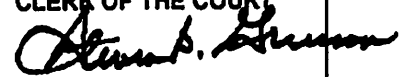


Exhibit 8

Exhibit 8



NEO

James R. Christensen Esq.
Nevada Bar No. 3861

JAMES R. CHRISTENSEN PC

601 S. 6th Street
Las Vegas NV 89101

-and-

Peter S. Christiansen, Esq.
Nevada Bar No. 5254

CHRISTIANSEN LAW OFFICES

810S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

Attorneys for SIMON

**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

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

Consolidated with

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

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

1 **NOTICE OF ENTRY OF DECISION AND ORDER ON MOTION TO DISMISS**
2 **NRCP 12(B)(5)**

3 PLEASE TAKE NOTICE that on the 10th day of October, 2018, a Decision and Order on
4 Defendants' Motion to Dismiss NRCP12(b)(5) was entered in the above captioned action. A true and
5 correct copy of the file-stamped Order is attached hereto.

6 Dated this 24th day of October, 2018.

7 **JAMES R. CHRISTENSEN PC**

8
9 /s/ James R. Christensen

10 **JAMES CHRISTENSEN, ESQ.**

Nevada Bar No. 003861

601 S. 6th Street

Las Vegas, NV 89101

Phone: (702) 272-0406

Facsimile: (702) 272-0415

-and-

Peter S. Christiansen, Esq.

Nevada Bar No. 5254

CHRISTIANSEN LAW OFFICES

810S. Casino Center Blvd., Ste. 104

Las Vegas, NV 89101

Attorney for Daniel Simon and Simon Law

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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)** was made by electronic service (via Odyssey) this 24th day of October, 2018, to all parties currently shown on the Court's E-Service List.

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

-

Steven D. Grierson

1 **ORD**

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

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

8 **Plaintiffs,**

9 **vs.**

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

10 **LANGE PLUMBING, LLC; THE VIKING**
11 **CORPORATION, a Michigan Corporation;**
12 **SUPPLY NETWORK, INC., dba VIKING**
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15 **10;**

16 **Defendants.**

Consolidated with

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

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

19 **Plaintiffs,**

20 **vs.**

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

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

27 **Defendants.**

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

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

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

8 **FINDINGS OF FACT**

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

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

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

26 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
27
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1 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
2 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
3 resolve. Since the matter was not resolved, a lawsuit had to be filed.

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

10 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
11 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
12 had some discussion about payments and financials. No express fee agreement was reached during
13 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
14 It reads as follows:
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16 We never really had a structured discussion about how this might be done.
17 I am more that happy to keep paying hourly but if we are going for punitive
18 we should probably explore a hybrid of hourly on the claim and then some
19 other structure that incents both of us to win an go after the appeal that these
20 scumbags will file etc.
21 Obviously that could not have been doen earlier snce who would have though
22 this case would meet the hurdle of punitives at the start.
23 I could also swing hourly for the whole case (unless I am off what this is
24 going to cost). I would likely borrow another \$450K from Margaret in 250
25 and 200 increments and then either I could use one of the house sales for cash
26 or if things get really bad, I still have a couple million in bitcoin I could sell.
27 I doubt we will get Kinsale to settle for enough to really finance this since I
28 would have to pay the first \$750,000 or so back to Colin and Margaret and
why would Kinsale settle for \$1MM when their exposure is only \$1MM?

(Def. Exhibit 27).

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

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

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

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

15
16 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
17 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
18 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
19 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
20 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
21 25, 2017.

22
23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
24 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
26

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

3 **CONCLUSION OF LAW**

4 ***Breach of Contract***

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

11 ***Declaratory Relief***

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

21 ***Conversion***

22 The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed
23 that the settlement proceeds were solely their and Simon asserting an attorney's lien constitutes a
24 claim for conversion. In the Amended Complaint, Plaintiffs allege "The settlement proceeds from
25 the litigation are the sole property of the Plaintiffs." Amended Complaint, P. 9, Para. 41.
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1 Mr. Simon followed the law and was required to deposit the disputed money in a trust
2 account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr.
3 Simon never exercised exclusive control over the proceeds and never used the money for his
4 personal use. The money was placed in a separate account controlled equally by the Edgeworth's
5 own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

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

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

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

21 ***Breach of Fiduciary Duty***

22 The allegations in the Complaint assert a breach of fiduciary duty for not releasing all the
23 funds to the Edgeworths. The Court finds that Mr. Simon followed the law when filing the attorney's
24 lien. Mr. Simon also fulfilled all his obligations and placed the clients' interests above his when
25 completing the settlement and securing better terms for the clients even after his discharge. Mr.
26
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1 Simon timely released the undisputed portion of the settlement proceeds as soon as they cleared the
2 account. The Court finds that the Law Office of Daniel Simon is owed a sum of money based on the
3 adjudication of the lien, and therefore, there is no basis in law or fact for the cause of action for
4 breach of fiduciary duty and this claim must be dismissed.

