

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; AND THE LAW  
OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION,

Respondents/Cross-Appellants.

NO. 77678

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EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants

vs.

DANIEL S. SIMON; AND THE LAW  
OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION

Respondents.

NO. 78176

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THE LAW OFFICE OF DANIEL  
S. SIMON,

Petitioner

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK;  
AND THE HONORABLE TIERRA  
DANIELLE JONES, DISTRICT JUDGE,

Respondents,  
and

NO. 79821

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Real Parties in Interest.

**INDEX TO RESPONDENTS/ PETITIONERS COMBINED ANSWERING  
BRIEF AND OPENING BRIEF APPENDIX**

**VOLUME X OF XI**

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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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 ***Fee Agreement***

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

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

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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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



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

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

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

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

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

Id.

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

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

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

13 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9  
10 *Implied Contract*

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

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

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

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

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

28 <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,  
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 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that  
9 “[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors  
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 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 NRPC 1.5. However, the Court must also consider the fact  
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be  
17 responsible were never communicated to the client, within a reasonable time after commencing the  
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a  
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has  
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court  
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,  
22 from November 30, 2017 to the conclusion of this case.

## 23 CONCLUSION

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

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

9  
10 **ORDER**

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

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


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17 \_\_\_\_\_  
18 DISTRICT COURT JUDGE  
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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 3**





1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

10 LANGE PLUMBING, LLC; THE VIKING  
11 CORPORATION, a Michigan Corporation;  
12 SUPPLY NETWORK, INC., dba VIKING  
13 SUPPLYNET, a Michigan Corporation; and  
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.

**Consolidated with**

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

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.

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

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

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  
9 **FINDINGS OF FACT**

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

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

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

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

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

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

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

15 It reads as follows:

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

(Def. Exhibit 27).

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

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

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

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

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

23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
24 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
26

---

27 <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 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

24  
25 "Please let this letter serve to advise you that I've retained Robert D. Vannah,  
26 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation  
27 with the Viking entities, et.al. I'm instructing you to cooperate with them in  
28 every regard concerning the litigation and any settlement. I'm also instructing

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

(Def. Exhibit 43).

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

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and 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 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset of the case. Mr. Simon alleges that he worked on the case always believing he would receive the reasonable value of his services when the case concluded. There is a dispute over the reasonable fee due to the Law Office of Danny Simon.

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

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

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

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

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

2 **CONCLUSION OF LAW**

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

7  
8 **CONCLUSION**

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

13  
14 **ORDER**

15 It is hereby ordered, adjudged, and decreed, that the Special Motion to Dismiss Anti-Slapp is  
16 MOOT.  
17

18  
19 IT IS SO ORDERED this 10<sup>th</sup> day of October, 2018.


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

**CERTIFICATE OF SERVICE**

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

Electronically served to:

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

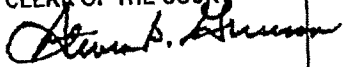
  
\_\_\_\_\_  
Tess Driver  
Judicial Executive Assistant  
Department 10



# **Exhibit 4**

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

Electronically Filed  
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Steven D. Grieron  
CLERK OF THE COURT



1 COMP  
2 ROBERT D. VANNAH, ESQ.  
3 Nevada Bar. No. 002503  
4 JOHN B. GREENE, ESQ.  
5 Nevada Bar No. 004279  
6 VANNAH & VANNAH  
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9 Telephone: (702) 369-4161  
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12 *Attorneys for Plaintiffs*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON, d/b/a SIMON LAW; DOES  
20 I through X, inclusive, and ROE  
21 CORPORATIONS I through X, inclusive,

22 Defendants.

CASE NO.: A-18-767242-C  
DEPT NO.: Department 14

23 COMPLAINT

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

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

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON (SIMON) is an attorney licensed to practice law in the State of Nevada and doing business as SIMON LAW.

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

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

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

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

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

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

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

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

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

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages.

1 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay  
2 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by  
3 PLAINTIFFS accrued interest.

4 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall  
5 of 2017, and thereafter blossomed from one of mere property damage to one of significant and  
6 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the  
7 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the  
8 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,  
9 neither PLAINTIFFS nor SIMON agreed on any terms.

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

17 14. A reason given by SIMON to modify the CONTRACT was that he purportedly  
18 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go  
19 through his invoices and create, or submit, additional billing entries. According to SIMON, he  
20 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason  
21 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that  
22 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement  
23 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

24 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and  
25 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees  
26

1 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following  
2 the flooding event.

3 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP  
4 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS  
5 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS  
6 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect  
7 fees and costs other than those contained in his invoices that were presented to and paid by  
8 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
9 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let  
10 alone those in excess of \$1,000,000.00.  
11

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

23 18. Despite SIMON'S requests and demands for the payment of more in fees,  
24 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.  
25

26 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,  
27 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement  
28 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide

1 PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds  
2 that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can  
3 receive either the undisputed number or their proceeds.

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

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

11 21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through  
12 20 of this Complaint, as though the same were fully set forth herein.

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

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

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

23 25. SIMON'S demand for additional compensation other than what was agreed to in the  
24 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for  
25 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.  
26  
27  
28

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

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

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

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

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

15 **SECOND CLAIM FOR RELIEF**

16 **(Declaratory Relief)**

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

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

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

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



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

4  
5 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in  
6 the LITIGATION was produced in updated form on or before September 27, 2017. The full  
7 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to  
8 PLAINTIFFS and that PLAINTIFFS paid in full.

9  
10 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the  
11 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and  
12 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON  
13 admitted that all of the bills for his services were produced in the LITIGATION; and, since the  
14 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to  
15 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the  
16 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the  
17 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

18  
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

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

23  
24 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his  
25 services, nothing more.

26 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or  
27 before September 27, 2017, had already been produced to the defendants.  
28

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

3 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his  
4 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay  
5 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd  
6 produced all of his billings through September of 2017, SIMON has refused to agree to either  
7 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed  
8 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.  
9

10 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a  
11 conscious disregard of, and contempt for, PLAINTIFFS' property rights.  
12

13 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises  
14 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to  
15 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount  
16 in excess of \$15,000.00.  
17

18 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
19 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
20 PLAINTIFFS are entitled to recover attorneys' fees and costs.  
21

22 **PRAYER FOR RELIEF**

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

- 24 1. Compensatory and/or expectation damages in an amount in excess of \$15,000;  
25 2. Consequential and/or incidental damages, including attorney fees, in an amount in  
26 excess of \$15,000;  
27 3. Punitive damages in an amount in excess of \$15,000;  
28 4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;

VANNAH & VANNAH  
400 South Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone (702) 369-1161 Facsimile (702) 369-0104

1 5. Costs of suit; and,

2 6. For such other and further relief as the Court may deem appropriate.

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

5  
6   
7 ROBERT D. VANNAH, ESQ. (4272)  
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# **Exhibit 5**

AFFIDAVIT OF BRIAN EDGEWORTH IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO  
DEFENDANT'S MOTIONS

STATE OF NEVADA           )  
  ) ss.  
COUNTY OF CLARK        )

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions  
of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date,  
and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to  
represent our interests following a flood that occurred on April 10, 2016, in a home under  
construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of \$500,000 of property damage to  
the home. It was initially hoped that SIMON drafting a few letters to the responsible parties  
could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the  
defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain.  
However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems  
to liken our transaction as an act of charity performed by him for a friend = me. Hardly.  
Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also,  
those "few letters" mentioned above were not done for free by SIMON, either. I believe I paid  
approximately \$7,000 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that  
SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd

1 reimburse him for his costs. No other form or method of compensation such as a contingency fee  
2 was ever brought up at that time, let alone agreed to.

3 7. The terms of our fee agreement were never reduced to writing. However, that  
4 formality didn't matter to us, as we each recognized what the terms of the agreement were and  
5 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his  
6 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the  
7 invoices in full in less than one week from the date they were received.

8  
9 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,  
10 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in  
11 those invoices totaled \$486,453.09. The hourly rate that SIMON billed us in all of his invoices  
12 was at \$550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us  
13 on November 10, 2017 in the amount of approximately \$72,000. However, SIMON withdrew the  
14 invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I  
15 don't know whether SIMON ever disclosed that "final" invoice to the defendants in the  
16 LITIGATION or whether he added those fees and costs to the mandated computation of damages.

17  
18 9. From the beginning of his representation of us, SIMON was aware that I was  
19 required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also  
20 aware that these loans accrued interest. It's not something for SIMON to gloat over or question  
21 my business sense about, as I was doing what I had to do to with the options available to me. On  
22 that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

23  
24 10. Plus, SIMON didn't express an interest in taking what amounted to a property  
25 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of  
26 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in  
27 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted  
28

1 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk  
2 of loss in the LITIGATION was gone.

3 11. Please understand that I was incredibly involved in this litigation in every respect.  
4 Regrettably, it was and has been my life for nearly 22 months. As discovery in the underlying  
5 LITIGATION neared its conclusion in the late fall of 2017, after the value of the case blossomed  
6 from one of property damage of approximately \$500,000 to one of significant and additional  
7 value do to the conduct of one of the defendants, and after a significant sum of money was offered  
8 to PLAINTIFFS from defendants, SIMON became determined to get more, so he started asking  
9 me to modify our CONTRACT. Thereafter, I sent an email labeled "Contingency." The purpose  
10 of that email was to make it clear to SIMON that we'd never had a structured conversation about  
11 modifying the existing fee agreement from an hourly agreement to a contingency agreement.  
12

13 12. SIMON scheduled an appointment for my wife and I to come to his office to  
14 discuss the LITIGATION. Instead, his only agenda item was to pressure us into modifying the  
15 terms of the CONTRACT. He told us that he wanted to be paid far more than \$550.00 per hour  
16 and the \$486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of  
17 SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it  
18 came at the time when the risk of loss in the LITIGATION had been nearly extinguished and the  
19 appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on  
20 a full court press for PLAINTIFFS to agree to his proposed modifications to our fee agreement.  
21 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to  
22 this or else."  
23

24 13. Following that meeting, SIMON would not let the issue alone, and he was  
25 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never  
26 agreed on any terms to alter, modify, or amend our fee agreement. Knowing SIMON as I do, if  
27  
28

1 we had agreed to modify our fee agreement, SIMON would have attached that agreement in large  
2 font to his Motion as Exhibit 1.

3 14. On November 27, 2017, SIMON sent a letter to us setting forth additional fees in  
4 the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be  
5 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.  
6 We were stunned to receive this letter. At that time, these additional “fees” were not based upon  
7 invoices submitted to us or detailed work performed. The proposed fees and costs were in  
8 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the  
9 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to  
10 defendants in the LITIGATION, and the amounts set forth in the computation of damages that  
11 SIMON was required to submit in the LITIGATION.  
12

13 15. A reason given by SIMON to modify the fee agreement was that he purportedly  
14 under billed us on the four invoices previously sent and paid, and that he wanted to go through his  
15 invoices and create, or submit, additional billing entries. We were again stunned to learn of  
16 SIMON’S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in  
17 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work  
18 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON  
19 prepared a proposed settlement breakdown with his new numbers and presented it to us for their  
20 signatures. This, too, came with a high-pressure approach by SIMON.  
21

22 16. Another reason why we were so surprised by SIMON’S demands is because of the  
23 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach  
24 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the  
25 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the  
26 flooding event. Since SIMON hadn’t presented these “new” damages to defendants in the  
27  
28



1 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to  
2 be presented at trial.

3 17. On September 27, 2017, I sat for a deposition on September 27, 2017.  
4 Defendants' attorneys asked specific questions of me regarding the amount of damages that  
5 PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid  
6 to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well.  
7 At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of  
8 attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017.  
9 At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON  
10 further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim  
11 have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted  
12 concerning his fees and costs: "And they've been updated as of last week." At that time, I felt I  
13 had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims  
14 for damages in the LITIGATION.  
15

16 18. Despite SIMON'S requests and demands on us for the payment of more in fees, we  
17 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the  
18 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement  
19 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and  
20 time that he'd never previously produced to us and that never saw the light of day in the  
21 LITIGATION.  
22

23 19. When SIMON refused to release the full amount of the settlement proceeds to us,  
24 we felt that the only reasonable alternative available to us was to file a complaint for damages  
25 against SIMON. We did not do so to shop around for a new judge. It was nothing like that. In my  
26 mind, by the time we filed our complaint, all of the claims from the LITIGATION were resolved  
27 and only one release had to be signed, then the entire case could be dismissed.  
28

20. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. We were forced to litigate with SIMON to get what is ours released to us.

21. SIMON makes light of the facts that we haven't fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION were, for all intents and purposes, resolved. Since we've already paid him for this work to resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

22. Please understand that we've paid SIMON in full every penny of every invoice that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall. I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the LITIGATION.

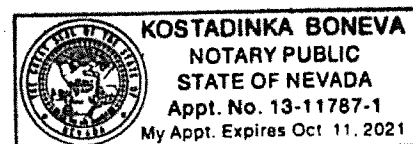
23. I ask this Court to deny SIMON'S Motions and give us the right to present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

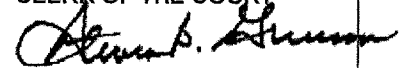
BRIAN EDGEWORTH

Subscribed and Sworn to before me  
this 2<sup>nd</sup> day of February 2018.

Kostadinka Boneva  
Notary Public in and for said County and State



# **Exhibit 6**



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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

**AMENDED COMPLAINT**

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

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

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

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

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

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

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

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

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

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

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

## **SECOND CLAIM FOR RELIEF**

### **(Declaratory Relief)**

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

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

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

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

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

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

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

### **THIRD CLAIM FOR RELIEF**

#### **(Conversion)**

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

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

3 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or  
4 before September 27, 2017, had already been produced to the defendants.  
5

6 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable  
7 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.  
8

9 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his  
10 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay  
11 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd  
12 produced all of his billings through September of 2017, SIMON has refused to agree to either  
13 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed  
14 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.  
15

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

18 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises  
19 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to  
20 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount  
21 in excess of \$15,000.00.  
22

23 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
24 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
25 PLAINTIFFS are entitled to recover attorneys' fees and costs.  
26

27 ///

28 ///

**FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

18  
19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair  
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access  
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,  
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the  
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.

24  
25 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a  
26 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or  
27 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are  
28 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

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

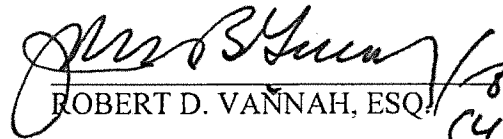
**PRAYER FOR RELIEF**

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

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ. (4279)

# **Exhibit 7**



AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA       )  
                                      ) ss.  
COUNTY OF CLARK       )

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over \$7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

1           7.       SIMON never reduced the terms of our fee agreement to writing. However, that  
2 formality didn't matter to us, as we each recognized what the terms of the agreement were and  
3 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his  
4 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the  
5 invoices in full in less than one week from the date they were received.

6           8.       For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,  
7 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in  
8 those invoices totaled \$486,453.09. There were hundreds of entries in these invoices. The hourly  
9 rate that SIMON billed us in all of his invoices was at \$550 per hour. I paid the invoices in full to  
10 SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of  
11 approximately \$72,000. However, SIMON withdrew the invoice and failed to resubmit the  
12 invoice to us, despite an email request from me to do so. I don't know whether SIMON ever  
13 disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those  
14 fees and costs to the mandated computation of damages. I do know, however, that when SIMON  
15 produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018,  
16 for an additional \$692,120 in fees, his hourly rate for all of his work was billed out at our agreed  
17 to rate of \$550.

18           9.       From the beginning of his representation of us, SIMON was aware that I was  
19 required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also  
20 aware that these loans accrued interest. It's not something for SIMON to gloat over or question  
21 my business sense about, as I was doing what I had to do to with the options available to me. On  
22 that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

23           10.       Plus, SIMON didn't express an interest in taking what amounted to a property  
24 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of  
25 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in  
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28

1 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted  
2 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk  
3 of loss in the LITIGATION was gone.

4 11. Please understand that I was incredibly involved in this litigation in every respect.  
5 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the  
6 good work SIMON performed, I was the one who dug through the thousands of documents and  
7 found the trail that led to the discovery that Viking had a bad history with these sprinklers, and  
8 that there was evidence of a cover up. I was the one who located the prior case involving Viking  
9 and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's  
10 insurer), and from fire marshals, etc. I was also the one who did the research and made the calls  
11 to the scores of people who'd had hundreds of problems with these sprinklers and who had  
12 knowledge that Viking had tried to cover this up for years. This was the work product that caused  
13 this case to grow into the one that it did.  
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15 12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an  
16 expert. This was around the time that the value of the case had blossomed from one of property  
17 damage of approximately \$500,000 to one of significant and additional value due to the conduct  
18 of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for  
19 the first time broached the topic of modifying our fee agreement from a straight hourly contract to  
20 a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him  
21 that I'd be open to discussing this further, but that our interests and risks needed to be aligned.  
22 Weeks then passed without SIMON mentioning the subject again.  
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24 13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email  
25 was to make it clear to SIMON that we'd never had a structured conversation about modifying the  
26 existing fee agreement from an hourly agreement to a contingency agreement. I also told him that  
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1 if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to  
2 borrow money to pay his hourly fees and the costs.

3 14. SIMON scheduled an appointment for my wife and I to come to his office to  
4 discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to  
5 a \$6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was  
6 to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid  
7 far more than \$550.00 per hour and the \$486,453.09 he'd received from us for the preceding  
8 eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was  
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11 suddenly been recognized. SIMON put on a full court press for us to agree to his proposed  
12 modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable.  
13 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to  
14 this or else."  
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16 15. Following that meeting, SIMON would not let the issue alone, and he was  
17 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never  
18 agreed on any terms to alter, modify, or amend our fee agreement.  
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20 16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the  
21 amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be paid in  
22 light of a favorable settlement that was reached with the defendants in the LITIGATION. We  
23 were stunned to receive this letter. At that time, these additional "fees" were not based upon  
24 invoices submitted to us or detailed work performed. The proposed fees and costs were in  
25 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the  
26 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to  
27 defendants in the LITIGATION, and the amounts set forth in the computation of damages that  
28

1 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON  
2 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep  
3 and review, or the reasons.

4 17. A reason given by SIMON to modify the fee agreement was that he claims he  
5 under billed us on the four invoices previously sent and paid, and that he wanted to go through his  
6 invoices and create, or submit, additional billing entries. We were again stunned to learn of  
7 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in  
8 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work  
9 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON  
10 prepared a proposed settlement breakdown with his new numbers and presented it to us for our  
11 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also  
12 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly  
13 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency  
14 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was  
15 now entitled to receive.  
16

17 18. Another reason why we were so surprised by SIMON'S demands is because of the  
18 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach  
19 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the  
20 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the  
21 flooding event. Since SIMON hadn't presented these "new" damages to defendants in the  
22 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to  
23 be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe  
24 until the claims against defendant Viking were resolved. How can that be? All of our claims  
25 against Viking and Lange were set to go to trial in February of this year.  
26  
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28

1           19.    On September 27, 2017, I sat for a deposition. Lange's attorney asked specific  
2 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the  
3 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what  
4 transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question  
5 was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the  
6 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been  
7 disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both  
8 of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page  
9 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been  
10 updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be  
11 billing more hours that he hadn't yet written down, or that additional invoices for fees or costs  
12 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS  
13 before he could determine the amount of his fee. At that time, I felt I had reason to believe  
14 SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the  
15 LITIGATION.  
16

17  
18           20.    Despite SIMON'S requests and demands on us for the payment of more in fees, we  
19 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the  
20 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement  
21 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and  
22 time that he'd never previously produced to us and that never saw the light of day in the  
23 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was  
24 nothing short of stealing what was ours.  
25

26           21.    When SIMON refused to release the full amount of the settlement proceeds to us  
27 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable  
28 alterative available to us was to file a complaint for damages against SIMON.

