

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

Electronically Filed  
Aug 08 2019 12:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case**

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

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

**APPELLANTS' APPENDIX**

VOL. 2 PART 1 of 9

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

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

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

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

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

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

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

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

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.1.17	Review, Download & Save Plaintiffs opposition to Non – Party Zurich American Insurance Company’s Motion for a Protective Order, or in the Alternative to Quash Subpoenas and Counter – Motion to Compel	0.30
11.1.17	Review, Download & Save MSTR-Defendants The Viking Corporation and Supply Network, Inc.’s Motion to Strike Plaintiffs’ Untimely Disclosed Expert Crane Pomerantz and Request for Order Shortening Time	0.30
11.1.17	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc’s Motion to Stay Enforcement of Discovery Commissioner’s Report and Recommendation Pursuant to EDCR 2.34 and Request for order Shortening Time	0.30
11/1/17	Draft written discovery to Viking	1.0
11/1/17	Draft Motion to Compel Depositions and Reports	3.5
11/1/17	Review Objection to the DCRR re: Motion to Compel Home Inspection	0.25
11/1/17	Finalize and serve Opposition to Zurich’s Motion for Protective Order	3.0
11/2/17	Review and Draft Responses to Viking’s Written Discovery to Edgeworth	1.25
11/2/17	Review Viking’s Motion to Stay Enforcement of the 10.24.17 DCRR and Request for EDCR 2.34 (e) relief	0.25
11/2/17	Draft Reply to Motion to Reconsider Pro Hac	4.25
11.2.17	Email chain with client re accountant	0.25
11.2.17	Email to Teddy Parker re status of Lange’s discovery responses and extension	0.15
11.2.17	Review email from client re what he thinks is important from Carnahan depo for MIL to Exclude	1.0
11.2.17	Review, Download & Save ORDR – Order Granting Plaintiffs Motion to Amend the Complaint to Add Viking Group , Inc.	0.30
11/2/17	Review Viking’s 16 <sup>th</sup> ECC Supplement (Carnahan Docs from FSS)	1.0
11/2/17	Review Viking’s Motion to Strike Pomerantz on OST and analyze	0.25

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.2.17	Call with DSS	0.40
11.3.17	Call with Client	0.25
11.3.17	Call with Client	0.15
11/3/17	Finalize and serve Reply to Motion to Reconsider Pro Hac	1.25
11/3/17	Finalize and serve Motion to Compel Depositions and Reports	1.5
11/3/17	Finalize and serve motion to Compel Viking Financials	0.75
11/3/17	Draft Reply to Plaintiffs' MIL to Exclude Carnahan	2.75
11/3/17	Draft responses to Viking's written discovery to Edgeworth	0.5
11/3/17	Review Robinson response regarding Viking's position on providing the Thorpe and FSS depositions via 4 <sup>th</sup> set of RFP and attached cases	2.5
11.3.17	Review email from DSS to Robinson re DCRR from 10/24/17 hearing	0.15
11/3/17	Review letter from Robinson re revisions to the 10/24/17 DCRR; and discuss with DSS	1.25
11.3.17	Email chain with Jessica Rogers re conference call with DC Bulla	0.15
11.3.17	Email chain with Robinson re Viking's Responses to 4 <sup>th</sup> Set of RFP's and analysis	0.75
11.3.17	Review email and attachment from Robinson re changes to the 10.24.17 DCRR	0.50
11.3.17	Email chain with Robinson re deposition scheduling of Viking employees around first week of December and review of calendar	0.25
11.3.17	Review email from client re drop ceiling and pics	0.15
11.3.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding the 10.24.17 DCRR	0.30
11.5.17	Review email from client and attachment re significant events in case and analyze	0.50
11.6.17	Review email from client re Carnahan depo and load creep	1.0
11.6.17	Email to UL re conference call re UL deposition and documents	0.15
11.6.17	Email chain between AMF, DSS and client re Viking's 17 <sup>th</sup> ECC Supplement	0.50

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11/6/17	Revise Reply Plaintiffs MIL to Exclude Carnahan	3.25
11/6/17	Review Viking's 17 <sup>th</sup> ECC Supplement	1.5
11/6/17	Review Viking's 16 <sup>th</sup> ECC Supplement (Carnahan Docs from FSS)	2.0
11/6/17	TC with Susan McNicholas at UL re deposition scheduling and document production	0.25
11.6.17	Review email from DSS re calling UL attorney and response	0.15
11.6.17	Review email from DSS re mediation and response	0.15
11.6.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 17 <sup>th</sup> Supplemental Disclosure Pursuant to NRCP 16	0.30
11.6.17	Review, Download & Save Letter Discovery Commissioner Bulla re TC Confirmation and DCRR 10.24.17	0.30
11.6.17	Review, Download & Save Plaintiffs Motion to Compel Viking Documents and for Order to Respond to Discovery Regarding Their Financial information on Order Shortening time	0.30
11.6.17	Review, Download & Save Plaintiffs Motion to Compel Viking Documents and for order to Respond to Discovery on Order Shortening Time	0.30
11.6.17	Review, Download & Save Reply to Viking's Opposition to Plaintiffs Motion to Reconsider order Granting the Viking Defendants Motions to Associate Counsel	0.30
11.7.17	Call with DSS	0.15
11.7.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 18 <sup>th</sup> Supplemental Disclosures pursuant to NRCP 16	0.30
11.7.17	Review, Download & Save Plaintiffs' Reply to Viking's opposition to Motion in Limine to Exclude Defendants The Viking Corporation and Supply Network, Inc., dba Viking Supplynet's Expert Robert Carnahan on Order Shortening Time	0.30
11.7.17	Review, Download & Save Letter Simon re MT Strike DCRR	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.7.17	Review, Download & Save Letter to Discovery Commissioner Bulla re Conf Call Exemplar	0.30
11.7.17	Review, Download & Save Notice of Deposition of Greg Fehr off Calendar	0.30
11.7.17	Review, Download & Save ROC of Plaintiff's Motion to Compel Financials and Motion to Compel Documents	0.30
11.7.17	Review email from Oasis re confirmation of Carnahan depo	0.25
11.7.17	Email chain with Robinson re site inspection on November 15 <sup>th</sup>	0.25
11.7.17	Review email from client and his excel documents with multiple tabs	1.5
11/7/17	Draft Continued Deposition Notices of Carnahan	0.5
11/7/17	Review DCRR from 10.24.17 returned from Bulla and make revisions	1.5
11/7/17	Finalize and serve Reply to MIL to Exclude Carnahan	2.0
11/7/17	Discussion with DSS re case	0.5
11/7/17	TC with Oasis scheduling and discussion with Janelle re re-scheduling Carnahan depo	0.25
11.7.17	Review email from DSS re drafting motion to compel financial information from Lange and response	0.15
11.7.17	Review email from DSS with attached letter from Parker	0.25
11.7.17	Review email from DSS re sending information to Pomerantz and response	0.15
11.8.17	Review, Download & Save Substitution of Attorneys for Lange Plumbing	0.30
11.8.17	Review, Download & Save Subpoena Duces Tecum for Robert Carnahan PE	0.30
11.8.17	Review, Download & Save Notice of Continued Video Deposition of Robert Carnahan, P.E. Duces Tecum	0.30
11.8.17	Review email from Evelyn Chun re depo notice of Rob Carnahan	0.15
11/8/17	Finalized and serve Amended Notice and SDT for Robert Carnahan	0.5
11/8/17	TC with Jenny at Rene Stone & Associates re: deposition is FSS/Thorpe case	0.5

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11/8/17	Review Viking's 18 <sup>th</sup> ECC Supplement	1.0
11/8/17	Draft Motion to Compel Financial documents from Lange Plumbing on OST	2.0
11/9/17	Draft and serve deposition notice and subpoena for Athanasia Dalacas	0.25
11/9/17	Review Zurich Reply to Motion for Protective Order	0.5
11/9/17	Revise DCRR for 10/24/17 hearing, serve and send over; Discussion with DSS	1.75
11/9/17	Finalize DCRR for 10/4/17, serve and send over	0.75
11/9/17	Finalize Order to exclude Rosenthal, serve and send over	0.75
11/9/17	Review 10/24/17 Transcript and conference call with Discovery Commissioner Bulla	1.0
11/9/17	TC with Mr. Parker re: case	0.5
11/9/17	Prepare for mediation	1.5
11/9/17	Review Pancoast letter and competing DCRR re Motion to Strike	0.25
11.9.17	Review email from DSS resending information to Pomerantz and response	0.15
11.9.17	Review email forwarded from DSS with Olivas job file for deposition	0.50
11.9.17	Email chain with Debbie Holloman re mediation brief	0.20
11.9.17	Review email from Susan McNicholas re UL deposition and documents	0.15
11.9.17	Email to UL re setting the UL deposition and acquiring the documents requested	0.15
11.9.17	Review, Download & Save Subpoena Duce Tecum to Athanasia EW. Dalacas, Esq.	0.30
11.9.17	Review, Download & Save Notice of Video Deposition of Athanasia E. Dalacas, Esq.	0.30
11.9.17	Review, Download & Save Non Party Zurich American Insurance Company's Reply to Plaintiff's Opposition to Motion for a Protective order, or In the Alternative to Quash Subpoenas, and Counter Motion to Compel	0.30
11.9.17	Review, Download & Save Correspondence to Judge Jones re Order Granting MIL to Exclude Jay Rosenthal	0.30
11.9.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding the 10.4.17 DCRR	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.9.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding the 10.24.17 DCRR	0.30
11.10.17	Multiple emails to Crane Pomerantz with additional documents for his review	0.25
11.10.17	Review email from client re Viking presentation of Best practice and forward to Crane Pomerantz	0.25
11/10/17	Mediation with Floyd Hale	4.0
11/13/17	Review Viking's competing DCRRs and Order to strike Rosenthal and analyze with the transcripts/minutes	1.25
11/13/17	Review Viking's Motion to Compel Settlement Conference; Research and draft notes for opposing argument	1.5
11/13/17	Review and pull documents from the federal court case of Viking v/ Harold Rodger, et al	2.5
11/13/17	TC with Charles Rego with UL re deposition and production of documents	0.25
11/13/17	Discussion with DSS re case; Prepare and pull documents for the hearing on 11/14/17	1.5
11.13.17	Review email from DSS to client re hearing on 11/14/17	0.15
11.13.17	Review email and attachment from DSS	0.15
11.13.17	Email chain with DSS re complaint filed against Harold Rodgers	0.25
11.13.17	Review email from DSS re research re privilege log and confidentiality issues and response	0.75
11.13.17	Review email from DSS re supplementing Pomerantz opinion letter	0.15
11.13.17	Email chain with DSS re expert depositions noticed by Viking	0.15
11.13.17	Review email from DSS to George Ogilvie with documents for the contract issue	0.15
11.13.17	Review email from Charles Rego re UL deposition and documents	0.15
11.13.17	Email to Susan McNicholas re UL Deposition	0.15
11.13.17	Review email from client and attachment of "red and black chart" of activations	0.50
11.13.17	Review email and attachments from client re print out of fire department reported VK457	0.50

