

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

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,

Respondents/Cross-Appellants.

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vs.

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Respondents.

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**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

VOL. 2 PART 6 of 9

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

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<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
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11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
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12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCp 12(B)(5))	2	AA000442
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1 The Court can grant attorney fees based solely on the most egregious cause  
2 of action for conversion (and punitive damages) which was a legal impossibility  
3 based on the uncontroverted facts known to Plaintiffs at the time they filed the  
4 complaint. In addition, the Court may grant attorney fees based on the frivolous  
5 and vexatious nature of the lawsuit which is shown by the totality of the  
6 circumstances, including the wild accusations contained in the Complaints and  
7 three separate affidavits of Brian Edgeworth that were confirmed as false at the  
8 evidentiary hearing. The mere fact that Vannah and Edgeworth attempted to name  
9 Mr. Simon personally underscores their willfulness and transparent motives.  
10  
11

### 12 **III. Argument**

#### 13 **A. Applicable Law.**

14  
15 There are several provisions within Nevada law that favor awarding attorney  
16 fees and costs when the claims maintained by a party are not well-grounded in fact  
17 or warranted by existing law to deter vexatious and frivolous claims. Nevada  
18 Revised Statute 18.010(2)(b) and (3) state:  
19  
20  
21

22 2. In addition to the cases where an allowance is authorized by specific  
23 statute, the court may make an allowance of attorney's fees to a prevailing  
24 party:

25 (b) Without regard to the recovery sought, when the court finds that  
26 the claim, counterclaim, cross-claim or third-party complaint or  
27 defense of the opposing party was brought or maintained without  
28 reasonable ground or to harass the prevailing party. *The court shall  
liberally construe the provisions of this paragraph in favor of  
awarding attorney's fees in all appropriate situations.* It is the intent

1 of the Legislature that the court award attorney's fees pursuant to this  
2 paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
3 Rules of Civil Procedure in all appropriate situations to punish for and  
4 deter frivolous or vexatious claims and defenses because such claims  
5 and defenses overburden limited judicial resources, hinder the timely  
6 resolution of meritorious claims and increase the costs of engaging in  
7 business and providing professional services to the public.

8 3. In awarding attorney's fees, the court may pronounce its decision on the  
9 fees at the conclusion of the trial or special proceeding without written  
10 motion and with or without presentation of additional evidence.

11 (Emphasis added.)

12 Further, Nevada Revised Statute 7.085 states:

13 1. If a court finds that an attorney has:

14 (a) Filed, maintained or defended a civil action or proceeding in any  
15 court in this State and such action or defense is not well-grounded in  
16 fact or is not warranted by existing law or by an argument for  
17 changing the existing law that is made in good faith; or

18 (b) Unreasonably and vexatiously extended a civil action or  
19 proceeding before any court in this State,

20 ~ the court shall require the attorney personally to pay the additional  
21 costs, expenses and attorney's fees reasonably incurred because of  
22 such conduct.

23 2. The court shall liberally construe the provisions of this section in favor  
24 of awarding costs, expenses and attorney's fees in all appropriate situations.  
25 It is the intent of the Legislature that the court award costs, expenses and  
26 attorney's fees pursuant to this section and impose sanctions pursuant to  
27 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations  
28 to punish for and deter frivolous or vexatious claims and defenses because  
such claims and defenses overburden limited judicial resources, hinder the  
timely resolution of meritorious claims and increase the costs of engaging in  
business and providing professional services to the public.

1           Additionally, under Nevada's Anti-SLAPP statutes that protect  
2     communications made to courts -- such as requesting adjudication of an attorney  
3     lien -- attorney fees and costs are also provided to deter frivolous and vexatious  
4     claims:  
5

6           1. If the court grants a special motion to dismiss filed pursuant to NRS  
7     41.660:

8                   (a) The court shall award reasonable costs and attorney's fees to the  
9                   person against whom the action was brought, except that the court  
10                  shall award reasonable costs and attorney's fees to this State or to the  
11                  appropriate political subdivision of this State if the Attorney General,  
12                  the chief legal officer or attorney of the political subdivision or special  
                    counsel provided the defense for the person pursuant to NRS 41.660.

13                  (b) The court may award, in addition to reasonable costs and  
14                  attorney's fees awarded pursuant to paragraph (a), an amount of up to  
15                  \$10,000 to the person against whom the action was brought.

16                  (c) The person against whom the action is brought may bring a  
17                  separate action to recover:

18                           (1) Compensatory damages;

19                           (2) Punitive damages; and

20                           (3) Attorney's fees and costs of bringing the  
21                  separate action.  
22

23           2. If the court denies a special motion to dismiss filed pursuant to NRS  
24     41.660 and finds that the motion was frivolous or vexatious, the court shall  
25     award to the prevailing party reasonable costs and attorney's fees incurred in  
26     responding to the motion.  
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1 3. In addition to reasonable costs and attorney's fees awarded pursuant to  
2 subsection 2, the court may award:

3 (a) An amount of up to \$10,000; and

4 (b) Any such additional relief as the court deems proper to punish and  
5 deter the filing of frivolous or vexatious motions.

6 4. If the court denies the special motion to dismiss filed pursuant to NRS  
7 41.660, an interlocutory appeal lies to the Supreme Court.

8 NRS 41.670.  
9

10 Finally, NRCP 11 provides sanctions as follows:

11 (b) Representations to Court. By presenting to the court (whether by  
12 signing, filing, submitting, or later advocating) a pleading, written  
13 motion, or other paper, an attorney or unrepresented party is certifying  
14 that to the best of the person's knowledge, information, and belief,  
15 formed after an inquiry reasonable under the circumstances, —

16 (1) it is not being presented for any improper purpose, such as  
17 to harass or to cause unnecessary delay or needless increase in the cost  
18 of litigation;

19 (2) the claims, defenses, and other legal contentions therein are  
20 warranted by existing law or by a nonfrivolous argument for the  
21 extension, modification, or reversal of existing law or the  
22 establishment of new law;

23 (3) the allegations and other factual contentions have  
24 evidentiary support or, if specifically so identified, are likely to have  
25 evidentiary support after a reasonable opportunity for further  
26 investigation or discovery; and

27 (4) the denials of factual contentions are warranted on the  
28 evidence or, if specifically so identified, are reasonably based on a  
lack of information or belief.

1 c) Sanctions. If, after notice and a reasonable opportunity to respond,  
2 the court determines that subdivision (b) has been violated, the court  
3 may, subject to the conditions stated below, impose an appropriate  
4 sanction upon the attorneys, law firms, or parties that have violated  
5 subdivision (b) or are responsible for the violation.

6 (1) How initiated.

7 (A) By Motion. A motion for sanctions under this rule  
8 shall be made separately from other motions or requests and  
9 shall describe the specific conduct alleged to violate  
10 subdivision (b). It shall be served as provided in Rule 5, but  
11 shall not be filed with or presented to the court unless, within  
12 21 days after service of the motion (or such other period as the  
13 court may prescribe), the challenged paper, claim, defense,  
14 contention, allegation, or denial is not withdrawn or  
15 appropriately corrected. If warranted, the court may award to  
16 the party prevailing on the motion the reasonable expenses and  
17 attorney's fees incurred in presenting or opposing the motion.  
18 Absent exceptional circumstances, a law firm shall be held  
19 jointly responsible for violations committed by its partners,  
20 associates, and employees.

21 (B) On Court's Initiative. On its own initiative, the court  
22 may enter an order describing the specific conduct that appears  
23 to violate subdivision (b) and directing an attorney, law firm, or  
24 party to show cause why it has not violated subdivision (b) with  
25 respect thereto.

26 (2) Nature of Sanction; Limitations. A sanction imposed for  
27 violation of this rule shall be limited to what is sufficient to deter  
28 repetition of such conduct or comparable conduct by others similarly  
situated. Subject to the limitations in subparagraphs (A) and (B), the  
sanction may consist of, or include, directives of a nonmonetary  
nature, an order to pay a penalty into court, or, if imposed on motion  
and warranted for effective deterrence, an order directing payment to  
the movant of some or all of the reasonable attorney's fees and other  
expenses incurred as a direct result of the violation.

1 (A) Monetary sanctions may not be awarded against a  
2 represented party for a violation of subdivision (b)(2).

3 (B) Monetary sanctions may not be awarded on the  
4 court's initiative unless the court issues its order to show cause  
5 before a voluntary dismissal or settlement of the claims made  
6 by or against the party which is, or whose attorneys are, to be  
sanctioned.

7 (3) Order. When imposing sanctions, the court shall describe  
8 the conduct determined to constitute a violation of this rule and  
9 explain the basis for the sanction imposed.