1           22.     Thereafter, the parties agreed to create a separate account, deposit the settlement  
2 proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to  
3 have the settlement funds deposited like they were, as SIMON flatly refused to give us what was  
4 ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

5           23.     In Motions filed in another matter, SIMON makes light of the facts that we haven't  
6 fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're  
7 not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've  
8 already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to  
9 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION  
10 were, for all intents and purposes, resolved. Since we've already paid him for this work to  
11 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

12           24.     Please understand that we've paid SIMON in full every penny of every invoice  
13 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.  
14 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one  
15 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused  
16 to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the  
17 LITIGATION.  
18

19           25.     I also feel that it's remarkable and so wrong that an attorney can agree to receive  
20 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period  
21 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless  
22 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.  
23

24           26.     SIMON in his motion, and in open court, made claims that he was effectively fired  
25 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with  
26 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to  
27 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false  
28

1 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club  
2 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses  
3 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if  
4 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is  
5 responsible for making contact about absences (that had already been outlined at the mandatory  
6 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls,  
7 SIMON sent the follow-up email, again carefully worded, with the clear accusation that  
8 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.  
9 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable  
10 position of confronting me about it. I read the email, and was forced to have a phone  
11 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell  
12 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars  
13 from me. I emphasized that SIMON'S accusation was without substance and there was nothing  
14 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the  
15 paperwork for another background check by USA Volleyball even though I have no coaching or  
16 any contact with any of the athletes for the club. My involvement is limited to sitting on the  
17 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two  
18 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.  
19 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit  
20 from the charity are minors, an accusation of this severity, from someone he assumed I was  
21 friends with and further from my own attorney could not be ignored. While I was embarrassed  
22 and furious that someone who was actively retained as my attorney and was billing me would  
23 attempt to damage my reputation at a charity my wife and I founded and have poured millions of  
24 dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not  
25 received his voicemail he referenced in an email and directed SIMON to call John Greene if he  
26  
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28



1 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a  
2 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied  
3 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told  
4 him to not send anything like that again. Simon claimed he did not intend the meaning  
5 interpreted. I think it speaks volumes to Simon's character that after being caught trying to  
6 damage our reputation and trying to smear our names with accusations that are impossible to  
7 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera  
8 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon  
9 further attempts to bill us hundreds of thousands of dollars for “representing” us during this  
10 period. In short, we never fired SIMON, though we asked him to communicate to us through an  
11 intermediary. Rather, we wanted and want him to finish the work that he started and billed us  
12 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the  
13 LITIGATION.  
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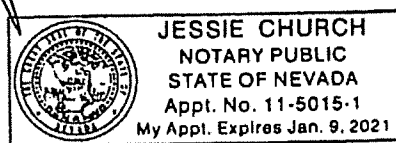
15  
16 27. I ask this Court to deny SIMON'S Motion and give us the right to present our  
17 claims against SIMON before a jury.

18 FURTHER AFFIANT SAYETH NAUGHT.

19   
20 BRIAN EDGEWORTH

21 Subscribed and Sworn to before me  
22 this 12 day of February 2018.

23   
24 Notary Public in and for said County and State



# Exhibit 8

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA       )  
                                      ) ss.  
COUNTY OF CLARK       )

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

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1 was ever brought up at that time, let alone ever agreed to.

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3 formality didn't matter to us, as we each recognized what the terms of the agreement were and  
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7 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,  
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2 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to  
3 defendants in the LITIGATION, and the amounts set forth in the computation of damages that  
4 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON  
5 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep  
6 and review, or the reasons.

7  
8 17. A reason given by SIMON to modify the fee agreement was that he claims he  
9 under billed us on the four invoices previously sent and paid, and that he wanted to go through his  
10 invoices and create, or submit, additional billing entries. We were again stunned to learn of  
11 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in  
12 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work  
13 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON  
14 prepared a proposed settlement breakdown with his new numbers and presented it to us for our  
15 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also  
16 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly  
17 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency  
18 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was  
19 now entitled to receive.  
20

21 18. Another reason why we were so surprised by SIMON'S demands is because of the  
22 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach  
23 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the  
24 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the  
25 flooding event. Since SIMON hadn't presented these "new" damages to defendants in the  
26 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to  
27  
28

1 be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe  
2 until the claims against defendant Viking were resolved. How can that be? All of our claims  
3 against Viking and Lange were set to go to trial in February of this year.

4 19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific  
5 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the  
6 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what  
7 transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question  
8 was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the  
9 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been  
10 disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both  
11 of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page  
12 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been  
13 updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be  
14 billing more hours that he hadn't yet written down, or that additional invoices for fees or costs  
15 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS  
16 before he could determine the amount of his fee. At that time, I felt I had reason to believe  
17 SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the  
18 LITIGATION.

21 20. Despite SIMON'S requests and demands on us for the payment of more in fees, we  
22 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the  
23 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement  
24 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and  
25 time that he'd never previously produced to us and that never saw the light of day in the  
26 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was  
27  
28



1 nothing short of stealing what was ours.

2 21. When SIMON refused to release the full amount of the settlement proceeds to us  
3 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable  
4 alterative available to us was to file a complaint for damages against SIMON.

5 22. Thereafter, the parties agreed to create a separate account, deposit the settlement  
6 proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to  
7 have the settlement funds deposited like they were, as SIMON flatly refused to give us what was  
8 ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

9  
10 23. In Motions filed in another matter, SIMON makes light of the facts that we haven't  
11 fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're  
12 not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've  
13 already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to  
14 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION  
15 were, for all intents and purposes, resolved. Since we've already paid him for this work to  
16 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

17  
18 24. Please understand that we've paid SIMON in full every penny of every invoice  
19 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.  
20 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one  
21 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused  
22 to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the  
23 LITIGATION.

24  
25 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive  
26 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period  
27 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless  
28

1 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.

2 26. SIMON in his motion, and in open court, made claims that he was effectively fired  
3 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with  
4 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to  
5 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false  
6 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club  
7 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses  
8 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if  
9 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is  
10 responsible for making contact about absences (that had already been outlined at the mandatory  
11 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls.  
12 SIMON sent the follow-up email, again carefully worded, with the clear accusation that  
13 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.  
14 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable  
15 position of confronting me about it. I read the email, and was forced to have a phone  
16 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell  
17 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars  
18 from me. I emphasized that SIMON'S accusation was without substance and there was nothing  
19 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the  
20 paperwork for another background check by USA Volleyball even though I have no coaching or  
21 any contact with any of the athletes for the club. My involvement is limited to sitting on the  
22 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two  
23 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.  
24 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit  
25  
26  
27  
28

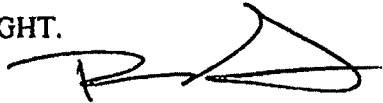
1 from the charity are minors, an accusation of this severity. from someone he assumed I was  
2 friends with and further from my own attorney could not be ignored. While I was embarrassed  
3 and furious that someone who was actively retained as my attorney and was billing me would  
4 attempt to damage my reputation at a charity my wife and I founded and have poured millions of  
5 dollars into. I politely sent SIMON an email on December 5, 2017, telling him that I had not  
6 received his voicemail he referenced in an email and directed SIMON to call John Greene if he  
7 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a  
8 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied  
9 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told  
10 him to not send anything like that again. Simon claimed he did not intend the meaning  
11 interpreted. I think it speaks volumes to Simon's character that after being caught trying to  
12 damage our reputation and trying to smear our names with accusations that are impossible to  
13 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera  
14 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon  
15 further attempts to bill us hundreds of thousands of dollars for “representing” us during this  
16 period. In short, we never fired SIMON, though we asked him to communicate to us through an  
17 intermediary. Rather, we wanted and want him to finish the work that he started and billed us  
18 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the  
19 LITIGATION.

22 27. We did not cause the Complaint or the Amended Complaint to be filed against  
23 SIMON or his business entities to prevent him from participating in any public forum. We also  
24 didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid  
25 under the CONTRACT.

27 28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to  
28

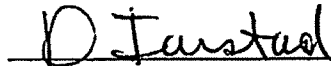
1 present our claims against SIMON before a jury.

2 FURTHER AFFIANT SAYETH NAUGHT.

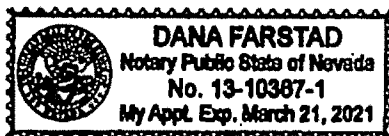
3 

4 BRIAN EDGEWORTH

5 Subscribed and Sworn to before me  
6 this 15 day of March 2018, by BRIAN EDGEWORTH.

7 

8 Notary Public in and for said County and State



# Exhibit 9

James R. Christensen Esq.  
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*Admitted in Illinois and Nevada*  
TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

November/December 2017 Billing Statement

I. ATTORNEY

11.27.17	Meeting with client	.50
	Email exchange and [REDACTED]	.30
11.28.17	Email exchange with client	n/c
11.29.17	Meeting with client	n/c
11.30.17	T/C with client	.50
	Email exchange with client & review attachments	.30
12.1.17	T/C #1 with client	.50
	T/C #2 with client	.20
12.4.17	T/C with client	n/c
	V/M for Robert Vannah	n/c
	Meeting with client	.50
12.5.17	T/C with David Clark	.20
	Meeting with client	n/c
	T/C with John Green	n/c
	T/C with Dave Clark	n/c

12.7.17	Westlaw research re: [REDACTED]. Meeting with client w/conference call with Vannah. Draft and edit letter to Vannah.	1.0
12.11.17	Review of [REDACTED]; and, t/c with client re: same	.20
12.12.17	T/C with client	.30
12.19.17	Review recent email re check endorsement and undisputed amount. T/C with client. E-mail to Vannah's office.	.30
12.26.17	Review Vannah email of 11.23. T/C with client. Draft reply email.	.50
12.27.17	Multiple calls with client/review and respond to Vannah email of 12.26.17	1.5
12.28.17	Forward Vannah email of 12.28.17 to client.	n/c
	T/c with client re: [REDACTED]	.40
	Review of [REDACTED] and t/c with David Clark re: separate trust account	.20

TOTAL Attorney Time: 7.4 hours @ \$400.00 = \$2,960.00

## II. PARALEGAL

N/A

TOTAL Paralegal Time: -0- hours @ \$100.00 = \$ -0-

III. COSTS

Postage	\$ -0-
Copies	\$2.20
Wiznet filing fees	\$ -0-

TOTAL Costs	\$ 2.20
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IV. TOTAL DUE THIS INVOICE	\$2,962.20
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V. RETAINER SUMMARY

Beginning balance	\$10,000.00
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Payment of this Invoice	- 2,962.20
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<b>RETAINER BALANCE</b>	<b>\$7,037.80</b>
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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

January – February 2018 Billing Statement

I. ATTORNEY

1.4.18	T/C with client	.20
	Review of recent email. Reply to Greene et al. Call to Sarah G.	.30
1.5- 1.9.18	Multiple phone calls	n/c
1.9.18	Call from John Greene re: service. Discussion with client. Email back to John.	.30
1.10.18	Meeting at Simon law.	.50
1.12.18	T/C w/ David Clark. Email documents to DC	.30
1.15.18	Work on motion to adjudicate lien	3.0
1.16.18	Work on motion to adjudicate lien	8.0
1.17.18	Discussion with client. Work on motion to adjudicate. Telephone discussion with D. Clark.	4.0 .20
1.18.18	Work on motion to adjudicate	2.0
1.24.18	Review emails from J. Greene. Calls to and from J. Greene.	.40

1.26.18	Review of emergency motion to continue/setting and change of hearing dates	.20
	T/C with client	.40
	Work on motion to dismiss	1.0
1.27.18	Work on motion to dismiss	2.0
1.29.18	T/c with client (x2)	.50
	Research and final MTD	1.3
1.30.18	Additional research. Review. Email to client	1.6
2.3.18	Review Kemp declaration. Work on supplement provided by Client.	2.0
2.5.18	Review opposition. Research and draft reply. Multiple t/c with client	5.0
2.6.18	Prepare and attend court hearing on motions to Consolidate/adjudicate	3.4
2.9.18	Read minute order re: motion to consolidate	.20
2.10.18	T/c with Westlaw and [REDACTED]	.40
2.12.18	Edit draft Order	.20
2.12.18	Research and draft Anti-SLAPP motion. T/C with client	6.0
2.13.18	Edit Anti-SLAPP motion	1.4
2.13.18	Review email from J. Greene	.20
2.14.18	Review emails from client re: [REDACTED]	.40
2.15.18	Final Anti-SLAPP motion	.40

2.15.18	Edit supplement to motion to adjudicate. T/C with client	1.0
2.19.18	Review email from J. Greene	.20
2.20.18	Prep for, travel to and attend hearing	1.0
2.20.18	Multiple emails (#11) regarding 100k check and MSC. Related T/C with client	.50
2.26.18	T/c with client (x2)	.20
	Emails to Vannah (x2). Email to client	.20
TOTAL Attorney Time: 48.9 hours @ \$400.00 = \$19,560.00		

## II. PARALEGAL

1.9.18	Receipt and review of Complaint, calendar, copy, forward to client	.20
1.16.18	Review and format Motion to Adjudicate	.55
1.18.18	Review and final Motion to Adj., Motion to Dismiss, Motion to Consolidate	1.5
1.24.18	Review, process, file, Motion to Dismiss, Motion to Adjudicate and Motion to Consolidate	1.1
1.26.18	Review and revise Motion to Dismiss	.50
1.29.18	Review and revise Motion to Dismiss	N/C
2.5.18	Review, revise, format, file Reply	1.4
2.7.18	Attempts to obtain brief filed in Beheshti v. Bartley	.50
2.12.18	Prep Order for attorney review	.20

2.13.18	Contact Vannah re: Order	.20
2.15.18	Review, revise and format MTD Anti-Slapp	1.3
2.26.18	Review ltr from District Court and calendar	.20
3.2.18	Serve and calendar MTD Anti-Slapp	.20
TOTAL Paralegal Time: 7.85 hours @ \$100.00 =		\$785.00

### III. COSTS

Postage	\$ -0-	
Copies	\$ 52.60	
Wiznet filing fees	\$250.69	
TOTAL Costs		\$303.29

IV. TOTAL DUE THIS INVOICE	\$20,648.29
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### V. RETAINER SUMMARY

Beginning balance	\$7,037.80
Retainer applied to this invoice	\$7,037.80
RETAINER BALANCE	\$ -0-

VI. BALANCE DUE	\$13,610.49
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TIN: 26-4598989

**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

March - April 2018 Billing Statement

I. ATTORNEY

3.1.18	Review latest proposed amended complaint	.20
3.2.18	Multiple calls with client and E-mail to adverse re: checks	.30
3.5.18	T/c with client	.20
3.8.28	Start on MSC draft	.70
3.12.18	MSC brief	1.8
3.15.18	MSC brief	2.0
3.20-21.18	Read opposition and draft reply to special MTD	3.5
3.23.18	Meet client, and attend MSC	5.0
4.3.18	Prep/attend hearing on MTDs and Adjudication	1.5
4.7.18	Work on MTD AC	2.0

TOTAL Attorney Time: 17.2 hours @ \$400.00 = \$6,880.00

II. PARALEGAL

3.5.18	Begin Settlement brief draft	.20
3.21.18	Review, revise, format, serve and file Reply re Anti-Slapp MTD	1.3
4.9.18	Review/revise MTD Amended Complaint	.75

TOTAL Paralegal Time: 2.25 hours @ \$100.00 = \$225.00

III. COSTS

Postage	\$ -0-
Copies	\$ 83.20
Wiznet filing fees	\$ 14.00

TOTAL Costs \$97.20

IV. TOTAL DUE THIS INVOICE \$7,202.20

V. RETAINER SUMMARY

Beginning balance	\$1,389.51
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Retainer applied to this invoice	\$1,389.51
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RETAINER BALANCE	\$ -0-
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VI. BALANCE DUE \$5,812.69

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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

May - June 2018 Billing Statement

I. ATTORNEY

5.3.18	Meeting with client	.60
	Telephone conference with potential hearing witness 1 and t/c with client	.40
5.7.18	Edit SLAPP for re-filing	.80
	Call to potential witness 1 and call to potential witness 2	.20
5.15.18	Meeting with Will Kemp	1.2
5.16.18	Research on [REDACTED] Email to client	.40
5.18.18	Draft Adjudication hearing brief	2.0

TOTAL Attorney Time: 5.6 hours @ \$400.00 = \$2,240.00

II. PARALEGAL

5.8.18	Review, revise and format Anti-slapp MTD and amended Complaint	.60
5.10.18	Final, prep, file, serve Anti-slapp MTD and calendar	1.5
5.18.18	Review, revise, format, final, prep, file, serve Evidentiary Brief	1.1

TOTAL Paralegal Time: 3.2 hours @ \$100.00 = \$320.00

III. COSTS

Postage	\$ -0-
Copies	\$ 63.80
Wiznet filing fees	\$ 3.50

TOTAL Costs \$67.30

IV. TOTAL DUE THIS INVOICE \$2,627.30

V. **BALANCE DUE** **\$2,627.30**



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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

July - August 2018 Billing Statement

I. ATTORNEY

8.20.18	Meeting with client	1.0
8.21.18	Email exchange with John Greene & t/c with client	.20
8.22.18	Meeting with client	1.0
	Meeting with client and expert	2.0
8.23.18	email exchange with Vannah office	.20
	t/c(s) with client	.20
8.24.18	Meeting at client's office	1.5
8.25.18	Telephone conversations with Vannah and client	.50
8.26.18	Meeting at client's office	5.0
8.27.18	Draft Vannah agreement bench brief	1.0
	Hearing attendance and preparation – Day 1	7.0
8.28.18	Hearing preparation and attendance – Day 2	8.0
8.29.18	Hearing preparation and attendance – Day 3	8.0

8.30.18	Hearing preparation and attendance – Day 4	8.0
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8.31.18	Work on Offer of Judgment	.20
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TOTAL Attorney Time: 43.80 hours @ \$400.00		= \$17,520.00
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II. PARALEGAL

N/A

III. COSTS

N/A

IV.	TOTAL DUE THIS INVOICE	\$17,520.00
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V.	<b>BALANCE DUE</b>	<b>\$17,520.00</b>
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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

September - October 2018 Billing Statement

I. ATTORNEY

9.10-11.18	Review and draft party correspondence to Judge Jones and review reply	.30
9.16.18	Review and edit findings of fact; and, add conclusions of law	3.5
9.17.18	Work on proposed orders, findings and conclusions	1.0
	Hearing preparation with client	2.0
9.18.18	Attend evidentiary hearing-day 5	5.0
9.23.18	Review closing brief	2.0
	Review of findings and discussion with client	1.0
10.24.18	Review and reply to adverse email	.20
10.25.18	Work on Rule 52 motion	2.0
10.26.18	Continue work on Rule 52 motion.	2.0
10.26.18	Took call from John Greene, email to client following	.30

10.27.18	Continue work on Rule 52 motion	2.0
10.29.18	Final Rule 52 motion	2.0
10.30.18	Review emails from law clerk re: OST and respond.	.20
	Review emails from Vannah office and respond.	.20
10.31.18	Review and reply to emails from adverse, t/c with client.	.30
10.31.18	Review and edit motion for attorney fees.	3.0

TOTAL Attorney Time: 27.0 hours @ \$400.00 = \$10,800.00

## II. PARALEGAL

10.24.18	File Notice of Entry of Order	.20
10.25.18	Review/format/Motion for reconsideration	1.1
10.29.18	Final Motions, regular and OST	.40
10.31.18	Review/revise/Motion for Attorney Fees	1.4

TOTAL Paralegal Time: 3.1 hours @ \$100.00 = \$ 310.00

## III. COSTS

Wiznet	\$ 14.00
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IV. TOTAL DUE THIS INVOICE	\$11,124.00
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V. BALANCE DUE	<b>\$11,124.00</b>
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James R. Christensen Esq.  
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**SIMON LAW GROUP – EDGEWORTH FEE DISPUTE**

Through November 15, 2018 Billing Statement

I. ATTORNEY

11.1.2018	Reply to adverse emails (2) and forward to client (3)	.20
11.1.2018	Review of Plaintiffs closing	.40
11.12.2018	Read opposition and draft reply	1.4
11.13.18	Final reply	1.5
11.15.18	Attend motion hearing	1.0

TOTAL Attorney Time: 4.5 hours @ \$400.00 = \$1,800.00

II. PARALEGAL

11.13.18	Review/revise/final Motion to Amend	1.1
11.14.18	File and serve Motion to Amend	n/c

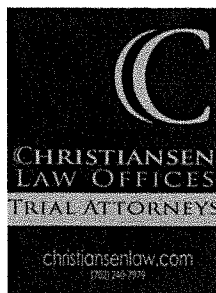
TOTAL Paralegal Time: 1.1 hours @ \$100.00 = \$ 110.00

