EXHIBIT 4

ANTC
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Attorneys for Third Party Defendant
GIBERTI CONSTRUCTION LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC,

Plaintiffs,

v.

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

Defendants.

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

Defendant/ Third Party Plaintiffs,

v.

GIBERTI CONSTRUCTION, LLC, a Nevada Limited Liability Company and DOES I through V and ROE CORPORATIONS VI through X, inclusive,

Third Party Defendants.

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

THIRD PARTY DEFENDANT GIBERTI CONSTRUCTION LLC'S ANSWER TO DEFENDANT/THIRD PARTY PLAINTIFFS' THIRD PARTY COMPLAINT

AND

COUNTERCLAIM AGAINST VIKING CORPORATION AND SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET

AND

CROSS-COMPLAINT AGAINST LANGE PLUMBING, LLC

THIRD PARTY DEFENDANT GIBERTI CONSTRUCTION LLC'S ANSWER TO DEFENDANT/THIRD PARTY PLAINTIFFS' THIRD PARTY COMPLAINT

COMES NOW, Third-Party Defendant, Giberti Construction LLC (hereinafter "GIBERTI"), by and through its attorneys of record, MURCHISON & CUMMING, LLP, and in Answer to the Third-Party Complaint of Defendant/Third-Party Plaintiffs The Viking Corporation and Supply Network, Inc. d/b/a Viking Supplynet, (Hereinafter "VIKING") filed herein, GIBERTI, denies, and alleges as follows:

GENERAL ALLEGATIONS

1. In answering Paragraph 1 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

2. In answering Paragraph 2 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

3. In answering Paragraph 3 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

4. In answering Paragraph 4 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

5. In answering Paragraph 5 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

6. In answering Paragraph 2 of VIKING'S Third-Party Complaint, GIBERTI admits it is a Domestic Limited Liability Corporation duly licensed and authorized to conduct business in Clark County, Nevada, as to the remaining allegations, GIBERTI is without sufficient knowledge

and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

7. In answering Paragraph 7 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

8. In answering Paragraph 8 of VIKING'S Third-Party Complaint, GIBERTI states the allegations contained therein constitute conclusions of law and thus, no response is required. To the extent Paragraph 8 contains allegations of fact, GIBERTI is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein; and therefore, denies the same.

9. In answering Paragraph 9 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

10. In answering Paragraph 10 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

11. In answering Paragraph 11 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

12. In answering Paragraph 12 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

13. In answering Paragraph 13 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

14. In answering Paragraph 14 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

15. In answering Paragraph 15 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

16. In answering Paragraph 16 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

17. In answering Paragraph 17 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

18. In answering Paragraph 18 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

19. In answering Paragraph 19 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

20. In answering Paragraph 20 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

21. In answering Paragraph 21 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

22. In answering Paragraph 22 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

23. In answering Paragraph 23 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

24. In answering Paragraph 24 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

25. In answering Paragraph 25 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

26. In answering Paragraph 26 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

27. In answering Paragraph 27 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

28. In answering Paragraph 28 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

29. In answering Paragraph 29 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

FIRST CLAIM FOR RELIEF

(Contribution & Apportionment)

30. In answering Paragraph 30 of VIKING'S Third-Party Complaint, GIBERTI repeats and re-alleges each and every answer and response to Paragraphs 1 through 29 as if more fully set forth herein, and thereby incorporates them.

31. In answering Paragraph 31 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

32. In answering Paragraph 32 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

33. In answering Paragraph 33 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

34. In answering Paragraph 34 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

35. In answering Paragraph 35 of VIKING'S Third-Party Complaint, GIBERTI repeats and re-alleges each and every answer and response to Paragraphs 1 through 34 as if more fully set forth herein, and thereby incorporates them.

36. In answering Paragraph 36 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

37. In answering Paragraph 37 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

38. In answering Paragraph 38 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

39. In answering Paragraph 39 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

40. In answering Paragraph 40 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

41. In answering Paragraph 41 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

42. In answering Paragraph 42 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

43. In answering Paragraph 43 of VIKING'S Third-Party Complaint, GIBERTI is without sufficient knowledge and/or belief upon which to form a basis for belief as to the truth and/or falsity of these allegations and therefore denies the same.

44. In answering Paragraph 44 of VIKING'S Third-Party Complaint, GIBERTI states the allegations contained therein are a general statement, no response is required. To the extent Paragraph 44 contains allegations of fact, GIBERTI is without knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations contained therein; and therefore, denies the same.

45. In answering Paragraph 45 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

46. In answering Paragraph 46 of VIKING'S Third-Party Complaint, GIBERTI denies the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

VIKING'S Third-Party Complaint fails to state a claim against this answering Third-Party Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The loss, injuries and damages, if any, which Plaintiff in the underlying action alleges was directly and proximately caused by the negligence, carelessness or fault of the Third-Party Plaintiffs, which is greater than the alleged negligence, carelessness or fault, if any, of this answering Third-Party Defendant and therefore, Third-Party Plaintiffs' claims against this answering Third-Party Defendant are barred.

THIRD AFFIRMATIVE DEFENSE

The loss, injuries and damages, if any, which Plaintiffs in the underlying action alleges were directly and proximately caused and/or contributed to by the negligence, carelessness or fault of the Third-Party Plaintiffs and therefore, this answering Third-Party Defendant is entitled to contribution in proportion to the percentage of negligence attributed to the Third-Party Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

At the time and place, and under the circumstances alleged, the injuries of Plaintiffs, if any, and the damages of Plaintiffs, if any, were caused solely by the acts or omissions of some parties over whom this answering Third-Party Defendant had no control, and for whose acts this answering Third-Party Defendant is not responsible.

FIFTH AFFIRMATIVE DEFENSE

This Third-Party Defendant alleges that the Third-Party Plaintiffs are barred by the contribution laws of the State of Nevada.

SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' Third-Party Complaint for indemnity is barred by Nevada.

SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' action against this answering Third-Party Defendant is moot because Third-Party Plaintiffs' actions are barred by the applicable Statute of Limitations.

EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' action against this answering Third-Party Defendant are moot because Third-Party Plaintiffs' actions are barred by the applicable Statutes of Repose.

NINTH AFFIRMATIVE DEFENSE

All the risks and dangers involved in the factual situation described in the Third-Party Complaint were open, obvious and known to Third-Party Plaintiffs and, by reason therefore, Third-Party Plaintiffs assumed such risks and dangers incident thereto.

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are estopped by virtue of its own acts and omissions from asserting the claims for relief set forth in the Third-Party Complaint against this answering Third-Party Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' Third-Party Complaint is barred by the Doctrine of Laches.

TWELFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not entitled to any relief because of want or failure of consideration.

THIRTEENTH AFFIRMATIVE DEFENSE

Third-Party Defendant performed its services in a proper, adequate and workmanlike manner.

FOURTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have failed to mitigate their alleged damages, if any, as required by law.

FIFTEENTH AFFIRMATIVE DEFENSE

This answering Third-Party Defendant's liability, the existence of which is expressly denied, must be reduced by the percentage of fault of others, including Plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

This answering Third-Party Defendant alleges that the Third-Party Plaintiffs failed to name each party necessary for full and adequate relief essential in this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims have been waived as a result of Plaintiffs' acts and conduct and, therefore, Plaintiffs are estopped from asserting its claims for damages against this answering Third-Party Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

This answering Third-Party Defendant alleges that the damages, if any, suffered by the Plaintiffs were caused, in whole or in part, by an independent intervening cause, and were not the result of negligence on the part of this answering Third-Party Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have failed to plead with sufficient specificity any violation of codes, ordinances, regulations, statutes or other laws.

TWENTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs, with full knowledge of all the facts connected with, or relating to, the transaction alleged in Plaintiffs' Complaint ratified and confirmed in all respects the acts of this answering Third-Party Defendant by accepting the benefits to Third-Party Plaintiffs accruing from such acts.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The claims are barred by an accord and satisfaction since Third-Party Defendant was paid in full for any and all work it performed.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The claims are barred by the payment to and release of Third-Party Defendant for any and all work performed by Third-Party Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

All implied warranties with regard to the products and materials at issue in the Third-Party Complaint have been expressly disclaimed.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Any and all of the work performed by Third-Party Defendant, if any, was inspected and approved by Third-Party Plaintiffs and/or Third-Party Plaintiffs' agents, employees or representatives.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Defendant is not responsible for any injury, loss or damages alleged by Third-Party Plaintiffs since Third-Party Defendant followed the plans and specifications furnished by others.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The injuries or damages suffered by Third-Party Plaintiffs, if any, were directly, proximately and solely caused by defects and/or insufficiencies in the plans and/or specifications supplied to Third-Party Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The products and materials used by Third-Party Defendant were fit and proper for the use of which they were designed and intended.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The product and materials were misused.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The products and materials were altered or modified in some unforeseeable manner, which subsequently caused the damages, if any.

THIRTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiff are estopped from asserting any claim against Third-Party Defendant in that Third-Party Plaintiffs or other parties modified, altered, redesigned, or in some fashion, materially changed the character of the structure and/or design of the subject property and/or Third-Party Defendant's work product. Said changes, alterations, redesign or modifications were accomplished in the absence of Third-Party Defendant's knowledge, approval or consent; said changes, alterations, redesign or modifications proximately causing or contributing to the damages claimed by Third-Party Plaintiffs.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Any and all labor, supervision and materials provided by Third-Party Defendant was performed in accordance with all applicable codes, standards, customs and practices of the building trades industry. However, without admitting any non-compliance with applicable codes, standards, customs and practices of the building trades industry, Third-Party Defendant alleges any such non-compliance was proximately caused and/or justified by the plans, specifications or direct supervision provided by Third-Party Plaintiffs and/or other third parties.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The performance, services and/or materials rendered or supplied by Third-Party Defendant conformed to the plans, specifications and orders accepted and approved by Third-Party Plaintiffs, governmental authorities and/or other third parties for use by Third-Party Defendant.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Following the performance and services of Third-Party Defendant, Third-Party Plaintiffs and/or other defendants or parties, and their agents, inspected, approved and accepted the condition of the subject property and worked performed by Third-Party Defendant and agreed and approved that the subject property and work was satisfactory, thereby waiving any further claim for damages.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for breach of contract are barred as Third-Party Plaintiffs failed to give reasonable notice of breach of contract, if any, to Third-Party Defendant.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims fail as a result of the doctrine of In *Pari Delicto*.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The claims for damages are barred as a result of the failure to satisfy conditions precedent.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

It has been necessary for this answering Third-Party Defendant to retain counsel to defend this action, and it is, therefore, entitled to an award of reasonable attorney's fees.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

This answering Third-Party Defendant is not the real party in interest.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims have been waived as a result of Plaintiffs' acts and conduct and, therefore, Plaintiffs are estopped from asserting its claims for damages against this answering Third-Party Defendant.

GIBERTI CONSTRUCTION, LLC'S COUNTERCLAIM AGAINST VIKING CORPORATION AND SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET

Giberti Construction, LLC (hereinafter "Counterclaimant") hereby asserts the following Counterclaim against Viking Corporation and Supply Network, Inc. DBA Viking SupplyNet (together "VIKING").

1. Upon information and belief, VIKING was responsible for the design, manufacture, sale, and distribution of the fire sprinkler heads and/or system installed at the Plaintiff's property, located at 645 St. Croix, Henderson, Nevada.

2. Upon information and belief, the acts and omissions of VIKING caused the damages alleged in Plaintiff's Complaint which is incorporated herein by reference.

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FIRST CLAIM FOR RELIEF

(Indemnity)

3. Counterclaimant repeats and re-alleges every paragraph of this Counterclaim and incorporates the same by reference as though fully set forth herein.

4. Counterclaimant alleges that in the event it is found liable to any other party to this action for damages or if payment is made by Counterclaimant to any other party as a result of the alleged incident or occurrences described and/or arising in Plaintiff's Complaint, then Counterclaimant's liability for payment is based upon the acts or omissions of VIKING.

5. Counterclaimant was not negligent in any matter. Should Counterclaimant nevertheless be found liable for any alleged wrongdoings with respect to alleged incident or occurrences described and/or arising in Plaintiff Complaint, then the acts and/or omissions of Counterclaimant were passive and derivative, while those of VIKING were active, primary, and superseding. Thus, as a direct, proximate, and foreseeable result of the wrongdoing of VIKING, Counterclaimant is entitled to indemnity from any and all liability adjudged against it.

6. Counterclaimant has been required to retain the services of Murchison & Cumming, LLP to prosecute this action, and is entitled to an award of attorney's fees and costs.

SECOND CLAIM FOR RELIEF

(Contribution)

7. Counterclaimant repeats and re-alleges every paragraph of this Counterclaim and incorporates the same by reference as though fully set forth herein.

8. Counterclaimant is informed and believes that it is in no way legally responsible for the injuries or damages alleged in this action or any other related action. Nonetheless, if Counterclaimant is held liable for any part of the claims asserted against it, VIKING, to the extent of its fault as determined by the Court, is obligated to reimburse Counterclaimant and will be legally responsible to Counterclaimant for any liabilities so assessed by way of contribution. Accordingly, Counterclaimant asserts herein its rights to such contribution; namely, that VIKING is obligated to provide equitable contribution to any judgment or settlement herein in direct proportion to the amount of negligence of VIKING.

