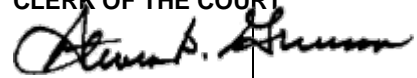


Docketing Statement
EXHIBIT 6



NEO
James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING SUPPLYNET, a
Michigan Corporation; and DOES 1
through 5 and ROE entities 6 through 10;

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON
LAW; DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**NOTICE OF ENTRY OF DECISION
AND ORDER ON SPECIAL
MOTION TO DISMISS ANTI-
SLAPP**

Date of Hearing: N/A

Time of Hearing: N/A

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A

1 PLEASE TAKE NOTICE, a Decision and Order on Special Motion to
2 Dismiss Anti-Slapp was entered on the docket on the 11th day of October 2018. A
3 true and correct copy of the file-stamped Decision and Order is attached hereto.

4 DATED this 9th day of January 2019.

6 /s/ James R. Christensen

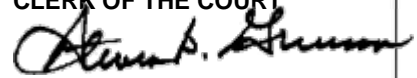
7 James R. Christensen Esq.
8 Nevada Bar No. 3861
9 JAMES R. CHRISTENSEN PC
10 601 S. 6th Street
11 Las Vegas NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

12 **CERTIFICATE OF SERVICE**

13 I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF
14 DECISION AND ORDER was made by electronic service (via Odyssey) this 9th
15 day of January, 2019, to all parties currently shown on the Court's E-Service List.

17 /s/ Dawn Christensen

18 an employee of
19 JAMES R. CHRISTENSEN, ESQ
20
21
22
23
24
25



ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan Corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

Defendants.

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

**DECISION AND ORDER ON SPECIAL
MOTION TO DISMISS ANTI-SLAPP**

DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**
7
8

9 **FINDINGS OF FACT**

10 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
11 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
12 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
13 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
14 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
15 Simon and his wife were close family friends with Brian and Angela Edgeworth.
16

17 2. The case involved a complex products liability issue.

18 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
19 suffered a flood. The house was still under construction and the flood caused a delay. The
20 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
21 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
22 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
23 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
24 Viking, et al., also denied any wrongdoing.
25

26 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
27
28

1 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
2 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
3 resolve. Since the matter was not resolved, a lawsuit had to be filed.

4 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
5 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
6 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
7 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
8 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.
9

10 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
11 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
12 had some discussion about payments and financials. No express fee agreement was reached during
13 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
14

15 It reads as follows:

16 We never really had a structured discussion about how this might be done.
17 I am more that happy to keep paying hourly but if we are going for punitive
18 we should probably explore a hybrid of hourly on the claim and then some
19 other structure that incents both of us to win an go after the appeal that these
20 scumbags will file etc.

21 Obviously that could not have been doen earlier snce who would have thought
22 this case would meet the hurdle of punitives at the start.

23 I could also swing hourly for the whole case (unless I am off what this is
24 going to cost). I would likely borrow another \$450K from Margaret in 250
25 and 200 increments and then either I could use one of the house sales for cash
26 or if things get really bad, I still have a couple million in bitcoin I could sell.

27 I doubt we will get Kinsale to settle for enough to really finance this since I
28 would have to pay the first \$750,000 or so back to Colin and Margaret and
why would Kinsale settle for \$1MM when their exposure is only \$1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.

1 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
2 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
3 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

4 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
5 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
6 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
7 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
8 bills indicated an hourly rate of \$550.00 per hour.

10 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
11 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
12 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
13 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
14 paid by the Edgeworths on August 16, 2017.

16 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
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18 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
19 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
20 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
21 25, 2017.

23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
24 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 costs to Simon. They made Simon aware of this fact.

2 12. Between June 2016 and December 2017, there was a tremendous amount of work
3 done in the litigation of this case. There were several motions and oppositions filed, several
4 depositions taken, and several hearings held in the case.

5 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against
6 the Viking Corporation ("Viking").

7
8 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
9 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
10 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
11 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

12 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
13 come to his office to discuss the litigation.

14
15 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
16 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
17 Exhibit 4).

18 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
19 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
20 communications with Mr. Simon.

21
22 18. On the morning of November 30, 2017, Simon received a letter advising him that the
23 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
24 et.al. The letter read as follows:

25 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
26 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
27 with the Viking entities, et.al. I'm instructing you to cooperate with them in
28 every regard concerning the litigation and any settlement. I'm also instructing

1 you to give them complete access to the file and allow them to review
2 whatever documents they request to review. Finally, I direct you to allow
3 them to participate without limitation in any proceeding concerning our case,
4 whether it be at depositions, court hearings, discussions, etc.”

(Def. Exhibit 43).

5 19. On the same morning, Simon received, through the Vannah Law Firm, the
6 Edgeworth’s consent to settle their claims against Lange Plumbing LLC for \$25,000.

7 20. Also on this date, the Law Office of Danny Simon filed an attorney’s lien for the
8 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
9 Law Office filed an amended attorney’s lien for the sum of \$2,345,450, less payments made in the
10 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
11 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.
12

13 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
14 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
15 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
16 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
17 due to the Law Office of Danny Simon.
18

19 22. The parties agree that an express written contract was never formed.

20 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
21 Lange Plumbing LLC for \$100,000.

22 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
23 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
24 Simon, a Professional Corporation, case number A-18-767242-C.
25

26 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
27 Lien with an attached invoice for legal services rendered. The amount of the invoice was
28

1 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

2 **CONCLUSION OF LAW**

3
4 The Court has adjudicated all remaining issues in the Decision and Order on Motion to
5 Dismiss NRCP 12(b)(5), and the Decision and Order on Motion to Adjudicate Lien; leaving no
6 remaining issues.

7
8 **CONCLUSION**

9 The Court finds that the Special Motion to Dismiss Anti-Slapp is MOOT as all remaining
10 issues have already been resolved with the Decision and Order on Motion to Dismiss NRCP 12(b)
11 and Decision and Order on Motion to Adjudicate Lien.

12
13
14 **ORDER**

15 It is hereby ordered, adjudged, and decreed, that the Special Motion to Dismiss Anti-Slapp is
16 MOOT.

17
18
19 IT IS SO ORDERED this 10th day of October, 2018.


20
21 
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

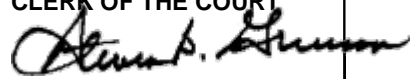
Electronically served to:

Peter S. Christiansen, Esq.
James Christensen, Esq.
Robert Vannah, Esq.
John Greene, Esq.



Tess Driver
Judicial Executive Assistant
Department 10

Docketing Statement
EXHIBIT 5



JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
VANNAH & VANNAH
400 S. Seventh Street, 4th Floor
Las Vegas, Nevada 89101
jgreene@vannahlaw.com
Telephone: (702) 369-4161
Facsimile: (702) 369-0104
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

--o0o--

EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan corporation; and
DOES I through V and ROE CORPORATIONS
VI through X, inclusive,

Defendants.

CASE NO.: A-16-738444-C
DEPT. NO.: X

NOTICE OF ENTRY OF ORDERS

EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORPORATION; DOES I through X, inclusive,
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

CASE NO.: A-18-767242-C
DEPT. NO.: XXIX

PLEASE TAKE NOTICE that the following orders were entered on the dates listed below and attached as indicated:

1. November 19, 2018 Decision and Order Regarding Motion to Adjudicate Lien attached hereto (Exhibit 1)
2. November 19, 2018 Decision and Order Regarding Motion to Dismiss NRCP 12(B)(5) attached hereto as (Exhibit 2)

DATED this 27 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that the following parties are to be served as follows:

Electronically:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.
CHRISTIENSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, Nevada 89101

Traditional Manner:
None

DATED this 27 day of December, 2018.

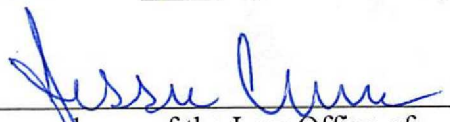

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1

1 **ORD**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

**DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN**

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

22
23 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
28

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
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12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
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18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
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20 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
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22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
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20 or if things get really bad, I still have a couple million in bitcoin I could sell.
21 I doubt we will get Kinsale to settle for enough to really finance this since I
22 would have to pay the first \$750,000 or so back to Colin and Margaret and
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24 (Def. Exhibit 27).

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26 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
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28 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per

1 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

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6 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
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9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
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13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
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15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
16 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work
20 done in the litigation of this case. There were several motions and oppositions filed, several
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
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5 come to his office to discuss the litigation.

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7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
14 et.al. The letter read as follows:

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16 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
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20 you to give them complete access to the file and allow them to review
whatever documents they request to review. Finally, I direct you to allow
them to participate without limitation in any proceeding concerning our case,
whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
28

1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

16 17 **CONCLUSION OF LAW**

18 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The** 19 **Court**

20 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
21 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
22 738444-C under NRS 18.015.

23 NRS 18.015(1)(a) states:

24 1. An attorney at law shall have a lien:

25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
26 damages, which has been placed in the attorney's hands by a client for suit or
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

1 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
2 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
3 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
4 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
5 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
6 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
7 is enforceable in form.

8 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
9 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
10 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
11 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
12 under NRS 18.015, thus the Court must adjudicate the lien.

13 14 *Fee Agreement*

15 It is undisputed that no express written fee agreement was formed. The Court finds that there
16 was no express oral fee agreement formed between the parties. An express oral agreement is
17 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469
18 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
19 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
20 payment terms are essential to the formation of an express oral contract to provide legal services on
21 an hourly basis.

22 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
23 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
24 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
25 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
26 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
27 22, 2017 email, titled "Contingency," he writes:
28

1 “We never really had a structured discussion about how this might be done. I
2 am more than happy to keep paying hourly but if we are going for punitive we
3 should probably explore a hybrid of hourly on the claim and then some other
4 structure that incents both of us to win and go after the appeal that these
5 scumbags will file etc. Obviously that could not have been done earlier since
6 who would have thought this case would meet the hurdle of punitives at the
7 start. I could also swing hourly for the whole case (unless I am off what this
8 is going to cost). I would likely borrow another \$450K from Margaret in 250
9 and 200 increments and then either I could use one of the house sales for cash
10 or if things get really bad, I still have a couple million in bitcoin I could sell. I
11 doubt we will get Kinsale to settle for enough to really finance this since I
12 would have to pay the first \$750,000 or so back to Colin and Margaret and
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?”

14 (Def. Exhibit 27).

15 It is undisputed that when the flood issue arose, all parties were under the impression that Simon
16 would be helping out the Edgeworths, as a favor.

17 The Court finds that an implied fee agreement was formed between the parties on December
18 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
19 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
20 created with a fee of \$275 per hour for Simon’s associates. Simon testified that he never told the
21 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to “trigger
22 coverage”. When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
23 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
24 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
25 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

26 *Constructive Discharge*

27 Constructive discharge of an attorney may occur under several circumstances, such as:

- 28 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- Refusal to pay an attorney creates constructive discharge. See e.g., Christian v. All Persons Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).

- Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v. Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge. McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated, has not withdrawn, and is still technically their attorney of record; there cannot be a termination. The Court disagrees.

On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and signed a retainer agreement. The retainer agreement was for representation on the Viking settlement agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all things without a compromise. Id. The retainer agreement specifically states:

Client retains Attorneys to represent him as his Attorneys regarding Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING ENTITIES and all damages including, but not limited to, all claims in this matter and empowers them to do all things to effect a compromise in said matter, or to institute such legal action as may be advisable in their judgment, and agrees to pay them for their services, on the following conditions:

- a) ...
- b) ...
- c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000 from the Viking entities and any settlement amount agreed to be paid by the Lange entity. Client also agrees that attorneys will work to reach an agreement amongst the parties to resolve all claims in the Lange and Viking litigation.

Id.

This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr. Simon had already begun negotiating the terms of the settlement agreement with Viking during the week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put

1 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
2 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
3 identified as the firm that solely advised the clients about the settlement. The actual language in the
4 settlement agreement, for the Viking claims, states:

5
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
8 effect of this AGREEMENT and their release of any and all claims, known or
9 unknown and, based upon that explanation and their independent judgment by
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the
11 legal significance and the consequences of the claims being released by this
12 Agreement. PLAINTIFFS further represent that they understand and
acknowledge the legal significance and consequences of a release of unknown
claims against the SETTLING PARTIES set forth in, or arising from, the
INCIDENT and hereby assume full responsibility for any injuries, damages,
losses or liabilities that hereafter may occur with respect to the matters
released by this Agreement.

13 Id.

14 Also, Simon was not present for the signing of these settlement documents and never explained any
15 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
16 Vannah and received them back with the signatures of the Edgeworths.

17 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
18 Though there were email communications between the Edgeworths and Simon, they did not verbally
19 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
20 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
21 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
22 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
23 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
24 working on this claim, but he had no communication with the Edgeworths and was not advising
25 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
26 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
27 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
28

1 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
2 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
3 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
4 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
5 Simon never signed off on any of the releases for the Lange settlement.

6 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
7 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
8 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
9 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
10 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
11 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
12 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
13 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
14 doesn't seem in his best interests." (Def. Exhibit 53).

15 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
16 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
17 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
18 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
19 was attached to the letter), and that Simon continued to work on the case after the November 29,
20 2017 date. The court further recognizes that it is always a client's decision of whether or not to
21 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
22 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
23 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
24 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
25 with him, making it impossible to advise them on pending legal issues, such as the settlements with
26 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

27 //

1 Simon from effectively representing the clients. The Court finds that Danny Simon was
2 constructively discharged by the Edgeworths on November 29, 2017.

3
4 **Adjudication of the Lien and Determination of the Law Office Fee**

5 NRS 18.015 states:

6 1. An attorney at law shall have a lien:

7 (a) Upon any claim, demand or cause of action, including any claim for
8 unliquidated damages, which has been placed in the attorney's hands by a
9 client for suit or collection, or upon which a suit or other action has been
10 instituted.

11 (b) In any civil action, upon any file or other property properly left in the
12 possession of the attorney by a client.

13 2. A lien pursuant to subsection 1 is for the amount of any fee which has
14 been agreed upon by the attorney and client. In the absence of an agreement,
15 the lien is for a reasonable fee for the services which the attorney has rendered
16 for the client.

17 3. An attorney perfects a lien described in subsection 1 by serving notice
18 in writing, in person or by certified mail, return receipt requested, upon his or
19 her client and, if applicable, upon the party against whom the client has a
20 cause of action, claiming the lien and stating the amount of the lien.

21 4. A lien pursuant to:

22 (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or
23 decree entered and to any money or property which is recovered on account of
24 the suit or other action; and

25 (b) Paragraph (b) of subsection 1 attaches to any file or other property
26 properly left in the possession of the attorney by his or her client, including,
27 without limitation, copies of the attorney's file if the original documents
28 received from the client have been returned to the client, and authorizes the
attorney to retain any such file or property until such time as an adjudication
is made pursuant to subsection 6, from the time of service of the notices
required by this section.

5. A lien pursuant to paragraph (b) of subsection 1 must not be
construed as inconsistent with the attorney's professional responsibilities to
the client.

6. On motion filed by an attorney having a lien under this section, the
attorney's client or any party who has been served with notice of the lien, the
court shall, after 5 days' notice to all interested parties, adjudicate the rights of
the attorney, client or other parties and enforce the lien.

7. Collection of attorney's fees by a lien under this section may be
utilized with, after or independently of any other method of collection.

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
3 are applied. Here, there was no express contract for the fee amount, however there was an implied
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
5 services, and \$275 per hour for the services of his associates. This contract was in effect until
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
8 due a reasonable fee- that is, quantum meruit.

9
10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
14 created when invoices were sent to the Edgeworths, and they paid the invoices.

15 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
16 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
17 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
18 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
19 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
20 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
21 bills to give credibility to his actual damages, above his property damage loss. However, as the
22 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
23 the money, or memorialize this or any understanding in writing.