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.13.17	Review email and attachments from client re print out of activation list from 2/2017	0.50
11.13.17	Review email from client re pic of VK456 fusible link	0.15
11.13.17	Review email from client and analyze re Viking's response to Carnahan	0.50
11.13.17	Review email from client re motion to exclude crane and response	0.20
11.13.17	Review email from client re hearing on 11.14.17 and response	0.15
11.13.17	Review email from client re adding Robert Edgeworth as a witness to ECC Disclosure	0.15
11.13.17	Review motion, draft email, and review email chain between client, AMF and DSS re Viking's motion for a settlement conference	2.0
11.13.17	Review email and attachment from client re his review of the 18th ECC Supplement	0.25
11.13.17	Email to Crane Pomerantz with additional documents for his review	0.25
11.13.17	Review, Download & Save Notice of Deposition of Crane Pomerantz	0.30
11.13.17	Review, Download & Save Notice of Deposition of Brian Garelli	0.30
11.13.17	Review, Download & Save Notice of Deposition of Don Koch	0.30
11.13.17	Review, Download & Save Letter to Discovery Commissioner	0.30
11.13.17	Review, Download & Save Stipulation Regarding Motion in Limine Briefing Schedule	0.30
11.13.17	Review, Download & Save Letter to Hon. Tierra Jones	0.30
11.13.17	Review, Download & Save Letter Discovery Commissioner Bulla re Mtn SC	0.30
11.13.17	Review, Download & Save The Viking Corporation and Supply Network, Inc.'s Motion for Mandatory Settlement Conference and Stay Rulings on the Pending Motions and Request for Order Shortening Time	0.30
11.13.17	Review, Download & Save Letter to Discovery Commissioner Bulla DCRRs	0.30
11.14.17	Call with Client	0.15

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.14.17	Review, Download & Save Commission to Take Out of State Deposition of Rene Stone	0.30
11.14.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition of Rene Stone	0.30
11.14.17	Review, Download & Save Commission to Take Out of State Deposition Harold Rodgers	0.30
11.14.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition Harold Rodgers	0.30
11.14.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC.'s 14 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30
11.14.17	Review, Download & Save Subpoena Duces Tecum for the Custodian of Records of Rene Stone and Associates	0.30
11.14.17	Review, Download & Save Notice of Deposition of Custodian of Records for Rene Stone and Associates Duces Tecum	0.30
11.14.17	Email chain with Sheri Kern with process server in CA for Rene Stone SDT	0.25
11.14.17	Review email from client re Crane expert report typo	0.20
11.14.17	Email chain with client re K statues Parker was arguing for MSJ	1.0
11/14/17	Discussion with Rene Stone & Associates re: depos in FSS/Thorpe litigation; Draft, serve and domesticate SDT in CA	1.0
11/14/17	Draft, compile and serve Plaintiffs' 14 <sup>th</sup> ECC Supplement	1.0
11/14/17	Prepare and Attend Hearing re: Motion to Strike Carnahan and MSJ Against Lange Plumbing	3.5
11/14/17	Pull documents for Contract attorney	0.5
11/14/17	Research contract issues brought up by Parker at hearing and Discussion with DSS	2.5
11/15/17	Draft Opposition to Pomerantz Motion	4.5
11/15/17	Revise SDT and California Court documents for domestication for Rene Stone & Associates	1.0
11/15/17	Discussion re case with DSS and BJM	0.50
11.15.17	Review email and links from client re K issues	0.50

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.15.17	Review email from client re Zurich list and Viking list and respond	0.25
11.15.17	Review email from client re calendar and respond explaining what everything is	0.50
11.15.17	Review email and link from client re Jeff Norton employment and SDT issues	0.30
11.15.17	Review email from client re evidentiary hearing questions and discuss with DSS	1.0
11.15.17	Review email from client re counsel in FSS/Thorpe case and respond	0.25
11.16.17	Email to Zamiski re outstanding bill and request for all evidence back	0.15
11.16.17	Review email and attachments from client re Zurich activations	0.50
11.16.17	Review email from client re privilege log and respond	0.25
11.16.17	Call with DSS	0.15
11.16.17	Review, Download & Save Plaintiffs' Opposition to Viking's Motion to Strike Untimely Disclosed Expert Crane Pomerantz on an Order Shortening Time and Counter Motion to Disclosure Crane Pomerantz as an Initial Expert	0.30
11.16.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Opposition to Plaintiffs' Motion to Compel Viking Documents	0.30
11.16.17	Review, Download & Save Defendant The Viking Corporation's opposition to Plaintiff's Motion to Compel Documents and Respond to Discovery Regarding Financial Information	0.30
11.16.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Confidentiality / privilege Log of Documents Subject to Stipulated Protective Order	0.30
11.16.17	Review, Download & Save Letter to D. Simon from J. Pancoast re Privilege Log	0.30
11/16/17	Finalize and Serve Opposition to Strike Pomerantz	1.5
11/16/17	Review Viking Privilege Log and documents and analyze Seattle Times case	2.75

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11/16/17	Review Viking's Oppositions to Plaintiffs' Motions to Compel Financials and Compel Discovery Responses	0.75
11/16/17	Discussion with DSS and BJM re Lange claims	0.75
11/16/17	Prepare and pull documents for hearing on 11/17/17	1.0
11.16.17	Review email from DSS re finalized opp to Pomerantz motion and response	0.15
11.16.17	Review email from DSS to Ben Miller re response to bad faith acts of Lange	0.15
11.17.17	Review email from DSS to Susan McNicholas re re-noticing depo for UL	0.15
11.17.17	Review email and attachment from Evelyn Chun re Notice to vacate Olivas	0.15
11.17.17	Review and Respond to Jorie Yambao re Kevin Hastings final invoice	0.15
11.17.17	Review email from Susan McNicholas re UL deposition and documents	0.15
11.17.17	Email chain with Hastings re final bill and request for all evidence back	0.15
11.17.17	Review, Download & Save Lange Plumbing, LLC's 12 <sup>th</sup> Supplement to NRC 16.1 Early Case Conference List of Witnesses and Documents	0.30
11.17.17	Review, Download & Save Lange Plumbing, LLC's Responses to Plaintiffs' 3 <sup>rd</sup> Set of Requests for Production	0.30
11.17.17	Review, Download & Save Lange plumbing, LLC's Answers to Plaintiffs' 3 <sup>rd</sup> Set of Interrogatories	0.30
11.17.17	Review, Download & Save Lange Plumbing, LLC's Responses to Plaintiffs' 2 <sup>nd</sup> Set of Requests for Production	0.30
11.17.17	Review, Download & Save Lange Plumbing, LLC's Answers to Plaintiffs' 2 <sup>nd</sup> Set of Interrogatories	0.30
11.17.17	Review, Download & Save Subpoena Duces Tecum for 30(B)(6) of the Designees of Underwriters Laboratories	0.30
11.17.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Video Deposition Duces Tecum Pursuant to NRC 30(B)(6) of Designees of Underwriters laboratories, Inc.	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11/17/17	Prepare and attend Hearing for Zurich motion for protective order, Viking Motion to Strike Pomerantz, Viking motion to Stay Enforcement of DCRR, Plaintiff Motion to Compel Financials, Plaintiff motion to Compel Discovery	3.0
11/17/17	Review Lange Plumbing's 12 <sup>th</sup> ECC Disclosure	0.25
11/17/17	Draft and serve amended deposition notice and subpoena for PMK of UL	0.50
11/20/17	Review Pancoast letter re meet and confer re MILs and draft response letter	0.50
11/20/17	Draft and send letter to Fred Knez re depositions of Rene Stone and Harold Rodgers	0.25
11.20.17	Email chain with DSS re outstanding expert bills	0.25
11.20.17	Email chain with DSS re meet and confer for MILS and hearing for Giberti's MGFS	0.25
11.20.17	Email chain with DSS re Knez letter and threat of motion to file protective order in CA for Rodgers and Rene Stone depositions	0.25
11.20.17	Review email from DSS to George Ogilvie re contract issues	0.15
11.20.17	Review and respond to email from Tracy Hunt re acceptance of Don Koch binder	0.15
11.20.17	Email chain with Mary Hayes re correspondence to and from Mr. Knez re Rogers and Rene Stone depo	0.50
11.20.17	Review and respond to email from Beth Molinar re outstanding invoice for Zamiski	0.15
11.20.17	Review email from client re K and forward to George	0.20
11.20.17	Email to Koch re send outstanding bill	0.15
11.20.17	Review, Download & Save Correspondence to Counsel regarding EDCR 2.47	0.30
11.20.17	Review, Download & Save Letter to Viking Counsel re Expert Depos 11.20.17	0.30
11.20.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
11.20.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11.20.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
11.22.17	Review, Download & Save Lange Plumbing, LLC's Supplemental Brief in Support of its Opposition to Plaintiff's Motion for Summary Judgment Against Lange Plumbing, LLC, Only and Countermotion Pursuant to EDCR 2.20	0.30
11.22.17	Review, Download & Save Notice of Vacating Video Deposition of the Custodian of Records for Rene Stone and Associates	0.30
11.22.17	Review, Download & Save Notice of Vacating Video Deposition of Harold Rodgers	0.30
11.22.17	Email to Mary Hayes re notice to vacated depositions of Harold Rogers and Rene Stone	0.15
11.22.17	Email documents for review to George Ogilvie	0.15
11/22/17	Draft and serve notice to vacate deposition of Rene Stone; Draft and serve notice to vacate deposition of Harold Rodgers	0.50
11.22.17	Review email from DSS re recent list of damages and response	0.15
11.22.17	Review email from DSS re sending Lange responses brief to Ogilvie and resps	0.15
11.27.17	Review email from DSS re Carnahan depo and response	0.15
11.27.17	Email chain with Rene Stone re vacating deposition	0.15
11.27.17	Email chain with Julie Lord (Dept. 10 clerk) re spellings for hearing transcript	0.25
11.27.17	Review email from Olivas re final billing	0.15
11.27.17	Review, Download & Save Notice of Vacating Video Deposition of Athanasia E. Dalacas, Esq. Duces Tecum	0.30
11.27.17	Review, Download & Save Notice of Deposition of Don Koch OFF Calendar	0.30
11.27.17	Review, Download & Save Notice of Deposition of Brian Garelli-Off Calendar	0.30
11.27.17	Review, Download & Save Notice of Deposition of Crane Pomerantz – Off Calendar	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