9. Counterclaimant has been required to retain the services of Murchison & Cumming, LLP to prosecute this action, and is entitled to an award of attorney's fees and costs.

GIBERTI CONSTRUCTION, LLC'S CROSS-COMPLAINT AGAINST LANGE PLUMBING, LLC

Giberti Construction, LLC (hereinafter "Cross-Claimant") hereby asserts the following Cross-Complaint against Lange Plumbing, LLC ("LANGE"):

1. Cross-Defendant LANGE was responsible for the installation and design of the fire sprinkler system installed in the property located at 645 St. Croix, Henderson, Nevada.

2. Upon information and belief, the acts and/or omission of LANGE caused the damages alleged in Plaintiff's complaint which is incorporated herein by reference.

FIRST CAUSE OF ACTION

(Indemnity)

3. Cross-Claimant repeats and re-alleges every paragraph of this Cross-Complaint and incorporates the same by reference as though fully set forth herein.

4. Cross-Claimant alleges that in the event it is found liable to any other party to this action for damages or if payment is made by Cross-Claimant to any other party as a result of the alleged incident or occurrences described and/or arising in Plaintiff's Complaint, then Cross-Claimant's liability for payment is based upon the acts or omissions of LANGE.

5. Cross-Claimant expressly denies the allegations of the Third-Party Complaint, or other wrongdoing on its part. Should Cross-Claimant nevertheless be found liable for any alleged wrongdoings with respect to claims asserted against it, the acts and/or omissions of Cross-Claimant were passive and derivative, while those of LANGE were active, primary, and superseding. Thus, as a direct, proximate, and foreseeable result of the wrongdoing of LANGE, Cross-Claimant is entitled to indemnity from any and all liability adjudged against it.

6. Cross-Claimant has been required to retain the services of Murchison & Cumming, LLP to prosecute this action, and is entitled to an award of attorney's fees and costs.

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SECOND CAUSE OF ACTION

(Contribution)

7. Cross-claimant repeats and re-alleges every paragraph of this Cross-Claim and incorporates the same by reference as though fully set forth herein.

8. Cross-claimant is informed and believes that it is in no way legally responsible for the injuries or damages alleged in this action or any other related action. Cross-claimant alleges that if it is held liable for any part of the claims asserted against it, LANGE, to the extent of its fault as determined by the Court, is obligated to reimburse Cross-Claimant and will be legally responsible to Cross-Claimant for any liabilities so assessed by way of contribution. Accordingly, Cross-Claimant asserts herein its rights to such contribution; namely, that LANGE is obligated to provide equitable contribution to any judgment or settlement herein in direct proportion to the amount of negligence of LANGE.

9. Counterclaimant has been required to retain the services of Murchison & Cumming, LLP to prosecute this action, and is entitled to an award of attorney's fees and costs.

WHEREFORE, Third-Party Defendant GIBERTI prays for judgment as follows:

1. Third-Party Plaintiffs take nothing against Third-Party Defendant (GIBERTI) by way of its Third-Party Complaint;

2. Third Party Plaintiff's' Third-Party Complaint be dismissed with prejudice and that it take nothing thereby;

3. If a judgment is rendered against GIBERTI, then GIBERTI is entitled to indemnity from VIKING and/or LANGE.

4. If a judgment is rendered against GIBERTI, then GIBERTI is entitled to contribution from VIKING and/or LANGE;

5. For an apportionment of liability;

6. For damages in excess of $10,000;

7. For attorney's fees and costs of suit incurred herein; and

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8. For such other and further relief as the Court deems just and proper in the premises.

DATED: June 12, 2017

MURCHISON & CUMMING, LLP

By _____

Michael J. Nuñez, Esq.
Nevada Bar No. 10703
Tyler N. Ure, Esq.
Nevada Bar No. 11730
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Las Vegas, Nevada 89145
Attorneys for Third Party Defendant
GIBERTI CONSTRUCTION

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PROOF OF SERVICE

STATE OF NEVADA, COUNTY OF CLARK

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Clark, State of Nevada. My business address is 6900 Westcliff Drive, Suite 605, Las Vegas, Nevada 89145.

On June 12, 2017, I served true copies of the following document(s) described as **THIRD PARTY DEFENDANT GIBERTI CONSTRUCTION LLC'S ANSWER TO DEFENDANT/THIRD PARTY PLAINTIFFS' THIRD PARTY COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY ELECTRONIC SERVICE: by transmitting via the Court's electronic filing and electronic service the document(s) listed above to the Counsel set forth on the service list on this date pursuant to Administrative order 14-2 NEFCR 9 (a), and EDCR Rule 7.26.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on June 12, 2017, at Las Vegas, Nevada.

Katherine D. Wilson

SERVICE LIST
GIBERTI CONSTRUCTION adv. Viking Corporation

Athanasia E. Dalacas, Esq. Resnick & Louis, P.C. 5940 S Rainbow Blvd. Las Vegas, NV 89118 Telephone: 702-997-8329	Attorney for Lange Plumbing, LLC
Janet C. Pancoast, Esq. Cisneros and Marias 1160 N. Town Center Drive, Ste. 130 Las Vegas, NV 89144 Telephone: (702) 233-9660 Facsimile: (702) 233-9665	Attorney for The Viking Corporation & Supply Network, Inc. dba Viking Supplynet
Daniel S. Simon, Esq. Ashley M. Ferrel, Esq. Simon Law 810 South Casino Center Blvd. Las Vegas, Nevada 89101 Telephone: (702) 364-1650 Facsimile: (702) 364-1655	Attorney for Plaintiffs Edgeworth Family Trust and American Grating, LLC

EXHIBIT 5

STP
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Attorneys for Defendant/Cross-Defendant
Cross-Claimant/Third Party Plaintiffs
The Viking Corporation & Supply Network, Inc.
d/b/a Viking Supplynet

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. d/b/a VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	**CASE NO.: A-16-738444-C** **DEPT. NO.: X** **STIPULATION FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS & OF ENTIRE ACTION**

LANGE PLUMBING, LLC,
Cross-Claimant,

vs.

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

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

vs.

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

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

v.

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

GIBERTI CONSTRUCTION, LLC, a Nevada Limited Liability Company,

Counter-Claimant

v.

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

Counter-Defendant.

GIBERTI CONSTRUCTION, LLC, a Nevada Limited Liability Company,

Cross-Claimant

v.

LANGE PLUMBING, LLC, and DOES I through V and ROE CORPORATIONS VI through X, inclusive.

Cross-Defendant.

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

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

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

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

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

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

Dated this ____ day of December, 2017.

SIMON LAW

Daniel S. Simon, Esq.
810 South Casino Center Blvd.
Las Vegas, NV 89101
Attorney for Plaintiff

Dated this ____ day of December, 2017.

CISNEROS & MARIAS

Janet C. Pancoast, Esq.
1160 Town Center Drive, Suite 130
Las Vegas, Nevada 89144

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

Dated this 20th day of ~~December~~ February, 2017.

PARKER NELSON & ASSOCIATES

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

Dated this 15th day of December, 2017.

MURCHISON & CUMMING, LLP

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

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ORDER

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

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

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

Dated this 7th day of Feb, 2018

DISTRICT COURT JUDGE

Submitted by:
CISNEROS & MARIAS

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

EXHIBIT 6

ANAC
JANET C. PANCOAST, ESQ.
Nevada Bar No. 5090
CISNEROS & MARIAS
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Las Vegas, NV 89144
Tel: (702) 233-9660
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janet.pancoast@zurichna.com

Attorney for Defendants/Third Party Plaintiffs
The Viking Corporation & Supply Network, Inc.
d/b/a Viking Supplynet

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. d/b/a VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive,
Defendants.

LANGE PLUMBING, LLC,
Cross-Claimant,

vs.

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

CASE NO.: A-16-738444-C

DEPT. NO.: X

DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC'S ANSWER TO LANGE PLUMBING, LLC'S AMENDED CROSS-CLAIM & AMENDED COUNTER-CLAIM

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

vs.

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

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

v.

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

DEFENDANTS/CROSS-CLAIMANTS/CROSS-DEFENDANTS/THIRD PARTY PLAINTIFFS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET (hereinafter the "Viking Defendants'), by and through its counsel JANET C PANCOAST, ESQ. of the law firm of CISNEROS & MARIAS, and hereby answers LANGE PLUMBING, LLC's (hereinafter "Lange") Cross-Claim:

1. Answering Paragraphs 1, 2, 3, 4, 6 and 8 the Cross-Claim, these answering Cross-Defendants admit the claims as alleged therein.

2. Answering Paragraphs 5, 7 and 9, of the Cross-Claim, these answering Cross-Defendants deny the allegations contained therein.

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FIRST CAUSE OF ACTION
(Indemnity)

3. Answering Paragraph 10 of the Cross-Claim, these answering Cross-Defendants repeat and reallege their answers to the preceding paragraphs as though fully set forth herein.

4. Answering Paragraphs 11, 12 and 13 of the Cross-Claim, these answering Cross-Defendants deny the allegations contained therein.

SECOND CAUSE OF ACTION
(Contribution)

5. Answering Paragraph 14 of the Cross-Claim, these answering Cross-Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

6. Answering Paragraphs 15 and 16 of the Cross-Claim, these answering Cross-Defendants deny the allegations contained therein.

THIRD CAUSE OF ACTION
(Apportionment)

7. Answering Paragraph 17 of the Cross-Claim, these answering Cross-Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

8. Answering Paragraphs 18 and 19 of the Cross-Claim, these answering Cross-Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

1. The Viking Defendants allege that the Amended Cross-Claim and each and every claim for relief stated therein fails to state fact sufficient to constitute a claim for relief, or any claim for relief, as against The Viking Defendants.
2. The Viking Defendants are informed and believe and thereon allege that at the time and place of the incident or incidents alleged in the Amended Cross-Claim, Lange knew of and/or should have known of the risk of leaving heat sensitive fire sprinklers in a non-

climate controlled residence for a prolonged period of time, and freely and voluntarily assumed and exposed themselves to all risk of harm and the consequential injuries and damages, if any, resulting therefrom.

3. The Viking Defendants are informed and believe, and thereon allege, that the injuries and damages of which Lange complains were proximately caused by, or contributed to by, the acts of others, Plaintiffs, Defendants, Cross-Defendants, persons, and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Lange complains, thus barring Lange from any recovery against The Viking Defendants.

4. The Viking Defendants are informed and believe and thereon allege, that whatever damages were sustained by the Lange as a result of the allegations of Lange's Amended Cross-Claim were proximately caused in whole or in part or were contributed by reason of Lange's own negligence, thus barring or diminishing Lange's recovery herein according to the principles of comparative negligence.

5. The Viking Defendants are informed and believe and thereon allege that as to each alleged Claim for Relief, Lange has failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Lange's recovery herein.

6. The Viking Defendants are informed and believe and thereon allege that Lange's alleged damages, if any, were and are, wholly or partially, contributed or proximately caused by Lange's carelessness, recklessness, negligence or fault, thus barring or diminishing Lange's recovery herein and, therefore, The Viking Defendants are entitled to contribution apportioned to the percentage of negligence attributable to Plaintiff.

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7. The Viking Defendants are informed and believe and thereon allege that the damages and injuries, if any, incurred by Lange, are not attributable to any act, conduct or omission on the part of The Viking Defendants.

8. At all times relevant herein, The Viking Defendants acted diligently and with due care in the performance of any duty owed to Lange, if any.

9. The Viking Defendants are informed and believe and thereon allege, that the acts of the Defendants as alleged herein preclude a finding of joint liability pursuant to NRCP 41.141, *et. seq.*

10. The Viking Defendants are informed and believe and thereon allege that the Lange has failed to plead with sufficient specificity any violation of codes, ordinances, regulations, statutes or any other laws.

11. The Viking Defendants were without knowledge of the acts giving rise to and could not have averted the damages alleged by Lange.

12. The Viking Defendants are informed and believe and thereon allege, that certain of said parties have or will enter into settlement agreements with Plaintiffs so that in the event that The Viking Defendants are held liable to Plaintiffs herein, then The Viking Defendants are entitled to an offset, in an amount equal to any settlements previously paid to Plaintiffs by any other party, against any judgment which may be entered herein.

13. At the times and places under the circumstances alleged in the Amended Cross-Claim, Lange failed to exercise ordinary care, caution or prudence, thereby proximately causing or contributing to the cause of their own damages, if any, through their own negligence.

14. The Viking Defendants are informed and believe and thereon allege, that if Lange herein suffered or sustained any loss, injury, damage or detriment the same is directly and proximately caused and contributed to, in whole or in part, by conduct, acts, omissions,

activities, carelessness, recklessness, willful, negligence, and/or intentional misconduct of Lange thereby completely or partially barring Lange's recovery herein.

15. The Viking Defendants are informed and believe and thereon allege that if there was any defect in products utilized at the subject property, that such defect did not exist at the time said product left the possession of The Viking Defendants, and was caused by the misuse, abuse, changes, modifications and alterations of others including Lange and the Plaintiffs herein.

16. The Viking Defendants alleged that all products designed, manufactured or assembled by them conformed with the state of the art at the time such product was produced and sold.

17. At the time The Viking Defendants' product left the hands of its manufacturer, if in fact this Defendant's product was involved within this litigation as alleged in Lange's Amended Cross-Claim, said product was fit and proper for the use for which it was designed and intended.