10 NRCp 11(b) and (c).

11 **B. Attorney Fees and Costs Is Proper and Necessary.**

12  
13 Simon properly asserted a charging lien pursuant to Nevada law. *See*  
14 **Exhibit 1**, p. 8. Plaintiffs' claims *were not* maintained upon reasonable grounds.  
15 *See* NRS 18.010(2)(b). The claims were not "well-grounded" in fact, "warranted  
16 by existing law" or warranted "by an argument for changing the existing law that  
17 [was] made in good faith." *See* NRS 7.085(1)(a). In fact, Plaintiffs and their  
18 counsel openly admitted the falsity of the allegations and that conversion was a  
19 legal impossibility. This is disturbing since the conversion claim is an accusation  
20 of stealing and severely tarnishes the reputation of the lawyer accused.  
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1 Plaintiffs did not present any “well-grounded” facts as alleged in their  
2 Complaint (and also their Amended Complaint) to prove that:

- 3 • Simon “intentionally” converted and was going to steal the settlement  
4 proceeds;
- 5 • Simon’s conduct warranted punitive damages;
- 6 • Daniel S. Simon individually should be named as a party;
- 7 • Simon had been paid in full;
- 8 • Simon refused to release the full settlement proceeds to Plaintiffs;
- 9 • Simon breached his fiduciary duty to Plaintiffs;
- 10 • Simon breached the covenant of good faith and fair dealing;
- 11 • Plaintiffs were entitled to Declaratory Relief because they had paid Simon in  
12 full; and,
- 13 • Simon extorted, blackmailed or did anything remotely similar.

14 Plaintiffs’ claims were maintained via the Complaint, Amended Complaint,  
15 and three affidavits provided by Brian Edgeworth that Simon had been paid in full  
16 already; that Simon tried to steal the settlement proceeds; and that Simon tried to  
17 “blackmail” the Edgeworths. *See Exhibit 4*, ¶¶ 36-37 and 40-44; and Affidavit of  
18 Brian Edgeworth, dated February 2, 2018, pp. 3, ¶ 12, ll. 23-24, attached hereto as  
19 **Exhibit 5**. These were false facts that were asserted to smear the reputation of  
20 Simon, to harass Simon and were brought for an improper purpose to prevent  
21 adjudication of the attorney lien.



1 Plaintiffs and their counsel knew the facts were false when the complaint  
2 was filed and when the complaint was served. Plaintiffs and their counsel knew  
3 Simon did not have possession of the settlement funds and knew that an allegation  
4 that Simon had stolen the money was an impossibility. Plaintiffs and counsel knew  
5 that a conversion action brought on a contractual claim was a legal impossibility  
6 and knew that a conversion action against Simon when Simon did not have  
7 possession of the funds was an impossibility. Yet, counsel signed the complaint  
8 under NRCP 11 without any regard for the falsity of the allegations. In fact, Mr.  
9 Vannah conceded in an email that he personally did not believe Simon would steal  
10 the money, yet his office prepared and filed a public lawsuit on January 4, 2018  
11 alleging the theft via the conversion claim.  
12

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15  
16 Following the first Simon motion to dismiss, Mr. Edgeworth reaffirmed the  
17 false and impossible allegations in his three affidavits. Rather than acknowledging  
18 that Simon did not and could not steal or convert the settlement money as a matter  
19 of law, Plaintiffs and counsel continued to assert these facts in pleading after  
20 pleading. Even at the most recent reconsideration motion, Mr. Vannah told this  
21 court that the money in the trust account was all of the Edgeworth's. This is  
22 baffling in light of the representations by Mr. Vannah and Edgeworth during the  
23 evidentiary hearing when they both admitted "we always knew we owed Mr.  
24 Simon money for his work" and at the time the complaint for conversion was filed  
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1 he was owed in excess of \$68,000 for costs alone. By maintaining the frivolous  
2 and serious claim of theft, this conduct compelled Simon to vigorously defend  
3 these false accusations incurring substantial fees and costs.  
4

5 Simon followed the law for asserting an attorney lien. There was no  
6 blackmail, stealing or conversion. Yet, Plaintiffs and their counsel asserted those  
7 false claims beginning with the filing of the Complaint on January 4, 2018, through  
8 the Amended Complaint on March 15, 2018; and, in three affidavits by Brian  
9 Edgeworth -- all the way up to the Evidentiary Hearing. *See Exhibits 4 and 6* and  
10 Affidavits of Brian Edgeworth, dated February 12, 2018 and March 15, 2018,  
11 attached respectively hereto as **Exhibits 7 and 8**.  
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15 In addition to being false, the claims were made for an improper purpose.  
16 The Court should recall that at every opportunity, Plaintiffs and their counsel  
17 argued against this Court adjudicating the lien, a remedy provided by statute, based  
18 solely on the nature of their fallacious conversion claim.  
19

20 It was only at the evidentiary hearing, and upon thorough cross examination,  
21 that Plaintiffs conceded that Plaintiffs owe Simon money and that was never in  
22 dispute. Mr. Vannah also conceded this crucial fact only at the time of the  
23 evidentiary hearing when the plaintiffs and their counsel all stated "We never  
24 disputed that we have always owed Simon money." This confirms the frivolous  
25 nature of the complaints at the time of the filing in January and again in March,  
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27  
28

1 2018. Further, there were no contentions, much less actual evidence, of Simon's  
2 "reckless disregard" of Plaintiffs' rights that rose to the level of fraud, malice and  
3 oppression to support Plaintiffs' claims for punitive damages.  
4

5 Plaintiffs and their attorneys' conduct is clear evidence of maintaining  
6 claims that had no grounding in fact or law. Their actions warped a lien  
7 adjudication matter into vexatious false claims of blackmail and oppressive  
8 conduct that were directed both personally and professionally against Daniel  
9 Simon which necessitated hiring counsel and experts to vigorously defend against  
10 those claims.  
11  
12

13 Simon can certainly adjudicate his lien without counsel as he had done on  
14 other occasions, but in light of the serious nature of the false claims filed by  
15 Plaintiffs, Simon had to hire his own legal team at great expense. Plaintiffs should  
16 be held accountable for the consequences of their decision to pursue frivolous  
17 claims against Simon.  
18  
19

### 20 **3. Nevada law favors the award of attorney's fees and costs.**

21

22 The Nevada Supreme Court addressed awarding attorney fees for frivolous  
23 claims directly in *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993)  
24 (*superseded* by statute on other grounds). In *Bergmann*, Fred and Harriet Boyce  
25 consulted their former attorney, Roger Bergmann, for advice regarding investment  
26 strategies. *Id.* at 673. Bergmann mentioned an investment brokerage firm named  
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1 Lemons & Associates during the consultation, and the Boyces invested a  
2 significant amount of money with Lemons & Associates. *Id.* Subsequently,  
3 Lemons & Associates became insolvent and Steve Lemons was incarcerated. *Id.*  
4 The Boyces then sued Bergmann, alleging six causes of action, including fraud and  
5 misrepresentation; breach of the implied covenant of good faith and fair dealing;  
6 intentional and negligent infliction of emotional distress; attorney malpractice;  
7 negligent misrepresentation; and a claim for the Boyce's daughter's losses. *Id.* The  
8 Boyces also sought punitive damages against Bergmann. *Id.*

12 Bergmann filed a motion for attorney's fees pursuant to NRS 18.010(2)(b),  
13 NRCP 11 and NRCP 68. The district court denied Bergmann's motion for fees,  
14 finding that the Boyce's claims had survived the NRCP 12(b)(5) motion and that  
15 only some of the claims had been dismissed pursuant to NRCP 41(b) during the  
16 trial. *Id.*

19 The Nevada Supreme Court concluded that the district court abused its  
20 discretion and remanded the case back to the district court to conduct the proper  
21 analysis for awarding attorney's fees. The *Bergmann* Court stated that "[i]n  
22 assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must  
23 determine whether the plaintiff had reasonable grounds for its claims. **Such an**  
24 **analysis depends upon the actual circumstances of the case rather than a**  
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1 **hypothetical set of facts favoring plaintiff's averments."** *Id.* at 675 (emphasis  
2 added). Further, the Court specifically noted:

3 [T]he fact that the Boyce's complaint survived a 12(b)(5) motion to dismiss  
4 was irrelevant to the trial court's inquiry as to whether the claims of the  
5 complaint were groundless. The trial court could not base its refusal to  
6 award attorney's fees upon the 12(b)(5) ruling. The trial court also based its  
7 refusal to award fees upon the fact that it dismissed only a few of the  
8 Boyce's claims for failure to present sufficient evidence. In fact, only one of  
9 the Boyce's claims survived at trial. **The prosecution of one colorable  
claim does not excuse the prosecution of five groundless claims.**

10 *Id.* (Emphasis added) (citing *Trus Joist Corp. v. Safeco Ins. Co. of Am.*, 153 Ariz.