III. COSTS

N/A

IV.	TOTAL DUE THIS INVOICE	\$1,910.00
V.	<b>BALANCE DUE</b>	<b>\$1,910.00</b>

# **Exhibit 10**



# INVOICE

Invoice # 15648  
Date: 11/29/2018  
Due On: 12/29/2018

## Christiansen Law Offices

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United States  
Phone: 702-240-7979  
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Law Office of Daniel S. Simon  
810 S. Casino Center Boulevard  
Las Vegas, NV 89101

### 2018-03891-Law Office of Daniel S. Simon-Simon adv Edgeworth

#### Simon adv Edgeworth

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	01/10/2018	PSC	Meeting with Client re: case history	2.50	\$850.00	\$2,125.00
Service	02/01/2018	PSC	Review file; Discussions with Client.	3.80	\$850.00	\$3,230.00
Service	02/03/2018	PSC	Review Motions to Adjudicate Lien.	1.30	\$850.00	\$1,105.00
Service	02/04/2018	PSC	Review motion to Dismiss; Discussions with Client.	2.30	\$850.00	\$1,955.00
Service	02/06/2018	PSC	Notice to Associate in on case	0.10	\$850.00	\$85.00
Service	02/06/2018	PSC	Attend Hearing on Motion for Determination of Good Faith Settlement, Simon's Motion to Adjudicate the Lien, Motion to Consolidate/New Lawsuit.	2.50	\$850.00	\$2,125.00
Service	02/14/2018	PSC	Review of hearing transcript	0.50	\$850.00	\$425.00
Service	02/15/2018	PSC	Assist in preparing, revising and finalizing Supplement to Motion to Adjudicate Attorney Lien	3.50	\$850.00	\$2,975.00
Service	02/21/2018	PSC	Review Vannah's Opp to Defendant's Motion to Dismiss and Countermotion to Amend; conference with client	2.30	\$850.00	\$1,955.00
Service	02/26/2018	PSC	Draft and fax letter to Williams re settlement conference	0.50	\$850.00	\$425.00

AA02351



Service	03/01/2018	PSC	Review Vannah's Supplement to their Counter-motion to amend Complaint; conference with client	1.80	\$850.00	\$1,530.00
Service	03/02/2018	PSC	Review and revise Special Motion to Dismiss- Anti-Slapp on OST	1.30	\$850.00	\$1,105.00
Service	03/15/2018	PSC	Review Amended Complaint filed by Vannah; conference with client	1.30	\$850.00	\$1,105.00
Service	03/16/2018	PSC	R&R MSC brief; conference with client	3.50	\$850.00	\$2,975.00
Service	03/16/2018	PSC	Review Opp to Special motion to Dismiss: Anti-Slapp; conference with client	1.80	\$850.00	\$1,530.00
Service	03/21/2018	PSC	Assist R&R Reply to Motion to Dismiss: Anti-Slapp	1.30	\$850.00	\$1,105.00
Service	03/22/2018	PSC	Assist R&R Reply to Motion to Dismiss 12(b)(5)	1.80	\$850.00	\$1,530.00
Service	03/23/2018	PSC	Meeting re settlement conference with Jim, DS and AF; Prepare for and Attend Mandatory Settlement Conference	5.00	\$850.00	\$4,250.00
Service	04/09/2018	PSC	Assist R&R Motion to Dismiss Plaintiff's Amended Complaint; meet with client.	1.80	\$850.00	\$1,530.00
Service	04/24/2018	PSC	Review Opp to Defendants' (Third) Motion to Dismiss; conference with client	1.30	\$850.00	\$1,105.00
Service	05/09/2018	PSC	Assist R&R Special Motion to Dismiss Amended Complaint: Anti-Slapp	2.30	\$850.00	\$1,955.00
Service	05/15/2018	PSC	Meeting with Will Kemp	1.50	\$850.00	\$1,275.00
Service	05/18/2018	PSC	Assist R&R Bench Brief on Evidentiary Hearing	3.50	\$850.00	\$2,975.00
Service	05/19/2018	PSC	Review Plaintiffs' bench brief on evidentiary hearing; conference with client	1.50	\$850.00	\$1,275.00
Service	05/23/2018	PSC	Review calendar and scheduling issues and draft letter to Judge Jones re: evidentiary Hearing regarding continuing the evidentiary hearing due to trial conflict	0.50	\$850.00	\$425.00
Service	05/24/2018	PSC	Review Opposition to Defendants' 2nd Motion to Dismiss: Anti-Slapp	1.50	\$850.00	\$1,275.00
Service	08/10/2018	PSC	Assist in preparing subpoena to Floyd Hale; finalize and email same.	0.90	\$850.00	\$765.00
Service	08/18/2018	PSC	Reviewed file in preparation for evidentiary hearing.	8.50	\$850.00	\$7,225.00
Service	08/19/2018	PSC	Reviewed file in preparation for evidentiary hearing.	10.50	\$850.00	\$8,925.00
Service	08/20/2018	PSC	Meeting with Jim, DS and AMF; prepare for hearing	7.50	\$850.00	\$6,375.00

Service	08/21/2018	PSC	Review of file and prepare for hearing	9.50	\$850.00	\$8,075.00
Service	08/23/2018	PSC	Started reviewing exhibits AMF put in dropbox and continue preparing for hearing	8.50	\$850.00	\$7,225.00
Service	08/24/2018	PSC	Review case and exhibits and prepare for hearing.	8.50	\$850.00	\$7,225.00
Service	08/25/2018	PSC	Prepare for Hearing--Brian and Angela as witness	10.10	\$850.00	\$8,585.00
Service	08/26/2018	PSC	Prepare for Hearing--Brian as witness	9.80	\$850.00	\$8,330.00
Service	08/27/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	12.20	\$850.00	\$10,370.00
Service	08/28/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	11.90	\$850.00	\$10,115.00
Service	08/29/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	12.00	\$850.00	\$10,200.00
Service	08/30/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel.	11.80	\$850.00	\$10,030.00
Service	08/31/2018	PSC	Conference with client; prepare and serve OOJ and cover letter	1.50	\$850.00	\$1,275.00
Service	09/02/2018	PSC	Assist with Findings of Fact and Conclusions of Law; conference with client	7.50	\$850.00	\$6,375.00
Service	09/10/2018	PSC	Review letter from Vannah re continuing hearing and discuss with client	1.30	\$850.00	\$1,105.00
Service	09/10/2018	PSC	Review and discuss production of cell phone records with client	0.80	\$850.00	\$680.00
Service	09/11/2018	PSC	Prepare response and serve to Vannah letter re continuing hearing; conference with client	0.80	\$850.00	\$680.00
Service	09/13/2018	PSC	Assist R&R updated findings of fact and conclusions of law for motions to dismiss; meet with client re: same	2.50	\$850.00	\$2,125.00
Service	09/14/2018	PSC	R&R updated draft findings of fact and conclusions of law for motion to adjudicate and Motions to Dismiss review of record with respect to evidentiary support of same	2.20	\$850.00	\$1,870.00
Service	09/15/2018	PSC	Assist R&R findings of fact and conclusions of law for motion to adjudicate; Motion to dismiss/proposed order to dismiss complaint.	3.20	\$850.00	\$2,720.00
Service	09/15/2018	PSC	Prepare for Hearing	4.00	\$850.00	\$3,400.00
Service	09/16/2018	PSC	Prepare for Hearing	2.80	\$850.00	\$2,380.00

Service	09/16/2018	PSC	Assist R&R spousal privilege brief; Discuss with client.	1.80	\$850.00	\$1,530.00
Service	09/17/2018	PSC	Prepare for hearing (prepping for Angela and closing)	2.50	\$850.00	\$2,125.00
Service	09/18/2018	PSC	Prepare for and attend Evidentiary Hearing	7.50	\$850.00	\$6,375.00
Service	09/19/2018	PSC	Discussion with client and prepare closing	2.20	\$850.00	\$1,870.00
Service	09/23/2018	PSC	Review and revise closing arguments	1.20	\$850.00	\$1,020.00
Service	10/11/2018	PSC	Review of Court's decision on Motion to Adjudicate, Motion to Dismiss 12(b)(5) and Motion to Dismiss: Anti-Slapp; meet with client and discuss necessary action re: same	2.50	\$850.00	\$2,125.00
Service	10/12/2018	PSC	Discussion with client re: orders; legal research and assess options in light of same	3.00	\$850.00	\$2,550.00
Service	10/26/2018	PSC	Review motion to reconsider; discuss with AF and client re: same	2.20	\$850.00	\$1,870.00
Service	11/02/2018	PSC	Assist with preparing Motion for Attorney Fees	3.00	\$850.00	\$2,550.00
Service	11/09/2018	PSC	Review Opposition to Motion for Reconsideration	1.00	\$850.00	\$850.00
Service	11/12/2018	PSC	Assist in preparation of Reply.	1.50	\$850.00	\$1,275.00
Service	11/13/2018	PSC	Meeting with client re hearing and prepare for same.	1.00	\$850.00	\$850.00
Service	11/14/2018	PSC	Prepare for hearing on Motion for Reconsideration; Disc. with client	1.50	\$850.00	\$1,275.00
Service	11/15/2018	PSC	Prepare for and attend hearing on Motion for reconsideration	2.50	\$850.00	\$2,125.00
Service	11/25/2018	PSC	Final review and revision of Motion for Attorneys Fees	2.00	\$850.00	\$1,700.00
					<b>Subtotal</b>	<b>\$199,495.00</b>
					<b>Total</b>	<b>\$199,495.00</b>

## Detailed Statement of Account

### Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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15648	12/29/2018	\$199,495.00	\$0.00	\$199,495.00
<b>Outstanding Balance</b>				<b>\$199,495.00</b>
<b>Total Amount Outstanding</b>				<b>\$199,495.00</b>

Please make all amounts payable to: Christiansen Law Offices  
 Tax Identification Number: 88-0497171

# **Exhibit 11**

**EDGEWORTH**  
**COSTS FOR FEE DISPUTE**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
12/19/17	copy costs for lawyers emails 1,859 pages (.25 per page)	\$464.75
12/20/17	copy costs for dss sent emails to brian@pediped 653 pages (.25 per page)	\$163.25
1/18/18	<b>Lipson Neilson</b> *David Clark Retainer Fee	\$5,000.00
2/14/18	<b>Brittany Mangelson Transcriber</b>	\$369.38
2/15/18	<b>AT&amp;T</b> *Phone records	\$85.00
3/1/18	<b>Brittany Mangelson Transcriber</b>	\$87.40
3/14/18	Copy fee - Ashley's emails 1856 pages x .25	\$464.00
4/18/18	<b>Verbatim Digital Reporting</b> *4/3/18 Hearing Transcript	\$117.80
5/31/18	<b>KC Investigations</b> *Service on Angela & Brian Edgeworth	\$120.00
9/19/18	Clark County Treasurer	\$65.00
10/24/18	<b>Kemp, Jones &amp; Coulthard, LLP</b> *Expert Fees	\$11,498.15
	<b>TOTAL:</b>	<b>\$18,434.73</b>

<b>LAW OFFICE OF DANIEL S. SIMON</b> <b>A PROFESSIONAL CORPORATION</b> <b>GENERAL ACCOUNT</b> 810 S. CASINO CENTER BLVD. LAS VEGAS, NV 89101		23437 <small>W-11/17/1214 2131 @00000000</small> 1/16/2018
PAY TO THE ORDER OF Lipson Neilson Cole Seltzer & Garin, P.C.		BANK OF NEVADA <small>A Division of Western Alliance Bank Member FDIC</small>
Five Thousand and 00/100*		\$ 5,000.00
Lipson Neilson Cole Seltzer & Garin, P.C. David Clark, Esq. 9900 Covington Cross Dr #120 Las Vegas, NV 89144		DOLLARS
MEMO Retainer Fee / Edgeworth	 AUTHORIZED SIGNATURE	

## INVOICE

BRITTANY MANGELSON  
TRANSCRIBER  
4613 Standing Bluff Way  
Las Vegas, NV 89130  
(916) 753-8199  
bdmangelson@gmail.com

Attention:		Job #:	218
Attorney's Name:	Daniel Simon/Ashley Ferrel	Department #:	X
Date Ordered:	02/13/18	Case #:	A-16-738444-C
Date Delivered:	02/14/18	Tax ID #	46-3765787

RATE: 24-hour Expedite

# OF PAGES	CASE INFORMATION A-16-738444-C	PRICE PER PAGE	TOTAL CHARGES
46	<i>Edgeworth Family Trust versus Lange Plumbing</i>  02/06/18 Hearing	\$8.03	\$369.38
TOTAL OWED:		\$369.38	

PD. 2/14/18  
ck# 23517



Invoice Date: January 31, 2018

Invoice Number: 267865

Billing Fax: (702) 364-1655

Bill To:

LAW OFC DANIEL S SIMON 89101  
DANIEL SIMON  
810 S CASINO CTR BLVD  
LAS VEGAS NV 89101



Global Legal Demand Center

Phone: 1-800-635-6840

Fax: 1-888-938-4715

11760 US HIGHWAY 1, SUITE 600  
NORTH PALM BEACH, FL 33408-3029

REF #

## Invoice

File Code	Case Description	Description of	Units	Rate	Amount
2395234	EDGEWORTH FAMILY TRUST ET AL. VS. LANGE PLUMBING LLC ET AL. CASE NO.: A-16-738444-C	Billed Usage	5.0	\$10.00	\$50.00
2395234	EDGEWORTH FAMILY TRUST ET AL. VS. LANGE PLUMBING LLC ET AL. CASE NO.: A-16-738444-C	Processing Fee	1.0	\$35.00	\$35.00

Federal Tax ID: 91-1379052

Subtotal: \$85.00

Payments Received: - \$0.00

Total Due: \$85.00

Cost dispute

pd 2/15/18  
OK# 23523

JM

AA02360

**INVOICE**

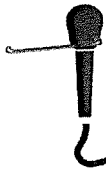
BRITTANY MANGELSON  
TRANSCRIBER  
4613 Standing Bluff Way  
Las Vegas, NV 89130  
(916) 753-8199  
bdmangelson@gmail.com

Attention:		Job #:	220
Attorney's Name:	Daniel Simon/Ashley Ferrel	Department #:	X
Date Ordered:	02/20/18	Case #:	A-16-738444-C
Date Delivered:	02/28/18	Tax ID #	46-3765787

RATE: Ordinary

# OF PAGES	CASE INFORMATION A-16-738444-C	PRICE PER PAGE	TOTAL CHARGES
23	<i>Edgeworth Family Trust versus Lange Plumbing</i>  02/20/18 Hearing	\$3.80	\$87.40
TOTAL OWED:		\$87.40	

pd. 3/1/18  
Clt# 23564



*Verbatim Digital Reporting*  
3317 West Layton Avenue  
Englewood, CO 80110

# Invoice

Date	Invoice #
4/18/2018	2239

Daniel S. Simon, Esq.  
c/o Janelle  
Simon Law  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101

Terms	Due Date
Due on receipt	4/18/2018

Description		Qty	Rate	Amount
Transcript of Hearing held on 4/3/2018 Motions Hearing		31	3.80	117.80
In Re Edgeworth Family Trust, et al. v. Lange Plumbing, LLC, et al. Case No. A-16-738444-C District Court, Clark County, Nevada				
pd. 4/18/18 OK # 23607				
Phone #	Fax #	E-mail		Total
303-798-0890	303-797-0432	Julie@VerbatimDigitalReporting.Com		\$117.80
Payments/Credits				\$0.00
Balance Due				\$117.80

AA02362

OW

# KC INVESTIGATIONS, LLC

1148 S. MARYLAND PKWY  
LAS VEGAS, NV 89104  
PHONE# 702-474-4102  
FAX# 702-474-4137

## Invoice

Date	Invoice #
5/24/2018	6723

Bill To
SIMON LAW 810 S. CASINO CENTER BLVD. LAS VEGAS, NV 89101 ATTN: JANELLE

Client
EDGEWORTH FAMILY TRUST

Date Served	Terms	Server
05/21/2018	Duc on receipt	JR

Item	Description	Amount
SERVE	SERVED SUBPOENA-CIVIL FOR ANGELA EDGEWORTH AN NOTICE TO APPEAR FOR EVIDENTIARY HEARING TO ANGELA EDGEWORTH WITH BRIAN EDGEWORTH (HUSBAND) AT 1191 CENTER POINT DR., HENDERSON, NV 89074.	70.00
SERVE	SERVED SUBPOENA-CIVIL FOR BRIAN EDGEWORTH AND NOTICE TO APPEAR FOR EVIDENTIARY HEARING TO BRIAN EDGEWORTH AT 1191 CENTER POINT DR., HENDERSON, NV 89074.	50.00
pd. 5/31/18 ck# 23833		
Thank you for your business.		<b>Total</b> \$120.00

TRANSCRIBER'S BILLING INFORMATION

CASE #	A-16-738444		
CASE NAME:	Edgeworth Family Trust		
HEARING DATE:	9-18-18		
DEPARTMENT #	10		
COURT RECORDER/ EXTENSION	VICTORIA BOYD 671-4388		
ORDERED BY:	Ashley Ferrel		
FIRM:	<a href="mailto:Ashley@simonlawlv.com">Ashley@simonlawlv.com</a>		
EMAIL:	702-364-1650		
<i>PJ 9/19/18 OK # 24147</i>			
PAYABLE TO:	Make check payable to: Clark County Treasurer County Tax ID#: 88-6000028 Include case number on check		
	<u>Mailing Address:</u> Regional Justice Center Fiscal Services Attn: Kim Ockey 200 Lewis Ave. Las Vegas, NV 89155		
BILL AMOUNT:	1	CDs @ \$25 each =	\$25
	1	hours @ \$40 an hour recording fee =	\$40
		pages @ \$            per page of trans.	\$0
	Total		\$65
PAYABLE TO OUTSIDE TRANSCRIBER:	Make check payable to:		
BILL AMOUNT:	pages @	\$	per page of trans \$
DATE PAID:			
TRANSCRIPTS WILL NOT BE FILED OR RELEASED UNTIL PAYMENT IS RECEIVED			

**Kemp, Jones & Coulthard, LLP**

3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, NV 89169

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September 21, 2018

Daniel Simon  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101

Invoice #: 65151  
Billed through: August 31, 2018  
Our file #: 02160 00002

**REGARDING:** Lange Plumbing

Current professional services (detail follows)	\$11,475.00
Current expenses advanced (detail follows)	\$23.15
	-----
Total Current Charges	\$11,498.15
	-----
<b>TOTAL CHARGES THIS INVOICE</b>	<b>\$11,498.15</b>
Net balance forward	\$0.00
	=====
<b>TOTAL NOW DUE - INCLUDING PAST DUE AMOUNTS</b>	<b>\$11,498.15</b>

<b>PROFESSIONAL SERVICES RENDERED</b>			<u>Hours</u>	<u>Amount</u>
08/16/18	WK	Meeting with Special Master.	1.00	675.00
08/22/18	WK	Meeting with Danny Simon, Pete Christiansen and Jim Christiansen; prepare testimony; review materials.	2.00	1,350.00
08/23/18	WK	Review materials.	2.00	1,350.00
08/27/18	WK	Review materials.	1.20	810.00
08/28/18	WK	Review materials.	1.50	1,012.50
08/29/18	WK	Review materials; update research; conference with Eric Pepperman; telephone conference with Pete Christiansen.	3.50	2,362.50
08/30/18	WK	Meeting with counsel; court appearance at hearing.	5.80	3,915.00
			<u>17.00</u>	<u>\$11,475.00</u>
<b>EXPENSES ADVANCED</b>				
08/28/18		Computer Disk/DVD/Flash Drive (ONE 16 GB FLASH DRIVE)		20.00
08/29/18		Printing Expense B/W		0.45
08/29/18		Printing Expense B/W		0.30

AA02365

02160 00002

Invoice # 65151

Page 2

08/29/18	Printing Expense B/W	0.45
08/29/18	Printing Expense B/W	0.60
08/29/18	Printing Expense B/W	0.45
08/29/18	Printing Expense B/W	0.45
08/29/18	Printing Expense B/W	0.45
		<hr/>
		\$23.15

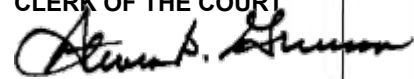
**EXPENSE SUMMARY**

150	Printing Expense B/W	3.15
701	Computer Disk/DVD/Flash Drive	20.00
		<hr/>
		\$23.15

**TIMEKEEPER SUMMARY**

WK	Kemp, Will	17.00	hrs @	\$675.00 /hr	11,475.00
		<hr/>			<hr/>
		17.00			\$11,475.00

DUE AND PAYABLE UPON RECEIPT  
ONE AND ONE-HALF PERCENT PER MONTH ADDED  
TO ANY BALANCE NOT PAID WITHIN 30 DAYS



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*

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  
SUPPLYNET, a Michigan corporation; and  
16 DOES I through V and ROE CORPORATIONS  
17 VI through X, inclusive,

18 Defendants.

CASE NO.: A-16-738444-C

DEPT. NO.: X

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

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-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

AA02367



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  
15 VANNAH & VANNAH

16   
17 ROBERT D. VANNAH, ESQ.

