with a supplemental affidavit, breaking out and calculating the fees based on the hourly rate for the work that was incurred throughout what is now almost four years of pending litigation. November 10th is the date in which Defendant's motion for Stay and Plaintiff's Counter Motion to Compel a supersedeas bond is on calendar. If you could please apprise all parties of how the court would like to proceed on these issues it would be greatly appreciated.

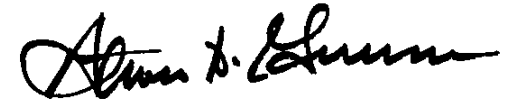
Sincerely,

George O. West III

George O. West III

Enc.

cc : Chris Rose, Esq
William Urga, Esq
Craig Friedberg, Esq



CLERK OF THE COURT

DECL
GEORGE O. WEST III [SBN 7951]
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Consumer Attorneys Against Auto Fraud
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Websites: www.caaaf.net
www.americasautofraudattorney.com

CRAIG B. FRIEDBERG [SBN 4606]
Law Offices of Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
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Email: attcbf@cox.net
Website: www.consumerlaw.justia.net

Attorneys for Plaintiff ALLEN KELLEY

DISTRICT COURT

CLARK COUNTY, NEVADA

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiffs,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through 100,
Inclusive,

Defendants.

CASE NO: A-13-674480-C

DEPT: I

**FIFTH SUPPLEMENTAL
DECLARATION OF CRAIG B.
FRIEDBERG IN SUPPORT OF
PLAINTIFF'S MOTION FOR
STATUTORY ATTORNEY'S FEES**

I, Craig B. Friedberg, declare as follows:

1. I am one of Plaintiffs' attorneys and I am making this declaration in support of Plaintiff's Motion for Statutory Attorney's Fees. I have personal first hand knowledge of the matters set forth herein, except to those based upon information and/or belief, of which I believe such matters to be true, and if called as a witness, I would and could competently testify.

1 2. Exhibit 1, Craig Friedberg's Supplemental Time Records for this case is a
2 true and correct copy of what it is purported to be, as identified and referenced in the
3 motion, my original declaration, the supplemental declaration, the second supplemental
4 declaration, the third supplemental declaration, the fourth supplemental declaration
5 and this fifth supplemental declaration. My billing records have been personally
6 reviewed by me. The time expended was reasonably related to, and necessary for,
7 culminating this case successfully, through two phases of trial, and handling of extensive
8 and time-consuming post-trial motions and hearings. The additional time entries
9 (*formatted in italics in Exhibit 1*) are for the actual time spent at the November 3, 2016
10 and the estimated time for appearing for the hearing on December 8, 2016, which adds
11 an additional 2.4 hours to those previously provided.

12 3. The total number of hours I am requesting for my involvement in this
13 litigation through the hearing on December 8, 2016 is **175.80 hours**. The hours are
14 multiplied at my historical hourly attorney rate of \$450.00 per hour, which has been the
15 same since January 1, 2015. The total amount requested is **\$ 79,110.00**.

16 Under NRS 53.045, I, Craig B. Friedberg, do hereby certify under penalty of
17 perjury, that the above statements are true and correct to the extent they reflect my
18 personal knowledge and otherwise are based upon my information and belief.

19 Executed this 6th day of December, 2016 at Las Vegas, Nevada.

20
21 /s/ Craig Friedberg
22 CRAIG B. FRIEDBERG
23 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December 2016, I electronically served (via Odyssey) a true and correct copy of the foregoing Fifth Supplemental Declaration of Craig B. Friedberg in Support of Plaintiff's Motion for Statutory Attorney's Fees to the following:

L. CHRISTOPHER ROSE, ESQ
WILLIAM URGAS, ESQ
Jolly, Urga et al.
3800 Howard Hughes Pkwy, 16th floor
Las Vegas, NV 89169
lcr@juww.com
WRU@juww.com

/s/ Craig Friedberg

EXHIBIT 1

EXHIBIT 1

Detailed Time Report

Timeframe	07/30/2015 - 12/08/2016	Client	Allen Kelley v. Fairway Chevrolet, et al.
Total	175.80 Hours	Project	Fairway
		Task	Legal
		Staff	All Staff

Client	Project	Task	Person	Hours
07/30/2015				5.50
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	5.50
Meet w/ George West re association into case, assisting w/ trial prep, co-counseling on all phases of trial (5.4); review draft of notice of association of counsel (0.1)				
07/31/2015				0.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	0.30
Receive & review conformed notice of association (0.1); receive and review correspondences between counsel for P and Ds re: status of Ds' revisions to pre-trial memo				
08/01/2015				4.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	4.10
Receive and review Ds' revisions to draft of pre-trial memo (0.3); receive and review P's trial exhibits re: trial strategy (0.3); meet w/ atty West re: trial strategy, examination of Hoisington and opening statement (3.5)				
08/02/2015				3.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	3.30
Meet w/ atty West re: trial prep (examination of Hienrich & trial strategy (use of exhibits, trial briefs, pre-trial memo and opening statement)				
08/03/2015				4.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	4.30
Receive and review multiple correspondences exchanged between counsel for P and Ds re: trial witnesses and testimony of Dr. Kelley (0.2); Meet w/ atty West re: trial prep (order & examination of witnesses, opening statement, theme) (4.1)				
08/04/2015				1.90
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	1.90
Review P's trial briefs to have deeper understanding of trial issues and assist w/ trial prep (0.6); Multiple telephone conferences w/co-counsel re: trial prep (examination of Dft witnesses, trial briefs & opening), and arguments for hearing on Ds' 2nd MSJ & P's motion in limine (1.3)				
08/05/2015				8.50
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	3.50

Client	Project	Task	Person	Hours
	<i>Court appearance re: Ds' 2nd MSJ and P's motion in limine</i>			
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	5.00
	<i>Meeting w/ co-counsel re: effect of court's rulings at hearing, trial strategy, examination of witnesses, opening statement and use of trial exhibits</i>			
08/06/2015				0.70
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	0.70
	<i>Receive and review from co-counsel draft of order denying Ds' 2nd MSJ and granting P's motion in limine; revise P's proposed order; draft correspondence to co-counsel re: order</i>			
08/07/2015				2.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	2.40
	<i>Receive and review Ds' proposed order re: denial of Ds' 2nd MSJ and granting P's motion in limine (0.1); receive, review and analysis of D's designations of depo testimony to be read at trial of Urrutia and McCarthy (0.3); receive and review multiple correspondences between counsel re: depo designations, submission of competing orders to the Judge and stipulation to use Dr. Kelley's depo testimony at trial (0.3); multiple telephone conferences w/ co-counsel re: revisions & response to opposing counsel re: Ds' proposed order, trial strategy, examination of witnesses (1.7)</i>			
08/08/2015				7.70
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	7.70
	<i>Meeting w/ co-counsel and client re: witness and trial prep (4.0); meeting w/ co-counsel re: examination of witnesses, opening and trial strategy (3.7)</i>			
08/09/2015				8.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	8.40
	<i>Trial prep re: Legal research on use of injunctive relief to monitor defendant's actions (0.5); Meeting w/ co-counsel re: opening, examination of client and Ds' employees, use of depo testimony at trial, pre-trial matters to be discussed with Judge, other aspects of trial strategy (7.9)</i>			
08/10/2015				9.20
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	6.80
	<i>Appear at trial</i>			
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	2.40
	<i>Receive, review and analyze Ds' trial brief & supplement to trial brief (0.6); meeting w/ co-counsel and client re: trial testimony, changes to trial strategy resulting from court's evidentiary rulings and preparation for 2nd day of trial (1.8)</i>			
08/11/2015				7.20
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	2.70
	<i>Trial prep w/ co-counsel re: use of Urrutia depo at trial and examination/cross exam of other trial witnesses</i>			

Client	Project	Task	Person	Hours
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	4.50
	Trial			
08/12/2015				6.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	4.50
	Receive, review and analyze Ds' depo designations of Dr. Kelley (0.2); meeting w/ co-counsel re: use of exhibits in closing, preparation of closing argument and rebuttal, assistance in dry run of closing (4.3)			
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	1.90
	Trial (not able to stay until trial day ended) hearing			
08/13/2015				8.50
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	8.00
	Trial			
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	0.50
	Telephone conference w/ client re: results of first phase of trial, further procedures			
08/15/2015				0.80
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	0.80
	Telephone conference w/ co-counsel re: litigation and resolution strategy			
08/16/2015				0.90
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	att cbf	0.90
	Telephone conferences w/ co-counsel re: parameters of settlement offer and draft of written offer to opposing counsel			
08/24/2015				3.80
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	3.80
	Receive and review draft of P's findings of fact and conclusions of law (FoF/CoL) on first phase of trial (0.9); Revise and finalize draft of P's FoF/CoL (cross referencing with court's bench ruling from trial dvd recording) (2.9)			
08/25/2015				1.70
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	1.70
	Draft final revisions to P's proposed findings of fact and conclusions of law in first phase of trial (0.5); receive and review multiple correspondences between counsel and the court re: submission of proposed findings of fact and conclusions of law in first phase of trial (0.4); Multiple telephone conferences w/ co-counsel re: submission to court of P's proposed findings of fact and conclusions of law in first phase of trial, possible replies to opposing counsel's stance re submitting proposed FoF/CoL to court and litigation strategy for 2nd phase of trial (0.8)			
08/27/2015				1.00

Client	Project	Task	Person	Hours
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	1.00
		<i>Receive and review co-counsel's draft of P's trial brief for 2nd phase of trial (0.5); telephone conference w/ co-counsel re: trial brief (0.5)</i>		
08/28/2015				4.50
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	4.50
		<i>Revise and finalize P's trial brief on 2nd phase of trial (3.5); telephone conference w/ co-counsel re: revisions to trial brief and trial strategy for 2nd phase of trial (1.0)</i>		
08/29/2015				0.90
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.90
		<i>Receive and review Ds' supplemental trial brief (0.3); Telephone conference w/ co-counsel re: Ds' supplemental trial brief and trial strategy (0.6)</i>		
09/01/2015				0.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.40
		<i>Telephone conference w/ co-counsel re: opening statement for 2nd phase of trial and trial strategy</i>		
09/07/2015				0.50
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.50
		<i>Telephone conference w/ co-counsel re: Ds' failure to submit their own proposed FoF/CoL and trial strategy</i>		
09/16/2015				0.20
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.20
		<i>Telephone conference w/ co-counsel re: coordinating availability of counsel and client for re-scheduling 2nd phase of trial</i>		
09/18/2015				1.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	1.40
		<i>Receive and review correspondences from court re: scope of 2nd phase of trial, exhibits and witnesses allowed, and acceptance of P's proposed findings of fact and conclusions of law from the 1st phase of trial (0.3); Lengthy telephone conference with co-counsel re: implications of court's rulings on trial strategy for 2nd phase (1.1)</i>		
09/24/2015				0.60
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.60
		<i>Multiple telephone conferences w/ co-counsel re: analyzing D's proposed order and further procedures to take, and coordinating availability for Court's proposed 10/16/15 date for phase 2 trial</i>		
10/05/2015				1.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	1.10
		<i>Legal research re: discoverability of opposing counsel's fees in preparation of possible post-trial application for fees</i>		

Client	Project	Task	Person	Hours
10/07/2015				0.20
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.20
<i>Receive, review and send correspondences with the court re: scheduling of pre-trial conference and 2nd phase of trial</i>				
10/16/2015				0.60
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.60
<i>Receive and review Ds' motion to amend findings of fact and conclusions of law from 1st phase of trial (0.2); telephone conference w/ co-counsel re: response to D's motion and trial strategy (0.4)</i>				
10/29/2015				0.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.30
<i>Receive and review correspondence from court re: new trial date for 2nd phase of trial (0.1); receive and review correspondence from opposing counsel re: scheduling conflict of their witness with new trial date (0.1); telephone conference w/ co-counsel re: availability for new trial date and other dates in December (0.1)</i>				
11/02/2015				0.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.30
<i>Receive and review correspondence from Court re: 2 other trial dates for 2nd phase (0.1); telephone conference w/ co-counsel re: availability on court-proposed trial dates (0.1); receive and review correspondence from opposing counsel re: unknown availability of Ds' witnesses for either of proposed trial dates (0.1)</i>				
11/04/2015				1.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	1.10
<i>Review and revise draft of P's opposition to Ds' motion to amend FoF/CoL from 1st phase (1.0); draft correspondence to opposing counsel re: status of his witnesses' availability on Court's proposed trial dates for 2nd phase (0.1)</i>				
11/06/2015				0.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.10
<i>Receive and review notice from Court re: setting of firm trial date for 2nd phase</i>				
11/10/2015				0.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.40
<i>Telephone conference w/ co-counsel re: Ds' reply supporting their motion to amend the FoF/CoL and trial strategy</i>				
11/23/2015				0.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.10
<i>Receive and review court's order denying without prejudice D's motion to amend the FoF/CoL from the 1st phase</i>				
12/04/2015				0.20

Client	Project	Task	Person	Hours
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.20
<i>Receive and review exchange of correspondences between P's and Ds' counsel re: starting time for trial</i>				
12/07/2015				0.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.10
<i>Receive and review notice from Court re: new starting time for trial of 2nd phase</i>				
12/09/2015				4.50
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	4.50
<i>Meeting w/ client and co-counsel re: trial prep (prepare client for direct and cross trial examination, go over opening, and trial strategy)</i>				
12/10/2015				2.10
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	2.10
<i>Meeting w/ co-counsel re: trial prep for 2nd phase, prepare responses to expected evidentiary objections, and assist in closing</i>				
12/11/2015				6.00
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	6.00
<i>Appear for trial</i>				
01/23/2016				3.20
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	3.20
<i>Review, revise and finalize P's proposed FoF/CoL on 2nd phase of trial and mandatory injunction</i>				
01/25/2016				0.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.30
<i>Telephone conference w/ co-counsel re: response to Ds' need for another 10 days to review P's proposed FoF/CoL & injunction</i>				
02/08/2016				0.30
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.30
<i>Receive and review Ds' correspondence to the court re: need for additional time to submit Ds' version of the FoF/CoL & injunction (0.1); telephone conference w/ co-counsel re: response to opposing counsel's letter to the court (0.2)</i>				
02/16/2016				0.20
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.20
<i>Receive and review Ds' proposed FoF/CoL & injunction</i>				
02/18/2016				0.40

Client	Project	Task	Person	Hours
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.40
<i>Telephone conference w/ co-counsel re: response to Ds' proposed FoF/CoL & injunction</i>				
03/22/2016				1.90
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	1.90
<i>Legal research re: court's analysis of fee request where defendants fought at every turn, & brought same arguments before court multiple times in preparation for filing application for attorneys fees</i>				
03/23/2016				0.90
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	0.90
<i>Legal research re: recent case authority allowing discovery of opposing counsel's time and billing records in preparation for filing application for attorneys fees</i>				
03/28/2016				2.40
Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C] Fairway	Legal	cbf _	2.40
<i>Draft declaration supporting time and billing records in preparation for filing application for attorneys fees</i>				
03/31/2016	[A-13-674480-C] Fairway	Legal	cbf _	1.20
Allen Kelley v. Fairway Chevrolet, et al.	Receive and review Fairway's Motion 1) To Amend Judgment; 2) Alternative Motion to Amend Findings of Fact and Conclusions of Law; and 3) Motion to Stay Enforcement of Judgment Pending Appeal			
04/14/2016	[A-13-674480-C] Fairway	Legal	cbf _	0.10
Allen Kelley v. Fairway Chevrolet, et al.	Receive and review Fairway's Stipulation and Order Regarding Briefing Schedule and Hearing Dates of Motions			
05/04/2016	[A-13-674480-C] Fairway	Legal	cbf _	3.90
Allen Kelley v. Fairway Chevrolet, et al.	Review, revise and finalize Opposition to Fairway's motion to amend judgment / motion for stay			
05/05/2016	[A-13-674480-C] Fairway	Legal	cbf _	0.90
Allen Kelley v. Fairway Chevrolet, et al.	Receive and review Fairway's opposition to motion for award of attorneys' fees and costs (0.3); outline research subjects in preparation drafting reply brief (0.6)			
05/06/2016	[A-13-674480-C] Fairway	Legal	cbf _	4.30
Allen Kelley v. Fairway Chevrolet, et al.	Legal research re: reviewing case authority cited by Fairway in its opposition brief (2.4); legal research re: use of current billing rates vs. historical billing rates in prep for drafting reply brief (1.9)			
05/07/2016	[A-13-674480-C] Fairway	Legal	cbf _	6.10
Allen Kelley v. Fairway Chevrolet, et al.	Legal research re: effect of losing motions /issues on court's atty fee analysis (2.1); legal research re: efficacy of striking offer of judgment in preparation for drafting reply brief (1.7); draft introduction section of reply brief (2.3)			
05/09/2016	[A-13-674480-C] Fairway	Legal	cbf _	3.10
Allen Kelley v. Fairway Chevrolet, et al.	Legal research re: party's standing to move for protective order on non-party subpoena in prep for drafting reply brief (0.9); draft reply brief (2.2)			
05/11/2016	[A-13-674480-C] Fairway	Legal	cbf _	4.90
Allen Kelley v. Fairway Chevrolet, et al.	Continue drafting reply brief supporting motion for atty fees & costs			

Client	Project	Task	Person	Hours
05/18/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	4.00
	Meet w/ co-counsel re: preparation for court hearing on P's motion for atty fees & costs and D's motion to amend judgment / motion for stay (0.6); Court appearance for hearing on motions (3.4)			
05/20/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.80
	Review extensive notes taken by CBF and by co-counsel at 5/18 hearing in preparation of amending findings of fact & conclusions of law (2 nd phase) ("amended FoF/CoL")			
05/21/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	2.20
	Draft amendments to the findings of fact in the amended FoF/CoL			
05/22/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	1.50
	Draft amendments to the conclusions of law in the amended FoF/CoL			
05/23/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	1.00
	Telephone conference with co-counsel re: amended findings and conclusions (.4 - NC); Revise amended FoF/CoL (1.5)			
05/27/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.40
	Meeting w/ co-counsel re: preparation of argument for hearing on motion for atty fees			
05/27/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	1.00
	Court appearance for hearing on motion for atty fees			
06/06/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.20
	Review and revise letter to Disc Comm'r re: Dept. 1's referral of consideration of fees on P's mtn for atty fees			

Client	Project	Task	Person	Hours
06/06/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.10
	Read and review Disc Comm'r's notice to appear for discovery conference			
06/07/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.40
	Exchange multiple correspondences w/ co-counsel re: strategy for disc hrg and used of demonstrative evid at hrg			
06/25/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.30
	Legal research re: recovering attorney's travel expenses and time in preparation for disc hrg on fees			
06/30/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.50
	Meeting w/ co-counsel re: preparation for disc hrg on atty's fees			
06/30/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	2.60
	Attend discovery hearing on atty's fee issue			
07/07/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.30
	Telephone conference w/ co-counsel re: responding to demand by D's counsel for revisions in P's proposed DCRR			
07/25/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.20
	Telephone conference w/ co-counsel re: D's refusal to sign proposed DCRR and further procedures			
08/13/2016 Allen Kelley v. Fairway Chevrolet, et al.	[A-13-674480-C]	Legal	cbf_	0.20
	Read and review D's filed objections to DCRR			

Client	Project	Task	Person	Hours
08/14/2016	[A-13-674480-C]	Legal	cbf_	0.30
Allen Kelley v. Fairway Chevrolet, et al.	Telephone conference w/ co-counsel re: litigation strategy in light of D's objections to DCRR			
09/14/2016	[A-13-674480-C]	Legal	cbf_	0.30
Allen Kelley v. Fairway Chevrolet, et al.	Draft third supplemental declaration in support of P's motion for atty fees			
09/16/2016	[A-13-674480-C]	Legal	cbf_	0.40
Allen Kelley v. Fairway Chevrolet, et al.	Meeting w/ co-counsel re: preparation of argument for hearing on motion for atty fees			
09/16/2016	[A-13-674480-C]	Legal	cbf_	2.70
Allen Kelley v. Fairway Chevrolet, et al.	Court appearance for hearing on P's motion for atty fees			
09/30/2016	[A-13-674480-C]	Legal	cbf_	0.20
Allen Kelley v. Fairway Chevrolet, et al.	Telephone conference w/ co-counsel re: Ct's addendum to DC's report & recommendations and further procedures			
10/05/2016	[A-13-674480-C]	Legal	cbf_	1.00
Allen Kelley v. Fairway Chevrolet, et al.	Revise P's proposed amended findings of fact and conclusions of law			
10/07/2016	[A-13-674480-C]	Legal	cbf_	0.40
Allen Kelley v. Fairway Chevrolet, et al.	Telephone conferences w/ co-counsel re: D's objection to the Ct's amended injunctive relief which was reflected in P's proposed amended fof/col, D's explanation of the objection			

Client	Project	Task	Person	Hours
10/10/2016	[A-13-674480-C]	Legal	cbf_	0.20
Allen Kelley v. Fairway Chevrolet, et al.	Read and review D's correspondence to the Court re: objecting to P's letter to court (0.1); Telephone conference w/ co-counsel re: response to D's letter (0.1)			
10/13/2016	[A-13-674480-C]	Legal	cbf_	0.20
Allen Kelley v. Fairway Chevrolet, et al.	Read and review Court's lengthy minute order re: granting P's motion for atty's fees			
10/14/2016	[A-13-674480-C]	Legal	cbf_	0.30
Allen Kelley v. Fairway Chevrolet, et al.	Telephone conference w/ co-counsel re: Ct's minute order on P's motion for costs and attorney's fees and further procedures			
10/18/2016	[A-13-674480-C]	Legal	cbf_	0.70
Allen Kelley v. Fairway Chevrolet, et al.	Read and review D's correspondence to Ct requesting conference call to admonish P re: his correspondence to the Court (0.1); telephone conference w/ co-counsel re: D's accusations (0.2); legal research re: allowable scope of communications with a Court that are copied to opposing party (0.4)			
10/20/2016	[A-13-674480-C]	Legal	cbf_	0.20
Allen Kelley v. Fairway Chevrolet, et al.	Telephone conference w/ co-counsel re: Conference call with Court & opposing counsel and further procedures			
10/25/2016	[A-13-674480-C]	Legal	cbf_	0.40
Allen Kelley v. Fairway Chevrolet, et al.	Read and review D's correspondences re: D's need for extension of time to file brief (0.2); telephone conference w/ co-counsel re: effect of D's computer problems on briefing and hearing schedule (0.2)			
10/25/2016	[A-13-674480-C]	Legal	cbf_	1.50
Allen Kelley v. Fairway Chevrolet, et al.	Revise brief supporting Court's amendment of its earlier order re: injunctive relief			

Client	Project	Task	Person	Hours
10/30/2016	[A-13-674480-C]	Legal	cbf_	0.50
Allen Kelley v. Fairway Chevrolet, et al.	Draft 4 th declaration supporting P's motion for attorney's fees			
11/03/2016	[A-13-674480-C]	Legal	cbf_	0.5
Allen Kelley v. Fairway Chevrolet, et al.	Meeting w/ co-counsel re: preparation of argument for hearing on D's motion for stay, objection to Ct's revised injunction and P's ctrmtn on imposition of supercedeas bond			
11/03/2016	[A-13-674480-C]	Legal	cbf_	2.2
Allen Kelley v. Fairway Chevrolet, et al.	Court appearance for hearing on D's motion for stay, D's objection to P's correspondences to the court, D's objection to Ct's revised injunction and P's ctrmtn on imposition of supercedeas bond			
12/08/2016	[A-13-674480-C]	Legal	cbf_	1.5 (est.)
Allen Kelley v. Fairway Chevrolet, et al.	Court appearance for continued hearing on D's motion for stay, objection to Ct's revised injunction, P's ctrmtn on imposition of supercedeas bond and entry of final judgment			

Total

175.80 hrs
x \$450.00 / hr

\$79,110.00

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REGISTER OF ACTIONS

CASE No. A-13-674480-C

Allen Kelley, Plaintiff(s) vs. Fairway Chevrolet Company,
Defendant(s)

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
 Subtype: **Other Civil Matters**
 Date Filed: **01/04/2013**
 Location: **Department 1**
 Cross-Reference Case Number: **A674480**
 Supreme Court No.: **72444**

PARTY INFORMATION

Defendant **Fairway Chevrolet Company**

Lead Attorneys
L C. Rose
Retained
 7026997500(W)

Plaintiff **Kelley, Allen**

George O. West III
Retained
 702-318-6570(W)

EVENTS & ORDERS OF THE COURT

12/08/2016 | **All Pending Motions** (10:30 AM) (Judicial Officer Cory, Kenneth)

Minutes

12/08/2016 10:30 AM

- Following arguments of counsel. COURT ORDERED, MOTION TO STAY GRANTED. SUPER-CEDEAS BOND GRANTED IN THE AMOUNT OF \$450,000. Mr. West to prepare the Order.

[Parties Present](#)

[Return to Register of Actions](#)



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

ALLEN KELLEY,	.	CASE NO. A-13-674480-C
	.	
Plaintiff,	.	DEPT. NO. I
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
FAIRWAY CHEVROLET COMPANY,	.	
	.	
Defendant.	.	
.	