11 95, 735 P.2d 125, 140 (Ariz. Ct. App. 1986) (case remanded for trial court to

12 apportion attorney's fees between grounded and groundless claims); *Department of*

13 *Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98, 101 (Ariz. Ct. App. 1986) ("The fact

14 that not all claims are frivolous does not prevent an award of attorneys' fees.");

15 *Fountain v. Mojo*, 687 P.2d at 501 ("[A] prevailing party must be afforded an

16 opportunity to establish a reasonable proration of attorney fees incurred relative to

17 the defense of a frivolous or groundless claim.")).

1 The *Bergmann* Court also found that the lower court abused its discretion in  
2 denying attorney's fees under NRCP 11: "NRCP 11 sanctions *should* be imposed  
3 for frivolous actions." *Id.* at 676 (emphasis added). The Court stated as follows:  
4

5 A frivolous claim is one that is 'both baseless and made without a reasonable  
6 and competent inquiry.' Thus, a determination of whether a claim is  
7 frivolous involves a two-pronged analysis: (1) the court must determine  
8 whether the pleading is 'well-grounded in fact and is warranted by existing  
9 law or a good faith argument for the extension, modification, or reversal of  
10 existing law'; and (2) whether the attorney made a reasonable and competent  
11 inquiry.

12 The first prong of the test has a component which is similar to the analysis  
13 required under NRS 18.010(2)(b): The trial court must examine the actual  
14 circumstances surrounding the case to determine whether the suspect claims  
15 were brought without reasonable grounds. As we noted previously, the trial  
16 court did not base its decision upon such an examination, but instead upon  
17 the fact that the complaint survived a Rule 12(b)(5) motion to dismiss. The  
18 legal standard applied to a rule 12(b)(5) motion to dismiss differs from the  
19 legal standard applied to a Rule 11 motion for sanctions. Thus, the trial court  
20 abused its discretion by applying an incorrect legal standard to the question  
21 whether Bergmann could recover fees as a sanction under NRCP 11.

22 *Id.* at 676-77 (citations omitted).

23 When applying the foregoing analysis, the *Bergmann* Court noted that the  
24 record contained "ample evidence" for which the trial court could have concluded  
25 that the Boyce's attorney failed to make a reasonable and competent inquiry, and,  
26 therefore, the trial court's error "may well have affected Bergmann's substantial  
27 rights." *Id.* at 677.  
28

1 The facts in the present case are much stronger than in *Bergmann*, and the  
2 evidence is more than substantial. Plaintiffs filed their lawsuit and included claims  
3 for Conversion and punitive damages. This Court found that Simon had not even  
4 received the settlement proceeds until after Plaintiffs had filed their lawsuit:  
5  
6 “When the Complaint was filed on January 4, 2018, Mr. Simon was not in  
7 possession of the settlement proceeds as the checks were not endorsed or deposited  
8 in the trust account.” *See, Exhibit 1*, pp. 7:15-16. In fact, this was conceded and  
9 known to Plaintiffs when filing the complaint. Plaintiffs had actual knowledge of  
10 the when and how the settlement money was deposited into a special trust account  
11 controlled by Vannah. Thus, Plaintiffs and their counsel had actual knowledge that  
12 no money was stolen or converted. Rather than correcting the wild accusations,  
13 Vannah maintained the frivolous theft claims in pleading after pleading.  
14  
15 Additionally, there was no breach of contract; no breach of fiduciary duty; no  
16 breach of the covenant of good faith and fair dealing; and Plaintiffs were not  
17 entitled to Declaratory Relief, much less punitive damages. *Id.*, pp.6-8. Instead,  
18 Simon followed the law in asserting an attorney lien and aggressively represented  
19 his former clients throughout the entire process.  
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25 Plaintiffs and their counsel knew the facts of this case and that this was a fee  
26 dispute and nothing more. Nevertheless, they chose to pursue their claims through  
27 a separate action asserting wild accusations in multiple pleadings, oppositions and  
28

1 affidavits, despite admitting at the start of the evidentiary hearing that Simon was  
2 always owed money. It is undisputed that there were not any reasonable grounds to  
3 file a lawsuit.  
4

5 Nevada law on this matter is clear. Courts must “*liberally construe*” the  
6 provisions “*in favor*” of awarding attorney fees against parties who maintain  
7 claims without reasonable grounds for doing so. *See* NRS 18.010(2)(b) and NRS  
8 7.085(2) (emphasis added). Here, the Court must determine if Plaintiffs’ claims  
9 were well-grounded in fact or existing law or they had made a good faith argument  
10 for a change in the existing law. *See Bergmann*, 109 Nev. at 675-77; *see also Iorio*  
11 *v. Check City P’ship*, LLC, 2015 Nev. Unpub. LEXIS 658, \*9-10 (affirming the  
12 lower court’s *Bergmann* analysis and upholding the court’s award of attorney fees  
13 and sanctions pursuant to NRCP 11 and NRS 18.010(2)(b)); and *Ginena v. Alaska*  
14 *Airlines, Inc.*, 2013 U.S. Dist. LEXIS, \*13-14 (holding that plaintiffs’ voluntarily  
15 dismissed claims right before trial were groundless and weighed in favor of  
16 awarding fees). In *Bennett v. Baxter Group*, 224 p.3d 230 (Ariz 2010), a lawyer  
17 was sanctioned for holding onto a claim long after he should have dropped it and  
18 then the lawyer dropped it on the eve of trial.  
19  
20  
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24

25 In Edgeworth, they should not have pursued the impossible claim of theft  
26 initially and certainly should have dropped the theft claim from the amended  
27 complaint.  
28



1 This Court has found that Plaintiffs and their counsel did not show that their  
2 claims were well-grounded in fact or existing law, as was established in the  
3 evidentiary hearing and concluded in the Court's ruling on Simon's Motion to  
4 Dismiss pursuant to NRCP 12(b)(5). *See Exhibit 1.*

6 Consequently, NRCP 11 and NRS 7.085 sanctions are appropriate, and  
7 attorney fees and costs for Simon are proper pursuant to NRS 18.010(2)(b), NRS  
8 7.085, NRCP 11, and NRS 41.670.

10 While Simon recognizes that the Court determined the Anti-SLAPP Motion  
11 to Dismiss to be moot as the NRCP 12(b)(5) motion was granted, the same facts  
12 can still apply within NRS 41.670 to provide attorney's fees and costs to Simon.  
13 The attorney lien was a communication to the court and was protected via  
14 Nevada's Anti-SLAPP statutes; therefore, Plaintiffs' claims were – once again –  
15 not grounded in fact or law to allow prosecution against Simon. This was made  
16 clear to Plaintiffs in the initial special motion to dismiss –Anti-SLAPP, yet they  
17 continued to maintain the frivolous action, which is the exact conduct the  
18 legislature intended to deter. Therefore, Simon respectfully requests that its Motion  
19 be granted and that the Court award attorney's fees and costs as detailed below.  
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1           **C.     Simon's Attorney's Fees and Costs**

2           As discussed above, Simon has adjudicated liens in the past without  
3 retaining counsel. This usually involves a simple motion hearing and the Court  
4 decides based on the pleadings and argument. Instead, Plaintiffs' lawsuit asserting  
5 false and wild accusations necessitated retaining counsel to defend himself and his  
6 firm against their frivolous claims. Simon retained James Christensen, Esq. and  
7 Peter Christiansen, Esq. to defend the wild accusations and litigate all of the issues  
8 and claims within the Evidentiary Hearing. Thus, Simon has incurred the following  
9 attorney's fees and costs:  
10  
11  
12

13	1.     James Christensen, Esq. Legal Fees	\$ 62,604.48 <sup>1</sup>
14		
15	2.     Peter Christiansen, Esq. Legal Fees	\$199,495.00 <sup>2</sup>
16		
17	3.     Total Costs	\$ 18,434.73 <sup>3</sup>
18		
19	a.     Will Kemp, Esq. Expert Fees	\$ 11,498.15
20	b.     David Clark, Esq.	\$ 5,000.00
21	c.     Miscellaneous Costs	\$ 1,936.58
22	<b>TOTAL ATTORNEY'S FEES AND COSTS</b>	<b>\$280,534.21</b>
23		
24		
25		
26		

27 <sup>1</sup> James Christensen's Invoices, attached hereto as Exhibit 9

28 <sup>2</sup> Peter Christiansen's Invoices, attached hereto as Exhibit 10

<sup>3</sup> Costs Summary and supporting documentation attached hereto as Exhibit 11

1 Please note that these fees and costs do not include substantial time  
2 expended by Simon and his firm in defending the frivolous claims that were filed  
3 solely to harass Simon in a vexatious manner to destroy his reputation. The effects  
4 of the theft claim of conversion still remain unknown on his practice and  
5 reputation, but are clearly substantial. The fees and costs are the reasonable  
6 expenses Simon incurred in defending Plaintiffs' claims that went far beyond an  
7 attorney lien adjudication.  
8  
9