18. The Viking Defendants alleged that the failure of the sprinkler, if any, was caused by an alteration or modification of the product that was not reasonably foreseeable, made by a person other than The Viking Defendants and subsequent to the time the product first left the possession of The Viking Defendants.

19. The Viking Defendants allege that the failure of the sprinkler, if any, was caused by negligent, improper, or wrongful installation or use of the product and not by any defect in the product design, manufacture, or assembly or by any negligence on the party of The Viking Defendants.

20. The Viking Defendants allege that Plaintiffs, co-defendant Lange Plumbing, Third Party Defendant Giberti Construction, or presently unknown third parties altered, modified or damaged the Viking products at issue at the time such product left the Viking Defendants'

possession, and that such alteration, modification or damage was a cause of the damages alleged herein.

21. The Viking Defendants allege that there is a lack of direct or proximate causation to Lange's damages.

22. The Viking Defendants are informed and believe and thereon allege, that Lange is barred and precluded from any recovery in this action because The Viking Defendants at all times complied with the applicable standard of care required of the manufacturer of the type of The Viking Defendants at the time and location where the professional services were rendered.

23. The Viking Defendants are informed and believe and thereon alleges that if there was any defect in products utilized at the subject property, that such defect did not exist at the time said product left the possession of The Viking Defendants, and was caused by the misuse, abuse, changes, modifications and alterations of others including Lange and the Plaintiffs herein.

24. The Viking Defendants are informed and believes and thereon alleges that the Lange's damages, if any, proximately resulted from the use of products in an unintended and abnormal manner and not from any defect or mechanical failure of, failure to service properly, or failure to install properly, said product or any of its components.

25. At all times, The Viking Defendants acted with due care and diligence and Defendant's conduct was reasonable in regards to its work which was within industry standards, and this answering Defendant breached no duty to the Plaintiffs and/or Defendant Lange, herein.

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26. The acts and omissions as claimed by Lange are is not an activity that would only occur in the instance of a negligent act. The agency or instrumentality which resulted in the alleged harm was not in the exclusive control of the Viking Defendants. Further, Lange contributed to its own injuries and losses relating to the alleged negligent event.

27. The claims of Lange, as alleged in the Amended Cross-Claim, and the loss and damage, if any in fact exist, are the direct and proximate result of the acts, deeds, omission or failure to act, or the conduct of third parties whose names are presently unknown, over whom the Viking Defendants had no control, nor the right, duty or obligation to control.

28. The Viking Defendants are informed and believe and thereon allege that they are not legally responsible in any fashion with respect to damages and injuries claimed by Plaintiffs in the underlying Complaints on file herein, or Lange in its cross-claims, however, if the Viking Defendants are subject to any liability to Plaintiffs or Lange or any other party herein, it will be due, in whole or in part, to acts, omissions, activities, carelessness, recklessness and negligence of others; wherefore, any recovery obtained by the Plaintiffs or Lange against the Viking Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; the liability of Plaintiff and/or Lange, if any, is limited in direct proportion to the percentage of fault actually attributed to Lange except as reduced by implied or express contractual indemnity.

29. The Viking Defendants are informed and believe and thereon allege that they are not legally responsible in any fashion for damages and injuries claimed by the Lange in the Amended Cross-Claim; however, if The Viking Defendants are subjected to any liability to the Plaintiffs, it will be due, in whole or in part, to the conduct, acts, omissions, activities,

carelessness, recklessness, and negligence of others; wherefore, any recovery obtained by Lange against The Viking Defendants should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, person and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; the liability of The Viking Defendants, if any, are limited in direct proportion to the percentage of fault actually attributed to The Viking Defendants. At the time and place under the circumstances alleged, Lange had full and complete knowledge and information in regard to the conditions and circumstances then and there existing, and through Lange's own knowledge, conduct, acts and omissions, assumed the risks attendant to any condition there or then present.

30. The incident alleged in the Amended Cross-Claim, and the resulting damages to Lange, if any, were caused by the acts or omissions of a third party over whom Defendants had no control.

31. Any and all of Lange's alleged damages were proximately caused or contributed to by the acts of other persons and/or other entities and said acts were an intervening and/or superseding cause of the injuries and damages, if any, thus barring any recovery against the Viking Defendants.

32. The Viking Defendants are without knowledge of the acts giving rise to and could not have averted the damages alleged by Lange.

33. The Viking Defendants are informed and believe, and thereon allege, that certain of said parties have or will enter into settlement agreements with Plaintiffs and/or Co-Defendants or Third Party Defendant, so that in the event that the Viking Defendants are held liable to Plaintiff, then the Viking Defendants are entitled to an offset, in an amount equal to any

settlements previously paid to Plaintiffs or Lange by any other party, against any judgment which may be entered herein.

34. It has been necessary for The Viking Defendants to retain the services of an attorney to defend this action and therefore Defendant is entitled to a reasonable sum for attorneys' fees together with the costs expended in this action.

35. Lange's claims for attorney's fees as alleged in its Amended Cross-Claim are not recoverable herein and have been improperly pled in Lange's Amended Cross-Claim. The Viking Defendants specifically reserves the right to have Lange's improperly pled claim for attorney's fees dismissed prior to trial.

36. Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as insufficient facts were not available after reasonable inquiry upon the filing of Lange's Amended Cross-Claim, and therefore, the Defendant reserves the right to amend its Answer to the Amended Cross-Claim to allege additional affirmative defenses, if subsequent investigation so warrants.

37. The Viking Defendants incorporates by reference each and every affirmative defense set forth in N.R.C.P. 8(c) as if fully set forth herein.

38. The Viking Defendants deny that by reason of any act or omission, fault, or conduct or liability on the part of The Viking Defendants, whether negligent, careless, unlawful or whether as alleged, or otherwise, Lange was injured or damaged in any of the amounts alleged, or in any other manner or amount whatsoever; The Viking Defendants further denies that The Viking Defendants were negligent, careless, reckless, wanton, acted unlawfully or is liable, whether in the manner alleged or otherwise.

39. Any allegation not otherwise responded to is generally, and specifically denied.

DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET allege and pray for judgment against Lange as follows:

1. That Lange take nothing by virtue of the Amended Cross-Claim;

2. That Lange's Amended Cross-Claim be dismissed with prejudice;

3. For the costs of suit incurred herein;

4. For attorneys' fees and costs; and

5. For such other and further relief as the Court deems just, equitable and proper.

DEFENDANTS/THIRD PARTY PLAINTIFFS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNE'S AMENDED CROSS-CLAIM AGAINST DEFENDANT/CROSS-CLAIMANT LANGE PLUMBING, LLC

DEFENDANTS/THIRD PARTY PLAINTIFFS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNE'S (hereinafter "Viking Defendants"), by and through its attorney of record, Janet C. Pancoast, Esq. of CISNEROS & MARIAS, file this Amended Cross-Claim against DEFENDANT/CROSS-CLAIMANT LANGE PLUMBING, LLC (hereinafter "Lange") and complains and alleges the following:

GENERAL ALLEGATIONS

1. Viking Corporation is a Michigan corporation, which is, and at all times relevant hereto was, duly licensed to conduct business in Clark County, Nevada.

2. Supply Network, Inc. is a Michigan corporation, which is, and at all times relevant hereto was, duly licensed to conduct business in Clark County, Nevada.

3. At all times relevant herein, the facts and circumstances underlying Plaintiffs' Second Amended Complaint on file herein occurred in Clark County, Nevada.

4. Upon information and belief, Plaintiff Edgeworth Family Trust is an entity domiciled in Clark County Nevada, with its Trustee being Brian Edgeworth.

5. The Edgeworth Family Trust, owned land located at 645 Saint Croix Street, Henderson, in Clark County, Nevada and were building a residence at that location (hereinafter "Edgeworth Residence").

6. At all times relevant herein, Plaintiff American Grating LLC (herein after American") is a domestic limited liability company, duly authorized and doing business in Clark County, State of Nevada, with its managers being Brian Edgeworth & Angela Edgeworth.

7. At all times relevant herein, Third Party Defendant Giberti Construction, LLC (hereinafter "Giberti") is a domestic limited liability company, duly authorized and doing business in Clark County, State of Nevada.

8. Defendant Lange Plumbing, LLC (hereinafter "Lange") is a domestic limited liability company, duly authorized and doing business in Clark County, State of Nevada.

9. That the true names and capacities, whether individual, corporate, associate, or otherwise, of the Third Party Defendants DOES I through V and ROE CORPORATIONS VI through X, inclusive, are presently unknown to the Viking Defendants who, therefore, sue said Third Party Defendants by such fictitious names. The Viking Defendants are informed and believe and thereupon allege that each of the Third Party Defendant herein designated as a DOE and/or ROE CORPORATION is negligently, intentionally and/or strictly liable and caused damages proximately thereby to The Viking Defendants as herein alleged; that these individuals or entities may have been responsible for the improper installation or maintenance, modification, improper storage, failure to provide climate control of the subject sprinkler head and system and/or general plumbing contained within the subject property. When the true names and/or capacities of such Third Party Defendants become known, the Viking Defendants will ask leave of this Court to

amend this Third Party Complaint to insert the true names, identities and capacities, together with the appropriate charging allegations.

10. Plaintiff American Grating entered into an agreement with Third Party Defendant Giberti who was to perform the services of a general contractor and oversee the construction of the Edgeworth residence.

11. Plaintiff American Grating entered into an agreement with Lange which was to perform the plumbing and fire sprinkler design and installation services at the Edgeworth residence.

12. Upon information and belief, in March & April of 2015, Defendant Lange Plumbing LLC purchased various Viking sprinklers from Viking Supply Net and installed the sprinklers in residence located in Henderson, Nevada, which was allegedly owned by Edgeworth Family Trust and being built by American and Giberti.

13. Giberti was the general contractor on the construction of the Edgeworth Residence and was responsible for the progress of the construction, obtaining building permits, sequencing of trades, etc.

14. American oversaw the work of Lange.

15. American approved the work of Lange for payment.

16. Lange provided information and instructions to American for the sprinkler system.

17. The Viking Tech Data Sheet which came with the Viking Sprinklers bought by Lange and installed by Lange, specified that the maximum ambient ceiling temperature of the Sprinklers was 100 Fahrenheit, because the Sprinklers were heat sensitive.

18. Upon information and belief, Lange failed to take appropriate action to assure tha the fire sprinklers installed would not be exposed to ambient temperatures in excess of 100 Fahrenheit.

19. On or about April 10, 2016, the sprinkler is described as "failing", causing the water to discharge.

20. Upon information and belief, the failure of said fire sprinkler was a result of the failure to properly install said fire sprinkler and assure that it was maintained at the proper temperatures.

21. At all times herein relevant, each agents and employees of Lange were acting at its agents, servants, and/or employees and were acting in the course and scope of said agency, service, and/or employment with Lange, such as to impose further liability on Lange under the doctrine of *respondeat superior* and/or vicarious liability.

FIRST CLAIM FOR RELIEF
(Contribution & Apportionment)

22. The Viking Defendants refer to and incorporates hereby by reference Paragraphs 1 through 21 of this Cross-Claim, as though fully set forth herein.

23. Based upon the acts and/or omissions of the Lange, if a judgment is rendered on behalf of Plaintiffs against the Viking Defendants, then the Viking Defendants are entitled to contribution from Lange in an amount proportionate to the amount of negligence and/or fault attributable to Lange.

24. The Viking Defendants are entitled to an apportionment of liability with Lange.

25. The violation of the acts and omissions of Lange as described above, were and are the actual and proximate cause of damages to the Viking Defendants in excess of $10,000.

26. It has been necessary for the Viking Defendants to retain the services of counsel to defend the Plaintiffs' action and to bring this action. The Viking Defendants are entitled to recover attorneys' fees and costs incurred herein pursuant to statute, contractual provisions of the Agreement and Nevada law.

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SECOND CLAIM FOR RELIEF
(Breach of Implied/Equitable Indemnity)

27. The Viking Defendants refer to and incorporate herein by reference Paragraphs 1 through 26 of this Cross-Claim as though fully set forth herein.

28. The Viking Defendants are informed and believe and thereon allege that Viking Defendants entered into written and oral implied agreements with the Lange's.

29. The Viking Defendants are informed and believe and thereon allege that Viking Defendant are the intended third party beneficiary of written and oral implied agreements entered into between Lange's for injuries and damages sustained by Plaintiff, if any, for any sums paid by way of settlement, or in the alternative, judgment rendered against Viking Defendants in the underlying action based upon Plaintiffs Complaints on file herein.

30. The Viking Defendants are informed and believe and thereon allege that the defects and damages alleged by Plaintiffs in their Complaints on file herein involve conditions then Plaintiffs' damages were caused by Lange's acts or omissions arising out of and in connection with, the performance of Lange's design and installation of the fire sprinkling system at the Edge worth Residence.

31. By reason of the foregoing, if Plaintiffs recover against The Viking Defendants, then The Viking Defendants are entitled to implied contractual indemnity from Lange for injuries and damages sustained by Plaintiffs if any, for any sums paid by way of settlement, or in the alternative, judgment rendered against Viking Defendants in the underlying action based upon Plaintiff's Complaint.

