IN THE SUPREME COURT OF THE STATE OF NEVADA

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EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

Supreme Court Case

No. 77678 consolidated with No. 78176

APPELLANTS' REPLY BRIEF, ANSWERING BRIEF TO CROSS APPEAL, ANSWER TO WRIT, AND RESPONSE TO AMICUS BRIEF

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B. Whether the District Court, in its Decision and Order Dismissing Appellants' Amended Complaint for breach of contract, declaratory relief, conversion, and breach of the implied covenant of good faith and fair dealing pursuant to NRCP 12(b)(5), committed clear and reversible error when it failed to apply the proper standard for review?

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J. Whether Simon's Amended Lien, which was in excess of what he knew and reasonably believed he could assert when it was perfected—an unlawful amount—and in retaining a claim to the balance of the settlement proceeds, amounts to conversion?

K. Whether the Amicus Brief, which speaks in general principles, as opposed to the facts of this case, and perhaps promotes

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L. Whether Simon's Motion to Dismiss Appellants' Amended Complaint can be deemed a converted motion for a judgment pursuant to NRCP 12(c)—as opposed to NRCP 12(d) as stated in Simon's Brief—when none of the parties ever requested a judgment on the pleadings, the District Court never entertained a request for a judgment on the pleadings, most of the material facts were in dispute, and the District Court's Decision and Order Dismissing Appellants' Amended Complaint was expressly made pursuant to NRCP 12(b)(5), not NRCP 12(c) or NRCP 56?

II. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW:

Appellants retained Simon to represent their interests following a flood at a residence they owned. *AA, Vol. 2 page 000296, lines 10 through 14; 000298:10-12; 000354-000355.* The representation began on May 27, 2016. *AA, Vol. 2 000278:18-20; 000298:10-12; 000354.* Simon billed Appellants $550 per hour for his work from that first date to his last entry on January 8, 2018. *AA, Vols 1 and* 2 *000053-000267; 000296-000297; 000365-000369.* Damage from the flood caused in excess of $500,000 of property damage, and litigation was filed in the 8th Judicial District Court as Case Number A-16-738444-C. *AA, Vol. 2 000296.* Appellants brought suit against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (Lange and Viking). *AA, Vol. 2 000278:24-27; 000354.*

The District Court held an evidentiary hearing to adjudicate Simon's attorney's lien over five days from August 27, 2018, through August 30, 2018, and concluded on September 18, 2018. *AA, Vol. 2* 000353-000375. The Court found that Simon and Appellants had an implied agreement for attorney's fees. *Id., at, 000365-000366;000374.* However, Appellants alleged in their Amended Complaint that an oral fee agreement existed between Simon and Appellants for

$550/hour for work performed by Simon. *AA, Vols. 2 & 3 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon admitted that he never reduced the hourly fee agreement to writing. *AA, Vol. 3 000515-1:8-25.* Regardless, Simon and Appellants performed the understood terms of the fee agreement with exactness. *AA, Vol. 2 000297:3-9; AA, Vol. 3 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.* Simon demonstrated that knowledge and understanding by sending four invoices to Appellants over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September 19, 2017. *AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon always billed for his time at the hourly rate of $550 per hour (and $275 per hour for his associates). *AA, Vols. 1 & 2 000053-000267; 000374.* It is undisputed that Appellants paid the invoices in full, and that Simon deposited the checks without returning any money. *AA, Vol. 2 000356:14-16.* And Simon did not express any interest in taking the property damage claim on a contingency basis with a value of $500,000. *AA, Vol. 2 000297:1-5.*

Simon believed that his attorney's fees would be recoverable as damages in the underlying flood litigation. *AA, Vol. 2 000365-000366.* To that end, he provided and served computations of damages pursuant to NRCP 16.1, listing how

much in fees he'd charged and billed. *Id., 000365:24-26.* At the deposition of Brian Edgeworth on September 29, 2017, Simon voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." *AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1.* Those were hourly fees spoken of and produced by Simon. *Id., 000365:24-27, 000366:1.* Thus we see that through Simon's words and deeds he clearly knew and understood that his fee agreement with Appellants was for $550 per hour...until he wanted more. *Id.*

Despite having and benefiting from an hourly fee agreement, Simon did want more and devised a plan to get it. *Id., 000271-000304.* In the late Fall of 2017, and only after the value of the flood case skyrocketed past $500,000 to over $6,000,000, Simon demanded that Appellants modify the hourly fee contract so that he could recover a contingency fee dressed up as a bonus. *AA, Vol. 2 000298:3-17.*

Simon scheduled a meeting with Appellants on November 17, 2107. At that meeting, Simon told Appellants he wanted to be paid far more than $550.00 per hour and the $367,606.25 in fees he'd already received from Appellants. *Id.* Simon said he was losing money and that Appellants should agree to pay him more, like 40% of the $6 million settlement with Viking. *AA, Vols. 2 & 3* 000299:13-22; *000270; 000275*; *000515-1.* Simon then invited Appellants to contact another

attorney and verify that "this was the way things work." *AA, Vol. 3 000000515-1, 000515-2, 000516:1-7, 000517:13-25.*