18  
19  
20 I.

21 SUMMARY

22 As stated in recent submissions, the facts of this matter are well known to this Court. (The  
23 Court is getting more familiar with each motion and opposition filed, though PLAINTIFFS  
24 were—and remain—content to stop this madness after this Court issued the initial orders  
25 following the evidentiary hearing on SIMON'S Motion to Adjudicate Attorney's Lien. But,  
26 SIMON isn't ready to and apparently won't stop unless he's stopped.) The path to this intricate  
27 knowledge was gained by, but not limited to, having listened to five days of comprehensive  
28

AA02368

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  
26

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.  
11

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.  
19

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.  
23

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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  
27  
28

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.  
22  
23  
24

25 ///

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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  
17 For what they hope is the last time they have to state this in court filings, PLAINTIFFS  
18 want this to end. They are ready, willing, and able to accept this Court's Decision and Order  
19 Adjudicating Lien, pay \$484,982.50 to SIMON, and move on. Please continue to encourage  
20 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.

CERTIFICATE OF SERVICE

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

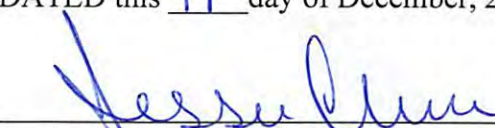
Electronically:

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

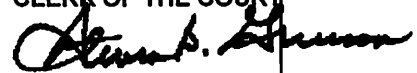
Traditional Manner:  
*None*

DATED this 17 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

# Exhibit 1

# Exhibit 1



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-16-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 20, 2018

12 **RECORDER'S PARTIAL TRANSCRIPT OF HEARING**  
13 **STATUS CHECK: SETTLEMENT DOCUMENTS**  
14 **DEFENDANT DANIEL S. SIMON D/B/A SIMON LAW'S MOTION TO**  
15 **ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL**  
16 **SIMON PC; ORDER SHORTENING TIME**

17 APPEARANCES:

18 For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

19 For the Defendant:

THEODORE PARKER, ESQ.

20 For Daniel Simon:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

21 For the Viking Entities:

JANET C. PANCOAST, ESQ.

22 Also Present:

DANIEL SIMON, ESQ.

23  
24  
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 distinguishable facts. Be happy to brief it if you'd like. Simply wasn't  
2 enough time this weekend to do that. But that's the thumbnail sketch.

3 THE COURT: Okay. Mr. Christensen, do you have any  
4 response to that?

5 MR. CHRISTENSEN: Sure, Judge. We move for adjudication  
6 under a statute. The statute is clear. The case law is clear. A couple of  
7 times we've heard the right to jury trial, but they never established that  
8 the statute is unconstitutional. They've never established that these are  
9 exclusive remedies. And in fact, the statute implies that they are not  
10 exclusive remedies. You can do both.

11 The citation of the *Hardy Jipson* case, is illustrated. If you look  
12 through literally every single case in which there's a lien adjudication in  
13 the state of Nevada, in which there is some sort of dispute, you -- the  
14 Court can take evidence, via statements, affidavits, declarations under  
15 Rule 43; or set an evidentiary hearing under Rule 43.

16 That's the method that you take to adjudicate any sort of a  
17 disputed issue on an attorney lien. That's the route you take. The fact  
18 that the *Hardy* case is a slightly different procedural setting doesn't  
19 argue against or impact the effect of Rule 43. In fact, it reinforces it.  
20 Just shows that's the route to take.

21 So, you know their -- they've taken this rather novel tact in  
22 filing an independent action to try to thwart the adjudication of the lien  
23 and try to impede the statute and they've supplied absolutely no  
24 authority, no case law, no statute, no other law that says that that  
25 actually works. They're just throwing it up on the wall and seeing if it'll

1 stick. And Judge, it won't stick. This is the way you resolve a fee  
2 dispute under the lien.

3           Whatever happens next, if they want to continue on with the  
4 suit, if they survive the Motion to Dismiss -- the anti-SLAPP Motion to  
5 Dismiss, we'll see. That's a question for another day. But the question  
6 of the lien adjudication is ripe, this Court has jurisdiction, and they don't  
7 have a legal argument to stop it. So, we should do that.

8           If the Court wants to set a date for an evidentiary hearing, we  
9 would like it within 30 days. Let's get this done. And then they can sit  
10 back and take a look and see what their options are and decide on what  
11 they want to do. But, there's nothing to stop that lien adjudication at this  
12 time.

13           THE COURT: Okay. Well, I mean, basically this is what I'm  
14 going to do in this case. I mean, it was represented last time we were  
15 here, that this is something that both parties eagerly want to get this  
16 resolved -- they want to get this issue resolved. So I'm ordering you  
17 guys to go to a mandatory settlement conference in regards to the issue  
18 on the lien. Tim Williams has agreed to do a settlement conference for  
19 you guys, as well as Jerry Wiese has also agreed to do a settlement  
20 conference.

21           So if you guys can get in touch with either of those two and set  
22 up the settlement conference and then you can proceed through that,  
23 and if it's not settled then we'll be back here.

24           Mister --

25           MR. PARKER: Your Honor, my own selfish concern here, my

1 what the statutes says, hearing in five days. We're all happy. We'll all  
2 go participate in a settlement conference, but this notion that there's  
3 discovery and adjudication, unless somebody knows how to do  
4 discovery in five days, which I don't, that's not contemplated. You have  
5 a hearing you take evidence, whether it takes us a day or three days to  
6 do the hearing, that's how it works.

7 THE COURT: Okay.

8 MR. VANNAH: Well, that's not how it works, because I have  
9 done this before, and it was discovery ordered by another Judge saying  
10 yeah, you're going to have discovery. Judge Israel ordered discovery.  
11 But we're looking at two million dollars here.

12 THE COURT: And I understand that, Mr. Vannah.

13 MR. VANNAH: This is not some old fight over a fee of  
14 \$15,000, which I agree would --

15 MR. CHRISTENSEN: Your Honor, I'm sorry, but I've been  
16 doing lien work for a quarter century now --

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

20 MR. CHRISTENSEN: -- you don't get discovery to adjudicate  
21 a lien. It's not contemplated in the statute. If you have a problem with  
22 the statute, appear in front of the legislature and argue against it.

23 THE COURT: Okay --

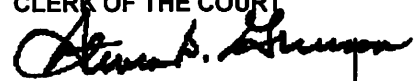
24 MR. VANNAH: No, there's nothing --

25 THE COURT: -- well today, we're going to go to the



# Exhibit 2

# Exhibit 2



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

EDGEWORTH FAMILY TRUST,	)	
	)	CASE NO. A-16-738444-C
Plaintiff,	)	
	)	DEPT. NO. X
vs.	)	
	)	(CONSOLIDATED WITH:
LANGE PLUMBING, LLC,,	)	CASE NO. A-18-767242-C)
	)	
Defendant.	)	
	)	
<u>And related matter/cases.</u>		

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

**RECORDER'S TRANSCRIPT OF HEARING:**  
**ALL PENDING MOTIONS**

APPEARANCES:

FOR THE PLAINTIFF:	ROBERT D. VANNAH, ESQ.
	JOHN B. GREENE, ESQ.
FOR THE DEFENDANT:	JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1                   LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

2                   [Case called at 9:38 A.M.]

3                   THE COURT:  -- in the consolidated case of Edgeworth  
4 Family Trust versus Daniel S. Simon, doing business as Simon  
5 Law.  Good morning, counsel.  If we could have everyone's  
6 appearance.

7                   MR. VANNAH:  Yes.  Robert Vannah and John Greene on  
8 behalf of the Edgeworth parties.

9                   THE COURT:  Okay.

10                  MR. CHRISTENSEN:  Jim Christensen on behalf of the  
11 Law Office.

12                  THE COURT:  Okay.  So this is on for several things.  
13 And what I did notice, counsel, is Mr. Simon had filed a  
14 Motion to Adjudicate the Lien.  And I believe when we were  
15 here last time, I ordered you guys to a mandatory settlement  
16 conference.  So, it was my fault that we did not recalendar  
17 the motion to adjudicate the lien, so it did not appear on the  
18 calendar today.

19                  However, I believe that the Motion to Adjudicate the  
20 Lien is very, very important in making the decisions on the  
21 other motions that are on calendar today.  You guys have  
22 already argued that motion, so I'm prepared to deal with all  
23 of those issues today, if you guys are prepared to go forward  
24 on that.

25                  MR. VANNAH:  We -- we are, Your Honor.

1 thing as giving it to us. You're okay.

2           So there's just -- there's no way to stop the anti-  
3 SLAPP motion. They haven't cited any case law; we have. They  
4 don't point to any section of the statute; we have. It  
5 applies. Their -- their initial Complaint and their Amended  
6 Complaint both have to be dismissed, because Mr. Simon was  
7 sued because, and solely because he followed the lien statute.

8           THE COURT: Okay.

9           MR. CHRISTENSEN: Thank you, Your Honor.

10          THE COURT: Thank you, counsel.

11           I've read everything, and considering the arguments  
12 today, it appears to me on the face of the regular Complaint  
13 as well as on the face of the Amended Complaint that they were  
14 not suing Mr. Simon for bringing the lien; they were suing him  
15 for conversion, breach of contract, and the other causes of  
16 action, which includes the last one that was added in the  
17 Amended Complaint.

18           So the Special Motion to Dismiss is going to be  
19 denied.

20           Moving on to -- there is a Motion to -- sorry, I'm  
21 just on the wrong page -- a Motion to Dismiss Plaintiff's  
22 Complaint pursuant to NRCP 12(b)(5), as well as the -- I want  
23 to do the Motion to Adjudicate the Attorney Lien at the same  
24 time. If you guys -- and I know you guys have made a lot of  
25 arguments, and I do recall everything that was said the last

1 time we were here on the Motion to Adjudicate the Attorney  
2 Lien.

3 But in regards to both of those motions, Mr.  
4 Christensen, do you have anything to add to those two motions?

5 MR. CHRISTENSEN: Well, the initial Motion to  
6 Dismiss only addressed the original first three causes of  
7 action of the original Complaint.

8 THE COURT: Not the new one.

9 MR. CHRISTENSEN: So there's a fourth cause of  
10 action floating around out there?

11 THE COURT: Yeah.

12 MR. CHRISTENSEN: As to the first three causes of  
13 action, you can't sue for conversion when someone hasn't  
14 converted money. In this case, Mr. Simon was sued for  
15 conversion before anyone even had any money. He was sued  
16 before the checks were even deposited, before the clients had  
17 even signed the backs of the checks, they had sued him for  
18 conversion.

19 So I would incorporate all of the arguments I made  
20 on conversion with regard to anti-SLAPP.

21 THE COURT: Okay.

22 MR. CHRISTENSEN: They just don't have conversion.  
23 There is not conversion if you haven't taken the money and put  
24 it in your pocket. This is different from a case where a  
25 lawyer has reached into their trust account and moved money

1 over to the business account, or put it in their pocket, or  
2 they have a debit card off their trust account or whatever.  
3 This is different.

4 Mr. Simon followed the rules. He can't be sued for  
5 following the rules.

6 THE COURT: Okay. And, Mr. Vannah, you in the  
7 Supplement to the Motion to Adjudicate that was filed by Mr.  
8 Christensen, you did not file an Opposition. Is there  
9 anything you want to add to that or anything you want to add  
10 to the Motion to Dismiss?

11 MR. VANNAH: No. No, Your Honor.

12 THE COURT: Okay.

13 MR. VANNAH: It's -- it's -- I think we've -- we've  
14 burned a lot of paper with the --

15 THE COURT: No, and I understand that. I just  
16 wanted to give you --

17 MR. VANNAH: Right.

18 THE COURT: -- guys that opportunity because you  
19 hadn't filed anything, if you wanted to.

20 Okay. So in regards to the Motion to Adjudicate the  
21 Lien, we're going to set an evidentiary hearing to determine  
22 what Mr. Simon's remaining fees are. Whether or not there is  
23 a contract is a question of fact that this Court needs to  
24 determine. This Court is going to determine if there is a  
25 contract in implied, in fact, between Mr. Simon and between

1 the Edgeworths, because there were promises exchanged and  
2 general obligations and there was services performed as well  
3 as there was payment made on those services.

4           During the course of that evidentiary hearing, I  
5 will also rule on the Motion to Dismiss at the end of the  
6 close of evidence, because I think that evidence is  
7 interrelated in the sense that it is my understanding from  
8 everything that has happened, that after all of this arose the  
9 end of November, the beginning of December of last year, then  
10 there was the discussion between Mr. Simon and Mr. Vannah  
11 where the money was placed into the account where Mr. Vannah  
12 and Mr. Simon are the signors on the account, and then the  
13 undisputed money, it's my understanding -- and correct me if  
14 I'm wrong -- has already been disbursed to the plaintiffs and  
15 only the disputed money remains in the account, is my  
16 understanding.

17           MR. CHRISTENSEN: That's correct.

18           THE COURT: And so I think that is the subject that  
19 needs to be addressed during the evidentiary hearing as to  
20 what the fees are in regards to that disputed amount. So  
21 after the close of evidence at the evidentiary hearing I will  
22 be able to rule on the Motion to Dismiss.

23           Now, when do you guys want to have this hearing?

24           MR. VANNAH: Well --

25           THE COURT: How long do you guys think it's going to

# Exhibit 3

# Exhibit 3



## EVENTS &amp; ORDERS OF THE COURT

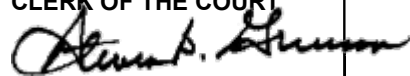
04/03/2018 All Pending Motions (9:30 AM) (Judicial Officer Jones, Tierra)

**Minutes**

04/03/2018 9:30 AM

- APPEARANCES CONTINUED: Robert Vannah, and Robert Greene, present. Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp; Order Shortening Time....Status Check: Settlement Conference...Defendant Daniel S. Simon's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint Following arguments by counsel, COURT ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp, DENIED. COURT FURTHER ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, Set for Evidentiary Hearing on the dates as Follows: 05-29-18 11:00 a.m., 05-30-18, at 10:30 a.m., and 5-31-18 at 9:00 a.m. Court notes is will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/29/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties PresentReturn to Register of Actions



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)  
6 Telephone: (702) 369-4161  
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  
SUPPLYNET, a Michigan corporation; and  
16 DOES I through V and ROE CORPORATIONS  
17 VI through X, inclusive,

18 Defendants.

CASE NO.: A-16-738444-C

DEPT. NO.: X

**NOTICE OF ENTRY OF ORDERS**

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.

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

AA02393

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

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

DATED this 27 day of December, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

**CERTIFICATE OF SERVICE**

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

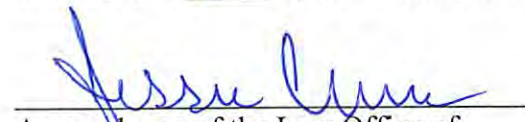
Electronically:

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

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

Traditional Manner:  
*None*

DATED this 27 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

AA02394

# Exhibit 1

# Exhibit 1

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

**Consolidated with**

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

14 Defendants.

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

### 7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,  
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and  
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  
14 scumbags will file etc.  
15 Obviously that could not have been doen earlier snce who would have thought  
16 this case would meet the hurdle of punitives at the start.  
17 I could also swing hourly for the whole case (unless I am off what this is  
18 going to cost). I would likely borrow another \$450K from Margaret in 250  
19 and 200 increments and then either I could use one of the house sales for cash  
20 or if things get really bad, I still have a couple million in bitcoin I could sell.  
21 I doubt we will get Kinsale to settle for enough to really finance this since I  
22 would have to pay the first \$750,000 or so back to Colin and Margaret and  
23 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

24 (Def. Exhibit 27).

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

- 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  
28

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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



1 Nev. Rev. Stat. 18.015.

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

9  
10 *Implied Contract*

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

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

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

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

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

28 <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,  
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.

### 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.

### 15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

The result was impressive. This began as a \$500,000 insurance claim and ended up settling for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage 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  
6 (a) A lawyer shall not make an agreement for, charge, or collect an  
unreasonable fee or an unreasonable amount for expenses. The factors to be  
7 considered in determining the reasonableness of a fee include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

11 NRCP 1.5.

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

## 23 CONCLUSION

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

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

9  
10 **ORDER**

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

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

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

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# Exhibit 2

# Exhibit 2

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

6  
7 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
15 \$118,846.84 in costs; for a total of \$486,453.09.<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  
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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 15 **CONCLUSION OF LAW**

### 16 ***Breach of Contract***

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

### 22 23 ***Declaratory Relief***

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

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

#### 4 5 *Conversion*

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

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

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

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

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

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***Breach of Fiduciary Duty***

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

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

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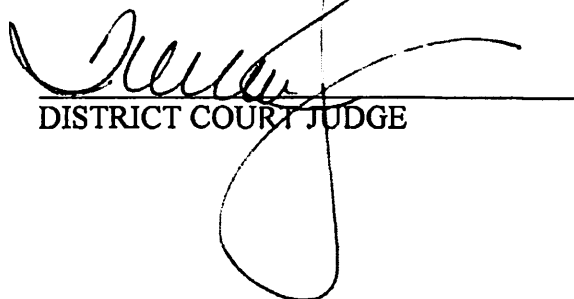
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**ORDER**

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

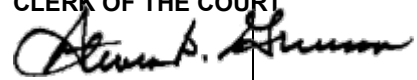
IT IS SO ORDERED this 19 day of November, 2018.

  
DISTRICT COURT JUDGE

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

AA02429



RPLY

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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

**REPLY IN SUPPORT OF MOTION  
FOR ATTORNEY FEES AND  
COSTS**

Date of Hearing: 1.15.19

Time of Hearing: 9:30 A.M.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

## I. Argument

The Edgeworths sued Simon for conversion, case no. A-18-767242-C. This Court dismissed the conversion case pursuant to NRCP 12(b)(5) as a matter of law. Simon moved for fees because the conversion case was not well-grounded in fact and was not warranted by existing law.

The focus of the subject motion is on the conversion case: whether the conversion case was filed on reasonable grounds; whether the conversion case was warranted under the law; and, whether counsel made a “reasonable and competent inquiry” into the facts and law prior to filing the conversion complaint, and then pursuing the conversion case after facts and law were made known to counsel.<sup>1</sup>

The Edgeworths opposed the subject motion by making personal attacks against Mr. Simon. *Argumentum Ad Hominem* attacks - that is, name calling - is a deceptive argument tactic. Name calling is a sign of a flawed argument.

The flaws in the Edgeworths’ position is also exposed by what the opposition did not address. The Edgeworths *did not* oppose the substance of the motion<sup>2</sup>. The Edgeworths *did not* provide the Court with facts which made filing or pursuit of the conversion case reasonable. The Edgeworths *did not* provide the Court with legal authority under which the filing and pursuit of the conversion case

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<sup>1</sup> See, e.g., *Bergman v. Boyce*, 856 P.2d 560 (Nev. 1993).

<sup>2</sup> The Edgeworths argue that NRS 18.015 does not contemplate an award of fees, however, Simon did not ask for fees pursuant to NRS 18.015.



1 was warranted. The Edgeworths *did not* provide the Court with a description of an  
2 inquiry into the basis of the conversion case. Lastly, the Edgeworths *did not*  
3 contradict any of the applicable law set forth in the motion for fees or the earlier  
4 motions to dismiss.<sup>3</sup>

5  
6 Instead, the Edgeworths opposed the motion for fees by making an  
7 unsupported statement of personal belief:

8 “PLAINTIFFS strenuously object to any such characterization or  
9 representation, as it is unfounded in fact and law.”

10 (Opp., at 11:10-11.) The strength of the Edgeworths’ subjective belief is  
11 meaningless. What matters is the basis for filing and then maintaining the  
12 conversion case. On what matters, the Edgeworths fall short. The Edgeworths  
13 have not provided this Court with any objective support for its subjective belief.