11/27/17	Draft and serve notice to vacate deposition of Anthasia Dalacas	0.25
11/28/17	Draft and serve amended deposition notice and subpoena for Robert Carnahan	0.25
11/28/17	Review Letter from Lange and discussion with DSS	0.75
11.28.17	Review, Download & Save Subpoena Duces Tecum for Robert Carnahan PE	0.30
11.28.17	Review, Download & Save Amended Notice of Continued Video Deposition of Robert Carnahan P.E. Duces Tecum	0.30
11.29.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 19 <sup>th</sup> Supplemental NRCP 16.1 Disclosure	0.30
11.29.17	Review, Download & Save Correspondence to Counsel, dated November 29, 2017	0.30
11/29/17	Review Olgilvie response to Lange's Supplement to MSJ; Discussion with DSS re Reply	0.50
11.29.17	Review email from DSS re drafting reply to Lange's supplemental Opposition	1.50
11.29.17	Review email from DSS re drafting notice of attorney lien	0.15
11.29.17	Review email from DSS re letter from Pancoast to Simon	0.15
11.29.17	Email to Pancoast re hearing dates I front of DC Bulla in light of negotiations	0.15
11.30.17	Email to George Olgilvie instructing him to stop working on the case	0.15
11.30.17	Review, Download & Save Letter to Counsel	0.30
11.30.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
11/30/17	Review Viking's 19 <sup>th</sup> ECC Supplement	1.0
11/30/17	Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
11.30.17 & 12.2.17	Email chain with DSS re attorney lien	0.15
12/1/17	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.5
12.1.17	Review, Download & Save Lange Plumbing Verification to Rogs	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

12.1.17	Review, Download & Save Notice of Attorney Lien	0.30
12/1/17	Review Release from Viking and discussion with DSS re release	0.50
12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	0.25
12/4/17	Review Lange written discovery responses	1.5
12/4/17	Discussion with DSS re scheduling and status of case	0.40
12.4.17	Review, Download & Save Notice Vacating the 2 <sup>nd</sup> Amended Video Depo of NRCP30(b) (6) Designees of Underwriters Laboratories	0.30
12.4.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
12.5.17	Email chain with UL re vacating depo	0.15
12/6/17	Review Lange's 13 <sup>th</sup> ECC Disclosure	2.5
12.6.17	Review email from DSS re notice to vacate Caranahan depo	0.15
12/6/17	Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
12/6/17	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
12.6.17	Review, Download & Save Service Only – Lange Plumbing 13 <sup>th</sup> Supp to NRCP 16.1 ECC	0.30
12.6.17	Review, Download & Save Service Only – Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
12.7.17	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
12/8/17	Review Viking Motion for Good Faith Settlement, Analyze and discussion with DSS	0.75
12/8/17	Review Lange's 14 <sup>th</sup> and 15 <sup>th</sup> ECC Disclosure	0.50
12.8.17	Email chain with DSS re Order Granting Giberti MGFS	0.15
12/8/17	Review Stipulation to Dismiss from Viking and discussion with DSS	0.50
12.8.17	Review, Download & Save Lange Plumbing 15 <sup>th</sup> Supplement to 16.1 ECC List Witnesses and Docs	0.30

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**

12.8.17	Review, Download & Save Lange Plumbing 14 <sup>th</sup> Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 <sup>th</sup> ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 <sup>th</sup> ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
<b>TOTAL HOURS x \$275 per hour (reduced)</b>		<b>762.6</b>
<b>TOTAL FEES</b>		<b>\$209,715.00</b>

**INVOICE FOR BENJAMIN J. MILLER**  
***EDGEWORTH v. LANGE, ET AL.***

<b>Date</b>	<b>Description</b>	<b>Time</b>
8/16/17	Research and review prior cases and brief bank for written discovery on punitive damages	0.75
8/16/17	Send interoffice email regarding punitive damage discovery from other cases	0.25
8/17/17	Research and review licensing standards and regulations from California Board of Professional Engineers, Land Surveyors and Geologists for possible use in upcoming expert depositions	1.5
8/30/17	Send interoffice email regarding punitive damages written discovery from other cases	0.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35
11/13/17	Draft interoffice email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/6/17	Research Nevada case law regarding cost of repair damages and diminution in value damages	0.75
11/6/17	Research case law of surrounding jurisdictions regarding cost of repair damages and diminution in value damages	1.5
11/6/17	Research various law review articles, restatements of law, jury instructions and other legal authorities regarding cost of repair damages and diminution in value damages	1.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35

11/8/17	Prepare memo regarding cost of repair damages and diminution in value damages	2.0
11/9/17	Discussion with DSS re: Memo	0.5
11/13/17	Research Nevada law regarding admissibility of litigation conduct for bad faith	0.5
11/13/17	Research case law of surrounding jurisdictions regarding admissibility of litigation conduct for bad faith	3.25
11/13/17	Research various law review articles and other legal authorities regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Prepare memo regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Draft email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/14/17	Research Contract Validity within NRS Chapter 624 and Nevada case law for summary judgment briefing	2.75
11/16/17	Confer regarding recoverable damages within breach of contract vs. products liability	0.75
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
	<b>Total Hours x's \$275 per hour (reduced)</b>	<b>21.8</b>
	<b>Total Fees</b>	<b>\$5,995.00</b>

**SIMON LAW**  
A PROFESSIONAL CORPORATION  
810 SOUTH CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89101

TELEPHONE (702) 364-1650

FACSIMILE (702) 364-1655

December 7, 2017

Robert Vannah, Esq.  
John Greene, Esq.  
400 South 7<sup>th</sup> Street, Suite 400  
Las Vegas, Nevada 89101

**RE: Edgeworth v. Viking, et al.**

Dear Mr. Vannah,

It was a pleasure speaking with you today. Pursuant to your direction, based on the wishes of the client, all client communication will be directed to your office.

Thank you for confirming that the pending evidentiary hearing concerning Viking, may be taken off calendar. There are pending motions on the enforceability of the Lange contract which need to be addressed in the very near term. We have moved to enforce the contract; and, Lange has asked the Court to find the contract void. The Lange brief to void the contract is attached. Because of the motion briefing schedule, the decision to take the pending motions off calendar should be made on or before Monday, December 11, 2017.

An issue of concern is the current settlement proposal from Lange. The offer is \$100,000.00 with an offset of approximately \$22,000.00 for a net offer of about \$78,000.00. The \$78k would be "new" money in addition to the \$6M offered by Viking. If the Lange offer is accepted it would end the case and no other recovery for the subject incident would be possible. If the Lange offer is not accepted, then Viking will need to file a motion for Good Faith settlement. See attached motion. If the motion is granted, then the \$6M settlement will be paid. If denied, then the \$6M payment will be delayed an indeterminate time.

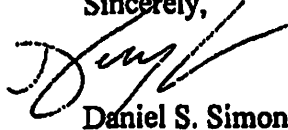
The Lange offer is good as far as the property damage claims are concerned. However, there is a potential for recovery of attorney fees and costs from Lange

based upon the Lange contract with American Grating LLC. If the current Lange offer is accepted the potential recovery of attorney fees and costs pursuant to the contract will be waived. If the Lange motion to void the contract is granted, then the claim against Lange for attorney fees and costs will be destroyed (unless there is a successful appeal).

Simon Law is reviewing the case file and work performed from the outset that has not been billed (including such things as obtaining a forensic copy of case related e-mails and phone records) to provide a comprehensive hourly bill. It is reasonably expected at this time that the hourly bill may well exceed a total of \$1.5M and the costs currently are approximately \$200,000. The size of the billing and costs incurred should be considered in the decision to accept the current Lange offer or to continue to pursue Lange under the contract.

Thank you for your assistance in this matter. I have discussed the above with the client previously, but the situation requires a review. If there are any questions, or if any additional information is needed, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel S. Simon', is written over the typed name.

Daniel S. Simon

LAW OFFICE OF  
**DANIEL S. SIMON**  
A PROFESSIONAL CORPORATION  
810 SOUTH CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89101

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

Pursuant to your request, please find attached herewith the agreement I would like signed, as well as the proposed settlement breakdown, if a final settlement is reached with the Viking entities. The following is to merely clarify our relationship that has evolved during my representation so you are not confused with my position.

**I helped you with your case and went above and beyond for you because I considered you close friends and treated you like family**

As you know, when you first asked me to look at the case, I did not want to take it as I did not want to lose money. You already met with Mr. Marquis who wanted a 50k retainer and told you it would be a very expensive case. If Mr. Marquis did the work I did, I have no doubt his billing statements would reflect 2 million or more. I never asked you for a retainer and the initial work was merely helping you. As you know, you received excellent advice from the beginning to the end. It started out writing letters hoping to get Kinsale to pay your claim. They didn't. Then this resulted in us filing a lawsuit.

As the case progressed, it became apparent that this was going to be a hard fight against both Lange and Viking who never offered a single dollar until the recent mediations. The document production in this case was extremely voluminous as you know and caused my office to spend endless late night and weekend hours to push this case through the system and keep the current trial date.