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE

**DEFENDANT'S MOTION TO STAY ENFORCEMENT OF JUDGMENT
PENDING APPEAL**

**PLAINTIFF'S COUNTERMOTION TO REQUIRE POSTING OF
SUPERSEDEAS BOND PENDING APPEAL**

THURSDAY, DECEMBER 8, 2016

APPEARANCES:

FOR THE PLAINTIFF: GEORGE O. WEST, III, ESQ.
 CRAIG B. FRIEDBERG, ESQ.

FOR THE DEFENDANT: L.C. ROSE, ESQ.

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 8, 2016, 10:36 A.M.

2 THE CLERK: Page 8, Case Number A674480, Allen
3 Kelley versus Fairway Chevrolet.

4 THE COURT: Good morning.

5 MR. ROSE: Good morning.

6 MR. WEST: Good morning, Your Honor.

7 THE COURT: We are on for several matters. I'm not
8 sure how many of which are actually listed on the calendar. I
9 don't have my calendar with me.

10 Does it show two matters on?

11 THE CLERK: Yes, Your Honor.

12 THE COURT: And those are defendant's motion to stay
13 enforcement and the plaintiff's countermotion to require
14 posting of supersedeas bond, correct?

15 MR. WEST: That's what's formally on calendar, yes,
16 Your Honor. There are a couple cleanup items after you rule
17 on those, but those are the two things.

18 THE COURT: Thank you.

19 And there are the other matters which I've been
20 laboring over, trying to come up with the finalized amended
21 findings of fact and conclusions of law on the second remedy
22 phase of the trial and the amended mandatory injunction. I've
23 been working off of the copy supplied by I believe defense
24 counsel because it's -- it's redlined and -- it's a redlined
25 version of the order submitted -- as submitted by the

1 plaintiff and it was my intention to have that done by today
2 and be able to perhaps hand it out. Unfortunately I have not
3 been able to conclude that. My last chance to do that went
4 south when I took a criminal trial this week.

5 So is there any reason why we can't go forward with
6 these two listed motions today and I will have the whole ball
7 of wax done before the end of the year?

8 MR. ROSE: I don't believe so, Your Honor.

9 MR. WEST: I don't believe so, Your Honor.

10 THE COURT: All right. Let's deal with defendant's
11 motion to stay enforcement.

12 MR. ROSE: Your Honor, this is a motion, as you
13 know, that we filed in March. Quite a bit has happened and
14 changed since then. I don't know how much I need to argue on
15 a lot of the elements because I think plaintiff has really
16 conceded they don't have a problem with a stay being put into
17 place. They -- they admit --

18 MR. WEST: Subject to a supersedeas, not just that,
19 counsel.

20 THE COURT: Well, that's --

21 MR. ROSE: I think you'll get a chance to argue,
22 counsel.

23 THE COURT: -- that's pretty --

24 MR. ROSE: That's in your brief, you'll get a chance
25 to make your argument.

1 THE COURT: Yeah.

2 MR. ROSE: In fact, he admits that as to the
3 injunction that was entered, the appeal would be defeated if
4 -- if a motion were filed and its dissolved. So I -- I don't
5 know that I necessarily need to go through the various
6 elements unless the Court would like me to.

7 I will note on that bond issue, I think the
8 plaintiff -- when they filed the countermotion for a bond, I
9 think there's a -- a little bit of confusion. There's --
10 under the statute, you know, an injunction for -- as the Court
11 entered it earlier this year, there would be no requirement
12 for a bond to be posted for that to be stayed because if the
13 plaintiff prevailed on appeal, he's not recovering any money
14 and a bond is to protect the plaintiff in the event of a
15 successful appeal so that they can collect.

16 So I think there was a little confusion about
17 requesting a bond in response to our motion to stay the
18 injunction appeal. I don't know that it's necessarily that
19 harmful. I think what they meant was we want a bond for the
20 ultimate judgment in this case which would include attorney's
21 fees and costs --

22 THE COURT: Attorney's fees. Yeah.

23 MR. ROSE: -- and so we're getting to the same place
24 even though I think their reasoning was -- was erroneous.

25 Your Honor, I -- I do want to mention one thing that

1 I think is pretty important and to preserve the record and to
2 maybe get the Court's guidance since the injunction hasn't
3 been entered and is still being worked on by the Court.

4 Your Honor, as you can imagine, with the amendment
5 of the injunction changing it from a temporary injunction to
6 adopt a written policy to a permanent injunction --

7 MR. WEST: Your Honor, I just --

8 MR. ROSE: -- that would remain in perpetuity --

9 MR. WEST: I -- I'm sorry to interject here, Your
10 Honor, but he is going way outside the scope of what's before
11 this Court right now. He's going back --

12 THE COURT: Well --

13 MR. WEST: -- re-arguing everything again. They had
14 their opportunity --

15 THE COURT: Well, I -- I don't know if he's going
16 back to re-argue it or not. He's -- so far he's talked about
17 what -- a topic. Let's see where he's going with the topic.

18 MR. WEST: Fair enough, Your Honor. Thank you.

19 MR. ROSE: One of the elements, Your Honor, for a
20 stay is showing a likelihood of prevailing on the merits.
21 That's what this motion is about so my argument fits within
22 that purview.

23 Since the judgment was amended or the Court
24 indicated it was going to amend the judgment, it's really
25 raised a lot of new issues. We already briefed and argued the

1 -- the argument that we didn't believe the judgment could be
2 amended. I'm not going to rehash that.

3 But the one thing that I don't think we've put
4 before the Court so far and that is very important here is we
5 believe that amending an injunction to say that Fairway cannot
6 publish an advertisement, cannot engage in advertising without
7 doing certain X, Y, Z steps beforehand is a prior restraint of
8 speech. So it really raises a constitutional due process
9 issue because advertising is a form of speech. And so again,
10 we've got this new issue here that hasn't been briefed. We're
11 raising it because it is important and because it just came up
12 as a result of the amendment of the injunction.

13 Now, whether we do as much as --

14 THE COURT: When -- when did the Court announce the
15 amendment of the injunction to include the -- the permanent
16 injunction?

17 MR. ROSE: The Court did that I believe in
18 September.

19 THE COURT: September. Okay.

20 MR. ROSE: Correct. Correct.

21 THE COURT: All right, so go ahead.

22 MR. ROSE: And so I -- and at that time, Your Honor,
23 the Court mentioned in September that because the Court was
24 amending the injunction -- the Court actually mentioned that
25 it was going to deny our prior motion to amend the judgment as

1 moot because it was a different amended injunction that was
2 going to be entered and that we would have the chance after
3 entry of the amended injunction to file a motion to amend
4 either the judgment or the findings of fact. Even though the
5 Court indicated it might not be inclined to do anything
6 different, I think it recognized because the motion we filed
7 to amend the judgment and to amend the findings as much --
8 pertained to a much different judgment and injunction than
9 what the Court is entering now.

10 So whether we handle it through that kind of motion
11 or whether we do some other briefing, as much as the parties
12 would like to get this on appeal, that's an issue that has
13 just surfaced because of this change so I wanted to mention
14 that because in addition to the other reasons that we
15 mentioned in our brief about the reasons we believe that
16 there's a likelihood of success on the merits on appeal,
17 that's one, Your Honor, that is not contained in the briefing
18 of this motion because the judgment was just amended.

19 So Your Honor, I don't know that there's really
20 anything else to say on the --

21 THE COURT: Let -- let me make --

22 MR. ROSE: -- on the stay --

23 THE COURT: -- one -- one comment because it -- it
24 has been raised a number of times both in argument and I see
25 that it is also raised by way or your interlineation proposed

1 findings of fact, conclusions of law. And that is the
2 question of whether the Court simply denied your motion to
3 amend findings of fact, conclusions of law and then sort of
4 sailed off on a sua sponte mission of its own.

5 My belief and my conclusion is that is not what
6 happened. It is true that I did not grant the relief that you
7 had requested in your motion, but my sua sponte finding that a
8 permanent injunction was needed in this case came as a result
9 of and in response to -- direct response to reading your
10 motion to amend findings of fact and conclusions of law.

11 So while it certainly was not anything that your
12 client was asking for in its motion, I can assure you that
13 this was the -- the process of that sua sponte statement was
14 that after reading the motion to amend findings of fact,
15 conclusions of law together with the motion to amend the
16 judgment itself, I became convinced that -- that there was
17 going to need to be -- it was going to take an injunction with
18 a more permanent effect than what I had originally thought
19 would be a -- an adequate response to -- and an adequate
20 injunction in this matter.

21 So, you know, wherever that shows up, be it in a
22 transcript of this or other hearings, I do want the record to
23 be clear that -- that that sua sponte amendment, if you will,
24 on the part of the Court did come about in direct response to
25 the motion that was filed because to me that -- that -- that

1 caused me to reflect that what was going to be needed to
2 simply make sure that the intention of the legislature in the
3 statute was complied with was a -- a more clear cut and more
4 long lasting requirement; namely, the requirement that someone
5 at Fairway look at the final copy.

6 I -- I see that you are saying that you think it's
7 -- the -- that by so saying it's a prior restraint and -- and
8 that sort of thing, you certainly can raise that, whether you
9 raise it by further motion work here or you simply raise it in
10 the appeal. I do not consider it to be so, but that's what
11 makes horse racing. Okay, go ahead.

12 MR. ROSE: Understood, Your Honor, and we are
13 raising it because it -- it is an issue that's -- in our minds
14 that's new.

15 And I understand what the Court's mentioning. I --
16 I think the -- the record -- our -- our understanding is that
17 in May when we first had the hearings, the motion to amend was
18 denied. In September, the Court mentioned -- it was denied on
19 the merits in May and then in September when the Court sua
20 sponte mentioned the new amended injunctive relief, I believe
21 the Court mentioned that our prior motion would be denied --
22 motion to amend the judgment would be denied as moot because
23 it was seeking to amend a judgment that had not been entered
24 and that was going to be changed --

25 THE COURT: Yeah.

1 MR. ROSE: -- but I -- but I --

2 THE COURT: Yeah.

3 MR. ROSE: -- understand the Court's statements that
4 it just made.

5 THE COURT: Yeah.

6 MR. ROSE: I'm just pointing out as part of our
7 motion to stay this additional issue that we needed to raise
8 and that we think probably needs to be addressed through
9 briefing or motion so that it can be preserved on appeal. But
10 as to the stay, Your Honor, I really don't think there's a
11 dispute as to that.

12 I will mention as to their countermotion, we might
13 as well just address it all at once, Your Honor, unless you
14 want me to separate that -- their countermotion for the bond
15 and leave that for later?

16 THE COURT: Let's -- let's do that. I -- I can see
17 that Mr. West is just excited to present his motion.

18 MR. ROSE: Yes, he is.

19 THE COURT: So let's let him do that.

20 MR. WEST: I'm more excited to actually talk about
21 in opposition their motion about these new issues, Your Honor.
22 I've been chomping at the bit and the reason I'm chomping at
23 the bit is, is because as Your -- Your Honor astutely pointed
24 out, you gave them every opportunity and any supplement that
25 they wanted to file with respect to the modification the

1 injunction. They never raised a constitutional issue -- this
2 alleged constitutional issue I should say in their supplement.
3 They knew about it and they didn't do it.

4 So what do they do today? They come in here and
5 they happen to mention this constitutional issue in this
6 hearing for what reason? Exactly what you said. Among 55
7 other issues, let's throw another one in at appeal so we don't
8 waive the argument. Very very lofty, very very crafty, I will
9 hand them -- give them an A for that.

10 But I've been doing this for 26 years, Your Honor,
11 it's been my stock and trade and to my maybe detriment I've
12 decided to go ahead and take the Arizona Bar in February. And
13 I can't wave in. So I have to go back and take a Bar Review
14 course in BARBRI and learn about all those fundamental things,
15 those fun things we did back in law school and in Bar -- and
16 in -- and passing the Bar.

17 And one of those subjects that I just had to
18 re-master again was constitutional law. Believe me, I'm up to
19 speed on free speech and commercial speech and the extent to
20 which the government can regulate it and I know exactly what a
21 prior restraint is and Your Honor is absolutely correct. What
22 Mr. Rose claims this Court is doing is, quote, a prior
23 restraint is per se by definition, by case law absolutely
24 wrong. The definition of a prior restraint --

25 THE COURT: Well, are -- are we going to actually

1 argue the -- the -- the assertion of prior restraint at this
2 point?

3 MR. WEST: I just wanted the Court to feel very
4 comfortable in its ruling because they're making -- they're
5 making -- they're making the record. I feel I should be given
6 two minutes to make my record with respect to --

7 THE COURT: Okay.

8 MR. WEST: -- opposing their argument.

9 THE COURT: All right.

10 MR. WEST: Prior restraint is when the government
11 precludes or prevents the dissemination or communication of
12 otherwise protected speech. Your Honor's order doesn't do
13 that in the slightest.

14 Yes, commercial speech does have protections under
15 the First Amendment. However, as Your Honor knows, they are
16 nowhere close to the protections that afforded under the other
17 areas of protected speech such as political speech.
18 Commercial speech can be regulated by the government as long
19 as the government has a reasonably legitimate purpose and that
20 purpose is rational related to that purpose with respect --
21 they can regulate conduct -- content, Your Honor. Beyond that
22 -- for the police power of the state.

23 Now, with respect to prior restraint, you didn't
24 tell them in your order you can't advertise, you can't
25 advertise certain things, you can't advertise financed cars.

1 All you did was you issued an injunction under the equitable
2 powers this Court has based on the evidence before it that
3 said you must take these steps first before you communicate
4 and disseminate a certain type of advertisement to the
5 community. That's not a prior restraint.

6 Moving on with respect to the issue of the bond.
7 Nowhere in their motion do they even cite to or even talk
8 about NRCP 62, which is really what the issue is here.
9 They're moving for a stay, but they don't mention anywhere in
10 their motion anything about having to post a supersedeas bond,
11 which was very conspicuous in nature.

12 I don't know how they could have missed it because
13 Nevada Rule Appellate Procedure 8(a)(1) and (b)(2) -- and
14 (2)(B) (sic) excuse me, which was deciding statute that they
15 based their motion, says specifically a party must ordinarily
16 move first in the district court for a -- for the following
17 relief: Approval of a supersedeas bond. And (2)(B) (sic),
18 the court may condition relief on a party filing a bond or
19 other appropriate security in the district court.

20 Now they cited NRAP 8, but they left those two
21 provisions out, conveniently I might add, because they just
22 wanted to move for stay but they didn't want to talk about
23 whether they had to pay for it. But Rule 62 is pretty clear
24 with respect to that and they didn't even want to talk about
25 it because it doesn't bode well for them.

1 As -- as the Court's well aware, stay's pending an
2 appeal with respect to injunctive relief are carved out of
3 this kind of special exception with respect to monetary
4 judgments in and of themselves. And sub (c) says injunction
5 pending appeal, again which wasn't set forth in their papers,
6 when an appeal is taken from an interlocutory or final
7 judgment granting, dissolving or denying -- granting, denying
8 injunction, the court in its discretion may suspend, modify,
9 restore or grant an injunction during the pendency of the
10 appeal and here's the key language, upon such terms as a bond
11 or otherwise as it considers proper for the security of the
12 rights of the adverse party.

13 Now, I think it's pretty obvious why they didn't
14 want to mention this in their motion and why we had to bring
15 it by countermotion. Moreover, they never filed a reply brief
16 to their motion to stay to address this issue, nor did they
17 file an opposition to our countermotion.

18 So there's no facts before the Courts -- Court, no
19 information about why a supersedeas bond in the amount of
20 about a half million dollars should not be issued for their
21 right to take an appeal -- I mean for -- for their right to
22 stay enforcement of the judgment pending their appeal.

23 How do we get to that number? Well, based on Your
24 Honor's order on the minute order with respect to what the
25 Court found to be reasonable, we recalculated our fees with

1 respect to the staggered rate accurately. I made a
2 miscalculation of about 35 hours I believe. I took those off
3 when I went back and -- and did that.

4 The calculation between my staggered time, Mr. --
5 MR. FRIEDBERG: Friedberg.

6 MR. WEST: -- Friedberg, thank you, Mr. Friedberg's
7 time, only known him 10 years, and the costs in this case come
8 to roughly about \$400,000.

9 There is a case, Your Honor, I don't know if you're
10 familiar with it, that's the *Waddell* case. Are you familiar
11 with that case?

12 THE COURT: To some extent, but it never --

13 MR. WEST: Okay.

14 THE COURT: -- hurts to refresh recollection.

15 MR. WEST: I do have a -- do have a copy of it if I
16 may approach, Your Honor.

17 THE COURT: Uh-huh.

18 MR. WEST: And I've highlighted the relevant
19 portions, Your Honor. *Waddell* stands for the proposition that
20 attorney's fee awards are part of the judgment. That is
21 undisputed. And what *Waddell* held was post-judgment interest
22 on an attorney fee award and costs is part of the judgment.

23 Now we all know based upon where we're going with
24 this case, when they file an appeal, we're looking at a
25 minimum of two years before we get an adjudication on this.

1 Even if the -- even if the Supreme Court decides to take it
2 and they decide to summarily dispose of it through an order
3 which I seriously doubt given the issues in this case, it's
4 still going to be two years. If they decide it en banc, it's
5 going to go further. We're looking about a five -- five and
6 half percent interest rate over two years that comes to about
7 \$45,000 over two years.

8 So if Your Honor enters the judgment for the
9 attorney's fees as part of the judgment, which it has to be,
10 that's the calculation on the post-judgment we would be -- we
11 would be entitled to if we successfully defended the appeal.

12 The second issue, Your Honor, is, is are we entitled
13 as a matter of law to our attorney's fees if defendants take
14 the appeal and we successfully defend it. The answer to that
15 is yes.

16 May I approach? I have another Nevada case, Your
17 Honor.

18 THE COURT: Uh-huh.

19 MR. WEST: This is the case of *Russo* (phonetic) and
20 they've been outlined for the Court and opposing counsel.
21 What *Russo* held -- held was when the parties to a contract
22 action have a mutual attorney's fees prevailing party
23 provision, if the party who prevails has to defend an appeal
24 against the aggrieved party and successfully defends the
25 appeal, the issue in *Russo* was is that party who successfully

1 defended the appeal and who won below, the prevailing party,
2 entitled to their attorney's fees that were expended in
3 preparing and defending the appeal successfully.

4 And the court in *Russo* resoundingly came back on
5 page 2 when the answer is yes. They said although some courts
6 have construed general provisions for attorney's fees in
7 contracts as not including an award of attorney's fees on
8 appeal, the purpose of such contractual provision is to -- to
9 indemnify the prevailing party for the full amount of the
10 obligation is defeated and the party's contract rights are
11 diminished if the party is forced to defend its rights on
12 appeal at its own expense. We therefore conclude that
13 respondents are entitled award of attorney's fees pursuant to
14 the contractual agreement of the parties.

15 Now, we don't have a contract here, but what we do
16 have in this case is even more compelling than just a regular
17 old common law contract provision involving a private dispute
18 between two parties. We have a mandatory one way attorney's
19 fees provision that requires the payment of reasonable
20 attorney's fees which Your Honor says -- has already ruled
21 we're entitled to because we prevailed on all three claims for
22 relief and we have been deemed the prevailing party for all
23 purposes.

24 Therefore, I can't see by ruling my analogy how if
25 clearly if there was a contract provision that allowed the

1 prevailing party to be allowed attorney's fees for
2 successfully defending an appeal, how that would not work the
3 same way with a mandatory one way attorney fee shifting
4 provision in a consumer protection statute, especially one
5 that has wide ranging implications with respect to the entire
6 community. It's exactly the same thing, it's just in a
7 different form, but I would submit that a one way attorney's
8 provision statutorily one way is more compelling than just a
9 prevailing provision in a contract.

10 So Mr. -- Mr. Friedberg and I have discussed it.
11 Given the length of the trial, the -- the motion sickness that
12 we've all gone through with the reconsideration after
13 reconsideration, everything else, the record and everything
14 else, we figured our time's going to be roughly about a
15 hundred -- at least a hundred hours on -- on appeal to oppose
16 it. And that comes to roughly about little over -- little
17 under \$50,000. I don't think that's unreasonable.

18 Costs will be not that much, except for -- well, we
19 don't even do copying anymore, everything's digital, but the
20 bottom line is, is we -- we've posted our fees for defending
21 appeal in this case given everything in the record at about
22 \$50,000 so we're asking for a bond to -- to be issued in the
23 amount of \$500,000 to cover the attorney's fees, to cover the
24 post-judgment interest and to cover the appeals on -- the fees
25 on appeal if we prevail.

1 If we don't prevail and the Supreme Court disagrees
2 and says no, the statute doesn't -- doesn't protect people who
3 haven't been damaged, well then that's -- that's -- that's the
4 way it goes, but everyone knows at the end of the day what
5 happened back in 2008, 2009, 2010. Everybody including the
6 auto industry were teetering on bankruptcy.

7 Now we don't know what's going to happen in the
8 future, but for the defendant has not submitted any evidence
9 to this Court and they've had every opportunity to say we
10 can't afford it, it's too -- it's too oppressive, whatever.
11 There's no evidence before the Court and -- and we're talking
12 about a large dealership here who can easily afford a half
13 million dollar bond for a two-year period to protect the
14 plaintiff to ensure that the judgment is paid off with respect
15 to fees and costs which have been awarded.

16 And since there's no evidence here with respect to
17 anything else that would otherwise justify not imposing the
18 supersedeas bond as the plaintiff has requested, I think the
19 Court should deem a supersedeas bond necessary to stay
20 enforcement of the fees.

21 There is no mistake here as Mr. Rose has put it.
22 They are two separate issues. If they get the stay, the issue
23 is pending the -- pending the appeal on injunction, the issue
24 is the Court now needs to make a determination under 62(c)
25 what is the appropriate bond. It's certainly not going to be

1 nothing and it shouldn't be based on what's going on.

2 So I think at the end of the day when the Court
3 looks at the law with respect to what plaintiffs are entitled
4 to for successfully defending the appeal -- and plaintiff
5 again does not oppose a stay. We -- that's been our position
6 since day one. We haven't come in here seeking any contempt
7 or anything else. We don't oppose a stay as long as, which
8 Mr. Rose left out, as long as they post an adequate
9 supersedeas bond per our request. That I think is a fair
10 exchange.

11 I'm not going to argue the fact they're not entitled
12 to a stay. Quite frankly, you know, that's one of the issues
13 with respect to whether they're going to be successful on
14 appeal. It's very difficult for a trial judge in your
15 position to really know given the issues in this case what's
16 going to happen on appeal. I mean it's hard to say. If you
17 ask Mr. Rose, they think they've got a great case. If you ask
18 me, I think we got a great case.

19 But irrespective that's only one factor -- but as
20 long as, you know, we don't want to come in here -- I don't
21 think the defendant and I'll -- I'll say this, I don't think
22 the defendant is going to -- well I said that after the second
23 one. But I don't think the defendant's going to come in here
24 and violate your injunction. I mean the lawsuit basically
25 stopped all that conduct and actually was essentially a de

1 factio injunction for the pendency of the action.

2 But if they do, there's an injunction in place and
3 it's not going to go down good for them if they have to come
4 in here for a fourth time. So I don't believe that there is a
5 huge lingering threat out there to the community that they're
6 going to continue their conduct and that's why I don't think
7 that I'm making a big deal about the stay, because I think
8 they're going to comply with the injunction and the Court's
9 understanding and ruling of -- of what happened and why they
10 can't do what they did and they can't do it in the future.
11 That's pretty clear.

12 So if they want their stay, they can have it but
13 they should pay for it. Submit it.

14 THE COURT: Okay.

15 MR. ROSE: Your Honor, I'll just briefly address our
16 stay motion again. In regard to the argument that I made
17 about -- about the prior restraint and counsel's argument was
18 that they've had every opportunity to brief this and
19 appreciate the discussion on his Bar Review, but the reality
20 is this is an amended injunction that hasn't even been entered
21 yet and as the Court mentioned is still being fashioned.

22 So for plaintiff to say you haven't raised this when
23 you had every opportunity to do so about an amended injunction
24 that hasn't been entered yet, just doesn't fly. We haven't
25 had our chance on that. We're raising it now and we'll file

1 whatever briefs or motions --

2 THE COURT: Well, I -- I wasn't going to say this
3 but since you've raised it, that's why I asked you when --
4 when was that hearing held when I announced that's when I was
5 going to do. Certainly there's nothing to -- that would have
6 precluded you from raising what amounts to an entire new issue
7 of constitutional dimension could have been file. I don't
8 fault you for not because as you say, it hasn't been -- the --
9 the order itself has not been entered yet, but it's not as if
10 you're at this point at this juncture suddenly caught
11 unawares. It's been out there for three months.

12 MR. ROSE: Yeah.

13 THE COURT: Anyway, go ahead.

14 MR. ROSE: Well, and again, Your Honor, when we're
15 dealing with the motions that we're here to talk about today,
16 certainly this issue wasn't out there and it was a recently
17 raised issue, but I understand what the Court is saying. I
18 think that's enough on the stay. Let me address -- I think
19 counsel went into his bond motion.

20 Again, they're confusing the issue of an injunction
21 and a money judgment. If you look at their countermotion --
22 in response to our motion for a stay pending appeal of an
23 injunction, their countermotion for determination of a
24 supersedeas bond completely misses the point.