10 Our Supreme Court has also adopted the view in stating that the trial court  
11 should "either ... award attorney's fees or ... state the reasons for refusing to do  
12 so." *Pandelis Const. v. Jones-Viking Assoc.*, 103 Nev. 129, 734 P.2d 1239  
13 (1987). Accordingly, if attorney's fees and costs are not allowed there should be  
14  
15 very compelling reasons supporting such a decision.  
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1 **IV. Conclusion**

2 Simon respectfully requests that the Motion for Attorney Fees and Costs be  
3 GRANTED, in the sum of **\$280,534.21** (\$262,099.48 in attorney's fees and  
4 \$18,434.73 in costs).  
5

6 Dated this 7<sup>th</sup> day of December, 2018.  
7

8 /s/ James R. Christensen  
9

10 JAMES R. CHRISTENSEN, ESQ.

11 Nevada Bar No. 003861

12 601 S. 6<sup>th</sup> Street

13 Las Vegas, NV 89101

14 Phone: (702) 272-0406

15 Facsimile: (702) 272-0415

16 Email: jim@jchristensenlaw.com

17 *Attorney for Daniel S. Simon*

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing **MOTION FOR ATTORNEY**  
20 **FEES AND COSTS** was made by electronic service (via Odyssey) this 7<sup>th</sup> day  
21 of December, 2018, to all parties currently shown on the Court's E-Service List.  
22

23  
24 /s/ Dawn Christensen  
25

26 an employee of  
27 JAMES R. CHRISTENSEN, ESQ.  
28



1 JOHN B. GREENE, ESQ.  
Nevada Bar No. 004279  
2 ROBERT D. VANNAH, ESQ.  
Nevada Bar No. 002503  
3 VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor  
4 Las Vegas, Nevada 89101  
5 [jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)  
Telephone: (702) 369-4161  
6 Facsimile: (702) 369-0104  
*Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN  
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN  
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.  
27  
28

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

**PLAINTIFFS' MOTION FOR AN  
ORDER DIRECTING SIMON TO  
RELEASE PLAINTIFFS' FUNDS**

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

VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC  
2 (Plaintiffs), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN  
3 B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an  
4 Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S.  
5 SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

6 This Motion is based upon the attached Memorandum of Points and Authorities; the  
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,  
8 any oral argument this Court may wish to entertain.  
9

10 DATED this 13<sup>th</sup> day of December, 2018.

11 VANNAH & VANNAH

12  
13 *Signature* *Per No: 14530*  
14 ROBERT D. VANNAH, ESQ.

15 I.

16 SUMMARY

17 The facts of this matter are well known to this Court. The path to this intricate knowledge  
18 was gained by, but not limited to, having listened to five days of comprehensive testimony; by  
19 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre  
20 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual  
21 findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of  
22 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an  
23 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, SIMON  
24 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.  
25

26 This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney  
27 Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a  
28

1 fee of \$550 per hour between SIMON and the Edgeworths, and once SIMON started billing the  
2 Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths  
3 constructively discharged SIMON as their attorney on November 29, 2017, when they ceased  
4 following his advice and refused to communicate with him. The Court then found SIMON was  
5 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour  
6 for his associates, up and until the last billing of September 19, 2017.

7  
8 For the period between September 19, 2017 and November 29, 2017, the Court held  
9 SIMON was entitled to his implied agreement fee of \$550 an hour, and \$275 an hour for his  
10 associates, for a total amount of \$284,982.50. Further, the Court decided that for the period after  
11 November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the  
12 services his office rendered in quantum meruit: an amount the Court determined to be \$200,000.  
13 Accordingly, SIMON is owed a total amount of \$484,982.50 in fees—taken from the net lien in  
14 the sum of \$1,977,843.80—pursuant to this Court's Order adjudicating the attorneys lien.

15  
16 The Edgeworths have expressed a willingness, in writing, to accept the Court's rulings on  
17 all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the  
18 trust account. The same cannot be said for SIMON: even after this Court's Order was issued,  
19 SIMON has refused to release the balance of the funds held in trust: a sum of \$1,492,861.30. The  
20 Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their  
21 \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their  
22 money—money to which they are legally entitled. Simon's unreasonable, inappropriate  
23 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,  
24 which is untoward—not to mention unconstitutional.

25  
26 PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to  
27 release to Plaintiff the remainder of the funds SIMON is withholding in trust.

28  
II.

## ARGUMENTS

### A. SIMON'S WITHHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14<sup>th</sup> Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Phipus*, 435 US 247, 259 (1978). Due process requires notice: interested parties must be apprised of any action aimed at depriving them of property and must be afforded the opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Additionally, due process requires individuals be given an adequate hearing before they are deprived of their property interests; this requirement is designed to prevent arbitrary encroachment on an individual's property interests. *Carey v. Phipus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14<sup>th</sup> Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for a creditor's lawyer to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that **this prejudgment garnishment** violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*



1 Further, Nevada law mandates certain procedures must be followed before a garnishment  
2 takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the  
3 14<sup>th</sup> Amendment and Supreme Court precedent, Nevada law includes multiple due process  
4 protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS  
5 31.260; See also *Frank Settelmeier & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57  
6 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must  
7 obtain a writ of garnishment from the court—which may only issue at the same time or after the  
8 order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be  
9 served in the same manner as a summons in a civil action. *Frank Settelmeier & Sons, Inc.*, 197  
10 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to  
11 answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the  
12 garnishee be given a fair hearing: “if the garnishment is contested, the matter must be tried and  
13 judgment rendered, in a manner similar to civil cases.” *Id.* at 1056. Providing further protection  
14 still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP  
15 3A(a) and (b)(1). *Id.*

17 Here, SIMON is holding in trust a huge sum of money: \$1,977,843.80 despite this Court's  
18 Order stating that he is entitled *only* to \$484,982.50. He has effectively seized, garnished,  
19 Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to  
20 Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of  
21 Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He  
22 did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did  
23 not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS  
24 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS  
25 Chapter 31 whatsoever.  
26  
27  
28

1 Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not  
2 get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that  
3 the money be withheld. Au contraire, after listening to five days of comprehensive testimony,  
4 reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is  
5 entitled to the \$1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018  
6 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this  
7 Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—  
8 withheld Plaintiffs' money and still continues to do so.

9  
10 SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs  
11 anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far  
12 back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg.  
13 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien  
14 attached hereto as "Exhibit 1")(See also, Email dated December 26, 2018, 12:18 p.m., attached  
15 hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have  
16 lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into  
17 his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's  
18 words were not only just a description of client's feelings at the time, but a foreshadowing of S  
19 SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two  
20 weeks now.

21  
22 Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is  
23 wholly unconstitutional under United States Supreme Court precedent. His actions are  
24 tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach*  
25 court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—  
26 which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds  
27  
28

1 without any opportunity to be heard and without the opportunity to tender any defense—is an  
2 unconstitutional violation of Due Process.

3 SIMON'S behavior in this case is similar to—but more abusive than—the procedures  
4 permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon's  
5 purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court  
6 to retain the funds, yet he has flatly refused to release Plaintiffs' money. And in terms of its overt  
7 deprivation of due process rights, SIMON'S behavior goes much, much further than the statute in  
8 *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee  
9 before garnishment procedures were to be initiated.  
10

11 Here, SIMON has shown nothing but disdain for Plaintiffs' due process rights: SIMON  
12 did not follow any of Nevada's garnishment requirements or comply with Nevada statutory  
13 garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment.  
14 Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object  
15 to the withholding of money, and has not been given a hearing to address his objections to  
16 SIMON'S behavior. His outright refusal to release the remaining funds held in trust is wholly  
17 inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs*  
18 *favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust  
19 minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he  
20 answers to no one. But he does need to answer to this Court—and as such, it is the aim of this  
21 Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is  
22 legally entitled.  
23

24 ///

25 ///

26 ///

1           **B.     THIS COURT HAS JURISDICTION TO ADJUDICATE THIS**  
2           **ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN**  
3           **EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S**  
4           **MONEY PENDING APPEAL**

5           A Nevada court that presided over a client's underlying action has jurisdiction to  
6           adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a  
7           retaining lien has been asserted by the attorney and the client asks the court to determine the value  
8           of the attorney's services in order to post adequate or substitute security in order to recover the  
9           file; or if the client otherwise consents. See *Argentina Consol. Min. Co. v. Jolley Urga*, 216 P. 3d  
10          779 (2009).

11          Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate  
12          SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate  
13          Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018  
14          Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid  
15          out findings with respect to the entitlements of all parties. SIMON'S lien rights have been  
16          exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his  
17          lien adjudication rights are *finished*.