5
6 ***Punitive Damages***

7
8 Plaintiffs' Amended Complaint alleges that Mr. Simon acted with oppression, fraud, or
9 malice for denying Plaintiffs of their property. The Court finds that the disputed proceeds are not
10 solely those of the Edgeworths and the Complaint fails to state any legal basis upon which claims
11 may give rise to punitive damages. The evidence indicates that Mr. Simon, along with Mr. Vannah
12 deposited the disputed settlement proceeds into an interest bearing trust account, where they remain.
13 Therefore, Plaintiffs' prayer for punitive damages in their Complaint fails as a matter of a law and
14 must be dismissed.
15

16
17 **CONCLUSION**

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

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ORDER

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

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


DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

Electronically served to:

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 7

Exhibit 7



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

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **--o0o--**

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

12 **Plaintiffs,**

13 **vs.**

14 **LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
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SUPPLYNET, a Michigan corporation; and
16 DOES I through V and ROE CORPORATIONS
17 VI through X, inclusive,**

18 **Defendants.**

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22
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CORPORATION; DOES I through X, inclusive,
25 and ROE CORPORATIONS I through X,
inclusive,**

26 **Defendants.**
27
28

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

NOTICE OF ENTRY OF ORDERS

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

VANNAH & VANNAH
400 S. Seventh Street, 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.
CHRISTIENSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, Nevada 89101

Traditional Manner:
None

DATED this 27 day of December, 2018.

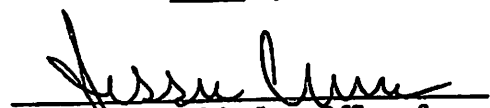

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1

1 **ORD**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**
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CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

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

DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN

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

27 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
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2 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
3 bills indicated an hourly rate of \$550.00 per hour.

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

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

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

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

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

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

26
27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

29 Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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,
27 November 21, and November 23-26.

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

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

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

5
6 *Costs Owed*

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

14
15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 **3. The Work Actually Performed**

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

18 **4. The Result Obtained**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

23 CONCLUSION

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

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

9
10 **ORDER**

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

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


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DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2

Exhibit 2

1 **ORD**

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

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

8 **Plaintiffs,**

9 **vs.**

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

16 **Defendants.**

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

19 **Plaintiffs,**

20 **vs.**

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

25 **Defendants.**

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

Consolidated with

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

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

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

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

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

6
7 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

14 15 CONCLUSION OF LAW

16 *Breach of Contract*

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

22 23 *Declaratory Relief*

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

1 settlement proceeds as the Court has adjudicated the lien and ordered the appropriate distribution of
2 the settlement proceeds, in the Decision and Order on Motion to Adjudicate Lien. As such, a claim
3 for declaratory relief must be dismissed as a matter of law.
4

5 *Conversion*

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

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

15 When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the
16 settlement proceeds as the checks were not endorsed or deposited in the trust account. They were
17 finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien
18 and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds,
19 this claim must be dismissed as a matter of law.
20

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

22 The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and
23 Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no
24 express contract existed for compensation and there was not a breach of a contract for compensation,
25 the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter
26 of law and must be dismissed.
27
28

1 ***Breach of Fiduciary Duty***

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

10
11 ***Punitive Damages***

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

19
20 **CONCLUSION**

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

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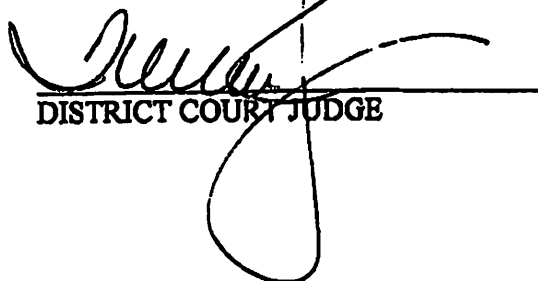
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ORDER