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
28

1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
2 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
6 Office retained the payments, indicating an implied contract was formed between the parties. The
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
8 date they were constructively discharged, November 29, 2017.

9
10 *Amount of Fees Owed Under Implied Contract*

11 The Edgeworths were billed, and paid for services through September 19, 2017. There is
12 some testimony that an invoice was requested for services after that date, but there is no evidence
13 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
14 fees was formed, the Court must now determine what amount of fees and costs are owed from
15 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
16 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
17 billings, the attached lien, and all other evidence provided regarding the services provided during
18 this time.

19 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
20 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
21 and attempted to create a bill for work that had been done over a year before. She testified that they
22 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
23 email that was read and responded to. She testified that the dates were not exact, they just used the
24 dates for which the documents were filed, and not necessarily the dates in which the work was
25 performed. Further, there are billed items included in the "super bill" that was not previously billed
26 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
27 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
28

1 indicated that there were no phone calls included in the billings that were submitted to the
2 Edgeworths.

3 This attempt to recreate billing and supplement/increase previously billed work makes it
4 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
5 between the actual work and the billing. The court reviewed the billings of the "super bill" in
6 comparison to the previous bills and determined that it was necessary to discount the items that had
7 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
8 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
9 bill."

10 Simon argues that he has no billing software in his office and that he has never billed a client
11 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
12 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
13 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
14 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
15 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
16 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
17 emails or calls, understanding that those items may be billed separately; but again the evidence does
18 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
19 This argument does not persuade the court of the accuracy of the "super bill".

20 The amount of attorney's fees and costs for the period beginning in June of 2016 to
21 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
22 which appears to indicate that it began with the initial meeting with the client, leading the court to
23 determine that this is the beginning of the relationship. This invoice also states it is for attorney's
24 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
25 amount has already been paid by the Edgeworths on December 16, 2016.²

26
27 ²There are no billing amounts from December 2 to December 4, 2016.
28

1 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to
2 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
3 amount has already been paid by the Edgeworths on May 3, 2017.

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
8 been paid by the Edgeworths on August 16, 2017.³

9 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
10 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
11 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
12 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
13 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
14 paid by the Edgeworths on September 25, 2017.

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
16 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
21 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

24 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

25
26 ³ There are no billings from July 28 to July 30, 2017.

27 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

28 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

5 6 *Costs Owed*

7 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
8 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
9 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
10 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
11 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
12 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
13 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

14 15 *Quantum Meruit*

16 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
17 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
18 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
19 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*
20 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
21 *and, Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
22 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
23 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
24 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
25 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
26 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
27 of the Law Office's work on this case.

1 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
2 discretion on the method of calculation of attorney fee, to be “tempered only by reason and
3 fairness”. Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the
7 reasonableness of the fee under the Brunzell factors. Argentena Consolidated Mining Co., v. Jolley,
8 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that
9 “[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

11 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
12 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
13 Court notes that the majority of the work in this case was complete before the date of the
14 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
15 after the constructive discharge.

16 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
17 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

18 *1. Quality of the Advocate*

19 Brunzell expands on the “qualities of the advocate” factor and mentions such items as
20 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
21 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
22 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
23 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
24 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s
25 work product and results are exceptional.

26 *2. The Character of the Work to be Done*

27 The character of the work done in this case is complex. There were multiple parties,
28

1 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the
2 gamut from product liability to negligence. The many issues involved manufacturing, engineering,
3 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp
4 testified that the quality and quantity of the work was exceptional for a products liability case against
5 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the
6 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the
7 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a
8 substantial factor in achieving the exceptional results.

9 3. The Work Actually Performed

10 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
11 numerous court appearances, and deposition; his office uncovered several other activations, that
12 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
13 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
14 other activations being uncovered and the result that was achieved in this case. Since Mr.
15 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
16 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
17 the Law Office of Daniel Simon led to the ultimate result in this case.

18 4. The Result Obtained

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
28

1 were made more than whole with the settlement with the Viking entities.

2 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
3 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
4 which states:

5
6 (a) A lawyer shall not make an agreement for, charge, or collect an
unreasonable fee or an unreasonable amount for expenses. The factors to be
7 considered in determining the reasonableness of a fee include the following:

8 (1) The time and labor required, the novelty and difficulty of the
questions involved, and the skill requisite to perform the legal service
properly;

9 (2) The likelihood, if apparent to the client, that the acceptance of the
particular employment will preclude other employment by the lawyer;

10 (3) The fee customarily charged in the locality for similar legal
services;

11 (4) The amount involved and the results obtained;

12 (5) The time limitations imposed by the client or by the
circumstances;

13 (6) The nature and length of the professional relationship with the
14 client;

15 (7) The experience, reputation, and ability of the lawyer or lawyers
performing the services; and

16 (8) Whether the fee is fixed or contingent.

17 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

18 (b) The scope of the representation and the basis or rate of the fee and
expenses for which the client will be responsible shall be communicated to the
19 client, preferably in writing, before or within a reasonable time after
commencing the representation, except when the lawyer will charge a
20 regularly represented client on the same basis or rate. Any changes in the
basis or rate of the fee or expenses shall also be communicated to the client.

21 (c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited
22 by paragraph (d) or other law. A contingent fee agreement shall be in writing,
signed by the client, and shall state, in boldface type that is at least as large as
23 the largest type used in the contingent fee agreement:

24 (1) The method by which the fee is to be determined, including the
percentage or percentages that shall accrue to the lawyer in the event of
25 settlement, trial or appeal;

26 (2) Whether litigation and other expenses are to be deducted from the
recovery, and whether such expenses are to be deducted before or after the
27 contingent fee is calculated;

1 (3) Whether the client is liable for expenses regardless of outcome;

2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and

5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.

7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
15 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
17 responsible were never communicated to the client, within a reasonable time after commencing the
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.

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17 _____
18 DISTRICT COURT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on or about the date e-filed, this document was copied through
3 e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the
4 proper person as follows:
5

6 Electronically served on all parties as noted in the Court's Master Service List
7 and/or mailed to any party in proper person.
8
9


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11 _____
12 Tess Driver
13 Judicial Executive Assistant
14 Department 10
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Exhibit 2

Exhibit 2

1 **ORD**

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3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through

14 Defendants.

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

**DECISION AND ORDER ON MOTION
TO DISMISS NRCP 12(B)(5)**

22 **AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

23
24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
28 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

1 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
2 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
3 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
4 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
5 advised of the matters herein, the **COURT FINDS:**

6
7 **FINDINGS OF FACT**

8 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
9 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
10 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
11 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
12 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
13 Simon and his wife were close family friends with Brian and Angela Edgeworth.

14 2. The case involved a complex products liability issue.

15 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
16 suffered a flood. The house was still under construction and the flood caused a delay. The
17 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
18 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
19 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
20 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
21 Viking, et al., also denied any wrongdoing.

22 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
23 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
24 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
25 resolve. Since the matter was not resolved, a lawsuit had to be filed.

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
28

1 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
2 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
3 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

4 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
5 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
6 had some discussion about payments and financials. No express fee agreement was reached during
7 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
8 It reads as follows:

9 We never really had a structured discussion about how this might be done.
10 I am more that happy to keep paying hourly but if we are going for punitive
11 we should probably explore a hybrid of hourly on the claim and then some
12 other structure that incents both of us to win an go after the appeal that these
13 scumbags will file etc.
14 Obviously that could not have been doen earlier snce who would have thought
15 this case would meet the hurdle of punitives at the start.
16 I could also swing hourly for the whole case (unless I am off what this is
17 going to cost). I would likely borrow another \$450K from Margaret in 250
18 and 200 increments and then either I could use one of the house sales for cash
19 or if things get really bad, I still have a couple million in bitcoin I could sell.
20 I doubt we will get Kinsale to settle for enough to really finance this since I
21 would have to pay the first \$750,000 or so back to Colin and Margaret and
22 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

23 (Def. Exhibit 27).

24 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
25 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
26 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
27 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
28 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

1 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
2 bills indicated an hourly rate of \$550.00 per hour.

3 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
4 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
5 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
6 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
7 paid by the Edgeworths on August 16, 2017.

8 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
9 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
10 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
11 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
12 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
13 25, 2017.

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
15 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
16 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
17 costs to Simon. They made Simon aware of this fact.

18 12. Between June 2016 and December 2017, there was a tremendous amount of work
19 done in the litigation of this case. There were several motions and oppositions filed, several
20 depositions taken, and several hearings held in the case.

21 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against
22 the Viking Corporation ("Viking").

23 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
24 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
25 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

2 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
3 come to his office to discuss the litigation.

4 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
5 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
6 Exhibit 4).

7 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
8 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
9 communications with Mr. Simon.

10 18. On the morning of November 30, 2017, Simon received a letter advising him that the
11 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
12 et.al. The letter read as follows:

13 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
14 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
15 with the Viking entities, et.al. I'm instructing you to cooperate with them in
16 every regard concerning the litigation and any settlement. I'm also instructing
17 you to give them complete access to the file and allow them to review
18 whatever documents they request to review. Finally, I direct you to allow
19 them to participate without limitation in any proceeding concerning our case,
20 whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
28 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly

1 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
2 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
3 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
4 due to the Law Office of Danny Simon.

5 22. The parties agree that an express written contract was never formed.

6 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
7 Lange Plumbing LLC for \$100,000.

8 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
9 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
10 Simon, a Professional Corporation, case number A-18-767242-C.

11 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
12 Lien with an attached invoice for legal services rendered. The amount of the invoice was
13 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

17 The First Claim for Relief of the Amended Complaint alleges breach of an express oral
18 contract to pay the law office \$550 an hour for the work of Mr. Simon. The Amended Complaint
19 alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the
20 Court finds that there was no express contract formed, and only an implied contract. As such, a
21 claim for breach of contract does not exist and must be dismissed as a matter of law.

22 23 ***Declaratory Relief***

24 The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract
25 existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of
26 the settlement proceeds. The Court finds that there was no express agreement for compensation, so
27 there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the
28

1 settlement proceeds as the Court has adjudicated the lien and ordered the appropriate distribution of
2 the settlement proceeds, in the Decision and Order on Motion to Adjudicate Lien. As such, a claim
3 for declaratory relief must be dismissed as a matter of law.

4 5 *Conversion*

6 The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed
7 that the settlement proceeds were solely theirs and Simon asserting an attorney's lien constitutes a
8 claim for conversion. In the Amended Complaint, Plaintiffs allege "The settlement proceeds from
9 the litigation are the sole property of the Plaintiffs." Amended Complaint, P. 9, Para. 41.

10 Mr. Simon followed the law and was required to deposit the disputed money in a trust
11 account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr.
12 Simon never exercised exclusive control over the proceeds and never used the money for his
13 personal use. The money was placed in a separate account controlled equally by the Edgeworth's
14 own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

15 When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the
16 settlement proceeds as the checks were not endorsed or deposited in the trust account. They were
17 finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien
18 and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds,
19 this claim must be dismissed as a matter of law.

20 21 *Breach of the Implied Covenant of Good Faith and Fair Dealing*

22 The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and
23 Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no
24 express contract existed for compensation and there was not a breach of a contract for compensation,
25 the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter
26 of law and must be dismissed.

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Breach of Fiduciary Duty

The allegations in the Complaint assert a breach of fiduciary duty for not releasing all the funds to the Edgeworths. The Court finds that Mr. Simon followed the law when filing the attorney's lien. Mr. Simon also fulfilled all his obligations and placed the clients' interests above his when completing the settlement and securing better terms for the clients even after his discharge. Mr. Simon timely released the undisputed portion of the settlement proceeds as soon as they cleared the account. The Court finds that the Law Office of Daniel Simon is owed a sum of money based on the adjudication of the lien, and therefore, there is no basis in law or fact for the cause of action for breach of fiduciary duty and this claim must be dismissed.

Punitive Damages

Plaintiffs' Amended Complaint alleges that Mr. Simon acted with oppression, fraud, or malice for denying Plaintiffs of their property. The Court finds that the disputed proceeds are not solely those of the Edgeworths and the Complaint fails to state any legal basis upon which claims may give rise to punitive damages. The evidence indicates that Mr. Simon, along with Mr. Vannah deposited the disputed settlement proceeds into an interest bearing trust account, where they remain. Therefore, Plaintiffs' prayer for punitive damages in their Complaint fails as a matter of a law and must be dismissed.

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court adjudicated the lien. The Court further finds that the claims for Breach of Contract, Declaratory Relief, Conversion, Breach of the Implied Covenant of Good Faith and Fair Dealing, Breach of the Fiduciary Duty, and Punitive Damages must be dismissed as a matter of law.

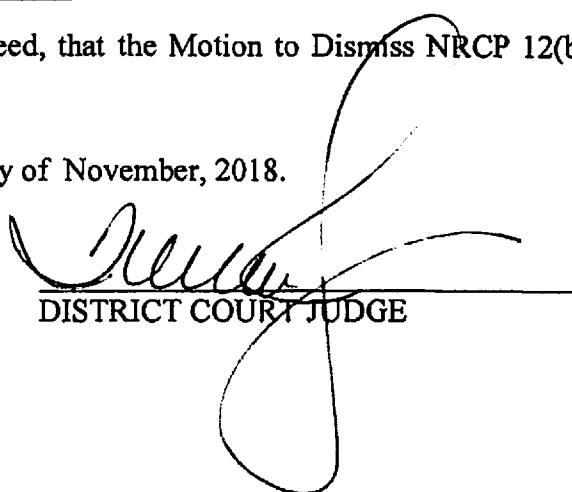
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ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Dismiss NRCP 12(b)(5) is GRANTED.


IT IS SO ORDERED this 19 day of November, 2018.



DISTRICT COURT JUDGE

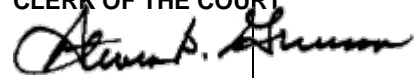
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Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.


Tess Driver
Judicial Executive Assistant
Department 10

Docketing Statement

EXHIBIT 4



JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE
VIKING CORPORATION, a Michigan
corporation; SUPPLY NETWORK,
INC., dba VIKING SUPPLYNET, a
Michigan Corporation; and DOES 1
through 5 and ROE entities 6 through 10;

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON
LAW; DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**MOTION TO AMEND FINDINGS
UNDER NRCP 52; and/or FOR
RECONSIDERATION**

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 The Law Office of Daniel Simon, Daniel Simon individually, and Simon
2 Law, (Simon) requests amendment of the findings recently issued by the Court
3 pursuant to NRCP 52, and/or, reconsideration of the findings and orders recently
4 issued pursuant to EDCR 2.20.
5

6 This motion is made and based upon the papers and pleadings on file herein,
7 exhibits attached, the points and authorities set forth herein, all other evidence that
8 the Court deems just and proper, as well as the arguments of counsel at the time of
9 the hearing hereon.
10
11

12 Dated this 29th day of October, 2018.

13 /s/ James R. Christensen
14 JAMES R. CHRISTENSEN, ESQ.
15 Nevada Bar No. 003861
16 601 S. 6th Street
17 Las Vegas, NV 89101
18 (702) 272-0406
19 (702) 272-0415 fax
20 jim@jchristensenlaw.com
21 Attorney for Daniel S. Simon
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You, and each of you, will please take notice that the undersigned will bring on for hearing the Motion for Reconsideration, Clarification of Decision and Order, and Amendment of the Findings of Fact and Conclusions of Law before the above- entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the 29th day of November, 2018, at **In Chambers** a.m./p.m. in Department X, Courtroom 14B.