25 They even cite a case, it's called *McCulloch*, this

1 is their case, where they say you have to have a bond pending
2 appeal. The *McCulloch* case deals with a money judgment, not
3 an injunction.

4 And in fact they don't even explain if they -- if
5 they weren't awarded any fees or costs whatsoever, what would
6 the bond amount be for an injunction? They don't answer that,
7 they can't answer that. The only reason a bond would come
8 into play is not because of the appeal of the injunction but
9 it's the money judgment that we're talking about. Again as I
10 mentioned before, I think we get to the same place.

11 Here's the problem with what they're proposing. If
12 you add the attorney's fees and costs that they've come up
13 with based on their most recent filings, it comes to
14 396,588.65. A bond in that amount, again for stay of
15 enforcement of that judgment, would be appropriate and maybe
16 an additional amount for -- for interest. We would suggest
17 25,000.

18 What counsel has asked you to do is to require us to
19 post a bond now for fees that haven't even been requested much
20 less awarded. You can get a bond for attorney's fees and
21 costs that have been awarded in district court. You can't
22 require a bond -- and there's no authority for it. The two
23 cases they gave you don't pertain to anything that they're
24 asking the Court to do.

25 They can't say Your Honor, you need to increase the

1 bond 50,000 or 100,000 or whatever it is because we might win
2 on appeal and then we might come back down and get an award of
3 attorney's fees down here. So we want a bond right now for
4 amounts that we don't know what they are, haven't been
5 incurred, haven't been awarded yet, but require that as a
6 condition. That is unsupported, Your Honor. So the bond
7 amount for the judgment for attorney's fees --

8 THE COURT: Is there any authority for the
9 proposition that -- that it's not appropriate to include in a
10 supersedeas bond a projection amount -- a projected amount for
11 attorney's fees incurred on appeal?

12 MR. ROSE: I'm sorry, Your Honor, I missed your
13 question.

14 THE COURT: Is there any authority for the -- the
15 position you're taking?

16 MR. ROSE: I haven't research that yet because it's
17 not an issue they raised until right now in their argument.
18 So there's no authority for the fact that they can get a bond
19 for attorney's fees on appeal. They -- they give a case that
20 says in a contract, and they've noted that this is not a
21 contract case, that if we win on appeal, we can get an award
22 of attorney's fees. Fine. You can't get -- you can't require
23 as a condition of an appeal a bond for fees or costs that have
24 not yet been incurred that haven't been awarded. So --

25 THE COURT: Part of the reason I asked if there's

1 any authority for the -- for the position that you take is
2 I've -- I have been on the losing end of that argument in
3 practice where on appeal my client was required to post a bond
4 that included some -- some, you know, projected at least
5 partial amount for fees on appeal. I've been successful in
6 getting another district judge to do the same thing and as a
7 district judge I -- perhaps if you're correct I shouldn't
8 admit to this but I have -- I have on at least one occasion
9 acceded to that request and included some amount.

10 So I need to know if that's -- if that position is
11 in error and your position is correct. It certainly is
12 important to me to know the answer to that. I'm not asking
13 you all to brief it. I think we'll take a look at it and --
14 so I can be sure of my footing here.

15 Let's -- let's ask another question though. You --
16 if I'm understanding you're -- you're indicating that the
17 amount for -- which I think you calculated at some
18 390-some-odd thousand would be appropriate but you object to
19 any additional amount for other fees?

20 MR. ROSE: Well, I'm saying an additional amount
21 could be added for the interest on the amounts already
22 awarded, maybe another 25,000 or --

23 THE COURT: Yeah.

24 MR. ROSE: -- whatever the Court determines. I'm
25 saying that they don't get to require a bond for additional --

1 for additional fees, costs --

2 THE COURT: Fees.

3 MR. ROSE: -- not yet awarded --

4 THE COURT: Understood.

5 MR. ROSE: -- or incurred even.

6 THE COURT: Understood. So -- so let's move to a
7 different question. One learns through trial and error. I
8 was the judge who was reversed in one case because I did not
9 allow the appellee to post a supersedeas bond for some
10 properties they owned as opposed to requiring an actual bond,
11 so I will forever be very careful to inquire does your client
12 wish to do something along those lines as opposed to the
13 posting of a supersedeas bond?

14 MR. ROSE: I --

15 THE COURT: Posting of sureties which could be in
16 the -- in the form of -- of real estate --

17 MR. ROSE: Or -- or property or cash or whatever?

18 THE COURT: Yeah, I don't know of anything other
19 than property and cash would -- would do it. I don't think --
20 I don't think it extends to personal property but certainly
21 real estate and cash.

22 MR. ROSE: Cars, vehicles.

23 THE COURT: I --

24 MR. ROSE: Your --

25 THE COURT: I don't think it goes that far.

1 MR. ROSE: Understood, Your Honor.

2 THE COURT: Especially with a car dealer.

3 MR. ROSE: I -- I haven't addressed that
4 specifically, Your Honor, whether they would want to take the
5 option of posting some other security in that amount. My
6 feeling is that they would post a bond --

7 THE COURT: A bond.

8 MR. ROSE: -- for that.

9 THE COURT: Yeah.

10 MR. ROSE: To answer your question, Your Honor --
11 first of all, we did file an opposition and a reply. That's
12 included in our brief that we filed May 13, 2016 to address
13 counsel's argument.

14 But I want to read from a portion of a case that the
15 plaintiff cites in their case. It's actually the *McCulloch*
16 case that I just mentioned to you. This is page 30 of their
17 opposition brief. And *McCulloch* says that the purpose of the
18 bond is to protect a prevailing party and it says it should
19 usually be set in an amount that will permit --

20 THE COURT: Let -- let me just catch up with you.
21 You're on page 30 of their brief?

22 MR. ROSE: Page 30 of their brief which they filed
23 May 4th, 2016.

24 THE COURT: Okay. All right, go ahead.

25 MR. ROSE: It says that it is for an amount that

1 will permit full satisfaction of the judgment.

2 THE COURT: And that -- so let's see, where are you
3 there?

4 MR. ROSE: I'm on page 30 if you look at line 13.

5 THE COURT: All right.

6 MR. ROSE: So they --

7 THE COURT: And that's a direct quote from
8 *McCulloch*.

9 MR. ROSE: From *McCulloch*. So that's the --

10 THE COURT: Okay.

11 MR. ROSE: -- purpose of a bond. It's to permit
12 satisfaction of a judgment. It's not to couch terms or
13 provide some other security for things that haven't been
14 included in a judgment already. And in fact you can see there
15 it says the -- a court in its discretion may provide for a
16 bond in a lesser amount, or may permit other security which
17 the Court just mentioned.

18 THE COURT: Down at the bottom of that page it cites
19 to *Nelson versus Heer*. That was my case. That's the one that
20 includes a very -- a very thoughtful discussion --

21 MR. ROSE: Okay.

22 THE COURT: -- of the purposes of the bond and why
23 it is that something other than a supersedeas bond per se may
24 be posted.

25 MR. ROSE: Okay. And even that case down in the

1 footnote says it's to protect the judgment creditor's ability
2 to collect the judgment. So really the amount is determined
3 based on the judgment that's going to be entered here.

4 THE COURT: Well and it's your position that the
5 judgment amount does not include the award of attorney's fees.
6 Is that --

7 MR. ROSE: It includes -- the judgement -- there
8 will be a monetary -- there's two judgments in this case
9 really --

10 THE COURT: Yeah.

11 MR. ROSE: -- that are going to be entered, Your
12 Honor. First you entered a judgment already for the
13 injunction. And then there's going to be another judgment to
14 include the attorney's fees --

15 THE COURT: Attorney's fees.

16 MR. ROSE: -- and costs that have been awarded.

17 THE COURT: Right.

18 MR. ROSE: That it does include.

19 THE COURT: Okay.

20 MR. ROSE: It does not include any attorney's fees
21 or costs that have not yet --

22 THE COURT: For the future.

23 MR. ROSE: -- not yet been incurred, not yet been
24 awarded, are not included in a judgment or that might somehow
25 possibly be included in a judgment two or three years from

1 now. It doesn't include that.

2 So Your Honor, I would -- I would submit that
3 here's the authority and -- and really that -- they haven't
4 presented any authority to support what they're asking for.
5 So the bond really should be the amount of the attorney's fees
6 and costs that are awarded plus, you know, some amount if we
7 want to include the interest. I would suggest 25,000, but
8 Your Honor, I think that's -- that's our argument in that
9 regard.

10 THE COURT: Okay. Anything as to that?

11 MR. WEST: Just -- yes, Your Honor, just briefly.
12 Mr. Rose says that we did not ask for attorney's fees on
13 appeal in the motion. I direct Your -- Your Honor to page 30
14 at the bottom, starting at line 21: Fairway should have no
15 problem whatsoever either financially or logistically in
16 posting the appropriate supersedeas bond in the amount of the
17 final judgment plus an additional \$50,000 in anticipated fees
18 in responding to the appeal and for post-appeal motions for
19 additional fees if the plaintiff prevails on appeal.

20 And the supersedeas bond is there to protect to
21 satisfy the judgment. Mr. Rose concedes that attorney's fees
22 as per the *Waddell* case and as per code says attorney's fees
23 are part of the judgment so it's there -- whether it's for
24 attorney's fees or whether it's for monetary, there's no law
25 that says you can't -- if you get attorney's fees suddenly if

1 the -- if the -- if the -- if the plaintiff is not suing for
2 monetary relief but has incurred fees that that's not part of
3 the judgment. It is part of the judgment.

4 And with respect to appeal, Your Honor, I think
5 there's complete discretion with respect to that. It's --
6 it's done. There's no law in Nevada that says you can't do
7 it. I've looked and if -- I'm assuming if it -- if it -- if
8 it -- if it was there, Jolley Urga would have found it, too.
9 And there isn't anything there with respect to that.

10 So as far as the -- the post-judgment interest, Your
11 Honor, that is a mandatory statutory rate. There's -- there's
12 no discretion there with respect to what plaintiff's entitled
13 to on the calculation of that money. Where he comes up with
14 25,000 I don't know. I set forth the 50,000 -- well actually
15 it was 44,000 and change on the prejudgment interest because
16 it's five and a half percent coming next week.

17 They're going to file a motion for reconsideration,
18 that's 30 days. Then they're going to file a notice of
19 appeal, another 30 days. Then they're going to file a request
20 to extend the opening brief for another 60 days. And then on
21 and on and we all know and the Court I think can take judicial
22 notice both in the -- what the Court gets and also in what's
23 been published in the Nevada Lawyer Magazine, the average time
24 of an appeal even with the court of appeals now is 21 months,
25 a minimum. And that's for the simple cases.

1 THE COURT: I -- I understand your argument. I am
2 sympathetic to your argument. I do believe though that unless
3 I was confident that I have the authority to do that, which
4 might be persuasive authority, wouldn't have to be Nevada
5 Supreme Court authority, but unless I could see that I have
6 authority to do that, I believe I would -- I would probably
7 make it the amount of the attorney's fees expended to date
8 plus the interest -- anticipated interest. Well, plus the
9 interest and -- and that would probably be it. I don't think
10 that I would care to -- even though I've -- as I've already
11 said, I've seen instances where it's been done, I -- I just --
12 I'm -- I'm not inclined to do that unless I could see that I
13 had the authority to.

14 MR. WEST: Submit it, Your Honor.

15 THE COURT: So that being the case, the amount that
16 we're talking about to this point, what -- what is the dollar
17 amount that you calculate, Mr. West?

18 MR. WEST: Well I think Mr. Rose had indicated
19 \$396,000 and change --

20 MR. FRIEDBERG: Three ninety-seven.

21 MR. WEST: -- 397 and change. That's on fees --

22 MR. FRIEDBERG: Well two years at 11 percent.

23 MR. WEST: -- fees and costs and two years at 11
24 percent. That comes out to about \$450,000 --

25 MR. FRIEDBERG: Five and a half times --

1 MR. WEST: I mean five and --

2 MR. FRIEDBERG: -- two at 11.

3 MR. WEST: Yeah, if it comes out to four -- four and
4 a half -- \$450,000.

5 MR. FRIEDBERG: Excuse me, Your Honor.

6 THE COURT: Four --

7 MR. WEST: Four fifty, 450,000.

8 THE COURT: Four fifty.

9 MR. WEST: If the fees are roughly about 400,
10 prejudgment interest is going to run about 44, 45, five and a
11 half percent per annually, we're looking at two years --

12 THE COURT: Does that comport with your calculation,
13 Mr. Rose?

14 MR. ROSE: Close enough, Your Honor.

15 THE COURT: Okay. Okay. Let's -- let's -- let me
16 go back and comment on the -- on the stay. There really isn't
17 much to say. This is -- you both have already said it. I
18 agree that this is a case in which there is not a compulsion
19 to immediately apply that. While I profess some confidence
20 that the Court will be upheld on appeal, I don't see any
21 reason to require that that happen before the Supreme Court
22 weighs in on -- on that topic. So the stay will be granted
23 and it will be conditioned on a supersedeas bond in the amount
24 of \$450,000.

25 What else?

1 MR. WEST: The only thing left we need to do to get
2 this maybe off your plate forever, Your Honor, maybe is the
3 final judgment. What I might suggest is, is I could prepare
4 the proposed orders for Mr. Rose's review on these motions
5 today because your finding in these orders are the basis for
6 the number in which you're going to put in the final judgment
7 so I think we need to get these orders in first. You then
8 issue the final judgment in the way of findings of fact,
9 conclusions of law and then at the end put in reference to the
10 amounts of attorney's fees awarded and -- and costs. You
11 still need to also sign off on the proposed order on the grant
12 which we submitted as well.

13 So I think logistically --

14 THE COURT: Do we have that on --

15 MR. WEST: -- we need to get an order to you on
16 this, we need to -- you need to sign off on an order granting
17 plaintiff's motion as to the amount and then you finish the
18 findings of fact and conclusions of law and then we put it all
19 in one final judgment. I think that's probably the easiest
20 way to do it.

21 THE COURT: Well so it would -- it would be one
22 order granting the defendant's motion for stay and -- and at
23 the same time granting the -- the plaintiff's motion for
24 supersedeas bond would do it, would it not?

25 MR. FRIEDBERG: For today.

1 THE COURT: Do you need separate orders?

2 MR. ROSE: No, I -- I agree that should be one
3 order. The -- the stay --

4 MR. WEST: The -- the --

5 MR. ROSE: -- and the bond should be one order.

6 MR. WEST: Yeah, the stay and the bond should be one
7 order. There should be --

8 THE COURT: Okay.

9 MR. WEST: -- a separate order for the grant on
10 plaintiff's motion for fees, but it is --

11 THE COURT: Okay.

12 MR. WEST: -- the information and the grant of the
13 amounts in those two orders that have to be incorporated into
14 the final judgment. We should only have one final judgment.

15 THE COURT: Right.

16 MR. WEST: So we don't want to create -- and -- and
17 for two reasons; one, we don't want to create any issues of
18 premature appeals. We need to do one final judgment that
19 that's going to be the one that's going to trigger the appeal
20 period so there's no ambiguity.

21 THE COURT: Well then let's -- let's do this: I
22 will produce and I think -- I think it will be by the end of
23 this week -- that trial is out of the way now so I'm hopeful I
24 can get it done at least by the end of this week -- a -- what
25 will be the final version of the amended findings of fact,

1 conclusions of law on the second phase of trial, as well as
2 the amended mandatory injunction and I will get copies of that
3 to both of you and then you will produce then from that the
4 actual judgment and then I will also enter the order on the
5 fees -- fees and costs and then from that you can prepare the
6 final --

7 MR. WEST: Correct.

8 THE COURT: -- final final judgment.

9 MR. FRIEDBERG: And the orders from today.

10 MR. WEST: Right, that's what he's talking about.

11 THE COURT: And the orders from today.

12 MR. WEST: The order from today --

13 THE COURT: Correct.

14 MR. WEST: -- and the order --

15 MR. FRIEDBERG: Orders for the fees and costs and --

16 MR. WEST: Correct.

17 THE COURT: Correct.

18 MR. WEST: We need a final amount.

19 MR. ROSE: So to be clear, is there going to be a
20 separate judgment just for the attorney's fees or that's being
21 included in the injunction final judgment?

22 THE COURT: I think it goes there's a judgment, then
23 there's the award of attorney's fees and then the final final
24 judgment that incorporates the attorney's fees --

25 MR. WEST: Correct.

1 THE COURT: -- is it not?

2 MR. WEST: Correct. We --

3 THE COURT: Yeah.

4 MR. WEST: Right. The way -- the way -- the way I
5 envisioned it was you do findings of fact, conclusions of --
6 amended findings of fact, conclusions of law, amended
7 injunction -- amended permanent injunction, and then from that
8 we will then prepare -- then you'll have the order signing off
9 on the order for the motion for fees. We will prepare a
10 motion on the motions today with respect to supersedeas and
11 stay.

12 After all of that's been signed off by the Court,
13 then I'll prepare a proposed judgment, run it by Mr. Rose for
14 submission to the Court that will be entitled final judgment
15 on -- on phase two findings of fact, preliminary injunction
16 and judgment. And then that'll include the attorney's fees
17 and costs so we all have it one document and that way there's
18 no ambiguity that there's nothing left for the Court to
19 adjudicate and then we'll know what triggers that, because I
20 don't think -- I think everybody wants clarity as to what
21 triggering event is with respect to the appeal period.

22 THE COURT: Uh-huh.

23 MR. WEST: Unless Your Honor wants a different way.

24 THE COURT: No. That works for me.

25 MR. ROSE: All right.

1 THE COURT: I think that's --

2 MR. ROSE: I -- I -- I will note that I think their
3 prior -- just -- just for clarity for the -- well and to
4 preserve for the record, I think their prior final judgment
5 and injunction was an appealable order so if we're amending
6 that and then filing something -- if we file a notice of
7 appeal just to preserve -- I -- I just have some concerns if
8 whether that would start the time as opposed to us waiting for
9 the final judgment, but I'm just mentioning it for the record.
10 We can proceed as has been stated. I just --

11 THE COURT: Yeah.

12 MR. ROSE: As counsel mentioned, we're -- we're
13 being very careful.

14 THE COURT: Yeah. My -- my concern would be if you
15 -- if you file the notice of appeal, is that going to divest
16 the Court of jurisdiction?

17 MR. WEST: Not for --

18 MR. ROSE: No --

19 MR. WEST: -- not for --

20 MR. ROSE: I know.

21 MR. WEST: Well here's the thing --

22 MR. ROSE: I think it will depend on --

23 MR. WEST: -- not for entry of the judgment and it
24 doesn't divest the Court from attorney's fees.

25 THE COURT: Yeah

1 MR. WEST: The only issue is, is -- it would only be
2 an issue if they filed a premature notice of appeal, unless we
3 objected to it and filed a motion to dismiss it as premature
4 which I don't see why we would do that.

5 THE COURT: It seems to me the notice of -- of
6 appeal at this point would even -- not only does it need to be
7 done, why would -- why would you do that if the Court's
8 already indicated that that judgment -- maybe I just need to
9 enter an order right now that set aside that judgment --

10 MR. FRIEDBERG: Right, vacating the judgment.

11 THE COURT: -- so that you aren't -- you don't feel
12 under the -- under the gun.

13 MR. WEST: Yeah, that the March 31st findings of
14 fact and conclusions of law were vacated per their motion.
15 That way they don't have a problem -- but it was already
16 extended because it's a Rule 59(e) motion so -- 52 and 59(e)
17 are extension motions and tolling motions for purposes of
18 appeal so when they filed that, until there's a final judgment
19 and you set it aside and it was granted, it doesn't run, but I
20 have no problem with you doing --

21 MR. ROSE: No, I -- I -- I think I --

22 THE COURT: Why -- why don't we do this, why don't
23 -- why don't you take a look at it. If you decide that --
24 that -- that to be sure that you don't, you know, eclipse in
25 -- in any way your right to appeal that I need to enter an

1 order that vacates the previous order --

2 MR. ROSE: Okay.

3 THE COURT: -- let -- let's all --

4 MR. ROSE: Then we can -- we can notify --

5 THE COURT: We'll get together and --

6 MR. ROSE: -- the Court and Mr. --

7 THE COURT: -- and -- and do that.

8 MR. ROSE: Okay.

9 THE COURT: That's not -- that shouldn't -- I mean
10 we would not want that to happen.

11 MR. ROSE: Right. Understood. Thank you, Your
12 Honor.

13 MR. WEST: And part of my findings of fact and
14 conclusions of law that I submitted to the Court included that
15 in the procedural part of it up front --

16 THE COURT: That it's vacated?

17 MR. WEST: -- that it's vacated --

18 THE COURT: All right.

19 MR. WEST: -- and that -- that was there for both of
20 -- both of our respects.

21 THE COURT: All right. Well --

22 MR. WEST: But it's -- it's in there.

23 THE COURT: -- that works then.

24 MR. ROSE: All right. Thank you, Your Honor.

25 THE COURT: All right.

1 MR. WEST: Thank you, Your Honor.

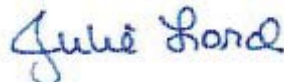
2 THE COURT: Thank you.

3 MR. FRIEDBERG: Thank you, Your Honor.

4 (Proceeding concluded at 11:29 a.m.)

5 * * * * *

6 ATTEST: I hereby certify that I have truly and correctly
7 transcribed the audio/visual proceedings in the above-entitled
8 case to the best of my ability.

9 

10
11 _____
12 JULIE LORD, INDEPENDENT TRANSCRIBER
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REGISTER OF ACTIONS

CASE No. A-13-674480-C

**Allen Kelley, Plaintiff(s) vs. Fairway Chevrolet Company,
 Defendant(s)**

§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
 Subtype: **Other Civil Matters**
 Date Filed: **01/04/2013**
 Location: **Department 1**
 Cross-Reference Case Number: **A674480**
 Supreme Court No.: **72444**

PARTY INFORMATION

Defendant Fairway Chevrolet Company

Lead Attorneys
L C. Rose
Retained
 7026997500(W)

Plaintiff Kelley, Allen

George O. West III
Retained
 702-318-6570(W)

EVENTS & ORDERS OF THE COURT

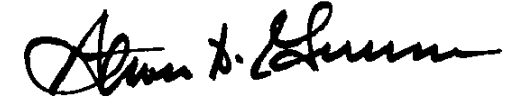
12/23/2016 **Minute Order** (2:55 PM) (Judicial Officer Cory, Kenneth)

Minutes

12/23/2016 2:55 PM

- The Court has finalized the Amended Findings of Fact and Conclusion of Law on the Second Remedy Phase of Trial, and; Amended Mandatory Permanent Injunction. By way of e-mail the Order will be forward in a word document to Mr. West and Mr. Rose. Plaintiff SHALL serve and file the Order and the Notice of Filing of the Order. CLERK'S NOTE: The above minute order has been distributed to: George West, Esq (gowesq@cox.net) and Christopher Rose, Esq. (lcr@juwww.com). /mlt

[Return to Register of Actions](#)



CLERK OF THE COURT

ORDER

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Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

DISTRICT COURT

CLARK COUNTY, NEVADA

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiff,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**ORDER GRANTING PLAINTIFF'S
MOTION FOR STATUTORY AWARD
OF ATTORNEY'S FEES AND COSTS**

1 On May 18, 2016, Plaintiff's Motion for Award of Statutory Attorney's Fees and
2 Costs came on regularly for hearing. The Court continued the matter to May 27, 2016.
3 On May 27, 2016, after a more thorough review of the moving and opposing papers,
4 because a large portion of the disputed time and fees was related to time expended
5 conducting pre-trial discovery, the Court referred the matter to Discovery Commissioner
6 Bulla for a Report and Recommendations as to the reasonableness and necessity of the
discovery conducted in the matter.

7 On August 4, 2016, Commissioner Bulla issued her Report and
8 Recommendations. Defendant FAIRWAY filed an Objection to the Report and
9 Recommendations on August 12, 2016. On September 16, 2016, oral argument on
10 Plaintiff's Motion for Award of Statutory Fees and Costs was heard. The Court took the
11 matter under submission. On September 27, 2016, this Court approved the Discovery
12 Commissioner's Report and Recommendations. After reviewing the moving and
13 opposing papers, and after consideration of the Discovery Commissioner's Report and
14 Recommendations, as modified by the Court, the Court hereby grants Plaintiff's motion
and makes the following findings and order.

15 The first issue here is whether this Court should grant a motion for attorney s fees
16 to a prevailing party awarded injunctive relief when the Defendant was found to have
17 violated NRS 41.600(2)(d) and/or (e), which includes a mandatory fee-shifting
18 provision to the prevailing party via sub section 3. The Court finds the awarding of fees
and costs is appropriate for several reasons.

19 **I. Mandatory Fee Shifting**

20 NRS 41.600(3), which pertains to actions by victims of fraud, includes a mandatory
21 fee-shifting provision that states:

- 22 3. If the claimant is the prevailing party, the court shall award the claimant:
23 (a) Any damages that the claimant has sustained;
24 (b) Any equitable relief that the court deems appropriate; and
25 (c) The claimant's costs in the action and reasonable attorneys fees

26 This Court has already determined that Plaintiff is the prevailing party in this
27 action, and has thus implicated NRS 41.600(3)'s one-way fee-shifting. However,
28 Defendant contends that NRCP 68 prohibits an award of attorney's fees, arguing that
Plaintiff did not obtain a more favorable outcome than Defendant's Rule 68 settlement
offer.