Appellants refused to bow to Simon's pressure or demands. *AA, Vol. 2 000300:16-23.* Simon then refused to release the full amount of the settlement proceeds to Appellants. *Id.* Instead, Simon served two attorney's liens on the case: one on November 30, 2017, and an Amended Lien on January 2, 2018. *Id; AA, Vol. 1 000001; 000006.* Simon's Amended Lien was for a net sum of $1,977,843.80. *Id.* This amount was on top of the $486,453.09 in fees and costs Appellants already paid in full to Simon for all his services and time from May 27, 2016, through September 19, 2017. *AA, Vol. 2 000301:12-13.*

Appellants accepted Simon's invitation to consult other attorneys and contacted Robert D. Vannah, Esq. *AA, Vol. 3 000515-2:22-25, 516:1-7.* Thereafter, Mr. Vannah contacted Simon and explained that since the settlement with Viking was essentially completed, it would not be expeditious for Mr. Vannah to either substitute into the case or to associate with Simon. *AA, Vol. 3 000490-000491.*

Mr. Vannah told Simon that he was to continue on the case until the settlement details were all ironed out. *Id.* And those details were clearly minimal, as the lion's share of rigorous and time-consuming work had already been completed: a successful mediation with Floyd Hale, Esq.; an offer from Viking of $6 million to resolve those claims *(Id)*; and, an offer from Lange to settle for

$25,000, to which Appellants had consented to accept both no later than November 30, 2017. *AA, Vol. 2 000357:22-23.* The only tasks remaining on the case were ministerial, i.e., following Appellants' settlement instruction by signing releases and obtaining dismissals of claims. *Id., 000517:13-25, 000518.*

At the evidentiary hearing, Simon admitted that he could not charge a 40% contingency fee because he had not obtained a written contingency fee agreement. *AA, Vol. 3 000515-1.* That's an invited error. *Carstarphen v. M*ilsner, 270 P.3d 1251, 128 Nev. 55 (2012). Regardless, Simon argued that even though he didn't reduce any fee agreement to writing, let alone a written contingency fee agreement as required by NRPC 1.5(c), he could get a 40% fee via the equitable remedy of quantum meruit because 40% is the normal charge if a contingent fee agreement existed. *AA, Vol. 1 000045.* That's an invited error and a violation of NRPC 1.5(c).

The District Court held that Appellants constructively discharged Simon on November 29, 2017. *AA, Vol. 2 000369:22-25.* The basis was a purported "breakdown in attorney-client relationship," and the lack of communication with regard to the pending legal issues, i.e., the Lange and Viking Settlements. *Id.*, 000361-000364.

Yet, it was Simon who: 1.) demanded that Appellants change the terms of the fee agreement from hourly to contingent when the case value increased; 2.) told Appellants he couldn't afford to continue working on their case at $550 per hour;

3.) threatened to stop working on Appellants' case if they didn't agree to modify the fee agreement; 4.) encouraged Appellants to seek independent legal counsel; 5.) sought legal counsel, as well; 6.) continued to follow Appellants' directions and worked on Appellants' case through its conclusion with Viking and Lange; and, 7.) billed Appellants for all of his time from November 30, 2017 (the date after the alleged constructive discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3 000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

In January of 2018, Simon presented a super bill that was weeks in the making that contained every entry for every item of work that was allegedly performed from May 27, 2016 (plus some do-overs, add-ons, and mistakes), through January 8, 2018. *AA, Vols 1 & 2 000053-000267.* It also contained startling entries such as a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265.* All of the itemized tasks billed by Simon and Ms. Ferrel (at $550/$275 per hour, respectively) for that slim slot of time totaled **$33,811.25**. *Id.*

Settlements of Appellants' claims for substantial amounts of money were formally reached with the two flood defendants on November 30 and December 7, 2017. *AA, Vol 3 000518-3:22-25, 000518-4:1-6.* But Simon wrongfully continued to lay claim to nearly $1,977,843 of Appellants' property, and he refused to release

the full amount of the settlement proceeds to Appellants. *AA, Vols. 1 & 2 000006; 000300.* When Simon refused to release the full amount of Appellants' settlement proceeds to Appellants, litigation was filed and served to recover from Simon the damages Appellants had sustained. *AA, Vols. 1 & 2 000014; 000358:10-12.*

Appellants filed a Complaint against Simon on January 4, 2018, as well as an Amended Complaint on March 15, 2018, asserting claims for Breach of Contract, Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair Dealing. *AA, Vol. 2 000305.* Eight months later, the District Court dismissed Appellants' Amended Complaint. *Id., 000384:1-4.* In doing so, the District Court did not follow the heightened standard of reviewing such motions and instead disbelieved Appellants, adopted the arguments of Simon, and dismissed Appellants' Amended Complaint pursuant to NRCP 12(b)(5). *Id.*

However, as Simon didn't mention in his Brief: 1.) none of the parties ever requested, pursuant to NRCP 12(c), a judgment on the pleadings; 2.) the District Court never entertained a request for a judgment on the pleadings; 3.) most of the material facts remained in hot dispute; and, 4.) the District Court's Decision and Order Dismissing Appellants' Amended Complaint was made expressly pursuant to NRCP 12(b)(5), not NRCP 56. *Id.*; *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 734 P.2d 1238 (1987).