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32. In equity and good conscience, if Plaintiffs recover against Viking Defendants herein, then Viking Defendants are entitled to equitable indemnity, apportionment of liability and contribution among and from Lange according to Lange's respective faults for the injuries and damages allegedly sustained by Plaintiffs if any, by way of sums paid by settlement, or in the alternative, judgment rendered against Viking Defendants based upon Plaintiffs Complaints on file herein.

33. The acts and omissions of Lange's as described above, were and are the actual and proximate cause of damages to Viking Defendants in excess of $15,000.

34. It has been necessary for Viking Defendants to retain the services of counsel to defend the Plaintiff's action and to bring this action. Viking Defendants are entitled to recover attorneys' fees and costs incurred herein pursuant to statute, contractual provisions of the Agreement and Nevada law.

THIRD CLAIM FOR RELIEF
(Declaratory Relief)

35. The Viking Defendants repeat and realleges the allegations of Paragraphs 1 through 34 of this Cross-Claim as though fully set forth herein.

36. A dispute has arisen and actual controversy now exists between the Viking Defendants and Lange as to their rights and liabilities with respect to any ultimate responsibility in the underlying action, and with respect to the rights to receive, or duty to give, defense and/or indemnification in proportion to their comparative fault, if any.

37. The Viking Defendants contend that if they suffer judgment in the underlying action, or if it pays monies by way of reasonable compromise of said claims, the Viking Defendants is entitled to contribution by Lange and to judgment over and against them, to the extent that the Viking Defendants responsibility in the underlying action exceeds their percentage of negligence,

fault or liability, if any, the Viking Defendants is informed and believes that Lange contend to the contrary.

38. The Viking Defendants maintain that if they suffer judgment in the underlying action, or if they pays monies by way of reasonable compromise of said claims, the Viking Defendants are entitled to contribution by Lange and to judgment over and against them, to the extent that the Viking Defendants responsibility in the underlying action exceeds their percentage of negligence, fault or liability, if any.

39. The Viking Defendants are informed and believe that Lange contends to the contrary.

40. Therefore, an actual controversy exists relative to the legal duties and rights of the respective parties pursuant to their written agreement, which controversy the Viking Defendants request this Court resolve.

41. All of the rights and obligations of the parties hereto arose out of what is actually one transaction or one series of transactions, happenings or events, all of which can be settled and determined in a judgment in this one action.

42. The Viking Defendants alleges that an actual controversy exists between the parties to the Lange under the circumstances alleged.

43. A declaration of rights, responsibilities and obligations of the Viking Defendants and Lange, and each of them, is essential to determine their respective obligations in connection with the principal action and the Cross-Claim.

44. The Viking Defendants have no true and speedy remedy at law of any kind.

45. The acts and omissions of Lange as described above, were and are the actual and proximate cause of damages to the Viking Defendants in excess of $15,000.

46. It has been necessary for the Viking Defendants to retain the services of counsel to defend the Plaintiffs' action and to bring this action and Viking Defendants are entitled to recover attorneys' fees and costs incurred herein pursuant to statute, contractual provisions of the Agreement and Nevada law.

PRAYER FOR RELIEF

WHEREFORE DEFENDANTS/CROSS-DEFENDANTS/CROSS-CLAIMANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET pray for judgment against DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT LANGE PLUBMING, LLC, as follows:

1. For general and special damages in excess of $15,000, according to proof;
2. For indemnity for all damages and/or economic losses that Plaintiffs recover against the Viking Defendants by way of judgment, order, settlement, compromise or trial;
3. For reasonable attorneys' fees, costs, expert costs and expenses, pursuant to statutory law, common law, and the Agreement;
4. For prejudgment interest;
5. For consequential damages in excess of $10,000, according to proof;
6. For incidental damages in excess of $10,000, according to proof;
7. For an apportionment of liability between Lange & The Viking Defendants and each of them;
8. For a declaration of rights and obligations as between the Viking Defendants and Lange;
9. For contribution pursuant to NRS 17.225; and

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10. For such other and further relief and this court may deem just and proper.

DATED this 24TH day of May, 2017.

CISNEROS & MARIAS

JANET C. PANCOAST, ESQ.
1160 Town Center Drive, Suite 130
Las Vegas, Nevada 89144
Attorney for Defendants/Third Party Plaintiffs
The Viking Corporation & Supply Network, Inc.
d/b/a Viking Supplynet

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24TH day of May, 2017, I served the following document:

DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC'S ANSWER TO LANGE PLUMBING, LLC'S AMENDED CROSS-CLAIM & AMENDED COUNTER-CLAIM

☒ **VIA ELECTRONIC FILING (N.E.F.R. 9(b))**

☒ **VIA ELECTRONIC SERVICE (N.E.F.R. 9)**

☐ **BY MAIL:** by placing the documents(s) listed above in a sealed envelope, postage prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FAX:** by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file copy of this document(s).

☐ **BY HAND DELIVERY:** by delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Daniel S. Simon, Esq.
Simon Law
810 South Casino Center Blvd.
Las Vegas, NV 89101
Fax: 702-364-1655
Attorney for Plaintiff

Gary W. Call
RESNICK & LOUIS, PC
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorney for Lange Plumbing, LLC

Employee of CISNEROS & MARIAS

EXHIBIT 7

ACOM
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XIV Consolidated with CASE NO.: A-16-738444-C DEPT. NO.: X **AMENDED COMPLAINT**

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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$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.

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

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

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

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

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

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

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

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

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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.

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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.

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

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

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

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

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

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

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

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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

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

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

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

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

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

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

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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)

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EXHIBIT 8

NEO
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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.	Case No.: A-16-738444-C Dept. No.: 10 **NOTICE OF ENTRY OF DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP** Date of Hearing: N/A Time of Hearing: N/A
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-18-767242-C Dept. No.: 26 Date of Hearing: N/A Time of Hearing: N/A

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

DATED this 9th day of January 2019.

/s/ *James R. Christensen*

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CERTIFICATE OF SERVICE

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

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN, ESQ

ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

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

Hon. Tierra Jones
DISTRICT COURT JUDGE

DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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

FINDINGS OF FACT

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

2. The case involved a complex products liability issue.

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

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

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

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

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

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I 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.

This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. 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 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

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

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

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

[1] $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.

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

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

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

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

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

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

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

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

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in 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

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

CONCLUSION OF LAW

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

CONCLUSION

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

ORDER

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

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

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

Electronically served to:

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

Tess Driver
Judicial Executive Assistant
Department 10

EXHIBIT 9

JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
VANNAH & VANNAH
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA
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EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X **NOTICE OF ENTRY OF ORDERS**
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT. NO.: XXIX

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

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

1. November 19, 2018 Decision and Order Regarding Motion to Adjudicate Lien attached hereto (Exhibit 1)

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

DATED this 27 day of December, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:
None

DATED this 27 day of December, 2018.

An employee of the Law Office of
Vannah & Vannah

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

Exhibit 1

Exhibit 1

ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan Corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5; and, ROE entities 6 through 10; Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XXVI **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

FINDINGS OF FACT

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

2. The case involved a complex products liability issue.

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

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

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

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

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

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I 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. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. 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

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

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

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

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

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

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

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

[1] $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.

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

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

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

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

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in 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.

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

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

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

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

> "We never really had a structured discussion about how this might be done. I am more than happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc. Obviously that could not have been done earlier snce who would have thought this case would meet the hurdle of punitives at the start. I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell. I doubt we will get Kinsale to settle for enough to really finance this since I 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).

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

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

Constructive Discharge

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

- 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

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

> PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this 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.

Id.

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

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

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

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

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

//

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

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

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

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

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

4. A lien pursuant to:

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

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

Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

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

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

Amount of Fees Owed Under Implied Contract

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

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

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

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

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

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

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[2]There are no billing amounts from December 2 to December 4, 2016.

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

The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the services of Daniel Simon Esq. is $72,077.50. The amount of attorney's fees for this period for Ashley Ferrel Esq. is $38,060.00. The amount of costs outstanding for this period is $31,943.70. This amount totals $142,081.20 and is based upon the invoice from July 28, 2017. This amount has been paid by the Edgeworths on August 16, 2017.[3]

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

From September 19, 2017 to November 29, 2017, the Court must determine the amount of attorney fees owed to the Law Office of Daniel Simon.[4] For the services of Daniel Simon Esq., the total amount of hours billed are 340.05. At a rate of $550 per hour, the total attorney's fees owed to the Law Office for the work of Daniel Simon Esq. is $187,027.50. For the services of Ashley Ferrel Esq., the total amount of hours billed are 337.15. At a rate of $275 per hour, the total attorney's fees owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November 29, 2017 is $92,716.25.[5] For the services of Benjamin Miller Esq., the total amount of hours billed are 19.05. At a rate of $275 per hour, the total attorney's fees owed to the Law Office for the work of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is $5,238.75.[6]

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

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[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

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

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

Costs Owed

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

Quantum Meruit

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

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

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

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

1. Quality of the Advocate

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

2. The Character of the Work to be Done

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

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

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

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

> (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 considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

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

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
> (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state, in boldface type that is at least as large as the largest type used in the contingent fee agreement:
> (1) The method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;
> (2) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated;

(3) Whether the client is liable for expenses regardless of outcome;
(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and
(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.
Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

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

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of $550 per hour between Mr. Simon and the Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The 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

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

ORDER

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

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

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2

Exhibit 2

ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan Corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5; and, ROE entities 6 through 10; Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XXVI **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

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

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

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

FINDINGS OF FACT

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

2. The case involved a complex products liability issue.

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

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

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

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

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

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I 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. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. 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 hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

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

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

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

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

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

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

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

[1] $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.

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

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

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

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

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

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in 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 $692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

CONCLUSION OF LAW

Breach of Contract

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

Declaratory Relief

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

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

Conversion

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

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

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. They were finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds, this claim must be dismissed as a matter of law.

Breach of the Implied Covenant of Good Faith and Fair Dealing

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

Breach of Fiduciary Duty

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

Punitive Damages

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

CONCLUSION

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

//

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ORDER

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

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

DISTRICT COURT JUDGE

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 10

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

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

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

Date of Hearing: N/A
Time of Hearing: N/A

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-18-767242-C
Dept. No.: 26

Date of Hearing: N/A
Time of Hearing: N/A

PLEASE TAKE NOTICE, a Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs was entered on the docket on the 8th day of February, 2019. A true and correct copy of the file-stamped Decision and Order is attached hereto.

DATED this 8th day of February, 2019.

/s/ James R. Christensen

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

CERTIFICATE OF SERVICE

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

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN, ESQ

ORDR
JAMES CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Phone: (702) 272-0406
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Email: jim@christensenlaw.com
Attorney for Daniel S. Simon

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

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

This matter came on for hearing on January 15, 2019, 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 (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

1. 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 Edgeworths' property. 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 Edgeworths' property, at the time the lawsuit was filed.

2. Further, the Court finds that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien. 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. 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.

IT IS SO ORDERED.

Dated this 6 day of February, 2019.

DISTRICT COURT JUDGE SW

Submitted by:

JAMES CHRISTENSEN, ESQ.
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Approved as to form and content:

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Las Vegas, Nevada 89101
Phone: (702) 369-4161
Facsimile: (702) 369-0104
jgreene@vannahlaw.com
Attorney for Plaintiffs

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

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

No. 77678

AMENDED
DOCKETING STATEMENT
CIVIL APPEALS

by Cross-Appellants

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 10

County Clark Judge Jones

District Ct. Case No. A-16-738444-C consolidated with A-18-767242-C

2. Attorney filing this docketing statement:

Attorney James R. Christensen Telephone 702.272.0406

Firm James R. Christensen, PC

Address 601 S. 6th Street
Las Vegas, NV 89101

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

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

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

Attorney John B. Greene Telephone 702.369.4161

Firm Vannah & Vannah

Address 400 S. Seventh Street, 4th Floor
Las Vegas, NV 89101

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

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal:
  - ☐ Lack of jurisdiction
  - ☒ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☒ Other disposition (specify): Lien Adjudication

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

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

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

None

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

None

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

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

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

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

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

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

None known.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

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

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

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

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

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 10.11.18

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 10.24.18

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing 10.29.18

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. ***See*** **AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion 11.19.18

(c) Date written notice of entry of order resolving tolling motion was served 12.27.18

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed Edgeworth's Notice of Appeal filed 12.7.18; Simon's Notice of Cross-Appeal filed 12.17.18

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

Timliness of the Edgeworths' notice of appeal is governed by NRAP 4(a)(1), the Simon cross appeal by NRCP 4(a)(2).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- [x] NRAP 3A(b)(1)
- [ ] NRAP 3A(b)(2)
- [ ] NRAP 3A(b)(3)
- [x] Other (specify) NRAP3A(b)(8)
- [ ] NRS 38.205
- [ ] NRS 233B.150
- [ ] NRS 703.376

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court orders of October 11, later amended, dismissing the case and denying the Anti-SLAPP motion as moot acted as a final judgment in A767242 under NRAP 3A(b)(1).
The District Court order of October 11, later amended, adjudicating the lien was a special order under NRAP3A(b)(8), considering the consolidation with A767242 in which Simon was a named party.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

A-16-738444-C: Edgeworth Family Trust, Plaintiffs; Lange Plumbing, L.L.C., The Viking Corporation, Supply Network, Inc., dba Viking Supplynet, Defendants; Lange Plumbing, L.L.C., Cross-Claimant; Viking Corporation, Supply Network Inc. dba Viking Supplynet, Cross-Defendants.
A-18-767242-C: Edgeworth Family Trust; American Grating, LLC, Plaintiffs; Daniel S. Simon dba Simon Law, Defendants.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

A738444: All parties dismissed via Stipulation and Order on February 20, 2018.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

See attached description and disposition of all claims.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

SEE ATTACHED LIST OF DOCUMENTS

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Daniel S. Simon and the Law Office of Daniel S. Simon, a Professional Corporation
Name of appellant

James R. Christensen
Name of counsel of record

6.5.19
Date

James R. Christensen
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 5th day of June , 2019 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

☒ By E-serve to all parties

Dated this 5th day of June , 2019

Dawn Christensen
Signature

Amended docketing statement by Cross Appellants
Item 23 attachment

I. A738444

A. The second amended complaint.

The second amended complaint is the operative complaint. (Exhibit 1.) The causes of action of the second amended complaint, and disposition of each, are as follows:

1. The first cause of action is for “negligent, reckless and intentional conduct” and is brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

2. The second cause of action is for “breach of contract” and is brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the second cause of action was dismissed by stipulation and order. (Exhibit 5.)