DATED this 29th day of October, 2018.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

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3 **MEMORANDUM OF POINTS & AUTHORITIES**

4 **I. Introduction**

5 On October 11, 2018, this Court made three decisions:

6

- 7
- 8 • Decision and Order on Motion to Dismiss NRCP 12(b)(5).
9 (“MTDO”) Attached hereto as Exhibit 1.
 - 10 • Decision and Order on Motion to Adjudicate Lien. (“Lien D&O”)
11 Attached hereto as Exhibit 2.
 - 12 • Decision and Order on Special Motion to Dismiss Anti-SLAPP.
13 (“ASO”) Attached hereto as Exhibit 3.

14 Upon review, Simon believes there are matters that require correction,
15 clarification and/or merit reconsideration by the court. Accordingly, Simon
16 respectfully requests the Court amend its findings pursuant to NRCP 52 and/or
17 reconsider its rulings pursuant to EDCR 2.20 on the following issues:

18

- 19 A. The implied oral contract finding in the MTDO appears to be a typo.
- 20
- 21 B. The cost award in the Lien D&O needs clarification.
- 22
- 23 C. The Viking claim settled on or after December 1, 2017, not November
24 15, 2017.
- 25
- 26 D. Because Simon was constructively discharged, the Simon fee is
27 determined by quantum meruit.
- 28
- E. Simon must be paid for all work on the file.

1 Simon asks the Court to revisit its findings, conclusions and orders on these
2 topics as argued below.

3 **II. Statement Of Relevant Facts**

4
5 Simon represented Plaintiffs in a complex and hotly contested products
6 liability and contractual dispute stemming from a premature fire sprinkler
7 activation in April of 2016 which flooded Plaintiffs speculation home during its
8 construction causing \$500,000.00 in property damage. Lien D&O, pp. 2-7.

9
10 In May/June of 2016, Simon helped Plaintiffs on the flood claim as a favor,
11 with the goal of ending the dispute by triggering insurance to adjust the property
12 damage loss. Simon and Plaintiffs never had an express written or oral attorney fee
13 agreement.
14
15

16 In June of 2016, a complaint was filed. In November of 2016, a joint case
17 conference was held.
18

19 In August/September of 2017, Simon and clients agree that the flood case
20 dramatically changed. The case had become extremely demanding and was
21 dominating the time of the law office. Simon and the clients made efforts to reach
22 an express attorney fee agreement. In August of 2017, Daniel Simon and Brian
23 Edgeworth agreed that the nature of the case had changed and had discussions
24 about an express fee agreement based on a hybrid of hourly and contingency fees.
25
26 However, an express agreement could not be reached due to the unique nature of
27
28

1 the property damage claim and the amount of work and costs necessary to achieve
2 a great result. Simon and the clients agree that the attorney fee was in flux during
3 this period.
4

5 Although efforts to reach an express fee agreement failed, Simon continued
6 to forcefully litigate Plaintiffs' claims by serving and assertively pursuing
7 discovery and dynamic motion practice, including the filing of a motion to strike
8 Vikings' answer.
9

10 In mid-November of 2017, an offer was made by Viking. The first Viking
11 offer was made in the context of mediation, as a counter offer to a mediator's
12 proposal. The first Viking offer was made as several dispositive motions and an
13 evidentiary hearing on the request to strike Vikings answer were pending. The
14 first Viking offer contained contingencies and provisions which had not been
15 previously agreed to.
16
17
18

19 Following the Viking offer in mid-November, Simon continued to
20 vigorously pursue the litigation against Viking pending resolution of the details of
21 settlement, and against the co-defendant, Lange Plumbing. Simon also again
22 raised the desire for an express attorney fee agreement with the clients.
23
24

25 On November 29, 2017, the Edgeworths constructively fired Simon by
26 retaining new counsel, Vannah and Vannah, and ceased all direct communications
27 with Simon.
28

1 On November 30, 2017, Vannah and Vannah provided Simon notice of
2 retention.

3 On November 30, 2017, Simon served an attorney lien pursuant to NRS
4 18.015. However, Simon continued to protect his former clients' interests in the
5 complex flood litigation, to the extent possible under the unusual circumstances.
6

7 On December 1, 2017, the Edgeworths entered into an agreement to settle
8 with Viking and release Viking from all claims in exchange for a promise by
9 Viking to pay six million dollars (\$6,000,000.00 USD).
10

11 On January 2, 2018, Simon served an amended attorney lien.
12

13 On January 4, 2018, Plaintiffs sued Simon, alleging Conversion and various
14 other causes of actions based on the assertion of false allegations.
15

16 Simon responded with two motions to dismiss, which detailed the facts and
17 explained the law on why the complaint was frivolous. Rather than conceding the
18 lack of merit as to even a portion of the complaint, Plaintiffs filed an Amended
19 Complaint to include new causes of action for the Breach of the Implied Covenant
20 of Good Faith and Fair Dealing and Breach of Fiduciary Duty and reaffirmed all
21 the false facts in support of the claims. The false facts asserted alleged extortion,
22 blackmail, stealing, by Simon and sought punitive damages.
23
24
25

26 The facts elicited at the five-day evidentiary hearing confirmed that the
27 allegations in the complaints were false and that the complaints were filed for an
28

1 improper purpose as a collateral attack on the lien adjudication proceeding; which
2 forced Simon to retain counsel and experts to defend the suit.

3 The Court found that Simon was discharged as of November 29, 2017. The
4 Court also found an implied contract existed based solely on the bills sent and paid.
5

6 **III. Argument**

7 A court may, for sufficient cause shown, amend, correct, resettle, modify, or
8 vacate an order previously made and entered on motion in the progress of the cause
9 or proceeding. *See, e.g., Trail v. Faretto*, 91 Nev. 401 (1975).
10
11

12 NRCP 52(b) allows a party to request amendment of findings of fact and
13 conclusions of law, and the court to do so, as long as the request is timely made:
14

15 **b) Amendment.** Upon a party's motion filed not later than 10 days after
16 service of written notice of entry of judgment, the court may amend its
17 findings or make additional findings and may amend the judgment
18 accordingly. The motion may accompany a motion for a new trial under
19 Rule 59. When findings of fact are made in actions tried without a jury, the
20 sufficiency of the evidence supporting the findings may later be questioned
whether or not in the district court the party raising the question objected to
the findings, moved to amend them, or moved for partial findings.

21 Notice of entry of order for the MTDO and ASO just occurred and a notice has not
22 yet been filed for the Lien D&O, therefore, this motion is timely.
23

24 A party may also move to reconsider an order. A motion to reconsider must
25 set forth the following: (1) some valid reason why the court should revisit its prior
26 order; and (2) facts or law of a “strongly convincing nature” in support of reversing
27 the prior decision. *Keating v. Gibbons*, 2009 U.S. Dist. LEXIS 22842 (citing
28

1 *Frasure v. U.S.*, 256 F. Supp.2d 1180, 1183 (D. Nev. 2003)). Reconsideration may
2 be appropriate if (1) the court is presented with newly considered evidence; (2) has
3 committed clear error; or (3) there has been an intervening change in controlling
4 law. *Id.* (citing *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th
5 Cir. 2000)).

6
7
8 EDCR 2.24 sets forth the way parties are permitted to seek reconsideration
9 of a prior court ruling. EDCR 2.24(b) provides:

10
11 A party seeking reconsideration of a ruling of the court, other than any order
12 which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or
13 60, must file a motion for such relief within 10 days after service of written
14 notice of the order or judgment unless the time is shortened or enlarged by
15 order. A motion for rehearing or reconsideration must be served, noticed,
16 filed and heard as is any other motion.

17 Notice of entry of order for the MTDO and ASO just occurred and a notice has not
18 yet been filed for the Lien D&O, therefore, this motion is timely.

19 As detailed below there are grounds to amend, alter and/or reconsider the
20 D&O under NRCP 52(b) and/or EDCR 2.24.

21 **A. The implied oral contract finding in the MTDO appears to be a typo.**

22 The order granting the motion to dismiss pursuant to NRCP 12(b)(5)
23 references an implied oral contract, “After the Evidentiary Hearing, the Court finds
24 that there was no express contract formed, and only an implied oral contract.”
25
26
27 MTDO at 7:8-9.

1 It appears that the reference to an implied oral contract in the MTDO is
2 likely a typo. For example, the Lien D&O at page 9 describes the basis for finding
3 an implied contract and does not mention an implied oral contract. Further, the
4 Court found an implied contract was based on the past performance only, that is-
5 the bills generated and paid. This is an implied contract based on past performance
6 only and was not based on an express oral agreement. Accordingly, Simon
7 requests that the order be amended to reference an implied contract only.
8
9

10 **B. The cost award in the Lien D&O needs clarification.**
11

12 The Lien D&O can be read to award outstanding costs to Simon.

13 The Simon attorney liens sought reimbursement for advanced costs. The
14 amount of advanced costs originally sought was \$71,594.93. The amount sought
15 for advanced costs was later changed to \$68,844.93.
16

17 In March of 2018, the Edgeworths finally paid the outstanding advanced
18 costs. As of the evidentiary hearing, no advanced costs were sought by Simon and
19 no advanced costs were outstanding.
20
21

22 It is proper and necessary for the Court to find that Simon acted
23 appropriately in securing repayment of advanced costs through use of an attorney
24 lien, in accord with statute and case law. However, Simon is uncertain how the
25 Court addressed the costs in relation to what is currently owed Simon.
26
27
28

1 The Edgeworths have also indicated uncertainty concerning the findings in
2 the Lien D&O regarding the need to currently pay costs.

3 Simon respectfully requests clarification on the cost issue and whether costs
4 are to be added, deducted or are considered separate from the amount currently
5 owed to Simon, and reconciliation of the amount of the fee owed.
6

7
8 **C. The Viking claim settled on or after December 1, 2017, not November**
9 **15, 2017.**

10 Finding of fact #13 in the MTDO, the ASO, and the Lien D&O states:
11

12 13. On the evening of November 15, 2017, the Edgeworth's settled their
13 claims against the Viking Corporation ("Viking").

14 An express settlement agreement with Viking was not formed in November
15 of 2017. An express settlement agreement with Viking was formed after Brian
16 Edgeworth returned from China, and after Mr. Vannah was hired-on or after
17 December 1, 2017.
18

19 It is undisputed that on November 15, 2017, Viking made its first settlement
20 *offer*, with conditions. The conditions were contrary to the mediator's proposal;
21 therefore, the first Viking offer was not an acceptance of the mediator's proposal,
22 but a counter offer. The three main new Viking conditions were:
23

24 (1) Confidentiality;
25

26 (2) A court order granting of good faith settlement status; and,
27

28 (3) Plaintiffs dismissal of the case against Lange.

1 On November 17, 2017, Simon met the Edgeworths and provided a litigation
2 and settlement update and again raised the issue of an express written fee
3 agreement.
4

5 Following November 17, Simon continued to negotiate with Viking and
6 Lange, despite being hobbled by the clients' unusual silence.
7

8 On November 29, Vannah was hired.

9 On November 30, Simon was informed of Vannah's retention.
10

11 On December 1, 2017, the express written settlement agreement with Viking
12 was signed by the Edgeworths. The express written agreement was later signed by
13 Viking.
14

15 A settlement agreement is formed only when all essential terms are agreed
16 upon. *See, May v. Anderson*, 119 P.3d 1254 (Nev. 2005). The express written
17 settlement agreement signed by the Edgeworths on December 1, 2017, *did not*
18 contain a confidentiality provision or a term requiring dismissal of the case against
19 Lange-a million dollar plus claim, which was later settled by Plaintiffs for an
20 additional \$100,000.00. Both are essential terms which were not expressly reached
21 until on or after December 1, 2017.
22
23
24

25 In addition, advice by Vannah to the Edgeworths on the written Viking
26 settlement agreement presumably did not occur until December 1, according to the
27 express terms of the settlement agreement. And, good faith settlement status,
28

1 granted later by the Court, was an agreed upon pre-condition to enforceability of
2 the agreement.

3 The forgoing all mean that settlement with Viking did not occur on
4 November 15, 2017, as a matter of law. The earliest possible date for a finding of
5 an express settlement agreement with Viking is December 1, 2017. Accordingly,
6 Simon requests that finding #13 in all orders be so amended.
7
8

9 **D. Because Simon was constructively discharged, the Simon fee is**
10 **determined by quantum meruit.**
11

12 In the Lien D&O, the Court concluded that an implied contract existed
13 between Simon and clients until November 29, 2017, the date of Simon's
14 discharge; and, that Simon must be compensated prior to November 29, 2017,
15 under the hourly payment terms of the implied contract as found by the Court.
16 Lien D&O at pages 15-19. Simon requests the Court alter and/or reconsider this
17 conclusion of law.
18
19

20 As a matter of law, the Edgeworths cannot use the implied contract as a
21 shield from the Simon lien claim for reasonable value, because by discharging
22 Simon, the Edgeworths disavowed the implied contract:
23
24

25 A client who voids the contract as stated here cannot then enforce its
26 favorable terms against the lawyer, and the client is liable to the lawyer for
27 the fair value of the lawyer's services (see § 39).
28

1 Third Restatement, *The Law Governing Lawyers*, §18, at comment e.¹

2 The Court agreed that when a lawyer is discharged by the client, the lawyer
3 is no longer compensated under the discharged/breached/repudiated contract but is
4 paid based on *quantum merit*. See, *Golightly v. Gassner*, 281 P.3d 1176 (Nev.
5 2009) (unreported) (discharged contingency attorney paid by *quantum merit* rather
6 than by contingency); citing, *Gordon v. Stewart*, 324 P.3d 234 (1958) (attorney
7 paid in *quantum merit* after client breach of agreement); and, *Cooke v. Gove*, 114
8 P.2d 87 (Nev. 1941)(fees awarded in *quantum merit* when there was no
9 agreement). D&O at 19:18-25.

13 The law cited by the Court prevents the client from enforcing the terms of a
14 contract, which the client has disavowed. This means that quantum meruit is used
15 to determine the amount of fee owed for the period before as well as after the
16 discharge.

19 In this case, the Edgeworths disavowed the implied contract with Simon, and
20 the implied hourly rate, when they fired Simon and hired Vannah. Accordingly,
21 the Court erred when it analyzed a portion of the lien claim as if the implied
22

24 ¹ The Nevada Supreme Court frequently relies upon the Third Restatement. E.g.,
25 *NC-DSH, Inc., v. Gardner*, 218 P.3d 853, 861 (Nev. 2009); *Waid v. Eighth Jud.*
26 *Dist. Ct.*, 119 P.3d 1219 (Nev. 2005); *Leibowitz v. Eighth Jud. Dist. Ct.*, 78 P.3d
27 515, 520 n. 19, 521 n. 23 (Nev. 2003); *Palmer v. Pioneer Inn Assocs., Ltd.*, 59 P.3d
28 1237, 1247 (Nev. 2002).

1 contract hourly rate was enforceable. The law calls for the entirety of Simon's
2 services to be analyzed by the Court under quantum meruit-that is, a reasonable fee
3 pursuant to the *Brunzell* factors.
4

5 The Court cited *Rosenberg* in support of the constructive discharge and the
6 payment method to the discharged attorney. *Rosenberg v. Calderon Automation,*
7 *Inc.*, 1986 Ohio App. LEXIS 5460 (1986). In *Rosenberg*, client Calderon hired
8 attorney Brenner for a patent infringement case. Brenner recently graduated from
9 law school and did not have much patent infringement experience, so he hired
10 attorney Rosenberg, which was authorized by Calderon. Rosenberg believed he
11 was hired and to be paid based on the 1/3 contingency fee agreement between
12 Calderon and Brenner.
13
14
15

16 After a trial on special interrogatories, Rosenberg recommended settlement
17 negotiations between Calderon and General Motors. Calderon refused and had no
18 further communications with Rosenberg. The refusal to communicate was held to
19 be a constructive discharge. Rosenberg then filed suit against Calderon in order to
20 recover his attorney fees.
21
22

23 The *Rosenberg* court noted that an attorney that is discharged without just
24 cause is entitled to compensation based upon a stated agreement or upon the theory
25 of quantum meruit. *Id.* at *15. The Court found that Rosenberg was constructively
26 discharged when Calderon ceased all communications with Rosenberg. On the
27
28

1 question of how Rosenberg should be compensated – either by a percentage of the
2 contingency fee per the agreement or by the basis of quantum meruit. The
3 *Rosenberg* court indicated that termination of a contract by a party after part
4 performance of the other party, entitles the performing party to recover the value of
5 the labor performed *irrespective of the contract price. Although the Court*
6 *acknowledged that Rosenberg could have elected to be compensated pursuant to*
7 *the agreement, the court adopted Rosenberg's election to be compensated via*
8 *quantum meruit:*

12 Consequently, the reasonable value of Rosenberg's services must be based
13 either on a percentage of the contingency fee or on the basis of quantum
14 meruit. Rosenberg has elected, by his testimony and by his letters to
15 Calderon, to be paid based upon the theory of quantum meruit." *Id.* at *19.