14  
15 The Court’s analysis of a motion seeking fees for filing and pursuing a  
16 frivolous complaint is an objective review of the facts and law of the conversion  
17 case. Thus, the Court’s analysis must focus on such things as:

- 18  
19 • That Plaintiffs cannot sue for conversion when no money was converted.
- 20 • That Plaintiffs cannot sue for conversion when Plaintiffs share control of the
- 21 money under an agreement of the Parties.
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25 <sup>3</sup> *But see*, fn. 2.

- That Plaintiffs cannot sue for conversion when Plaintiffs receive the benefit of all interest from the money (including interest earned off funds due Simon for costs and fees).
- That Plaintiffs cannot sue for conversion when using an attorney's lien is permitted by statute.
- That Plaintiffs cannot sue for conversion, when an attorney is due money for advanced costs and fees secured by an attorney lien, only the amount is disputed.
- That Plaintiffs cannot sue for conversion when filing an attorney lien is not conversion as a matter of law.

In the motions to dismiss, Simon described in detail the law of conversion and why a conversion did not occur when Simon acted in strict accordance with the lien statute and with the safekeeping property ethical rule, NRPC 1.15 - including an opinion from former Bar Counsel David Clark (an opinion which is not challenged by the Edgeworths). As a matter of law, an attorney cannot be sued for conversion by a client in a fee dispute when the attorney has complied with Nevada statute and the safekeeping property rule. The Edgeworths have yet to provide a case where such a claim was recognized, let alone succeeded. The Edgeworths have yet to provide a statute or rule of law which supports the conversion case.

1 Antagonism between the Parties and name calling are not grounds to pursue  
2 a conversion case against a lawyer who uses an attorney's lien. An objective  
3 analysis by the Court of the facts and law of the conversion case necessarily leads  
4 to the conclusion that filing and pursuit of the conversion case was frivolous, and  
5 that Simon is due his fees and costs incurred in defense of the conversion case.  
6

7 **A. Groundless litigation must be sanctioned.**

8 The Court protects the integrity of the judicial system by shielding limited  
9 judicial resources against frivolous litigation and by fostering timely and  
10 inexpensive resolution of claims.<sup>4</sup> The Court is provided with substantial tools to  
11 protect the administration of justice in Nevada. However, the judicial system will  
12 only be protected if the Court acts when cases are brought that are not well  
13 grounded in fact and law.  
14  
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16 There is a Legislative mandate in Nevada instructing Courts to sanction  
17 those who threaten the administration of justice by pursuing warrantless cases.  
18 The Nevada Legislature directs Courts to "liberally construe the provisions of this  
19 section in favor of awarding costs, expenses and attorney's fees" in both NRS  
20 7.085 and 18.010(2)(b).  
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25 <sup>4</sup> See, e.g., NRS 7.085.

1 The Nevada Supreme Court agrees with the Legislature about the need to  
2 deter groundless cases. NRCP 11 states that Courts “shall impose” sanctions for  
3 frivolous litigation.

4 In this case, Simon served an attorney’s lien as permitted by Nevada statute  
5 law to resolve a dispute over fees and costs owed by the Edgeworths for Simon’s  
6 work on the Viking sprinkler case. Under the attorney lien statute, the Edgeworths  
7 can assert every factual and legal defense available to the fee claim and are given  
8 an opportunity to be heard and present their side of the dispute.  
9

10 The problem, which led to this motion, arose when the Edgeworths sued  
11 Simon for conversion. The Law requires reasonable grounds for filing the  
12 conversion case. If reasonable grounds did not exist, then sanctions must follow.  
13

14 The Edgeworths filed the conversion case, and continued the case through  
15 their amended complaint and beyond, on the claim that Simon was due nothing  
16 from the settlement.<sup>5</sup> That claim was factually and legally false.<sup>6</sup> Simon was due  
17 advanced costs and Simon was due fees, even if the amount was in dispute.<sup>7</sup>  
18 Counsel for the Edgeworths has repeatedly conceded this point in making  
19 statements to this Court that this is just a fee dispute.  
20  
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22  
23 <sup>5</sup> D&O granting 12(b)(5) motion to dismiss at 6:24-7:19. All the causes of action in  
24 the conversion case were based on the Edgeworths’ false claim that no money for  
25 costs or fees was owed to Simon.

<sup>6</sup> See, fn. 5.

<sup>7</sup> See, fn. 5.

1 This Court has found, and Edgeworths' counsel apparently agrees, that there  
2 was no reasonable basis for filing the conversion case.<sup>8</sup> Because the conversion  
3 case was filed without reasonable grounds, the law requires that the Edgeworths,  
4 and their attorney, be sanctioned.

5  
6 **B. The fees and costs sought are a reasonable sanction amount.**

7 The filing and pursuit of the conversion case forced Simon to incur  
8 significant defense fees and costs. Simon has built a law practice over many years  
9 of hard work; the practice continues based on reputation and word of mouth.  
10 (Simon does not appear on TV or use billboards.) Besides the obvious threat of a  
11 conversion case and a prayer for punitive damages, the conversion claim directly  
12 threatened manifest reputational harm. When the Edgeworths took the  
13 unwarranted and unneeded step of filing the conversion case, they triggered a  
14 necessary and foreseeable robust reaction.  
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16

17 All the fees and costs sought are related to the defense of the frivolous  
18 conversion complaint. *But for* the conversion case, Simon could have dealt with  
19 the fee dispute in house. *But for* the conversion case, Simon would not have  
20 retained former Bar Counsel David Clark to opine on the conversion complaint.  
21 *But for* the conversion case, Simon would not have retained Will Kemp to support  
22 Simon's fee claim against the groundless claims of wrongful dominion over the  
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25 <sup>8</sup> See, fn. 5.

1 settlement funds. *But for* the conversion case, Simon would not have retained Pete  
2 Christiansen to expose the Edgeworths' false factual claims, nor retain Jim  
3 Christensen to expose the Edgeworths' baseless legal claims.

4 In an argument against the amount of fees sought, the Edgeworths observe  
5 that much of the time spent by Simon counsel was during the evidentiary hearing.  
6 However, that observation is another flawed argument because the lien issues and  
7 the facts underlying the conversion case were intertwined.  
8

9 This Court already ruled the conversion case and the lien adjudication were  
10 related when the Court granted consolidation; and, when the Court decided to rule  
11 on the motion to dismiss and the motion to adjudicate at the same time - after  
12 receiving evidence at the evidentiary hearing.<sup>9</sup> The Edgeworths did not challenge  
13 the Court rulings by motion for reconsideration, writ, or in their notice of appeal.  
14 The Edgeworths cannot contest the Court's rulings on the close relationship of the  
15 cases now.  
16

17 Based on this Court's rulings, the time spent in the evidentiary hearing was  
18 incurred for the motion to dismiss the conversion case A-18-767242-C; and, to  
19 adjudicate the attorney lien in A-16-738444. Based on the Court's rulings,  
20 apportionment is not appropriate.  
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23  
24 <sup>9</sup> The Court found the facts and circumstances of the motion for adjudication and to  
25 dismiss to be closely related. Exhibit 2 to the Edgeworth Opposition, April 3,  
2018 transcript at 2:19-24, 15:20-16:2, & 17:20-18:16.

1           **C.     The *Brunzell* factors**

2           In making its award of fees, the Court must review the amounts sought  
3 under the *Brunzell* factors.<sup>10</sup> The factors have been heavily briefed already and  
4 will not be repeated here.

5           Retained counsel are highly qualified. The CVs are attached at Exhibit A  
6 and B. The hourly fee sought is reasonable for both.

7           The character of the work to be done, and the work actually done, supports  
8 the fees sought. The conversion case presented a unique effort to circumvent the  
9 impact of the Nevada attorney lien statute. The quality of advocacy was high  
10 throughout the prolonged pleadings and evidentiary hearing.

11           The result of dismissal of the conversion case supports the fees sought. The  
12 conversion case presented a clear and present threat of reputational harm to Simon.  
13 Dismissal of the conversion case as groundless as a matter of law was a major  
14 victory for Simon.

15           **D.     Costs**

16           Simon is also due recoverable costs as requested in A-18-767242-C pursuant  
17 to NRS 18.020(2) & (3). The conversion case was dismissed; therefore, Simon is a  
18 prevailing party for the costs incurred, and is due costs in defense of A-18-767242-  
19 C, without reaching the frivolous nature of the conversion case.  
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25       <sup>10</sup> *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

1 **II. Conclusion**

2 There were no reasonable grounds for filing, and then maintaining, the  
3 conversion case. The Edgeworths have had several chances to explain why the  
4 conversion case was warranted but have not done so.

5  
6 The Nevada Legislature and the Supreme Court have told Courts to sanction  
7 those who file and pursue baseless litigation. This is such a case.

8 Dated this 8<sup>th</sup> day of January 2019.

9 /s/ James R. Christensen  
10 **JAMES 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@christensenlaw.com  
17 *Attorney for Daniel Simon*

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing REPLY IN SUPPORT OF  
20 MOTION FOR ATTORNEY FEES AND COSTS was made by electronic service  
21 (via Odyssey) this 8<sup>th</sup> day of January, 2019, to all parties currently shown on the  
22 Court's E-Service List.

23 /s/ Dawn Christensen  
24 an employee of  
25 JAMES R. CHRISTENSEN, ESQ.



# **EXHIBIT A**

AA02440

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Las Vegas, NV 89101  
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Peter S. Christiansen is the founding partner and lead trial attorney at Christiansen Law Offices, a boutique firm focused exclusively on trying catastrophic personal injury cases and criminal matters, as well as fraud and business related disputes. A testament to Mr. Christiansen's advocacy skills, he is among the youngest attorneys ever to be inducted into the American College of Trial Lawyers ("ACTL"), which is widely recognized as the preeminent organization of trial lawyers in North America. The mission of the ACTL is to maintain and improve standards of trial practice, professionalism, ethics and the administration of justice.

#### **Bar Admissions:**

Nevada, 1994  
U.S. Court of Appeals, 9th Circuit, 1994  
U.S. District Court for the District of Nevada, 1994

#### **Education:**

University of Wyoming, College of Law, Laramie, Wyoming, 1994  
J.D.  
Honors: With Honors  
Honors: Order of the Coif

University of California at San Diego, La Jolla, CA, 1991, B.A.  
Major: Political Science

#### **Representative Cases/Clients:**

##### *State v. Maurice Sims*

Defense in state prosecution of defendant accused of two counts of murder, one count of attempted murder and multiple counts of conspiracy, robbery and burglary with use of a firearm. During the first trial, in which the State sought the death penalty, the jury hung on all murder and attempted murder counts resulting in a mistrial and the State choosing to not pursue the death penalty but opting to try the defendant a second time. In the re-trial, the jury acquitted the defendant on all but one count of burglary, resulting in the first acquittal of a capital defendant in State history.

##### *United States Anti-Doping Agency v. Jon Jones*

Defense of UFC Fighter Jon Jones for alleged second violation of the UFC Anti-Doping Policy. After counsel's presentation of facts and witnesses, an independent

arbitrator sanctioned Jones just fifteen months for his second violation, substantially reducing the thirty month sanction initially imposed pre-hearing. The reduction of the sentence by half was based upon the circumstances of the case and reduced degree of fault demonstrated during the hearing.

*Khiabani v. Motor Coach Industries et al.,*

Wrongful death action involving allegations of negligence against multiple defendants and strict products liability against bus manufacturer resulting in pre-trial settlement of all negligence claims and jury verdict in favor of plaintiffs and awarding in excess of \$18.7 million against bus manufacturer.

*United States of America v. Noel Gage*

Defense in federal prosecution of local attorney alleging complex conspiracy between Gage and local surgeons.  
Discovery intensive case which included over 200,000 documents produced by the Government.

*Jackie Templeton v. EPMG*

Prosecution of medical malpractice case brought by decedent's widow for failure to diagnose cancer. Jury verdict returned for \$18 million resulting in judgment of over \$24 million.

*Marsha R. Gray, et al. v. Wyeth Pharmaceuticals, Inc., et al.*

Lead co-counsel in Mass Tort action regarding hormone replacement therapy ("HRT") drugs. Case settled during trial which lead to the settlement of the last 96 HRT cases in the U.S.

*Dirk Eldredge v. Granite Construction*

Prosecution of personal injury action stemming from on-the-job incident. Jury verdict returned and judgment entered for in excess of \$9 million. Case settled for confidential amount during appeal.

*United States of America v. James Hannigan, et al.*

*State of Nevada v. James Hannigan, et al.*

Defense in federal and state prosecutions of members of the Hells Angels Motorcycle Club arising out of incident at Harrah's Laughlin. Defendant faced multiple life sentences. Cases resolved with resulting sentence of 12 months.  
Discovery intensive case where government produced over 100,000 documents and over 5 thousand hours of surveillance video and audio recordings.

*United States of America v. Floyd Strickland, et al.*

Defense of federal prosecution of 18 members of the Rolling Sixties Crips gang. Government sought death penalty. Succeeded in convincing Government to drop death penalty.  
Discovery intensive case where government produced over 70,000 documents and hundreds of hours of surveillance video and audio recordings.

*United States of America v. Gary Harouff, et al.*

Defense in federal white-collar prosecution alleging embezzlement of over \$8 million. Succeeded in convincing government to drop charges in exchange for plea to one count of depravation of honest goods and services. The Court granted client probation.

*Mowen v. Walgreens*

Slip and fall case. Jury award was largest verdict against national drug store chain and largest slip and fall verdict in Nevada.

*State of Nevada v. Steve Shaw*

Defense in state prosecution of chiropractor accused of murder. Successfully obtained dismissal of murder charge and eventual plea agreement resulting in client being afforded opportunity to complete probation.

*University of Nevada Las Vegas*

Represented University in administrative proceedings before the Board of Regents.

**Certifications and Appointments:**

Clark County Indigent Defense Panel Attorney, 1995 - present

Criminal Justice Act (CJA) Panel Attorney, 1999 - 2016

Nevada Supreme Court Rule 250 (Death Penalty) Qualified, 1998 - present

Martindale - Hubbell - (Peer Rated for High Professional Achievement)

**Professional Associations and Memberships:**

American College of Trial Lawyers, Fellow, 2015 - present

National Association of Criminal Defense Lawyers, 1997 - present

Nevada Attorneys for Criminal Justice, 1997 - present

Clark County Bar Association, 1995 - present

Nevada Justice Association, 1994 - present

American Bar Association, 1994 - present

**Law Related Education Positions:**

University of Nevada Las Vegas, William S. Boyd School of Law, Adjunct Professor:

- Trial Advocacy, Spring 2019
- Opening Statements and Closing Arguments, Spring 2018
- Opening Statements and Closing Arguments, Spring 2017

State Bar of Nevada, Trial Academy Instructor

Nevada Justice Association, Continuing Legal Education Instructor on trial advocacy and related topics

## **EXHIBIT B**

AA02444

## **NRPC 1.4(c) BIOGRAPHICAL DATA FORM FOR JAMES R. CHRISTENSEN**

### **EDUCATION**

Northern Illinois University, College of Law, DeKalb, Illinois, Juris Doctor, May of 1988; graduated *Cum Laude*. Honors include: Dean's List; Law Review Assistant Editor 1987-88, staff 1986-87; Chicago Bar Association Rep. 1986-87.

Indiana University, Bloomington, Indiana, Bachelor of Arts, Economics, co-department major, History, May, 1985.

### **PUBLICATIONS**

Comment, *Strict Liability and State of the Art Evidence in Illinois*, Vol. 7, No. 2, No. Ill. L. Rev. 237 (1987)

### **EXPERIENCE**

More than 25 years of litigation, including over 35 trials to a verdict in State and Federal Court, and more than 100 arbitrations. Cases handled include medical malpractice, product defect, premises liability, construction defect, personal injury, wrongful death, land transactions, breach of contract, fraud, insurance bad faith, the financial industry and FINRA, Native American gaming law and governance, ERISA, and disability claims.

Appellate work includes over 10 appearances before the Nevada Supreme Court and several appearances before the 9<sup>th</sup> Circuit Court of Appeals.

Experience includes serving as an arbitrator on hundreds of cases in Nevada, service on the Nevada Medical Dental Screening Panel in Nevada, and service on the Southern Nevada Disciplinary Panel for the State Bar of Nevada.

Expert experience includes testimony on insurance claims practices and on legal practice standards.

Rated "AV" by Martindale-Hubbell.

### **REPORTED CASES**

*Gunderson v. D.R. Horton, Inc.*, 319 P.3d 606 (Nev. 2014).

*D.R. Horton v. The Eighth Judicial District Court*, 215 P.3d 697 (Nev. 2009).

*D.R. Horton v. The Eighth Judicial District Court*, 168 P.3d 731 (Nev. 2007).

*Powers v. USAA*, 962 P.2d 596 (1998); *rehearing denied*, 979 P.2d 1286 (Nev. 1999)(briefing).

## EMPLOYMENT HISTORY

April 2009 – Present  
James R. Christensen PC  
601 S. Sixth St.  
Las Vegas NV 89101  
(702) 272-0406 Fax (702)272-0415

November 2009 – 2016  
Fox Rothschild LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169

February 2005 – April 2009  
Quon Bruce Christensen Law Firm  
2330 Paseo del Prado, Suite C-101  
Las Vegas, NV 89102

December 1994 – February 2005  
Brenske & Christensen  
630 S. Third Street  
Las Vegas, NV 89101

September 1989 – December 1994  
Law Office of William R. Brenske  
610 S. Ninth Street  
Las Vegas, NV 89101

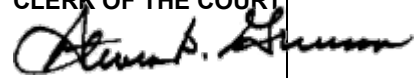
August 1988 – August 1989  
Law Clerk: Honorable Earl W. White  
Eighth Judicial District Court of Nevada, Department IV

January 1988 – April 1988  
Judicial Externship: Honorable Stanley J. Roszkowski  
United States District Court, Northern District of Illinois, Western Division

April 1987 – May 1988  
Law Clerk: Office of the Legal Counsel  
Northern Illinois University

## LICENSES/AFFILIATIONS

State Bar of Illinois (admitted 1989); State Bar of Nevada (admitted 1990); U.S. Court of Appeals 9<sup>th</sup> Circuit; Nevada Bar Association; Illinois Bar Association; Clark County Bar Association; American Association for Justice; Nevada Justice Association.



1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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8 EDGEWORTH FAMILY TRUST,

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Plaintiff,

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vs.

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LANGE PLUMBING, L.L.C.

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Defendant.

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14

BEFORE THE HONORABLE TIERRA D. JONES,

15

DISTRICT COURT JUDGE

16

TUESDAY, JANUARY 15, 2019

17

**RECORDER'S TRANSCRIPT HEARING OF MOTION FOR**  
**ATTORNEY'S FEES AND COSTS**

18

APPEARANCES:

19

For the Plaintiff:

20

JOHN GREENE, ESQ.

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For the Daniel Simon:

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JAMES CHRISTENSEN, ESQ.

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PETE CHRISTENSEN, ESQ.

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RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Tuesday, January 15, 2019

[Case called at 9:44 A.M.]

THE COURT: Counsel.

MR. CHRISTENSEN: Good morning, Your Honor. Jim Christensen and Mr. Chris Jansen on behalf of Mr. Simon.

MR. GREENE: And John Greene for the Edgewood Plaintiffs.

THE COURT: Good morning. So, this is on for your motion -- for Mr. Simon's motion for attorney's fees and costs. I've read the motion, I've read the opposition, I've read the reply. Mr. Christensen, do you have anything you want to add? I do have a question.

MR. CHRISTENSEN: I do, Your Honor.

THE COURT: I was a little -- I was interested in the fact that your original motion talks about a lot of reasons. It lists like three or four statutes, as well as the Rule 11 sanctions and all of that. And then it appears in the reply, you kind of deviated to just talking about getting attorney's fees based on the conversion claim and not any of the other things that were referenced in the original motion.

MR. CHRISTENSEN: Your Honor, that was not a conscious attempt to limit any of our amounts of recovery in this matter. That was simply done for clarity of argument.

THE COURT: Okay. Just making sure. Because I mean that's how I read it so I'm just making sure that we were on the same page; that I understood what it was you intended to convey in the

1 reply.

2 MR. CHRISTENSEN: And, thank you, Your Honor. Of  
3 course, any questions just let me know.

4 THE COURT: Okay.

5 MR. CHRISTENSEN: We're here on Mr. Simon's motion for  
6 attorney's fees following the dismissal of the Edgeworth conversion  
7 complaint against Mr. Simon. That dismissal was done pursuant to  
8 12(b)(5) following a five day evidentiary hearing. The rules on granting  
9 attorney's fees are fairly straightforward and simple.