After Simon filed a Motion for Attorney's Fees and Costs, the District Court awarded Simon $50,000 in attorney's fees and $5,000 in costs. *AA, Vol. 2 000484:1-2.* The District Court did not follow the standard of review set forth in *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5), believed Simon over Appellants, and held that the conversion claims brought against Simon were maintained in bad faith. *AA, Vol 2 000482:16-23.*

The District Court awarded these fees and costs without providing any justification or rationale as to the amounts awarded. *Id., at 000484.* Appellants appealed the District Court's decision to award $50,000 attorney's fees and $5,000 costs. *AA, Vol 2 000485-000486.* There is nothing in the District Court's decision that finds that the award of fees or costs was a sanction. *Id.*

Appellants have no disagreement with the District Court's review of all of Simon's invoices from May 27, 2016, through January 8, 2018. Specifically, the District Court reviewed Simon's bills and determined that the reasonable value of his services from May 27, 2016, through September 19, 2017, was $367,606.25. *AA, Vol 2 000353-000374.* Appellants paid this sum in full. *Id., 000356.* The District Court also determined that the reasonable value of Simon's services from September 20, 2017, through November 29, 2017, was $284,982.50. *Id., 000366-*

000369. Appellants do not dispute this award, either. *Gibellini v. Klindt*, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994).

In reaching that conclusion and award, the District Court reviewed all five invoices, and exercised the discretion to reject many of Simon's billing entries on his super bill for a variety of excellent and substantiated reasons. *AA, Vol 2 000366-000369; 000374*. In short, these findings were supported by substantial evidence and should not be disturbed on appeal. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004); *Gibellini v. Klindt*, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994); *State, Emp. Security Dep't v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

The District Court then awarded a bonus to Simon in the guise of fees of $200,000 for the timeframe of November 30, 2017, through January 8, 2018. The work Simon admits he actually performed for that period of time totals **$33,811.25**, for a difference of $166,188.75. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265*. After Simon's lien was adjudicated in the amount of $484,982.50, Simon still wrongfully retains an interest in, and exercises dominion and control over, $1,007,878.80 of Appellants' funds. *AA, Vol. 2 000415-000424*.

On January 15, 2020, The National Trial Lawyers filed a Brief of Amicus Curiae (the Amicus Brief). The Amicus Brief speaks in general principles in supporting "lawful" charging liens, and when conversion can and cannot occur. (It

inaccurately labels Appellants' multi-claim complaint as a "conversion complaint.") However, the Amicus Brief does not address specifics, such as what to do when the amount of a charging lien makes it unlawful on its face (50%, 60%, 75%, or some other random amount of a settlement) pursuant to NRS 18.015(2), such as when an attorney has no reasonable belief on the facts that the amount of the charging lien asserted is lawful, or whether a claim for conversion can be dismissed pursuant to NRCP 12(b)(5) when a charging lien has retained client funds (for years) that are unlawful in amount and/or without a reasonable basis.

III. STANDARD OF REVIEW:

A. Adjudicating Attorney's Liens - *Abuse of Discretion*:

A district court's decision on attorney's lien adjudications is reviewed for an abuse of discretion. *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215 (2008). An abuse of discretion occurs when the court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

B. Motions to Dismiss – *de novo* Review

An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). De novo review requires a matter be considered anew, as if it had not been heard before and as if no decision had been rendered previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir.1988).

C. Motions for Attorney's Fees and Costs – *Abuse of Discretion*

A district court's decision on an award of fees and costs is reviewed for an abuse of discretion. *Gunderson v. D.R. Norton, Inc.*, 130 Nev. 67, 319 P.3d 606, 615 (2014); *LVMPD v. Yeghiazarian*, 129 Nev 760, 766, 312 P.3d 503, 508 (2013). An abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

IV. SUMMARY OF ARGUMENTS:

Simon agreed to represent Appellants for an hourly fee of $550 following a flood at a residence they owned but then, in contravention of NRPC 1.5(b), failed to ever reduce the fee agreement to writing. Thereafter, Simon billed and collected

over $367,000 in fees for eighteen months by sending four periodic invoices to Appellants at that agreed upon rate of $550/hour. When the value of the case increased from a property damage case worth $500,000 to a products liability matter valued over $6,000,000, Simon demanded more money from Appellants, despite not providing the additional invoice for unpaid fees and costs that Brian Edgeworth had asked Simon to provide in the Fall of 2017.

Simon then coupled the demand with threats that caused Appellants to believe that if they didn't acquiesce, Simon, the lawyer, would stop working on their case, a threat that Appellants believed was real. That was the threat that intimidated and concerned Appellants, not Simon's size. Despite Simon's claim that channels of communication had broken down, and even after he claimed he was constructively discharged by Appellants, Simon followed Appellants' instructions to settle their claim against Lange and to finalize their settlement with Viking. Simon also kept working on and billing on Appellants' case through its closure on January 8, 2018.

Simon then used his failure to reduce the fee agreement to writing as a basis to get more money from Appellants via the equitable remedy of quantum meruit and its plus one, a "charging lien." Quantum meruit is an equitable remedy, and Simon's hands are not clean, thus precluding that remedy. Furthermore, when his

Amended Lien was perfected, Simon had no reasonable basis to believe that he was entitled to assert that lien in the amount claimed. See NRPC 1.5(a).

NRPC 1.5(c) prohibits an attorney from collecting a contingency fee without a written fee agreement. The District Court properly found that Simon was not entitled to receive one here. And, Simon's charging lien was perfected in an amount that he could not have reasonably believed was justified on the facts and the law. Then Simon continued to exercise dominion and control over Appellants' personal property, which is conversion.