1 The Court disagrees. See *Texas v. United States*, aff'd, 798 F.3d 1108 (D.C. Cir.
2 2015), cert. denied sub nom *Texas v. Davis*, 136 S. Ct. 981 (2016). One of the issues
3 before the court in *Davis* was whether to grant attorney s fees to a plaintiff seeking
4 declaratory relief under the Voting Rights Act. Although the special circumstances
5 exception to the fee-shifting provision in Texas was a judicially created concept, and the
6 proffered exception in this case would be a legislatively created exception, namely NRCP

7 68, the Texas court's reasoning applies here.
8 In *Davis*, *id*, the court had the discretion not to award attorneys fees pursuant to
9 a judicially created exception. Here, according to Defendant's argument, this Court has
10 the discretion not to award attorneys fees pursuant to NRCP 68, if the Plaintiff did not
11 receive a more favorable outcome, similar to the court in *Davis*, which reasoned that the
12 exception is narrowly construed so as to not interfere with the congressional purpose in
13 passing fee-shifting statutes.

14 This Court construes NRCP 68 so as not to interfere with the legislative purpose
15 in passing the fee-shifting provision of NRS 41.600. Further, the language in the Voting
16 Rights Act states that attorney's fees ordinarily should be granted to a prevailing party.
17 NRS 41.600(3), on the other hand, uses the word shall. If this Court were to deny
18 attorney's fees to Plaintiff when this Court has already determined that it is the
19 prevailing party, it would undermine the legislature s express desire to adopt mandatory
20 fee-shifting as outlined in NRS 41.600(3). See *Hall v. Cole*, 93 S. Ct. 1943, 1950 (1973)
21 (holding "moreover, the award of attorneys fees under section 102 is clearly consonant
22 with Congress express desire to adopt legislation that will afford necessary protection of
23 the rights and interests of employees and the public generally 29 U.S.C. s 401(b)").
24 As the Court of Appeals also recognized: Not to award counsel fees in cases such as this
25 would be tantamount to repealing the Act itself by frustrating its basic purpose).

26 Additionally, this Court notes that fee shifting under NRS 41.600(3) is a
27 mandatory one way attorney's fees provision to the prevailing claimant (Plaintiff). If
28 this Court were to take them away it could be seen as a denial of individual due process.

25 **II. NRCP 68**

26 Defendant argues that this Court may take into consideration both (a) any
27 injunctive relief and (b) any monetary offers of settlement in the Court's analysis in
28 determining what is a more favorable outcome. The Court thinks that under the facts at
bar this comparison would be inappropriate. Under NRCP 68, when an offeree rejects

1 an offer and fails to obtain a more favorable judgment, the offeree is precluded from
2 receiving attorney's fees or costs. Here, the Defendant made Plaintiff a settlement offer
3 that included monetary relief, via Rule 68. However, Defendant's Rule 68 offer did not
4 include a formal stipulated injunction. Defendant argues that the Court should compare
5 Plaintiff's award of injunctive relief to Defendant's monetary offer of settlement in
6 determining whether Plaintiff's award was more favorable than Defendant's offer. This
Court is not wholly persuaded that this is an appropriate comparison to make.

7 In *Kent v. Kent*, 108 Nev. 398, 404, 835 P.2d 8, 11 (1992), the Nevada Supreme
8 Court upheld the District Court's refusal to award attorney's fees and costs when the
9 Defendant offered an equitable settlement. In doing so, the court reasoned that
10 Defendant's offer to divide the subject property was not an appropriate comparison to
11 Plaintiff's award. Similarly, in *Leeming v. Leeming*, 87 Nev. 530, 535, 490 P.2d 342,
12 345 (1971), the Court held that where far more may be at stake than the mere dollar
13 amount of [an award], an offer of judgment seldom can be comprehensive, and an
offer's favorable character will often depend on the party's personal goals.

14 Similar to the Court in *Kent*, the facts before this Court suggest that a simple
15 comparison of injunctive relief to a dollar amount is an inappropriate standard for
16 determining which result is more favorable, because Plaintiff's personal goals never
17 included money damages. In the alternative, if this Court were to compare Defendant's
18 settlement offer to Plaintiff's award of injunctive relief, it would find Plaintiff's award
more favorable because of the societal benefits effectuated by the injunctive relief.

19 Defendant argues that because Plaintiff is only one person, the injunctive relief
20 ordered by this Court cannot be more favorable than Defendant's monetary settlement
21 offer. However, Defendant fails to take consider the injunction's benefits to society. The
22 Supreme Court of Nevada has made it clear that statutes with a protective purpose
23 should be liberally construed in order to effectuate the benefits intended to be obtained.
Edgington v. Edgington, 119 Nev. 577, 583 80 P.3d 1282, 1287 (2003).

24 Thus, when injunctive relief is awarded pertaining to a statute with a protective
25 purpose, that injunction should be liberally construed in order to effectuate the benefits
26 intended to be obtained from the injunction. Here, Plaintiff is not the only party who
27 will benefit from the injunction. The Court must liberally construe the injunction to
28 effectuate the benefits to all of society, not just the Plaintiff. Therefore, if this Court
were to determine what is a more favorable₄ outcome under NRCP 68, this Court would

1 consider the award's benefits to society, in addition to the benefits received by Plaintiff,
2 to be more favorable than Defendant's offer of settlement.

3 **III. Reasonableness of Attorneys Fees and Costs**

4 The next issue is two-fold: 1) whether Plaintiff's counsels' time billed was
5 reasonable, as NRS 41.600(3) requires, and 2) whether Plaintiff's counsels' historic or
6 current billing rate should be applied. The Court finds that the Plaintiff's counsels'
7 historic billing rates shall apply, meaning the billable rate at the time a given service was
8 rendered throughout the four year pendency of this action is to be used to calculate
9 Plaintiff's attorney's fees.

10 Based on this calculation, and based upon a review of Plaintiff counsel George O.
11 West III's Third Amended Verified Time Sheet and Craig B. Friedberg's Fifth
12 Supplemental Declaration in further support of Plaintiff's Motion for Fees and Costs,
13 and their attached supplemental declarations, Plaintiff's counsel, George O. West III is
14 hereby awarded \$ 305,911.25, in reasonable attorney's fees, and co-counsel Craig
15 Friedberg is awarded \$ 79,110.00, in reasonable fees, for a total award of
16 attorney's fees in the amount of \$ 385,021.25.

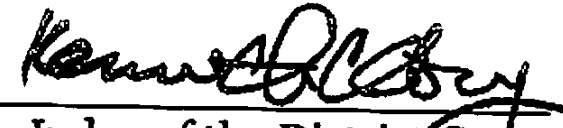
17 The Court finds that the historical billing rates of Mr. West throughout the four
18 year pendency of this case, which began with \$ 350.00 per hour and ended with \$
19 450.00 per hour, and Mr. Friedberg's historical billing rate of \$ 450.00 per hour, are the
20 prevailing rate in the community given the expertise, experience and reputation of
21 Plaintiff's counsel, coupled with the type of consumer protection work both attorneys
22 practice within this locality.

23 With respect to costs incurred, the Court has reviewed Plaintiff's verified cost bill
24 and finds all the costs reasonable, and hereby awards costs in the amount of \$ 11,567.40.

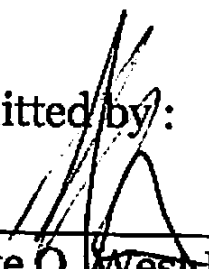
25 Finally, the Court has taken the *Bunzell* factors into account in rendering this
26 award. Accordingly, this Court finds that all efforts and time billed by Plaintiff's counsel
27 were appropriate and reasonably calculated to prevail. As to each of Defendant's
28 specific objections concerning the reasonableness of Plaintiff's counsel's time billed, the
Court agrees with the arguments advanced by Plaintiff in his moving papers and at oral
argument, in addition to the reasons cited by the Discovery Commissioner's Report and
Recommendations, to overcome Defendant's objections and contentions.

Kelley v Fairway
A-13-674480-C
Order Granting Plaintiff's Motion
For Statutory Attorney's Fees

Dated this 12 day of Jan, 2016

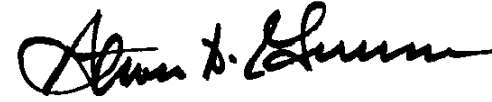
By 
Judge of the District Court

Submitted by:



George O. West III
Law Offices of George O. West
Consumer Attorneys Against Auto Fraud
Attorney for Plaintiff
ALLEN KELLEY

 ORIGINAL



CLERK OF THE COURT

ORDER

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Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

DISTRICT COURT

CLARK COUNTY, NEVADA

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiff,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**ORDER GRANTING DEFENDANT'S
MOTION TO STAY INJUNCTION
PENDING APPEAL AND ORDER
GRANTING PLAINTIFF'S COUNTER
MOTION TO REQUIRE POSTING
OF SUPERSEDEAS BOND**

1 On December 8, 2016, Defendant's Motion to Stay Injunction Pending Appeal,
2 and Plaintiff's Counter Motion to Require Posting of Supersedeas Bond came on for
3 hearing. After reading the moving, opposing and reply papers, and after hearing all the
4 arguments of counsel, the Court rules as follows :

5 **IT IS HEREBY ORDERED**, that Defendant's Motion to Stay Injunction
6 Pending Appeal is *granted*. The Court hereby suspends the enforcement of the
injunction issued in this case pending full adjudication of the appeal.

7 With respect to Plaintiff's Counter Motion to Require Posting of Supersedeas
8 Bond, it is *granted in part and denied in part*. The Court sets the bond to be posted in
9 the total amount of \$450,000.00 (four hundred and fifty thousand). This amount is
10 calculated based upon the amount of attorney's fees and costs awarded in this action, in
11 conjunction with \$50,000.00 in anticipated post judgment interest calculated at 5 1/2%
12 per annum. The post judgment interest was calculated based upon a period of two
13 years after the entry of final judgment, which is the estimated time the appeal will take
14 until final adjudication. With respect to Plaintiff's request for the bond to also include
15 \$50,000.00 in future anticipated attorney's fees on the appeal if the judgment is
16 successfully upheld, that request is *denied*. Pursuant to Rule 62(d), upon Defendant's
17 posting of the required supersedeas bond with the clerk of the Court and compliance
18 with NRS 20.010 and 20.050, enforcement of the judgment by Plaintiff shall be stayed
after entry of the final judgment in this action, pending full adjudication of the
anticipated appeal by Defendant. ¹

19 ¹ **NRS 20.010 Undertaking with sureties; affidavits.**

20 1. In all cases where an undertaking with sureties is required by the provisions of titles 2 to 6,
21 inclusive, of NRS, the judge, justice, or clerk, or other officer taking the same, shall, unless it is otherwise
22 provided in NRS, require the sureties to accompany the same with an affidavit that they are each worth
the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of
property exempt from execution.

23 2. When the amount specified in an undertaking exceeds \$3,000, and there are more than two
sureties thereon, they may state in their affidavits that they are severally worth amounts less than that
expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

24 **NRS 20.050 Bond or undertaking to be approved by clerk of court.**


25 1. In all cases where a bond or other undertaking, except a bail bond, is required by the provisions of
26 titles 2 to 5, inclusive, of NRS or in any civil action arising under any other title of NRS or by the Nevada
Rules of Civil Procedure or Nevada Rules of Appellate Procedure, the bond or undertaking shall be
presented to the clerk of the court in which the action or proceeding is pending, for approval of the clerk
of the court, before being filed or deposited.

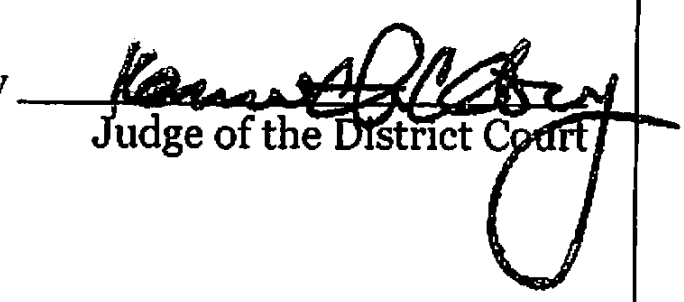
27 2. The clerk of the court may refuse approval of a surety for any bond or other undertaking if a
28 power of attorney-in-fact which covers the agent whose signature appears on the bond or other
undertaking is not on file with the clerk of the court.

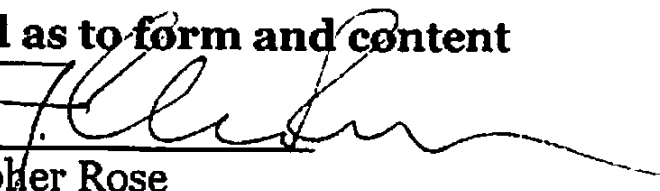
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Kelley v Fairway
A-13-674480-C
Order on Defendant's Motion for Stay and
Plaintiff's Counter Motion to Require Posting of Supersedeas Bond

Dated this 19 day of Jan, 2016

Submitted by: 
George O. West III
Law Offices of George O. West
Attorney for Plaintiff
ALLEN KELLEY

By 
Judge of the District Court

Approved as to form and content

L. Christopher Rose
Jolley-Urga Woodbury & Little
Attorney for Defendant
FAIRWAY CHEVROLET COMPANY

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Allen D. Kelley

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ORDR/FFCO/INJ

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**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

*ALLEN KELLEY, individually, and on
behalf of all others similarly situated*

Plaintiff,

vs.

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants.

CASE NO: A-13-674480-C
DEPT: I

**AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW ON
SECOND REMEDY PHASE OF
TRIAL, AND;**

**AMENDED MANDATORY
PERMANENT INJUNCTION**

A. PROCEDURAL BACKGROUND

The Court ordered this action to be bifurcated into two phases. The first phase, (the liability phase), would adjudicate whether Defendant FAIRWAY CHEVROLET COMPANY ("FAIRWAY") did in fact engage in statutory consumer fraud pursuant to

1 NRS 41.600(2)(d) and/or (e) with respect to the television advertisement at issue. If
2 Plaintiff prevailed on the liability phase of the trial, then the Court would conduct a
3 second, remedy phase of the trial to determine the proper equitable remedy, if any,
4 pursuant to NRS 41.600(3)(b), in addition to *Edwards v. Emperor's Garden Rest.*, 122
5 Nev. 317, 325, 130 P.3d 1280, 1285 (2006) ("*Edwards*").
6

7 On August 13, 2015, after a four day bench trial, the Court concluded the first
8 phase of the trial and on October 2, 2015, issued Findings of Fact and Conclusions of
9 Law on the liability (first) phase of the trial. Based on a preponderance of evidence, the
10 Court found that the television advertisement in question violated NRS 482.351(1), NRS
11 598.0923(3), *Nevada Administrative Code* ("NAC") 482.180(3) and 482.120(1), all or
12 any of which are in turn a violation of NRS 41.600(2)(d) and/or (e). The Court found,
13 based on a preponderance of evidence, that the television advertisement in question was
14 misleading, and therefore constituted statutory consumer fraud pursuant to
15 41.600(2)(d) and (e).
16

17 Because Plaintiff prevailed in establishing a violation of 41.600(2)(d) and (e), the
18 Court, on December 11, 2015, conducted the second remedy phase of the trial to fashion
19 a suitable remedy, pursuant to 41.600(3)(b), and based on the *Edwards* factors.

20 As an evidentiary matter, prior to the beginning of the second phase of the trial,
21 the Court issued an order regarding the admissibility of any evidence relating to the
22 previous two actions filed against FAIRWAY by the Plaintiff. Both previous cases were
23 ultimately resolved by way of a settlement agreement and releases of Fairway, which
24 settlement agreements included certain provisions referred to as Assurances of
25 Discontinuance ("AODs"). The Court ruled that other than the provisions of the two
26 previous AODs that FAIRWAY entered into, the Court would not allow the introduction
27 or admission by the Plaintiff of any other evidence used in the previous two cases filed
28

1 against FAIRWAY, including the introduction of any previous advertisements at issue in
2 those cases.

3 The Court admitted redacted portions of the previous AODs, as the Court found
4 that they were relevant to the issue of Defendant FAIRWAY's previous actual knowledge
5 and/or FAIRWAY's "heightened awareness" of the provisions of NAC 482.180(3), prior
6 to approving the television advertisement at issue in the present action. A Defendant's
7 actual knowledge or having a "heightened awareness" of a particular advertising rule
8 would be relevant in the remedy phase of the trial under the factors enunciated under
9 *Edwards*. Defendant FAIRWAY did not dispute at trial that it had a "heightened
10 awareness" of the advertising prohibitions and provisions of NAC 482.180(3). They were
11 additionally relevant to fashioning an appropriate remedy in the present case.
12

13 At the conclusion of the second phase of the trial, on December 11, 2015, the
14 Court announced its ruling from the bench, and issued a mandatory injunction against
15 Defendant FAIRWAY involving the promulgation of certain written policies and
16 procedures relating to FAIRWAY's advertising practices in the future.
17

18 On March 14, 2016, Notice of Entry of Order and Mandatory Injunction, with a
19 copy of the Court's Findings and Conclusions on the Remedy phase, was served on
20 Defendant FAIRWAY by Plaintiff. The mandatory injunction issued against FAIRWAY
21 stated as follows:
22

23 FAIRWAY is hereby directed to promulgate and implement forthwith
24 written policies, practices and/or procedures to ensure violations of the
25 advertising prohibitions set forth in NAC 482.180(3) do not occur in the
26 future. FAIRWAY has the freedom and discretion to promulgate and
27 implement any written policies and/or procedures it deems helpful or
28 necessary in conducting its normal and ordinary business affairs to
effectuate this directive.

1 However, while the Court gives full discretion to FAIRWAY to promulgate,
2 and implement such written policies and/or procedures, the Court will
3 require FAIRWAY to adopt and implement a specific written policy,
4 practice and/or procedure mandating that FAIRWAY designate a person
5 or persons, knowledgeable with respect to the advertising prohibitions of
6 NAC 482.180(3), to always review the final iteration of any advertisement
7 that falls within the ambit or purview of NAC 482.180(3), before any such
8 advertisement is authorized for dissemination by FAIRWAY. These
9 written policies apply to all forms of advertising media, including, but not
10 limited to radio, television, internet and print advertising.

11 Upon FAIRWAY submitting to the Court for its review the written policies
12 and procedures it has promulgated, as attested by its President, Greg
13 Hienrich, that FAIRWAY has implemented such written policies, practices
14 and procedures; and upon the Court being satisfied with said written
15 policies, practices and procedures; and there being no objection by
16 Plaintiff; the Court will entertain a motion to dissolve the injunction.

17 On March 31, 2016, pursuant to Rules 59(a) and (e) and 52(b), Defendant
18 FAIRWAY timely filed a Motion to Amend Judgment and mandatory injunction issued
19 against Defendant FAIRWAY, and alternatively, to Amend Findings of Fact and
20 Conclusions of Law.

21 On May 18, 2016, Defendant FAIRWAY's Motion to Amend Judgment and to
22 Amend Findings of Fact and Conclusions of Law came on regularly for hearing. After
23 reading the moving, opposing and reply papers, and after hearing all the arguments of
24 counsel, the Court ruled as follows:

- 25 1. With respect to Defendant's Motion to Amend Judgment pursuant
26 to Rule 59(a), FAIRWAY's motion is *denied*.
- 27 2. With respect to Defendant's Motion to Amend Findings of Fact and
28 Conclusions of Law with respect to the second (remedy) phase of
the trial, pursuant to Rule 52(b), FAIRWAY's motion is *granted in part* as to findings about the Court's reliance on the prior lawsuits and AODs.

1 Upon further reevaluation and examination of the findings of fact and
2 conclusions of law on the second phase of trial that were filed on March 14, 2016, the
3 Court has determined that the injunction previously entered should be amended and
4 that further explanation and/or clarification of those findings and conclusions are
5 warranted, including findings and conclusions supporting the amended injunction as
6 set forth hereinafter.
7

8 On September 16, 2016, Plaintiff's Motion for Award of Statutory Attorney's Fees
9 came on regularly for hearing, in addition to the proposed content of amended findings
10 of fact and conclusions of law for the second phase of trial, based on the Court's
11 previous grant of Defendant's Motion to Amend Findings of Fact and Conclusions of
12 Law on May 18, 2016. During the September 16, 2016 hearing, the Court informed the
13 parties that after giving the Defendant's Motion to Amend Findings of Fact and
14 Conclusions of Law more thought and reevaluation, the Court had concluded, *sua*
15 *sponte*, that it is necessary to issue a permanent injunction in this matter, in addition to
16 the mandatory injunction previously issued by the Court.
17

18 In addition to the mandatory injunction previously issued against Defendant
19 FAIRWAY, as set forth at page 3, *supra*, the Court ruled on September 16, 2016 that
20 Defendant FAIRWAY is also permanently enjoined from issuing or utilizing
21 advertisements in any form of media, unless first reviewed in its final form by the
22 owner or president of FAIRWAY, or by an authorized designated employee of
23 FAIRWAY, so as to ensure FAIRWAY complies with its own written policies and
24 procedures, and NAC 482.180(3), prior to any advertisement being disseminated to the
25 community.
26
27
28

1 As a threshold matter, the Court has plenary authority and discretion to amend
2 or modify its findings of fact and conclusions of law, including the nature and scope of
3 the injunctive relief, and may amend the judgment accordingly. Because the Court
4 *granted* Defendant FAIRWAY's Motion to Amend the phase two Findings of Fact and
5 Conclusions of Law, the previously filed second phase findings and conclusions and the
6 injunction were not final, and were then subject to change, modification and/or
7 amendment by the Court pursuant to Rule 52(b). While the amendment was not what
8 FAIRWAY was hoping for, it was in fact in direct consequence of considering the
9 defendants motion.
10

11 At the conclusion of the hearing on September 16, 2016, the Court ordered both
12 parties to simultaneously exchange, (in the blind), a newly proposed amended
13 injunction with supporting Findings of Fact and Conclusions of Law for the remedy
14 phase of the trial. The newly proposed findings and conclusions were to include the
15 pertinent additional clarifications and/or changes in the Court's rulings. The proposed
16 findings and conclusions were also to reflect the modifications to the injunctive relief as
17 set forth on the record on September 16, 2016.
18

19 While Rule 52(b) grants the Court the authority to amend the findings and
20 conclusions and the judgment itself, the Court is mindful of the party's rights to due
21 process. Based upon the *sua sponte* nature of the amendments and modifications
22 announced on September 6, 2016 in open court, the Court has allowed the parties to
23 submit any objections or supplemental briefing on the issue of those amendments to
24 the injunctive relief, in addition to any of the proposed findings and conclusions
25 prepared by the respective parties. The Court ordered supplemental briefing to be
26 simultaneously exchanged and filed in the blind. In briefing and oral argument,
27 FAIRWAY objected to amendment of the injunction as set forth herein, preserved its
28

1 prior objections and relief requested in its motion to amend the judgment and findings
2 of fact and conclusions of law, and reserved its arguments and objections to the
3 amendment of the findings of fact and conclusions of law set forth herein.

4 The Court, having thoroughly reviewed all the subsequent and supplemental
5 briefing, and after reviewing the competing versions of the party's proposed amended
6 findings of fact and conclusions of law on the second phase of trial, and after hearing
7 additional arguments of counsel on November 3, 2016 in open court, the Court hereby
8 amends its findings of fact, conclusions of law and injunction filed March 14, 2016 as to
9 the second (remedy) phase of trial as follows:
10

11 **I. AMENDED FINDINGS OF FACT**

12 1. FAIRWAY was a party Defendant in two previous lawsuits brought by
13 Plaintiff Allen Kelley filed in the Eighth Judicial District Court, which were filed in 2008
14 and 2009, respectively.
15

16 2. Those two previous actions, which are public record, involved lawsuits
17 relating to the same provisions of law at issue in the instant action, NAC 482.180(3). It
18 is these two previous lawsuits involving the same provisions of law which the Court
19 primarily relied upon with respect to FAIRWAY's "heightened awareness" of the
20 advertising prohibitions of NAC 482.180(3), prior to FAIRWAY authorizing the
21 dissemination of the television advertisement at issue in the instant case. It should be
22 noted that the Court is not treating the conduct at issue in the present action as a
23 violation of the two prior written AODs, but under *Edwards*, the Court is not required to
24 be blind to the fact that there were two previous filed actions involving the Defendant
25 and the same Plaintiff relating to alleged violations of the same NAC 482.180(3).
26
27
28

1 3. Given the fact that these two previous lawsuits gave FAIRWAY a
2 “heightened awareness” of the provision of law primarily at issue in this case, and the
3 fact that this advertising rule was, in the present case, clearly and patently violated, it is
4 painfully evident that stronger medicine is required.