3. The third cause of action is for “negligent hiring, training, supervision & retention” and is brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the third cause of action was dismissed by stipulation and order. (Exhibit 5.)

4. The fourth cause of action is for “res ipsa loquitor” and was brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the fourth cause of action was dismissed by stipulation and order. (Exhibit 5.)

5. The fifth cause of action is for “strict products liability” and was brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the fifth cause of action was dismissed by stipulation and order. (Exhibit 5.)

6. The sixth cause of action is for “negligence, breach of the standard of care” and was brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the sixth cause of action was dismissed by stipulation and order. (Exhibit 5.)

7. The seventh cause of action is for “corporate negligence and vicarious liability” and was brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the seventh cause of action was dismissed by stipulation and order. (Exhibit 5.)

8. The eighth cause of action is for “breach of covenant of good faith and fair dealing” and was brought against Lange Plumbing LLC; The Viking Corp., Supply Network, Inc., dba Viking Supplynet.

On February 20, 2018, the eighth cause of action was dismissed by stipulation and order. (Exhibit 5.)

B. The Lange cross claim.

Lange Plumbing LLC filed a cross claim against The Viking Corp., and, Supply Network, Inc., dba Viking Supplynet. (Exhibit 2.) The causes of action of the Lange Plumbing LLC cross claim, and disposition of each, are as follows:

1. The first cause of action is for “indemnity”.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

2. The second cause of action is for “contribution”.

On February 20, 2018, the second cause of action was dismissed by stipulation and order. (Exhibit 5.)

3. The third cause of action is for “apportionment”.

On February 20, 2018, the third cause of action was dismissed by stipulation and order. (Exhibit 5.)

C. The Viking third-party complaint.

The Viking Corp., and Supply Network, Inc., dba Viking Supplynet filed a third-party complaint against Giberti Construction LLC. (Exhibit 3.) The causes of action, and disposition of each, are as follows:

1. The first cause of action is for “contribution and apportionment”.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

2. The second cause of action is for “breach of implied/equitable indemnity”.

On February 20, 2018, the second cause of action was dismissed by stipulation and order. (Exhibit 5.)

3. The third cause of action is for “declaratory relief”.

On February 20, 2018, the third cause of action was dismissed by stipulation and order. (Exhibit 5.)

D. The Viking counter claim.

The Viking Corp., and Supply Network, Inc., dba Viking Supplynet filed an amended counter claim against Lange Plumbing LLC. (Exhibit 6.) The causes of action, and disposition of each, are as follows:

1. The first cause of action is for “indemnity”.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

2. The second cause of action is for “contribution”.

On February 20, 2018, the second cause of action was dismissed by stipulation and order. (Exhibit 5.)

3. The third cause of action is for “contribution”.

On February 20, 2018, the third cause of action was dismissed by stipulation and order. (Exhibit 5.)

E. Giberti counter claim and cross claim.

Giberti Construction LLC filed a counter claim and a cross claim. (Exhibit 4.) The causes of action of the counter claim and disposition of each are as follows:

1. The first cause of action is for “indemnity”.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

2. The second cause of action is for “contribution”.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

The causes of action of the cross complaint and disposition of each are as follows:

1. The first cause of action is for “indemnity”.

On February 20, 2018, the first cause of action was dismissed by stipulation and order. (Exhibit 5.)

2. The second cause of action is for “contribution”.
On February 20, 2018, the second cause of action was dismissed by stipulation and order. (Exhibit 5.)

F. Motion to adjudicate attorney’s lien.

A motion to adjudicate attorneys’ lien was filed by the Law Office of Daniel Simon PC. The lien was adjudicated by the Court. On November 19, 2019, notice of entry of order adjudicating the lien was filed. (Exhibit 9.)

II. A 767242

In A 767242 the Edgeworth Family Trust and American Grating LLC sued Daniel S. Simon; and the Law Office of Daniel S. Simon PC. The amended complaint is the operative complaint. (Exhibit 7.)

The causes of action and disposition of each are as follows:

1. The first cause of action is for “breach of contract”.

On November 19, 2018, the cause of action was dismissed by the court via filing of a notice of entry of order granting a motion to dismiss. (Exhibit 9.)

2. The second cause of action is for “declaratory relief”.

On November 19, 2018, the cause of action was dismissed by the court via filing of a notice of entry of order granting a motion to dismiss. (Exhibit 9.)

3. The third cause of action is for “conversion”.

On November 19, 2018, the cause of action was dismissed by the court via filing of a notice of entry of order granting a motion to dismiss. (Exhibit 9.)

4. The fourth cause of action is for “breach of the implied covenant of good faith and fair dealing”.

On November 19, 2018, the cause of action was dismissed by the court via filing of a notice of entry of order granting a motion to dismiss. (Exhibit 9.)

Amended docketing statement by Cross Appellants
Item 27 attachment

Exhibit 1: A 738444; Second amended complaint.

Exhibit 2: A 738444; Lange cross claim

Exhibit 3: A 738444; Viking third-party complaint

Exhibit 4: A 738444; Giberti counter claim and cross claim

Exhibit 5: A 738444; February 20, 2018, SAO for dismissal.

Exhibit 6: A 739444; Viking amended counter claim

Exhibit 7: A 767242; Amended complaint.

Exhibit 8: A 767242; Notice of entry of order and order denying Anti-SLAPP motion to dismiss.

Exhibit 9: A 767242 and A 738444; Notice of entry of orders and order granting motion to dismiss amended complaint and order adjudicating attorney lien.

Exhibit 10: A 767242; Notice of entry of order and order granting attorney fees.

EXHIBIT 1

ACOM
DANIEL S. SIMON, ESQ.
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lawyers@simonlawlv.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.;

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A738444
DEPT. NO.: X

SECOND AMENDED COMPLAINT

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

FIRST CAUSE OF ACTION

NEGLIGENT, RECKLESS AND INTENTIONAL CONDUCT

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

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

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

Clark, State of Nevada.

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

NEGLIGENT HIRING, TRAINING, SUPERVISION & RETENTION

(As Against ALL DEFENDANTS)

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

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

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

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

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

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

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

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

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FOURTH CAUSE OF ACTION

RES IPSA LOQUITOR

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SIXTH CAUSE OF ACTION:

NEGLIGENCE, BREACH OF THE STANDARD OF CARE

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

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

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION:

CORPORATE NEGLIGENCE AND VICARIOUS LIABILITY

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

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

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

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

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

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

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

WHEREFORE, Plaintiffs pray judgment against the Defendants as follows:

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

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

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

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

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

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

Dated this 7th day of March, 2017.

By: _____

DANIEL S. SIMON, ESQ.
Nevada Bar #004750
SIMON LAW
810 South Casino Center Blvd.
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Attorney for Plaintiffs

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CERTIFICATE OF E-SERVICE

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

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

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

An Employee of SIMON LAW

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EXHIBIT 2

ANAC
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Attorneys for Defendant/Cross-Claimant, Lange Plumbing, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC;,

Plaintiffs,

v.

LANGE PLUMBING, L.L.C.; VIKING AUTOMATIC SPRINKLER CO.; and DOES I through V, inclusive; ROE CORPORATIONS VI through X, inclusive,

Defendants.

LANGE PLUMBING, L.L.C.,

Cross-Claimant,

v.

VIKING CORPORATION, a Michigan Corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation and DOES I through V, inclusive; ROE CORPORATIONS VI through X, inclusive,

Cross-Defendants.

CASE NO.: A-16-738444-C

DEPT: X

DEFENDANT LANGE PLUMBING, LLC'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

AND

CROSS CLAIM

Defendant, LANGE PLUMBING, LLC, (hereinafter "LANGE") by and through its counsel of record, ATHANASIA E. DALACAS, ESQ., of the law offices of RESNICK & LOUIS, P.C., hereby answers Plaintiffs' Second Amended Complaint as follows:

FIRST CAUSE OF ACTION

NEGLIGENT, RECKLESS AND INTENTIONAL CONDUCT

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

1. Answering Paragraphs 1, 2, 4, 5 and 6 of Plaintiffs' Second Amended Complaint, LANGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

2. Answering Paragraph 3 of Plaintiffs' Second Amended Complaint, LANGE admits the allegations contained therein.

3. Answering Paragraphs 7, 8, 9, 10, 11, 12 and 13 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

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

4. LANGE hereby incorporates their responses to Paragraphs "1" through "3" as though fully contained herein

5. Answering Paragraphs 15, 16, 17, 18 and 19 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

THIRD CAUSE OF ACTION

NEGLIGENT HIRING, TRAINING, SUPERVISION & RETENTION

(As Against ALL DEFENDANTS)

6. LANGE hereby incorporates their responses to Paragraphs "1" through "5" as though fully contained herein

7. Answering Paragraphs 21, 22, 23, 24, 25 and 26 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

FOURTH CAUSE OF ACTION

RES IPSA LOQUITOR

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

8. LANGE hereby incorporates their responses to Paragraphs "1" through "7" as though fully contained herein

9. Answering Paragraphs 28, 29, 30 and 31 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

FIFTH CAUSE OF ACTION

STRICK PRODUCTS LIABILITY

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

10. LANGE hereby incorporates their responses to Paragraphs "1" through "9" as though fully contained herein

11. Answering Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

SIXTH CAUSE OF ACTION

NEGLIGENCE, BREACH OF THE STANDARD CARE

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

12. LANGE hereby incorporates their responses to Paragraphs "1" through "11" as though fully contained herein

13. Answering Paragraphs 47, 48, 49, 50 and 51 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

SEVENTH CAUSE OF ACTION

CORPORATE NEGLIGENCE AND VICARIOUS LIABILITY

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

14. LANGE hereby incorporates their responses to Paragraphs "1" through "13" as though fully contained herein

15. Answering Paragraphs 53, 54, 55 and 56 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

EIGHTH CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

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

16. LANGE hereby incorporates their responses to Paragraphs "1" through "15" as though fully contained herein

17. Answering Paragraphs 58, 59, 60 and 61 of Plaintiffs' Second Amended Complaint, LANGE specifically and generally deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

LANGE hereby assets the following affirmative defenses against Plaintiff:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

LANGE alleges that the Complaint and each and every Claim for Relief stated therein fails to state facts or other allegations sufficient to constitute a Claim for Relief, or any Claim for Relief, as against LANGE.

SECOND AFFIRMATIVE DEFENSE

(Negligence of Others/Breaches of Obligations by Others)

LANGE alleges that at all times mentioned herein, if Plaintiffs were damaged, it was proximately caused by the independent conduct of third parties or entities, both known and unknown, and each of them, were negligent, careless and reckless and unlawfully conducted themselves so as to substantially contribute to Plaintiffs' purported damages, and said negligence, if any, either bars in whole or in part damages sought herein against LANGE, and any potential recovery against LANGE must therefore be reduced accordingly.

THIRD AFFIRMATIVE DEFENSE

(Reduction to Percentage of Fault)

LANGE alleges that if it should be found that LANGE is in any manner legally responsible for the injury or damages, if any, sought by Plaintiffs, which supposition is not admitted but merely stated for the purpose of pleading this action, then any such injuries or damages were proximately caused or contributed to by Plaintiffs, and/or any other persons or entities not parties to this action, and it is necessary that the proportionate degree of negligence, fault or unreasonable conduct of each of said persons or entities, whether parties to this action or not, be determined and pro-rationed and that any judgment which might be rendered against LANGE be reduced to reflect its percentage of fault, and that any award be reduced to reflect the total of the degree of negligence, fault and/or unreasonable conduct found to exist as to said other persons or entities.

FOURTH AFFIRMATIVE DEFENSE

(Comparative Negligence)

LANGE alleges that at the times and places mentioned in the Second Amended Complaint, Plaintiff and/or Plaintiffs were careless, reckless and negligent in or about the matters and things alleged in the Second Amended Complaint which said carelessness, recklessness and negligence concurred in point of time with the negligence of LANGE, if any, there may have been, and proximately caused and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.