Appellants filed an Amended Complaint against Simon, seeking damages for breach of contract, declaratory relief, conversion, and breach of the implied covenant of good faith and fair dealing. The Amended Complaint itself wasn't filed to punish Simon; rather, it was filed to protect Appellants' interests due to Simon's conduct, as clearly alleged.

Following the evidentiary hearing on Simon's Motion to Adjudicate Attorney's Lien, the District Court issued a Decision and Order Dismissing Appellants' Amended Complaint pursuant to NRCP 12(b)(5). There isn't any mention or finding that the District Court: 1.) construed Appellants' pleadings liberally; 2.) accepted every factual allegation in Appellants' Amended Complaint as true; 3.) drew every fair inference in favor of Appellants; or, 4.) considered if it appeared beyond a doubt whether Appellants could prove no set of facts which, if

accepted as true by the trier of fact (a jury), would entitled them to relief. In failing to do so, in doing just the opposite by summarily adopting Simon's assertions, and in summarily dismissing Appellants' Amended Complaint, the District Court committed clear and reversible error.

The District Court also abused its discretion, failed to draw all inferences in favor of Appellants, and improperly awarded $50,000 in attorney's fees and $5,000 in costs without explanation, though they were never labeled as a sanction. Also, at the evidentiary hearing adjudicating Simon's lien, none of the parties ever requested a judgment on the pleadings, the District Court never entertained a request for a judgment on the pleadings, most of the material facts were in dispute, and the District Court's Decision and Order Dismissing Appellants' Amended Complaint was expressly made pursuant to NRCP 12(b)(5), not NRCP 12(c) or 56.

The denial of Simon's Anti-SLAPP Motion was a proper exercise of discretion. While Simon had the right to assert a lien, substantial evidence was presented that he knew that there was no reasonable basis for the amount of his lien. Plus, pursuant to NRCP 12(b)(5), Appellants' pleadings must be construed liberally, every factual allegation in Appellants' Amended Complaint must be accepted as true, every fair inference must be drawn in favor of Appellants, and Simon would have had to establish whether it was beyond a doubt whether Appellants could prove no set of facts which, if accepted as true by the trier of fact

(a jury), would entitled them to relief, and so on. Simon could not and did not meet that heightened burden in his quest for a dismissal.

The District Court also properly exercised its discretion when it found that the super bill was not sufficiently accurate. It was riddled with billing errors, burdened by the passage of time from when much of work was allegedly performed to the recording of it on a time sheet, and the like. Also, much of the content of, and the basis for, the super bill was belied by the substantial evidence presented by Simon's words, deeds, and knowledge.

Simon also failed to meet the burden to demonstrate that an extraordinary writ is warranted or necessary, as substantial evidence presented showed that Simon has no reasonable basis to believe that he was entitled to assert a lien in the amount claimed.

Finally, the Amicus Brief seems to seek carte blanche immunity for lawyers who perfect an attorney's lien, and to bar all claims for conversion, regardless of the amount of the lien or basis for the attorney in doing so. If that's the bright line that the Amicus Brief seeks to paint, and if that's really the rule of law in Nevada, then this is the case where that line and that rule can cause reason and justice to slide down a very slippery slope. The Simon Rule is not a disparagement. It is the factual reality faced by Appellants. It's also the type of conduct that can cripple client trust generally and soil society's expectations of attorney transparency.

V. ARGUMENTS:

A. The District Court Abused Its Discretion In Utilizing The Equitable Remedy Of Quantum Meruit, In Bestowing A Bonus To Simon Of $200,000, And In Finding That Simon Was Constructively Discharged.

A district court's determination of the amount of attorney's fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). Here, the District Court's award of $200,000 in attorney's fees based on quantum meruit was predicated on the clearly erroneous determination that Appellants constructively discharged Simon. *AA, Vol. 2 000360:23-28, 361-364:1-2.* That finding was improper and an abuse of discretion, as the District Court based its determination on a clearly erroneous factual determination which was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

For example, Simon conceded that: 1.) he never withdrew from representing Appellants; 2.) he *himself* encouraged Appellants to speak with other attorneys; 3.) he spoke with an attorney either before or after he met with Appellants on November 17, 2017; 4.) Mr. Vannah instructed Simon that Appellants needed Simon to continue working on the case through its conclusion; and, 5.) he

continued to work on behalf of Appellants, to follow their instructions on settling their claims, and billed them an additional **$33,811.25** in fees from November 30, 2017, through January 8, 2018. *AA Vols 1 & 2 000159-000163; 000263-000265.*

Under no logic or reason whatsoever could Simon's and Appellants' relationship be viewed as having "broken down" to the point where Simon was "prevented from effectively representing" them. *See Rosenberg v. Calderon Automation, Inc.*, 1986 WL 1290 (Court of Appeals, Ohio 6th Dist. 1986). He DID continue to represent Appellants effectively, he followed their instructions to settle and finalize their claims, and Simon billed them accordingly at $550 per hour. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* The District Court's quantum meruit analysis, which stemmed from an erroneous finding of constructive discharge, was unwarranted, an abuse of discretion, and should be reversed.