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and John's willingness to look at the information I secured to support his position. As you know, no other appraiser was willing to go above and beyond as they believed the cost of repairs did not create a loss. As you know, John's opinion greatly increased the value of this case. Please do not think that he was paid a fee so he had to give us the report. His fee was very nominal in light of the value of his report and he stepped up to help you because of us and our close relationship. Securing all of the other experts and working with them to finalize their opinions were damaging to the defense was a tremendous factor in securing the proposed settlement amount. These experts were involved because of my contacts. When I was able to retain Mr. Pomerantz and work with him to finalize his opinions, his report was also a major factor. There are very few lawyer's in town that would approach the case the way I did to get the results I did for you. Feel free to call Mr. Hale or any other lawyer or judge in town to verify this. Every time I went to court I argued for you as if you were a family member taking the arguments against you personal. I made every effort to protect you and your family during the process. I

was an exceptional advocate for you. It is my reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number. It is also because my office stopped working on other cases and devoted the office to your case filing numerous emergency motions that resulted in very successful rulings. My office was available virtually all of the time responding to you immediately. No other lawyer would give you this attention. I have already been complimented by many lawyers in this case as to how amazing the lawyering was including Marks lawyer who told me it was a pleasure watching me work the way I set up the case and secured the court rulings. Feel free to call him. The defense lawyers in this case have complimented me as well, which says a lot. My work in my motions and the rulings as an exceptional advocate and the relationships I have and my reputation is why they are paying this much. The settlement offer is more than you ever anticipated as you were willing to take 4-4.5 at the first mediation and you wanted the mediator's proposal to be 5 million when I advised for the 6 million. One major reason they are likely willing to pay the exceptional result of six million is that the insurance company factored in my standard fee of 40% (2.4 million) because both the mediator and the defense have to presume the attorney's fees so it could get settled. Mr. Hale and Zurich both know my usual attorney's fees. This was not a typical contract case your other hourly Lawyers would handle. This was a major fight with a world-wide corporation and you did not get billed as your other hourly lawyers would have billed you. This would have forced you to lay out substantially more money throughout the entire process. Simply, we went above and beyond for you.

**I have lost money working on your case.**

As you know, when I was working on your case I was not working on many other cases at my standard fee and I told you many times that I can't work hourly because I would be losing too much money. I felt it was always our understanding that my fee would be fair in light of the work performed and how the case turned out. I do not represent clients on an hourly basis and I have told this to you many times.

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### **Value of my Services**

The attached agreement reflects a greatly reduced sum for the value of my services that I normally charge in every case. I always expected to be compensated for the value of my services and not lose money to help you. I was troubled at your statements that you paid me hourly and you now want to just pay me hourly when you always knew this was not the situation. When I brought this to your attention you acknowledged you understood this was not just an hourly fee case and you were just playing devil's advocate. As you know, if I really treated your case as only an hourly case, I would have included all of the work my staff performed and billed you at a full hourly fee in 30 day increments and not advance so much money in costs. I would have had you sign just an hourly contract retainer just as Mr. Pomerantz had you sign. I never did this because I trusted you would fairly compensate me for the value of my services depending on the outcome. In the few statements I did send you I did not include all of the time for my staff time or my time, and did not bill you as any other firm would have. The reason is that this was not just an hourly billing situation. We have had many discussions about this as I helped you through a very difficult case that evolved and changed to a hotly contested case demanding full attention. I am a trial attorney that did tremendous work, and I expect as you would, to be paid for the value of my service. I did not have you sign my initial standard retainer as I treated you like family to help you with your situation.

### **Billing Statements**

I did produce billing statements, but these statements were never to be considered full payment as these statements do not remotely contain the full time myself or my office has actually spent. You have acknowledged many times that you know these statements do not represent all of my time as I do not represent clients on an hourly basis. In case you do not recall, when we were at the San Diego Airport, you told me that a regular firm billing you would likely be 3x my bills at the time. This was in August. When I started filing my motions to compel and received the rulings for Viking to produce the information, the case then got substantially more demanding. We have had many discussions that I was losing money but instead of us figuring out a fair fee arrangement, I did continue with the case in good faith because of our relationship focusing on winning and trusted that you would fairly compensate me at the end. I gave you several examples of why I was losing money hourly because my standard fee of 40% on all of my other cases produced hourly rates 3-10 times the hourly rates you were provided. Additionally, just some of the time not included in the billing statement is many phone calls to you at all hours of the day, review and responses of endless emails with attachments from you and others, discussions with experts, substantial review the filings in this case and much more are not contained in the bills. I also spent substantial time securing representation for Mark Giberti when he was sued. My office continued to spend an exorbitant amount of time since March and have diligently litigated this case having my office virtually focus solely on your case. The hourly fees in the billing statements are much lower than my true hourly billing. These bills were generated for several reasons. A few reasons for the billing statements is that you wanted to justify your loans and use the bills to establish damages against Lange under the contract, and this is the why all of my time was not included and why I expected to be paid fairly as we worked through the case.

I am sure you will acknowledge the exceptional work, the quality of my advocacy, and services performed were above and beyond. My services in every case I handle are valued based on results not an hourly fee. I realize that I didn't have you sign a contingency fee agreement and am not asserting a contingency fee, but always expected the value of my services would be paid so I would not lose money. If you are going to hold me to an hourly arrangement then I will have to review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rates to avoid an unjust outcome.

### **How I handle cases**

I want you to have a full understanding as to how my office works in every other case I am handling so you can understand my position and the value of my services and the favorable outcome to you.

My standard fee is 40% for a litigated case. I have told you this many times. That is what I get in every case, especially when achieving an outcome like this. When the outcome is successful and the client gets more and I will take my full fee. I reduce if the outcome is not as expected to make sure the client shares fairly. In this case, you received more than you ever anticipated from the outset of this case. I realize I do not have a contract in place for percentages and I am not trying to enforce one, but this merely shows you what I lost by taking your case and given the outcome of your case, and what a value you are receiving. Again, I have over 5 other big cases that have been put on the back burner to handle your case. The discovery period in these cases were continued several times for me to focus on your case. If I knew you were going to try and treat me unfairly by merely asserting we had an hourly agreement after doing an exceptional work with an exceptional result, I wouldn't have continued. The reason is I would lose too much money. I would hope it was never your intention to cause me hardship and lose money when helping you achieve such an exceptional result. I realize I did not have you sign a fee agreement because I trusted you, but I did not have you sign an hourly agreement either.

### **Finalizing the settlement**

There is also a lot of work left to be done. As you know, the language to the settlement must be very specific to protect everyone. This will need to be negotiated. If this cannot be achieved, there is no settlement. The Defendant will require I sign the confidentiality provisions, which could expose me to future litigation. Depending on the language, I may not be comfortable doing this as I never agreed to sign off on releases. Even if the language in the settlement agreement is worked out, there are motions to approve the settlement, which will be strongly opposed by Lange. If the Court does not grant the motion, then there is no settlement. If there is an approved settlement and Viking does not pay timely, then further motions to enforce must be filed.

Presently, there are many things on calendar that I need to address. We have the following depositions: Mr. Carnahan, Mr. Garelli, Crane Pomerantz, Kevin Hastings, Gerald Zamiski, and the UL deposition in Chicago. We have the Court hearings for Zurich's motions for protective order, our motion to de-designate the documents as confidential, our motion to make Mr. Pomerantz an initial expert, as well as the summary judgment motions involving Lange, who has

recently filed a counter motion and responses need to be filed. Simply, there is a substantial amount of work that still needs to be addressed. Since you knew of all of the pending matters on calendar, it is unfortunate that you were obligated to go to China during a very crucial week to attempt to finalize the case. When I asked if you would be available to speak if necessary, you told me that you are unavailable to discuss matters over the phone. This week was very important to make decisions to try and finalize a settlement.

I understand that the way I am looking at it may be different than the way your business mind looks at things. However, I explained my standard fees and how I work many times to you and the amount in the attached agreement is beyond fair to you in light of the exceptional results. It is much less than the reasonable value of my services. I realize that because you did not sign my retainer that you may be in a position to take advantage of the situation. However, I believe I will be able to justify the attorney fee in the attached agreement in any later proceeding as any court will look to ensure I was fairly compensated for the work performed and the exceptional result achieved.

I really want us to get this breakdown right because I want you to feel like this is a remarkable outcome while at the same time I don't want to feel I didn't lose out too much. Given what we have been through and what I have done, I would hope you would not want me to lose money, especially in light of the fact that I have achieved a result much greater than your expectations ever were in this case. The attached agreement should certainly achieve this objective for you, which is an incredible reduction from the true value of my services.

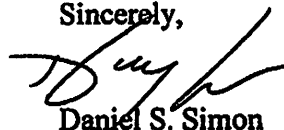
### **Conclusion**

If you are agreeable to the attached agreement, please sign both so I can proceed to attempt to finalize the agreement. I know you both have thought a lot about your position and likely consulted other lawyers and can make this decision fairly quick. We have had several conversations regarding this issue. I have thought about it a lot and this is the lowest amount I can accept. I have always felt that it was our understanding that this was not a typical contract lawyer case, and that I was not a typical contract lawyer. In light of the substantial work performed and the exceptional results achieved, the fee is extremely fair and reasonable.

If you are not agreeable, then I cannot continue to lose money to help you. I will need to consider all options available to me.

Please let me know your decisions as to how to proceed as soon as possible.

Sincerely,



Daniel S. Simon

## **RETAINER AGREEMENT**

1  
2  
3 **THAT Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust**  
4 **and American Grating have retained and does by this instrument retain the Law Offices of**  
5 **Daniel S. Simon, as his/her attorneys; said attorneys to handle on his/her behalf, all claims for**  
6 **damages arising out of and resulting from an incident on or about April 9, 2016 involving the**  
7 **flood caused by a failed sprinkler head, which clients now have, and which might hereafter**  
8 **accrue against Viking Corporation, Viking Group and Viking Supply Net, for damages arising**  
9 **out of said incident to Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family**  
10 **Trust and American Grating that the parties have respectively agreed as follows:**

11 **1. THE FEE FOR LEGAL SERVICES SHALL BE IN THE SUM OF 1,500,000 for**  
12 **services rendered to date. This sum includes all past billing statements, the substantial time that**  
13 **is not included in past billing statements, the current outstanding billing statements and any**  
14 **further billing statements that may accrue to finalize and secure the settlement with the Viking**  
15 **Entities only. Any future services performed prosecuting Lange Plumbing will be determined**  
16 **by a separate agreement. However, all past services performed prosecuting Lange Plumbing**  
17 **will be included in the above fee. The above sum will be reduced by all payments already made**  
18 **toward the attorneys fees. If for some reason, the settlement cannot be finalized with the Viking**  
19 **Entities, this agreement shall be void as it only contemplates a reasonable fee for services**  
20 **performed and to finalize the settlement agreement.**

21 **2. ALL COSTS, INCLUDING ARBITRATION COSTS, COSTS OF**  
22 **OBTAINING EXPERTS TO ANALYZE AND EVALUATE THE CAUSE OF**  
23 **THE ACCIDENT, COSTS OF EXPERT TESTIMONY, COSTS OF WITNESS**  
24 **FEES, TRAVEL COSTS, DEPOSITION COSTS, COURT COSTS, AND ALL**  
25 **COSTS OF LITIGATION, INCLUDING LONG DISTANCE PHONE CALLS,**  
26 **COPYING EXPENSES, REGARDLESS OF THE OUTCOME, ARE TO BE**  
27 **PAID BY THE CLIENT, AND IF ANY OF THEM SHALL HAVE BEEN**  
28 **ADVANCED BY THE ATTORNEY, HE SHALL BE REIMBURSED FOR THE**

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

VOL. 2 PART 2 of 9

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

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

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

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

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

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

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

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

The Law Office of Daniel S. Simon  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

1 SAME. THE ATTORNEY IS AUTHORIZED TO PAY ANY OF SAID  
2 EXPENSES OUT OF THE SHARE OF THE SETTLEMENT ACCRUING TO  
3 THE CLIENT.