16 The *Rosenberg* Court applied a basic legal principle. Following a discharge,
17 a performing party may elect to be paid the contract price or quantum meruit, at the
18 election of the performing party.

20 Notably, Rosenberg did not keep time records, but Rosenberg attempted to
21 estimate the total number of hours on the case that was outstanding at the time of
22 the constructive discharge. The *Rosenberg* court found that Rosenberg's testimony
23 on the work he performed was corroborated by Calderon and Brenner and,
24 therefore, upheld the lower court's award to Rosenberg:

27 "Upon a review of the record, we find that the trial court exercised its
28 discretion in arriving at a fair and equitable determination of fees for

1 services rendered by Rosenberg. The trial court's award, in our opinion,
2 accomplishes the same and we accordingly affirm." *Id.* at *20.

3 In Rosenberg, when the discharge occurred, the Court confirmed that the
4 method of payment for outstanding services was elected at the choice of the
5 discharged attorney. The discharged lawyer was given the option by the court to
6 elect to enforce the terms of the contract or have the court determine the
7 outstanding fee based on quantum meruit. The discharged lawyer elected quantum
8 meruit. The Court then determined the reasonable value of his services based on
9 the quantum meruit and not the contract. This result was upheld by the reviewing
10 court on appeal.
11
12
13

14 Our case is directly on point to the facts and law in *Rosenberg*, and the Ohio
15 Court of Appeals decision is still good law. Like Calderon, Brian Edgeworth fired
16 Simon on the eve of a fantastic result but prior to case conclusion. At the time of
17 termination there were substantial attorney's fees and costs owed to Simon.
18 Edgeworth does not get the benefit of the repudiated implied contract because
19 Simon elected to be compensated by quantum meruit.
20
21
22

23 The period of quantum meruit could be from the beginning of the case, but
24 certainly for the period after September 19, 2017, which is the period when
25 outstanding services were rendered. The value of quantum meruit for this period is
26 1.9 million based on the undisputed testimony of expert Will Kemp, and is
27 corroborated by the size of the file, the work performed and the amazing result.
28

1 The Court is asked to make a new finding based on this period of time, or at
2 a minimum, to make an alternative finding for this period of time, which can be
3 used if the Supreme Court determines that quantum meruit is the correct measure
4 of fees for this period of time.
5

6 The law is clear that if there is no express contract, or if Simon is fired, then
7 the fee is set by reasonable value-that is quantum meruit. The Edgeworths know
8 this is the law, which is why the Edgeworths would not admit they had fired Simon
9 even when they filed a complaint alleging Simon was a thief. No matter, because
10 by ceasing communication, hiring Vannah, and suing Simon for conversion, the
11 Edgeworths constructively fired Simon, and Simon is due the reasonable value of
12 his services. *Rosenberg*, 1986 Ohio App. LEXIS 5460.
13
14
15

16 **E. Simon must be paid for all work on the file.**
17

18 In the alternative to a reasonable fee under quantum meruit, Simon requests
19 amendment and reconsideration of the conclusion that every single entry of
20 additional time in the super bill for a previously billed period was speculative.
21

22 The Court found that an implied contract existed based solely on the past
23 performance of the bills sent and paid up until September 2017. The Court then
24 described general concerns over the accuracy of the superbill entries for work
25 down prior to September 2017, without identifying any specific inaccuracies. In
26
27
28

1 addition, neither the Court nor the Edgeworths identified a meaningful contract law
2 defense for payment of the past work.

3 The undisputed evidence at the hearing was that the time entries in the super
4 bill was for work that was done-even if a date was a day or two off. The entries in
5 the superbill were based on tangible work product and/or events in the file, not
6 speculative guess work. Mr. Simon and Ms. Ferrel both testified in detail about the
7 foundation for the superbill and that *every entry was based upon a tangible event*.
8
9

10 In fact, the use of a landmark tangible event meant that many hundreds of
11 hours of work were not included, because those hours could not be tied to a
12 tangible event. The use of only confirmable tangible events by Simon creates a
13 time sheet which can be objectively confirmed, is not speculative, and is
14 considerably lower than a typical hourly bill.
15
16

17 The Edgeworths attempts at establishing double billing and other billing
18 inaccuracies fell flat, and were exposed, by the Court and Simon counsel, as
19 groundless. As such, the Edgeworths failed attempts helped to establish that the
20 foundation for all Simon billing was rock solid. Accordingly, Simon requests an
21 amended finding/conclusion granting a fee for all the documented work performed
22 for the Edgeworths.
23
24
25
26
27
28

1 **1. The superbill was supported by substantial evidence.**

2 There is no requirement for an attorney to keep a contemporaneous time
3 record. *See, e.g., Mardirossian & Associates v. Ersoff*, 153 Cal. App. 4th 257
4 (2007). In *Mardirossian*, attorney Mardirossian was fired on the eve of a \$3.7
5 million-dollar settlement. Mardirossian then sued former client Ersoff for a
6 reasonable fee. Mardirossian did not keep contemporaneous time records. At trial
7 Mardirossian and other firm lawyers gave *estimates* of the time spent on the file.
8 The estimates were not grounded on tangible work product or events. Rather, they
9 were given on an average hour per week basis. *Ibid.*

10 The jury awarded Mardirossian a considerable fee based, in part, on the time
11 estimates. The foundation for the time estimates was repeatedly challenged by
12 Ersoff at the trial court and on appeal. And, Ersoff lost at every turn because the
13 testimony of a witness with knowledge, Mardirossian and the firm lawyers,
14 constitutes substantial evidence.

15 At attorney's testimony as to the number of hours worked is sufficient
16 evidence to support an award of attorney fees, even in the absence of detailed time
17 records. *Id.*, at 269; *quoting, Steiny & Co., v. California Electric Supply*, 79 Cal.
18 App. 4th 285, 293 (2000).

19 The law is the same in Nevada. "Substantial evidence is evidence that a
20 reasonable mind might accept as adequate to support a conclusion." *Bongiovi v.*
21
22
23
24
25
26
27
28

1 *Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006). The witnesses’
2 testimonies alone can constitute substantial evidence supporting a finding by a
3 Court. *CoruSummit Vill., Inc., v. Hilltop Duplexes Homeowners Ass’n*, 2011 Nev.
4 Unpub. LEXIS 873, *10-11 (Nev. April 27, 2011).

5
6 The evidence of time spent provided by Simon was magnitudes stronger
7 than that provided by Mardirossian. Simon provided time sheets, Mardirossian did
8 not. Every entry on the Simon time sheets is founded on tangible work product or
9 a tangible confirmable event, such as the court file or a disclosed e-mail or phone
10 record. Mardirossian did not. The Court’s current finding creates a burden for
11 proof of damages which is well beyond anything found in the law. The Court is
12 asked to re-visit its decision and grant Simon fees for the all the work performed.

13 **2. Minimum billing entries are the norm.**

14
15 The Edgeworths are seemingly criticized the use of minimum billing entries
16 by Simon. However, the use of a minimum billing entry by Simon is entirely
17 appropriate and the use of minimum billing entries is commonplace.

18
19 Minimum billing amounts are the norm, are accepted and are enforceable.
20 *Manigault v. Daly & Sorenson*, 413 P.3d 1114 (Wyo. 2018) (the court found that
21 minimum billing units benefit “both attorneys and clients” and are reasonable). To
22 the extent that the Court discounted work billed under a minimum entry, the Court
23 is asked to revisit the decision.

1 **3. The Edgeworths will be unjustly enriched if the full amount**
2 **of the time entries is not awarded to Simon for the work**
3 **performed.**

4 The Court did not grant Simon fees for a lot of documented time spent on
5 the Edgeworths' case. The Court discounted all entries for past billing periods in
6 the superbill. There is no doubt that enormous time was spent, and work was done,
7 the boxes of emails are objective proof of that fact. Therefore, by holding that
8 Simon not get paid for work done and time spent, the Edgeworths have been given
9 a windfall.
10

11 Lien adjudication is a proceeding in equity to determine the fair value of an
12 attorney's services, and the lawyer should be compensated for the work performed.
13 In *Leventhal v. Black & LoBello*, 129 Nev. 472, 475, 305 P.3d 907, 909 (2013), the
14 Supreme Court of the state of Nevada stated:
15

16 “A charging lien "is not dependent on possession, as in the case of the
17 general or retaining lien. It is based on natural equity—the client should not
18 be allowed to appropriate the whole of the judgment without paying for the
19 services of the attorney who obtained it." 23 *Williston on Contracts* § 62:11
20 (4th ed. 2002).”
21

22 There is no rule or authority that supports a finding that work not billed
23 during a case cannot be recovered later. Excepting, of course, the statute of
24 limitations, which is four years or six years, depending on the contract. NRS
25 11.190 (1)(a) & 2(c).
26
27
28

1 The Edgeworths were aware of the phone calls and the 2,000+ emails not
2 included in the bills. The Edgeworths received or sent a huge number of the emails
3 and Brian initiated many of the phone calls. A finding that does not award the Law
4 Office the actual time spent unjustly enriches the Edgeworth's for the work
5 performed, which is contrary to the purpose and intent of lien adjudication and
6 certainly the principles of fundamental fairness.
7
8

9 There is no evidence in the record that the billing entries in the super bill
10 were speculative or that the work was not actually performed. The Edgeworths did
11 not have a basis to dispute any of the entries, and the Edgeworths admitted they
12 had no basis to challenge the time entries during the hearing. If the Court is going
13 to determine the fee based on the hourly rate of the implied contract found for all
14 work done through November 29, 2017, then the actual time of the Law Office
15 should be reimbursed.
16
17
18

19 The Edgeworths admit they have been more than fully compensated. The
20 Edgeworths admitted at hearing that their claimed liquidity problems were caused
21 by their own decisions, like when they used cash on hand to refurbish their 12,000
22 square foot paid for home instead of for the litigation. There is no basis to grant
23 the Edgeworths another windfall. There is no doubt that the Edgeworths
24 dominated the time of the Law Office, one look at the boxes of e-mails confirms
25 the magnitude of the time spent. The Court is asked to revisit its decision to
26
27
28

1 prevent a further windfall for the Edgeworths, and to grant fees to Simon for all the
2 work performed.

3 **IV. Conclusion**
4

5 Simon respectfully requests that the findings and conclusions be clarified,
6 reconsidered and/or amended as stated.

7
8 Dated this 29th day of October 2018.

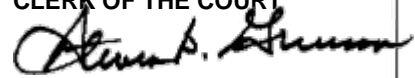
9 /s/ James R. Christensen
10 JAMES R. CHRISTENSEN, ESQ.
11 Nevada Bar No. 003861
12 601 S. 6th Street
13 Las Vegas, NV 89101
14 (702) 272-0406
15 (702) 272-0415 fax
16 jim@jchristensenlaw.com
17 Attorney for Daniel Simon

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing Motion for Reconsideration,
20 Clarification of Decision and Order, And Amendment of Findings of Fact and
21 Conclusion of Law was made by electronic service (via Odyssey) this 29th day of
22 October 2018, to all parties currently shown on the Court's E-Service List.
23

24
25 /s/ Dawn Christensen
26 an employee of
27 JAMES R. CHRISTENSEN, ESQ.
28

Exhibit 1



ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan Corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

Defendants.

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

**DECISION AND ORDER ON MOTION
TO DISMISS NRCP 12(B)(5)**

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**
7
8

9 **FINDINGS OF FACT**

10 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
11 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
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13 come to his office to discuss the litigation.
14

15 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
16 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
17 Exhibit 4).

18 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
19 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
20 communications with Mr. Simon.
21

22 18. On the morning of November 30, 2017, Simon received a letter advising him that the
23 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
24 et.al. The letter read as follows:

25 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
26 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
27 with the Viking entities, et.al. I'm instructing you to cooperate with them in
28 every regard concerning the litigation and any settlement. I'm also instructing

1 you to give them complete access to the file and allow them to review
2 whatever documents they request to review. Finally, I direct you to allow
3 them to participate without limitation in any proceeding concerning our case,
4 whether it be at depositions, court hearings, discussions, etc.”

(Def. Exhibit 43).

5 19. On the same morning, Simon received, through the Vannah Law Firm, the
6 Edgeworth’s consent to settle their claims against Lange Plumbing LLC for \$25,000.

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8 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
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17 due to the Law Office of Danny Simon.
18

19 22. The parties agree that an express written contract was never formed.

20 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
21 Lange Plumbing LLC for \$100,000.

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25

26 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
27 Lien with an attached invoice for legal services rendered. The amount of the invoice was
28

1 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.
2

3 **CONCLUSION OF LAW**

4 ***Breach of Contract***

5 The First Claim for Relief of the Amended Complaint alleges breach of an express oral
6 contract to pay the law office \$550 an hour for the work of Mr. Simon. The Amended Complaint
7 alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the
8 Court finds that there was no express contract formed, and only an implied oral contract. As such, a
9 claim for breach of contract does not exist and must be dismissed as a matter of law.
10

11 ***Declaratory Relief***

12 The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract
13 existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of
14 the settlement proceeds. The Court finds that there was no express agreement for compensation, so
15 there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the
16 settlement proceeds as the Court has adjudicated the lien and ordered the appropriate distribution of
17 the settlement proceeds, in the Decision and Order on Motion to Adjudicate Lien. As such, a claim
18 for declaratory relief must be dismissed as a matter of law.
19
20

21 ***Conversion***

22 The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed
23 that the settlement proceeds were solely their and Simon asserting an attorney's lien constitutes a
24 claim for conversion. In the Amended Complaint, Plaintiffs allege "The settlement proceeds from
25 the litigation are the sole property of the Plaintiffs." Amended Complaint, P. 9, Para. 41.
26
27
28

1 Mr. Simon followed the law and was required to deposit the disputed money in a trust
2 account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr.
3 Simon never exercised exclusive control over the proceeds and never used the money for his
4 personal use. The money was placed in a separate account controlled equally by the Edgeworth's
5 own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

6
7 When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the
8 settlement proceeds as the checks were not endorsed or deposited in the trust account. They were
9 finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien
10 and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds,
11 this claim must be dismissed as a matter of law.

12
13 ***Breach of the Implied Covenant of Good Faith and Fair Dealing***
14

15 The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and
16 Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no
17 express contract existed for compensation and there was not a breach of a contract for compensation,
18 the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter
19 of law and must be dismissed.
20

21
22 ***Breach of Fiduciary Duty***

23 The allegations in the Complaint assert a breach of fiduciary duty for not releasing all the
24 funds to the Edgeworths. The Court finds that Mr. Simon followed the law when filing the attorney's
25 lien. Mr. Simon also fulfilled all his obligations and placed the clients' interests above his when
26 completing the settlement and securing better terms for the clients even after his discharge. Mr.
27
28

1 Simon timely released the undisputed portion of the settlement proceeds as soon as they cleared the
2 account. The Court finds that the Law Office of Daniel Simon is owed a sum of money based on the
3 adjudication of the lien, and therefore, there is no basis in law or fact for the cause of action for
4 breach of fiduciary duty and this claim must be dismissed.