18          For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while  
19          he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this  
20          Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should  
21          not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court  
22          allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an  
23          unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the  
24          *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the*  
25          *interim*—between service of the action and a trial on the suit—this Court should strike down  
26          SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance  
27  
28

1 of the Court's November 19, 2018 Order and the final resolution of this matter on appeal.  
2 Plaintiffs should not be deprived of his money for months and months—perhaps even years—  
3 especially where SIMON'S withholding of these funds is inapposite in light of the Court's  
4 substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S  
5 ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully  
6 request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.

7 **C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018**  
8 **ORDER, WHICH IS CLEAR AND UNABMBIGUOUS.**

9 The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon  
10 is \$484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate  
11 Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the  
12 full \$1,977,843.80 in trust. SIMON'S withholding of \$1,492,861.30 from Plaintiffs is in direct  
13 contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's  
14 Order, the Court must take remedial action and issue an Order for the release of the remainder of  
15 the funds to Plaintiffs that SIMON is withholding in trust.

16  
17 It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue  
18 without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See  
19 Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached  
20 hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the  
21 matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his  
22 attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs  
23 respectfully request that this Court issue an Order for the release of Plaintiffs' funds.  
24

25 ///

26 ///

27 ///

III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13<sup>th</sup> day of December, 2018.

VANNAH & VANNAH

  
Bar No: 14530  
s/s for → 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 13 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

Electronically Filed  
12/7/2018 2:53 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

Electronically Filed  
Dec 17 2018 11:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 JOHN B. GREENE, ESQ.  
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*Attorneys for Plaintiffs/Appellants*

DISTRICT COURT

CLARK COUNTY, NEVADA

--000--

10 EDGEWORTH FAMILY TRUST; AMERICAN  
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN  
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.  
27  
28

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

NOTICE OF APPEAL

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

VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

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,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

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,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

VOL. 2 PART 7 of 9



**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425


**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCp 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY  
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from  
3 the Decision and Order on Motion to Adjudicate Lien and from the Amended Decision and Order  
4 on Motion to Dismiss NRCP 12(B)(5), both of which were entered on November 19, 2018.  
5

6 DATED this 7 day of December, 2018.

7 VANNAH & VANNAH

8  
9   
10 ROBERT D. VANNAH, ESQ.  
11 Nevada Bar No. 002503  
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19 Attorneys for Plaintiffs/Appellants  
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**CERTIFICATE OF SERVICE**

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

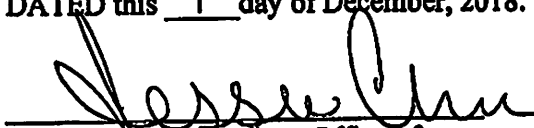
Electronically:

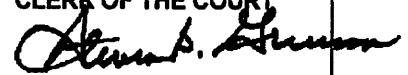
James R. Christensen, Esq.  
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601 S. Third Street  
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Peter S. Christiansen, Esq.  
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810 S. Casino Center Blvd., Ste. 104  
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Traditional Manner:  
*None*

DATED this 7<sup>th</sup> day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah



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7  
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN  
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN  
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.  
27  
28

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

**PLAINTIFFS' OPPOSITION TO  
SIMON'S MOTION FOR FEES AND  
COSTS**

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

VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC  
2 (PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and  
3 JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Opposition  
4 to the Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A  
5 PROFESSIONAL CORPORATION (SIMON) for Attorney's Fees and Costs (the Motion).

6 This Opposition is based upon the attached Memorandum of Points and Authorities; the  
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; NRCP  
8 11 & 12(b)(5); NRS 18.010 & 18.015; and, any oral argument this Court may wish to entertain.  
9 PLAINTIFFS also incorporate by this reference all of their factual and legal assertions, arguments  
10 made, exhibits presented, and Motions and Oppositions made to and filed before this Court from  
11 the inception through the filing of this Opposition.  
12

13 DATED this 17 day of December, 2018.

14 VANNAH & VANNAH

15   
16 ROBERT D. VANNAH, ESQ.

17  
18  
19 I.

20 SUMMARY

21 As stated in recent submissions, the facts of this matter are well known to this Court. (The  
22 Court is getting more familiar with each motion and opposition filed, though PLAINTIFFS  
23 were—and remain—content to stop this madness after this Court issued the initial orders  
24 following the evidentiary hearing on SIMON'S Motion to Adjudicate Attorney's Lien. But,  
25 SIMON isn't ready to and apparently won't stop unless he's stopped.) The path to this intricate  
26 knowledge was gained by, but not limited to, having listened to five days of comprehensive  
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1 testimony on SIMON'S Motion to Adjudicate Lien; by having reviewed the totality of the  
2 evidence presented; by having read hundreds of pages of pre and post hearing briefing, exhibits,  
3 notes, and arguments; and, by having carefully crafted two sets of factual findings and orders.  
4 Therefore, PLAINTIFFS will spare this Court yet another complete recitation of the facts.  
5 However, highlights are necessary to illuminate the darkness that is SIMON'S latest Motion.

6 This ordeal began when SIMON, the attorney, failed to perform the remedial step of  
7 preparing a written hourly fee agreement for PLAINTIFFS to sign way back in May or June of  
8 2016. Had SIMON simply performed that basic task, arguably none of this would have ever been  
9 necessary. SIMON doubled down on his basic error on November 17, 2018, when he told  
10 PLAINTIFFS that he wanted to be paid far more than the \$550.00 per hour and the \$387,606.25  
11 he'd been paid to that point by PLAINTIFFS in attorneys' fees (incurred from May of 2016  
12 through the fourth invoice that was paid in full by PLAINTIFFS on September 25, 2017).

13 While SIMON repeatedly stated in several briefs and testified under oath at the  
14 evidentiary hearing that he was not seeking a contingency fee from PLAINTIFFS, he's seeking a  
15 contingency fee from PLAINTIFFS one way or the other. SIMON first laid his eyes on that  
16 contingency prize in August of 2017, a time when adverse facts against Viking had caused the  
17 risk of loss to begin to rapidly diminish and the prospect of a substantial settlement becoming  
18 more and more real. However, it is undisputed that SIMON never scratched that itch with an  
19 alternative fee proposal until November 17, 2018, when he demanded a very hefty portion of the  
20 Viking settlement from PLAINTIFFS.

21 SIMON again made his desire for far more in fees clear in his written Motion to  
22 Adjudicate Lien, and it was his consistent theme at the multi-day evidentiary hearing on that  
23 motion. He once again made that wish clear in his Motion to Reconsider at page 19:9-10, when  
24 he asked for \$1.9 million, the same basic number he'd asked for since he served his Amended  
25 Lien in January of 2018 for \$1,977,843.80 in additional fees. Even a political science major can  
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1 see that simple math shows that 40% of the Viking settlement of \$6 million is \$2.4 million, an  
2 amount that is eerily similar to what PLAINTIFFS had already paid SIMON in fees, plus the  
3 amount of his Amended Lien.

4 If that desire weren't so, why would SIMON not have just sent PLAINTIFFS another  
5 invoice for fees and costs as PLAINTIFFS undisputedly requested via email on November 15,  
6 2018, as opposed to demanding a percentage of the Viking settlement two days later? And why  
7 would SIMON then demand \$1,100,000 ten days after that? And then demand \$1,500,000  
8 several days after that? And why would SIMON then serve the Amended Lien for \$1,977,843.80  
9 the following month? If SIMON thought keeping concurrent time sheets was a miserable chore,  
10 try keeping track of the moving target that has been his demands for more in fees.

12 Now that he lost his bid for a contingency fee in his Motions to Adjudicate Lien and to  
13 Reconsider/Clarify, SIMON impermissibly seeks to shake down PLAINTIFFS for more in fees  
14 and costs when: 1.) The fees and costs SIMON is now seeking were incurred litigating the  
15 Motion to Adjudicate Lien, not SIMON'S collateral Motion to Dismiss on NRCP 12(b)(5)  
16 grounds; 2.) An award of additional attorney's fees and costs to seek and obtain an award of  
17 attorneys fees under NRS 18.015 isn't contemplated under that statute; 3.) SIMON was not and is  
18 not a prevailing party; and, 4.) PLAINTIFFS' complaints were filed and maintained in good faith.

20 For all of the reasons that this Court has entertained thus far in properly managing and  
21 containing this matter, PLAINTIFFS respectfully request that SIMON'S latest Motion for Fees  
22 and Costs be denied in its entirety.

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II.

ARGUMENTS

A. SIMON'S FEES AND COSTS IN HIS MOTION WERE ALL INCURRED IN THE EVIDENTIARY HEARING TO ADJUDICATE HIS LIEN IN THE GROSSLY INFLATED AMOUNT OF \$1,977,843.80.