4 SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2017.  
5

6  
7 LAW OFFICES OF DANIEL S. SIMON Brian Edgeworth on behalf of Edgeworth Family  
Trust and American Grating

8  
9 Angela Edgeworth on behalf of Edgeworth Family  
Trust and American Grating  
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*Steven D. Grierson*

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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 --000--

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

17 **Plaintiffs,**

18 **vs.**

19 **LANGE PLUMBING, LLC; THE VIKING**  
20 **CORPORATION, a Michigan corporation;**  
21 **SUPPLY NETWORK, INC., dba VIKING**  
22 **SUPPLYNET, a Michigan corporation; and**  
23 **DOES I through V and ROE CORPORATIONS**  
24 **VI through X, inclusive,**

25 **Defendants.**

26 **EDGEWORTH FAMILY TRUST; AMERICAN**  
27 **GRATING, LLC,**

28 **Plaintiffs,**

**vs.**

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

**Defendant.**

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

**DEPT. NO.: X**

**PLAINTIFFS OPPOSITIONS TO**  
**DEFENDANT'S MOTIONS TO**  
**CONSOLIDATE AND TO**  
**ADJUDICATE ATTORNEY LIEN**

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

**DEPT. NO.: XXIX**

**Date of Hearing: February 6, 2018**

**Time of Hearing: 9:30 a.m.**

///

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC  
2 (PLAINTIFFS), by and through his attorneys of record, ROBERT D. VANNAH, ESQ., and  
3 JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby files this Opposition  
4 to the Motions of DANIEL S. SIMON, ESQ., dba SIMON LAW (SIMON) to Consolidate and to  
5 Adjudicate Attorney Lien (the Motions).

6 This Opposition is based upon NRS 18.015, the attached Memorandum of Points and  
7 Authorities, the pleadings and papers on file herein, and any oral argument this Court may wish to  
8 entertain.  
9

10 DATED this 2 day of February, 2018.

11 VANNAH & VANNAH

12   
13 ROBERT D. VANNAH, ESQ. /for  
14

15 I.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17  
18 On or about May 27, 2016, PLAINTIFFS retained SIMON to represent their interests  
19 following a flood that occurred on April 10, 2016, in a home under construction that was owned  
20 by PLAINTIFFS. (Please see Affidavit of Brian Edgeworth attached to this Opposition as  
21 Exhibit 1.) The damage from the flood caused in excess of \$500,000 of property damage to the  
22 home. It was initially hoped that SIMON drafting a few letters to the responsible parties could  
23 resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation  
24 in the 8<sup>th</sup> Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a  
25 trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of  
26 money was reached with defendants not long before the trial date.  
27  
28

1 At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed  
2 that SIMON would be paid for his services by the hour and at an hourly rate of \$550. (Id.). No  
3 other form or method of compensation such as a contingency fee was ever brought up at that  
4 time, let alone agreed to. (Id.) Despite SIMON serving as the attorney in this business  
5 relationship, and the one with the requisite legal expertise, SIMON never reduced the terms of  
6 the CONTRACT to writing in the form of a Fee Agreement. However, that formality didn't  
7 matter to the parties as they each recognized what the terms of the CONTRACT were and  
8 performed them accordingly with exactness. (Id.)  
9

10 For example, SIMON sent invoices to PLAINTIFFS that were dated December 16, 2016,  
11 May 3, 2017, August 16, 2017, and September 25, 2017. (SIMON'S invoices that were actually  
12 sent to PLAINTIFFS are attached to SIMON'S Motion to Adjudicate as Exhibit 20.) The  
13 amount of fees and costs SIMON billed PLAINTIFFS in those invoices totaled \$486,453.09.  
14 Simple reading and math shows that SIMON billed for his time at the hourly rate of \$550 per  
15 hour. PLAINTIFFS paid the invoices in full to SIMON. (Id.)  
16

17 SIMON also submitted an invoice to PLAINTIFFS on November 10, 2017, in the  
18 amount of approximately \$72,000. (Id.) However, SIMON withdrew the invoice and failed to  
19 resubmit the invoice to PLAINTIFFS, despite an email request from Brian Edgeworth to do so.  
20 (Id.) It is unknown to PLAINTIFFS whether SIMON ever disclosed that "final" invoice to the  
21 defendants in the LITIGATION or whether he added those fees and costs to the mandated  
22 computation of damages.  
23

24 From the beginning of his representation of PLAINTIFFS, SIMON was aware that  
25 PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the  
26 LITIGATION. SIMON was also aware that the loans secured by PLAINTIFFS accrued interest.  
27 It's not something for SIMON to gloat over or question the business sense of PLAINTIFFS, as  
28 SIMON did in his Motion at page 12. Rather, SIMON knew that PLAINTIFFS could not get

1 traditional loans to pay SIMON'S fees and costs. (Id.) Plus, SIMON didn't express an interest  
2 in taking what amounted to a property damage claim with a value of \$500,000 on a contingency  
3 basis. Easy math shows that 40% of \$500,000 is \$200,000; SIMON billed over twice that in  
4 fees in the invoices that he disclosed in the LITIGATION. In reality, SIMON only wanted what  
5 amounts to a bonus after he'd received \$500,000 in fees and costs and after the risk of loss was  
6 gone.

7  
8 As discovery in the underlying LITIGATION neared its conclusion in the late fall of  
9 2017, after the value of the case blossomed from one of property damage of approximately  
10 \$500,000 to one of significant and additional value do to the conduct of one of the defendants,  
11 and after a significant sum of money was offered to PLAINTIFFS from defendants, SIMON  
12 became determined to get more, so he started asking PLAINTIFFS to modify the CONTRACT.  
13 (Id.) Thereafter, Mr. Edgeworth sent an email labeled "Contingency." (See Exhibit 4 to the  
14 Motion to Adjudicate.) (Remarkably, SIMON misleads the Court in his Motion at page 11 by  
15 using this email from August of 2017 that discusses modifying the original terms of fee  
16 agreement) to support his unsupportable and untenable position that the parties didn't have a  
17 "structured discussion" in 2016 on fees.) The sole purpose of that email was to make it clear to  
18 SIMON that PLAINTIFFS never had a structured conversation about modifying the existing fee  
19 agreement from an hourly agreement to a contingency agreement. (Please see Exhibit 1.)  
20

21 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the  
22 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into  
23 modifying the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be  
24 paid far more than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for  
25 the preceding eighteen (18) months. (Id.)  
26

27 The timing of SIMON'S request for the CONTRACT to be modified was deeply  
28 troubling to PLAINTIFFS, for it came at the time when the risk of loss in the LITIGATION had

1 been nearly extinguished and the appearance of a large gain from a settlement offer had  
2 suddenly been recognized. SIMON put on a full court press for PLAINTIFFS to agree to his  
3 proposed modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being  
4 blackmailed by SIMON, who was basically saying "agree to this or else." (Id.)

5 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional  
6 fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted  
7 to be paid in light of a favorable settlement that was reached with the defendants in the  
8 LITIGATION. (Id.) At that time, these additional "fees" were not based upon invoices  
9 submitted to PLAINTIFFS or detailed work performed by SIMON. The proposed fees and costs  
10 were in addition to the \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to  
11 the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence  
12 produced to defendants in the LITIGATION, and the amounts set forth in the computation of  
13 damages disclosed by SIMON in the LITIGATION.  
14

15 One reason given by SIMON to modify the CONTACT was he claimed he was losing  
16 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was  
17 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and  
18 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)  
19 According to SIMON, he under billed in the LITIGATION in an amount in excess of  
20 \$1,000,000.00.  
21

22 We've now learned through SIMON'S latest invoices (attached to his Motion as Exhibit  
23 19) that he actually allegedly under-billed by \$692,120. On the one hand, it's odd for SIMON to  
24 assert that he's losing money then, on the other hand, have SIMON admit that he under-billed  
25 PLAINTIFFS to the tune of hundreds of thousands to over a million dollars. But, that's the  
26 essence of the oddity to SIMON'S conduct with PLAINTIFFS since the settlement offers in the  
27 LITIGATION began to roll in.  
28

1 Yet an additional reason given then by SIMON was that he felt his work now had greater  
2 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.  
3 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to  
4 PLAINTIFFS for their signatures. They refused to bow to SIMON'S pressure or demands.  
5 (Please see Exhibit 1.)

6 Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and  
7 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees  
8 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole  
9 following the flooding event. In support of PLAINTIFFS' claims in the LITIGATION, and  
10 pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages  
11 that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs  
12 that PLAINTIFFS paid.  
13

14 There is nothing in the computation of damages signed by and served by SIMON to  
15 reflect fees and costs other than those contained in his invoices that were presented to and paid  
16 in full by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial  
17 disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed  
18 by SIMON, let alone those in excess of \$692,120, or \$1,000,000.00, or the exorbitant figure set  
19 forth in SIMON'S amended lien.  
20

21 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a  
22 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.  
23 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the  
24 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that  
25 deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that  
26 PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19,  
27 SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further  
28

1 stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have  
2 been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted  
3 concerning his fees and costs: "And they've been updated as of last week." (Excerpts of the  
4 Deposition are attached as Exhibit 2.)