An award of fees must also be tempered by "reason and fairness." *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). This $200,000 award is not fair or reasonable under any circumstances. The District Court had already twice looked to Simon's invoices and utilized $550 per hour to determine Simon's reasonable fee (the four original invoices and from September 20 to November 29, 2017). *AA Vol. 2 000353-000374.* For the adjudication of any fee from November 30, 2017, through January 8, 2018, the

only fair and proper analysis under NRPC 1.5(a)(1) would focus on the *actual work performed and billed* by Simon (and Ms. Ferrel). Yet, the District Court did not do that, awarding a bonus instead. *Id., 000353-000374.*

The District Court was also silent on the *timing* of Simon's labor. *AA Vol. 2 000370-000372.* The District Court must describe the work Simon performed following the alleged discharge, and that didn't happen. *AA Vol. 2 000371.* Rather, the "ultimate result" referenced (the litigation and settlements) had already been completed, or either agreed to in principle, before any alleged constructive discharge, or merely required ministerial tasks to complete. *Id., 000356:22-24, 000357:12-24.*

In the section of the Order labelled "Quantum Meruit," there is also no evidence offered or reasonable basis given that Simon did anything of value for the case after November 29, 2017, to justify an additional $200,000 "fee" for five weeks of work. *Id.* Clearly, the District Court's award of fees was not tempered by "reason and fairness." Instead, it was an equitable gift in violation of NRPC 1.5(a)(1) to one with unclean hands.

The fair, reasonable, and appropriate amount of Simon's attorney's fee in this case from November 30, 2017, through January 8, 2018, should be calculated in a consistent manner ($550 per hour worked/billed) as previously found from May 27, 2016, through November 29, 2017. *Id., 000353-000374.* Instead, the

District Court came up with the $200,000 that lacks a nexus to the facts and the law, rather than awarding the $33,811.25 in fees for the actual work Simon performed during that time frame. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265*. Therefore, this Court should reverse the $200,000 fee/bonus award.

B. The District Court Erred When It Dismissed Appellants' Amended Complaint.

A district court's order granting a motion to dismiss for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal because the Appellate Court must construe the pleadings liberally, accept all factual allegations in the complaint as true, and draw all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). Further, the complaint should be dismissed "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Pankopf v. Peterson*, 124 Nev. 43, 175 P.3d 910 (2008). As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief."

Upon reviewing the District Court's decision to dismiss *de novo,* this Court should reverse the District Court's ruling, as the District Court clearly applied the wrong standard when analyzing then dismissing Appellants' Amended Complaint. In their Amended Complaint, Appellants included twenty (20) detailed paragraphs outlining Simon's words and deeds supporting each of their claims for relief. *AA, Vol. 2 000305-000316.* Appellants left no doubt as to the basis for their claims, who and what they're against, and why they are making them. *Id.* They're seeking damages from Simon for his conduct and the remedies that their claims allow. *Id.* Certainly, there could have been no reasonable dispute that Appellants met that minimum standard. *Id.*

The Amended Complaint alleged that a fee agreement was reached between the parties at the beginning of the attorney/client relationship; that the agreement provided for Simon to be paid $550 per hour for his services; that Simon billed $550 per hour in four invoices for his services; that Appellants paid Simon's four invoices in full; that Simon demanded far more from the Appellants than the $550 per hour that the contract provided for; and, that Simon breached the contract when he demanded a bonus from Appellants that totaled close to 40% of a financial settlement, liened the file when Appellants wouldn't agree to modify the contract, then refused to release Appellants' property. *Id.*

In the District Court's Decision and Order Dismissing Appellants' Amended Complaint for breach of contract, declaratory relief, conversion, and breach of the implied covenant of good faith and fair dealing pursuant to NRCP 12(b)(5), there isn't any mention that it: 1.) construed Appellants' pleadings liberally; 2.) accepted every factual allegation in Appellants' Amended Complaint as true; 3.) drew every fair inference in favor of Appellants; or, 4.) considered whether it was beyond a doubt whether Appellants could prove no set of facts which, if accepted as true by the trier of fact (a jury), would entitled them to relief. *AA, Vol. 2 000376-000384.* In failing to do so, in doing just the opposite by summarily adopting Simon's assertions, and in dismissing Appellants' Amended Complaint, the District Court committed clear and reversible error. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5).

C. The District Court Erred When It Found That Appellants' Claim For Conversion Was Not Brought Or Maintained On Reasonable Grounds.

In addition to the preceding argument, Appellants' Amended Complaint contains numerous allegations (including those in paragraphs 16-17) that when viewed as true as the law requires, would prove the basis for Appellants' claim for conversion, which is that Simon had no reasonable basis to believe that he was

entitled to charge or collect a fee from Appellants in the amount asserted in his Amended Attorney's Lien. *AA, Vol. 2 000305.*

Appellants' allegations include: 1.) Simon's words to defense counsel at the deposition of Brian Edgeworth ("[the fees have] all been disclosed to you" and "have been disclosed to you long ago."); 2.) Simon's deeds in producing 16.1 disclosures (with all invoices and various computations of damages) and billing invoices (five in total) such as the super bill (for fees owed in the amount of $692,120 in fees, as opposed to Simon's Amended Lien for fees asserted in the amount of $1,977,843.80); and, 3.) Simon's professional knowledge as a lawyer as to what he could and could not charge or accept as a reasonable fee under NRPC 1.5. *Id.* This clearly meets and exceeds the necessary standard for pleading. NRCP 8.