It's difficult to choose an appropriate word to describe SIMON'S latest Motion. Remarkable is a tame selection; sanctionable is yet another (though PLAINTIFFS don't seek sanctions at this time—just closure). Why? SIMON has caused to be filed under NRCP 11(b)(1) & (3) a Motion that asks for fees under the pretense of being incurred arguing a Motion to Dismiss when the overwhelming evidence supports a finding that they were actually incurred litigating his Motion to Adjudicate Lien. SIMON knows this to be true, though he still caused this Motion to be filed. Under NRCP 11(b)(1), that's an improper purpose designed to increase PLAINTIFFS fees and costs. Under NRCP 11(b)(3), it's a Motion that lacks factual and evidentiary support.

How do we know this for sure? First, this is all about SIMON'S Motion to Adjudicate. At the hearing on February 20, 2018, James R. Christensen, Esq., told this Court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit 1, at p. 13:5-6.) He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute...the Court can take evidence...or set an evidentiary hearing...This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing...Let's get this done...But there's nothing to stop that lien adjudication at this time." (Id., at 14:8-12.) This Court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018.

At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to Dismiss (Please see Excerpts from Transcript attached as Exhibit 2, at p. 15:18-19) and ordered that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary Hearing on the dates as Follows: 05-29-18 1:00 a.m., 5-30-18 at 10:30 a.m., and 5-31-18 at 9:00 a.m." (Please see minutes of the Court attached as Exhibit 3.) The minutes also indicate that the Court would rule on the NRCP 12(b)(5) Motion to Dismiss at the conclusion of the hearing. (Id.) What hearing was the Court referring to? The evidentiary hearing for SIMON'S Motion to Adjudicate Lien, a proceeding that this Court deemed "...very, very important...." (See Exhibit 2, at p. 2:19-20.) The Court also ordered the parties to submit briefs prior to the hearing.

On that note, how much ink did SIMON use in his Brief re: Evidentiary Hearing to discuss the merits of PLAINTIFFS' Amended Complaint and whether or not it should be dismissed pursuant to NRCP 12(b)(5)? Absolutely none. Rather, every argument made, each exhibit attached, and the only expert report submitted focused solely on reasons for SIMON to get either a contingency fee via quantum meruit or another \$692,120 in fees from his super bill. Similarly, how much time or effort did SIMON spend, incur, and/or make at the multi-day evidentiary hearing on his Motion to Dismiss? Fifteen minutes? Likely much, much less, if any.

For example, the purpose for the participation of Peter S. Christiansen, Esq., in all of this was to take the lead in the evidentiary hearing. To highlight this obvious point, while Mr. Christiansen was present on behalf of SIMON at court proceedings on February 8 & 20, 2018, those hearings did not involve arguments on SIMON'S Motions to Dismiss, and he merely noted his appearances. At the April 3, 2018, hearing on SIMON'S Motions to Dismiss, Mr. Christiansen wasn't present at all.

Rather, a perusal of court minutes clearly shows that Mr. Christiansen's first substantive appearance occurred when the evidentiary hearing on the Motion to Adjudicate Lien was initially scheduled. Thereafter, all of his time, questions and arguments at the multi-day evidentiary

1 hearing were directed at establishing and/or increasing SIMON'S fee. There is nothing in the  
2 minutes that PLAINTIFFS found where Mr. Christiansen directed any measurable amount of time  
3 to matters concerning SIMON'S pending Motion to Dismiss on NRCP 12(b)(5) grounds. Rather,  
4 he focused solely on SIMON'S Motion to Adjudicate Lien and getting more compensation for  
5 SIMON. And, he did an excellent job for his client.

6 On the topic of sole purpose and focus, what were those of David Clark, Esq., and Will  
7 Kemp, Esq.? Both were used to establish and bolster the reputation of SIMON and/or the amount  
8 of additional fees that SIMON should get in quantum meruit. A simple re-reading of Mr. Kemp's  
9 Report retells that story in full. And all of his testimony focused on case value and fees. Neither  
10 offered a word of opinion or a morsel of testimony on the merits of PLAINTIFFS' Amended  
11 Complaint or whether or not it should be dismissed on any ground.

12 Why, then, would SIMON file this Motion and make the representations he did that  
13 \$280,534.21 in fees and costs was spent getting PLAINTIFFS' Amended Complaint dismissed  
14 pursuant to NRCP 12(b)(5)—a collateral matter to the Motion to Adjudicate Lien—when that is  
15 patently false by any measure? And why was the evidentiary hearing on Motion to Adjudicate  
16 Lien necessary? One, because SIMON filed the motion (on an OST) and, per Mr. Christensen, an  
17 evidentiary hearing to adjudicate a lien is how it's done under Nevada law. Two, because  
18 SIMON wasn't content with the largesse that was an hourly rate of \$550 totaling hundreds of  
19 thousands of dollars in fees paid to him by PLAINTIFFS and instead demanded a percentage of  
20 the Viking settlement for himself.

21 Three, because SIMON demanded an additional \$1,114,000 in fees from PLAINTIFFS on  
22 November 27, 2018, without any evidentiary or legal basis. Four, because SIMON sent a letter to  
23 PLAINTIFFS' then co-counsel on December 7, 2018, stating that SIMON'S additional fees "may  
24 well exceed \$1.5M." Five, because SIMON served an Amended Attorney's Lien attaching  
25 PLAINTIFFS settlement proceeds to the tune of \$1,977,843.80, knowing full well (as the attorney  
26  
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1 of the stature and reputation as described by Mr. Clark and Mr. Kemp) that: a.) the Rules  
2 precluded him from getting a contingency fee without a written contingency fee agreement; and,  
3 b.) his hourly fees for work performed on the case would never come even close to the amount of  
4 his Amended Lien. And, of course, SIMON'S additional billed fees were far less than his  
5 estimates, coming in at \$692,120.

6 Last, and most importantly, despite all of the above, SIMON would not agree to release  
7 PLAINTIFFS settlement proceeds (that remain on deposit) that are in excess of SIMON'S largest  
8 additional fee estimate of \$1.5M. In fact, SIMON still won't release PLAINTIFFS settlement  
9 proceeds in excess of the \$484,982.50 that this Court awarded him on November 19, 2018.  
10 That's the subject of yet another pleading that PLAINTIFFS did not want to file but were left with  
11 no other reasonable option due to SIMON'S refusal to put this matter behind us all.

12 For SIMON to replay the victim card and tell this Court in his Motion at page 27 (!) that  
13 this lien adjudication should have been simple and easy like all his others, he's just not seeing  
14 either the error of his ways or what the rest of us are seeing. He did a really bad thing when he  
15 violated the Nevada Rules of Professional Conduct out of the gate and compounded his  
16 unbecoming conduct when he continued (and continues) to lay claim to a substantial sum of  
17 money that was not and now is not his to claim. In short, PLAINTIFFS did not ask for any of  
18 this, though they did ask SIMON on November 15, 2018, to provide them his invoice for fees and  
19 costs owed, which SIMON promptly ignored. Instead, PLAINTIFFS have had to fight, and have  
20 to continue to fight, to get their settlement proceeds. As such, PLAINTIFFS respectfully request  
21 that SIMON'S Motion be denied.

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**B. AN AWARD OF ADDITIONAL ATTORNEYS FEES AND COSTS TO SEEK OR OBTAIN AN AWARD OF FEES AND COSTS UNDER NRS 18.015 ISN'T CONTEMPLATED IN THE STATUTE.**

If there were a basis or authority for SIMON to request or obtain fees and costs in order to obtain fees and costs pursuant to NRS 18.015, SIMON would have cited it over and over. But, there isn't so he didn't. Rather, to quote SIMON'S counsel, who was addressing the issue of discovery in general in lien adjudication proceedings: "It's not contemplated in the statute. If you have a problem with the statute, appear in front of the legislature and argue against it." (See Exhibit 1, at p. 20:21-22.) Getting fees for pursuing fees under NRS 18.015 isn't contemplated in the statute, either. It's not there. If SIMON has a problem with the fact that he can't get fees and costs to obtain fees and costs per NRS 18.015, he can take it up with the folks in Carson City. However, it's inappropriate to ask for or receive them in these proceedings. As a result, SIMON'S Motion must be denied.

**C. SIMON WAS NOT AND IS NOT THE PREVAILING PARTY OF ANYTHING OF MERIT.**

As argued above, NRS 18.015 does not contemplate an award of fees and costs in a lien adjudication proceeding filed to obtain fees and costs. Thus, awarding fees and cost under that statute would be improper. Furthermore, NRS 18.010 states that a prevailing party cannot recover fees if that party has recovered more than \$20,000. Even if one could assume that SIMON is a prevailing party, which he is not, SIMON has sought additional fees from PLAINTIFFS ranging from a low of \$692,120 to a high of \$1,977,843.80, amounts that are all well north of \$20,000.