5 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS  
6 refused to alter or amend the terms of the CONTRACT. (Please see Exhibit 1.) When  
7 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree  
8 to release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served  
9 two attorneys liens and reformulated his billings to add entries and time that never saw the light  
10 of day in the LITIGATION. (Id.)

12 When SIMON refused to release the full amount of the settlement proceeds to  
13 PLAINTIFFS, litigation was filed and served. A copy of PLAINTIFFS' Complaint is attached as  
14 Exhibit 17 to SIMON'S Motion to Adjudicate (the COMPLAINT). Thereafter, the parties agreed  
15 to create a separate account, deposit the settlement proceeds, and release the undisputed  
16 settlement funds to PLAINTIFFS. The claims of PLAINTIFFS against SIMON for Breach of  
17 Contract, Declaratory Relief, and Conversion are pending before Judge Gloria Sturman.

19 SIMON makes light of the facts that PLAINTIFFS haven't fired him, or that they are  
20 allowing him to continue working to wrap up the LITIGATION. Yet, to fire SIMON would be to  
21 give some measure of validity to his need to claim a lien, where none presently exists. As stated  
22 in NRS 18.015(2), and supporting case law, the charging lien that SIMON desires so badly here is  
23 only applicable "in the absence of an agreement." See *Gordon v. Stewart*, 324 P.2d 234 (Nev.  
24 1958)(Attorney withdrew, invalidating the agreement and triggering an analysis of the  
25 reasonableness of the fee based on quantum meruit.)

27 SIMON'S Motions are without merit. The Motion to Adjudicate Attorney Lien must fail  
28 pursuant to NRS 18.015(2), as the parties did agree upon a fee of \$550 per hour for SIMON'S

1 services, and PLAINTIFFS paid all of SIMON'S invoices in full that were presented to them.  
2 (See Exhibit 1 to this Opposition and Exhibit 20 to SIMON'S Motion.) SIMON never presented  
3 any of the additional invoices to PLAINTIFFS. (Id.) Rather, it was only on January 24, 2018,  
4 with the filing of the Motion to Adjudicate, that SIMON'S "new" invoices made their public  
5 debut. PLAINTIFFS were never given a chance to receive them, review them, and/or pay what  
6 could be deemed reasonable before SIMON'S liens were served or his Motion was filed.  
7 Therefore, for these and all of the other reasons listed above, SIMON'S attorneys' liens are  
8 meaningless fugitive documents that have no basis in fact or law.  
9

10 Additionally, the Motion to Consolidate should be denied pursuant to NRCP 42(a), as the  
11 questions of law and fact in these two actions are not common, the parties are not common or  
12 affiliated, and the underlying LITIGATION has reached the point weeks ago that all claims and  
13 parties could be dismissed with prejudice. Furthermore, since SIMON'S liens are completely  
14 improper under Nevada law, and since SIMON has refused to release the full amount of the  
15 settlement proceeds to PLAINTIFFS, and is instead converted them to his own use through his  
16 failure to agree to release them without the payment of a bonus to him, PLAINTIFFS claims  
17 against SIMON need to proceed before a jury as a matter of right.  
18

## 19 II.

### 20 ARGUMENTS

#### 21 **A. THERE IS NO BASIS IN FACT OR LAW FOR SIMON'S FUGITIVE** 22 **ATTORNEYS' LIENS OR TO HIS MOTION TO ADJUDICATE ATTORNEYS LIEN.**

23 NRS 18.015(2) discusses the amount of a permissible attorney's lien. It states in part that:  
24 "A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the  
25 attorney and the client." The evidence is overwhelming that the terms of the CONTRACT  
26 contain the agreement between PLAINTIFFS and SIMON on the amount of SIMON'S fee. First,  
27  
28

1 there's the affidavit of Brian Edgeworth, where he states that he and SIMON agreed that  
2 SIMON'S fee would be \$550 per hour for his services.

3 That's a lot of money to most people and ranks higher on the pay scale than SIMON'S  
4 depiction of merely agreeing, "to lend a hand." (See SIMON'S Motion at page 11, line 7.) That  
5 alleged "helping hand" to "draft a few letters" cost PLAINTIFFS approximately \$7,000 in fees  
6 from SIMON. (Id.) Additionally, the discussion was structured enough for the parties to agree  
7 that SIMON would be retained as PLAINTIFFS attorney and be paid \$550 per hour for his  
8 services, and reimbursed for his costs. That's the essence of a fee agreement. It's not a  
9 complicated business relationship that requires anything more for the contracting parties to know  
10 to clearly understand where they stand with the agreement.

12 Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the  
13 LITIGATION are for an hourly rate of \$550 per hour for SIMON'S services. (See Exhibit 20 to  
14 SIMON'S Motion.) There are hundreds of entries for hundreds of thousands of dollars, all billed  
15 by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.)  
16 Even SIMON'S new invoices, which contain thousands of entries and many more hundreds of  
17 thousands of dollars in billings, are billed by SIMON at \$550 per hour. (Please see Exhibit 19 to  
18 SIMON'S Motion.)

20 Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. Again, at  
21 page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of  
22 attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017.  
23 At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON  
24 further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim  
25 have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted  
26 concerning his fees and costs: "And they've been updated as of last week." (See Exhibit 2.)  
27 These are the same invoices that contain the agreed to hourly rate of \$550 per hour, which were  
28

1 all paid in full by PLAINTIFFS. The \$550 question is: how much more consistent performance  
2 by the parties to the terms of an agreement does it take to convince even the most intransigent  
3 litigant that there is a CONTRACT that he has to abide by?

4 On that note, based on the totality of SIMON'S admissions and actions, how can he  
5 reasonably assert that there was no CONTRACT and that instead he was "waiting until the end to  
6 be paid in full?" No one agreed to that arrangement. If they had, SIMON was required by  
7 Nevada law to reduce his contingency fee dream to writing. Rather, the evidence shows that  
8 SIMON didn't present any such concept to PLAINTIFFS until the LITIGATION was nearly over  
9 and substantial settlement offers were in. Then, and only then, did SIMON demand a bonus.  
10 Plus, SIMON'S conduct clearly runs counter to that assertion. From the beginning to nearly the  
11 end, SIMON billed, and was paid, nearly \$500,000. That's nearly the full amount of  
12 PLAINTIFFS initial property damage claim! Is billing a client an amount that equals her total  
13 loss be deemed a reasonable fee, let alone waiting to be paid more? Hardly can be or should be.  
14

15 Fourth, there are the calculations of damages in the LITIGATION that SIMON was  
16 obligated to submit and serve on PLAINTIFFS behalf and in accordance with NRCP 11(b) and  
17 NRCP 16.1. The calculations of damages submitted by and signed by SIMON set forth damages,  
18 including attorneys' fees, based on his hourly rate of \$550 and paid in full by PLAINTIFFS.  
19 Thus we see that all of the conduct by SIMON in the LITIGATION refutes his newfound position  
20 and instead supports a finding that the terms of the CONTRACT contain the agreement of the  
21 parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of  
22 \$550.  
23

24 The only pathway for SIMON to prevail on his Motion is to convince a trier of fact that  
25 the CONTRACT isn't a contract and that it didn't contain the agreement of the parties on the  
26 amount of SIMON'S fee. The CONTRACT contains every element of a valid and enforceable  
27 contract. PLAINTIFFS asked SIMON to represent them in the LITIGATION in exchange for an  
28

1 hourly fee of \$550, plus the reimbursement of costs incurred (the offer). SIMON agreed to serve  
2 as PLAINTIFFS attorney and to be paid the hourly rate of \$550 for his services (the acceptance).  
3 PLAINTIFFS agreed to pay, and SIMON agreed to receive, \$550 per hour for SIMON'S time,  
4 plus the reimbursement of costs (the consideration). Thereafter, SIMON billed PLAINTIFFS for  
5 his time at a rate of \$550 per hour, plus incurred costs, and PLAINTIFFS paid each invoice  
6 presented by SIMON in full (the performance). There isn't a question of capacity or intent.  
7 Therefore, that's a contract, which is the CONTRACT.

8  
9 SIMON now seems to want a contingency fee from PLAINTIFFS without a written  
10 contingency fee agreement, ironically one that he never wanted or would have agreed to in the  
11 first place. SIMON attempts this impossible task by taking a creative, though impermissible,  
12 approach to the facts and the law.

13 First, despite his belated denials, all of SIMON'S conduct to date supports a finding that  
14 he knows without any measure of doubt that he agreed from day one to accept \$550 per hour from  
15 PLAINTIFFS in exchange for his services in the LITIGATION. It shows in his billings/invoices,  
16 in his cashing of PLAINTIFFS checks to the tune of \$486,453.09, and in his representations to,  
17 and filings with, the parties and this Court. Every reasonable sign points to SIMON'S clear  
18 understanding and agreement that his fees were his fees (i.e.\$550 per hour). For SIMON to now  
19 argue against the agreement that he has profited so handsomely and instead demand an additional  
20 bonus of well over one million dollars of PLAINTIFFS property is belied by any measure of  
21 common or factual sense.

22  
23 Second, SIMON remarkably misstates Nevada law at page 8 of his Motion by asserting  
24 that NRS 18.015(2) and *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958) stand for the proposition  
25 that: "If there is no express contract, the charging lien is for a reasonable fee." (See SIMON'S  
26 Motion at page 8, lines 3-6.) Of course, there is nothing in the Nevada Revised Statutes, in NRS  
27 18.015(2), or in Nevada law in general, including those cited by SIMON, that says anything of the  
28

1 sort. Perhaps it was merely an oversight by SIMON to assert something so misleading and  
2 wrong. Rather, NRS 18.015(2) states that "in the absence of an agreement, the lien is for a  
3 reasonable fee...." *Gordon* dealt with an attorney who had withdrawn, thus negating the contract  
4 as a matter of law that had purportedly existed. Nonetheless, it doesn't say what SIMON says and  
5 hopes it says.