5 4. While it is the Court’s position that it can take into account the two
6 previous AODs FAIRWAY entered into with respect to the present issues, under
7 *Edwards*, the Court did not in fact need to take the AODs into account in order to enter
8 an injunction against FAIRWAY. The Court primarily relies on the fact that two
9 previous lawsuits were filed involving alleged violations of NAC 482.180(3), as an
10 indication of FAIRWAY’s actual notice and “heightened awareness” of the provisions of
11 NAC 482.180(3), not because those lawsuits resulted in written AODs, but for the
12 inescapable fact that notwithstanding the two previous lawsuits the present violation
13 occurred.
14

15 5. Fairway objected to the admission of evidence or any reference to the two
16 prior lawsuits, the two prior advertisements at issue in those lawsuits, and the two AODs
17 resulting from the settlement of the two prior lawsuits. Upon objection by Fairway, the
18 Court did not consider the advertisements from the two previous lawsuits in fashioning
19 its injunctive remedy, and did not admit into evidence the advertisements from the two
20 prior lawsuits. Rather, the Court specifically excluded any such evidence at trial. A
21 reading of the complaints themselves in the two previous lawsuits, which are public
22 documents, is sufficient to show that FAIRWAY was already operating under a
23 “heightened awareness” that this law existed, and required compliance. It would be a
24 mistake to conclude that in entering the present injunction, the Court placed significant
25 reliance on either the existence or contents of the previous AODs.
26
27
28

1 6. As a result of the first lawsuit filed in 2008, FAIRWAY had acquired a
2 "heightened awareness" of the advertising prohibitions of NAC 482.180(3).

3 7. After the resolution of the first lawsuit in 2008, FAIRWAY did not put into
4 place any written policies, practices or procedures to ensure it did not violate any of the
5 advertising prohibitions of NAC 482.180(3) in the future.

6 8. After resolution of the first lawsuit filed in 2008, there was nothing
7 preventing FAIRWAY from putting into place written policies, practices or procedures
8 to ensure FAIRWAY did not violate any of the advertising prohibitions of NAC
9 482.180(3) in the future.

10 9. When FAIRWAY settled the second lawsuit in 2010, FAIRWAY continued
11 to have a "heightened awareness" of the advertising prohibitions of NAC 482.180(3).

12 10. After the resolution of the second lawsuit in 2010, FAIRWAY did not put
13 into place any written policies, practices or procedures to ensure it did not violate any of
14 the advertising prohibitions of NAC 482.180(3).

15 11. After the resolution of the second lawsuit in 2010, there was nothing
16 preventing FAIRWAY from putting into place written policies, practices or procedures
17 to ensure it not violate any of the advertising prohibitions of NAC 482.180(3) in the
18 future.

19 12. The Court makes no finding as to whether the present conduct violates the
20 two previous AODs.

21 13. At the time the instant lawsuit was filed and served upon FAIRWAY in
22 January of 2013, FAIRWAY had still not put into place any written policies, practices or
23 procedures to ensure it did not violate any of the advertising prohibitions of NAC
24 482.180(3).

1 14. Throughout the pendency of this lawsuit, approximately 35 months,
2 FAIRWAY had still not put into place any written policies, practices or procedures to
3 ensure it did not violate any of the advertising prohibitions of NAC 482.180(3).

4 15. Throughout the three-year pendency of this action, there was nothing
5 preventing FAIRWAY from putting into place written policies, practices or procedures
6 to ensure it did not violate any of the advertising prohibitions of NAC 482.180(3) in the
7 future. The Court notes that Plaintiff did not demand or seek the relief of having
8 FAIRWAY put into place any written policies, practices or procedures in this lawsuit, in
9 the two previous lawsuits, or in the AODs resulting from the two previous lawsuits.
10

11 16. In December of 2012, when FAIRWAY approved the television
12 advertisement at issue in the instant case, FAIRWAY did not have any policy in effect,
13 either orally or in writing, to always compare the final broadcast copy, (the script for the
14 commercial), and the final iteration of the television advertisement, before FAIRWAY
15 authorized it to be disseminated. While FAIRWAY acknowledged ultimate responsibility
16 for its advertising compliance with Nevada law, FAIRWAY did use an advertising agency
17 which, evidence showed, it relied upon to assist with preparation and dissemination of
18 advertisements and compliance with applicable advertising laws and regulations.
19 Sometimes the comparison was done; sometimes it was not.
20

21 17. As the Court previously found in paragraph six of its Findings of Facts
22 entered on October 2, 2015 in regard to the first (liability) phase of this trial, FAIRWAY
23 reviewed the final broadcast copy, (the written script of the written and audible message
24 for the commercial), prior to the television commercial being broadcast to the public.
25 The Court further found in paragraph 28 that FAIRWAY made changes to the broadcast
26 copy by adding disclaimer language, apparently intending for the disclaimer language to
27 be displayed in large print in the final₁₀ iteration of the television advertisement.
28

1 However, FAIRWAY did not review the final video iteration of the television commercial
2 at issue before it authorized its dissemination in December of 2012.

3 18. Taking into consideration the Court's findings in the liability phase of the
4 trial, that while FAIRWAY believed it did not have the time to view, or did not have the
5 ability to view, the video of the television advertisement before it was disseminated to
6 the community, there was nothing actually preventing FAIRWAY from reviewing the
7 video of the final iteration of the television commercial at issue in the instant action
8 before FAIRWAY authorized it to be disseminated.

9
10 19. Prior to authorizing the dissemination of the television advertisement at
11 issue in 2012, FAIRWAY had on previous occasions failed to compare the final
12 broadcast copy with the final iteration of the commercial before FAIRWAY authorized
13 the advertisement to be disseminated.

14 20. FAIRWAY had written policies, practices and procedures in place with
15 regard to its sales department, its finance and insurance department, and in its service
16 department.

17
18 21. FAIRWAY expected and had a policy that those written policies, practices
19 and procedures involving FAIRWAY's sales department, its finance and insurance
20 department and service department, were to always be followed.

21 22. However, FAIRWAY did not implement or have any written policies,
22 practices and/or procedures in place to ensure it did not violate any of the advertising
23 prohibitions of NAC 482.180(3) in the future.

24
25 23. Given the "heightened awareness" FAIRWAY was operating under,
26 whatever changes FAIRWAY had put in place at the time of the broadcast of the subject
27 advertisement were, in and of themselves, not sufficient to prevent or preclude the
28 dissemination of the subject television advertisement, which clearly and plainly violated

1 NAC 482.180(3).

2 24. It is the Court's belief that any individual in FAIRWAY's shoes can do a
3 better job of observing the law, if he or she is operating under some written policies and
4 procedures. Clearly, heightened awareness alone has not brought about compliance with
5 the law.

6 25. The Court also accepts the Plaintiff's argument that, if you have one person
7 show who is in charge of all of the advertising on behalf of FAIRWAY, (which in this case
8 was Mr. Hoisington), there is still a need to have written policies and procedures, in the
9 event that the one person leaves the employment of FAIRWAY. Someone has to know of
10 the requirement that you must fulfill the mandate of the law. It is not sufficient, given
11 FAIRWAY's "heightened awareness," to simply make "some" effort to see that the
12 advertisement comports with NAC 482.180(3). Fairway needs to make certain that the
13 final form of the advertisement that is being disseminated to the community complies
14 with its intentions and the law, by having a written policy or practice to require a person
15 knowledgeable with NAC 482.180(3), to always review the final version, form or
16 iteration of any advertisement that falls within the purview or ambit of NAC 482.180(3)
17 before it is disseminated to the community.

20 **II. AMENDED CONCLUSIONS OF LAW**

21 1. The Court finds that the instant action was brought in the form of a private
22 attorney general action pursuant to the provisions of NRS 41.600. It is NRS 41.600
23 which expressly gives a claimant and/or a consumer a private right of action for
24 statutory consumer fraud based on violations of certain enumerated categories of
25 statutes. *See NRS 41.600(1) and (2).*

1 2. The private attorney general doctrine allows a private citizen to retain a
2 private attorney to supplement the government's enforcement of certain laws, including
3 consumer protection laws, and thereby ensure that laws are enforced that otherwise may
4 go unenforced due to the limited resources of governmental enforcement agencies. The
5 hallmark of actions applying the private attorney general doctrine is the statutory
6 authorization of attorney's fees to enforce an important public right or policy. NRS
7 41.600(3)(c) contains a one-way mandatory fee shifting provision.¹

9 3. The Court further notes the Legislative preamble and statement of
10 Legislative purpose underlying the promulgation of Chapter 482 of the NRS, which
11 regulates vehicle dealerships, among other auto related businesses and industries within
12 the state. NRS 482.318 entitled "legislative declaration" states:

13 "The Legislature finds and declares that the distribution and sale of motor
14 vehicles in the State of Nevada vitally affects the general economy of the
15 State and the public interest and the public welfare, and in the exercise of
16 its police power, it is necessary to regulate and to license motor vehicle
17 manufacturers, distributors, new and used vehicle dealers, brokers,
18 rebuilders, leasing companies, salespersons, and their representatives
doing business in the State of Nevada in order to prevent frauds,
impositions and other abuse upon its citizens."

19 4. The Court finds Plaintiff to be the prevailing party in this action. See
20 *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), holding a
21 party is considered the prevailing party if it succeeds on any significant issue in the
22 litigation which achieves some of the benefit it sought in bringing suit. *Blackjack* dealt
23 with the fee shifting provisions under the Nevada Public Records Act; NRS 239.011(2).

24
25 ¹ See *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553, 565, 21 Cal.Rptr.3d 331, 339, 101 P.3d 140, 147
26 (2004) [holding "the private attorney general doctrine rests upon the recognition that privately initiated
27 lawsuits are often essential to the effectuation of the fundamental public policies embodied in
28 constitutional or statutory provisions, and that, without some mechanism authorizing the award of
attorney fees, private actions to enforce such important public policies will as a practical matter frequently
be infeasible. Thus, the fundamental objective of the doctrine is to encourage suits enforcing important
public policies by providing substantial attorney fees to successful litigants in such cases."]

1 Plaintiff herein prevailed on all three claims for relief that were plead in the Complaint.
2 The Court makes the finding that Plaintiff is the prevailing party in this action based on
3 the following:

4 A. Plaintiff initially prevailed on his second claim for relief for
5 declaratory relief based on his counter motion for partial summary
6 judgment. Plaintiff prevailed with respect to his argument that NRS
7 41.600 does not require a claimant under its provisions to plead or sustain
8 monetary damage or other pecuniary loss, as a prerequisite to such a
9 statutory claim, and a 41.600 claimant can seek strictly equitable relief
10 against a Defendant pursuant to 41.600(3)(b), for any of the statutory
11 violations enumerated under NRS 41.600(2). FAIRWAY filed a motion for
12 reconsideration of that grant and finding. The Court denied FAIRWAY's
13 motion.

14 B. Plaintiff then prevailed on his first claim for relief for
15 consumer fraud in the liability phase of the bifurcated trial. This Court,
16 pursuant to its previous findings of fact and conclusions of law, found
17 FAIRWAY, based on a preponderance of the evidence, to have violated
18 certain state statutes and regulations involving vehicle dealership
19 advertising in violation of NRS 41.600(2)(d) and (e), which in turn
20 constituted statutory consumer fraud.

21 C. Plaintiff then prevailed, as set forth *infra*, on his third claim
22 for relief for injunctive relief via this Court issuing a mandatory and
23 permanent injunction against FAIRWAY.

24 5. Based upon the testimony and evidence presented during the second
25 phase of the trial, pursuant to *Edwards*, and based upon FAIRWAY's "heightened
26 awareness" of the specific advertising prohibitions of NAC 482.180(3), in conjunction
27 with FAIRWAY violating those prohibitions, the Court finds without injunctive relief
28 that future violations are likely to occur.

 6. The Court finds that the steps taken by FAIRWAY since the filing of the
instant action are not sufficient to give assurances that future violations will not occur.
The Court acknowledges FAIRWAY has taken steps along the way, but it is subject to
change on a day-to-day basis, as well as the possibility of not being followed if there is
any turnover of personnel charged with preventing any advertisement which violates

1 NAC 482.180(3) from being disseminated. The Court therefore concludes that the
2 Plaintiff has established the need for written policies and procedures at the dealership to
3 attempt to make sure there are no future violations. Without any written policies,
4 practices and procedures being promulgated and enforced by FAIRWAY regarding their
5 advertising practices, with respect to complying with NAC 482.180(3), there is
6 uncertainty that the advertisements disseminated will comply with FAIRWAY's
7 intentions.
8

9 7. Based upon the continued consideration of Defendant FAIRWAY's Motion
10 to Amend Findings and Conclusions, and upon additional reflection with respect to the
11 kind of injunctive relief that would prove effective in this matter, and contrary to what
12 the Court had previously indicated and/or concluded in the injunction filed March 14,
13 2016, the Court has come to the conclusion that a permanent injunction needs to be put
14 into place, in addition to the current mandatory injunction requiring the promulgation
15 and implementation of written policies and procedures for advertising that is going to be
16 disseminated to the community. The Court is of the opinion that the current mandatory
17 injunction does not give adequate or sufficient assurance that this type of advertisement,
18 in violation of NAC 482.180(3), will cease to be disseminated to the community in the
19 future.
20

21 8. The Court may have been short sighted with respect to the issuance of the
22 initial mandatory injunction requiring FAIRWAY to promulgate written policies and
23 procedures for its advertising practices in the future, in that the Court believed that once
24 adequate written policies and procedures were presented to and approved by the Court,
25 the mandatory injunction could be dissolved. It is the Court's conclusion, following
26 further consideration of Defendants post trial motions that this conduct is likely to
27 reoccur, unless there is also a narrowly tailored permanent injunction.
28

1 9. The issuances of the permanent injunction, as set forth herein, is designed
2 to stop the violation of the law, with the least amount of imposition on FAIRWAY.

3 10. The Court has looked at the totality of the circumstances, as required
4 under *Edwards*, including the enumerated factors, In finding the need for FAIRWAY to
5 be directed and required, via a mandatory injunction, to implement written polices,
6 practices and procedure to ensure that future violations of the advertising prohibitions
7 of NAC 482.180(3) do not occur.
8

9 11. The Court is satisfied that the narrowly tailored and relatively minimal
10 requirements that are set forth in the amended injunction is designed to, and will, in
11 fact, be minimally intrusive and not cause an undue burden upon the defendant's
12 business, while at the same time ensuring compliance with the law involving certain
13 advertising rules that apply to vehicle dealerships.
14

15 12. In looking at the totality of the circumstances, the Court has also
16 considered whether, by entering an injunction as to one dealer, it puts FAIRWAY at a
17 competitive disadvantage to all the other dealers in town. The Court submits that this
18 injunctive relief does not do so. The Court believes that after what the Court has seen in
19 this lawsuit, that any dealer in town, who is under any "heightened awareness" of NAC
20 482.180(3), and who then violates its advertising prohibitions, is just as likely to wind
21 up where FAIRWAY is today.
22

23 13. The Court has also considered FAIRWAY's concerns about the Plaintiff,
24 individually, in any way continuing to be involved in overseeing or conferring with
25 respect to the implementation or supervision of the policies and practices FAIRWAY
26 puts into place to comply with this Court's mandatory injunction. It is not the Court's
27 intention to allow Plaintiff any oversight of FAIRWAY's policies and practices, or to have
28 any right to inquire about those policies, other than through his attorney of record in
16

1 any formal objections that are made to the Court after FAIRWAY submits its proposed
2 written policies or practices to the Court for the Court's review and consideration.

3 14. **EDWARDS FACTORS**

4 **A. THE GRAVITY OF THE HARM**

5 The Court finds that the gravity of the harm in this case with respect to the
6 Plaintiff is minimal. Plaintiff is not seeking monetary relief, and did not suffer any
7 monetary damages, so any individual harm he suffered to himself as an individual was
8 from not being able to acquire the advertised financing rate that was advertised in the
9 commercial. Thus, the Court does not place great emphasis on this factor in issuing the
10 mandatory injunction against FAIRWAY as hereinafter set forth. However, it is
11 important to note that the television advertisement at issue was disseminated to the
12 community, and it was clearly intended by FAIRWAY to be aired and viewed by the
13 community at large, not just by the Plaintiff.
14

15 **B. THE EXTENT AND MOTIVATION OF THE VIOLATOR'S**
16 **PARTICIPATION IN THE WRONGFUL CONDUCT**

17 The Court does not find any specific intent on the part of, or on behalf of
18 FAIRWAY to defraud or deceive. No fraudulent intent has been demonstrated to this
19 Court on FAIRWAY's part in using the advertisement at issue.
20

21 However, it is difficult for the Court to find that, once the advertisement came
22 out, FAIRWAY could be unaware that this particular television advertisement, as
23 egregious as it was, was not in compliance with of NAC 482.180(3). This is based upon
24 FAIRWAY's admitted understanding and familiarity with NAC 482.180(3), FAIRWAY's
25 "heightened awareness" of NAC 482.180(3), and the affirmative statutory requirement
26 of NAC 482.110 that FAIRWAY be familiar with the rules involving dealership
27 advertising. Ultimately, responsibility for the advertisement falls squarely on the
28

1 shoulders of FAIRWAY to ensure the advertisement at issue did not violate NAC
2 482.180(3), and it was FAIRWAY who ultimately allowed such an advertisement to have
3 been disseminated.

4 **C. THE ISOLATED OR RECURRING NATURE OF THE**
5 **VIOLATION**

6 The Court finds that there are no other proven violations of NAC 482.180(3) by
7 FAIRWAY within the record. However, there were two prior actions involving the same
8 Plaintiff and similar alleged violation of NAC 482.180(3), which can be gleaned from the
9 Court's reading of the Complaints in the previous two lawsuits. The end result of both
10 previous actions were two previous AODs not to violate the provisions of NAC
11 482.180(3) in the future. While the Court makes no finding as to whether previous
12 AODs were violated, it is FAIRWAY's "heightened awareness" from the two previous
13 lawsuits involving the same statute which prompts slightly heightened requirements.
14 FAIRWAY presented evidence of the role of the advertising agency it hired to produce
15 the advertisement, but in the end, responsibility for approving and reviewing the
16 content of the advertisement before it was disseminated rests squarely on FAIRWAY.
17

18 **D. WHETHER THE VIOLATOR HAS RECOGNIZED**
19 **CULPABILITY AND OR SINCERELY PROMISED THAT FUTURE**
20 **VIOLATIONS WILL NOT OCCUR**

21 FAIRWAY did not agree that it acted with any recognition of its culpability at the
22 time it disseminated the advertisement, because it believed when the advertisement was
23 created that it complied with NAC 482.180(3). The Court has found that the
24 advertisement did not comply with NAC 482.180(3), and Fairway has shown that it
25 accepts responsibility for its conduct and for its advertisements. While FAIRWAY has
26 put into place some measures and actions to show that they are making some efforts to
27 prevent future violations of NAC 482.180(3), the Court finds that there is not enough in
28

1 that promise, or in those subsequent efforts to increase assurance that violations of NAC
2 482.180(3) will not reoccur. FAIRWAY needs written procedures in place and to make
3 sure that no advertisement goes out without the owner of FAIRWAY or a designated
4 representative reviewing the final copy or video and approving it, and FAIRWAY must
5 be required to review every advertisement it intends to disseminate to the community if
6 the advertisement falls within the ambit or purview of NAC 482.180(3).
7

8 **THEREFORE, IT IS HEREBY ORDERED**, that Defendant FAIRWAY
9 CHEVROLET COMPANY is hereby mandatorily enjoined. FAIRWAY is hereby directed
10 to promulgate and implement forthwith written policies, practices and/or procedures to
11 ensure violations of the advertising prohibitions set forth in NAC 482.180(3) do not
12 occur in the future. FAIRWAY has the freedom and discretion to promulgate and
13 implement any written policies and/or procedures it deems helpful or necessary in
14 conducting its normal and ordinary business affairs to effectuate this directive.
15

16 However, while the Court gives full discretion to FAIRWAY to promulgate, and
17 implement such written polices and/or procedures, the Court will require FAIRWAY to
18 adopt and implement a specific written policy, practice and/or procedure mandating
19 that FAIRWAY designate a person or persons, knowledgeable with respect to the
20 advertising prohibitions of NAC 482.180(3), to always review the final iteration or
21 presentation of any advertisement subject to NAC 482.180(3), before any such
22 advertisement is authorized for dissemination to the community by FAIRWAY. These
23 written policies apply to all forms of advertising media, including, but not limited to
24 radio, television, internet and print advertising.
25



26 **IT IS FURTHER HEREBY ORDERED**, that Defendant FAIRWAY
27 CHEVROLET COMPANY is hereby permanently enjoined, and will be required to have
28 its owner, or a designated employee, review⁹ the final version of every advertisement, in

1 any form of media, that falls within the ambit or purview of NAC 482.180(3), before any
2 such advertisement is authorized for dissemination to the community by FAIRWAY.


3 Upon FAIRWAY submitting to the Court for its review the written policies and
4 procedures it has promulgated, as attested to by its President, Greg Heinrich, that
5 FAIRWAY has implemented such written policies, practices and procedures; and upon
6 the Court being satisfied with said written policies, practices and procedures, the Court
7 will entertain a motion to dissolve the mandatory injunction relating to the
8 implementation of written policies and procedures involving advertising practices of
9 FAIRWAY. The dissolving of the mandatory injunction described in this paragraph
10 shall not have any effect on the continuance of the permanent injunction described in
11 the preceding paragraph.
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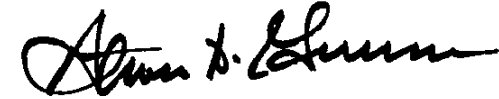
13 **IT IS FURTHER ORDERED** that any other injunctive relief requested in
14 Plaintiff's Complaint is hereby denied for the reasons set forth herein.
15

16 Dated this 12 day of Jan, 2017

17 By 
18  Judge of the District Court

19 Submitted by:

20 
21 _____
22 George O. West III
23 Law Offices of George O. West
24 **Attorney for Plaintiff**
25 **ALLEN KELLEY**
26
27
28



CLERK OF THE COURT

NEOJ
GEORGE O. WEST III [SBN 7951]
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Consumer Attorneys Against Auto Fraud
10161 Park Run Drive., Suite 150
Las Vegas, NV 89145
(702) 318-6570
(702) 664-0459
Email : gowesq@cox.net
Website : www.caaaf.net

Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiffs,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

NOTICE OF ENTRY OF ORDERS

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD :

PLEASE TAKE NOTICE, that 1) the Order on Defendant's Motion for Stay and Plaintiff's Counter Motion to Require Posting of Bond, 2) the Order Granting Plaintiff's Motion for Award of Statutory Fees and Costs, and 3) the Court's Amended Findings of Fact and Conclusions of Law on Second Remedy Phase of Trial and Amended Mandatory Permanent Injunction were entered on January 18, 2017, a copy of said orders are attached to this notice as Exhibits 1, 2 and 3.

Dated this 18th day of January, 2017

By /s/ George O. West III
George O. West III
Attorney for Plaintiff
ALLEN KELLEY

EXHIBIT 1

 ORIGINAL



CLERK OF THE COURT

ORDER

GEORGE O. WEST III [SBN 7951]
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Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

DISTRICT COURT

CLARK COUNTY, NEVADA

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiff,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**ORDER GRANTING DEFENDANT'S
MOTION TO STAY INJUNCTION
PENDING APPEAL AND ORDER
GRANTING PLAINTIFF'S COUNTER
MOTION TO REQUIRE POSTING
OF SUPERSEDEAS BOND**

1 On December 8, 2016, Defendant's Motion to Stay Injunction Pending Appeal,
2 and Plaintiff's Counter Motion to Require Posting of Supersedeas Bond came on for
3 hearing. After reading the moving, opposing and reply papers, and after hearing all the
4 arguments of counsel, the Court rules as follows :

5 **IT IS HEREBY ORDERED**, that Defendant's Motion to Stay Injunction
6 Pending Appeal is *granted*. The Court hereby suspends the enforcement of the
injunction issued in this case pending full adjudication of the appeal.

7 With respect to Plaintiff's Counter Motion to Require Posting of Supersedeas
8 Bond, it is *granted in part and denied in part*. The Court sets the bond to be posted in
9 the total amount of \$450,000.00 (four hundred and fifty thousand). This amount is
10 calculated based upon the amount of attorney's fees and costs awarded in this action, in
11 conjunction with \$50,000.00 in anticipated post judgment interest calculated at 5 1/2%
12 per annum. The post judgment interest was calculated based upon a period of two
13 years after the entry of final judgment, which is the estimated time the appeal will take
14 until final adjudication. With respect to Plaintiff's request for the bond to also include
15 \$50,000.00 in future anticipated attorney's fees on the appeal if the judgment is
16 successfully upheld, that request is *denied*. Pursuant to Rule 62(d), upon Defendant's
17 posting of the required supersedeas bond with the clerk of the Court and compliance
18 with NRS 20.010 and 20.050, enforcement of the judgment by Plaintiff shall be stayed
after entry of the final judgment in this action, pending full adjudication of the
anticipated appeal by Defendant. ¹

19 ¹ **NRS 20.010 Undertaking with sureties; affidavits.**

20 1. In all cases where an undertaking with sureties is required by the provisions of titles 2 to 6,
21 inclusive, of NRS, the judge, justice, or clerk, or other officer taking the same, shall, unless it is otherwise
22 provided in NRS, require the sureties to accompany the same with an affidavit that they are each worth
the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of
property exempt from execution.