Appellants' choice to assert a claim for conversion wasn't done just to punish Simon, as asserted in his Answering Brief at page 16. Rather, Angela Edgeworth testified that this particular claim was brought for Simon "stealing" (as in converted) Appellants' money. *Id.*; *Respondents Appendix, Vol. VIII, AA01874:10-19.* Since the District Court's Decision and Order Dismissing Appellants' Amended Complaint failed to follow Nevada law, Appellants respectfully ask this Court to reverse the District Court's dismissal of the Amended Complaint, including the claim for conversion.

D. The District Court Abused Its Discretion And Improperly Found That The Contract For Fees Was Implied, As Opposed To Oral, As Alleged By Appellants In Their Amended Complaint.

In their Amended Complaint, Appellants included twenty (20) detailed paragraphs. *AA, Vol. 2 000305-000316.* The Amended Complaint alleged that a fee agreement was reached between the parties at the beginning of the attorney/client relationship; that the agreement provided for Simon to be paid $550 per hour for his services; that Simon billed $550 per hour in four invoices for his services; that Appellants paid Simon's four invoices in full; that Simon demanded far more from Appellants than the $550 per hour that the contract provided for; and, that Simon breached the contract when he demanded a bonus from Appellants that totaled close to 40% of a financial settlement, liened the file when Appellants wouldn't agree to modify the contract, then refused to release Appellants' property. *Id.*

The District Court was under an obligation to construe that pleading liberally, to accept all factual allegations in the complaint as true, and to draw all inferences in Appellants favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). It failed to do so and that constitutes reversable error. *Id.*

E. The District Court Abused Its Discretion When It Improperly Found That Simon Had Been Constructively Discharged By Appellants.

The District Court held that Appellants constructively discharged Simon on November 29, 2017. *AA, Vol. 2 000369:22-25.* The basis was a purported "breakdown in attorney-client relationship," and the lack of communication with regard to the pending legal issues, i.e., the Lange and Viking Settlements. *Id.*, 000361-000364.

Yet, it was Simon who: 1.) demanded that Appellants change the terms of the fee agreement from hourly to contingent when the case value increased; 2.) told Appellants he couldn't afford to continue working on their case at $550 per hour; 3.) threatened to stop working on Appellants' case if they didn't agree to modify the fee agreement; 4.) encouraged Appellants to seek independent legal counsel; 5.) sought legal counsel, as well; 6.) continued to work on Appellants' case through its conclusion with Viking and Lange; and, 7.) billed Appellants for all of his time from November 30, 2017 (the date after the alleged constructive discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3 000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

The evidence produced at the hearing to adjudicate Simon's lien showed that he kept working on and billing on Appellants' case through its closure on January 8, 2018, even after Simon claimed he was constructively discharged. *Id.* Despite

claiming that channels of communication had broken down, Simon followed Appellants' instructions to settle their claim against Lange and to finalize their settlement with Viking. *Id.* Thus, to find a constructive discharge on these facts is an abuse of discretion. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 100 P.3d 658 (2004).

F. The District Court Abused Its Discretion When It Awarded Simon $50,000 In Attorney's Fees and $5,000 in Costs.

Pursuant to NRS 18.010, district courts are to interpret the provisions of the statute to award fees "in all appropriate situations,"—that is, *appropriate* situations. *NRS 18.010(2)(b)*. Fees under this section are limited to where a district court finds "that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass..." *Id.*

And the district court's award of fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). District courts are further limited: when determining the reasonable value of an attorney's services, the court is to consider the factors under *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33-34 (1969); *Hornwood v.*

Smith's Food King No. 1, 807 P2d 209 (1991); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 834 (1985).

In fact, this Court has held that it is an abuse of discretion when district courts fail to consider the *Brunzell* factors when awarding fees. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427-28, (2006) (Finding that a district court's mere observation of certain *Brunzell* elements and mention of the factors is insufficient, the district court must actually consider the *Brunzell* factors when determining the amount of fees to award under NRS 40.655). Further, a district court's award of costs *must* be reasonable. NRS 18.005; *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458, 463(2002).

Here, the District Court's $50,000 award of fees was an abuse of discretion as it was predicated on a clearly errant finding that the Appellants' conversion claim was not maintained on reasonable grounds, was unreasonable, and was made without consideration of the *Brunzell* factors. Further, the District Court's award of $5,000 in costs was unreasonable, as it was made with absolutely no explanation or justification for the amount awarded. Finally, the award of fees and costs was founded on the erroneous dismissal of Appellants' Amended Complaint, as discussed above. As such, this Court should reverse the District Court's $50,000 fee award and $5,000 in costs.

G. The Denial Of Simon's Anti-SLAPP Motion To Dismiss Was A Proper Exercise Of Discretion.

As indicated above, the claims in Appellants' Amended Complaint were well pled and entitled to the deference that the law allows. *See* NRCP 8; NRCP 12(b)(5); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Furthermore, while Simon had the right to assert a lien, substantial evidence was presented that he knew that there was no reasonable basis for the amount of his lien, and that he had no reasonable basis to believe that he was entitled to charge or collect a fee from Appellants in the amount asserted in his Amended Attorney's Lien. *AA, Vol. 2 000365-000366; Id., 000365:24-26; AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1; Id., 000365:24-27, 000366:1.*

Appellants' allegations include: 1.) Simon's words to defense counsel at the deposition of Brian Edgeworth ("[the fees have] all been disclosed to you" and "have been disclosed to you long ago."); 2.) Simon's deeds in producing 16.1 disclosures (with all invoices and various computations of damages) and billing invoices (five in total) such as the super bill (for fees owed in the amount of $692,120 in fees, as opposed to Simon's Amended Lien for fees asserted in the amount of $1,977,843.80); and, Simon's professional knowledge as a lawyer as to what he could and could not charge or accept as a reasonable fee under NRPC 1.5. *Id.*

Thus, the District Court's denial of the Anti-SLAPP motion was a proper exercise of discretion.