10 If a claim or defense is filed or maintained without  
11 reasonable grounds, then sanctions should issue. That's found in NRS  
12 7.085, NRS 18.010(2)(b), NRCP 11, a host of case law, including the  
13 *Boyce* case, which we cited to the Court and the very recent *Capanna*  
14 *vs. Orth* case that just came down September -- or December 27th.

15 THE COURT: And have you had an opportunity to review  
16 that *Capanna* case, Mr. Greene?

17 MR. GREENE: Yes, Your Honor.

18 THE COURT: Okay. Because I did, so I just wanted to make  
19 sure that everybody else had the opportunity.

20 MR. CHRISTENSEN: Another way of stating that rule is, if  
21 there is no legal basis or factual basis for a claim or defense, then  
22 sanctions must issue.

23 I'm going to go over a very abbreviated portion of the facts  
24 that focus in on essentially what occurred between November 29th and  
25 January 18th.

1 THE COURT: Of 2017, right?

2 MR. CHRISTENSEN: November 29, 2017.

3 THE COURT: To January 18th of '18.

4 MR. CHRISTENSEN: To January 18th of '18.

5 On November 29, 2017, the Edgeworth's retained Mr.  
6 Vannah and Mr. Greene. On November 30th, Mr. Vannah gave notice  
7 of the hire. The following day, Mr. Simon filed his attorney lien. That  
8 was on December 1, 2017. On that same day, December 1, 2017, Mr.  
9 Vannah signed the release with Viking for the settlement of \$6 million.  
10 On December 18th, 2017, the checks -- there were two checks -- were  
11 picked up by Mr. Simon. Mr. Simon notified Mr. Greene that same day  
12 said, hey, the checks are available, let's endorse them, get them into  
13 the trust accounts so that there's no delay in disbursement of  
14 undisputed funds. There was some back and forth. There was  
15 confusion about who was in town, who wasn't. Those checks were not  
16 immediately endorsed.

17 Fast forward to December 26, 2017, Mr. Vannah sent an  
18 email in which he said the clients are fearful that Simon will steal the  
19 money. And because of that, Mr. Vannah did not want to use Mr.  
20 Simon's trust account. On the 27th, I was involved, and I sent a letter  
21 back, and I said that we should avoid hyperbole and went through the  
22 history of the claim and then offered to work collaborative with Mr.  
23 Vannah to resolve this.

24 On the 28th of December of 2017, Mr. Vannah wrote in an  
25 email that he did not believe Simon would steal money, he was simply

1 relaying his client's statements to me. Later that day, Mr. Vannah  
2 proposed, and Mr. Simon and we agreed, to a single purpose trust  
3 account that has both Simon and Vannah as signators and that the  
4 Edgeworth's benefit from the interest on all the money in the account,  
5 including that money that may, at some point, be provided to Mr.  
6 Simon for fees and advance costs.

7           On January 2nd, 2018, Mr. Simon filed an amended lien.  
8 On January 4th, 2018, a conversion suit was filed, based upon the  
9 allegation brought by the Edgeworths that Mr. Simon was stealing their  
10 money. On January 8th, 2018, Mr. Vannah, and Mr. Simon, and the  
11 Edgeworths separately went to the bank, endorsed the checks and all  
12 \$6 million was deposited into the trust -- into the joint trust account.

13           So, at that time, January 8th of 2018, there's no doubt there  
14 was actual notice that the funds were sitting in an account, Mr. Vannah  
15 was a signatory on the account so the Edgeworths had control of the  
16 money, all the interest was inuring to their benefit and there was --

17           THE COURT: The money can only be moved if Simon and  
18 then Vannah signed off on it, right?

19           MR. CHRISTENSEN: Correct.

20           THE COURT: Okay. Just making sure.

21           MR. CHRISTENSEN: Dual signatures are required on that  
22 account.

23           THE COURT: Right.

24           MR. CHRISTENSEN: And at that time also, the amended  
25 lien had been filed. So, the amount of funds that were in dispute was

1 known and the amount of funds that was not in dispute under the lien  
2 was known.

3           The following day, the conversion suit was served on my  
4 office. I agreed to accept service. And I reached out and said, you  
5 know, what's going on here. They confirmed that although the  
6 Edgeworths had sued Mr. Simon, Mr. Simon was not fired, at least in  
7 their view of the facts.

8           On the 18th, after the large item hold was withdrawn, the  
9 Edgeworths received the undisputed amount of just under \$4 million.  
10 Late January through March there was a motion to dismiss and an  
11 Anti-SLAPP motion filed. On March 15, 2018, there was an amended  
12 complaint filed. A motion to dismiss and an Anti-SLAPP motion to  
13 dismiss were filed in response to the amended complaint. The Anti-  
14 SLAPP motion was eventually dismissed as moot. The 12(b)(5) motion  
15 was granted following the evidentiary hearing. The claims -- the  
16 conversion claims and the other claims in that conversion case, were  
17 brought and maintained through that evidentiary hearing and beyond.

18           So, we understand the law, and we understand the facts.  
19 Sanctions should issue for filing the conversion case and for  
20 maintaining it, even after they understood money was safe kept in the  
21 trust account over which they had control. When there is a dispute  
22 over fees and costs, Nevada statute says the lawyer may file a lien and  
23 move for adjudication. There is no basis to claim conversion when  
24 Simon followed the lien statute to protect his fee claim and advance  
25 costs. And again, that becomes crystal clear when you examine the

1 timing that occurred. By the time that complaint was served, the  
2 Edgeworths and their attorneys knew the money was safe kept in the  
3 trust account.

4 Now, when looking at whether or not there were  
5 reasonable grounds to bring the suit or to maintain the suit, because  
6 that's the standard, did you have reasonable grounds to sue. And the  
7 law understands that facts change as the case evolves, discovery  
8 occurs, what have you, so then the law also says, well, we're also going  
9 to look at whether he had reasonable grounds to maintain a suit. And  
10 that concept was really brought to light in the, not only *Boyce*, but also  
11 in the *Capanna vs. Orth* case. In *Capanna vs. Orth*, -- Dr. Capanna's a  
12 neurosurgeon, he's been a neurosurgeon for many years in this town,  
13 he operated on Mr. Orth and allegedly operated on the wrong levels in  
14 his back, causing Mr. Orth a great deal of trouble, subsequent care,  
15 pain and disability. During the case, both parties provided experts. Dr.  
16 Capanna had an expert saying well, he didn't violate the standard of  
17 care.

18 And the case went to trial with Dr. Capanna defending on  
19 liability on the medical malpractice claims. The jury found for Orth.  
20 Following that case, there was a motion for attorney's fees and costs  
21 under NRS 18.010(2)(b) by Plaintiff's counsel because Plaintiff's counsel  
22 said the defense didn't have reasonable grounds to maintain the  
23 defense that Dr. Capanna acted within the standard of care when he  
24 operated on the wrong level. And the court agreed, the district court  
25 agreed, and awarded sanctions and costs for maintaining that defense.

1 And that was upheld by the supreme court recently on December 27th.

2           So, what we see there is the mandate handed down by the  
3 legislature and by the supreme court to prevent and deter  
4 unreasonable litigation. In this case, sanctions should issue because  
5 there were no reasonable grounds for filing the conversion case. In the  
6 opposition to this motion, the defense spent a great deal of time of  
7 pointing the finger and name calling and understandably, they attacked  
8 the fact that Mr. Simon never got a fee agreement with his friends,  
9 former friends, Brian and Angela Edgeworth. And that was something  
10 we never disputed. There was no fee agreement. We acknowledge  
11 that. That's what led to the dispute.

12           The problem is this. The Edgeworths were well within their  
13 rights and had reasonable ground to dispute the amount of fees that  
14 Mr. Simon was requesting in the lien adjudication. And they can  
15 certainly tell their side of the story within the context of that process of  
16 that case. When they took the extra step of suing Mr. Simon, in a  
17 separate case alleging conversion, when they put pen to paper in their  
18 claims that he's going to steal money, when they ask for punitive  
19 damages against Mr. Simon, that's when they went too far. They did  
20 not have reasonable grounds to sue Mr. Simon for conversion when  
21 the money is safe kept in a trust account and only the disputed funds  
22 remain in that account. The undisputed funds were promptly  
23 disbursed when the large item hold was removed by the bank.

24           And our legislature clearly says, in NRS 7.085 and  
25 18.010(2)(b), that when looking at issues like this, the court should

1 liberally grant sanctions to deter unreasonable litigation.

2 Now the defense may argue that the lien was improper.

3 They may argue that it was improper because there was no fee  
4 agreement. Well, you don't have to have a fee agreement to file a lien  
5 to get quantum meruit. Or, in this case, the court found that at least for  
6 a period of time, there is a contract implied by conduct.

7 THE COURT: Right.

8 MR. CHRISTENSEN: Even so, that doesn't mean you don't  
9 get anything. It means you should get whatever fees are found under  
10 that contract and, of course, you get reimbursement of advanced costs.  
11 And of course, the lien was proper under the statute. There is  
12 absolutely nothing wrong with that. As this court found, Mr. Simon  
13 followed that statute to a T. They may argue that the lien was improper  
14 maybe an amount.

15 That was one of the reasons why Mr. Will Kemp was  
16 retained. And Mr. Will Kemp came in, as an outside observer, who has  
17 immense experience and knowledge in determining the value of  
18 product liability cases. And he came in and found what he thought  
19 would be a reasonable fee, which was, in fact, slightly less than the  
20 amount of Mr. Simon's claim.

21 THE COURT: But you would agree, Mr. Kemp was retained  
22 to do the quantum meruit analysis on the motion to adjudicate the lien  
23 and that was -- well I'll let you answer.

24 MR. CHRISTENSEN: No, Your Honor, I don't. And --

25 THE COURT: So, what is Mr. Kemp's link to the conversion



1 claim or the lawsuit that was filed by the Edgeworths against Danny  
2 Simon. What does Will Kemp -- how does Will Kemp -- because when  
3 Will Kemp testified -- I know we will all never forget those five lovely  
4 days we all spent together, and I think we went into a day six. But what  
5 did Will Kemp testify to in regards to the lawsuit. Give me Will Kemp's  
6 connection to and David Clark.

7 MR. CHRISTENSEN: Mr. Kemp had two purposes. One,  
8 was obviously, to put a number on the quantum meruit claim. But the  
9 second purpose was because there was at least an implied claim,  
10 they've never come out and expressly said it, but there was an implied  
11 claim that Mr. Simon's lien was improper because it was overreaching  
12 or excessive in amount. And Mr. Kemp said, no, no, no, this is a  
13 reasonable claim. And in fact, that's why Mr. Kemp's declaration was  
14 attached to each of our motions to dismiss under 12(b)(5), to cut off  
15 that claim.

16 So, there is no doubt that Mr. Kemp provided, or that his  
17 role was in determining the amount of the lien, but that's not the end of  
18 the story. He had two roles. And he had a role in each of the two  
19 cases, because, as we know, Your Honor consolidated the claims.

20 THE COURT: Right.

21 MR. CHRISTENSEN: And deferred ruling on the 12(b)(5)  
22 motion, the motions to dismiss, until after evidence was educed at the  
23 evidentiary hearing --

24 THE COURT: Right.

25 MR. CHRISTENSEN: -- because the issues were

1 intertwined. So, as far as apportionment saying well this hour was for  
2 this case or the second hour was for this case, that really doesn't apply  
3 because everything that was done applied equally to both cases.

4 THE COURT: Okay. What about Clark?

5 MR. CHRISTENSEN: I was actually surprised at the  
6 opposition that they raised that. You know, Mr. David Clark is former  
7 bar counsel.

8 THE COURT: Right.

9 MR. CHRISTENSEN: His summary opinion was, it is my  
10 opinion to a reasonable degree of probability that Mr. Simon's conduct  
11 is lawful, ethical and does not constitute a breach of contract or  
12 conversion as those claims are pled in Edgeworth Family Trust, on and  
13 on, versus Daniel Simon on and on filed January 4, 2018 in the 8th  
14 Judicial District Court. So, we didn't call Mr. Clark to testify at the  
15 evidentiary hearing. We certainly submitted his declaration.

16 THE COURT: Right.

17 MR. CHRISTENSEN: And we felt that his opinions were  
18 valuable to that proceeding, but Mr. Clark was specifically retained to  
19 rebut the unreasonable claim that Mr. Simon had committed  
20 conversion. So, he is directly, no doubt, related to that conversion  
21 case.

22 Getting back to what the defense may argue. The defense  
23 may argue that evidence of the reasonableness of their claim can be  
24 seen because the -- they beat the motion to dismiss on Ant-SLAPP  
25 grounds. Well as we've seen in *Boyce* and yet again in *Orth*, it's the

1 totality of the circumstances that you look at. At the end of the day,  
2 was there reasonable grounds.

3           The Court has -- the Nevada Supreme Court has repeatedly  
4 said, you know, when you're talking about a motion to dismiss, those  
5 are specific distinct standards and the court's looking at specific distinct  
6 items and is maybe not looking at the entire case. At the end of the  
7 day, as they found in *Orth*, and that's a defense that actually went to  
8 trial and at the end of the trial, the judge said in the order that the  
9 evidence was overwhelming.

10           So, you look at the totality of the facts and circumstances at  
11 the end of the day. And at the end of this day, under your Judge's  
12 order, there was no basis for any of the claims that were brought  
13 against Mr. Simon, not just conversion. In the opposition, the defense  
14 said that they strenuously believed that they brought their claim in  
15 good faith. And again, I talked about how that subjective evidence of  
16 belief really has to be analyzed for the Court, it needs to be looked at  
17 objectively. What facts did they bring their claim on, what case law,  
18 and they didn't provide any.

19           Getting to the amounts that we requested, we've already  
20 discussed briefly the experts. The amount for attorney's fees is  
21 between Mr. Chris Jansen and myself, my fee -- or the fee claimed for  
22 my hours was \$62,604.48, for Mr. Chris Jansen, it was \$199,495 and  
23 then we have the costs that we requested, 11,498.15 for Will Kemp,  
24 5,000 even for Mr. Clark and then there were miscellaneous costs that  
25 were later detailed at 1,936.58. The total requested is 280,534.21.

1 I would point out that on the costs, we don't need to  
2 establish that there were no reasonable grounds. We are the prevailing  
3 party for purposes of costs only in the conversion case, so therefore,  
4 the Court can also award expert fees and other costs under that  
5 provision. Although you do have to get a money judgment to be a  
6 prevailing party under the 18, but that's not an issue that's before the  
7 Court.

8 We went through a very brief Brunzell analysis. The  
9 amounts requested are reasonable for the quality of counsel and the  
10 time spent, which was quite a bit. And again, the defense may argue  
11 that most of that time was spent in the evidentiary hearing. That is  
12 true, but that argument misses the point, it doesn't go far enough. The  
13 fact is, is that this Court consolidated the cases and wanted to hear all  
14 the evidence educed at the evidentiary hearing before ruling on the  
15 12(b)(5) motion because those issues were intertwined.

16 The Edgeworths had an opportunity to challenge that  
17 decision of the Court by a motion for reconsideration. By writ, they  
18 could have noted that as error in their recently filed notice of appeal.  
19 They did none of those things. So, they missed the opportunity to  
20 challenge that. So, while technically, it may not be law in the case, it's  
21 about as good as you can get short of an appellate confirmation of it.

22 Lastly on the costs, they may argue against awarding  
23 expert's fees in excess of \$1,500. But, of course, that's not a hard rule  
24 in the statute As we saw in *Orth*, amounts are routinely awarded above  
25 1500. And the quality, experience of Mr. Kemp can't be challenged.

1 He's one of the best trial lawyers in the United States. And it would be  
2 hard to challenge Mr. Clark's experience and qualifications for  
3 rendering opinions on ethical matters and the bounds of proper  
4 conduct from attorney. He was with the state bar for 15 years or so and  
5 bar counsel for about 10.

6 There's one last thing I would like to get to. The  
7 Edgeworths are -- I anticipate in argument, that Mr. Simon is driving  
8 this bus, that they didn't want anything of this to happen and that --

9 THE COURT: They made that argument in their opposition.

10 MR. CHRISTENSEN: -- and that they are the victims here.  
11 I'd like to point out a few things. One, before that conversion complaint  
12 was filed, I reached out and I said let's resolve this collaboratively, let's  
13 work together to resolve these issues. And then when Mr. Vannah  
14 suggested a separate trust account, we were debating, you know, an  
15 escrow, we were debating interpleading the funds, and Mr. Vannah  
16 came up and said, listen, why don't we just open a single purpose trust  
17 account, and as soon as I saw that email, I responded immediately the  
18 same day and said that's a great idea, Bob, let's do that.

19 I saw that as that we were now on a road to reconciliation,  
20 that we could get this thing resolved and get it done without too much  
21 blood. And I thought we were well on that way when everybody met at  
22 the bank, the funds were deposited, everything seemed to be going in  
23 the right direction. And then a complaint for conversion was served  
24 and I looked at the date it was filed, and it was filed right around the  
25 same time that Mr. Vannah had sent a letter to the bank saying, hey,

1 this is what we're going to do.

2           When we seemed to be working collaboratively to get this  
3 thing resolved, they sue Mr. Simon for conversion. I even called up  
4 John. I said, John, you know, do you have a case, do you have  
5 something to support your position, I'll go on down, I'll have a heart to  
6 heart meeting with my client, you know, tell me there's something here  
7 because I could see what was going to happen there. That was going  
8 to throw everything off the rails. And it did. We got into protracted  
9 litigation, we got into the very long evidentiary hearing. And even  
10 now, they're going to stand up and say we're still the victims, we're  
11 willing to agree with the Judge's decisions and this and that, and the  
12 fact remains is that the Edgeworths filed a notice of appeal. And days  
13 later, Mr. Simon filed another cross appeal to preserve certain claims.

14           But, you know, those are the hard and fast facts. So, on  
15 that basis, I submit it and under the law that says the Court has to  
16 literally grant fees for unreasonable litigation, this case fits, the  
17 conversion case fits. They did not have a basis to sue Mr. Simon for  
18 conversion when the money was sitting in a trust account that they had  
19 control over. Thank you, Your Honor.

20           THE COURT: Thank you. Mr. Greene.

21           MR. GREENE: Yes, Your Honor. Thank you so much. I  
22 know you've heard so much of this case and I'm sure the end is near  
23 but let me just --

24           THE COURT: You guys keep promising me but then I'll get  
25 my calendar and it's back on.

1 MR. GREENE: One more.

2 THE COURT: Because there's a motion on 2/5, right?

3 MR. GREENE: Yes. There is one for the release of the  
4 funds in excess of what you adjudicated --

5 THE COURT: Okay.

6 MR. GREENE: -- that Mr. Simon was entitled to receive.

7 THE COURT: Okay. Well we'll deal with that. I haven't  
8 read any of that. I just saw that we have another hearing coming up. I  
9 haven't read that. So, we'll deal with that on February 5th.

10 MR. GREENE: I'm not getting in to that, Your Honor.

11 Let me just begin at the beginning. I'm not going to restate  
12 everything. We've heard all of this so many times. Let me focus on  
13 what is important from a legal standpoint and a factual standpoint  
14 concerning this 12(b)(5).

15 First of all, Your Honor, when you issued your two orders,  
16 the one in October, then the one in November concerning Plaintiff's  
17 four claims for relief, there wasn't one iota of language that indicated  
18 that the Edgeworths claims were not based on reasonable grounds.  
19 You dismissed them, but did not make that finding. This was a matter  
20 that wasn't litigated, unlike the *Capanna* case, it wasn't a subject of  
21 discovery, unlike the *Capanna* case. This was something that you put  
22 on hold, Your Honor, while we could adjudicate the beast that was in  
23 this room, which is the attorneys lien and adjudicating that.

24 So, again, Your Honor, there's nothing in your orders that  
25 indicates that the Edgeworth's amended complaint was based on

1 unreasonable grounds. And you wouldn't have found that because you  
2 know the law, Your Honor, the supreme court asks us in this room  
3 when we're looking at a 12(b)(5) motion, to take a look at the  
4 allegations in the complaint that Plaintiffs have made and accept them  
5 as true. And the Edgeworths allege breach of contract, they allege that  
6 there was an oral agreement at 550 an hour, they dutifully paid 550 an  
7 hour, as you know, from all those entries that we showed. They  
8 dutifully paid 387 plus thousand dollars in fees without any review,  
9 without any reduction, without any delay, but something happened.