23 2. When the amount specified in an undertaking exceeds \$3,000, and there are more than two
sureties thereon, they may state in their affidavits that they are severally worth amounts less than that
expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

24 **NRS 20.050 Bond or undertaking to be approved by clerk of court.**

25 1. In all cases where a bond or other undertaking, except a bail bond, is required by the provisions of
26 titles 2 to 5, inclusive, of NRS or in any civil action arising under any other title of NRS or by the Nevada
Rules of Civil Procedure or Nevada Rules of Appellate Procedure, the bond or undertaking shall be
presented to the clerk of the court in which the action or proceeding is pending, for approval of the clerk
of the court, before being filed or deposited.

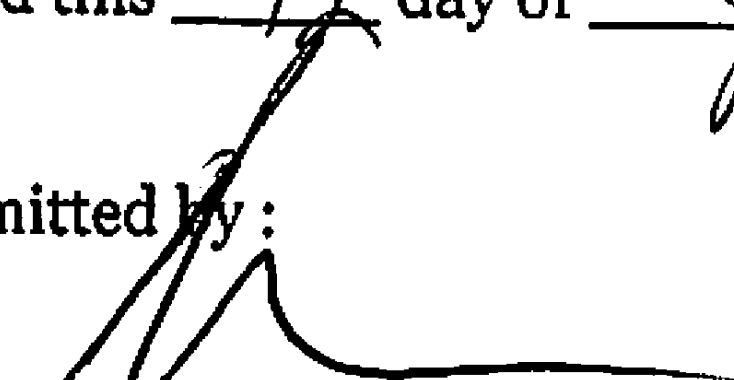
27 2. The clerk of the court may refuse approval of a surety for any bond or other undertaking if a
28 power of attorney-in-fact which covers the agent whose signature appears on the bond or other
undertaking is not on file with the clerk of the court.

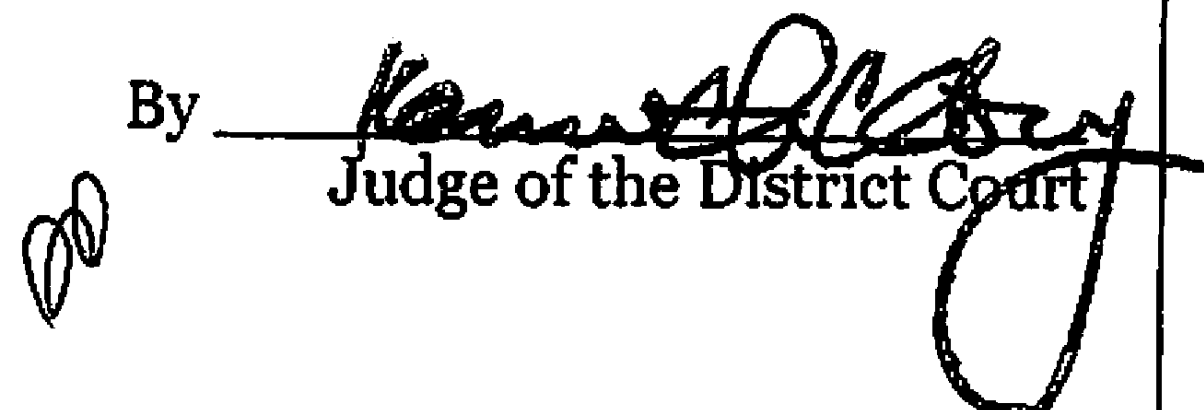
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Kelley v Fairway
A-13-674480-C
Order on Defendant's Motion for Stay and
Plaintiff's Counter Motion to Require Posting of Supersedeas Bond

Dated this 19 day of Jan, 2016

Submitted by:


George O. West III
Law Offices of George O. West
Attorney for Plaintiff
ALLEN KELLEY

By 
Judge of the District Court

Approved as to form and content

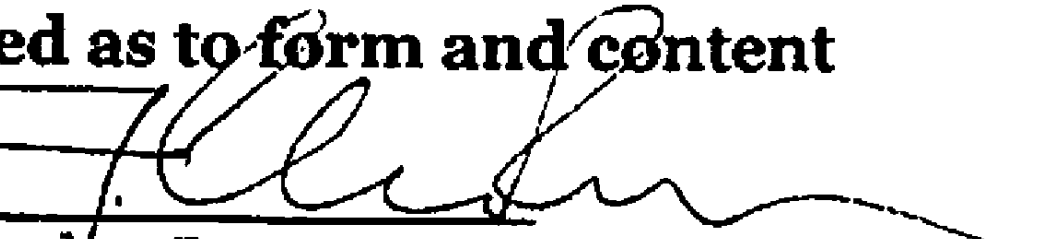
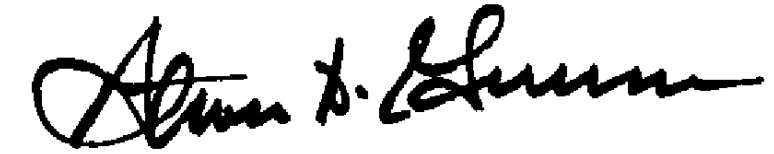

L. Christopher Rose
Jolley-Urga Woodbury & Little
Attorney for Defendant
FAIRWAY CHEVROLET COMPANY

EXHIBIT 2



CLERK OF THE COURT

ORDR

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Email: attcbf@cox.net
Website: www.consumerlaw.justia.net

Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiff,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**ORDER GRANTING PLAINTIFF'S
MOTION FOR STATUTORY AWARD
OF ATTORNEY'S FEES AND COSTS**

1 On May 18, 2016, Plaintiff's Motion for Award of Statutory Attorney's Fees and
2 Costs came on regularly for hearing. The Court continued the matter to May 27, 2016.
3 On May 27, 2016, after a more thorough review of the moving and opposing papers,
4 because a large portion of the disputed time and fees was related to time expended
5 conducting pre-trial discovery, the Court referred the matter to Discovery Commissioner
6 Bulla for a Report and Recommendations as to the reasonableness and necessity of the
discovery conducted in the matter.

7 On August 4, 2016, Commissioner Bulla issued her Report and
8 Recommendations. Defendant FAIRWAY filed an Objection to the Report and
9 Recommendations on August 12, 2016. On September 16, 2016, oral argument on
10 Plaintiff's Motion for Award of Statutory Fees and Costs was heard. The Court took the
11 matter under submission. On September 27, 2016, this Court approved the Discovery
12 Commissioner's Report and Recommendations. After reviewing the moving and
13 opposing papers, and after consideration of the Discovery Commissioner's Report and
14 Recommendations, as modified by the Court, the Court hereby grants Plaintiff's motion
and makes the following findings and order.

15 The first issue here is whether this Court should grant a motion for attorney s fees
16 to a prevailing party awarded injunctive relief when the Defendant was found to have
17 violated NRS 41.600(2)(d) and/or (e), which includes a mandatory fee-shifting
18 provision to the prevailing party via sub section 3. The Court finds the awarding of fees
and costs is appropriate for several reasons.

19 **I. Mandatory Fee Shifting**

20 NRS 41.600(3), which pertains to actions by victims of fraud, includes a mandatory
21 fee-shifting provision that states:

- 22 3. If the claimant is the prevailing party, the court shall award the claimant:
23 (a) Any damages that the claimant has sustained;
24 (b) Any equitable relief that the court deems appropriate; and
25 (c) The claimant's costs in the action and reasonable attorneys fees

26 This Court has already determined that Plaintiff is the prevailing party in this
27 action, and has thus implicated NRS 41.600(3)'s one-way fee-shifting. However,
28 Defendant contends that NRCP 68 prohibits an award of attorney's fees, arguing that
Plaintiff did not obtain a more favorable outcome than Defendant's Rule 68 settlement
offer.

1 The Court disagrees. See *Texas v. United States*, aff'd, 798 F.3d 1108 (D.C. Cir.
2 2015), cert. denied sub nom *Texas v. Davis*, 136 S. Ct. 981 (2016). One of the issues
3 before the court in *Davis* was whether to grant attorney s fees to a plaintiff seeking
4 declaratory relief under the Voting Rights Act. Although the special circumstances
5 exception to the fee-shifting provision in Texas was a judicially created concept, and the
6 proffered exception in this case would be a legislatively created exception, namely NRCP

7 68, the Texas court's reasoning applies here.
8 In *Davis*, *id*, the court had the discretion not to award attorneys fees pursuant to
9 a judicially created exception. Here, according to Defendant's argument, this Court has
10 the discretion not to award attorneys fees pursuant to NRCP 68, if the Plaintiff did not
11 receive a more favorable outcome, similar to the court in *Davis*, which reasoned that the
12 exception is narrowly construed so as to not interfere with the congressional purpose in
13 passing fee-shifting statutes.

14 This Court construes NRCP 68 so as not to interfere with the legislative purpose
15 in passing the fee-shifting provision of NRS 41.600. Further, the language in the Voting
16 Rights Act states that attorney's fees ordinarily should be granted to a prevailing party.
17 NRS 41.600(3), on the other hand, uses the word shall. If this Court were to deny
18 attorney's fees to Plaintiff when this Court has already determined that it is the
19 prevailing party, it would undermine the legislature s express desire to adopt mandatory
20 fee-shifting as outlined in NRS 41.600(3). See *Hall v. Cole*, 93 S. Ct. 1943, 1950 (1973)
21 (holding "moreover, the award of attorneys fees under section 102 is clearly consonant
22 with Congress express desire to adopt legislation that will afford necessary protection of
23 the rights and interests of employees and the public generally 29 U.S.C. s 401(b)").
24 As the Court of Appeals also recognized: Not to award counsel fees in cases such as this
25 would be tantamount to repealing the Act itself by frustrating its basic purpose).

26 Additionally, this Court notes that fee shifting under NRS 41.600(3) is a
27 mandatory one way attorney's fees provision to the prevailing claimant (Plaintiff). If
28 this Court were to take them away it could be seen as a denial of individual due process.

25 II. NRCP 68

26 Defendant argues that this Court may take into consideration both (a) any
27 injunctive relief and (b) any monetary offers of settlement in the Court's analysis in
28 determining what is a more favorable outcome. The Court thinks that under the facts at
bar this comparison would be inappropriate. Under NRCP 68, when an offeree rejects

1 an offer and fails to obtain a more favorable judgment, the offeree is precluded from
2 receiving attorney's fees or costs. Here, the Defendant made Plaintiff a settlement offer
3 that included monetary relief, via Rule 68. However, Defendant's Rule 68 offer did not
4 include a formal stipulated injunction. Defendant argues that the Court should compare
5 Plaintiff's award of injunctive relief to Defendant's monetary offer of settlement in
6 determining whether Plaintiff's award was more favorable than Defendant's offer. This
Court is not wholly persuaded that this is an appropriate comparison to make.

7 In *Kent v. Kent*, 108 Nev. 398, 404, 835 P.2d 8, 11 (1992), the Nevada Supreme
8 Court upheld the District Court's refusal to award attorney's fees and costs when the
9 Defendant offered an equitable settlement. In doing so, the court reasoned that
10 Defendant's offer to divide the subject property was not an appropriate comparison to
11 Plaintiff's award. Similarly, in *Leeming v. Leeming*, 87 Nev. 530, 535, 490 P.2d 342,
12 345 (1971), the Court held that where far more may be at stake than the mere dollar
13 amount of [an award], an offer of judgment seldom can be comprehensive, and an
offer's favorable character will often depend on the party's personal goals.

14 Similar to the Court in *Kent*, the facts before this Court suggest that a simple
15 comparison of injunctive relief to a dollar amount is an inappropriate standard for
16 determining which result is more favorable, because Plaintiff's personal goals never
17 included money damages. In the alternative, if this Court were to compare Defendant's
18 settlement offer to Plaintiff's award of injunctive relief, it would find Plaintiff's award
more favorable because of the societal benefits effectuated by the injunctive relief.

19 Defendant argues that because Plaintiff is only one person, the injunctive relief
20 ordered by this Court cannot be more favorable than Defendant's monetary settlement
21 offer. However, Defendant fails to take consider the injunction's benefits to society. The
22 Supreme Court of Nevada has made it clear that statutes with a protective purpose
23 should be liberally construed in order to effectuate the benefits intended to be obtained.
Edgington v. Edgington, 119 Nev. 577, 583 80 P.3d 1282, 1287 (2003).

24 Thus, when injunctive relief is awarded pertaining to a statute with a protective
25 purpose, that injunction should be liberally construed in order to effectuate the benefits
26 intended to be obtained from the injunction. Here, Plaintiff is not the only party who
27 will benefit from the injunction. The Court must liberally construe the injunction to
28 effectuate the benefits to all of society, not just the Plaintiff. Therefore, if this Court
were to determine what is a more favorable₄ outcome under NRCP 68, this Court would

1 consider the award's benefits to society, in addition to the benefits received by Plaintiff,
2 to be more favorable than Defendant's offer of settlement.

3 **III. Reasonableness of Attorneys Fees and Costs**

4 The next issue is two-fold: 1) whether Plaintiff's counsels' time billed was
5 reasonable, as NRS 41.600(3) requires, and 2) whether Plaintiff s counsels' historic or
6 current billing rate should be applied. The Court finds that the Plaintiff's counsels'
7 historic billing rates shall apply, meaning the billable rate at the time a given service was
8 rendered throughout the four year pendency of this action is to be used to calculate
9 Plaintiff's attorney's fees.

10 Based on this calculation, and based upon a review of Plaintiff counsel George O.
11 West III's Third Amended Verified Time Sheet and Craig B. Friedberg's Fifth
12 Supplemental Declaration in further support of Plaintiff's Motion for Fees and Costs,
13 and their attached supplemental declarations, Plaintiff's counsel, George O. West III is
14 hereby awarded \$ 305,911.²⁵, in reasonable attorney's fees, and co-counsel Craig
15 Friedberg is awarded \$ 79,110.⁰⁰, in reasonable fees, for a total award of
16 attorney's fees in the amount of \$ 385,021.²⁵.

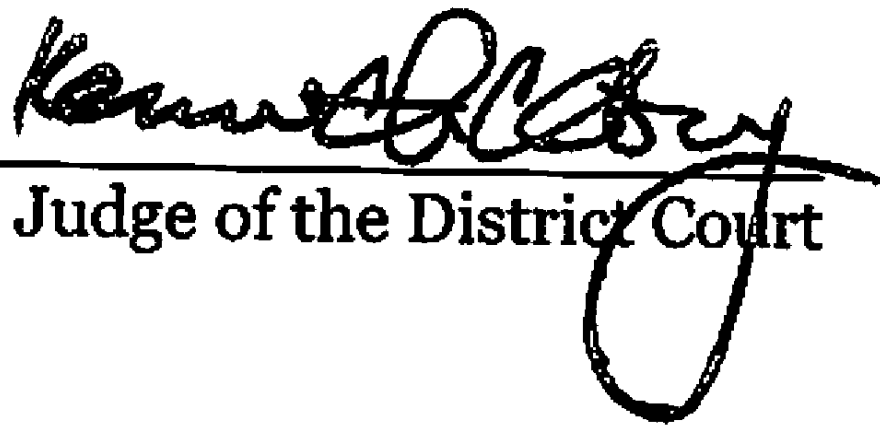
17 The Court finds that the historical billing rates of Mr. West throughout the four
18 year pendency of this case, which began with \$ 350.00 per hour and ended with \$
19 450.00 per hour, and Mr. Friedberg's historical billing rate of \$ 450.00 per hour, are the
20 prevailing rate in the community given the expertise, experience and reputation of
21 Plaintiff's counsel, coupled with the type of consumer protection work both attorneys
22 practice within this locality.

23 With respect to costs incurred, the Court has reviewed Plaintiff's verified cost bill
24 and finds all the costs reasonable, and hereby awards costs in the amount of \$ 11,567.40.

25 Finally, the Court has taken the *Bunzell* factors into account in rendering this
26 award. Accordingly, this Court finds that all efforts and time billed by Plaintiff s counsel
27 were appropriate and reasonably calculated to prevail. As to each of Defendant's
28 specific objections concerning the reasonableness of Plaintiff's counsel's time billed, the
Court agrees with the arguments advanced by Plaintiff in his moving papers and at oral
argument, in addition to the reasons cited by the Discovery Commissioner s Report and
Recommendations, to overcome Defendant's objections and contentions.

Kelley v Fairway
A-13-674480-C
Order Granting Plaintiff's Motion
For Statutory Attorney's Fees

Dated this 12 day of Jan, 2016

By 
Judge of the District Court

Submitted by:


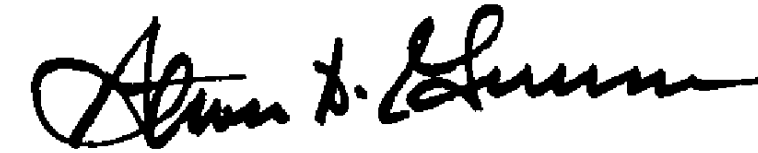

George O. West III
Law Offices of George O. West
Consumer Attorneys Against Auto Fraud
Attorney for Plaintiff
ALLEN KELLEY

EXHIBIT 3

 ORIGINAL

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CLERK OF THE COURT

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Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

*ALLEN KELLEY, individually, and on
behalf of all others similarly situated*

Plaintiff,

vs.

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,
Defendants.

CASE NO: A-13-674480-C
DEPT: I

**AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW ON
SECOND REMEDY PHASE OF
TRIAL, AND;**

**AMENDED MANDATORY
PERMANENT INJUNCTION**

A. PROCEDURAL BACKGROUND

The Court ordered this action to be bifurcated into two phases. The first phase, (the liability phase), would adjudicate whether Defendant FAIRWAY CHEVROLET COMPANY ("FAIRWAY") did in fact engage in statutory consumer fraud pursuant to

1 NRS 41.600(2)(d) and/or (e) with respect to the television advertisement at issue. If
2 Plaintiff prevailed on the liability phase of the trial, then the Court would conduct a
3 second, remedy phase of the trial to determine the proper equitable remedy, if any,
4 pursuant to NRS 41.600(3)(b), in addition to *Edwards v. Emperor's Garden Rest.*, 122
5 Nev. 317, 325, 130 P.3d 1280, 1285 (2006) ("*Edwards*").
6

7 On August 13, 2015, after a four day bench trial, the Court concluded the first
8 phase of the trial and on October 2, 2015, issued Findings of Fact and Conclusions of
9 Law on the liability (first) phase of the trial. Based on a preponderance of evidence, the
10 Court found that the television advertisement in question violated NRS 482.351(1), NRS
11 598.0923(3), *Nevada Administrative Code* ("NAC") 482.180(3) and 482.120(1), all or
12 any of which are in turn a violation of NRS 41.600(2)(d) and/or (e). The Court found,
13 based on a preponderance of evidence, that the television advertisement in question was
14 misleading, and therefore constituted statutory consumer fraud pursuant to
15 41.600(2)(d) and (e).
16

17 Because Plaintiff prevailed in establishing a violation of 41.600(2)(d) and (e), the
18 Court, on December 11, 2015, conducted the second remedy phase of the trial to fashion
19 a suitable remedy, pursuant to 41.600(3)(b), and based on the *Edwards* factors.

20 As an evidentiary matter, prior to the beginning of the second phase of the trial,
21 the Court issued an order regarding the admissibility of any evidence relating to the
22 previous two actions filed against FAIRWAY by the Plaintiff. Both previous cases were
23 ultimately resolved by way of a settlement agreement and releases of Fairway, which
24 settlement agreements included certain provisions referred to as Assurances of
25 Discontinuance ("AODs"). The Court ruled that other than the provisions of the two
26 previous AODs that FAIRWAY entered into, the Court would not allow the introduction
27 or admission by the Plaintiff of any other evidence used in the previous two cases filed
28

1 against FAIRWAY, including the introduction of any previous advertisements at issue in
2 those cases.

3 The Court admitted redacted portions of the previous AODs, as the Court found
4 that they were relevant to the issue of Defendant FAIRWAY's previous actual knowledge
5 and/or FAIRWAY's "heightened awareness" of the provisions of NAC 482.180(3), prior
6 to approving the television advertisement at issue in the present action. A Defendant's
7 actual knowledge or having a "heightened awareness" of a particular advertising rule
8 would be relevant in the remedy phase of the trial under the factors enunciated under
9 *Edwards*. Defendant FAIRWAY did not dispute at trial that it had a "heightened
10 awareness" of the advertising prohibitions and provisions of NAC 482.180(3). They were
11 additionally relevant to fashioning an appropriate remedy in the present case.
12

13 At the conclusion of the second phase of the trial, on December 11, 2015, the
14 Court announced its ruling from the bench, and issued a mandatory injunction against
15 Defendant FAIRWAY involving the promulgation of certain written policies and
16 procedures relating to FAIRWAY's advertising practices in the future.
17

18 On March 14, 2016, Notice of Entry of Order and Mandatory Injunction, with a
19 copy of the Court's Findings and Conclusions on the Remedy phase, was served on
20 Defendant FAIRWAY by Plaintiff. The mandatory injunction issued against FAIRWAY
21 stated as follows:
22

23 FAIRWAY is hereby directed to promulgate and implement forthwith
24 written policies, practices and/or procedures to ensure violations of the
25 advertising prohibitions set forth in NAC 482.180(3) do not occur in the
26 future. FAIRWAY has the freedom and discretion to promulgate and
27 implement any written policies and/or procedures it deems helpful or
28 necessary in conducting its normal and ordinary business affairs to
effectuate this directive.

1 However, while the Court gives full discretion to FAIRWAY to promulgate,
2 and implement such written policies and/or procedures, the Court will
3 require FAIRWAY to adopt and implement a specific written policy,
4 practice and/or procedure mandating that FAIRWAY designate a person
5 or persons, knowledgeable with respect to the advertising prohibitions of
6 NAC 482.180(3), to always review the final iteration of any advertisement
7 that falls within the ambit or purview of NAC 482.180(3), before any such
8 advertisement is authorized for dissemination by FAIRWAY. These
9 written policies apply to all forms of advertising media, including, but not
10 limited to radio, television, internet and print advertising.

11 Upon FAIRWAY submitting to the Court for its review the written policies
12 and procedures it has promulgated, as attested by its President, Greg
13 Hienrich, that FAIRWAY has implemented such written policies, practices
14 and procedures; and upon the Court being satisfied with said written
15 policies, practices and procedures; and there being no objection by
16 Plaintiff; the Court will entertain a motion to dissolve the injunction.

17 On March 31, 2016, pursuant to Rules 59(a) and (e) and 52(b), Defendant
18 FAIRWAY timely filed a Motion to Amend Judgment and mandatory injunction issued
19 against Defendant FAIRWAY, and alternatively, to Amend Findings of Fact and
20 Conclusions of Law.

21 On May 18, 2016, Defendant FAIRWAY's Motion to Amend Judgment and to
22 Amend Findings of Fact and Conclusions of Law came on regularly for hearing. After
23 reading the moving, opposing and reply papers, and after hearing all the arguments of
24 counsel, the Court ruled as follows:

- 25 1. With respect to Defendant's Motion to Amend Judgment pursuant
26 to Rule 59(a), FAIRWAY's motion is *denied*.
- 27 2. With respect to Defendant's Motion to Amend Findings of Fact and
28 Conclusions of Law with respect to the second (remedy) phase of
the trial, pursuant to Rule 52(b), FAIRWAY's motion is *granted in part* as to findings about the Court's reliance on the prior lawsuits
and AODs.

1 Upon further reevaluation and examination of the findings of fact and
2 conclusions of law on the second phase of trial that were filed on March 14, 2016, the
3 Court has determined that the injunction previously entered should be amended and
4 that further explanation and/or clarification of those findings and conclusions are
5 warranted, including findings and conclusions supporting the amended injunction as
6 set forth hereinafter.
7

8 On September 16, 2016, Plaintiff's Motion for Award of Statutory Attorney's Fees
9 came on regularly for hearing, in addition to the proposed content of amended findings
10 of fact and conclusions of law for the second phase of trial, based on the Court's
11 previous grant of Defendant's Motion to Amend Findings of Fact and Conclusions of
12 Law on May 18, 2016. During the September 16, 2016 hearing, the Court informed the
13 parties that after giving the Defendant's Motion to Amend Findings of Fact and
14 Conclusions of Law more thought and reevaluation, the Court had concluded, *sua*
15 *sponte*, that it is necessary to issue a permanent injunction in this matter, in addition to
16 the mandatory injunction previously issued by the Court.
17

18 In addition to the mandatory injunction previously issued against Defendant
19 FAIRWAY, as set forth at page 3, *supra*, the Court ruled on September 16, 2016 that
20 Defendant FAIRWAY is also permanently enjoined from issuing or utilizing
21 advertisements in any form of media, unless first reviewed in its final form by the
22 owner or president of FAIRWAY, or by an authorized designated employee of
23 FAIRWAY, so as to ensure FAIRWAY complies with its own written policies and
24 procedures, and NAC 482.180(3), prior to any advertisement being disseminated to the
25 community.
26
27
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1 As a threshold matter, the Court has plenary authority and discretion to amend
2 or modify its findings of fact and conclusions of law, including the nature and scope of
3 the injunctive relief, and may amend the judgment accordingly. Because the Court
4 *granted* Defendant FAIRWAY's Motion to Amend the phase two Findings of Fact and
5 Conclusions of Law, the previously filed second phase findings and conclusions and the
6 injunction were not final, and were then subject to change, modification and/or
7 amendment by the Court pursuant to Rule 52(b). While the amendment was not what
8 FAIRWAY was hoping for, it was in fact in direct consequence of considering the
9 defendants motion.
10

11 At the conclusion of the hearing on September 16, 2016, the Court ordered both
12 parties to simultaneously exchange, (in the blind), a newly proposed amended
13 injunction with supporting Findings of Fact and Conclusions of Law for the remedy
14 phase of the trial. The newly proposed findings and conclusions were to include the
15 pertinent additional clarifications and/or changes in the Court's rulings. The proposed
16 findings and conclusions were also to reflect the modifications to the injunctive relief as
17 set forth on the record on September 16, 2016.
18

19 While Rule 52(b) grants the Court the authority to amend the findings and
20 conclusions and the judgment itself, the Court is mindful of the party's rights to due
21 process. Based upon the *sua sponte* nature of the amendments and modifications
22 announced on September 6, 2016 in open court, the Court has allowed the parties to
23 submit any objections or supplemental briefing on the issue of those amendments to
24 the injunctive relief, in addition to any of the proposed findings and conclusions
25 prepared by the respective parties. The Court ordered supplemental briefing to be
26 simultaneously exchanged and filed in the blind. In briefing and oral argument,
27 FAIRWAY objected to amendment of the injunction as set forth herein, preserved its
28

1 prior objections and relief requested in its motion to amend the judgment and findings
2 of fact and conclusions of law, and reserved its arguments and objections to the
3 amendment of the findings of fact and conclusions of law set forth herein.