H. Simon's Super Bill Was Not Sufficiently Accurate.

In January of 2018, Simon presented a super bill that was weeks in the making that allegedly contained every entry for every item of work that was allegedly performed from May 27, 2016 (plus some do-overs, add-ons, and mistakes), through January 8, 2018. *AA, Vols 1 & 2 000053-000267.* It also contains startling entries such as a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265.* All of the itemized tasks billed by Simon and Ms. Ferrel (at $550/$275 per hour, respectively) for that slim slot of time total **$33,811.25**. *Id.* The District Court addressed other reasons, as well. *Id.*

The existence of, and the content of, the super bill was also belied by Simon's words and deeds. He, as the attorney, believed that his attorney's fees would be recoverable as damages in the underlying flood litigation. *AA, Vol. 2 000365-000366.* To that end, Simon provided computations of damages pursuant to NRCP 16.1, listing how much in fees he'd charged. *Id., 000365:24-26.* At the deposition of Brian Edgeworth on September 29, 2017, Simon voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." *AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1.* Those were hourly fees spoken of and produced by Simon. *Id., 000365:24-27, 000366:1.*

These are Simon's own words and deeds. *Id.* He is saying and conveying a clear message as an officer of the court to counsel and to the District Court that ALL attorney's fees from May of 2017 through September 29, 2017, had been produced. *Id.* Since Simon said that all fees had been produced, how can he be allowed to ask any Court for more, especially for the time frame from May 27, 2016, through September 19, 2017, the date of the last-produced invoice?

Therefore, the District Court's determination that the super bill wasn't sufficiently accurate was a proper exercise of discretion.

I. Simon Has Failed To Meet His Burden That An Extraordinary Writ Is Warranted.

Simon has failed to meet the burden to demonstrate that an extraordinary writ is warranted or necessary, as substantial evidence presented showed that Simon was not constructively discharged, that Simon has no reasonable basis to believe that he was entitled to assert a lien in the amount claimed, and the super bill isn't either sufficiently accurate or believable. *Pan v. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). As indicated above, Simon's words, deeds, and professional knowledge preclude his candidacy for this extraordinary relief.

J. Simon's Amended Lien Is In An Unlawful Amount, As It Is Far In Excess Of What He Knew And Reasonably Could Have Believed He Could Assert.

While an attorney has a right to assert a lien in a lawful amount pursuant to NRS 18.015, Simon's Amended Lien is far in excess of any amount that he knew

and had any reasonable basis that he could assert. *AA, Vol. 2 000365-000366*; *Id., 000365:24-26; AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1; Id., 000365:24-27, 000366:1.* In doing so, Simon has exercised dominion and control over Appellants' personal property.

By wrongfully exercising dominion and control over Appellants' settlement proceeds—property—is inconsistent with Appellants' rights, title, and interest. And to do so without any reasonable basis to believe that he could assert a lien in the amount that he has asserted, Simon has converted Appellants' property. *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000); quoting *Wantz v. Redfield*, 74 Nev. 196,198, 326 P.2d 413, 414 (1958). Therefore, the dismissal of Appellants' Amended Complaint and its claim for conversion contravened Nevada law, (NRCP 12(b)(5); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)), it was an abuse of discretion, and it was not supported by substantial evidence.

K. In Perhaps Promoting Carte Blanche Immunity For Lawyers, The Amicus Brief Advocates A Very Slippery Slope That Could Leave A Stain On The Nobel Profession That It Seeks To Protect.

The Amicus Brief speaks in general principles of supporting "lawful" charging liens, and when conversion can and cannot occur. (It inaccurately labels Appellants' multi-claim complaint as a "conversion complaint".) However, the Amicus Brief does not address specifics, such as what to do when the amount of a

charging lien makes it unlawful on its face (50%, 60%, 75%, or some other random amount) pursuant to NRS 18.015(2); or when an attorney has no reasonable belief on the facts that the amount of the charging lien asserted is lawful; or, whether a claim for conversion can be dismissed pursuant to NRCP 12(b)(5) when a charging lien has retained client funds (for years, such as here) that are unlawful in amount or without a reasonable basis.

In short, the Amicus Brief seems to seek carte blanche immunity for lawyers who perfect an attorney's lien, and to bar all claims for conversion, regardless of the amount of the lien or the basis for the attorney in doing so. If that's the bright line that the Amicus Brief seeks to paint, and if that's really the rule of law in Nevada, then this is the case where that line and that rule will cause reason and justice to slide down a slippery slope.

The Simon Rule is not a disparagement. It is the factual reality faced by Appellants. *AA, Vol. 2 000278-000304; 000354-000374.* It's also the type of conduct that can cripple client trust generally and soil society's expectations of attorney transparency. This must be an oversight by the Amicus Brief and not the rule of law in Nevada.

L. Simon's Motion To Dismiss Pursuant To NRCP 12(b)(5) Was Never Converted To A Motion For Any Judgment By Anyone For Any Purpose.