10           On November 17th, at that infamous meeting in Mr.  
11 Simon's office, these clients went from paying four invoices without  
12 question, asking for a fifth two days before, willing to pay that and all  
13 of a sudden that meeting happens. You heard testimony from the  
14 Edgeworths on this and something happened in that meeting that  
15 changed the relationship that eroded the trust that caused the  
16 Edgeworths to believe that their settlement funds were in jeopardy.  
17 They still believe that to this day. They maintained that complaint --  
18 that claim, one of the four, for conversion, based on good faith.

19           Mr. Simon knew, he is a very good attorney, he knew that  
20 the law didn't allow him to get a contingency fee here. You found that.  
21 He knew that if he can't have a contingency fee, how in the world is  
22 anybody going to allow him to get a contingency fee in the same  
23 amount, based on quantum meruit. That's exactly what he's done  
24 since day one, despite, if we believe the allegation to be true, like we  
25 have to, that there was an oral contract for the purposes of this



1 particular hearing here, they maintain that in good faith. They felt that  
2 their settlement proceeds were going to be jeopardized and still to this  
3 day.

4 All the amounts of 1.977 million dollars, they're all sitting  
5 there still. Two percent interest being earned on them the past year  
6 and a half'ish -- well not a year and a half, year. They've lost the  
7 investment potential, they've lost the ability to use their money.  
8 They're willing to pay Danny Simon. We've sent two letters, we don't  
9 want to appeal, don't make us appeal, we'll pay, let us resolve this.  
10 Two letters to Mr. Christiansen. We have no desire to do any of this  
11 appeal junk. We want this thing to end.

12 What this really comes down to, all these fees, Your Honor.  
13 We sat through all this. You didn't hear one minute of testimony, five  
14 day evidentiary hearing, five plus days, that dealt with any 12(b)(5).  
15 Every bit of Mr. Clark's, Mr. Kemp's testimony, everything that was  
16 asked dealt with trying to establish what Mr. Simon felt that he was  
17 entitled to in fees. There's nothing in the law that allows him to get  
18 fees in an effort to get fees under NRS 18.105. You can't do it, there's  
19 no provision for it.

20 Everything that's been submitted here, Your Honor, in  
21 summary, one, there's nothing that they can point to that can be  
22 pointed to that Plaintiff's claims were not made to anything other than  
23 reasonable grounds and in good faith. We have to take their  
24 allegations as true. There are facts that they testified to that said they  
25 believe that to be true. So, you didn't find that there were no

1 reasonable grounds. And finally, all these fees and costs were  
2 associated with this motion to adjudicate. We just want this to end,  
3 Your Honor. Please [indiscernible] maintain this and let this matter go,  
4 please. Thank you.

5 THE COURT: Thank you, Mr. Greene. Do you have any  
6 response to that, Mr. Christiansen?

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 The 12(b) motion did not address the grounds as  
9 unreasonable because, as Mr. Greene later confirmed, that's not the  
10 standard to be addressed at that stage of the proceeding. What the  
11 Court did find was that there were no grounds in which those claims  
12 could be brought as a matter of law. The question of  
13 unreasonableness, as the supreme court has repeatedly said is  
14 reserved for this motion. So, this is the time for that analysis.

15 In making that analysis, one of the things the Court needs  
16 to look at, was were there any legal grounds for the claim being  
17 brought and then being maintained. Yet again, we have not heard a  
18 single case citation from the Edgeworths that underlies, or rule of law,  
19 that underlies their claim that an attorney can be sued for conversion  
20 because the attorney filed a lien and the amount of the fees and costs  
21 ultimately due that attorney are in dispute. There is no such case. If  
22 there was, they would have brought it up.

23 What we did in the motions to dismiss, is we drilled down  
24 into the law of conversion. We brought in cases from every jurisdiction  
25 that we could find where this has been looked at. And you can't sue an

1 attorney for filing an attorney lien, for following the law, just because  
2 you dispute the fee claim, especially when that fee claim is supported,  
3 as was Mr. Simon's, by unrefuted, uncontested expert testimony.

4           There's two issues on the contingency fee argument. The  
5 first issue is, that is an issue that is part of their dispute. They're saying  
6 that well, Mr. Simon doesn't get quantum meruit because that's like a  
7 contingency fee and there wasn't a written agreement. Fine. Make that  
8 argument within the four corners of the adjudication proceeding.  
9 That's not a basis for suing a lawyer for conversion. And we provided  
10 to the Court, which is still unrefuted and unrebutted by the Edgeworths,  
11 the basis for the amount claimed by Mr. Simon. It comes right out of  
12 the third restatement of the law governing lawyers that says under  
13 quantum meruit, you can ask for market rate. It's -- right in the  
14 restatement it says it.

15           And, in fact, that's what happens in Nevada after a lawyer is  
16 terminated on the courthouse steps. Because at that moment, there is  
17 no contract because the client killed it. Does that mean you can't get a  
18 quantum meruit recovery that is the same as if that contingency fee  
19 contract still existed. Of course not. There's all sorts of cases, starting  
20 with the *Camp* case back in California that talks about lawyers getting  
21 their full contingency when they're fired on the courthouse steps.

22           So, that's not some weird, bizarre concept that obviously  
23 leads to a conversion case. It's not. And they haven't provided any law  
24 that supports that claim. Again, you know, we got the subjective belief.  
25 We strenuously believe. Okay. That's good as far as it goes. But what

1 was your belief based upon. You have to provide the basis for the  
2 belief. These folks sued Mr. Simon for punitive exemplary damages  
3 alleging that he acted maliciously because he filed a lien to resolve an  
4 attorney fee dispute. Because he was sued for punitive damages, Mr.  
5 Simon was, because he followed the law. That is, by definition,  
6 unreasonable.

7 Mr. Greene brought up the argument that fees are not  
8 contemplated under NRS 18.015. He's absolutely correct, they're not.  
9 It's not mentioned in that statute, but we're not requesting fees under  
10 NRS 18.015. That's a red herring. We're requesting fees under 7.085  
11 and 18.010(2)(b). Just because 18.015 doesn't have a fee provision in  
12 it, doesn't mean you can file frivolous litigation.

13 I think that's it, Your Honor, unless Your Honor has a  
14 specific question.

15 THE COURT: I don't have any questions.

16 MR. CHRISTENSEN: Thank you, Your Honor.

17 THE COURT: There's a couple other things I want to look at  
18 before I rule on this. I'll issue a ruling on Thursday from chambers.

19 MR. CHRISTENSEN: Judge, can I ask the Court to take a  
20 quick look at your April 3rd, 2018 transcripts at Pages 15, 16 and 17.  
21 Mr. Greene attached it as Exhibit 2 to his opposition. That just goes to  
22 Your Honor's initial finding that all these issues were so intertwined  
23 you had to do it all at once.

24 THE COURT: Yes. April 3rd of '18.

25 MR. CHRISTENSEN: It's Exhibit 2 to Mr. Greene's

1 opposition, Your Honor. He attached it.

2 THE COURT: I will do that. Exhibit 2 to the opposition.

3 MR. CHRISTENSEN: Thank you, Your Honor.

4 THE COURT: Okay. I will issue an order from chambers.

5 MR. GREENE: Thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 [Proceedings concluded at 10:21 a.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed  
19 the audio/video proceedings in the above-entitled case to the best of  
20 my ability.

21  
22 /s/Jessica B. Cahill

23 Maukele Transcriber, LLC

24 Jessica B. Cahill, Transcriber CER/CET-708

REGISTER OF ACTIONS  
CASE No. A-16-738444-C

Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C.,  
Defendant(s)

§  
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Case Type: **Product Liability**  
Date Filed: **06/14/2016**  
Location: **Department 10**  
Cross-Reference Case Number: **A738444**  
Supreme Court No.: **77678**  
**78176**

RELATED CASE INFORMATION

Related Cases  
A-18-767242-C (Consolidated)

PARTY INFORMATION

Lead Attorneys

Defendant Lange Plumbing, L.L.C.

Theodore Parker  
Retained  
7028388600(W)

Plaintiff Edgeworth Family Trust

Daniel S. Simon, ESQ  
Retained  
7023641650(W)

EVENTS & ORDERS OF THE COURT AA02469

**01/15/2019, 01/17/2019***Decision***Minutes**

01/15/2019 9:30 AM

- APPEARANCES CONTINUED: James Christensen Esq., and Pete Christiansen Esq., on behalf of Daniel Simon, and John Greene Esq., of behalf of Edgeworth Family Trust. Following arguments by counsel, COURT ORDERED, matter CONTINUED for Decision of the date given. 01/18/19 (CHAMBERS) DECISION: Motion for Attorney Fees and Costs

01/17/2019 3:00 AM

- The Motion for Attorney s Fees is GRANTED in part, DENIED in part. The Court finds that the claim for conversion was not maintained on reasonable grounds, as the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such, Mr. Simon could not have converted the Edgeworth s property. Further, the Court finds that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien. It has been argued that the Court s statement of during the course of that evidentiary hearing, I will also rule on the Motion to Dismiss at the end of the close of evidence, because I think that evidence is interrelated (Motion Hearing April 3, 2018, pg. 18) should be construed to mean that the evidentiary hearing was for the Motions to Dismiss as well as the Motion to Adjudicate Lien. While the Court acknowledges said statement, during the same hearing, the Court also stated So in regards to the Motion to Adjudicate the Lien, we re going to set an evidentiary hearing to determine what Mr. Simon s remaining fees are. (Motion Hearing April 3, 2018, pg. 17). During that same hearing, it was made clear that the primary focus of the evidentiary hearing was to determine the amount of fees owed to Mr. Simon. So, the primary purpose of the evidentiary hearing was for the Motion to Adjudicate Lien. As such, the Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworth s property, at the time the lawsuit was filed. The Motion for Attorney s Fees is DENIED as it relates to the other claims. In considering the amount of attorney s fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose of adjudicating the lien asserted by Mr. Simon. Further, the Motion to Consolidate The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David Clark Esq. were solely for the purposes of defending the lawsuit filed against Mr. Simon by the Edgeworths. As such, the Court has considered all of the factors pertinent to attorney s fees and attorney s fees are GRANTED in the amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

[Return to Register of Actions](#)

AA02470

*Steven D. Grierson*

**ORDR**

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*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.  
4

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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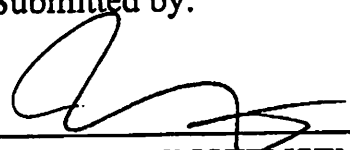
factors pertinent to attorney's fees and attorney's fees are GRANTED in the  
amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

IT IS SO ORDERED.


Dated this 6 day of February, 2019.

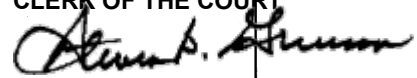
  
DISTRICT COURT JUDGE *SW*

Submitted by:

  
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*Attorney for SIMON*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE  
VIKING CORPORTATION, 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 d/b/a SIMON  
LAW; DOES 1 through 10; and, ROE  
entities 1 through 10;  
Defendants.

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

**Consolidated with**

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

**AMENDED DECISION AND ORDER  
ON SPECIAL MOTION TO DISMISS**

**ANTI-SLAPP**

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1 Mr. Simon and his wife were close family friends with Brian and Angela  
2 Edgeworth.

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

4 3. On April 10, 2016, a house the Edgeworths were building as a  
5 speculation home suffered a flood. The house was still under construction and the  
6 flood caused a delay. The Edgeworths did not carry loss insurance if a flood  
7 occurred and the plumbing company and manufacturer refused to pay for the  
8 property damage. A fire sprinkler installed by the plumber, and within the  
9 plumber's scope of work, caused the flood; however, the plumber asserted the  
10 fire sprinkler was defective and refused to repair or to pay for repairs. The  
11 manufacturer of the sprinkler, Viking, et al., also denied any wrongdoing.  
12

13 4. In May of 2016, Mr. Simon agreed to help his friend with the flood  
14 claim and to send a few letters. The parties initially hoped that Simon drafting a  
15 few letters to the responsible parties could resolve the matter. Simon wrote the  
16 letters to the responsible parties, but the matter did not resolve. Since the matter  
17 was not resolved, a lawsuit had to be filed.  
18

19 5. On June 14, 2016, a complaint was filed in the case of Edgeworth  
20 Family Trust; and American Grating LLC vs. Lange Plumbing, LLC; the Viking  
21 Corporation; Supply Network Inc., dba Viking Supplynet, in case number A-18-  
22 738444-C. The cost of repairs was approximately \$500,000. One of the elements of  
23  
24  
25

1 the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation  
2 was for reimbursement of the fees and costs that were paid by the Edgeworths.

3 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San  
4 Diego to meet with an expert. As they were in the airport waiting for a return  
5 flight, they discussed the case, and had some discussion about payments and  
6 financials. No express fee agreement was reached during the meeting. On August  
7 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency." It reads  
8 as follows:  
9  
10

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

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

18 I could also swing hourly for the whole case (unless I am off what this is  
19 going to cost). I would likely borrow another \$450K from Margaret in 250  
20 and 200 increments and then either I could use one of the house sales for  
21 cash or if things get really bad, I still have a couple million in bitcoin I could  
22 sell. I doubt we will get Kinsale to settle for enough to really finance this  
23 since I would have to pay the first \$750,000 or so back to Colin and  
24 Margaret and why would Kinsale settle for \$1MM when their exposure is  
25 only \$1MM?

(Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths.  
27 The first invoice was sent on December 2, 2016, seven (7) months after the  
28 original meeting at Starbucks. This invoice indicated that it was for attorney's fees

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

4       8. On April 7, 2017 a second invoice was sent to the Edgeworths for  
5 attorney's fees and costs through April 4, 2017 for a total of \$46,620.69, and was  
6 billed at a "reduced" rate of \$550 per hour. (Def. Exhibit 9). This invoice was paid  
7 by the Edgeworths on May 3, 2017. There was no indication on the first two  
8 invoices if the services were those of Mr. Simon or his associates; but the bills  
9 indicated an hourly rate of \$550.00 per hour.  
10

11       9. A third invoice was sent to the Edgeworths on July 28, 2017 for  
12 attorney's fees and costs through July 28, 2017 totaling of \$142,080.20. (Def.  
13 Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate  
14 of \$550 per hour totaling \$104,021.20; and services of Ashley Ferrel Esq. for a  
15 "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was paid by  
16 the Edgeworths on August 16, 2017.  
17

18       10. The fourth invoice was sent to the Edgeworths on September 19, 2017  
19 in an amount of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being  
20 calculated at a "reduced" rate of \$550 per hour for Daniel Simon Esq., \$60,981.25  
21 being calculated at a "reduced" rate of \$275 per hour for Ashley Ferrel Esq., and  
22 \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for Benjamin  
23  
24  
25



1 Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on  
2 September 25, 2017.

3 11. The amount of attorney's fees in the four (4) invoices was  
4 \$367,606.25, and \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies  
5 were paid to Daniel Simon Esq. and never returned to the Edgeworths. The  
6 Edgeworths secured very high interest loans to pay fees and costs to Simon. They  
7 made Simon aware of this fact.  
8

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

13 13. On the evening of November 15, 2017, the Edgeworth's received the  
14 first settlement offer for their claims against the Viking Corporation ("Viking").  
15 However, the claims were not settled until on or about December 1, 2017.  
16

17 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon  
18 asking for the open invoice. The email stated: "I know I have an open invoice that  
19 you were going to give me at a mediation a couple weeks ago and then did not  
20 leave with me. Could someone in your office send Peter (copied here) any invoices  
21 that are unpaid please?" (Def. Exhibit 38).  
22  
23  
24

---

25 <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 \$2,887.50 for the services of Benjamin Miller.

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

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

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

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

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

23 (Def. Exhibit 43).  
24

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

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

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

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

17           23.   On December 7, 2017, the Edgeworths signed Consent to Settle their  
18   claims against Lange Plumbing LLC for \$100,000.  
19

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

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

5  
6                           **CONCLUSIONS OF LAW**

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

10  
11                           **CONCLUSION**

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

16  
17    ///

18    ///

19    ///

20    ///

21    ///

22    ///

23    ///

24    ///

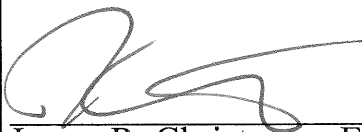
**ORDER**

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

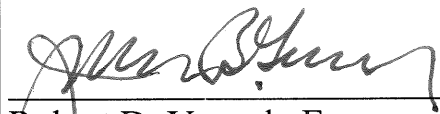
IT IS SO ORDERED this \_\_\_\_ day of September 2019.

  
DISTRICT COURT JUDGE

Respectfully submitted by:  
**JAMES R. CHRISTENSEN PC**

  
James R. Christensen Esq.  
Nevada Bar No. 3861  
601 S. 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
*Attorney for SIMON*

Approved as to form and content:  
**VANNAH & VANNAH**

  
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Nevada Bar No. 4279  
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Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

**INVOICE FOR DANIEL S. SIMON**  
***EDGEWORTH v. LANGE, ET AL.***

<b>Date</b>	<b>Description</b>	<b>Time</b>
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

7/20/16	Email Chain with SH, AD with Attachments; Re: Stipulation to Amend and Extension	.50
8/4/16	Receive, Review and Analyze Email from Client	.40
8/4/16	Receive, Review and Analyze Email from Client	.25
8/4/16 - 8/5/16	Receive, Review and Analyze Emails from M. Giberti	.50
8/5/16 - 8/8/16	Email Chain with Client	.75
8/9/16	Call with Client	.25
8/11/16	Receive, Review and Analyze Email from Dalacas with Report; Forward to Client	.40
8/11/16	Receive, Review and Analyze Emails from Giberti with Attachment	.75
8/11/16	Email Chain with A. Dalacas, Scott Holcomb; Re: Rimkus Report with Attachment	.75
8/11/16	Email Chain with SH, AD, GB; Re: Stipulations	.25
8/11/16	Email Chain with AD, SH; Re: Home Inspection	1.25
8/15/16	Email Chain with Client	.25
8/15/16 (9:21am)	Receive, Review and Analyze Email from Client with Attachment	.40
8/16/16	Email Chain with SH, AD, GB; Re: Chain of Custody	.25
8/16/16	Draft and Send Email to AD; Re: Lange Coverage	.40
8/16/16	Email Chain with Client	.40
8/19/16	Email Chain with AD; Re: Inspection	.25
8/19/16	Email Chain with Client	.40
8/22/16 - 8/24/16	Email Chain with Client	.40
8/22/16	Call with Client	.15
8/25/16	Call with Client	.15
9/1/16	Email Chain with AD, SH; Re: Transfer of Sprinkler Heads and Chain of Custody	.75

9/7/16	Email Chain with Client with Attachment	.75
9/8/16	Email Chain with Client	.75
9/12/16	Call with Client	.15
9/12/16	Email Chain from Ivey with Attachments; Email Chain with Client	.50
9/12/16	Email Chain with RP, KH, GR with Attachments; Re: Retention	1.25
9/14/16	Email Chain with RP, KH; Re: Retention and Telephone Call with Bill Ivey Re: Retention	1.35
9/15/16	Email Chain with RP; Re: List of Cases	.50
9/16/16	Email Chain with RP; Re: Signed Retainer Agreement and Check	.50
9/19/16	Email Chain with RP, KH; Re: Shipping of Sprinklers from Rimkus. Telephone Call with Hastings.	.75
9/22/16	Receive, Review and Analyze Email From AD with Attachment from Kreason	.40
9/28/16	Email Chain with Client	.50
9/28/16	Email Chain with Client Re: Installation Guide Info., with Attachments	.75
9/28/16	Call with Client	.40
9/29/16	Draft Email to JW	.10
9/29/16	Receive, Review and Analyze Email from Dalacas	.25
9/30/16	Receive, Review and Analyze Emails with Website Info.; Receive, Review and Analyze Email from B. Lange and Client; Draft Email to JW	.85
10/3/16	Email Chain with Client	.50
10/4/16	Call with Client	.25
10/4/16	Call with Client	.15
10/4/16	Email Chain with Client	.50
10/6/16	Receive, Review and Analyze Email from Client with Attachment	.50