FIFTH AFFIRMATIVE DEFENSE

(Intervening or Superseding Cause)

LANGE alleges that the injuries and damages complained of in the Second Amended Complaint, if any, were proximately caused by an intervening or superseding action and/or inaction of others over which LANGE had no control, which intervening and superseding action and/or inaction bars and/or diminishes Plaintiffs' recovery, if any, against LANGE.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

LANGE alleges that Plaintiffs and/or Plaintiffs, through their own acts and omissions, waived the right to recover damages from LANGE.

SEVENTH AFFIRMATIVE DEFENSE

(No Proximal Causation)

LANGE alleges that Plaintiffs have not sustained any damages or injuries which have been proximately caused by any purported act, omission, or breach of any duty on the part of LANGE.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

LANGE alleges that Plaintiffs, by the exercise of reasonable effort and/or care, could have mitigated that amount of damages alleged to have been suffered, but that Plaintiffs, neglected and refused, and continue to fail and refuse, to exercise a reasonable effort to mitigate the alleged damages.

NINTH AFFIRMATIVE DEFENSE

(Due Care and Circumspection)

LANGE alleges that at all times relevant to the allegations contained in the Second Amended Complaint, LANGE acted with the due care and circumspection in the performance of any and all duties imposed on it.

TENTH AFFIRMATIVE DEFENSE

(No Control or Possession)

LANGE alleges that it had no control over, or possession of, the area where Plaintiffs allege its damages took place.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

LANGE alleges that Plaintiffs, by virtue of their own acts and omissions, are estopped from recovering damages from LANGE.

TWELFTH AFFIRMATIVE DEFENSE

(Misuse)

LANGE alleges that all damages sustained by Plaintiffs, if any, by reason of the matters referred to in the Second Amended Complaint, resulted solely from unreasonable and improper use, and misuse, of the products, machines, premises, conditions, facilities, or systems involved.

THIRTEENTH AFFIRMATIVE DEFENSE

(Modification)

LANGE alleges that the injuries sustained by Plaintiffs, if any, were the result of modification, alteration or re-design of the products, systems or premises at issue in this litigation, and that said modification, alteration or re-design was a proximate cause of Plaintiffs' alleged injuries.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Maintain)

LANGE alleges that the injuries sustained by Plaintiff, if any, were the result of the failure to maintain, monitor or control the products, systems or premises at issue in this litigation, and that said failure to maintain, monitor or control was proximately caused by Plaintiffs' alleged injuries.

FIFTEENTH AFFIRMATIVE DEFENSE

(Discharge of Duties)

Prior to commencement of this action, LANGE duly performed, satisfied and discharged all duties and obligations it may have owed to Plaintiffs and/or Plaintiffs arising out of any and all purported agreements, representations or contracts made by it or on behalf of LANGE and this action is therefore barred.

SIXTEENTH AFFIRMATIVE DEFENSE

(Disclaimer of Warranties)

LANGE alleges that Plaintiffs and/or Plaintiffs disclaimed, negated and excluded all warranties of the type and character alleged in the Second Amended Complaint, if any, so as to bar recovery.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Right to Indemnification/Apportionment)

LANGE alleges that it is entitled to the right of indemnification, whether by apportionment or otherwise, against all of the parties, entities and persons whose negligence contributed proximately to the happening of the claimed damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Claim for Attorney's Fees Barred)

LANGE alleges that Plaintiff and/or Plaintiffs have failed to set forth facts sufficient to support an award for attorney's fees or extra-contractual damages, and that accordingly any alleged claims for attorney's fees or extra-contractual damages are barred.

NINETEENTH AFFIRMATIVE DEFENSE

(Attorney's Fees)

LANGE alleges that it has been necessary to employ the services of an attorney to defend it in this action and a reasonable sum should be allowed LANGE for attorney's fees, together with costs of suit incurred herein.

TWENTIETH AFFIRMATIVE DEFENSE

(NRCP Rule 8 Defenses)

LANGE hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, LANGE reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving same.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Breach of Warranties)

LANGE alleges that they did not breach any warranties, express or implied, and that no warranties, express or implied arose in this action. Warranties arise only in connection with the sale of a product, not in connection with performance of a service.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Right to Amend)

Pursuant to NRCP 11, LANGE presently has insufficient knowledge or information on which to form a belief as to whether it has additional, as yet unstated affirmative defenses available. LANGE hereby reserves its right to insert additional affirmative defenses in the event discovery and investigation indicate they would be appropriate.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Limitations of Indemnity)

Without admitting that any of the allegations of the Complaint on file herein are true, this answering LANGE alleges that the obligations in the express, written indemnity agreement between it and Plaintiff, if any, are limited by the Nevada Supreme Court's decision in *United Rentals Hwy. Techs., Inc. v. Wells Cargo Inc.* 128 Nev. Adv. Rep. 59, 289 P.3d 221 (2012) and *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Development, Inc.*, 127 Nev. Adv. Rep. 26, 255 P.3d 268 (2011).

WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint, LANGE respectfully requests the following relief:

A. That Plaintiffs take nothing by virtue of their Second Amended Complaint;

B. That the Second Amended Complaint be dismissed with prejudice and that LANGE be awarded judgment in this action;

C. That LANGE be awarded their costs incurred herein;

D. That LANGE be awarded their attorneys' fees; and

E. For such other and further relief as the Court deems just and proper.

CROSS-CLAIM

Cross-Claimant, Lange Plumbing, LLC (hereinafter "LANGE"), by and through its attorneys of record, the law offices of Resnick & Louis, P.C. and hereby asserts its Cross Claim, by stating and alleging the following:

1. Cross-Claimant, LANGE is a party to this action.

2. Cross-Claimant, LANGE is and at all times relevant was, a business entity qualified to perform and do business in Nevada.

3. Upon information and belief, THE VIKING CORPORATION was and is a corporation duly organized and existing under the laws of the State of Michigan, and authorized to do business in the State of Nevada.

4. Upon information and belief, SUPPLY NETWORK, INC. dba VIKING SUPPLYNET was and is a limited liability company duly organized and existing under the laws of the State of Michigan, and authorized to do business in the State of Nevada.

5. The true names and capacities, whether individual, corporate, associates, co-partnership, or otherwise of DOES I-V and/or ROE CORPORATIONS VI-X are unknown to Cross-Claimant, who therefore sue said Cross-Defendants by such fictitious names. Cross-Claimant is informed and believes and thereon allege that each of the Cross-Defendants designated as DOES I-V and/or ROE CORPORATIONS VI-X are responsible in some manner for the events and happenings referred to in this action and proximately caused damages to the Cross-Claimant as herein alleged, as they may have been responsible for the design, manufacture, inspection, care, distribution, sale, assembly construction, control or maintenance

of the fire sprinkler heads and/or system contained within the Plaintiffs' property and/or their agency, master/servant or joint venturer relationship with Cross-Defendants. Cross-Claimant will ask leave of this Court to amend the Complaint to insert the true names and capacities of said Cross-Defendants, when the same have been ascertained to join such Cross-Defendants in this action and assert the appropriate charging allegations.

6. Jurisdiction is proper in Clark County, Nevada, in so far as all the parties conduct forming the basis of this litigation occurred in Clark County Nevada.

7. Cross-Defendants THE VIKING CORPORATION and/or SUPPLY NETWORK, INC. dba VIKING SUPPLYNET, and DOES I-V and/or ROE CORPORATIONS VI-X are responsible for the design, manufacture, inspection, care, distribution, sale, assembly construction, control or maintenance of the fire sprinkler heads and/or system contained within the Plaintiffs' property, located at 645 Saint Croix, Henderson, Nevada, as alleged in Plaintiffs' Complaint, fully incorporated by reference herein.

8. Upon information and belief, Cross-Claimant purchased from Cross-Defendants THE VIKING CORPORATION and/or SUPPLY NETWORK, INC. dba VIKING SUPPLYNET, and DOES I-V and/or ROE CORPORATIONS VI-X the fire sprinkler heads and/or system that was installed by Cross-Claimant at the Plaintiffs' property.

9. Upon information and belief, the acts and/or omissions of Cross-Defendants THE VIKING CORPORATION and/or SUPPLY NETWORK, INC. dba VIKING SUPPLYNET, and DOES I-V and/or ROE CORPORATIONS VI-X in the design, manufacture, inspection, care, distribution, sale, assembly construction, control or maintenance of the fire sprinkler heads and/or system are responsible for the damages claimed by Plaintiff in the Complaint, fully incorporated by reference herein.

FIRST CAUSE OF ACTION

(Indemnity)

10. Cross-Claimant repeats and re-alleges paragraphs 1 through 9 of the Cross-Claim, and incorporates the same by reference as though fully set forth herein.

11. Cross-Claimant alleges that in the event it is found liable to Plaintiff or any other party for damages or if payment is made by Cross-Claimant to Plaintiff, or any other party as a result of the incident or occurrences described and/or arising in Plaintiffs' complaint, then Cross-Claimant's liability for payment is based upon the acts and/or omissions of Cross Defendants, and each of them, for any damages awarded against Cross-Claimant.

12. Cross-Claimant, LANGE, at all times relevant here in was not negligent in any manner and Cross Defendants' actions, omissions, and negligence constitute the sole, proximate, and primary cause of Plaintiffs' alleged damage as alleged in the complaint.

13. Cross-Claimant has found it necessary to retain the services of an attorney in order to prosecute this action and is entitled to attorney's fees and costs of suit incurred herein.

SECOND CAUSE OF ACTION

(Contribution)

14. Cross-Claimant repeats and re-alleges paragraphs 1 through 13 of the Cross-Claim, and incorporates the same by reference as though fully set forth herein.

15. Cross-Claimant alleges that in the event it is found liable to Plaintiff or any other party for damages or if payment is made by Cross-Claimant to Plaintiff, or any other party as a result of the incident or occurrences described and/or arising in Plaintiffs' complaint, then Cross-Claimant is entitled to contribution from Cross Defendants, and each of them, for any damages awarded against Cross-Claimant, in this action.

16. Cross-Claimant has found it necessary to retain the services of an attorney in order to prosecute this action and is entitled to attorney's fees and costs of suit incurred herein.

THIRD CAUSE OF ACTION

(Apportionment)

17. Cross-Claimant repeats and re-alleges paragraphs 1 through 16 of the Cross-Claim, and incorporates the same by reference as though fully set forth herein.

18. Cross-Claimant is entitled to an apportionment of liability with Cross Defendants.

19. Cross-Claimant has found it necessary to retain the services of an attorney in order to prosecute this action and is entitled to attorney's fees and costs of suit incurred herein.

PRAYER FOR RELIEF

Wherefore, Cross-Claimant expressly reserves the right to amend its Cross-Claim at the time of trial for the actions herein to include all items of damages not yet ascertained and demands judgment against Cross Defendants, and each of them, as follows:

1. Should judgment be rendered against Cross-Claimant, then Cross-Claimant is entitled to indemnity from Cross Defendants;

2. Should judgment be rendered against Cross-Claimant, then Cross-Claimant is entitled to contribution from Cross Defendants;

3. For an apportionment of liability;

4. For general and special damages in excess of $10,000;

5. For interest at the maximum rate allowed by law;

6. For attorney's fees and costs of suit incurred here in; and

7. For other and further relief as the court deems just and proper.

DATED this 12th day of April, 2017.

RESNICK & LOUIS, P.C.

By: _____

Gary W. Call, Esq., SBN: 6922
Athanasia E. Dalacas, Esq. SBN: 9390
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorneys for Defendant/Cross-Claimant, Lange Plumbing, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **DEFENDANT LANGE PLUMBING, LLC'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND CROSS CLAIM** was served this 12th day of April, 2017, by:

[ ] **BY U.S. MAIL**: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

[ ] **BY FACSIMILE**: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

[ ] **BY PERSONAL SERVICE**: by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

[X] **BY ELECTRONIC SERVICE**: by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

An Employee of Resnick & Louis, P.C.

EXHIBIT 3

ANAC
JANET C. PANCOAST, ESQ.
Nevada Bar No. 5090
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Tel: (702) 233-9660
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Attorney for Defendants/Third Party Plaintiffs
The Viking Corporation & Supply Network, Inc.
d/b/a Viking Supplynet

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. d/b/a VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants. THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET, a Michigan corporation, Defendants/Third Party Plaintiffs, v. GIBERTI CONSTRUCTION, LLC, a Nevada Limited Liability Company and DOES I through V and ROE CORPORATIONS VI through X, inclusive,	**CASE NO.: A-16-738444-C** **DEPT. NO.: X** **DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** **&** **THIRD PARTY COMPLAINT AGAINST GIBERTI CONSTRUCTION LLC**

DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET (hereinafter the "Viking Defendants'), by and through its counsel JANET C PANCOAST, ESQ. of the law firm of CISNEROS & MARIAS, and hereby answers PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC'S Second Amended Complaint:

FIRST CAUSE OF ACTION

(Negligent, Reckless and Intentional Conduct- As to Defendant Lange Plumbing, Defendant Viking Corporation, and Defendant Supply Network, Inc.)

1. Answering Paragraphs 1 through 5, the Second Amended Complaint, the Viking Defendants admit the claims as alleged therein.

2. Answering Paragraphs 6 through 13, of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

SECOND CAUSE OF ACTION

(Breach of Contract- as to Defendant Lange Plumbing, Defendant Viking Corporation and Defendant Supply Network Inc.)