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

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


DISTRICT COURT JUDGE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on or about the date e-filed, this document was copied through
3 e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the
4 proper person as follows:
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6 Electronically served on all parties as noted in the Court's Master Service List
7 and/or mailed to any party in proper person.
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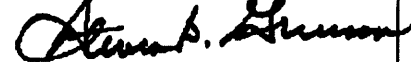
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Exhibit 5

Exhibit 5



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

Consolidated with

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

8 **FINDINGS OF FACT**

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

18 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
19 suffered a flood. The house was still under construction and the flood caused a delay. The
20 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
21 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
22 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
23 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
24 Viking, et al., also denied any wrongdoing.
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26 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
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1 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
2 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
3 resolve. Since the matter was not resolved, a lawsuit had to be filed.

4 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
5 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
6 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
7 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
8 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.
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10 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
11 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
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(Def. Exhibit 27).

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invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.

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3 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

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3 done in the litigation of this case. There were several motions and oppositions filed, several
4 depositions taken, and several hearings held in the case.

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6 the Viking Corporation ("Viking").
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11 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

3 **CONCLUSION OF LAW**

4 ***Breach of Contract***

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

11
12 ***Declaratory Relief***

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

21
22 ***Conversion***

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

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

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

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

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

21 ***Breach of Fiduciary Duty***

22 The allegations in the Complaint assert a breach of fiduciary duty for not releasing all the
23 funds to the Edgeworths. The Court finds that Mr. Simon followed the law when filing the attorney's
24 lien. Mr. Simon also fulfilled all his obligations and placed the clients' interests above his when
25 completing the settlement and securing better terms for the clients even after his discharge. Mr.
26
27
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1 Simon timely released the undisputed portion of the settlement proceeds as soon as they cleared the
2 account. The Court finds that the Law Office of Daniel Simon is owed a sum of money based on the
3 adjudication of the lien, and therefore, there is no basis in law or fact for the cause of action for
4 breach of fiduciary duty and this claim must be dismissed.

5
6
7 ***Punitive Damages***

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

16
17 **CONCLUSION**

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

24 //

25 //

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27
28

ORDER

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

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



DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

Electronically served to:

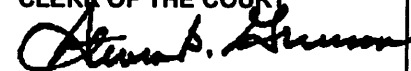
Peter S. Christiansen, Esq.
James Christensen, Esq.
Robert Vannah, Esq.
John Greene, Esq.



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 6

Exhibit 6



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

Consolidated with

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

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

17 Plaintiffs,

18 vs.

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

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d/b/a SIMON LAW; DOES 1 through 10; and,
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21 Defendants.

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

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

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

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7 **FINDINGS OF FACT**

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

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16 suffered a flood. The house was still under construction and the flood caused a delay. The
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18 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
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14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

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24 The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract
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11 account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr.
12 Simon never exercised exclusive control over the proceeds and never used the money for his
13 personal use. The money was placed in a separate account controlled equally by the Edgeworth's
14 own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

15 When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the
16 settlement proceeds as the checks were not endorsed or deposited in the trust account. They were
17 finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien
18 and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds,
19 this claim must be dismissed as a matter of law.
20

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

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

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

Punitive Damages

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

CONCLUSION

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

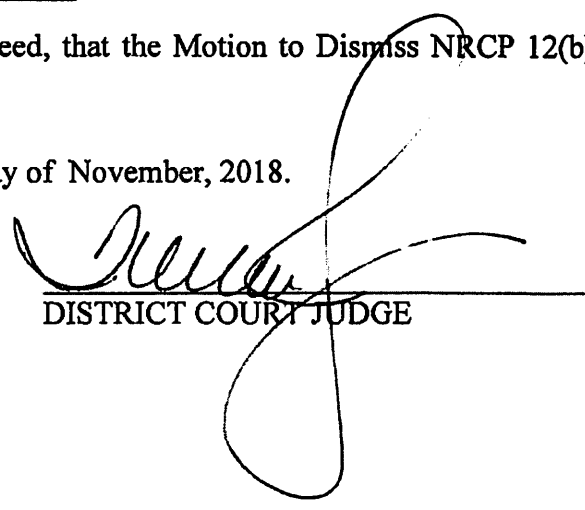
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ORDER