4 The Court, having thoroughly reviewed all the subsequent and supplemental
5 briefing, and after reviewing the competing versions of the party's proposed amended
6 findings of fact and conclusions of law on the second phase of trial, and after hearing
7 additional arguments of counsel on November 3, 2016 in open court, the Court hereby
8 amends its findings of fact, conclusions of law and injunction filed March 14, 2016 as to
9 the second (remedy) phase of trial as follows:
10

11 **I. AMENDED FINDINGS OF FACT**

12 1. FAIRWAY was a party Defendant in two previous lawsuits brought by
13 Plaintiff Allen Kelley filed in the Eighth Judicial District Court, which were filed in 2008
14 and 2009, respectively.
15

16 2. Those two previous actions, which are public record, involved lawsuits
17 relating to the same provisions of law at issue in the instant action, NAC 482.180(3). It
18 is these two previous lawsuits involving the same provisions of law which the Court
19 primarily relied upon with respect to FAIRWAY's "heightened awareness" of the
20 advertising prohibitions of NAC 482.180(3), prior to FAIRWAY authorizing the
21 dissemination of the television advertisement at issue in the instant case. It should be
22 noted that the Court is not treating the conduct at issue in the present action as a
23 violation of the two prior written AODs, but under *Edwards*, the Court is not required to
24 be blind to the fact that there were two previous filed actions involving the Defendant
25 and the same Plaintiff relating to alleged violations of the same NAC 482.180(3).
26
27
28

1 3. Given the fact that these two previous lawsuits gave FAIRWAY a
2 “heightened awareness” of the provision of law primarily at issue in this case, and the
3 fact that this advertising rule was, in the present case, clearly and patently violated, it is
4 painfully evident that stronger medicine is required.

5 4. While it is the Court’s position that it can take into account the two
6 previous AODs FAIRWAY entered into with respect to the present issues, under
7 *Edwards*, the Court did not in fact need to take the AODs into account in order to enter
8 an injunction against FAIRWAY. The Court primarily relies on the fact that two
9 previous lawsuits were filed involving alleged violations of NAC 482.180(3), as an
10 indication of FAIRWAY’s actual notice and “heightened awareness” of the provisions of
11 NAC 482.180(3), not because those lawsuits resulted in written AODs, but for the
12 inescapable fact that notwithstanding the two previous lawsuits the present violation
13 occurred.
14

15 5. Fairway objected to the admission of evidence or any reference to the two
16 prior lawsuits, the two prior advertisements at issue in those lawsuits, and the two AODs
17 resulting from the settlement of the two prior lawsuits. Upon objection by Fairway, the
18 Court did not consider the advertisements from the two previous lawsuits in fashioning
19 its injunctive remedy, and did not admit into evidence the advertisements from the two
20 prior lawsuits. Rather, the Court specifically excluded any such evidence at trial. A
21 reading of the complaints themselves in the two previous lawsuits, which are public
22 documents, is sufficient to show that FAIRWAY was already operating under a
23 “heightened awareness” that this law existed, and required compliance. It would be a
24 mistake to conclude that in entering the present injunction, the Court placed significant
25 reliance on either the existence or contents of the previous AODs.
26
27
28

1 6. As a result of the first lawsuit filed in 2008, FAIRWAY had acquired a
2 "heightened awareness" of the advertising prohibitions of NAC 482.180(3).

3 7. After the resolution of the first lawsuit in 2008, FAIRWAY did not put into
4 place any written policies, practices or procedures to ensure it did not violate any of the
5 advertising prohibitions of NAC 482.180(3) in the future.

6 8. After resolution of the first lawsuit filed in 2008, there was nothing
7 preventing FAIRWAY from putting into place written policies, practices or procedures
8 to ensure FAIRWAY did not violate any of the advertising prohibitions of NAC
9 482.180(3) in the future.

10 9. When FAIRWAY settled the second lawsuit in 2010, FAIRWAY continued
11 to have a "heightened awareness" of the advertising prohibitions of NAC 482.180(3).

12 10. After the resolution of the second lawsuit in 2010, FAIRWAY did not put
13 into place any written policies, practices or procedures to ensure it did not violate any of
14 the advertising prohibitions of NAC 482.180(3).

15 11. After the resolution of the second lawsuit in 2010, there was nothing
16 preventing FAIRWAY from putting into place written policies, practices or procedures
17 to ensure it not violate any of the advertising prohibitions of NAC 482.180(3) in the
18 future.

19 12. The Court makes no finding as to whether the present conduct violates the
20 two previous AODs.

21 13. At the time the instant lawsuit was filed and served upon FAIRWAY in
22 January of 2013, FAIRWAY had still not put into place any written policies, practices or
23 procedures to ensure it did not violate any of the advertising prohibitions of NAC
24 482.180(3).

1 14. Throughout the pendency of this lawsuit, approximately 35 months,
2 FAIRWAY had still not put into place any written policies, practices or procedures to
3 ensure it did not violate any of the advertising prohibitions of NAC 482.180(3).

4 15. Throughout the three-year pendency of this action, there was nothing
5 preventing FAIRWAY from putting into place written policies, practices or procedures
6 to ensure it did not violate any of the advertising prohibitions of NAC 482.180(3) in the
7 future. The Court notes that Plaintiff did not demand or seek the relief of having
8 FAIRWAY put into place any written policies, practices or procedures in this lawsuit, in
9 the two previous lawsuits, or in the AODs resulting from the two previous lawsuits.
10

11 16. In December of 2012, when FAIRWAY approved the television
12 advertisement at issue in the instant case, FAIRWAY did not have any policy in effect,
13 either orally or in writing, to always compare the final broadcast copy, (the script for the
14 commercial), and the final iteration of the television advertisement, before FAIRWAY
15 authorized it to be disseminated. While FAIRWAY acknowledged ultimate responsibility
16 for its advertising compliance with Nevada law, FAIRWAY did use an advertising agency
17 which, evidence showed, it relied upon to assist with preparation and dissemination of
18 advertisements and compliance with applicable advertising laws and regulations.
19 Sometimes the comparison was done; sometimes it was not.
20

21 17. As the Court previously found in paragraph six of its Findings of Facts
22 entered on October 2, 2015 in regard to the first (liability) phase of this trial, FAIRWAY
23 reviewed the final broadcast copy, (the written script of the written and audible message
24 for the commercial), prior to the television commercial being broadcast to the public.
25 The Court further found in paragraph 28 that FAIRWAY made changes to the broadcast
26 copy by adding disclaimer language, apparently intending for the disclaimer language to
27 be displayed in large print in the final iteration of the television advertisement.
28

1 However, FAIRWAY did not review the final video iteration of the television commercial
2 at issue before it authorized its dissemination in December of 2012.

3 18. Taking into consideration the Court's findings in the liability phase of the
4 trial, that while FAIRWAY believed it did not have the time to view, or did not have the
5 ability to view, the video of the television advertisement before it was disseminated to
6 the community, there was nothing actually preventing FAIRWAY from reviewing the
7 video of the final iteration of the television commercial at issue in the instant action
8 before FAIRWAY authorized it to be disseminated.
9

10 19. Prior to authorizing the dissemination of the television advertisement at
11 issue in 2012, FAIRWAY had on previous occasions failed to compare the final
12 broadcast copy with the final iteration of the commercial before FAIRWAY authorized
13 the advertisement to be disseminated.
14

15 20. FAIRWAY had written policies, practices and procedures in place with
16 regard to its sales department, its finance and insurance department, and in its service
17 department.
18

19 21. FAIRWAY expected and had a policy that those written policies, practices
20 and procedures involving FAIRWAY's sales department, its finance and insurance
21 department and service department, were to always be followed.
22

23 22. However, FAIRWAY did not implement or have any written policies,
24 practices and/or procedures in place to ensure it did not violate any of the advertising
25 prohibitions of NAC 482.180(3) in the future.
26

27 23. Given the "heightened awareness" FAIRWAY was operating under,
28 whatever changes FAIRWAY had put in place at the time of the broadcast of the subject
advertisement were, in and of themselves, not sufficient to prevent or preclude the
dissemination of the subject television advertisement, which clearly and plainly violated

1 NAC 482.180(3).

2 24. It is the Court's belief that any individual in FAIRWAY's shoes can do a
3 better job of observing the law, if he or she is operating under some written policies and
4 procedures. Clearly, heightened awareness alone has not brought about compliance with
5 the law.

6 25. The Court also accepts the Plaintiff's argument that, if you have one person
7 show who is in charge of all of the advertising on behalf of FAIRWAY, (which in this case
8 was Mr. Hoisington), there is still a need to have written policies and procedures, in the
9 event that the one person leaves the employment of FAIRWAY. Someone has to know of
10 the requirement that you must fulfill the mandate of the law. It is not sufficient, given
11 FAIRWAY's "heightened awareness," to simply make "some" effort to see that the
12 advertisement comports with NAC 482.180(3). Fairway needs to make certain that the
13 final form of the advertisement that is being disseminated to the community complies
14 with its intentions and the law, by having a written policy or practice to require a person
15 knowledgeable with NAC 482.180(3), to always review the final version, form or
16 iteration of any advertisement that falls within the purview or ambit of NAC 482.180(3)
17 before it is disseminated to the community.

18
19
20 **II. AMENDED CONCLUSIONS OF LAW**

21 1. The Court finds that the instant action was brought in the form of a private
22 attorney general action pursuant to the provisions of NRS 41.600. It is NRS 41.600
23 which expressly gives a claimant and/or a consumer a private right of action for
24 statutory consumer fraud based on violations of certain enumerated categories of
25 statutes. *See NRS 41.600(1) and (2).*

1 2. The private attorney general doctrine allows a private citizen to retain a
2 private attorney to supplement the government's enforcement of certain laws, including
3 consumer protection laws, and thereby ensure that laws are enforced that otherwise may
4 go unenforced due to the limited resources of governmental enforcement agencies. The
5 hallmark of actions applying the private attorney general doctrine is the statutory
6 authorization of attorney's fees to enforce an important public right or policy. NRS
7 41.600(3)(c) contains a one-way mandatory fee shifting provision.¹
8

9 3. The Court further notes the Legislative preamble and statement of
10 Legislative purpose underlying the promulgation of Chapter 482 of the NRS, which
11 regulates vehicle dealerships, among other auto related businesses and industries within
12 the state. NRS 482.318 entitled "legislative declaration" states:
13

14 "The Legislature finds and declares that the distribution and sale of motor
15 vehicles in the State of Nevada vitally affects the general economy of the
16 State and the public interest and the public welfare, and in the exercise of
17 its police power, it is necessary to regulate and to license motor vehicle
18 manufacturers, distributors, new and used vehicle dealers, brokers,
19 rebuilders, leasing companies, salespersons, and their representatives
20 doing business in the State of Nevada in order to prevent frauds,
21 impositions and other abuse upon its citizens."
22

23 4. The Court finds Plaintiff to be the prevailing party in this action. *See*
24 *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), holding a
25 party is considered the prevailing party if it succeeds on any significant issue in the
26 litigation which achieves some of the benefit it sought in bringing suit. *Blackjack* dealt
27 with the fee shifting provisions under the Nevada Public Records Act; NRS 239.011(2).
28

¹ *See Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553, 565, 21 Cal.Rptr.3d 331, 339, 101 P.3d 140, 147 (2004) [holding "the private attorney general doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. Thus, the fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases."]

1 Plaintiff herein prevailed on all three claims for relief that were plead in the Complaint.
2 The Court makes the finding that Plaintiff is the prevailing party in this action based on
3 the following:

4 A. Plaintiff initially prevailed on his second claim for relief for
5 declaratory relief based on his counter motion for partial summary
6 judgment. Plaintiff prevailed with respect to his argument that NRS
7 41.600 does not require a claimant under its provisions to plead or sustain
8 monetary damage or other pecuniary loss, as a prerequisite to such a
9 statutory claim, and a 41.600 claimant can seek strictly equitable relief
10 against a Defendant pursuant to 41.600(3)(b), for any of the statutory
11 violations enumerated under NRS 41.600(2). FAIRWAY filed a motion for
12 reconsideration of that grant and finding. The Court denied FAIRWAY's
13 motion.

14 B. Plaintiff then prevailed on his first claim for relief for
15 consumer fraud in the liability phase of the bifurcated trial. This Court,
16 pursuant to its previous findings of fact and conclusions of law, found
17 FAIRWAY, based on a preponderance of the evidence, to have violated
18 certain state statutes and regulations involving vehicle dealership
19 advertising in violation of NRS 41.600(2)(d) and (e), which in turn
20 constituted statutory consumer fraud.

21 C. Plaintiff then prevailed, as set forth *infra*, on his third claim
22 for relief for injunctive relief via this Court issuing a mandatory and
23 permanent injunction against FAIRWAY.

24 5. Based upon the testimony and evidence presented during the second
25 phase of the trial, pursuant to *Edwards*, and based upon FAIRWAY's "heightened
26 awareness" of the specific advertising prohibitions of NAC 482.180(3), in conjunction
27 with FAIRWAY violating those prohibitions, the Court finds without injunctive relief
28 that future violations are likely to occur.

6. The Court finds that the steps taken by FAIRWAY since the filing of the
instant action are not sufficient to give assurances that future violations will not occur.
The Court acknowledges FAIRWAY has taken steps along the way, but it is subject to
change on a day-to-day basis, as well as the possibility of not being followed if there is
any turnover of personnel charged with preventing any advertisement which violates

1 NAC 482.180(3) from being disseminated. The Court therefore concludes that the
2 Plaintiff has established the need for written policies and procedures at the dealership to
3 attempt to make sure there are no future violations. Without any written policies,
4 practices and procedures being promulgated and enforced by FAIRWAY regarding their
5 advertising practices, with respect to complying with NAC 482.180(3), there is
6 uncertainty that the advertisements disseminated will comply with FAIRWAY's
7 intentions.
8

9 7. Based upon the continued consideration of Defendant FAIRWAY's Motion
10 to Amend Findings and Conclusions, and upon additional reflection with respect to the
11 kind of injunctive relief that would prove effective in this matter, and contrary to what
12 the Court had previously indicated and/or concluded in the injunction filed March 14,
13 2016, the Court has come to the conclusion that a permanent injunction needs to be put
14 into place, in addition to the current mandatory injunction requiring the promulgation
15 and implementation of written policies and procedures for advertising that is going to be
16 disseminated to the community. The Court is of the opinion that the current mandatory
17 injunction does not give adequate or sufficient assurance that this type of advertisement,
18 in violation of NAC 482.180(3), will cease to be disseminated to the community in the
19 future.
20

21 8. The Court may have been short sighted with respect to the issuance of the
22 initial mandatory injunction requiring FAIRWAY to promulgate written policies and
23 procedures for its advertising practices in the future, in that the Court believed that once
24 adequate written policies and procedures were presented to and approved by the Court,
25 the mandatory injunction could be dissolved. It is the Court's conclusion, following
26 further consideration of Defendants post trial motions that this conduct is likely to
27 reoccur, unless there is also a narrowly tailored permanent injunction.
28

1 9. The issuances of the permanent injunction, as set forth herein, is designed
2 to stop the violation of the law, with the least amount of imposition on FAIRWAY.

3 10. The Court has looked at the totality of the circumstances, as required
4 under *Edwards*, including the enumerated factors, In finding the need for FAIRWAY to
5 be directed and required, via a mandatory injunction, to implement written policies,
6 practices and procedure to ensure that future violations of the advertising prohibitions
7 of NAC 482.180(3) do not occur.

8 11. The Court is satisfied that the narrowly tailored and relatively minimal
9 requirements that are set forth in the amended injunction is designed to, and will, in
10 fact, be minimally intrusive and not cause an undue burden upon the defendant's
11 business, while at the same time ensuring compliance with the law involving certain
12 advertising rules that apply to vehicle dealerships.

13 12. In looking at the totality of the circumstances, the Court has also
14 considered whether, by entering an injunction as to one dealer, it puts FAIRWAY at a
15 competitive disadvantage to all the other dealers in town. The Court submits that this
16 injunctive relief does not do so. The Court believes that after what the Court has seen in
17 this lawsuit, that any dealer in town, who is under any "heightened awareness" of NAC
18 482.180(3), and who then violates its advertising prohibitions, is just as likely to wind
19 up where FAIRWAY is today.

20 13. The Court has also considered FAIRWAY's concerns about the Plaintiff,
21 individually, in any way continuing to be involved in overseeing or conferring with
22 respect to the implementation or supervision of the policies and practices FAIRWAY
23 puts into place to comply with this Court's mandatory injunction. It is not the Court's
24 intention to allow Plaintiff any oversight of FAIRWAY's policies and practices, or to have
25 any right to inquire about those policies, other than through his attorney of record in
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27
28

1 any formal objections that are made to the Court after FAIRWAY submits its proposed
2 written policies or practices to the Court for the Court's review and consideration.

3 **14. EDWARDS FACTORS**

4 **A. THE GRAVITY OF THE HARM**

5 The Court finds that the gravity of the harm in this case with respect to the
6 Plaintiff is minimal. Plaintiff is not seeking monetary relief, and did not suffer any
7 monetary damages, so any individual harm he suffered to himself as an individual was
8 from not being able to acquire the advertised financing rate that was advertised in the
9 commercial. Thus, the Court does not place great emphasis on this factor in issuing the
10 mandatory injunction against FAIRWAY as hereinafter set forth. However, it is
11 important to note that the television advertisement at issue was disseminated to the
12 community, and it was clearly intended by FAIRWAY to be aired and viewed by the
13 community at large, not just by the Plaintiff.
14

15 **B. THE EXTENT AND MOTIVATION OF THE VIOLATOR'S**
16 **PARTICIPATION IN THE WRONGFUL CONDUCT**

17 The Court does not find any specific intent on the part of, or on behalf of
18 FAIRWAY to defraud or deceive. No fraudulent intent has been demonstrated to this
19 Court on FAIRWAY's part in using the advertisement at issue.
20

21 However, it is difficult for the Court to find that, once the advertisement came
22 out, FAIRWAY could be unaware that this particular television advertisement, as
23 egregious as it was, was not in compliance with of NAC 482.180(3). This is based upon
24 FAIRWAY's admitted understanding and familiarity with NAC 482.180(3), FAIRWAY's
25 "heightened awareness" of NAC 482.180(3), and the affirmative statutory requirement
26 of NAC 482.110 that FAIRWAY be familiar with the rules involving dealership
27 advertising. Ultimately, responsibility for the advertisement falls squarely on the
28

1 shoulders of FAIRWAY to ensure the advertisement at issue did not violate NAC
2 482.180(3), and it was FAIRWAY who ultimately allowed such an advertisement to have
3 been disseminated.

4 **C. THE ISOLATED OR RECURRING NATURE OF THE**
5 **VIOLATION**

6 The Court finds that there are no other proven violations of NAC 482.180(3) by
7 FAIRWAY within the record. However, there were two prior actions involving the same
8 Plaintiff and similar alleged violation of NAC 482.180(3), which can be gleaned from the
9 Court's reading of the Complaints in the previous two lawsuits. The end result of both
10 previous actions were two previous AODs not to violate the provisions of NAC
11 482.180(3) in the future. While the Court makes no finding as to whether previous
12 AODs were violated, it is FAIRWAY's "heightened awareness" from the two previous
13 lawsuits involving the same statute which prompts slightly heightened requirements.
14 FAIRWAY presented evidence of the role of the advertising agency it hired to produce
15 the advertisement, but in the end, responsibility for approving and reviewing the
16 content of the advertisement before it was disseminated rests squarely on FAIRWAY.
17

18 **D. WHETHER THE VIOLATOR HAS RECOGNIZED**
19 **CULPABILITY AND OR SINCERELY PROMISED THAT FUTURE**
20 **VIOLATIONS WILL NOT OCCUR**

21 FAIRWAY did not agree that it acted with any recognition of its culpability at the
22 time it disseminated the advertisement, because it believed when the advertisement was
23 created that it complied with NAC 482.180(3). The Court has found that the
24 advertisement did not comply with NAC 482.180(3), and Fairway has shown that it
25 accepts responsibility for its conduct and for its advertisements. While FAIRWAY has
26 put into place some measures and actions to show that they are making some efforts to
27 prevent future violations of NAC 482.180(3), the Court finds that there is not enough in
28

1 that promise, or in those subsequent efforts to increase assurance that violations of NAC
2 482.180(3) will not reoccur. FAIRWAY needs written procedures in place and to make
3 sure that no advertisement goes out without the owner of FAIRWAY or a designated
4 representative reviewing the final copy or video and approving it, and FAIRWAY must
5 be required to review every advertisement it intends to disseminate to the community if
6 the advertisement falls within the ambit or purview of NAC 482.180(3).
7

8 **THEREFORE, IT IS HEREBY ORDERED,** that Defendant FAIRWAY
9 CHEVROLET COMPANY is hereby mandatorily enjoined. FAIRWAY is hereby directed
10 to promulgate and implement forthwith written policies, practices and/or procedures to
11 ensure violations of the advertising prohibitions set forth in NAC 482.180(3) do not
12 occur in the future. FAIRWAY has the freedom and discretion to promulgate and
13 implement any written policies and/or procedures it deems helpful or necessary in
14 conducting its normal and ordinary business affairs to effectuate this directive.
15

16 However, while the Court gives full discretion to FAIRWAY to promulgate, and
17 implement such written policies and/or procedures, the Court will require FAIRWAY to
18 adopt and implement a specific written policy, practice and/or procedure mandating
19 that FAIRWAY designate a person or persons, knowledgeable with respect to the
20 advertising prohibitions of NAC 482.180(3), to always review the final iteration or
21 presentation of any advertisement subject to NAC 482.180(3), before any such
22 advertisement is authorized for dissemination to the community by FAIRWAY. These
23 written policies apply to all forms of advertising media, including, but not limited to
24 radio, television, internet and print advertising.
25



26 **IT IS FURTHER HEREBY ORDERED,** that Defendant FAIRWAY
27 CHEVROLET COMPANY is hereby permanently enjoined, and will be required to have
28 its owner, or a designated employee, review the final version of every advertisement, in

1 any form of media, that falls within the ambit or purview of NAC 482.180(3), before any
2 such advertisement is authorized for dissemination to the community by FAIRWAY.


3 Upon FAIRWAY submitting to the Court for its review the written policies and
4 procedures it has promulgated, as attested to by its President, Greg Heinrich, that
5 FAIRWAY has implemented such written policies, practices and procedures; and upon
6 the Court being satisfied with said written policies, practices and procedures, the Court
7 will entertain a motion to dissolve the mandatory injunction relating to the
8 implementation of written policies and procedures involving advertising practices of
9 FAIRWAY. The dissolving of the mandatory injunction described in this paragraph
10 shall not have any effect on the continuance of the permanent injunction described in
11 the preceding paragraph.
12

13 **IT IS FURTHER ORDERED** that any other injunctive relief requested in
14 Plaintiff's Complaint is hereby denied for the reasons set forth herein.
15

16 Dated this 12 day of Jan, 2017

17 By 
18  Judge of the District Court

19 Submitted by:

20 
21 George O. West III
22 Law Offices of George O. West
23 **Attorney for Plaintiff**
24 **ALLEN KELLEY**
25
26
27
28

1
2 **PROOF OF SERVICE**
3

4 On January 18, 2017, I served the forgoing document(s) described as 1) **NOTICE OF**
5 **ENTRY OF ORDERS** on interested party(ies) in this action by placing a true and
6 correct copy and/or original thereof enclosed in a sealed envelope addressed as follows :

7 **L. CHRISTOPHER ROSE, ESQ**

8 Jolly, Urga et al.
9 330 South Rampart, Suite 380
10 Las Vegas, NV 89145
11 Chris Rose lcr@juww.com

12 ☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection
13 and processing correspondence for mailing. Under that practice it would be deposited
14 with the U.S. Postal service on that same day with first class postage thereon fully
15 prepaid at Las Vegas, NV in the ordinary course of business.

16 ☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office of the
17 addressee.