10/6/16	Receive, Review and Analyze Email from Dalacas; Forward Email to Client; Receive, Review and Analyze Email from Client; Receive, Review and Analyze Email from B. Lange; S. Simmons Emails included	.75
10/6/16	Call with Client	.40
10/7/16	Call with Client	.15
10/7/16	Receive, Review and Analyze Email from Client	.50
10/7/16	Receive, Review and Analyze Email from Giberti	.25
10/7/16	Draft Email to Dalacas; Forward Email to Client	.75
10/11/16	Receive, Review and Analyze Email from Client	.25
10/11/16	Draft Email to Dalacas with Attachments	.25
10/12/16	Email Chain with KB, KH, and File Manager; Re: Travel for Inspection	.50
10/12/16	Call with Client	.15
10/12/16	Call with Client	.10
10/12/16	Call with Client	.25
10/13/16	Call with Client	.40
10/13/16	Receive, Review and Analyze Email from Client	.25
10/13/16	Email Chain with S. Holcomb and Dalacas and Client	1.25
10/13/16	Receive, Review and Analyze Emails from Client with Email Chain from Viking/Lange	.50
10/13/16	Receive, Review and Analyze Email from Client	.25
10/14/16	Email Chain with Client	.50
10/14/16	Receive, Review and Analyze Email from M. Giberti with Attachments; Forward Emails	1.25
10/14/16	Email Chain with Client	.75
10/15/16	Call with Client	.25
10/15/16	Draft Email to Client with Attachments	.25

10/15/16	Draft and Send Email to KH; Re: Sprinkler Heads to Take Back to San Diego	.15
10/15/16	Prepare, Revise and Finalize Affidavit for DSS, Re: Chain of Custody	.50
10/16/16	Receive, Review and Analyze Email from Client	.40
10/17/16	Receive, Review and Analyze Email from M. Giberti	.40
10/17/16	Receive, Review and Analyze Email from Client	.40
10/17/16	Receive, Review and Analyze Email from Dalascas; Email Chain with Client; Email from S. Holcomb; Email to Client	.90
10/17/16	Receive, Review and Analyze Email from M. Giberti	.15
10/17/16	Email Chain with Client Re: Website	.40
10/17/16	Receive, Review, and Analyze Letter from Dalacas	.25
10/18/16	Email Chain with Client Re: Dalacas Ladder	.50
10/18/16	Call with Client	.15
10/ 19/16	Call with Client	.10
10/19/16	Call with Client	.10
10/20/16	Email Chain with KH; Re: Receipt of Sprinkler Heads	.25
10/21/16	Call with Client	.25
10/21/16	Email Chain with Client and Dalacas with Attachments	1.25
10/22/16 - 10/24/16	Email Chain with Dalacas and Client	1.25
10/24/16	Call with Client	.15
10/24/16	Email Chain with Dalacas/Holcomb, A. Bullock and Client with Attachments	.75
10/25/16	Receive, Review and Analyze Email from Client	.50
10/26/16	Send Email Chain with Client; Receive, Review and Analyze Email from Dalacas with Attachments	.75
11/4/16	Email Chain with Client; Email Chain with Dalacas	.80

11/9/16	Email Chain with Client with Attachment	.50
11/9/16	Draft and Send Email to KH with ECC Disclosures	.35
11/10/16	Email Chain with KH; Re: Visual Inspection of Sprinklers	.25
11/10/16	Receive, Review and Analyze Email from M. Giberti	.25
11/17/16	Email Chain with Client and Dalacas	.75
11/18/16	Email Chain with Dalacas	.40
11/18/16	Email Chain with Client with Attachment	1.0
11/21/16	Receive, Review and Analyze Email from Client	.25
11/21/16	Call with Client	.25
11/22/16	Draft and Send Email to Dalacas and Client	.40
11/29/16	Email Chain with M. Giberti and Client	.75
11/29/16	Draft and Send Email to Dalacas	.50
11/29/16	Email Chain with Client	.40
11/30/16	Receive, Review and Analyze Email from Dalacas; Draft and Email Chain with Client	.50
11/30/16	Receive, Review and Analyze Email from M. Giberti and Client	.50
12/2/16	Email Chain with Client with Attachments	.75
12/2/16	Receive, Review and Analyze Email from Ivey and Forward to Client	.25
12/2/16	Call with Client	.50
12/3/16	Call with Client	.25
12/5/16	Receive, Review and Analyze Email from M. Giberti	.35
12/5/16	Receive, Review and Analyze Email from Client	.25
12/5/16	Draft and Send Email to Duggan with Attachments	.50
12/5/16	T/C with Duggan	.40
12/5/16	Draft and Send Email to Dalacas	.75
12/5/16	Receive, Review and Analyze Email from Dalacas	.40

12/5/16	Receive, Review and Analyze Email from Client with Attachment Re: Updated Damages Estimate	.40
12/6/16	Email Chain with Client with Attachments	.50
12/6/16	Receive, Review and Analyze Email from Dalacas; Forward to Client; Receive, Review and Analyze Email from M. Giberti	.40
12/7/16	Receive, Review and Analyze Email from M. Giberti	.25
12/13/16	Email Chain with JY, KH; Re: Retainer with Attachment	.75
12/22/16	Email Chain with AD; Re: Mediation	.25
1/3/17	Email Chain with KH; Re: Visual Inspection in San Diego	.25
1/3/17	Email Chain with Blumberg	.35
1/4/17	Email Chain with JP and AD	.75
1/4/17	Receive, Review and Analyze Email From JP; Re: Mediation	.15
1/4/17	Receive, Review and Analyze Email from JW to Pancoast; Receive, Review and Analyze Email from JP; Receive, Review and Analyze Email from Dalacas	.50
1/4/17	Draft email to JP and Receive and Review Email from JP	.40
1/4/17	Draft and Send Email to Client	.50
1/4/17	Email Chain with Client	.75
1/6/17	Received, reviewed and responded to email from AF Lange K inserts added to MSJ	.15
1/10/17	Draft and Send Email to Client with Attachment	.25
1/10/17	Email Chain with KH; Re: Metallurgist	.50
1/11/17	Call with Client	.15
1/11/17	Call with Client	.25
1/11/17	Draft and send email to AF re making small changes to MSJ	.15
1/11/17	Email Chain with Client with attachment	.25
1/17/17	Draft and Send Email to JP and Response	.25
1/17/17	Draft and Send Email to GZ	.15

1/17/17	Draft and send email to AF re preparing written discovery and depo notices	.15
1/19/17	Draft and Send Email to KH with Attachment MSJ; Re: Request for Call	.20
1/19/17	Email chain with AF re Viking's Opposition to MSJ	.50
1/20/17	Email chain with AF re Stackiewicz case and Discussion with AF	.50
1/23/17	Received, reviewed and responded to email from AF re business court judge	.15
1/23/17	Received, reviewed and responded to email from AF re draft notices and SDT for review	.15
1/24/17	Call with Client	.15
1/24/17	Email chain with AF re business court jurisdiction and discussion with AF	.35
1/24/17	Email chain with AF re breach of contract COAs and discussion with AF	.50
1/24/17	Receive, Review and Analyze Email from M. Giberti	.25
1/24/17	Review COR Depositions and Forward to Client via Email	.50
1/24/17	Receive, Review and Analyze Email from G. Zamiski; Email Chain with Client	.50
1/24/17	Receive, Review and Analyze Email From GZ; Re: Scope of Work	.15
1/25/17	Draft and Send Email to GZ; Re: Starting Work and Retainer	.25
1/25/17	Draft and Send Email to AF and JW; Objection to Subpoena; Review of COR's, Analyze Objections	.50
1/25/17	Email Chain with AD, AF; Re: Depositions	.25
1/26/17	Draft and send email to AF re Lange 30(b)(6) depo and discussion with AF	.35
1/27/17	Email Chain with Client with Attachments	.50
1/27/17	Draft and Send Email to Client with Attachment	.25
1/27/17	Call with Client	.25

1/27/17	Draft and send email to AF re preparing Viking 30(b)(6) depo notice	.15
1/28/17	Draft and Send Email to KH; Re: Ziminsky, Depositions, Request to Discuss Case	.25
1/28/17	Draft and Send Email to KH with Viking 16.1 Disclosures	.25
1/30/17	Call with AMF	.15
1/30/17	Receive, Review and Analyze Email from M. Giberti	.25
1/31/17	Email Chain with Client	.25
2/1/17	Receive, Review and Analyze Email from Client	.25
2/3/17	Receive, Review and Analyze Email from Client with Attachment	.25
2/3/17	Receive, Review and Analyze Email From KH; Re: Viking Expert Opinions and Request for a TC	.15
2/3/17	Receive, Review and Analyze Email from Client to S. Dugan	.25
2/6/17	Receive, Review and Analyze Email from S. Dugan and Response	.25
2/6/17	Receive, Review and Analyze Email from Client Re: Trailer Temps and Website Attachment	.50
2/6/17	Draft and send email to AF re email client sent re trailer temperatures and link	.50
2/6/17	Call with Client	.40
2/6/17	Email chain with AF re Motion to Amend Complain	.15
2/6/17	Draft and Send Email to JP	.25
2/7/17	Receive, Review and Analyze Email From JP and Response	.25
2/7/17	Draft and send email to AF re Viking 30(b)(6) notice	.15
2/9/17	Receive, Review and Analyze Letter from Dalacas re Lange 30(b)(6) depositions	.25
2/9/17	Call with Client	.15
2/10/17	Receive, Review and Analyze Letter from Dalacas re Lange 30(b)(6) depositions and Brandon Lange Deposition	.15
2/10/17	Email chain with AF re response to Pancoast re Dustin Hamer	.15

2/10/17	Draft and send email to AF re correspondence from Sia about moving depos	.15
2/10/17	Receive, Review and Analyze Email From JP and Response	.25
2/10/17	Email Chain with JP and AD	.95
2/12/17	Email chain with AF re re-noticing depos of Hamer and Diorio	.25
2/13/17	Email chain with AF re court's availability for MSJ hearing	.15
2/13/17	Call with Client	.15
2/13/17	Email Chain with AD, JP and JR	.35
2/15/17	Call with AMF	.40
2/15/17	Draft and Send Email to AD and JP	.25
2/15/17	Email Chain with AD, JP and AF; Re: Depositions	.25
2/15/17	Draft and send email to AF re document needing to be supplemented (attachment)	.25
2/15/17	Draft and send email to AF re noticing depos of Lange employees	.15
2/15/17	Receive, Review and Analyze Email from M. Giberti with Attached Letter	.50
2/17/17	Receive, Review and Analyze Email From JP; Re: Depositions	.25
2/21/17	Draft and send email to AF to print Exhibits 1-8	.15
2/21/17	Email chain with AF re exhibits for Dustin Hamer depo	.15
2/22/17	Email Chain with Client; T/C with Dalacas	.50
2/25/17	Email Chain with Client	.25
2/26/17	Received, reviewed and responded to email from AF re draft reply to motion to amend	.15
2/27/17	Email chain with AF re COR Depos for Giberti and American Grating	.15
2/27/17	Draft and Send Email to AD; Re: Kreason	.15
2/28/17	Receive, Review and Analyze Email From AD; Re: Kreason	.15
2/28/17	Receive, Review and Analyze Email From AD; Re: Kreason	.15

2/28/17	Receive, Review and Analyze Email from Client with Attachment	.75
2/28/17	Call with Client	.25
2/28/17	Call with Client	.10
2/28/17	Call with AMF	.15
2/28/17	Call with AMF	.10
2/28/17	Call with AMF	.15
2/28/17	Draft and Send Email to JP	.25
3/1/17	Received, reviewed and responded to email from AF re Pancoast coming to office to review documents	.15
3/1/17	Call with AMF	.15
3/1/17	Call with Client	.15
3/1/17	Call with Client	.10
3/1/17	Received, reviewed and responded to email from AF re Edgeworth trial order	.15
3/2/17	Draft and Send Email to Client with Attachment	.25
3/7/17	Email Chain with AF, AD and JP; Re: Orders	.15
3/7/17	Email Chain with AD; Re: Brandon Lange Deposition	.35
3/7/17	Email Chain with AF, AD, JW; Re: Calculation of Damages	.35
3/8/17	Email Chain with AD, JW, AF, JP; Re: Depositions	.30
3/8/17	Email Chain with JP, AF, AD; Re: Motions To Amend	.15
3/9/17 -3/14/17	Email Chain with AD, JW, AF, JP; Re: Deposition	.95
3/9/17	Call with Client	.15
3/10/17	Call with Client	.15
3/10/17	Email chain with AF re letter from Sia on withdrawing MSJ and her signature on proposed orders	.25
3/13/17	Receive, Review and Analyze Email from Dalacas; Forward Email to Client with Attachment	.65



3/13/17	Text Message with AMF	.10
3/13/17	Call with AMF	.10
3/13/17	Call with AMF	.15
3/13/17	Call with Client	.15
3/14/17	Call with Client	.65
3/14/17	Email Chain with Client with Attachments	.50
3/15/17	Call with AMF	.10
3/15/17	Call with AMF	.15
3/15/17	Call with AMF	.25
3/16/17	Email Chain with Client	.40
3/16/17	Email Chain with AD, AF, JP; Re: Bate Stamps	.15
3/17/17	Receive, Review and Analyze Email From AD; Re: OOO	.25
3/17/17	Email Chain with AD, AF; Re: OJ	.15
3/17/17	Email chain with AF re extension for Lange's response to OOO	.25
3/20/17	Email Chain with AD, AF; Re: Bate Stamp	.25
3/20/17	Draft and Send Email to Client with Attachment	.25
3/21/17	Email chain with AF re documents attached to supplement and review of the Kinsale file	.15
3/21/17	Email Chain with AF, AD, JP; Re: Bate Stamps	.25
3/24/17	Email Chain with AF, AD, JW; Re: Service	.50
3/24/17	Receive, Review and Analyze Email from JP; Forward Email to Client	.65
3/27/17	Email Chain with JF, AD, LV, LF; Re: Lawyer Contact	.25
3/28/17	Review Lange 5 <sup>th</sup> Supp and Email Chain with Client	.50
3/29/17	Email Chain with Client	.25
3/29/17	Call with AMF	.15
3/29/17	Call with AMF	.15

3/29/17	Call with AMF	.10
3/29/17	Email Chain with Client	.25
3/31/17	Call with AMF	.15
3/31/17	Email Chain with JP, AF, JR, TG, AD; Re: Deposition of Viking	.15
4/3/17	Email Chain with AD, JP, JW, JR; Re: Depositions	.50
4/3/17	Receive, Review and Analyze Email from Client with Attachment	.25
4/4/17	Receive, Review and Analyze Email from Client	.15
4/5/17	Email chain with AF re exhibits he needs for Kreason and Brandon Lange depo	.15
4/6/17	Received, reviewed and responded to email from AF re: 3 day notice of intent to default Lange and discussion with AF	.50
4/6/17	Receive, Review and Analyze Questions Email from Client	.50
4/6/17	Email Chain with Client	.25
4/6/17	Draft and Send Email to KH with Attachments; Re: Visual Inspection	.25
4/6/17	Receive, Review and Analyze Email from Client with Attachment	.25
4/6/17	Email Chain with Client	.25
4/6/17 - 4/20/17	Email Chain with AD, JP; Re: Inspection of Sprinklers	.65
4/6/17	Email Chain with AD, AF; Re: Testing of Heads	.15
4/7/17	Receive, Review and Analyze Email from Client with Attachment	.50
4/7/17	Receive, Review and Analyze Email from Client with Attachment; Receive, Review and Analyze Email from JW	.50
4/7/17	Receive, Review and Analyze Email from Client	.25
4/10/17	Email Chain JP, AD, JR; Re: PMK of Viking	.50
4/13/17	Draft and send email to AF re re-notice depo of Viking 30(b)(6)	.20
4/18/17	Draft and send email to AF re dropping off cc to Judge of Motion to compel Kreason	.15
4/18/17	Draft and Send Email to Client with Attachment	.75

4/18/17	T/C with Attorney Hulet and Draft and Send Email to Client	.50
4/18/17	Receive, Review and Analyze Email from Client	.25
4/18/17	Receive, Review and Analyze Email from Client	.40
4/18/17	Receive, Review and Analyze Email from Client	.40
4/18/17	Receive, Review and Analyze Email from Client	.25
4/18/17	Email Chain with AD, AF, Re: Kreason Deposition	.25
4/19/17	Call with Client	.50
4/19/17	Receive, Review and Analyze Email from Client	.65
4/19/17	Receive, Review and Analyze Email from Client with Attachments	.50
4/20/17	Email Chain with Client	.50
4/20/17	Receive, Review and Analyze Email from Client with Attachments	.50
4/20/17	Receive, Review and Analyze Email from M. Giberti	.15
4/20/17	Email Chain with AD, AF; Re: Testing of Heads	.25
4/21/17	Email Chain with AD, JP, AF; Re: Written Protocol	.50
4/23/17	Draft and send email to AF re research on the contract prior to the MSJ hearing	.15
4/24/17	Draft and send email to AF re printing 3 <sup>rd</sup> party complaint Lange filed against Viking	.15
4/24/17	Draft and Send Email to Client with Attachment	.25
4/24/17	Receive, Review and Analyze Email from Client	.15
4/24/17	Receive, Review and Analyze Email from Client	.15
4/24/17	Receive, Review and Analyze Email from Client with Attachments	.25
4/24/17	Draft and Send Email to Client	.15
4/25/17	Draft and Send Email to Bullock with Attachment and Draft and Send Email to Client	.50
4/25/17	Call with Client	.40

4/25/17	Draft and send email to AF re emailing 3 <sup>rd</sup> party complaint Lange filed against Viking	.15
4/25/17	Email Chain with Client and Office	.50
4/26/17	Email Chain with Client	.75
4/26/17	Email Chain with Client	.40
4/26/17	Receive, Review and Analyze Email from Client	.25
4/26/17	Receive, Review and Analyze Email from Client and Draft and Send Email to AF	.35
4/27/17	Draft and send email to AF re draft notice of depo and SDT for Dan Cadden	.15
4/27/17	Draft and send email to AF re what motions we need to file in Edgeworth and begin drafting	.20
4/27/17	Email chain with AF and JW re written discovery for Viking	.15
4/27/17	Draft and send email to AF re pulling invoices from Viking to Lange showing heads purchased	.15
4/27/17	Draft and send email to AF re forward from client	.40
4/28/17	Draft and Send Email to GZ; Re: Protocol with Attachments	.15
4/28/17	Email chain with AF re American Grating ECC and EFT Supp	.15
4/28/17	Review and analyze Viking's responses to written discovery	1.25
5/1/17	Draft and Send Email to Client with Attachment	.50
5/1/17	Email Chain with Client	.25
5/1/17	Draft and send email to AF re Viking's 2 <sup>nd</sup> Supp	.50
5/2/17	Email chain with AF requesting Viking 30(b)(6) notice, 3 <sup>rd</sup> party complaint and amended complaint emailed and printed	.20
5/2/17	Receive, Review and Analyze Email from Client	.15
5/2/17	Receive, Review and Analyze Email from Client	.15
5/2/17	Receive, Review and Analyze Email from Client	.25
5/2/17	Email Chain with KH with Attachment - Care & Handling	.25

5/2/17	Email Chain with KH with Attachments; Re: Testing Protocol	.50
5/2/17	Receive, Review and Analyze Email from Client	.50
5/2/17	Email Chain with AD, JP; Re: PMK Deposition	.25
5/2/17	T/C with Expert Hastings	.25
5/2/17	Call with Client	1.15
5/2/17	Call with Client	.15
5/3/17	Call with Client	.10
5/3/17	Call with Client	.15
5/3/17	Email chain with attachments to AF forwarded from Hastings and Viking supply invoices	.25
5/3/17	Draft and Send Email to Client	.15
5/3/17	Receive, Review and Analyze Email from Client with Attachment	.50
5/4/17	Call with Client	.75
5/4/17	Receive, Review and Analyze Email from M. Giberti with Attachments	.50
5/4/17	Receive, Review and Analyze Email from Client	.25
5/4/17	Receive, Review and Analyze Email from Client with Attachment	.25
5/4/17	Draft and Send Email to Kinsale	.40
5/4/17	Receive, Review and Analyze Email from Kinsale and Forward to Client	.15
5/4/17	Receive, Review and Analyze Email from Client with Attachment	.25
5/4/17	Receive, Review and Analyze Email from Client	.40
5/4/17	Email Chain with AD, AC, LF; Re: Giberti's 3 <sup>rd</sup> Party Complaint	.25
5/5/17	Email Chain with AD, AF; Re: Names of Employees	.25
5/5/17	Email chain with AF and Janelle re June 7 <sup>th</sup> hearing	.15
5/5/17	Receive, Review and Analyze Email from Client	.25
5/5/17	Receive, Review and Analyze Email from Client with Attachments	.40