6 SIMON also relies on other case law to support his novel theory, and that case law  
7 generally involves attorneys who've either withdrawn or been fired, of attorneys who've sought  
8 liens when they've failed to recover anything of monetary value, or an unfortunate case where the  
9 attorneys failed to perfect their lien before settlement proceeds were received and deposited. In  
10 most of the cases, a fee agreement (contract) no longer existed because it was terminated as a  
11 matter of right when the attorney-client relationship was severed. None of these cases has any  
12 application to the cases at hand, as an agreement was reached—the CONTRACT—and SIMON  
13 remains as counsel of record for PLAINTIFFS in the LITIGATION.  
14

15 Not only is SIMON wrong to assert that there was no agreement—CONTRACT—for fees  
16 despite the avalanche of evidence to the contrary, and wrong for him to suggest that the law  
17 requires agreements for attorney's fees to be in writing for the terms to be enforceable, his  
18 singular view runs amuck with the direction from the State Bar of Nevada. Attached as Exhibit 3  
19 is an Informational Brochure from the State Bar entitled "How Lawyers Charge." While not  
20 controlling per se, it always makes sense to look from time to time to the organization that  
21 governs us lawyers. The first bullet point suggests that the client ask the lawyer in person and at  
22 the outset about the fee. That's exactly what Mr. Edgeworth did, and SIMON told him that his  
23 fee would be \$550 per hour, and that's what SIMON charged, time and time again.  
24

25 The second bullet point tells the public how lawyers charge their fees. Three types are  
26 discussed. There are hourly fees charged for cases, "particularly civil litigation" just like we had  
27 in the LITIGATION. Contingency fees are mentioned, "where the lawyer is paid only if the  
28

1 client wins the case.” (Emphasis added.) That didn’t happen here, as SIMON was paid nearly a  
2 half million dollars by PLAINTIFFS at \$550 per hour from the beginning of the case through the  
3 last invoice that SIMON submitted. Last, it mentions a flat fee, though no one is claiming it  
4 applies.

5 Of additional importance is bullet point 6, where the question is asked: “Must the lawyer-  
6 client fee agreement be in writing?” Much of the answer focuses on contingency fee agreements,  
7 which clearly must be in writing. A portion of the last sentence states that: “Obtaining a written  
8 fee agreement in advance is in the best interests of the client....” Even though SIMON owed a  
9 fiduciary duty to act in the best interests of PLAINTIFFS (his clients), which included presenting  
10 a written fee agreement to them as the clients, there is nothing in this Exhibit, or pursuant to  
11 Nevada law, that states that fee agreements for an hourly rate must be in writing. Rather, the law  
12 supports the existence of, and the terms of, the CONTRACT.

13  
14 SIMON’S tenuous and new position also runs amuck with the Nevada Rules of  
15 Professional Responsibility. Rule 1.5(b) speaks on fee agreements and states: “The scope of the  
16 representation and the basis or rate of the fee and expenses for which the client will be responsible  
17 shall be communicated to the client, preferably in writing, before or within a reasonable time after  
18 commencing the representation....” (Emphasis Added.) That was SIMON’S responsibility to  
19 present a written fee agreement to PLAINTIFFS. It is inherently wrong to allow him to now  
20 profit from his failure to look after the best interests of his clients, PLAINTIFFS, as he is clearly  
21 attempting to do with his lien and his Motion.

22  
23 The law clearly demonstrates that the terms of an oral contract are enforceable, through  
24 the testimony of the parties, together with their conduct. Here, Mr. Edgeworth’s affidavit sets  
25 forth the terms of the fee agreement, or CONTRACT, of the parties. SIMON’S conduct does,  
26 too. His multiple invoices for services bill at \$550 per hour, cashing the checks that mirror the  
27 amounts of the invoices, and making numerous representations to lawyers and to this Court in the  
28

1 LITIGATION that his fees are set forth in documents produced to date, both in pleadings and in  
2 discovery, paint a very clear picture of his agreement to the terms of the CONTRACT.

3 There is simply no factual or legal basis for SIMON'S attorneys' lien or his Motion.  
4 There are no practical reasons, either. To the contrary—to entertain SIMON'S Motion or the  
5 foundation for his liens sends a very troubling message to the community who looks to lawyers  
6 for help. For the purposes of this Opposition, SIMON'S conduct here will be referred to as The  
7 SIMON Rule. If The SIMON Rule is adopted, attorneys will be emboldened by the following in  
8 the handing of their client's interests: 1.) Agree to represent a client for an hourly fee of \$550, but  
9 fail to represent their best interests by reducing the fee agreement to writing; 2.) Bill the client  
10 \$550 per hour for an extended period of time and collect thousands or hundreds of thousands of  
11 dollars from the client, who pays on time when the invoices are presented; 3.) Express a desire to  
12 change the terms of the fee agreement when it becomes clear that a much higher fee, or bonus,  
13 can be had if the client will agree to do so; 4.) When the client won't agree to pay more than the  
14 agreed to fee of \$550 per hour, lien the file for the additional proceeds, or bonus, that you had you  
15 eyes on late in the game; and, 5.) Use your failure to reduce your fee agreement in writing as a  
16 basis to get more money on the back of a "charging lien."

17  
18  
19 How would The SIMON Rule sell if it were widely known that this is the way that we  
20 attorneys can operate? Not well. Thankfully, neither the facts, nor the law, nor practical or  
21 common sense supports The SIMON Rule. Instead, PLAINTIFFS respectfully request that this  
22 court deny SIMON'S Motion to Adjudicate Attorneys Lien and refuse to acknowledge the  
23 validity of SIMON'S liens. Instead, allow PLAINTIFFS claims against SIMON to proceed  
24 before a jury, as provided for in Nevada law. See *Cheung v. Eighth Judicial District Court*, 124  
25 P.3d 550 (Nev. 2005); Nev. Const. art. 1, section 3.

26  
27 PLAINTIFFS right to a jury trial and to present their claims against SIMON, as set forth  
28 in their COMPLAINT, is the fair and reasonable remedy here. PLAINTIFFS claims have nothing

1 nothing to do with adjudicating an attorneys lien. To the contrary, they're suing SIMON for the  
2 conversion of PLAINTIFFS property that SIMON has no factual or legal basis to make a claim  
3 upon. The essential elements of conversion are present here, as PLAINTIFFS have exclusive  
4 rights to the ownership and possession of the settlement proceeds, SIMON has converted  
5 PLAINTIFFS property by wrongfully claiming a lien and refusing to release the full amount of  
6 the settlement proceeds to PLAINTIFFS, and PLAINTIFFS have been damaged by nearly  
7 \$2,000,000 by SIMON'S baseless lien. *Bader v. Cerri*, 609 P.2d 314 (Nev. 1980), overruled on  
8 other grounds by *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1050-51 (Nev. 2000);  
9 *Gebhardt v. D.A. Davidson*, 661 P.2d 855 (Mont. 1983).

11 Furthermore, PLAINTIFFS COMPLAINT is far more than a mere summary adjudication  
12 that can be resolved over a couple of hours of argument. We're dealing with well \$692,120 in  
13 "new" billings that PLAINTIFFS saw for the first time with the filing of SIMON'S Motion and a  
14 huge lien. Think of that for a moment: from May 27, 2016, through September 19, 2017,  
15 SIMON produced thirty-one (31) pages of invoices and was paid \$486,453.09 in fees and costs.  
16 Then, on January 24, 2018, SIMON stuffed in one hundred and eighty-three (183) pages of "new"  
17 invoices as Exhibit 19 to his Motion, totaling an additional \$692,120 in additional fees and costs.  
18

19 In addition to the obvious question of "why now?", multiple other questions surround  
20 these documents and the motives behind them. Why weren't these new invoices prepared  
21 contemporaneously with the work that was being done? SIMON certainly had pen and paper, if  
22 not the billing software he mentioned in his Motion, to jot things down and they were done. Why  
23 weren't these invoices produced to the defendants in the LITIGATION and set forth in  
24 PLAINTIFFS computation of damages? Or presented to PLAINTIFFS months ago for review  
25 and/or payment?  
26

27 SIMON'S expert seems to embrace SIMON'S conduct, at least on paper. How will he  
28 fare in a deposition on cross-examination with Mr. Vannah? What will his response be when

1 asked how SIMON possibly met his standard of care and abided by his fiduciary duty to  
2 PLAINTIFFS when these 183 pages of documents and \$692,120 in damages were never produced  
3 to the defendants or set forth in a computation of damages in the LITIGATION, let alone while  
4 discovery was still open? Trial was scheduled for January 8, 2018, and these weren't produced  
5 until after the trial date? Will he still hold true to his opinions? Whatever he says in response, a  
6 wise justice of the Nevada Supreme Court once said: "Experts are like bananas—you can buy  
7 them by the bunch."

8  
9 What will SIMON and his associate testify to in deposition as to why they did what they  
10 did, and how they came up with these new billings for old tasks? And the list goes on.  
11 PLAINTIFFS didn't ask for any of this. They are the only victims here. They suffered the flood.  
12 They suffered the property damage. They are the ones who the subcontractors and insurers  
13 ignored and were left out to dry. They're the ones that have paid nearly \$500,000 in fees and  
14 costs to SIMON pursuant to the CONTRACT. They are the ones who are being denied full  
15 access to their property (the settlement proceeds) by SIMON.  
16

17 PLAINTIFFS have a right to a jury trial (and all the usual tools) of their dispute to recover  
18 their property from SIMON, just as "Nevada attorneys have all of the usual tools available to  
19 creditors to recover the payment of their fees." *Leventhal v. Black & Lobello*, 305 P.3d 907, 909  
20 (Nev. 2013). Is SIMON to suggest that attorneys are afforded more options, and entitled to better  
21 treatment, than their clients?

22 In conclusion, a fair remedy in a jury trial before their peers is exactly what PLAINTIFFS  
23 request. In order to prepare their case, PLAINTIFFS require discovery, including a complete  
24 copy of SIMONS'S file, which is also PLAINTIFFS file. PLAINTIFFS believe that when a jury  
25 sees and hears the full effect of The SIMON Rule, justice for them will finally be found. As a  
26 result, PLAINTIFFS respectfully request that this Court deny SIMON'S Motion to Adjudicate his  
27 baseless lien.  
28

1 **B. THERE IS NO COMMONALITY OF ISSUES, PARTIES, FACTS, LAW, OR**  
2 **INTERESTS BETWEEN THE LITIGATION BEFORE THIS COURT AND THE**  
3 **MATTER PENDING BEFORE JUDGE STURMAN.**

4 NRCP 42(a) allows consolidation only when multiple actions involve “a common question  
5 of fact or law....” There is no such commonality here. The LITIGATION involved claims for  
6 different damages against different defendants following a flooding event at a home owned by  
7 PLAINTIFFS. All of the claims against the parties to the LITIGATION have been resolved and  
8 dismissal with prejudice is imminent.