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

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



DISTRICT COURT JUDGE

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


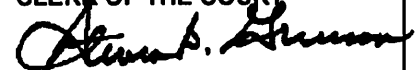

Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 4

Exhibit 4



ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 *Costs Owed*

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

15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (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
23 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
24 the largest type used in the contingent fee agreement:

25 (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;

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

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

11 NRCP 1.5.

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

23 **CONCLUSION**

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

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

9
10 **ORDER**

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

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

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


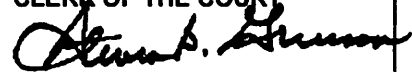

Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 3

Exhibit 3



1 ORD

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3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

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

8 Plaintiffs,

9 vs.

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

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

16 Defendants.

Consolidated with

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

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EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

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

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

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

8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

15 It reads as follows:

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

(Def. Exhibit 27).

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

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

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

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

15
16 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
17 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
18 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
19 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
20 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
21 25, 2017.

22
23 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
24 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
25 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
26

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

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

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

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

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

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

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

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

19 //

20 //

21 //

22 //

23 //

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.

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

4 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
5 Lien with an attached invoice for legal services rendered. The amount of the invoice was
6 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.
7

8 9 **CONCLUSION OF LAW**

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

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

15 NRS 18.015(1)(a) states:

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

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

20 Nev. Rev. Stat. 18.015.

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

1 is enforceable in form.

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

8 *Fee Agreement*

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

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

25 "We never really had a structured discussion about how this might be done. I
26 am more than happy to keep paying hourly but if we are going for punitive we
27 should probably explore a hybrid of hourly on the claim and then some other
28 structure that incents both of us to win an go after the appeal that these

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

10 (Def. Exhibit 27).

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

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

22 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

19 Id.

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

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

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

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

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

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

11
12
13 **Adjudication of the Lien and Determination of the Law Office Fee**

14 NRS 18.015 states:

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

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

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

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

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

4. A lien pursuant to:

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

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

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

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

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

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

9 Nev. Rev. Stat. 18.015.

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

18 *Implied Contract*

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

25 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's
26 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were
27

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

9 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
10 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
11 paid in full and there was never any indication given that anything less than all the fees had been
12 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
13 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
14 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
15 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
16 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
17 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
18 Office retained the payments, indicating an implied contract was formed between the parties. The
19 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
20 date they were constructively discharged, November 29, 2017.
21
22
23

24 *Amount of Fees Owed Under Implied Contract*

25 The Edgeworths were billed, and paid for services through September 19, 2017. There is
26 some testimony that an invoice was requested for services after that date, but there is no evidence
27
28

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

7
8 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
9 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
10 and attempted to create a bill for work that had been done over a year before. She testified that they
11 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
12 email that was read and responded to. She testified that the dates were not exact, they just used the
13 dates for which the documents were filed, and not necessarily the dates in which the work was
14 performed. Further, there are billed items included in the "super bill" that was not previously billed
15 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
16 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
17 indicated that there were no phone calls included in the billings that were submitted to the
18 Edgeworths.
19

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

1 bill.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4
5 *Costs Owed*

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

16
17 *Quantum Meruit*

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

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

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

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

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

25 1. Quality of the Advocate

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

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

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

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

18
19 3. The Work Actually Performed

20 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
21 numerous court appearances, and deposition; his office uncovered several other activations, that
22 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
23 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
24 other activations being uncovered and the result that was achieved in this case. Since Mr.
25 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
26
27
28

1 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
2 the Law Office of Daniel Simon led to the ultimate result in this case.

3 4. The Result Obtained

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

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

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

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

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

NRCP 1.5.

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

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

9 10 CONCLUSION

11 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
12 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
13 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
14 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
15 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
16 Simon as their attorney, when they ceased following his advice and refused to communicate with
17 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
18 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
19 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
20 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
21 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
22 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
23 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
24
25
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1 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
2 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.
3

4
5 **ORDER**

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

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

11
12 
13 _____
14 DISTRICT COURT JUDGE
15
16
17
18
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CERTIFICATE OF SERVICE

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

Electronically served to:

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



Tess Driver
Judicial Executive Assistant
Department 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EDGEWORTH FAMILY TRUST; AMERICAN
GRATING, LLC,
Appellants,

vs

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, A PROFESSIONAL
CORP.,
Respondents

No. 77678

Electronically Filed
Jun 06 2019 12:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

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.