5
6
7 ***Punitive Damages***

8 Plaintiffs' Amended Complaint alleges that Mr. Simon acted with oppression, fraud, or
9 malice for denying Plaintiffs of their property. The Court finds that the disputed proceeds are not
10 solely those of the Edgeworths and the Complaint fails to state any legal basis upon which claims
11 may give rise to punitive damages. The evidence indicates that Mr. Simon, along with Mr. Vannah
12 deposited the disputed settlement proceeds into an interest bearing trust account, where they remain.
13 Therefore, Plaintiffs' prayer for punitive damages in their Complaint fails as a matter of a law and
14 must be dismissed.
15

16
17 **CONCLUSION**

18 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
19 charging lien pursuant to NRS 18.015(3) and the Court adjudicated the lien. The Court further finds
20 that the claims for Breach of Contract, Declaratory Relief, Conversion, Breach of the Implied
21 Covenant of Good Faith and Fair Dealing, Breach of the Fiduciary Duty, and Punitive Damages
22 must be dismissed as a matter of law.
23

24 //

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ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Dismiss NRCP 12(b)(5) is GRANTED.

IT IS SO ORDERED this 10th day of October, 2018.



DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

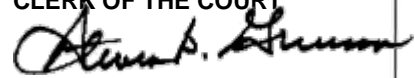
Electronically served to:

Peter S. Christiansen, Esq.
James Christensen, Esq.
Robert Vannah, Esq.
John Greene, Esq.



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2



ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan Corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

Defendants.

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

**DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN**

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**
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9 **FINDINGS OF FACT**

10 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
11 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
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5 Lien with an attached invoice for legal services rendered. The amount of the invoice was
6 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.
7

8 9 **CONCLUSION OF LAW**

10 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The** 11 **Court**

12 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
13 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
14 738444-C under NRS 18.015.

15 NRS 18.015(1)(a) states:
16

- 17 1. An attorney at law shall have a lien:
18 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
19 damages, which has been placed in the attorney's hands by a client for suit or
20 collection, or upon which a suit or other action has been instituted.

21 Nev. Rev. Stat. 18.015.

22 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
23 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
24 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
25 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
26 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
27 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
28

1 is enforceable in form.

2 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
3 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
4 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
5 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
6 under NRS 18.015, thus the Court must adjudicate the lien.
7

8 ***Fee Agreement***

9
10 It is undisputed that no express written fee agreement was formed. The Court finds that there
11 was no express oral fee agreement formed between the parties. An express oral agreement is
12 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469
13 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*
14 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the
15 payment terms are essential to the formation of an express oral contract to provide legal services on
16 an hourly basis.
17

18 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
19 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
20 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
21 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
22 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
23 22, 2017 email, titled "Contingency," he writes:
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25 "We never really had a structured discussion about how this might be done. I
26 am more than happy to keep paying hourly but if we are going for punitive we
27 should probably explore a hybrid of hourly on the claim and then some other
28 structure that incents both of us to win an go after the appeal that these

1 scumbags will file etc. Obviously that could not have been done earlier since
2 who would have thought this case would meet the hurdle of punitives at the
3 start. I could also swing hourly for the whole case (unless I am off what this
4 is going to cost). I would likely borrow another \$450K from Margaret in 250
5 and 200 increments and then either I could use one of the house sales for cash
6 or if things get really bad, I still have a couple million in bitcoin I could sell. I
7 doubt we will get Kinsale to settle for enough to really finance this since I
8 would have to pay the first \$750,000 or so back to Colin and Margaret and
9 why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

10 (Def. Exhibit 27).

11 It is undisputed that when the flood issue arose, all parties were under the impression that Simon
12 would be helping out the Edgeworths, as a favor.

13 The Court finds that an implied fee agreement was formed between the parties on December
14 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
15 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
16 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
17 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
18 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
19 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
20 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
21 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

22 *Constructive Discharge*

23 Constructive discharge of an attorney may occur under several circumstances, such as:

- 24 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
25 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 26 • Refusal to pay an attorney creates constructive discharge. *See e.g.,* Christian v. All Persons
27 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).

- Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v. Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge. McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated, has not withdrawn, and is still technically their attorney of record; there cannot be a termination. The Court disagrees.

On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and signed a retainer agreement. The retainer agreement was for representation on the Viking settlement agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all things without a compromise. Id. The retainer agreement specifically states:

Client retains Attorneys to represent him as his Attorneys regarding Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING ENTITIES and all damages including, but not limited to, all claims in this matter and empowers them to do all things to effect a compromise in said matter, or to institute such legal action as may be advisable in their judgment, and agrees to pay them for their services, on the following conditions:

- a) ...
- b) ...
- c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000 from the Viking entities and any settlement amount agreed to be paid by the Lange entity. Client also agrees that attorneys will work to reach an agreement amongst the parties to resolve all claims in the Lange and Viking litigation.

Id.

This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr. Simon had already begun negotiating the terms of the settlement agreement with Viking during the

1 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
2 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
3 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
4 identified as the firm that solely advised the clients about the settlement. The actual language in the
5 settlement agreement, for the Viking claims, states:

6
7 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
8 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
9 effect of this AGREEMENT and their release of any and all claims, known or
10 unknown and, based upon that explanation and their independent judgment by
11 the reading of this Agreement, PLAINTIFFS understand and acknowledge the
12 legal significance and the consequences of the claims being released by this
13 Agreement. PLAINTIFFS further represent that they understand and
14 acknowledge the legal significance and consequences of a release of unknown
15 claims against the SETTLING PARTIES set forth in, or arising from, the
16 INCIDENT and hereby assume full responsibility for any injuries, damages,
17 losses or liabilities that hereafter may occur with respect to the matters
18 released by this Agreement.

19 Id.

20 Also, Simon was not present for the signing of these settlement documents and never explained any
21 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and
22 Vannah and received them back with the signatures of the Edgeworths.

23 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
24 Though there were email communications between the Edgeworths and Simon, they did not verbally
25 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
26 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
27 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
28 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
against Lange Plumbing had not been settled. The evidence indicates that Simon was actively

1 working on this claim, but he had no communication with the Edgeworths and was not advising
2 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
3 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
4 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
5 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
6 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
7 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
8 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
9 Simon never signed off on any of the releases for the Lange settlement.

11 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
12 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
13 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
14 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
15 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
16 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
17 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
18 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
19 doesn't seem in his best interests." (Def. Exhibit 53).

22 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
23 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
24 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
25 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
26 was attached to the letter), and that Simon continued to work on the case after the November 29,
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28

1 2017 date. The court further recognizes that it is always a client's decision of whether or not to
2 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
3 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
4 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
5 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
6 with him, making it impossible to advise them on pending legal issues, such as the settlements with
7 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
8 Simon from effectively representing the clients. The Court finds that Danny Simon was
9 constructively discharged by the Edgeworths on November 29, 2017.
10

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12
13 **Adjudication of the Lien and Determination of the Law Office Fee**

14 NRS 18.015 states:

15 1. An attorney at law shall have a lien:

16 (a) Upon any claim, demand or cause of action, including any claim for
17 unliquidated damages, which has been placed in the attorney's hands by a
18 client for suit or collection, or upon which a suit or other action has been
19 instituted.

20 (b) In any civil action, upon any file or other property properly left in the
21 possession of the attorney by a client.

22 2. A lien pursuant to subsection 1 is for the amount of any fee which has
23 been agreed upon by the attorney and client. In the absence of an agreement,
24 the lien is for a reasonable fee for the services which the attorney has rendered
25 for the client.

26 3. An attorney perfects a lien described in subsection 1 by serving notice
27 in writing, in person or by certified mail, return receipt requested, upon his or
28 her client and, if applicable, upon the party against whom the client has a
cause of action, claiming the lien and stating the amount of the lien.

4. A lien pursuant to:

(a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or
decree entered and to any money or property which is recovered on account of
the suit or other action; and

(b) Paragraph (b) of subsection 1 attaches to any file or other property
properly left in the possession of the attorney by his or her client, including,
without limitation, copies of the attorney's file if the original documents

1 received from the client have been returned to the client, and authorizes the
2 attorney to retain any such file or property until such time as an adjudication
is made pursuant to subsection 6, from the time of service of the notices
required by this section.

3 5. A lien pursuant to paragraph (b) of subsection 1 must not be
4 construed as inconsistent with the attorney's professional responsibilities to
the client.

5 6. On motion filed by an attorney having a lien under this section, the
6 attorney's client or any party who has been served with notice of the lien, the
court shall, after 5 days' notice to all interested parties, adjudicate the rights of
the attorney, client or other parties and enforce the lien.

7 7. Collection of attorney's fees by a lien under this section may be
8 utilized with, after or independently of any other method of collection.

9 Nev. Rev. Stat. 18.015.

10 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms
11 are applied. Here, there was no express contract for the fee amount, however there was an implied
12 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his
13 services, and \$275 per hour for the services of his associates. This contract was in effect until
14 November 29, 2017, when he was constructively discharged from representing the Edgeworths.
15 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is
16 due a reasonable fee- that is, quantum meruit.
17

18 *Implied Contract*

19
20 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
21 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was
22 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
23 created when invoices were sent to the Edgeworths, and they paid the invoices.
24

25 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
26 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
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28

1 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as
2 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is
3 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that
4 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the
5 bills to give credibility to his actual damages, above his property damage loss. However, as the
6 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund
7 the money, or memorialize this or any understanding in writing.
8

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
11 paid in full and there was never any indication given that anything less than all the fees had been
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
14 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
18 Office retained the payments, indicating an implied contract was formed between the parties. The
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
20 date they were constructively discharged, November 29, 2017.
21
22

23 24 *Amount of Fees Owed Under Implied Contract*

25 The Edgeworths were billed, and paid for services through September 19, 2017. There is
26 some testimony that an invoice was requested for services after that date, but there is no evidence
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28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.
7

8 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
9 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
10 and attempted to create a bill for work that had been done over a year before. She testified that they
11 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
12 email that was read and responded to. She testified that the dates were not exact, they just used the
13 dates for which the documents were filed, and not necessarily the dates in which the work was
14 performed. Further, there are billed items included in the "super bill" that was not previously billed
15 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
16 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
17 indicated that there were no phone calls included in the billings that were submitted to the
18 Edgeworths.
19

20 This attempt to recreate billing and supplement/increase previously billed work makes it
21 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed
22 between the actual work and the billing. The court reviewed the billings of the "super bill" in
23 comparison to the previous bills and determined that it was necessary to discount the items that had
24 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,
25 downloading, and saving documents because the Court is uncertain of the accuracy of the "super
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28

1 bill.”

2 Simon argues that he has no billing software in his office and that he has never billed a client
3 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
4 in this case, were billed hourly because the Lange contract had a provision for attorney’s fees;
5 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
6 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
7 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
8 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
9 emails or calls, understanding that those items may be billed separately; but again the evidence does
10 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
11 This argument does not persuade the court of the accuracy of the “super bill”.
12

13 The amount of attorney’s fees and costs for the period beginning in June of 2016 to
14 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
15 which appears to indicate that it began with the initial meeting with the client, leading the court to
16 determine that this is the beginning of the relationship. This invoice also states it is for attorney’s
17 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
18 amount has already been paid by the Edgeworths on December 16, 2016.²
19

20 The amount of the attorney’s fees and costs for the period beginning on December 5, 2016 to
21 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
22 amount has already been paid by the Edgeworths on May 3, 2017.
23

24 The amount of attorney’s fees for the period of April 5, 2017 to July 28, 2017, for the
25 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney’s fees for this period for
26

27 ²There are no billing amounts from December 2 to December 4, 2016.
28

1 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
2 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
3 been paid by the Edgeworths on August 16, 2017.³

4 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
5 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
6 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
7 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
8 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
9 paid by the Edgeworths on September 25, 2017.

11 From September 29, 2017 to November 29, 2017, the Court must determine the amount of
12 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
13 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
14 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
15 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
16 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
17 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
18 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
19 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

22 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
23 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
24

25
26 ³ There are no billings from July 28 to July 30, 2017.

27 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

28 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.

⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 by the Edgeworths, so the implied fee agreement applies to their work as well.

2 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
3 of September 19, 2018 to November 29, 2017 is \$284,982.50.

4
5 ***Costs Owed***

6 The Court finds that the Law Office of Daniel Simon is owed for outstanding costs of the
7 litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing, LLC; The
8 Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-738444-C.
9 Pursuant to the Memorandum of Costs and Disbursements filed on January 17, 2018, the Law Firm
10 submits that it is owed \$71,594.93 in costs. These costs include \$3,122.97 in Clerk's Fees;
11 \$9,575.90 in Video and Court Recorder's Fees; \$57,646.06 in Expert Witness Fees; and \$1,250.00 in
12 Copy Fees. The Court finds that the Law Office of Daniel Simon is owed these costs in the amount
13 of \$71,594.93.
14
15

16
17 ***Quantum Meruit***

18 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
19 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
20 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
21 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*
22 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
23 and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
24 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
25 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
26
27
28

1 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
2 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
3 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
4 of the Law Office's work on this case.

5 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
6 discretion on the method of calculation of attorney fee, to be "tempered only by reason and
7 fairness". Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires
8 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530
9 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
10 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the
11 reasonableness of the fee under the Brunzell factors. Argentina Consolidated Mining Co., v. Jolley,
12 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that
13 "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
14 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).
15
16

17 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
18 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
19 Court notes that the majority of the work in this case was complete before the date of the
20 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
21 after the constructive discharge.
22

23 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
24 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

25 1. Quality of the Advocate
26

27 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
28

1 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
2 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
3 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
4 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
5 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
6 work product and results are exceptional.

7
8 2. The Character of the Work to be Done

9 The character of the work done in this case is complex. There were multiple parties,
10 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the
11 gamut from product liability to negligence. The many issues involved manufacturing, engineering,
12 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp
13 testified that the quality and quantity of the work was exceptional for a products liability case against
14 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the
15 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the
16 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a
17 substantial factor in achieving the exceptional results.

18
19 3. The Work Actually Performed

20 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
21 numerous court appearances, and deposition; his office uncovered several other activations, that
22 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
23 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
24 other activations being uncovered and the result that was achieved in this case. Since Mr.
25 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
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1 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
2 the Law Office of Daniel Simon led to the ultimate result in this case.

3 4. The Result Obtained

4 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
5 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
6 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
7 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
8 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
9 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
10 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
11 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
12 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
13 were made more than whole with the settlement with the Viking entities.
14

15
16 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
17 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
18 which states:

19 (a) A lawyer shall not make an agreement for, charge, or collect an
20 unreasonable fee or an unreasonable amount for expenses. The factors to be
21 considered in determining the reasonableness of a fee include the following:

22 (1) The time and labor required, the novelty and difficulty of the
23 questions involved, and the skill requisite to perform the legal service
24 properly;

25 (2) The likelihood, if apparent to the client, that the acceptance of the
26 particular employment will preclude other employment by the lawyer;

27 (3) The fee customarily charged in the locality for similar legal
28 services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the
circumstances;

- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state, in boldface type that is at least as large as the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;

(2) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for the Edgeworths, the character of the work was complex, the work actually performed was extremely significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact

1 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
2 responsible were never communicated to the client, within a reasonable time after commencing the
3 representation. Further, this is not a contingent fee case, and the Court is not awarding a
4 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
5 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
6 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
7 from November 30, 2017 to the conclusion of this case.
8

9 10 CONCLUSION

11 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
12 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
13 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
14 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
15 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
16 Simon as their attorney, when they ceased following his advice and refused to communicate with
17 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
18 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
19 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
20 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
21 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
22 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
23 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
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1 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
2 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.
3

4
5 **ORDER**

6 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
7 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
8 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

9
10 IT IS SO ORDERED this 10th day of October, 2018.