In several instances, SIMON presented letters containing different amounts demanded from PLAINTIFFS in fees. In another, he presented a fee proposal. In yet another instance, he served attorneys liens, one without an amount for fees, another with \$1,977,843.80 affixed. In a final instance, SIMON served an improper Offer of Judgment on August 31, 2018, for

1 \$1,500,000, even though SIMON wasn't a party in the (A-16-738444-C) matter (and the only  
2 matter) in which the attorney's liens were (or could have been) served. Yet, at the end of the  
3 proverbial five days, SIMON was awarded \$484,982.50.

4 As also argued above, the lien adjudication proceedings were the creation of SIMON'S  
5 desire for far more in fees than either the facts or the law allowed. He then refused and continues  
6 to refuse to release PLAINTIFFS settlement proceeds to them, despite knowing that the best he  
7 could hope to achieve in extra fees is the amount contained in his super bill = \$692,120. For  
8 SIMON to assert or maintain that PLAINTIFFS were doing anything but following their rights in  
9 these proceedings under these facts is, again, remarkable for shortsightedness, together with just  
10 plain wrong.

11  
12 PLAINTIFFS asked SIMON for a bill for his outstanding fees and costs on November 15,  
13 2018, that they knew they owed. SIMON ignored that request and instead held firm at demanding  
14 between \$1,500,000 (the defective Offer of Judgment) and \$1,977,843.80 (the Amended  
15 Attorney's Lien) in extra fees. Receiving \$484,982.50, while a win in most circles, cannot be  
16 deemed as such in the manner in which SIMON played this game and kept the score.

17  
18 Again, PLAINTIFFS wanted none of this. They are the only victims here and they are the  
19 ones who want all of this to end. Through the present date, SIMON has refused and continues to  
20 refuse to do so. For these reasons, PLAINTIFFS request that SIMON'S Motion be denied.

21 **D. PLAINTIFFS' COMPLAINTS AGAINST SIMON WERE FILED AND**  
22 **MAINTAINED IN GOOD FAITH.**

23  
24 It's one thing for this Court to agree with SIMON'S iteration of the story that comprises  
25 PLAINTIFFS' Amended Complaint and enter an order of dismissal on NRCP 12(b)(5) grounds.  
26 (Of note, this Court previously denied SIMON'S Special Motion to Dismiss on Anti-SLAPP  
27 grounds.) While PLAINTIFFS respectfully disagree that dismissal of their Amended Complaint  
28 was justified on these facts and according to the governing law, considering that the law provides



1 a very steep hurdle to overcome to reach the harsh and final decision of dismissal without  
2 discovery, etc., and that a jury could have just as easily agreed with PLAINTIFFS' version of the  
3 facts as set forth in their Amended Complaint, as opposed to those of their attorney, PLAINTIFFS  
4 are still willing to put an end to all of this and abide by the Court's Decision and Order on Motion  
5 to Adjudicate Lien.

6 Yet, it's another thing entirely for SIMON to misrepresent the content of the Decision and  
7 Order of Dismissal on NRCP 12(b)(5) grounds as one based on a frivolous, vexatious, or a  
8 pleading that was not filed or maintained in good faith. Or that fees and costs are somehow  
9 justified on based on NRS 18.010, NRS 7.085, or any other legal ground. PLAINTIFFS  
10 strenuously object to any such characterization or representation, as it is unfounded in fact and  
11 law. More importantly, there isn't any language in the Decisions and Orders of this Court  
12 concerning the dismissal on 12(b)(5) or Anti-SLAPP grounds that supports any of SIMON'S  
13 assertions in his Motion. Why would he continue to take positions that he knows are unsupported  
14 and false?  
15

16 For what they hope is the last time they have to state this in court filings, PLAINTIFFS  
17 want this to end. They are ready, willing, and able to accept this Court's Decision and Order  
18 Adjudicating Lien, pay \$484,982.50 to SIMON, and move on. Please continue to encourage  
19 SIMON to do so as well by denying his baseless Motion for Fees and Costs.  
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III.

**CONCLUSION**

Based on the foregoing, Plaintiff respectfully requests that this Court deny SIMON'S Motion, as indicated in this Opposition.

DATED this 17 day of December, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ. 1/201

**CERTIFICATE OF SERVICE**

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

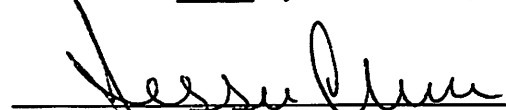
Electronically:

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 17 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah



Electronically Filed  
Dec 26 2018 10:53 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

JAMES R. CHRISTENSEN, ESQ.  
Nevada Bar No. 003861  
601 S. 6<sup>th</sup> 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; THE LAW  
OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION;  
DOES 1 through 10; and, ROE entities 1  
through 10;

Defendants.

Case No.: A-16-738444-C  
Dept. No.: 10

**NOTICE OF CROSS APPEAL**

CONSOLIDATED WITH

Case No.: A-18-767242-C  
Dept. No.: 10

1 NOTICE IS HEREBY GIVEN that Defendants/Appellants DANIEL S.  
2 SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL  
3 CORPORATION, hereby appeal to the Supreme Court of Nevada from the  
4 Decision and Order on Special Motion to Dismiss Anti-Slapp, which was entered  
5 on October 11, 2018; and, appeals to the Supreme Court of Nevada from the  
6 Decision and Order on Motion to Adjudicate Lien, which was entered on  
7 November 19, 2018.  
8  
9

10 DATED this 17<sup>th</sup> day of December 2018.  
11

12 /s/ James R. Christensen  
13 JAMES CHRISTENSEN, ESQ.  
14 Nevada Bar No. 003861  
15 601 S. 6<sup>th</sup> Street  
16 Las Vegas, NV 89101  
17 (702) 272-0406  
18 (702) 272-0415  
19 jim@jchristensenlaw.com  
20 Attorney for Daniel S. Simon

21 **CERTIFICATE OF SERVICE**

22 I CERTIFY SERVICE of the foregoing NOTICE OF CROSS APPEAL  
23 was made by electronic service (via Odyssey) this 17<sup>th</sup> day of December, 2018, to  
24 all parties currently shown on the Court's E-Service List.  
25

26 /s/ Dawn Christensen  
27 an employee of  
28 JAMES R. CHRISTENSEN

*Steven D. Grierson*

1 JOHN B. GREENE, ESQ.  
Nevada Bar No. 004279  
2 ROBERT D. VANNAH, ESQ.  
Nevada Bar No. 002503  
3 VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor  
4 Las Vegas, Nevada 89101  
5 [jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)  
Telephone: (702) 369-4161  
6 Facsimile: (702) 369-0104  
*Attorneys for Plaintiffs*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 --o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN  
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN  
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.  
27  
28

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

**NOTICE OF ENTRY OF ORDERS**

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

VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

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:

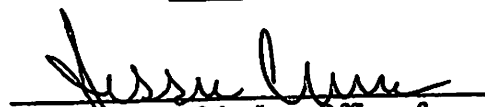
James R. Christensen, Esq.  
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Las Vegas, Nevada 89101

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.**

10 **LANGE PLUMBING, LLC; THE VIKING**  
11 **CORPORATION, a Michigan Corporation;**  
12 **SUPPLY NETWORK, INC., dba VIKING**  
13 **SUPPLYNET, a Michigan Corporation; and**  
14 **DOES 1 through 5; and, ROE entities 6 through**  
15 **10;**

16 **Defendants.**

17 **EDGEWORTH FAMILY TRUST; and**  
18 **AMERICAN GRATING, LLC,**

19 **Plaintiffs,**

20 **vs.**

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

25 **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**

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

27 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on  
28 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 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  
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on  
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  
17 suffered a flood. The house was still under construction and the flood caused a delay. The  
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and  
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and  
20 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire  
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,  
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  
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not  
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and  
28

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

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

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

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

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

17 I doubt we will get Kinsale to settle for enough to really finance this since I  
18 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?

19  
20 (Def. Exhibit 27).

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

26 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and  
27 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per  
28

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.

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

9 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount  
10 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate  
11 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per  
12 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for  
13 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September  
14 25, 2017.

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.<sup>1</sup> 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 <sup>1</sup> \$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 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a  
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send  
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

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

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,  
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:

15 "Please let this letter serve to advise you that I've retained Robert D. Vannah,  
16 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation  
17 with the Viking entities, et.al. I'm instructing you to cooperate with them in  
18 every regard concerning the litigation and any settlement. I'm also instructing  
19 you to give them complete access to the file and allow them to review  
20 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:

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 an go after the appeal that these  
5 scumbags will file etc. Obviously that could not have been done earlier snce  
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).