3. Answering Paragraph 14 of the Second Amended Complaint, the Viking Defendants repeat and reallege their answers to the preceding paragraphs as though fully set forth herein.

4. Answering Paragraphs 15, 16, 17, 18 and 19 of the Second Amended Complaint, the Viking Defendants denies the allegations contained therein.

THIRD CAUSE OF ACTION

(Negligent Hiring, Training, Supervision & Retention- as to all Defendants)

5. Answering Paragraph 20 of the Second Amended Complaint, the Viking Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

6. Answering Paragraphs 21 and 22 of the Second Amended Complaint, the Viking Defendants state that the allegations contained therein constitute legal conclusions to which no

response is required. To the extent a response may be required; the Viking Defendants deny the same.

7. Answering Paragraphs 23, 24, 25 and 26 of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

FOURTH CAUSE OF ACTION
(RES IPSA Loquitor- as to Defendant Lange Plumbing, Defendant Viking Corporation and Defendant Supply Network Inc.)

8. Answering Paragraph 27 of the Second Amended Complaint, the Viking Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

9. Answering Paragraphs 28, 29, 30 and 31 of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

FIFTH CAUSE OF ACTION
(Strict Products Liability- as to Defendant Lange Plumbing, Defendant Viking Corporation and Defendant Supply Network Inc.)

10. Answering Paragraph 32 of the Second Amended Complaint, the Viking Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

11. Answering Paragraphs 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44 and 45 of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

12. Answering Paragraph 38 of the Second Amended Complaint, the Viking Defendants state that the allegations contained therein constitute legal conclusions to which no response is required. To the extent a response may be required; the Second Amended Complaint, the Viking Defendants deny the same.

SIXTH CAUSE OF ACTION
(Negligence, Breach of the Standard Care- as to Defendant Lange Plumbing, Defendant Viking Corporation and Defendant Supply Network Inc.)

13. Answering Paragraph 46 of the Second Amended Complaint, the Viking Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

14. Answering Paragraph 47 of the Second Amended Complaint, the Viking Defendants state that the allegations contained therein constitute legal conclusions to which no response is required. To the extent a response may be required; the Viking Defendants deny the same.

15. Answering Paragraphs 48, 49, 50 and 51 of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

SEVENTH CAUSE OF ACTION
(Corporate Negligence and Vicarious Liability- as to Defendant Lange Plumbing, Defendant Viking Corporation and Defendant Supply Network Inc.)

16. Answering Paragraph 52 of the Second Amended Complaint, the Viking Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

17. Answering Paragraph 53 of the Second Amended Complaint, the Viking Defendants state that the allegations contained therein constitute legal conclusions to which no response is required. To the extent a response may be required; the Viking Defendants deny the same.

18. Answering Paragraphs 54, 55 and 56 of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

EIGHTH CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing- as to Defendant Lange Plumbing, Defendant Viking Corporation and Defendant Supply Network Inc.)

19. Answering Paragraph 57 of the Second Amended Complaint, the Viking Defendants repeat and re-allege their answers to the preceding paragraphs as though fully set forth herein.

20. Answering Paragraphs 58, 59, 60 and 61 of the Second Amended Complaint, the Viking Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

1. The Viking Defendants allege that the Second Amended Second Amended Complaint and each and every claim for relief stated therein fails to state fact sufficient to constitute a claim for relief, or any claim for relief, as against The Viking Defendants.

2. The Viking Defendants are informed and believe and thereon allege that at the time and place of the incident or incidents alleged in the Second Amended Complaint, Plaintiffs knew of and/or should have known of the risk of leaving heat sensitive fire sprinklers in a non-climate controlled residence for a prolonged period of time, and freely and voluntarily assumed and exposed themselves to all risk of harm and the consequential injuries and damages, if any, resulting therefrom.

3. The Viking Defendants are informed and believe, and thereon allege, that the injuries and damages of which Plaintiffs complains were proximately caused by, or contributed to by, the acts of others, Defendants, Cross-Defendants, persons, and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Plaintiffs complains, thus barring Plaintiffs from any recovery against The Viking Defendants.

4. The Viking Defendants are informed and believe and thereon allege, that whatever damages were sustained by the Plaintiffs as a result of the allegations of Plaintiffs' Second Amended Complaint were proximately caused in whole or in part or were contributed by reason of Plaintiffs' own negligence, thus barring or diminishing Plaintiffs' recovery herein according to the principles of comparative negligence.

5. The Viking Defendants are informed and believe and thereon allege that as to each alleged Claim for Relief, Plaintiffs have failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

6. The Viking Defendants are informed and believe and thereon allege that Plaintiffs' alleged damages, if any, were and are, wholly or partially, contributed or proximately caused by Plaintiffs' carelessness, recklessness, negligence or fault, thus barring or diminishing

Plaintiffs' recovery herein and, therefore, The Viking Defendants are entitled to contribution apportioned to the percentage of negligence attributable to Plaintiff.

7. The Viking Defendants are informed and believe and thereon allege, that Plaintiffs are unable to prove with clear and convincing evidence of any implied malice or oppression by Defendants that resulted in the injury to Plaintiffs. Nor is there any evidence that Defendants acted with a conscience disregard for Plaintiffs' rights or safety.

8. Recovery of punitive or exemplary damages is barred as NRS 42.005, under which punitive and exemplary damages are recoverable under Nevada law, I unconstitutionally vague under the due process clause of the Fifth Amendment to the United States Constitution and Section 8 of Article I of Nevada Constitution, and as applied, authorizes an award of punitive or exemplary damages in violation of Defendant's right of equal protection of the law under the United States Constitution and authorizes an award of punitive damages which would constitute an excessive fine in violation of Section 6 of Article I of the Nevada Constitution.

9. The Viking Defendants are informed and believe and thereon allege that the damages and injuries, if any, incurred by Plaintiff, are not attributable to any act, conduct or omission on the part of The Viking Defendants.

10. At all times relevant herein, Defendant acted diligently and with due care in the performance of any duty owed to Plaintiff, if any.

11. The Viking Defendants are informed and believe and thereon allege, that the acts of the Defendants as alleged herein preclude a finding of joint liability pursuant to NRCP 41.141, *et. seq.*

12. The Viking Defendants are informed and believe and thereon allege that the Plaintiffs has failed to plead with sufficient specificity any violation of codes, ordinances, regulations, statutes or any other laws.

13. The Viking Defendants are informed and believe and thereon alleged that there was no contract between Plaintiffs and The Viking Defendants.

14. Defendants reasonable care in the hiring, training, supervision, and retention of its employees, to ensure their fitness for their respective positions.

15. Defendants were without knowledge of the acts giving rise to and could not have averted the damages alleged by Plaintiff.

16. The Viking Defendants are informed and believe and thereon allege, that certain of said parties have or will enter into settlement agreements with Plaintiffs so that in the event that The Viking Defendants areheld liable to Plaintiffs herein, then The Viking Defendants areentitled to an offset, in an amount equal to any settlements previously paid to Plaintiffs by any other party, against any judgment which may be entered herein.

17. At the times and places under the circumstances alleged in the Second Amended Complaint, Plaintiffs failed to exercise ordinary care, caution or prudence for their own property, thereby proximately causing or contributing to the cause of their own damages, if any, through their own negligence.

18. The Viking Defendants are informed and believe and thereon allege, that if Plaintiffs herein suffered or sustained any loss, injury, damage or detriment the same is directly and proximately caused and contributed to, in whole or in part, by conduct, acts, omissions, activities, carelessness, recklessness, willful, negligence, and/or intentional misconduct of Plaintiffs thereby completely or partially barring Plaintiffs' recovery herein.

19. The Viking Defendants are informed and believe and thereon allege that if there was any defect in products utilized at the subject property, that such defect did not exist at the time said product left the possession of The Viking Defendants, and was caused by the misuse,

abuse, changes, modifications and alterations of others including Plaintiffs and the Plaintiffs herein.

20. The Viking Defendants alleged that all products designed, manufactured or assembled by them conformed with the state of the art at the time such product was produced and sold.

21. At the time The Viking Defendants' product left the hands of its manufacturer, if in fact this Defendant's product was involved within this litigation as alleged in Plaintiffs' Second Amended Complaint, said product was fit and proper for the use for which it was designed and intended.

22. The Viking Defendants alleged that the failure of the sprinkler, if any, was caused by an alteration or modification of the product that was not reasonably foresseeable, made by a person other than The Viking Defendants and subsequent to the time the product first left the possession of The Viking Defendants.

23. The Viking Defendants allege that the failure of the sprinkler, if any, was caused by negligent, improper, or wrongful installation or use of the product and not by any defect in the product design, manufacture, or assembly or by any negligence on the party of The Viking Defendants.

24. The Viking Defendants allege that Plaintiffs, co-defendant Lange Plumbing, Third Party Defendant Giberti Construction, or presently unknown third parties altered, modified or damaged the Viking products at issue at the time such product left the Viking Defendants' possession, and that such alteration, modification or damage was a cause of the damages alleged herein.

25. The Viking Defendants allege that there is a lack of direct or proximate causation to Plaintiffs' damages.

26. The Viking Defendants are informed and believe and thereon allege, that the Plaintiffs is barred and precluded from any recovery in this action because The Viking Defendants at all times complied with the applicable standard of care required of the manufacturer of the type of The Viking Defendants at the time and location where the professional services were rendered.

27. The Viking Defendants are informed and believe and thereon allege that if there was any defect in products utilized at the subject property, that such defect did not exist at the time said product left the possession of The Viking Defendants, and was caused by the misuse, abuse, changes, modifications and alterations of others including Plaintiffs and the Plaintiffs herein.

28. The Viking Defendants are informed and believe and thereon allege that the Plaintiffs' damages, if any, proximately resulted from the use of products in an unintended and abnormal manner and not from any defect or mechanical failure of, failure to service properly, or failure to install properly, said product or any of its components.

29. At all times, The Viking Defendants acted with due care and diligence and Defendant's conduct was reasonable in regards to its work which was within industry standards, and this answering Defendant breached no duty to the Plaintiffs and/or Defendant Lange, herein

30. The acts and omissions as claimed by Plaintiffs are is not an activity that would only occur in the instance of a negligent act. The agency or instrumentality which resulted in the alleged harm was not in the exclusive control of the Defendant. Further, Plaintiffs contributed to his own injuries and losses relating to the alleged negligent event.

31. The claims of Plaintiff, as alleged in the Second Amended Complaint, and the loss and damage, if any in fact exist, are the direct and proximate result of the acts, deeds, omission

or failure to act, or the conduct of third parties whose names are presently unknown, over whom Defendant had no control, nor the right, duty or obligation to control.

32. Defendants are informed and believe and thereon allege that they are not legally responsible in any fashion with respect to damages and injuries claimed by Plaintiffs in the Second Amended Complaint, however, if Defendant is subject to any liability to Plaintiffs or any other party herein, it will be due, in whole or in part, to acts, omissions, activities, carelessness, recklessness and negligence of others; wherefore, any recovery obtained by the Plaintiffs against Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; the liability of Plaintiff, if any, is limited in direct proportion to the percentage of fault actually attributed to Plaintiffs except as reduced by implied or express contractual indemnity.

33. The Viking Defendants are informed and believe and thereon allege that they are not legally responsible in any fashion for damages and injuries claimed by the Plaintiffs in the Second Amended Complaint; however, if The Viking Defendants are subjected to any liability to the Plaintiffs, it will be due, in whole or in part, to the conduct, acts, omissions, activities, carelessness, recklessness, and negligence of others; wherefore, any recovery obtained by Plaintiffs against The Viking Defendants should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, person and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; the liability of The Viking Defendants, if any, is limited in direct proportion to the percentage of fault actually attributed to The Viking Defendants. At the time and place under the circumstances alleged,

Plaintiffs had full and complete knowledge and information in regard to the conditions and circumstances then and there existing, and through Plaintiffs' own knowledge, conduct, acts and omissions, assumed the risks attendant to any condition there or then present.

34. The incident alleged in the Second Amended Complaint, and the resulting damages to Plaintiff, if any, were caused by the acts or omissions of a third party over whom Defendants had no control.

35. Any and all of Plaintiffs' alleged damages were proximately caused or contributed to by the acts of other persons and/or other entities and said acts were an intervening and/or superseding cause of the injuries and damages, if any, thus barring any recovery against Defendants.

36. Defendants are without knowledge of the acts giving rise to and could not have averted the damages alleged by Plaintiff.

37. This answering Third Party Defendant is informed and believes, and thereon alleges, that certain of said parties have or will enter into settlement agreements with Plaintiffs and/or Co-Defendants or Third Party Defendant, so that in the event that this answering Third Party Defendant is held liable to Plaintiff, then this answering Defendant is entitled to an offset, in an amount equal to any settlements previously paid to Plaintiffs by any other party, against any judgment which may be entered herein.

38. Plaintiffs failed to give timely and reasonable notice of its claim for breach of warranty.

39. t has been necessary for The Viking Defendants to retain the services of an attorney to defend this action and therefore Defendant is entitled to a reasonable sum for attorneys' fees together with the costs expended in this action.

40. Plaintiffs' claims for attorney's fees as alleged in his Second Amended Complaint are not recoverable herein and have been improperly pled in Plaintiffs' Second Amended

Complaint. The Viking Defendants specifically reserves the right to have Plaintiffs' improperly pled claim for attorney's fees dismissed prior to trial.

41. Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as insufficient facts were not available after reasonable inquiry upon the filing of Plaintiffs' Second Amended Complaint, and therefore, the Defendant reserves the right to amend its Answer to the Second Amended Complaint to allege additional affirmative defenses, if subsequent investigation so warrants.

42. The Viking Defendants incorporates by reference each and every affirmative defense set forth in N.R.C.P. 8(c) as if fully set forth herein.

43. The Viking Defendants denies that by reason of any act or omission, fault, or conduct or liability on the part of The Viking Defendants, whether negligent, careless, unlawful or whether as alleged, or otherwise, Plaintiffs was injured or damaged in any of the amounts alleged, or in any other manner or amount whatsoever; The Viking Defendants further denies that The Viking Defendants was negligent, careless, reckless, wanton, acted unlawfully or is liable, whether in the manner alleged or otherwise.

44. Any allegation not otherwise responded to is generally, and specifically denied.

WHEREFORE, DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET allege and pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by virtue of the Second Amended Complaint;
2. That Plaintiffs' Second Amended Complaint be dismissed with prejudice;
3. For the costs of suit incurred herein;
4. For attorneys' fees and costs; and
5. For such other and further relief as the Court deems just, equitable and proper.

DEFENDANTS/THIRD PARTY PLAINTIFFS
THE VIKING CORPORATION
&
SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNE'S
THIRD PARTY COMPLAINT AGAINST
THIRD PARTY DEFENDANT
GIBERTI CONSTRUCTION LLC

DEFENDANTS/THIRD PARTY PLAINTIFFS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNE'S (hereinafter "Viking Defendants"), by and through its attorney of record, Janet C. Pancoast, Esq. of CISNEROS & MARIAS, file this Third Party Complaint against THIRD PARTY DEFENDANT GIBERTI CONSTRUCTION LLC complains and alleges the following:

GENERAL ALLEGATIONS

1. At all times relevant herein, the Viking Defendants are foreign corporations doing business in the State of Nevada.

2. At all times relevant herein, the facts and circumstanced underlying Plaintiffs' Second Amended Complaint on file herein occurred in Clark County, Nevada.

3. Upon information and belief, Plaintiff Edgeworth Family Trust is an entity domiciled in Clark County Nevada, with its Trustee being Brian Edgeworth.

4. The Edgeworth Family Trust, owned land located at 645 Saint Croix Street, Henderson, in Clark County, Nevada and were building a residence at that location (hereinafter "Edgeworth Residence").

5. At all times relevant herein, Plaintiff American Grating LLC (herein after American") is a domestic limited liability company, duly authorized and doing business in Clark County, State of Nevada, with its managers being Brian Edgeworth & Angela Edgeworth.

6. At all times relevant herein, Third Party Defendant Giberti Construction LLC (hereinafter "Giberti") is a domestic limited liability company, duly authorized and doing business

in Clark County, State of Nevada.

7. Defendant Lange Plumbing, LLC (hereinafter "Lange") is a domestic limited liability company, duly authorized and doing business in Clark County, State of Nevada.

8. That the true names and capacities, whether individual, corporate, associate, or otherwise, of the Third Party Defendants DOES I through V and ROE CORPORATIONS VI through X, inclusive, are presently unknown to the Viking Defendants who, therefore, sue said Third Party Defendants by such fictitious names. The Viking Defendants are informed and believe and thereupon allege that each of the Third Party Defendant herein designated as a DOE and/or ROE CORPORATION is negligently, intentionally and/or strictly liable and caused damages proximately thereby to The Viking Defendants as herein alleged; that these individuals or entities may have been responsible for the improper installation or maintenance, modification, improper storage, failure to provide climate control of the subject sprinkler head and system and/or general plumbing contained within the subject property. When the true names and/or capacities of such Third Party Defendants become known, the Viking Defendants will ask leave of this Court to amend this Third Party Complaint to insert the true names, identities and capacities, together with the appropriate charging allegations.

9. Plaintiff American Grating entered into an agreement with Third Party Defendant Giberti who was to perform the services of a general contractor and oversee the construction of the Edgeworth residence.

10. On or about 3/28/14, Plaintiff American Grating LLC, identified as the "owner" entered into a contract with Defendant Lange Plumbing, identified as "contractor" to install, among other materials, Viking sprinklers, at the Edgeworth residence.

11. Upon information and belief, in March & April of 2015, Defendant Lange Plumbing LLC purchased various Viking sprinklers from Viking Supply Net and installed the sprinklers in

residence located in Henderson, Nevada, which was allegedly owned by Edgeworth Family Trust and being built by American and Giberti.

12. Giberti was the general contractor on the construction of the Edgeworth Residence and was responsible for the progress of the construction, obtaining building permits, sequencing of trades, etc.

13. Giberti oversaw the work of Lange.

14. Giberti approved the work of Lange for payment.

15. Lange provided information and instructions to Giberti for the sprinkler system.

16. American oversaw the work of Lange.

17. American approved the work of Lange for payment.

18. Lange provided information and instructions to American for the sprinkler system.

19. The Viking Tech Data Sheet which came with the Viking Sprinklers bought by Lange and installed by Lange, specified that the maximum ambient ceiling temperature of the Sprinklers was 100 Fahrenheit, because the Sprinklers were heat sensitive.

20. Giberti knew or should have known of this temperature limitation and the importance of keeping the climate control below the ambient temperature maximum as set forth in the documents.

21. In addition to these instructions regarding the maximum temperature, it was common knowledge in the fire sprinkler community that the sprinklers had to be protected from excess heat, because such heat in excess of 100 could impair the functioning of the fire sprinklers.

22. Giberti knew or should have known of the temperature requirements for the first sprinklers.

23. Mark Giberti, Manager of Giberti Construction, LLC, knew or should have known that the sprinklers once installed needed to be protected from heat greater than 100 degrees.

24. On or about April 10, 2016, the sprinkler is described as "failing", causing the water to discharge.

25. At the time of this discharge, there still was no electricity to the Edgeworth residence.

26. From the time of the installation in March/April 2015, to the time of the alleged failure, there was no electricity set up in the Edgeworth Residence.

27. From the time of the installation in March/April 2015, no climate control had been utilized in the Edgeworth residence.

28. As a result of the failure to install electricity and have an operational climate control HVAC system operating from March/April 2015, to the time of the alleged failure, there were days where the ambient temperature in the Edgeworth Residence exceeded 100 degrees.

29. At all times herein relevant, each agents and employees of Giberti were acting at its agents, servants, and/or employees and were acting in the course and scope of said agency, service, and/or employment with Giberti, such as to impose further liability on Giberti under the doctrine of *respondeat superior* and/or vicarious liability.

FIRST CLAIM FOR RELIEF
(Contribution & Apportionment)

30. The Viking Defendants refer to and incorporates hereby by reference Paragraphs 1 through 16 of this Third Party Complaint, as though fully set forth herein.

31. Based upon the acts and/or omissions of the Giberti, if a judgment is rendered on behalf of Plaintiffs against the Viking Defendants, then the Viking Defendants are entitled to contribution from Giberti in an amount proportionate to the amount of negligence and/or fault attributable to Giberti.

32. The Viking Defendants are entitled to an apportionment of liability with Giberti.

33. The violation of the acts and omissions of Giberti as described above, were and are the actual and proximate cause of damages to the Viking Defendants in excess of $10,000.

34. It has been necessary for the Viking Defendants to retain the services of counsel to defend the Plaintiffs' action and to bring this action. the Viking Defendants are entitled to recover attorneys' fees and costs incurred herein pursuant to statute, contractual provisions of the Agreement and Nevada law.

SECOND CLAIM FOR RELIEF
(Declaratory Relief)

35. The Viking Defendants repeats and realleges the allegations of Paragraphs 1 through 21 of this Third Party Complaint as though fully set forth herein.

36. A dispute has arisen and actual controversy now exists between the Viking Defendants and Giberti as to their rights and liabilities with respect to any ultimate responsibility in the underlying action, and with respect to the rights to receive, or duty to give, defense and/or indemnification in proportion to their comparative fault, if any.

37. The Viking Defendants contend that if it suffers judgment in the underlying action, or if it pays monies by way of reasonable compromise of said claims, the Viking Defendants is entitled to contribution by Giberti and to judgment over and against them, to the extent that the Viking Defendants responsibility in the underlying action exceeds their percentage of negligence, fault or liability, if any, the Viking Defendants is informed and believes that Giberti contend to the contrary.

38. The Viking Defendants maintains that if they suffer judgment in the underlying action, or if it pays monies by way of reasonable compromise of said claims, the Viking Defendants are entitled to contribution by Giberti and to judgment over and against them, to the extent that the Viking Defendants responsibility in the underlying action exceeds their percentage of negligence,

fault or liability, if any.

39. The Viking Defendants are informed and believe that Giberti'S contends to the contrary.

40. Therefore, an actual controversy exists relative to the legal duties and rights of the respective parties pursuant to their written agreement, which controversy the Viking Defendants request this Court resolve.

41. All of the rights and obligations of the parties hereto arose out of what is actually one transaction or one series of transactions, happenings or events, all of which can be settled and determined in a judgment in this one action.

42. The Viking Defendants alleges that an actual controversy exists between the parties to the Giberti under the circumstances alleged.

43. A declaration of rights, responsibilities and obligations of the Viking Defendants and Giberti, and each of them, is essential to determine their respective obligations in connection with the principal action and the Cross-Claim.

44. The Viking Defendants have no true and speedy remedy at law of any kind.

45. The acts and omissions of Giberti as described above, were and are the actual and proximate cause of damages to the Viking Defendants in excess of $10,000.

46. It has been necessary for the Viking Defendants to retain the services of counsel to defend the Plaintiffs' action and to bring this action and Viking Defendants are entitled to recover attorneys' fees and costs incurred herein pursuant to statute, contractual provisions of the Agreement and Nevada law.

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PRAYER FOR RELIEF

WHEREFORE, DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET pray for judgment against THIRD PARTY DEFENDANT GIBERTI CONSTRUCTION, and each of them, as follows:

1. For general and special damages in excess of $10,000, according to proof;
2. For indemnity for all damages and/or economic losses that Plaintiffs recover against the Viking Defendants by way of judgment, order, settlement, compromise or trial;
3. For reasonable attorneys' fees, costs, expert costs and expenses, pursuant to statutory law, common law, and the Agreement;
4. For prejudgment interest;
5. For consequential damages in excess of $10,000, according to proof;
6. For incidental damages in excess of $10,000, according to proof;
7. For an apportionment of liability between Giberti, the Viking Defendants and each of them;
8. For a declaration of rights and obligations as between the Viking Defendants and Giberti'S;
9. For contribution pursuant to NRS 17.225; and

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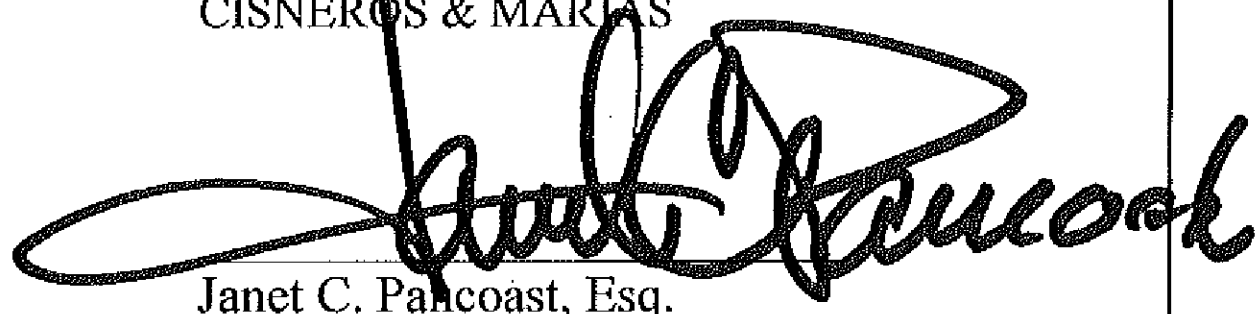
10. For such other and further relief and this court may deem just and proper.

DATED this 4th day of April, 2017.

CISNEROS & MARIAS



Janet C. Pancoast, Esq.
1160 No. Town Center Dr., Suite 130,
Las Vegas, NV 89144
Attorney for Defendants/Third Party Plaintiffs
The Viking Corporation & Supply Network, Inc.
d/b/a Viking Supplynet

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2017, I served the following document:

DEFENDANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC'S ANSWER TO PLAINTIFFS SECOND AMENDED COMPLAINT & THIRD-PARTY COMPLAINT TO GIBERTI CONSTRUCTION

☒ **VIA ELECTRONIC FILING (N.E.F.R. 9(b))**

☒ **VIA ELECTRONIC SERVICE (N.E.F.R. 9)**

☐ **BY MAIL:** by placing the documents(s) listed above in a sealed envelope, postage prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FAX:** by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file copy of this document(s).

☐ **BY HAND DELIVERY:** by delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Daniel S. Simon, Esq.
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810 South Casino Center Blvd.
Las Vegas, NV 89101
Fax: 702-364-1655
Attorney for Plaintiff

Gary W. Call
RESNICK & LOUIS, PC
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Attorney for Lange Plumbing, LLC

Employee of CISNEROS & MARIAS