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DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

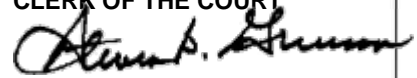
Electronically served to:

Peter S. Christiansen, Esq.
James Christensen, Esq.
Robert Vannah, Esq.
John Greene, Esq.



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 3



ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan Corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

**DECISION AND ORDER ON SPECIAL
MOTION TO DISMISS ANTI-SLAPP**

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**
7
8

9 **FINDINGS OF FACT**

10 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
11 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
12 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
13 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
14 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
15 Simon and his wife were close family friends with Brian and Angela Edgeworth.
16

17 2. The case involved a complex products liability issue.

18 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
19 suffered a flood. The house was still under construction and the flood caused a delay. The
20 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
21 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
22 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
23 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
24 Viking, et al., also denied any wrongdoing.
25

26 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
27
28

1 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
2 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
3 resolve. Since the matter was not resolved, a lawsuit had to be filed.

4 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
5 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
6 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
7 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
8 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.
9

10 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
11 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
12 had some discussion about payments and financials. No express fee agreement was reached during
13 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
14

15 It reads as follows:

16 We never really had a structured discussion about how this might be done.
17 I am more that happy to keep paying hourly but if we are going for punitive
18 we should probably explore a hybrid of hourly on the claim and then some
19 other structure that incents both of us to win an go after the appeal that these
20 scumbags will file etc.

21 Obviously that could not have been doen earlier snce who would have thought
22 this case would meet the hurdle of punitives at the start.

23 I could also swing hourly for the whole case (unless I am off what this is
24 going to cost). I would likely borrow another \$450K from Margaret in 250
25 and 200 increments and then either I could use one of the house sales for cash
26 or if things get really bad, I still have a couple million in bitcoin I could sell.

27 I doubt we will get Kinsale to settle for enough to really finance this since I
28 would have to pay the first \$750,000 or so back to Colin and Margaret and
why would Kinsale settle for \$1MM when their exposure is only \$1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.

1 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
2 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
3 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

4 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
5 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
6 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no
7 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
8 bills indicated an hourly rate of \$550.00 per hour.

10 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
11 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
12 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
13 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
14 paid by the Edgeworths on August 16, 2017.

16 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
17 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
18 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
19 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
20 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
21 25, 2017.

23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
24 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

1 costs to Simon. They made Simon aware of this fact.

2 12. Between June 2016 and December 2017, there was a tremendous amount of work
3 done in the litigation of this case. There were several motions and oppositions filed, several
4 depositions taken, and several hearings held in the case.

5 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against
6 the Viking Corporation ("Viking").

7
8 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
9 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
10 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
11 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

12 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to
13 come to his office to discuss the litigation.

14
15 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,
16 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
17 Exhibit 4).

18 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
19 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all
20 communications with Mr. Simon.

21
22 18. On the morning of November 30, 2017, Simon received a letter advising him that the
23 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,
24 et.al. The letter read as follows:

25 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
26 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
27 with the Viking entities, et.al. I'm instructing you to cooperate with them in
28 every regard concerning the litigation and any settlement. I'm also instructing

1 you to give them complete access to the file and allow them to review
2 whatever documents they request to review. Finally, I direct you to allow
3 them to participate without limitation in any proceeding concerning our case,
4 whether it be at depositions, court hearings, discussions, etc.”

(Def. Exhibit 43).

5 19. On the same morning, Simon received, through the Vannah Law Firm, the
6 Edgeworth’s consent to settle their claims against Lange Plumbing LLC for \$25,000.

7 20. Also on this date, the Law Office of Danny Simon filed an attorney’s lien for the
8 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
9 Law Office filed an amended attorney’s lien for the sum of \$2,345,450, less payments made in the
10 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
11 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.
12

13 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
14 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
15 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
16 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
17 due to the Law Office of Danny Simon.
18

19 22. The parties agree that an express written contract was never formed.

20 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against
21 Lange Plumbing LLC for \$100,000.

22 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
23 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
24 Simon, a Professional Corporation, case number A-18-767242-C.
25

26 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
27 Lien with an attached invoice for legal services rendered. The amount of the invoice was
28

1 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

2 **CONCLUSION OF LAW**

3
4 The Court has adjudicated all remaining issues in the Decision and Order on Motion to
5 Dismiss NRCP 12(b)(5), and the Decision and Order on Motion to Adjudicate Lien; leaving no
6 remaining issues.

7
8 **CONCLUSION**

9 The Court finds that the Special Motion to Dismiss Anti-Slapp is MOOT as all remaining
10 issues have already been resolved with the Decision and Order on Motion to Dismiss NRCP 12(b)
11 and Decision and Order on Motion to Adjudicate Lien.

12
13
14 **ORDER**

15 It is hereby ordered, adjudged, and decreed, that the Special Motion to Dismiss Anti-Slapp is
16 MOOT.

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18
19 IT IS SO ORDERED this 10th day of October, 2018.


20
21 
22 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

Electronically served to:

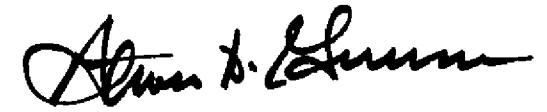
Peter S. Christiansen, Esq.
James Christensen, Esq.
Robert Vannah, Esq.
John Greene, Esq.



Tess Driver
Judicial Executive Assistant
Department 10

Docketing Statement

EXHIBIT 1



CLERK OF THE COURT

1 **ACOM**
2 **DANIEL S. SIMON, ESQ.**
3 Nevada Bar No. 4750
4 **SIMON LAW**
5 810 South Casino Center Boulevard
6 Las Vegas, Nevada 89101
7 (702)364-1650
8 facsimile (702)364-1655
9 lawyers@simonlawlv.com
10 Attorney for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 EDGEWORTH FAMILY TRUST; and)
10 AMERICAN GRATING, LLC.;)
11 Plaintiffs,)
12 vs.)
13 LANGE PLUMBING, L.L.C.;)
14 THE VIKING CORPORATION,)
15 a Michigan corporation;)
16 SUPPLY NETWORK, INC., dba VIKING)
17 SUPPLYNET, a Michigan corporation;)
18 and DOES I through V and ROE)
19 CORPORATIONS VI through X, inclusive,)
20 Defendants.)

CASE NO.: A738444
DEPT. NO.: X

SECOND AMENDED COMPLAINT

21 COMES NOW Plaintiffs, EDGEWORTH FAMILY TRUST, and AMERICAN GRATING,
22 LLC., by and through their attorney, DANIEL S. SIMON, ESQ., and for cause of action against
23 Defendants, allege as follows:

24 **FIRST CAUSE OF ACTION**

25 **NEGLIGENT, RECKLESS AND INTENTIONAL CONDUCT**

26 **(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,**
27 **and DEFENDANT SUPPLY NETWORK, INC.)**

28 1. That all times relevant hereto, the Plaintiff, EDGEWORTH FAMILY TRUST, was
and now is an entity domiciled in the County of Clark, State of Nevada.

2. That all times relevant hereto, the Plaintiff, AMERICAN GRATING, LLC., was and
now is, a Limited Liability Company duly licensed and authorized to conduct business in County of

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

1 Clark, State of Nevada.

2 3. That all times relevant hereto, the Defendant, LANGE PLUMBING, L.L.C., was and
3 now is, a Limited Liability Company duly licensed and authorized to conduct business in the County
4 of Clark, State of Nevada.

5 4. Upon information and belief, at all times relevant hereto, the Defendant, THE VIKING
6 CORPORATION, a Michigan corporation, was, and now is, a corporation duly licensed to conduct
7 business in the County of Clark, State of Nevada.

8 5. Upon information and belief, at all times relevant hereto, the Defendant, SUPPLY
9 NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation, was, and now is, a
10 corporation duly licensed to conduct business in the County of Clark, State of Nevada.

11 6. That the true names and capacities, whether individual, corporate, associate, or
12 otherwise, of the Defendants DOES I through V and ROE CORPORATIONS VI through X,
13 inclusive, are presently unknown to Plaintiffs who, therefore, sue said Defendants by such fictitious
14 names. Plaintiffs are informed and believe and thereupon allege that each of the Defendants herein
15 designated as a DOE and/or ROE CORPORATION is negligently, intentionally and/or strictly liable
16 and caused damages proximately thereby to Plaintiffs as herein alleged; that these individuals or
17 entities may have been responsible for the design, general manufacture, inspection, care, distribution,
18 rental, sale, assembly, installation, construction, control, maintenance and delivery of the subject
19 sprinkler head and system and/or general plumbing contained within the subject property. When the
20 true names and/or capacities of such Defendants become known, Plaintiff will ask leave of this Court
21 to amend their Complaint to insert the true names, identities and capacities, together with the
22 appropriate charging allegations.

23 7. That in or about 2016, the Plaintiff, Edgeworth Family Trust, owned the land located
24 at 645 Saint Croix Street, Henderson, Nevada and were in the process of building a custom home.
25 American Grating, LLC., entered into a contract with Lange Plumbing for the benefit of Edgeworth
26 Family Trust to sell, supply, install and warrant all necessary plumbing for the automatic sprinkler
27 system in the subject home.

1 8. That on or about April 10, 2016, the Sprinkler head and system sold and installed by
2 Defendants failed causing a massive flood in the home, which was almost completed. This caused
3 substantial damage to the property. The products sold and installed by Defendants were defective and
4 not fit for the purposes intended and sold thereby proximately causing the damages set forth herein.

5 9. That at said time and place, Defendants, and each of them, so negligently,
6 intentionally, and/or recklessly installed, designed, tested, approved, constructed, manufactured,
7 assembled, maintained, connected, controlled, delivered, entrusted, sold, inspected and failed to warn
8 of the dangerous condition inherent in the sprinkler head, sprinkler system and/or general plumbing
9 when sold and installed, which directly and proximately resulted in said products being defective,
10 hazardous and inherently dangerous when used for the purposes for which it was designed, produced,
11 manufactured, distributed, sold and installed, thereby proximately causing a flood to occur on the
12 subject premises.

13 10. That as a direct and proximate result of the negligence, defective products, breach of
14 contract and breach of warranty of the Defendants, and each of them, as aforesaid, EDGEWORTH
15 FAMILY TRUST and AMERICAN GRATING, LLC, sustained substantial property damage to the
16 contents and structure of the subject house, and diminution in value all to their damage in an amount
17 in excess of \$500,000.00 plus consequential damages.

18 11. In 2016 there existed between the Plaintiff, AMERICAN GRATING, LLC, and
19 Defendant Lange Plumbing a contract for the sale and installation of the subject sprinkler system,
20 including the subject sprinkler head for the benefit of Edgeworth Family Trust. As a material term
21 of this contract, Lange Plumbing was obligated to sell products of good and merchantable quality free
22 of defects. Lange Plumbing provided implied and express warranties for the products used for the
23 Plaintiff's home and are in breach of the said warranties. Lange Plumbing has refused and continues
24 to refuse to remedy such breach proximately causing the damages set forth herein. Due to the
25 Defendants refusal to pay for the damage caused, Plaintiff has been forced to take loans with accruing
26 interest to pay for the damages caused by the Defendants, and each of them.

27 12. Defendants possessed knowledge of the probable harmful consequences of the
28 defective and dangerous products and failed to act to avoid the probable and harmful consequences

1 and damages to the Plaintiff in a conscious and deliberate disregard for the rights of the Plaintiff.
2 Defendants conduct was intentional, wilful, malicious, fraudulent and oppressive proximately causing
3 damages to the Plaintiff as set forth herein in a sum to be determined at the time of trial.

4 13. That the Plaintiffs, EDGEWORTH FAMILY TRUST and AMERICAN GRATING,
5 LLC, have been required to retain an attorney to prosecute this action, and are entitled to recover
6 reasonable attorney's fees, interest and costs of suit.

7 **SECOND CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

9 **(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,
10 and DEFENDANT SUPPLY NETWORK, INC.)**

11 14. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST
12 repeat and reallege each and every allegation contained in all preceding paragraphs and incorporates
13 same as though fully set forth herein.

14 15. In 2016 there existed between the Plaintiff, AMERICAN GRATING, LLC., and
15 Defendant, LANGE PLUMBING, LLC., a contract for the sale and installation of the subject
16 sprinkler system, including the subject sprinkler head for the benefit of Plaintiff, EDGEWORTH
17 FAMILY TRUST. As a material term of this contract, LANGE PLUMBING, LLC was obligated to
18 sell products of good and merchantable quality free of defects. LANGE PLUMBING, LLC provided
19 a warranty for the products used for the Plaintiff's home. Pursuant to the agreement, LANGE
20 PLUMBING, LLC., provided express and implied warranties that the home and its plumbing were
21 of good and merchantable quality. That the plumbing and sprinkler's were not fit for the uses and
22 purposes for which it was intended and not of good and merchantable quality.

23 16. Defendant, LANGE PLUMBING, LLC., also agree to install said products in a
24 workmanlike manner without negligence. That at said time and place, Defendants, and each of them,
25 so negligently, intentionally, and/or recklessly installed, designed, constructed, manufactured,
26 assembled, maintained, connected, controlled, delivered, entrusted, sold, inspected and failed to warn
27 of the dangerous condition inherent in the sprinkler head, sprinkler system and/or general plumbing
28 when sold and installed, and it was not installed in a workmanlike manner, all of which, directly and

1 proximately resulted in said products being defective, hazardous and inherently dangerous when used
2 for the purposes for which it was designed, produced, manufactured, distributed sold and installed,
3 thereby proximately causing a flood to occur on the subject premises.

4 17. That as a direct and proximate result of the defective condition of said products and
5 the subject premises and the negligent installation, the Defendants, and each of them, were in material
6 breach of the express and implied warranties and the terms of the contract and/or the subcontractor
7 contract, which has proximately caused the Plaintiffs, AMERICAN GRATING, LLC. and
8 EDGEWORTH FAMILY TRUST, to incur property damage as set forth herein, as well as all
9 consequential damages and other damages, diminution in value, Attorney's fees and costs to be
10 determined at the time of trial. Plaintiffs provided immediate notice of its material breach allowing
11 a reasonable time to remedy said breach. Defendants, and each of the, continue to refuse to remedy
12 its breach, which constitutes its breach of contract.

13 18. Defendants possessed knowledge of the probable harmful consequences of the
14 defective and dangerous products and failed to act to avoid the probable and harmful consequences
15 and damages to the Plaintiffs in a conscious and deliberate disregard for the rights of the Plaintiffs.
16 Defendants conduct was intentional, wilful, malicious, fraudulent and oppressive proximately causing
17 damages to the Plaintiffs as set forth herein.

18 19. That the Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY
19 TRUST, have been required to retain an attorney to prosecute this action, and is entitled to recover
20 reasonable attorney's fees, interest and costs of suit.

21 **THIRD CAUSE OF ACTION**

22 **NEGLIGENT HIRING, TRAINING, SUPERVISION & RETENTION**

23 **(As Against ALL DEFENDANTS)**

24 20. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST
25 repeats and realleges each and every allegation contained in all preceding paragraphs and incorporate
26 same as though fully set forth herein.

27 21. That Defendants, and each of them, had a duty to exercise due care in its dealings with
28 Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST and in the

1 selection, training, supervision, oversight, direction, retention and control of its employees, agents,
2 servants, joint venturers, and independent contractors retained by them, including DOE EMPLOYEE,
3 to provide services at 645 Saint Croix Street, Henderson, Nevada.