Revised December 2015

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

2. Attorney filing this docketing statement:

Attorney John B. Greene, Esq. Telephone (702) 853-4338
Firm VANNAH & VANNAH
Address 400 S. 7th Street, 4th Floor
Las Vegas, NV 89101

Client(s) EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC

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 James R. Christensen, Esq. Telephone (702) 272-0406
Firm James R. Christensen, P.C.
Address 601 S. Third Street
Las Vegas, NV 89101

Client(s) Daniel S. Simon; The Law Office of Daniel S. Simon, A Professional Corporation

Attorney Peter S. Christiansen, Esq. Telephone (702) 240-7979
Firm CHRISTIANSEN LAW OFFICES
Address 810 S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

Client(s) Daniel S. Simon; The Law Office of Daniel S. Simon, A Professional Corporation

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

None.

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

None.

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

In Case No. A-16-738444-C, Plaintiffs/Appellants (Edgeworth) retained Defendants/Respondents (Simon) to represent them and agreed to pay Simon \$550 per hour (\$275 for associates). From May of 2016 through September of 2017, Simon billed \$550 per hour for his time and charged Edgeworth \$367,606.25 in attorneys fees via four invoices. Edgeworth paid these fees in full. Upon settlement, Simon demanded more in fees than the parties agreed to pay and receive. Edgeworth refused and Simon perfected a lien for \$1,977,843.80. After the hearing on Simon's Motion to Adjudicate Lien, Judge Jones awarded Simon an additional \$484,982.50 in fees. Simon won't release \$1,492,861.30 to Edgeworth.

In Case No. A-18-767242-C, Edgeworth sued Simon for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing. Judge Jones summarily dismissed the Amended Complaint without discovery.

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

1. Whether the agreement for payment of hourly fees was oral or implied?
2. Whether Edgeworth constructively discharged Simon?
3. Whether Simon is entitled to any fees based on quantum meruit versus his hourly rate of \$550?
4. Whether Simon is entitled to \$200,000 in fees based on quantum meruit from 11/29/17 thru the conclusion of the case when his billable hours on the invoice he submitted for the work he actually performed for this period of time totals \$31,811.25?
5. Whether it was inappropriate for the Amended Complaint to be dismissed pursuant to NRCP 12(b)(5)?

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 to our knowledge.

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 matter is arguably presumptively retained by the Supreme Court under NRAP 17(a) (11), being a matter of statewide public importance, as it involves an attorney who agreed to represent a client for an hourly fee of \$550, but failed to reduce the fee agreement to writing; then billed \$550 per hour in four invoices for over 18 months, collecting \$367,606.25 in fees; then demanded more in fees when a large settlement was reached. When the client refused to pay more than the agreed to fee of \$550 per hour, the attorney lienied the file for \$1,977,843.80, then used his failure to reduce the fee agreement to writing as a basis to get more fees in a "charging lien". When the lien was adjudicated, thus ordering \$484,982.50 in additional fees, attorney refused to release proceeds to client in excess of his adjudicated lien, retaining \$1,492,861.30 of client funds.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? An evidentiary hearing on a Motion to Adjudicate Lien

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 11/19/18

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 12/27/18

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 _____

☐ 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 _____

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed December 7, 2018

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:

Daniel S. Simon and The Law Office of Daniel S. Simon, A Professional Corporation filed a Notice of Cross Appeal on December 17, 2018, also appealing the underlying Decision and Order on Motion to Adjudicate Lien, which was entered on November 19, 2018.

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

NRAP4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

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

Judge Jones entered a final decision and order adjudicating Simon's attorney's lien. Judge Jones also entered a final decision and order dismissing Edgeworth's Amended Complaint.

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

(a) Parties:

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; LANGE PLUMBING, LLC; THE VIKING CORPORATION; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET; DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION.

(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:

LANGE PLUMBING, LLC; THE VIKING CORPORATION; and, SUPPLY NETWORK, INC., dba VIKING SUPPLYNET were all formally dismissed following the settlement reached with Edgeworth.

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.