Following the evidentiary hearing on Simon's Motion to Adjudicate Attorney's Lien, the District Court issued a Decision and Order Dismissing Appellants' Amended Complaint pursuant to NRCP 12(b)(5). *AA, Vol. 2 000384:1-4.* However, as Simon failed to mention in his Brief, none of the parties ever requested, pursuant to NRCP 12(c), a judgment on the pleadings, the District Court never entertained a request for a judgment on the pleadings, most of the material facts remained in hot dispute, and the District Court's Decision and Order Dismissing Appellants' Amended Complaint was made expressly pursuant to NRCP 12(b)(5), not NRCP 56. *Id.*

Since Simon has failed to and cannot demonstrate that the prerequisites for NRCP 12(c) were ever met here, his newly-minted request for the Order to be treated as one denying a motion for summary judgment must be rejected. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 734 P.2d 1238 (1987).

VIII. CONCLUSION/RELIEF SOUGHT:

The District Court committed clear and reversible error when it applied the wrong standard in considering Simon's Motion to Dismiss. When it should have, among other things, considered all of Appellants' allegations and inferences as true, including the claim for conversion, the District Court did just the opposite and believed Simon.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $50,000 in fees and $5,000 in costs while dismissing Appellants' Amended Complaint, a pleading that never should have been dismissed to begin with. Even so, these fees were awarded without the requisite analysis that Nevada law requires.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and that he never acted as such. Instead, Simon continued to work the case through January 8, 2018, continued to represent Appellants, completed the ministerial work he was asked to complete by Appellants to close out the flood case, and billed Appellants for all his efforts.

Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008). As argued throughout, Simon's hands are not clean, as The Simon Rule (and conduct) clearly demonstrated. Simon also had no reasonable basis to believe that he was entitled to charge or collect a fee from Appellants in the amount asserted in his Amended

Attorney's Lien, thus making its amount "unlawful" and his continued exercise of dominion and control over Appellants' property the intentional tort of conversion.

The District Court abused its discretion, failed to draw all inferences in favor of Appellants, and improperly found that Simon had been constructively discharged by Appellants, as substantial evidence exists that Simon was never discharged, that he continued to follow Appellants instructions on completing the ministerial tasks to finalize the settlement of their claims, that Simon continued to work on, and to bill for work he performed on, Appellants' case through its conclusion on January 8, 2018.

The denial of Simon's Anti-SLAPP Motion was a proper exercise of discretion. While Simon had the right to assert a lien, substantial evidence was presented that he knew that there was no reasonable basis for the amount of his lien. The District Court properly exercised its discretion when it found that the super bill was not sufficiently accurate. It was riddled with billing errors, burdened by the passage of time from when much of work was allegedly performed to the recording of it on a time sheet, and the like. Also, much of the content of, and the basis for, the super bill was belied by substantial evidence, as shown through by Simon's words, deeds, and knowledge.

Simon failed to meet his burden to demonstrate that an extraordinary writ is warranted or necessary, as substantial evidence presented showed that Simon has

no reasonable basis to believe that he was entitled to assert a lien in the amount claimed, and the amount of fees awarded to him through November 29, 2017, was a proper exercise of discretion and supported by substantial evidence.

If the Amicus Brief seeks blanket immunity from all claims to all lawyers from the legal implications of perfecting liens in unlawful amounts, the conduct depicted here, as described in The Simon Rule, is the type that can cripple client trust generally and soil society's expectations of attorney transparency. Its generalities can't be used to address the specifics of this case.

Simon's Motion to Dismiss Appellants' Amended Complaint cannot be deemed a motion for any judgment pursuant to NRCP 12(c) or NRCP 56—as opposed to NRCP 12(d) as stated in Simon's Brief and the Order—since none of the parties ever requested a judgment on the pleadings, the District Court never entertained a request for a judgment on the pleadings, most of the material facts were in dispute, and the District Court's Decision and Order Dismissing Appellants Amended Complaint was expressly made pursuant to NRCP 12(b)(5), not NRCP 12 (c) or NRCP 56.

Appellants respectfully request this Court to: 1.) REVERSE the District Court's decisions to Dismiss Appellants' Amended Complaint issued on November 19, 2018; 2.) REVERSE the District Court's award of $50,000 in fees and $5,000 in costs in its Decision and Order Granting in Part and Denying in Part

Simon's Motion for Attorney's Fees and Costs from February 8, 2019; 3.) REVERSE the District Court's award of fees of $200,000 in its Decision and Order on Motion to Adjudicate Attorney's Lien on November 19, 2018; and, 4.) DISMISS Simon's request for an extraordinary writ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because: This brief has been prepared in a proportionally spaced typeface using Word 2019, in 14 point Times New Roman font; and, complies with the Order Partially Dismissing Cross-Appeal, Granting Motions to Consolidate, Directing Answer, and Regarding Briefing filed on November 15, 2019, in not exceeding 40 pages.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event

that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of February, 2020.

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CERTIFICATE OF SERVICE

Pursuant to the provisions of NRAP, I certify that on the 14th day of February, 2020, I served **APPELLANTS' REPLY BRIEF, ANSWERING BRIEF TO CROSS APPEAL, ANSWER TO WRIT, AND RESPONSE TO AMICUS BRIEF** on all parties to this action, electronically, as follows:

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