4 22. That Defendants, and each of them, had a duty to exercise due care in selecting,
5 training, supervising, and retaining its employees, including DOE EMPLOYEE; a duty to have
6 adequate policies and procedures in place in order to assure the safety and inspection of the products
7 it installs, to understand the products its sells to ensure that they are fit for the purposes they are
8 intended and provide adequate warnings; and a duty to train and supervise their employees, including
9 DOE EMPLOYEE, while performing their duties to ensure they were following known safety
10 procedures to avoid damages to property and customers, including Plaintiffs, AMERICAN
11 GRATING, LLC., and EDGEWORTH FAMILY TRUST.

12 23. That Defendants, and each of them, breached their duties to Plaintiffs, AMERICAN
13 GRATING, LLC., and EDGEWORTH FAMILY TRUST, resulting in substantial property damage
14 to Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST.

15 24. As a direct result of the conduct of Defendants, and each of them, Plaintiffs,
16 AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST have been damaged in a sum
17 in excess of \$500,000.00.

18 25. Defendants, and each of them, possessed knowledge of the probable harmful
19 consequences of the defective and dangerous products and failed to act to avoid the probable and
20 harmful consequences and damages to the Plaintiff in a conscious and deliberate disregard for the
21 rights of the Plaintiff. Defendants conduct was intentional, wilful, malicious, fraudulent and
22 oppressive proximately causing damages to the Plaintiff as set forth herein in a sum to be determined
23 at the time of trial.

24 26. That as a direct and proximate result of the negligent, intentional, and/or reckless
25 conduct of the Defendants, and each of them, as aforesaid, Plaintiffs, AMERICAN GRATING, LLC.,
26 and EDGEWORTH FAMILY TRUST was required to obtain the services of an attorney in order to
27 prosecute this action, and are entitled to recover reasonable attorney's fees, plus interest and costs of
28 suit.

FOURTH CAUSE OF ACTION

RES IPSA LOQUITUR

**(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,
and DEFENDANT SUPPLY NETWORK, INC.)**

27. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST repeat and reallege each and every allegation contained in all preceding paragraphs and incorporates same as though fully set forth herein.

28. Defendants are in exclusive control of the Automatic Sprinkler System at the time of the subject incident, which was the instrumentality causing the damages set forth herein.

29. Plaintiffs allege that the incident is not the type of incident that occurs in the absence of negligence and Defendants are in a better position to explain the subject incident and the incident is inexplicable without resort to the presumption of negligence and the doctrine of res ipsa loquitur, which presumption of negligence and doctrine are especially invoked herein, thereby proximately causing damages to Plaintiffs, all to its damage in a sum in excess of \$500,000.00.

30. Defendants possessed knowledge of the probable harmful consequences of the defective and dangerous products and failed to act to avoid the probable and harmful consequences and damages to the Plaintiffs in a conscious and deliberate disregard for the rights of the Plaintiffs. Defendants conduct was intentional, wilful, malicious, fraudulent and oppressive proximately causing damages to the Plaintiff as set forth herein in a sum to be determined at the time of trial.

31. That as a direct and proximate result of the negligent, intentional, and/or reckless conduct of the Defendant LANGE PLUMBING, as aforesaid, Plaintiffs AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST were required to obtain the services of an attorney in order to prosecute this action, and are entitled to recover reasonable attorney's fees, plus interest and costs of suit.

FIFTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY

**(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,
and DEFENDANT SUPPLY NETWORK, INC.)**

32. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST

1 repeat and reallege each and every allegation contained in all preceding paragraphs of the Complaint
2 and incorporates same as though fully set forth herein.

3 33. That the Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and
4 SUPPLY NETWORK, INC., were the designers, manufacturers, installers, retailers, sellers,
5 packager's and distributors of a product known as a Sprinkler Head and/or Sprinkler System installed
6 in the Plaintiff's home.

7 34. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
8 NETWORK, INC.'s Automatic Sprinkler System and Sprinkler Head was in a defective condition
9 and/or unreasonably dangerous condition at the time the Defendants sold the device.

10 35. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
11 NETWORK, INC.'s Automatic Sprinkler System and Sprinkler Head was defective at the time the
12 product left the manufacturer.

13 36. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
14 NETWORK, INC.'s Automatic Sprinkler System and Sprinkler Head was being used in a foreseeable
15 manner as intended for its use.

16 37. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
17 NETWORK, INC.'s Automatic Sprinkler System and Sprinkler Head were defective in that
18 Defendants failed to include warnings that adequately communicated the dangers that may result from
19 its use or foreseeable misuse.

20 38. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
21 NETWORK, INC., had a duty to warn consumers of any dangerous characteristics that were not well
22 known to the general public when using Automatic Sprinkler System and Sprinkler Head.

23 39. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
24 NETWORK, INC.'s advertisements and/or literature did not denote the possible failure of the
25 Automatic Sprinkler System and Sprinkler Head in the manner in which it failed.

26 40. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
27 NETWORK, INC., failed to warn that the Automatic Sprinkler System and Sprinkler Head subject
28 presented an unreasonable danger if used.

1 41. As a direct result of the defective and unreasonably dangerous condition of
2 Defendants, and each of them, Defendants, LANGE PLUMBING,LLC., VIKING CORPORATION,
3 and SUPPLY NETWORK, INC.'s, Automatic Sprinkler System and Sprinkler Head was a proximate
4 cause of the Plaintiffs' damages, all Defendants are strictly liable to the Plaintiff for all damages as
5 set forth herein.

6 42. Defendants, LANGE PLUMBING, LLC.,VIKING CORPORATION, and SUPPLY
7 NETWORK, INC.'s Automatic Sprinkler System and Sprinkler Head was designed, manufactured,
8 tested, maintained, fabricated, supplied, marketed and/or sold to Plaintiffs, and the Automatic
9 Sprinkler System and Sprinkler Head was defective, hazardous and unreasonably dangerous in light
10 of the nature and intended use, and its failure during its use by Plaintiffs caused Plaintiffs substantial
11 property damage and consequential damages and all other damages in a sum in excess of ten thousand
12 (\$500,000) dollars.

13 43. That at all times mentioned herein, said Sprinkler Head and/or Sprinkler System were
14 defective, hazardous and unreasonably dangerous when used for the purposes for which it was
15 designed, manufactured and sold; that on or about April 10, 2016 a flood occurred at the subject
16 property, originating from the defective Sprinkler Head and/or Sprinkler System and plumbing and
17 as a direct and proximate result of its defective and unreasonably dangerous condition, the Plaintiffs,
18 sustained property damage in an amount in excess of \$500,000, diminution in value, attorney's fees,
19 costs, interest on loans and other damages to be determined at the time of trial; that said Defendants,
20 and all of them, are strictly liable for the damages suffered by the Plaintiffs

21 44. Defendants possessed knowledge of the probable harmful consequences of the
22 defective and dangerous products and failed to act to avoid the probable and harmful consequences
23 and damages to the Plaintiffs in a conscious and deliberate disregard for the rights of the Plaintiffs.
24 Defendants' conduct was intentional, wilful, malicious, fraudulent and oppressive proximately
25 causing damages to the Plaintiffs as set forth herein in a sum to be determined at the time of trial.

26 45. That Plaintiffs have been required to obtain the services of an attorney in order to
27 prosecute this action, and is entitled to reasonable attorney's fees, interest plus costs of suit.
28

SIXTH CAUSE OF ACTION:

NEGLIGENCE, BREACH OF THE STANDARD OF CARE

**(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,
and DEFENDANT SUPPLY NETWORK, INC.)**

46. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST repeat and reallege each and every allegation contained in all preceding paragraphs and incorporates same as though fully set forth herein.

47. That Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY NETWORK, INC., and each of them, had a duty to use reasonable care in the manufacture, testing, inspection, marketing, maintenance, distribution, and sale of non-defective, adequately labeled Automatic Sprinkler System, including the subject Sprinkler Head.

48. The subject Sprinkler Head, hereinbefore described, manufactured, maintained, assembled, distributed and sold by Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY NETWORK, INC., was negligently tested, inspected, marketed, maintained, distributed and/or sold and failed during the normal and intended use. Said product was unreasonably dangerous when used for its intended use and/or foreseeable misuse and said product was defective proximately causing the injuries alleged herein.

49. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY NETWORK, INC., and each of them, breached their duties of reasonable care by failing to properly warn consumers of the dangers that may result from their products use or foreseeable misuse.

50. Defendants possessed knowledge of the probable harmful consequences of the defective and dangerous products and failed to act to avoid the probable and harmful consequences and damages to the Plaintiffs in a conscious and deliberate disregard for the rights of the Plaintiffs. Defendants' conduct was intentional, wilful, malicious, fraudulent and oppressive proximately causing damages to the Plaintiffs as set forth herein in a sum to be determined at the time of trial.

51. That as a direct and proximate result of the negligent, intentional, and/or reckless conduct of the Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY NETWORK, INC., as aforesaid, Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH

1 FAMILY TRUST were required to obtain the services of an attorney in order to prosecute this action,
2 and are entitled to recover reasonable attorney's fees plus interest and costs of suit.

3 **SEVENTH CAUSE OF ACTION:**

4 **CORPORATE NEGLIGENCE AND VICARIOUS LIABILITY**

5 **(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,
6 and DEFENDANT SUPPLY NETWORK, INC.)**

7 52. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST
8 repeat and reallege each and every allegation contained in all preceding paragraphs and incorporates
9 same as though fully set forth herein.

10 53. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
11 NETWORK, INC., and each of them, are corporations vicariously liable for damages resulting from
12 their employees, agents and/or servants' negligent actions against Plaintiffs, AMERICAN GRATING,
13 LLC., and EDGEWORTH FAMILY TRUST during the scope of their employment and agency
14 relationship.

15 54. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
16 NETWORK, INC., and each of them, by and through their employees, agents and/or servants,
17 breached their duty of care by providing a defective and dangerous sprinkler systems for the intended
18 use of consumers, including Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY
19 TRUST.

20 55. As a result, Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY
21 TRUST sustained substantial property damage. Defendants, DEFENDANT LANGE PLUMBING,
22 DEFENDANT VIKING CORPORATION, and DEFENDANT SUPPLY NETWORK, INC., and each
23 of them, are liable for their employees, agents and/or servants' breach of duty to the Plaintiffs.

24 56. Defendants possessed knowledge of the probable harmful consequences of the
25 defective and dangerous products and failed to act to avoid the probable and harmful consequences
26 and damages to the Plaintiffs in a conscious and deliberate disregard for the rights of the Plaintiffs.
27 Defendants' conduct was intentional, wilful, malicious, fraudulent and oppressive proximately
28 causing damages to the Plaintiffs as set forth herein in a sum to be determined at the time of trial. All

1 Defendants have fully authorized, approved and ratified the conduct of each other Defendant,
2 employee, agent, independent contract, and or servant.

3 **EIGHTH CAUSE OF ACTION**

4 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

5 **(AS TO DEFENDANT LANGE PLUMBING, DEFENDANT VIKING CORPORATION,
6 and DEFENDANT SUPPLY NETWORK, INC.)**

7 57. Plaintiffs, AMERICAN GRATING, LLC., and EDGEWORTH FAMILY TRUST
8 repeat and reallege each and every allegation contained in all preceding paragraphs and incorporates
9 same as though fully set forth herein.

10 58. That Defendants also have an obligation to act in good faith and deal fairly with the
11 Plaintiffs to honor the agreements, which covenant is implied in every contract. The parties have a
12 special fiduciary relationship in dealing with each other. Defendants have failed and neglected to
13 perform the conditions of the contract on their part in that they have refused and failed to repair,
14 correct or otherwise pay for the damages caused by the flooding as required under the terms of the
15 agreements. There is no justifiable reason in law or equity for Defendants' refusal to pay Plaintiffs'
16 claim. Defendants, LANGE PLUMBING, LLC., VIKING CORPORATION, and SUPPLY
17 NETWORK, INC., and each of them, have misrepresented the true facts and destroyed material
18 evidence in an attempt to escape liability. Such actions constitute a breach of the implied covenant
19 of good faith and fair dealing as contained in every contract entered into in the State of Nevada.

20 59. Defendants' actions were malicious, wilful, oppressive, fraudulent and done in a
21 reckless disregard of Plaintiffs rights proximately causing the damages set forth herein.

22 60. As a direct result of Defendants' breach of the implied covenant of good faith and fair
23 dealing, Plaintiffs have been damaged in a sum in excess of \$10,000.00.

24 61. Plaintiffs have been required to obtain the services of an attorney in order to prosecute
25 this action, and are entitled to recover reasonable attorney's fees, interest and costs of suit.

26 WHEREFORE, Plaintiffs pray judgment against the Defendants as follows:

27 1. For a sum in excess of \$500,000 as and for property damage arising from this incident;
28

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

1 2. For a sum in excess of \$10,000 for breach of contract, breach of warranty and breach
2 of covenant of good faith and fair dealing.

3 3. For a sum to be determined at the time of trial for special and consequential damages.

4 4. For a sum to be determined at the time of trial for punitive damages.

5 5. For reasonable attorney's fees, interest and costs of suit; and

6 6. For such other and further relief as the Court may deem just and proper.

7 Dated this 7th day of March, 2017.

8
9
10 By: _____

Daniel S. Simon

DANIEL S. SIMON, ESQ.

Nevada Bar #004750

SIMON LAW

810 South Casino Center Blvd.

Las Vegas, Nevada 89101

Attorney for Plaintiffs

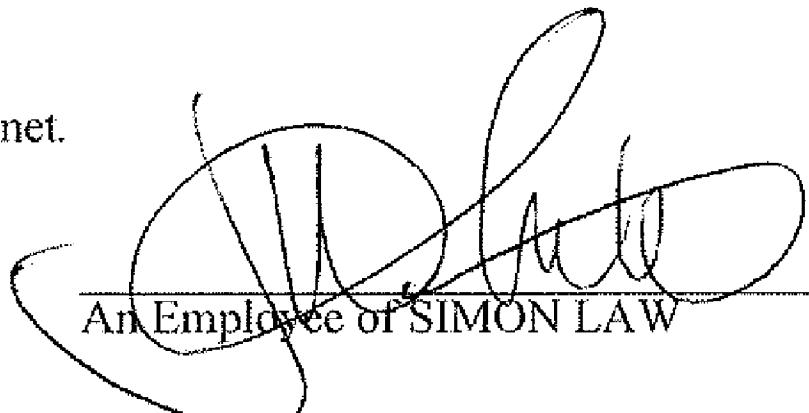
SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 7 day of March, 2017, I served the foregoing **SECOND AMENDED COMPLAINT** on the following parties by electronic transmission through the Wiznet system and via facsimile to:

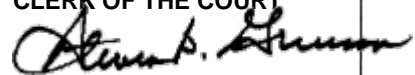
Gary W. Call, Esq.,
Athanasia E. Dalacas, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorney for Defendant
Lange Plumbing, LLC

Janet C. Pancoast, Esq.
Nevada Bar No. 5090
CISNEROS & MARIAS
1160 N. Town Center Dr., Suite 130
Las Vegas, NV 89144
Attorney for Defendant
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet.


An Employee of SIMON LAW

Docketing Statement

EXHIBIT 2



1 **STP**

JANET C. PANCOAST, ESQ.

2 Nevada Bar No. 5090

CISNEROS & MARIAS

3 1160 N. Town Center Dr., Suite 130

Las Vegas, NV 89144

4 Tel: (702) 233-9660

5 Fax: (702) 233-9665

janet.pancoast@zurichna.com

6 *in Association with*

7 S. Seth Kershaw, Esq.

State Bar No. 10639

8 MEYERS MCCONNELL REISZ SIDERMAN P.C.

11620 Wilshire Blvd., Suite 800

9 Los Angeles, CA 90025

Tel: 1-310-312-0772

10 Fax: 1-310-312-0656

11 kershaw@mms-law.com

12 Attorneys for Defendant/Cross-Defendant

Cross-Claimant/Third Party Plaintiffs

13 The Viking Corporation & Supply Network, Inc.

14 d/b/a Viking Supplynet

15
16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 EDGEWORTH FAMILY TRUST, and
19 AMERICAN GRATING, LLC

Plaintiffs,

20 vs.