- 1 • Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast  
2 Dist. #26, 2015 Conn. Super. LEXIS 3146, \*13-14, (Dec. 14, 2015). See also Maples v.  
3 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,  
4 2017 Nev. Unpubl. LEXIS 472.
- 5 • Taking actions that preventing effective representation creates constructive discharge.  
6 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

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

- 22 a) ...
- 23 b) ...
- 24 c) Client agrees that his attorneys will work to consummate a settlement of  
25 \$6,000,000 from the Viking entities and any settlement amount agreed to be  
26 paid by the Lange entity. Client also agrees that attorneys will work to reach  
27 an agreement amongst the parties to resolve all claims in the Lange and  
28 Viking litigation.

29 Id.

30 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.  
31 Simon had already begun negotiating the terms of the settlement agreement with Viking during the  
32 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

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 //

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

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,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

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,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

VOL. 2 PART 8 of 9

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
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11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
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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

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.<sup>2</sup>

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26  
27 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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

25  
26 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

<sup>4</sup> There are no billings for October 8<sup>th</sup>, October 28-29, and November 5<sup>th</sup>.

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

<sup>6</sup> 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. Argentina Consolidated Mining Co., v. Jolley,  
8 Urza, 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

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 (a) A lawyer shall not make an agreement for, charge, or collect an  
6 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  
9 questions involved, and the skill requisite to perform the legal service  
10 properly;

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

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

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

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

18 (6) The nature and length of the professional relationship with the  
19 client;

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

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

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

24 (b) The scope of the representation and the basis or rate of the fee and  
25 expenses for which the client will be responsible shall be communicated to the  
26 client, preferably in writing, before or within a reasonable time after  
27 commencing the representation, except when the lawyer will charge a  
28 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;



- 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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18 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 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

# **Exhibit 2**

# **Exhibit 2**

1 **ORD**

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

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**  
14 **DOES 1 through 5; and, ROE entities 6 through**  
15 **10;**

16 **Defendants.**

17 **EDGEWORTH FAMILY TRUST; and**  
18 **AMERICAN GRATING, LLC,**

19 **Plaintiffs,**

20 **vs.**

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

25 **Defendants.**

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

**Consolidated with**

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

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

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

29 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on  
30 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable  
31 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon  
32 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in  
33 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.

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.<sup>1</sup> 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

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27 <sup>1</sup> \$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 CONCLUSION OF LAW

### 15 *Breach of Contract*

16  
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 *Declaratory Relief*

23  
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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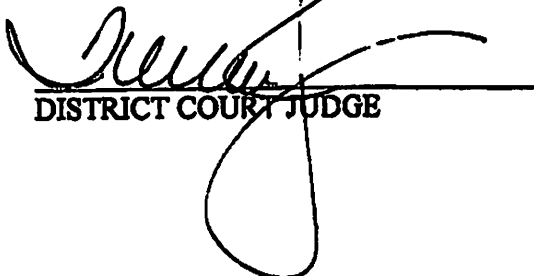
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**ORDER**

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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**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 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



James R. Christensen Esq.  
Nevada Bar No. 3861  
JAMES R. CHRISTENSEN PC  
601 S. 6<sup>th</sup> 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 GRANTING IN PART  
AND DENYING IN PART, SIMON'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

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 Granting in Part and  
2 Denying in Part, Simon's Motion for Attorney's Fees and Costs was entered on the  
3 docket on the 8<sup>th</sup> day of February, 2019. A true and correct copy of the file-  
4 stamped Decision and Order is attached hereto.

5 DATED this 8<sup>th</sup> day of February, 2019.

6  
7 /s/ James R. Christensen

8 James R. Christensen Esq.  
9 Nevada Bar No. 3861  
10 JAMES R. CHRISTENSEN PC  
11 601 S. 6<sup>th</sup> Street  
12 Las Vegas NV 89101  
13 (702) 272-0406  
14 (702) 272-0415 fax  
15 jim@jchristensenlaw.com  
16 Attorney for SIMON

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**CERTIFICATE OF SERVICE**

I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF  
DECISION AND ORDER was made by electronic service (via Odyssey) this 8<sup>th</sup>  
day of February, 2019, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen

an employee of  
JAMES R. CHRISTENSEN, ESQ



*Steven D. Grierson*

**ORDR**

**JAMES CHRISTENSEN, ESQ.**

Nevada Bar No. 003861

601 S. 6<sup>th</sup> Street

Las Vegas, NV 89101

Phone: (702) 272-0406

Facsimile: (702) 272-0415

Email: jim@christensenlaw.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

**DECISION AND ORDER  
GRANTING IN PART AND  
DENYING IN PART, SIMON'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

Date of Hearing: 1.15.19

Time of Hearing: 1:30 p.m.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 This matter came on for hearing on January 15, 2019, in the Eighth Judicial  
2 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.  
3 Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a  
4 Simon Law (jointly the "Defendants" or "Simon") having appeared by and through  
5 their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.;  
6 and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or  
7 "Edgeworths") having appeared through by and through their attorneys of record,  
8 the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having  
9 considered the evidence, arguments of counsel and being fully advised of the  
10 matters herein, the **COURT FINDS** after review:  
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15 The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

16 1. The Court finds that the claim for conversion was not maintained on  
17 reasonable grounds, as the Court previously found that when the complaint was  
18 filed on January 4, 2018, Mr. Simon was not in possession of the settlement  
19 proceeds as the checks were not endorsed or deposited in the trust account.  
20 (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such,  
21 Mr. Simon could not have converted the Edgeworths' property. As such, the  
22 Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion  
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1 claim as it was not maintained upon reasonable grounds, since it was an  
2 impossibility for Mr. Simon to have converted the Edgeworths' property, at the  
3 time the lawsuit was filed.  
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5 2. Further, the Court finds that the purpose of the evidentiary hearing was  
6 primarily for the Motion to Adjudicate Lien. The Motion for Attorney s Fees is  
7 DENIED as it relates to the other claims. In considering the amount of attorney's  
8 fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and  
9 Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against  
10 Mr. Simon, on January 4, 2018. However, they were also the attorneys in the  
11 evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found  
12 was primarily for the purpose of adjudicating the lien asserted by Mr. Simon.  
13 The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the  
14 purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr.  
15 David Clark Esq. were solely for the purposes of defending the lawsuit filed  
16 against Mr. Simon by the Edgeworths. As such, the Court has considered all of the  
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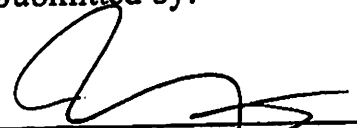
1 factors pertinent to attorney's fees and attorney's fees are GRANTED in the  
2 amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

3 IT IS SO ORDERED.


4 Dated this 6 day of February, 2019.

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7  
8   
DISTRICT COURT JUDGE SW

9 Submitted by:

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11  
12 JAMES CHRISTENSEN, ESQ.  
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14 601 S. 6<sup>th</sup> Street  
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19 Attorney for Daniel S. Simon

20 Approved as to form and content:

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Attorney for Plaintiffs



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6 Facsimile: (702) 369-0104  
*Attorneys for Plaintiffs/Appellants*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 --000--

10 **EDGEWORTH FAMILY TRUST; AMERICAN**  
11 **GRATING, LLC,**

12 **Plaintiffs,**

13 **vs.**

14 **LANGE PLUMBING, LLC; THE VIKING**  
15 **CORPORATION, a Michigan corporation;**  
16 **SUPPLY NETWORK, INC., dba VIKING**  
17 **SUPPLYNET, a Michigan corporation; and**  
18 **DOES I through V and ROE CORPORATIONS**  
19 **VI through X, inclusive,**

20 **Defendants.**

21 **EDGEWORTH FAMILY TRUST; AMERICAN**  
22 **GRATING, LLC,**

23 **Plaintiffs,**

24 **vs.**

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

**Defendants.**

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

**NOTICE OF APPEAL**

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

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

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,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

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,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

VOL. 2 PART 9 of 9

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001



**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

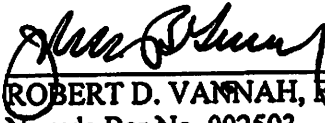
**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY  
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from  
3 the Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees  
4 and Costs, which was entered on February 8, 2019.  
5

6 DATED this 15<sup>th</sup> day of February, 2019.

7 VANNAH & VANNAH

8  
9 

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19 Attorneys for Plaintiffs/Appellants  
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**CERTIFICATE OF SERVICE**

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

Electronically:

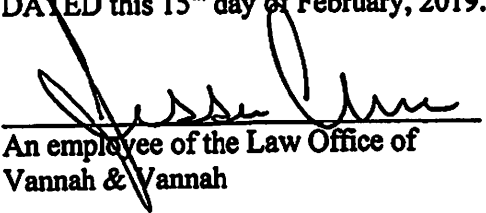
James R. Christensen, Esq.  
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Las Vegas, Nevada 89101

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

Traditional Manner:

*None*

DATED this 15<sup>th</sup> day of February, 2019.

  
An employee of the Law Office of  
Vannah & Vannah