18 ☒ **(BY EMAIL SERVICE)** (Wiznet/ Reg. Email) Pursuant to NRCP, Rule 5(b)(2)(D),
19 I hereby certify that service of the aforementioned document(s) via email to pursuant to
20 EDCR Rule 7.26(a), as set forth herein.

21 ☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify
22 that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule
23 7.26(a), as set forth herein.

24 Executed on this 18th day of January 2017

25 /s/ George O. West III
26 GEORGE O. WEST III
27
28

ORIGINAL

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Allen D. Kelley

CLERK OF THE COURT

JUDGE

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Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiff,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 The above captioned cause having being tried as a bench trial, on August 13,
2 2016, the Court concluded the first (liability) phase of the bifurcated trial in the above
3 captioned matter. At the conclusion of the first phase, the Court found Defendant
4 FAIRWAY CHEVROLET COMPANY ("FAIRWAY") liable for engaging in statutory
5 consumer fraud and deceptive trade practices pursuant to NRS 41.600(2)(d) and (e).

6 On December 11, 2016, the Court heard and concluded the second (remedy)
7 phase in the above captioned matter. The Court having previously found Defendant
8 FAIRWAY liable for engaging in statutory consumer fraud and deceptive trade practices
9 in the first phase of the trial, in conjunction with taking into account the totality of the
10 circumstances and the enumerated factors set forth as set forth in *Edwards v.*
11 *Emperor's Garden Rest.*, 122 Nev. 317, 325, 130 P.3d 1280, 1285 (2006), and having
12 been fully apprised of all the arguments and the facts presented at trial, and after ruling
13 on several post trial motions, including but not limited to Defendant's Motion to Amend
14 Judgment and Findings of Fact and Conclusions of Law, and Plaintiff's Motion for
15 Award of Statutory Attorney's Fees and Costs, the Court enters judgment as follows :

16 **IT IS HEREBY DECREED, ADJUDGED AND ADJUDICATED,** that
17 Defendant FAIRWAY is hereby mandatorily enjoined. FAIRWAY is hereby directed to
18 promulgate and implement forthwith written policies, practices and/or procedures to
19 ensure violations of the advertising prohibitions set forth in *Nevada Administrative*
20 *Code* ("NAC") 482.180(3) do not occur in the future. FAIRWAY has the freedom and
21 discretion to promulgate and implement any written policies and/or procedures it
22 deems helpful or necessary in conducting its normal and ordinary business affairs to
23 effectuate this directive.

24 However, while the Court gives full discretion to FAIRWAY to promulgate, and
25 implement such written polices and/or procedures, the Court will require FAIRWAY to
26 adopt and implement a specific written policy, practice and/or procedure mandating
27 that FAIRWAY designate a person or persons, knowledgeable with respect to the
28 advertising prohibitions of NAC 482.180(3), to always review the final iteration or
presentation of any advertisement subject to NAC 482.180(3), before any such
advertisement is authorized for dissemination to the community by FAIRWAY. These
written policies apply to all forms of advertising media, including, but not limited to
radio, television, internet and print advertising.

1 **IT IS HEREBY FURTHER DECREED, ADJUDGED AND**
2 **ADJUDICATED**, that Defendant FAIRWAY is hereby permanently enjoined.
3 FAIRWAY will be required to have its owner, or a designated employee, review the final
4 version of every advertisement, in any form of media, that falls within the ambit or
5 purview of NAC 482.180(3), before any such advertisement is authorized for
6 dissemination to the community by FAIRWAY.

7 Upon FAIRWAY submitting to the Court for its review the written policies and
8 procedures it has promulgated, as attested to by its President, Greg Heinrich, that
9 FAIRWAY has implemented such written policies, practices and procedures; and upon
10 the Court being satisfied with said written policies, practices and procedures, the Court
11 will entertain a motion to dissolve the mandatory injunction relating to the
12 implementation of written policies and procedures involving advertising practices of
13 FAIRWAY. The dissolving of the mandatory injunction described in this paragraph
14 shall not have any effect on the continuance of the permanent injunction as described
15 herein.

16 **FINALLY, IT IS HEREBY FURTHER DECREED, ADJUDGED AND**
17 **ADJUDICATED**, that Plaintiff and his counsel shall be awarded statutory attorney's
18 fees in the amount of \$ 385,021.25, and costs in the amount of \$ 11,567.40, for a
19 total award of \$ 396,588.65. Said amount shall bear post judgment interest at
20 the legal rate per statute. The Court has considered and analyzed all the factors set forth
21 in *Brunzell* in making this attorney's fees award.

22 Dated this 19 day of Jan, 2017

23 Submitted by :

24 _____
25 George O. West III
26 Law Offices of George O. West
27 Consumer Attorneys Against Auto Fraud
28 **Attorney for Plaintiff**
 ALLEN KELLEY

By 
Judge of the District Court

1 **PROOF OF SERVICE**

2 On January 24, 2017, I served the forgoing document(s) described as 1) **NOTICE OF**
3 **ENTRY OF JUDGMENT** on interested party(ies) in this action by placing a true and
4 correct copy and/or original thereof enclosed in a sealed envelope addressed as follows :

5 **L. CHRISTOPHER ROSE, ESQ**

6 Jolly, Urga et al.

7 330 South Rampart, Suite 380

8 Las Vegas, NV 89145

9 Chris Rose lcr@juwww.com

10 ☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection
11 and processing correspondence for mailing. Under that practice it would be deposited
12 with the U.S. Postal service on that same day with first class postage thereon fully
13 prepaid at Las Vegas, NV in the ordinary course of business.

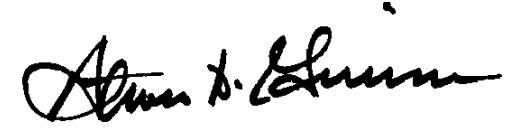
14 ☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office of the
15 addressee.

16 ☒ **(BY EMAIL SERVICE)** (Wiznet/ Reg. Email) Pursuant to NRCP, Rule 5(b)(2)(D),
17 I hereby certify that service of the aforementioned document(s) via email to pursuant to
18 EDCR Rule 7.26(a), as set forth herein.

19 ☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify
20 that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule
21 7.26(a), as set forth herein.

22 Executed on this 24th day of January 2017

23 /s/ George O. West III
24 GEORGE O. WEST III
25
26
27
28



CLERK OF THE COURT

NJUD

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive., Suite 150
Las Vegas, NV 89145
(702) 318-6570
(702) 664-0459
Email : gowesq@cox.net
Website : www.caaaf.net

Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALLEN KELLEY, individually, and on)
behalf of all others similarly situated)

CASE NO : A-13-674480-C
DEPT : I

Plaintiffs,

NOTICE OF ENTRY OF JUDGMENT

v

FAIRWAY CHEVROLET COMPANY, a)
Nevada Corporation, and DOES 1 through)
100, Inclusive,)

Defendants,

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD :

PLEASE TAKE NOTICE, that the final judgment and permanent injunction was entered on January 23, 2017. A copy of said final judgment is attached to this notice as Exhibit 1.

Dated this 23rd day of January, 2017

By /s/ George O. West III
George O. West III
Attorney for Plaintiff
ALLEN KELLEY

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EXHIBIT 1

ORIGINAL

Electronically Filed
01/23/2017 05:04:07 PM

Allen D. Kelley

CLERK OF THE COURT

JUDGE

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive., Suite 150
Las Vegas, NV 89145
(702) 318-6570
(702) 664-0459
Email : gowesq@cox.net
Website : www.caaaf.net

CRAIG B. FRIEDBERG [SBN 4606]
Law Offices of Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
Ph: (702) 435-7968/Fax: (702) 946-0887
Email: atcbf@cox.net
Website: www.consumerlaw.justia.net

Attorney for Plaintiff
**ALLEN KELLEY, individually, and
on behalf of all others similarly situated**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALLEN KELLEY, individually, and on
behalf of all others similarly situated

Plaintiff,

v

FAIRWAY CHEVROLET COMPANY, a
Nevada Corporation, and DOES 1 through
100, Inclusive,

Defendants,

CASE NO : A-13-674480-C
DEPT : I

**FINAL JUDGMENT AND
PERMANENT INJUNCTION**

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 The above captioned cause having being tried as a bench trial, on August 13,
2 2016, the Court concluded the first (liability) phase of the bifurcated trial in the above
3 captioned matter. At the conclusion of the first phase, the Court found Defendant
4 FAIRWAY CHEVROLET COMPANY ("FAIRWAY") liable for engaging in statutory
5 consumer fraud and deceptive trade practices pursuant to NRS 41.600(2)(d) and (e).

6 On December 11, 2016, the Court heard and concluded the second (remedy)
7 phase in the above captioned matter. The Court having previously found Defendant
8 FAIRWAY liable for engaging in statutory consumer fraud and deceptive trade practices
9 in the first phase of the trial, in conjunction with taking into account the totality of the
10 circumstances and the enumerated factors set forth as set forth in *Edwards v.*
11 *Emperor's Garden Rest.*, 122 Nev. 317, 325, 130 P.3d 1280, 1285 (2006), and having
12 been fully apprised of all the arguments and the facts presented at trial, and after ruling
13 on several post trial motions, including but not limited to Defendant's Motion to Amend
14 Judgment and Findings of Fact and Conclusions of Law, and Plaintiff's Motion for
15 Award of Statutory Attorney's Fees and Costs, the Court enters judgment as follows :

16 **IT IS HEREBY DECREED, ADJUDGED AND ADJUDICATED,** that
17 Defendant FAIRWAY is hereby mandatorily enjoined. FAIRWAY is hereby directed to
18 promulgate and implement forthwith written policies, practices and/or procedures to
19 ensure violations of the advertising prohibitions set forth in *Nevada Administrative*
20 *Code* ("NAC") 482.180(3) do not occur in the future. FAIRWAY has the freedom and
21 discretion to promulgate and implement any written policies and/or procedures it
22 deems helpful or necessary in conducting its normal and ordinary business affairs to
23 effectuate this directive.

24 However, while the Court gives full discretion to FAIRWAY to promulgate, and
25 implement such written polices and/or procedures, the Court will require FAIRWAY to
26 adopt and implement a specific written policy, practice and/or procedure mandating
27 that FAIRWAY designate a person or persons, knowledgeable with respect to the
28 advertising prohibitions of NAC 482.180(3), to always review the final iteration or
presentation of any advertisement subject to NAC 482.180(3), before any such
advertisement is authorized for dissemination to the community by FAIRWAY. These
written policies apply to all forms of advertising media, including, but not limited to
radio, television, internet and print advertising.

1 **IT IS HEREBY FURTHER DECREED, ADJUDGED AND**
2 **ADJUDICATED**, that Defendant FAIRWAY is hereby permanently enjoined.
3 FAIRWAY will be required to have its owner, or a designated employee, review the final
4 version of every advertisement, in any form of media, that falls within the ambit or
5 purview of NAC 482.180(3), before any such advertisement is authorized for
6 dissemination to the community by FAIRWAY.

7 Upon FAIRWAY submitting to the Court for its review the written policies and
8 procedures it has promulgated, as attested to by its President, Greg Heinrich, that
9 FAIRWAY has implemented such written policies, practices and procedures; and upon
10 the Court being satisfied with said written policies, practices and procedures, the Court
11 will entertain a motion to dissolve the mandatory injunction relating to the
12 implementation of written policies and procedures involving advertising practices of
13 FAIRWAY. The dissolving of the mandatory injunction described in this paragraph
14 shall not have any effect on the continuance of the permanent injunction as described
15 herein.

16 **FINALLY, IT IS HEREBY FURTHER DECREED, ADJUDGED AND**
17 **ADJUDICATED**, that Plaintiff and his counsel shall be awarded statutory attorney's
18 fees in the amount of \$ 385,021.25, and costs in the amount of \$ 11,567.40, for a
19 total award of \$ 396,588.65. Said amount shall bear post judgment interest at
20 the legal rate per statute. The Court has considered and analyzed all the factors set forth
21 in *Brunzell* in making this attorney's fees award.

22 Dated this 19 day of Jan, 2017

23 Submitted by :

24 _____
25 George O. West III
26 Law Offices of George O. West
27 Consumer Attorneys Against Auto Fraud
28 **Attorney for Plaintiff**
 ALLEN KELLEY

By 
Judge of the District Court

1 **PROOF OF SERVICE**

2 On January 24, 2017, I served the forgoing document(s) described as 1) **NOTICE OF**
3 **ENTRY OF JUDGMENT** on interested party(ies) in this action by placing a true and
4 correct copy and/or original thereof enclosed in a sealed envelope addressed as follows :

5 **L. CHRISTOPHER ROSE, ESQ**

6 Jolly, Urga et al.

7 330 South Rampart, Suite 380

8 Las Vegas, NV 89145

9 Chris Rose lcr@juwww.com

10 ☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection
11 and processing correspondence for mailing. Under that practice it would be deposited
12 with the U.S. Postal service on that same day with first class postage thereon fully
13 prepaid at Las Vegas, NV in the ordinary course of business.

14 ☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office of the
15 addressee.

16 ☒ **(BY EMAIL SERVICE)** (Wiznet/ Reg. Email) Pursuant to NRCP, Rule 5(b)(2)(D),
17 I hereby certify that service of the aforementioned document(s) via email to pursuant to
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19 ☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify
20 that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule
21 7.26(a), as set forth herein.

22 Executed on this 24th day of January 2017

23 /s/ George O. West III
24 GEORGE O. WEST III
25
26
27
28


CLERK OF THE COURT

1 **NOTC**
2 WILLIAM R. URG
3 Nevada Bar No. 1195
4 wru@juww.com
5 L. CHRISTOPHER ROSE, ESQ.
6 Nevada Bar No. 7500
7 lcr@juww.com
8 JOLLEY URG WOODBURY & LITTLE
9 330 S. Rampart Boulevard, Suite 380
10 Las Vegas, Nevada 89145
11 (702) 699-7500 Telephone
12 (702) 699-7555 Facsimile
13 *Attorneys for Defendant Fairway Chevrolet Company*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 ALLEN KELLEY, individually, and on) Case No. A-13-674480-C
12 behalf of all others similarly situated,) Dept No. I

13 Plaintiff,

14 vs.

15 FAIRWAY CHEVROLET COMPANY, a)
16 Nevada corporation, and DOES 1-100,)
17 inclusive,)

18 Defendants.
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**NOTICE OF POSTING OF CASH
DEPOSIT**

JOLLEY URG WOODBURY & LITTLE
330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada 89145
Telephone: (702) 699-7500 Fax: (702) 699-7555

NOTICE IS HEREBY GIVEN that on the 1st day of February, 2017, Defendant Fairway Chevrolet Company, pursuant to NRS 20.030¹ and the Court's order filed January 18, 2017 setting the amount of the bond/security pending appeal, deposited the sum of \$450,000.00 with the Clerk of the Court for the Eighth Judicial District. The receipt for the deposit is attached.

DATED this 1st day of February, 2017.

JOLLEY URGAL WOODBURY & LITTLE

/s/ L. Christopher Rose

WILLIAM R. URGAL, ESQ., #1195

L. CHRISTOPHER ROSE, ESQ., #7500

330 S. Rampart Boulevard, Suite 380

Las Vegas, Nevada 89145

Attorneys for Defendant

¹ NRS 20.030 states, in relevant part, "A party may, also, in lieu of a bond or undertaking required by titles 2 to 6, inclusive, of NRS, deposit with the court, or clerk thereof, cash in the amount of the bond or undertaking required."

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Jolley Urga Woodbury & Little, 330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada, 89145.

On this day I served the **NOTICE OF POSTING OF CASH DEPOSIT** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

George O. West, III, Esq.
LAW OFFICES OF GEORGE O. WEST, III
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, Nevada 89121

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on February 2nd, 2017, at Las Vegas, Nevada.

/s/ Kelly McGee

An employee of JOLLEY URGAL WOODBURY &
LITTLE

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

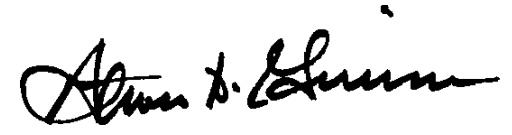
Payor
Fairway Chevrolet Company

Receipt No.
2017-10461-CCCLK

Transaction Date
02/1/2017

Description	Amount Paid
On Behalf Of Fairway Chevrolet Company A-13-674480-C Allen Kelley, Plaintiff(s) vs. Fairway Chevrolet Company, Defendant(s) Supersedeas Bond	
Supersedeas Bond	450,000.00
SUBTOTAL	450,000.00
PAYMENT TOTAL	450,000.00
Check (Ref #258067) Tendered	450,000.00
Total Tendered	450,000.00
Change	0.00
02/01/2017 04:18 PM	Cashier Station AIKO
	Audit 35752283

OFFICIAL RECEIPT


CLERK OF THE COURT

NOTC
WILLIAM R. URG
Nevada Bar No. 1195
wru@juww.com
L. CHRISTOPHER ROSE, ESQ.
Nevada Bar No. 7500
lcr@juww.com
JOLLEY URG WOODBURY & LITTLE
330 S. Rampart Boulevard, Suite 380
Las Vegas, Nevada 89145
(702) 699-7500 Telephone
(702) 699-7555 Facsimile
Attorneys for Defendant Fairway Chevrolet Company

DISTRICT COURT
CLARK COUNTY, NEVADA

ALLEN KELLEY, individually, and on)	Case No. A-13-674480-C
behalf of all others similarly situated,)	Dept No. I
Plaintiff,)	NOTICE OF APPEAL
vs.)	
FAIRWAY CHEVROLET COMPANY, a)	
Nevada corporation, and DOES 1-100,)	
inclusive,)	
Defendants.)	

JOLLEY URG WOODBURY & LITTLE
330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada 89145
Telephone: (702) 699-7500 Fax: (702) 699-7555

1 Notice is hereby given that Defendant Fairway Chevrolet Company appeals to the
2 Supreme Court of Nevada, generally and pursuant to Nevada Rule of Appellate Procedure
3 3A(b)(1) and (3), from the following judgments and orders of the District Court:

- 4 • Final Judgment and Permanent Injunction filed January 23, 2017;
- 5 • Amended Findings of Fact and Conclusions of Law on Second Remedy Phase of Trial,
6 and; Amended Mandatory Permanent Injunction filed January 18, 2017;
- 7 • Order Granting Plaintiff's Motion for Statutory Award of Attorneys' Fees and Costs filed
8 January 18, 2017;
- 9 • Findings of Fact and Conclusions of Law on Remedy (Second) Phase of Bifurcated Trial
10 and Mandatory Injunction filed March 14, 2016;
- 11 • Findings of Fact, Conclusions of Law and Order on Liability (First) Phase of Trial filed
12 October 2, 2015; and,
- 13 • All other adverse orders and rulings relating to and/or affecting the foregoing judgments
14 and orders.

15 DATED this 17th day of February, 2017.

16 JOLLEY URG A WOODBURY & LITTLE

17 /s/ L. Christopher Rose
18 WILLIAM R. URG A, ESQ., #1195
19 L. CHRISTOPHER ROSE, ESQ., #7500
20 330 S. Rampart Boulevard, Suite 380
21 Las Vegas, Nevada 89145
22 *Attorneys for Defendant*
23 *Fairway Chevrolet Company*
24
25
26
27
28

JOLLEY URGAL WOODBURY & LITTLE
330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada 89145
Telephone: (702) 699-7500 Fax: (702) 699-7555

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Jolley Urga Woodbury & Little, 330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada, 89145.

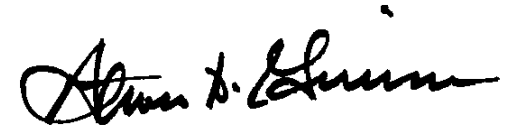
On this day I served the **NOTICE OF APPEAL** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

George O. West, III, Esq.	Craig B. Friedberg, Esq.
LAW OFFICES OF GEORGE O. WEST, III	4760 S. Pecos Road, Suite 103
10161 Park Run Drive, Suite 150	Las Vegas, Nevada 89121
Las Vegas, Nevada 89145	

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on February 17th, 2017, at Las Vegas, Nevada.

/s/ Kelly McGee

An employee of JOLLEY URGAL WOODBURY & LITTLE


CLERK OF THE COURT

1 **NOTC**
2 WILLIAM R. URG
3 Nevada Bar No. 1195
4 wru@juwww.com
5 L. CHRISTOPHER ROSE, ESQ.
6 Nevada Bar No. 7500
7 lcr@juwww.com
8 JOLLEY URG
9 330 S. Rampart Boulevard, Suite 380
10 Las Vegas, Nevada 89145
11 (702) 699-7500 Telephone
12 (702) 699-7555 Facsimile
13 *Attorneys for Defendant Fairway Chevrolet Company*

9 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
10 **OF THE STATE OF NEVADA IN AND FOR**
11 **THE COUNTY OF CLARK**

11 ALLEN KELLEY, individually, and on) Case No. A-13-674480-C
12 behalf of all others similarly situated,) Dept No. I
13 Plaintiff,) **CASE APPEAL STATEMENT**
14 vs.)
15 FAIRWAY CHEVROLET COMPANY, a)
16 Nevada corporation, and DOES 1-100,)
17 inclusive,)
18 Defendants.)

1. Name of appellant filing this case appeal statement:

Fairway Chevrolet Company
2. Identify the judge issuing the decision, judgment, or order appealed from:

Judge Kenneth C. Cory, Eighth Judicial District Court
3. Identify each appellant and the name and address of counsel for each appellant:

Fairway Chevrolet Company

William R. Urga, Esq.
wru@juwww.com
L. Christopher Rose, Esq.
lcr@juwww.com
Jolley Urga Woodbury & Little
330 S. Rampart Boulevard, Suite 380
Las Vegas, Nevada 89145
(702) 699-7500
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent’s appellate counsel is unknown, indicate as much and provide the name and address of that respondent’s trial counsel):

Allen Kelley

George O. West, III, Esq. gowesq@cox.net Law Offices of George O. West, III 10161 Park Run Drive, Suite 150 Las Vegas, Nevada 89145 (702) 318-6570	Craig B. Friedberg, Esq. attcbf@cox.net Law Offices of Craig B. Friedberg 4760 S. Pecos Road, Suite 103 Las Vegas, Nevada 89121 (702) 435-7968
---	---
5. Indicate whether any attorney identified above in response to question 3 of 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

No.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Fairway Chevrolet Company was represented by retained counsel in the district court.

- 1 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
2 Fairway Chevrolet Company is represented by retained counsel on appeal.
- 3 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
4 of entry of the district court order granting such leave:
5 No.
- 6 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
7 indictment, information or petition was filed):
8 Plaintiff/Respondent Allen Kelley filed his complaint on January 4, 2013.
- 9 10. Provide a brief description of the nature of the action and result in district court, including
10 the type of judgment or order being appealed and the relief granted by the district court:
11 Plaintiff/Respondent Allen Kelley (“Kelley”) filed this lawsuit alleging he was a victim
12 of consumer fraud based on a television advertisement of Defendant/Appellant Fairway
13 Chevrolet Company (“Fairway”). Kelley filed the lawsuit as a class action, but after the district
14 court denied class certification this matter proceeded with Kelley as plaintiff individually. Kelly
15 did not suffer or seek to recover monetary damages, but the district court entered a mandatory,
16 permanent injunction against Fairway and awarded Kelley attorneys’ fees and costs. The Final
17 Judgment was entered January 23, 2017, and notice of entry of the Final Judgment was given
18 January 24, 2017.
- 19 11. Indicate whether the case has previously been the subject of an appeal to or original writ
20 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
21 number of the prior proceeding:
22 No.
- 23 12. Indicate whether this appeal involves child custody or visitation:
24 No.
- 25
26 ///
27 ///
28

JOLLEY URG A WOODBURY & LITTLE
330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada 89145
Telephone: (702) 699-7500 Fax: (702) 699-7555

1 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:
2 Fairway Chevrolet Company does not believe this appeal involves the possibility of
3 settlement.

4 DATED this 17th day of February, 2017.

5 JOLLEY URG A WOODBURY & LITTLE
6
7 /s/ L. Christopher Rose
8 WILLIAM R. URG A, ESQ., #1195
9 L. CHRISTOPHER ROSE, ESQ., #7500
10 330 S. Rampart Boulevard, Suite 380
11 Las Vegas, Nevada 89145
12 *Attorneys for Defendant*
13 *Fairway Chevrolet Company*

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that I am employed in the County of Clark, State of Nevada, am over the
16 age of 18 years and not a party to this action. My business address is Jolley Urga Woodbury &
17 Little, 330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada, 89145.

18 On this day I served the **CASE APPEAL STATEMENT** in this action or proceeding
19 electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will
20 cause this document to be served upon the following counsel of record:

21 George O. West, III, Esq. Craig B. Friedberg, Esq.
22 LAW OFFICES OF GEORGE O. WEST, III 4760 S. Pecos Road, Suite 103
23 10161 Park Run Drive, Suite 150 Las Vegas, Nevada 89121
24 Las Vegas, Nevada 89145

25 I certify under penalty of perjury that the foregoing is true and correct, and that I
26 executed this Certificate of Service on February 17th, 2017, at Las Vegas, Nevada.

27 /s/ Kelly McGee
28 An employee of Jolley Urga Woodbury & Little