-Motion to Adjudicate Attorney's Lien: Adjudicated by Judge Jones on November 19, 2018 (Appellants are appealing Judge Jones' Order-discussed in items 8, 9, and 13)

-Amended Complaint for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing: Dismissed by Judge Jones on November 19, 2018 Appellants are appealing Judge Jones' Order-discussed in items 8, 9 and 13

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Edgeworth Family Trust, et.al.
Name of appellant

John B. Greene, Esq.
Name of counsel of record

June 3, 2019
Date


Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 3rd 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.)

Dated this 3rd day of June, 2019

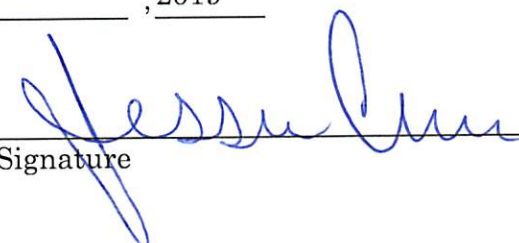

Signature

Exhibit 1

Exhibit 1

DISTRICT COURT CIVIL COVER SHEET

Department 14

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC	Defendant(s) (name/address/phone): DANIEL S. SIMON, d/b/a SIMON LAW
Attorney (name/address/phone): ROBERT D. VANNAH, ESQ. 400 S. Seventh Street, 4th Floor Las Vegas, Nevada 89101	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

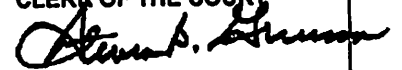
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

January 3, 2018
Date

Signature of initiating party or representative

See other side for family-related case filings.



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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

22 Defendants.

CASE NO.:
DEPT NO.:

A-18-767242-C
Department 14

COMPLAINT

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

27 1. At all times relevant to the events in this action, EFT is a legal entity organized
28 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.

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

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

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

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

22 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person
23 shall suffer personal injury by wrongful act, neglect or default of another,
24 the person causing the injury is liable to the person injured for damages;
25 and where the person causing the injury is employed by another person or
26 corporation responsible for his conduct, that person or corporation so
27 responsible is liable to the person injured for damages.
28

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

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

8 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

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

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

19 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December
20 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs
21 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to
22 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of
23 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to
24 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever
25 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees
26 and costs to the mandated computation of damages.
27
28

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

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

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

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

24 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and
25 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees
26
27
28

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

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

11
12 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a
13 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.
14 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the
15 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a
16 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had
17 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:
18 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees
19 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."
20 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And
21 they've been updated as of last week."
22

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

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

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

4 20. PLAINTIFFS have made several demands to SIMON to comply with the
5 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the
6 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To
7 date, SIMON has refused.
8

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

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

13 22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the
14 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An
15 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S
16 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed,
17 and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS
18 best interests.
19

20 23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that
21 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.
22

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

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

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

4 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the
5 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a
6 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their
7 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.
8

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

11 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS
12 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.
13

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

17 **SECOND CLAIM FOR RELIEF**

18 **(Declaratory Relief)**

19 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in
20 Paragraphs 1 through 30, as set forth herein.
21

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

24 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour
25 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.
26

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

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

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

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

18
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

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

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

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

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

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

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

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

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

22 **PRAYER FOR RELIEF**

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

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

1 5. Costs of suit; and,

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

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

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7 ROBERT D. VANNAH, ESQ. (4272)
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Exhibit 2

Exhibit 2



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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

AMENDED COMPLAINT

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

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

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

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

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

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

1 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person
2 shall suffer personal injury by wrongful act, neglect or default of another,
3 the person causing the injury is liable to the person injured for damages;
4 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.

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

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

11 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

12 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests
13 following a flood that occurred on April 10, 2016, in a home under construction that was owned by
14 PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case
15 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in
16 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the
17 trial date.
18

19 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally
20 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs
21 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were
22 never reduced to writing.
23

24 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December
25 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs
26 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to
27 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of
28

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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

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

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

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

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

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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

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

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

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

12 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an
13 amount that was far in excess of any amount of fees that he had billed from the date of the
14 previously paid invoice to the date of the service of the lien, that he could bill for the work
15 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing
16 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON
17 breached the implied covenant of good faith and fair dealing.
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19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.
24

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

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

4
5 **PRAYER FOR RELIEF**

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

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

14 DATED this 15 day of March, 2018.

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16 VANNAH & VANNAH

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19 ROBERT D. VANNAH, ESQ. (4279)
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