21 LANGE PLUMBING, LLC; THE VIKING
22 CORPORATION, a Michigan corporation;
23 SUPPLY NETWORK, INC. d/b/a VIKING
24 SUPPLYNET, a Michigan corporation; and
DOES I through V and ROE CORPORATIONS
25 VI through X, inclusive,
Defendants.

) **CASE NO.: A-16-738444-C**

) **DEPT. NO.: X**

) **STIPULATION FOR DISMISSAL**
) **WITH PREJUDICE OF ALL CLAIMS**
) **& OF ENTIRE ACTION**

26 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al.* Case No. A-16-738444-
27 Stipulation and Order for Dismissal of Action with Prejudice

1 LANGE PLUMBING, LLC,)
Cross-Claimant,)

2 vs.)

3 THE VIKING CORPORATION, a Michigan)
4 corporation; SUPPLY NETWORK, INC. d/b/a)
VIKING SUPPLYNET, a Michigan corporation;)
5 and DOES I through V and ROE)
6 CORPORATIONS VI through X, inclusive.)
Cross-Defendants)

7 THE VIKING CORPORATION, a Michigan)
8 corporation; SUPPLY NETWORK, INC. d/b/a)
9 VIKING SUPPLYNET, a Michigan corporation)
LANGE PLUMBING, LLC,)
Counter-Claimant,)

10 vs.)

11 LANGE PLUMBING, LLC, and DOES I through)
12 V and ROE CORPORATIONS VI through X,)
13 inclusive.)
Counter-Defendant)

14 THE VIKING CORPORATION, a Michigan)
15 corporation; SUPPLY NETWORK, INC. d/b/a)
16 VIKING SUPPLYNET, a Michigan corporation,)
Defendants/Third Party Plaintiffs,)

17 v.)

18 GIBERTI CONSTRUCTION, LLC, a Nevada)
19 Limited Liability Company and DOES I through)
20 V and ROE CORPORATIONS VI through X,)
inclusive,)
Third Party Defendant.)

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26 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al.* Case No. A-16-738444-
27 Stipulation and Order for Dismissal of Action with Prejudice

1 GIBERTI CONSTRUCTION, LLC, a Nevada)
Limited Liability Company,)

2 Counter-Claimant)

3 v.)

4 THE VIKING CORPORATION, a Michigan)
5 corporation; SUPPLY NETWORK, INC. d/b/a)
6 VIKING SUPPLYNET, a Michigan corporation,)

7 Counter-Defendant.)

8 GIBERTI CONSTRUCTION, LLC, a Nevada)
Limited Liability Company,)

9 Cross-Claimant)

10 v.)

11 LANGE PLUMBING, LLC, and DOES I through)
12 V and ROE CORPORATIONS VI through X,)
13 inclusive.)

14 Cross-Defendant.)

15 COMES NOW, PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN
16 GRATING, LLC by and through their attorney of record Daniel Simon, Esq. of SIMON LAW;
17 DEFENDANT/CROSS-DEFENDANT/CROSS-CLAIMANT LANGE PLUMBING, LLC, by and
18 through its counsel of record Theodore Parker, Esq. of PARKER NELSON & ASSOCIATES;
19 DEFENDANTS/CROSS-DEFENDANTS/CROSS-CLAIMANTS THE VIKING CORPORATION
20 & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET by and through their attorney of record,
21 Janet C. Pancoast, Esq. of the law firm of CISNEROS & MARIAS, in association with counsel of
22 MEYERS MCCONNELL REISZ SIDERMAN P.C. and LEWIS ROCA ROTHGERBER
23 CHRISTIE, LLP; and THIRD PARTY DEFENDANT/CROSS-CLAIMANT/COUNTER-
24

25
26 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al.* Case No. A-16-738444-
27 Stipulation and Order for Dismissal of Action with Prejudice

CLAIMANT GIBERTI CONSTRUCTION, LLC, by and through its counsel of record Tyler Ure,
Esq. of MURCHISON & CUMMING, LLP, that:

1. All claims asserted in any and all Complaints filed herein by PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC and each and every cause of action alleged therein against THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET and VIKING GROUP, shall be dismissed with prejudice.
2. All claims asserted in any and all Complaints filed herein by PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC and each and every cause of action alleged therein against LANGE PLUMBING, LLC shall be dismissed with prejudice.
3. All cross-claims asserted by THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET against LANGE PLUMBING, LLC shall be dismissed with prejudice.
4. All cross-claims asserted by LANGE PLUMBING, LLC, against THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET shall be dismissed with prejudice.
5. All claims by THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET against GIBERTI CONSTRUCTION, LLC shall be dismissed with prejudice.
6. All claims by GIBERTI CONSTRUCTION, LLC against THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET shall be dismissed with prejudice.

Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-
Stipulation and Order for Dismissal of Action with Prejudice


1 7. All claims by GIBERTI CONSTRUCTION, LLC against LANGE PLUMBING,
2 LLC shall be dismissed with prejudice.

3 8. The dismissal of the foregoing claims will result in the dismissal of this entire action
4 with prejudice.

5 9. Each party shall bear their own fees and costs.

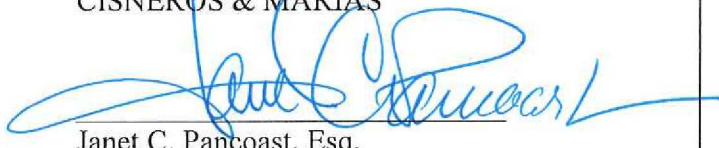
6
7 Dated this ____ day of December, 2017.

8 SIMON LAW

9
10 
11 Daniel S. Simon, Esq.
12 810 South Casino Center Blvd.
13 Las Vegas, NV 89101
14 Attorney for Plaintiff

Dated this ____ day of December, 2017.


CISNEROS & MARIAS

15
16 
17 Janet C. Pancoast, Esq.
18 1160 Town Center Drive, Suite 130
19 Las Vegas, Nevada 89144

20 *In Association with and with the agreement of*
21 MEYERS REISZ SIDERMAN P.C. &
22 LEWIS ROCA ROTHGERBER CHRISTIE,
23 LLP
24 *Attorneys for Viking Defendants*


25 Dated this 20th day of ~~December~~ ^{February}, 2017.

26 PARKER NELSON & ASSOCIATES

27
28 
Theodore Parker, Esq.
2460 Professional Ct., Suite 200
Las Vegas, NV 89128
Attorney for Lange Plumbing, LLC

Dated this 15th day of December, 2017.

MURCHISON & CUMMING, LLP


Tyler Ure, Esq.
6900 Westcliff Drive, Suite 605
Las Vegas, NV 89145
Attorney for Giberti Construction, LLC

//

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Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-
Stipulation and Order for Dismissal of Action with Prejudice

ORDER

Based on the Stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that all claims, cross-claims, counter-claims and third party claims as set forth above by the parties are hereby dismissed and this entire action is hereby dismissed with prejudice.

Each party is to bear their own attorney's fees and costs incurred herein.

Dated this 20th day of Feb, 2018


DISTRICT COURT JUDGE

Submitted by:

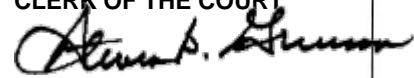
CISNEROS & MARIAS

BY: 

Janet C. Pancoast, Esq.
1160 N. Town Center Drive, Suite 130
Las Vegas, NV 89144
Attorneys for Viking Defendants

Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-
Stipulation and Order for Dismissal of Action with Prejudice

Docketing Statement
EXHIBIT 3



1 **ACOM**
2 ROBERT D. VANNAH, ESQ.
3 Nevada Bar. No. 002503
4 JOHN B. GREENE, ESQ.
5 Nevada Bar No. 004279
6 **VANNAH & VANNAH**
7 400 South Seventh Street, 4th Floor
8 Las Vegas, Nevada 89101
9 Telephone: (702) 369-4161
10 Facsimile: (702) 369-0104
11 jgreene@vannahlaw.com

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, A PROFESSIONAL
21 CORPORATION; DOES I through X, inclusive,
22 and ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: XIV

Consolidated with

CASE NO.: A-16-738444-C

DEPT. NO.: X

AMENDED COMPLAINT

25 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
26 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
27 GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants,
28 complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic professional corporation licensed and doing business in Clark County, Nevada. At times, Defendants shall be referred to as SIMON.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

[e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of

1 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
2 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
3 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
4 and costs to the mandated computation of damages.

5
6 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay
7 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by
8 PLAINTIFFS accrued interest.

9 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
10 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
11 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
12 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
13 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
14 neither PLAINTIFFS nor SIMON agreed on any terms.

15
16 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth
17 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he
18 wanted to be paid in light of a favorable settlement that was reached with the defendants in the
19 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS
20 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented
21 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set
22 forth in the computation of damages disclosed by SIMON in the LITIGATION.

23
24 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
25 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
26 through his invoices and create, or submit, additional billing entries. According to SIMON, he
27 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
28 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that

1 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
2 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

3 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
4 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
5 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following
6 the flooding event.
7

8 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP
9 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
10 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
11 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
12 fees and costs other than those contained in his invoices that were presented to and paid by
13 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
14 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
15 alone those in excess of \$1,000,000.00.
16

17 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
18 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
19 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
20 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
21 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
22 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
23 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
24 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
25 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
26 they've been updated as of last week."
27
28

18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00 per hour for SIMON'S legal services performed in the LITIGATION.

33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his services, nothing more.

40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or before September 27, 2017, had already been produced to the defendants.

41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

42. Despite SIMON'S knowledge that he has billed for and been paid in full for his services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd produced all of his billings through September of 2017, SIMON has refused to agree to either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFFS' property rights.

44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

///

///

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

1 determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
2 SIMON breached the implied covenant of good faith and fair dealing.

3 53. When SIMON executed his secret plan and went back and added substantial time to
4 his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good
5 faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and
6 fair dealing.
7

8 54. When SIMON demanded a bonus based upon the amount of the settlement with the
9 Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,
10 SIMON breached the implied covenant of good faith and fair dealing.
11

12 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an
13 amount that was far in excess of any amount of fees that he had billed from the date of the
14 previously paid invoice to the date of the service of the lien, that he could bill for the work
15 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing
16 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON
17 breached the implied covenant of good faith and fair dealing.
18

19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.
24

25 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a
26 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or
27 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are
28 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

50. PLAINTIFFS have been compelled to retain an attorney to represent their interests in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of \$15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of \$15,000;
3. Punitive damages in an amount in excess of \$15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
5. Costs of suit; and,
6. For such other and further relief as the Court may deem appropriate.

DATED this 15 day of March, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ. /sn
(4279)

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants, and Cross-Respondents,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION,
Respondents, and Cross-Appellants.

No. 77678 Electronically Filed
Jan 15 2019 12:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS
by Cross-Appellants

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 10
County Clark Judge Jones
District Ct. Case No. A-16-738444-C consolidated with A-18-767242-C

2. Attorney filing this docketing statement:

Attorney James R. Christensen Telephone 702.272.0406
Firm James R. Christensen, PC
Address 601 S. 6th Street
Las Vegas, NV 89101

Client(s) Daniel S. Simon and the Law Office of Daniel S. Simon, a Professional Corporation

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney John B. Greene Telephone 702.369.4161
Firm Vannah & Vannah
Address 400 S. Seventh Street, 4th Floor
Las Vegas, NV 89101

Client(s) Edgeworth Family Trust; American Grating, LLC

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Lien Adjudication</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

A-16-738444-C began as a product defect/contract claim against Viking and Lange plumbing to recover a \$500,000 property loss. The case was settled for \$6,100,000.00. A dispute arose over fees and advanced costs between Plaintiffs in A738444 (collectively the "Edgeworths") and their attorney (collectively "Simon"). Simon served an attorney's lien and then the Edgeworths sued Simon for conversion and other claims over the attorney fee dispute and Simon's use of the attorney lien in case A-18-767242-C. The District Court consolidated the cases, held a five day evidentiary hearing, then issued Orders adjudicating the lien, dismissing A767242 pursuant to NRCP 12(b)(5) and denying as moot the Simon motion to dismiss A767242 pursuant to the Nevada Anti-SLAPP statute.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The District Court erred when it denied the Anti-SLAPP motion to dismiss as moot. Use of an attorney's lien pursuant to statute cannot be conversion as a matter of law, and a suit against an attorney (or anyone else) for lawful use of process must be dismissed under the Anti-SLAPP statute. Dismissal under the Anti-SLAPP statute provides grounds and remedies to Simon that are not available under NRCP 12(b)(5); thus, the 12(b)(5) dismissal, while correct, did not moot the Anti-SLAPP motion to dismiss.

The District Court erred when it did not grant fees under quantum meruit for all time spent on the case by Simon following the constructive discharge of Simon on the eve of settlement. Alternatively, the District Court erred when it did not consider several hundred hours spent by the Simon firm in its grant of fees to Simon on an hourly basis.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal does not appear to be presumptively assigned to either Court. Based on the amounts involved, which are over the amounts listed for presumptive assignment to the Court of Appeals in NRAP 17(b)(5)&(6), Simon believes that retention by the Supreme Court is warranted.

14. Trial. If this action proceeded to trial, how many days did the trial last? No trial.

Was it a bench or jury trial? No trial, but the Court held a five day evidentiary hearing.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 10.11.18

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 10.24.18

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing 10.29.18

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion 11.19.18

(c) Date written notice of entry of order resolving tolling motion was served 12.27.18

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed

Edgeworth's Notice of Appeal filed 12.7.18; Simon's Notice of Cross-Appeal filed 12.17.18

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

Timeliness of the Edgeworths' notice of appeal is governed by NRAP 4(a)(1), the Simon cross appeal by NRCP 4(a)(2).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court orders of October 11, later amended, dismissing the case and denying the Anti-SLAPP motion as moot acted as a final judgment in A767242 under NRAP 3A(b)(1).

The District Court order of October 11, later amended, adjudicating the lien was a special order under NRAP3A(b)(8), considering the consolidation with A767242 in which Simon was a named party.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

A-16-738444-C: Edgeworth Family Trust, Plaintiffs; Lange Plumbing, L.L.C., The Viking Corporation, Supply Network, Inc., dba Viking Supplynet, Defendants; Lange Plumbing, L.L.C., Cross-Claimant; Viking Corporation, Supply Network Inc. dba Viking Supplynet, Cross-Defendants.

A-18-767242-C: Edgeworth Family Trust; American Grating, LLC, Plaintiffs; Daniel S. Simon dba Simon Law, Defendants.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

A738444: All parties dismissed via Stipulation and Order on February 20, 2018.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

A738444: Edgeworths sued for; Breach of Contract; Negligence; Strict Product Liability; and Breach of the Covenant of Good Faith and Fair Dealing; Defendants Viking and Lange filed cross claims, counter claims and a third party claim. All were dismissed by stipulation and order on February 20, 2018.

A738444: Edgeworths sued Simon for Breach of Contract, Declaratory Relief, Convesion, and Breach of the Implied Covenant of Good Faith and Fair Dealing. All were dismissed on October 11, 2018, later amended.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Daniel S. Simon and the Law Office of Daniel S. Simon,
a Professional Corporation

Name of appellant

James R. Christensen

Name of counsel of record

1.15.19

Date

James R. Christensen

Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 15th day of January, _____, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)
- ☒ By E-serve to all parties

Dated this 15th day of January, 2019

Dawn Christensen

Signature