9 The claims of PLAINTIFFS against SIMON stem from his unwillingness to honor the  
10 CONTRACT and his refusal to release the full amount of PLAINTIFFS property—the settlement  
11 proceeds—to PLAINTIFFS. As set forth above, despite agreeing to receive \$550 per hour for his  
12 services, and accepting nearly \$500,000 for his time and expenses, SIMON demands more.  
13 When PLAINTIFFS weren’t willing to agree to SIMON’S new, proposed terms, SIMON  
14 responded by making a claim to PLAINTIFFS property through baseless attorneys’ liens.

15 While PLAINTIFFS did agree to place the “disputed” funds in a common account, it  
16 wasn’t their desire to do so. Rather, they want their proceeds and are entitled to them, as they’ve  
17 honored every aspect of the CONTRACT. Yet, since SIMON made his baseless claim to the  
18 proceeds and wouldn’t agree to release them until his issue was resolved, PLAINTIFFS agreed to  
19 the common account. However, that’s not genuine “consent” or the kind of consent that anyone  
20 should be proud of.

21  
22 Contrary to SIMON’S assertions in his Motion at page 5, PLAINTIFFS did not file case  
23 A-18-767242-C to adjudicate an attorneys lien. Or to merely forum shop. Far from it. As has  
24 been made clear throughout this Opposition, PLAINTIFFS dispute that SIMON’S lien has any  
25 basis in fact or law, as PLAINTIFFS have paid every dime of every invoice presented to them to  
26 date. Furthermore, the LITIGATION has resolved with only ministerial tasks to complete. It was  
27  
28

1 senseless to move this Court to appear in that action to address PLAINTIFFS claims against  
2 SIMON for breach of contract, declaratory relief, and conversion.

3 PLAINTIFFS also expressed a willingness to pay the invoice that SIMON presented then  
4 withdrew last fall. Since PLAINTIFFS dispute the validity of SIMON'S liens, and since SIMON  
5 wouldn't release the full amount of PLAINTIFFS settlement proceeds, filing of a separate action  
6 was the only reasonable route they could take to be made whole. Unlike in *Verner v. Nevada*  
7 *Power Co.*, 706 P.2d 147 (Nev. 1985), since the issues of liability and damages in these two  
8 separate actions are not inextricably linked, and since SIMON'S claimed attorneys' lien is  
9 baseless in fact and in law, there is no need for this court to retain jurisdiction and consolidate  
10 these cases.  
11

12 III.

13 CONCLUSION

14 Based on the foregoing, PLAINTIFFS respectfully request the Court deny SIMON'S  
15 Motions and instead allow PLAINTIFFS to present their claims for damages against SIMON  
16 before a jury in case No. A-18-767242-C, as provided by Nevada Constitutional and case law.  
17

18 DATED this 2 day of February, 2018.

19 VANNAH & VANNAH

20   
21 ROBERT D. VANNAH, ESQ.  
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**CERTIFICATE OF SERVICE**

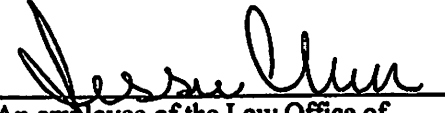
I hereby certify that the following parties are to be served as follows:

Electronically:

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

Traditional Manner:  
*None*

DATED this 2 day of February, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

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

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK       )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

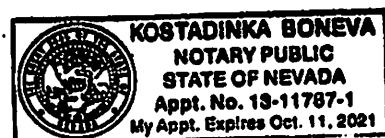
23. I ask this Court to deny SIMON'S Motions and give us the right to present our claims against SIMON before a jury.

**FURTHER AFFIANT SAYETH NAUGHT.**

**BRIAN EDGEWORTH**

Subscribed and Sworn to before me  
this 2nd day of February 2018.

Notary Public in and for said County and State



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC,**

**Plaintiffs,**

**vs.**

**Case No. A738444**

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

**Defendants.**

**AND ALL RELATED CLAIMS.**

**DEPOSITION OF BRIAN J. EDGEWORTH**

**INDIVIDUALLY AND AS NRCP 30(b)(6) DESIGNEE OF  
EDGEWORTH FAMILY TRUST AND AMERICAN GRATING LLC**

**Taken on Friday, September 29, 2017**

**By a Certified Court Reporter**

**At 9:35 a.m.**

**At 1160 North Town Center Drive, Suite 130**

**Las Vegas, Nevada**

**Reported by: William C. LaBorde, CCR 673, RPR, CRR  
Job No. 23999**

1           A.     At the end of the tax year when we  
2     reconcile all -- all the different expenses, it  
3     would be on there.

4           Q.     Okay. And is it your testimony that you  
5     haven't reconciled the 2016 taxes yet?

6           A.     No.

7           Q.     Okay. So -- and obviously you haven't  
8     done the 2017 taxes yet?

9           A.     No.

10          Q.     Okay. So there's noplacement that you could  
11     look for that information and tell me a number of  
12     attorneys' fees that American Grating LLC has  
13     actually incurred prior to May of 2017?

14          A.     Yes, I could.

15          Q.     You could?

16          A.     Yes.

17          Q.     Okay.

18                 MR. SIMON: They've all been disclosed to  
19     you.

20                 MS. DALACAS: The reconciliations?

21                 MR. SIMON: No.

22                 MS. DALACAS: The attorney --

23                 MR. SIMON: The attorneys' fees and costs  
24     for both of these plaintiffs as a result of this  
25     claim have been disclosed to you long ago.

1 MS. DALACAS: I'm --

2 MR. SIMON: And they've been updated as  
3 of last week.

4 MS. DALACAS: I understand that.

5 BY MS. DALACAS:

6 Q. I'm just wondering or trying to determine  
7 whether or not -- since we've talked about these  
8 different entities, Edgeworth Family Trust and  
9 American Grating, is there a separation as between  
10 the attorneys' fees between the two entities?

11 A. No. American Grating owes the attorneys'  
12 fees.

13 Q. American Grating owes the attorneys'  
14 fees?

15 A. Correct.

16 Q. Is that your testimony as to attorneys'  
17 fees and costs incurred prior to May of 2017 when  
18 they became a plaintiff in this case as well?

19 A. Yes, they would owe that.

20 Q. Okay. And why is that?

21 A. Because obviously it's their case.

22 Q. American Grating's case?

23 A. Yes.

24 Q. Okay. So why weren't they included as a  
25 plaintiff from the filing of the original complaint



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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; 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.

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

VOL. 2 PART 3 of 9

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

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

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

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

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

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

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

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

1 2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S.  
2 SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information  
3 and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW  
4 OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic  
5 professional corporation licensed and doing business in Clark County, Nevada. At times,  
6 Defendants shall be referred to as SIMON.  
7

8 3. The true names of DOES I through X, their citizenship and capacities, whether  
9 individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who  
10 therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and  
11 thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally  
12 responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein  
13 alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true  
14 names and capacities of such Defendants, when the same have been ascertained, and to join them  
15 in this action, together with the proper charges and allegations.  
16

17 4. That the true names and capacities of Defendants named herein as ROE  
18 CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said  
19 Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that  
20 each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for  
21 the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged  
22 herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and  
23 capacities of ROE CORPORATIONS I through X, inclusive, when the same have been  
24 ascertained, and to join such Defendants in this action.  
25

26 5. DOES I through V are Defendants and/or employers of Defendants who may be  
27 liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:  
28

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

22 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December  
23 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs  
24 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to  
25 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of  
26  
27  
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

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

3 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,  
4 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement  
5 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide  
6 PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds  
7 that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can  
8 receive either the undisputed number or their proceeds.  
9

10 20. PLAINTIFFS have made several demands to SIMON to comply with the  
11 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the  
12 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To  
13 date, SIMON has refused.  
14

15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract)**

17 21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through  
18 20 of this Complaint, as though the same were fully set forth herein.

19 22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the  
20 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An  
21 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S  
22 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed,  
23 and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS  
24 best interests.  
25

26 23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that  
27 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.  
28

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

3 25. SIMON'S demand for additional compensation other than what was agreed to in the  
4 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for  
5 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.  
6

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

10 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the  
11 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a  
12 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their  
13 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.  
14

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

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

19 30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have  
20 been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are  
21 entitled to recover attorneys' fees and costs.  
22

23 **SECOND CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

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

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

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

3 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or  
4 amend any of the terms of the CONTRACT.  
5

6 35. The only evidence that SIMON produced in the LITIGATION concerning his fees  
7 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which  
8 PLAINTIFFS paid in full.  
9

10 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in  
11 the LITIGATION was produced in updated form on or before September 27, 2017. The full  
12 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to  
13 PLAINTIFFS and that PLAINTIFFS paid in full.  
14

15 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the  
16 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and  
17 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON  
18 admitted that all of the bills for his services were produced in the LITIGATION; and, since the  
19 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to  
20 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the  
21 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the  
22 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.  
23

24 **THIRD CLAIM FOR RELIEF**

25 **(Conversion)**

26 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in  
27 Paragraphs 1 through 37, as set forth herein.  
28

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

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

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

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

15  
16 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a  
17 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

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

22  
23 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
24 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
25 PLAINTIFFS are entitled to recover attorneys' fees and costs.

26  
27 ///

28 ///

**FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

3 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.  
18

19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair  
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access  
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,  
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the  
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.  
24

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

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**

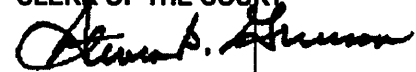
6 Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

- 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.

15 VANNAH & VANNAH

16  
17  
18   
19 ROBERT D. VANNAH, ESQ. (4279)  
20  
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28



MTD  
James R. Christensen Esq.  
Nevada Bar No. 3861  
JAMES R. CHRISTENSEN PC  
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Attorney for SIMON

Eighth Judicial District Court  
District of Nevada

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

CASE NO.: A-16-738444-C  
DEPT NO.: 10

Consolidated with

CASE NO.: A-18-767242-C  
DEPT NO.: 26

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON  
LAW; DOES 1 through 10; and, ROE  
entities 1 through 10;

Defendants.

**MOTION TO DISMISS**  
**PLAINTIFFS' AMENDED**  
**COMPLAINT PURSUANT TO**  
**NRCP 12(b)(5)**

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

COMES NOW Daniel S. Simon, by and through their attorney, JAMES R.  
CHRISTENSEN, Esq. and hereby moves to Dismiss Plaintiffs' Amended  
Complaint pursuant to NRCP 12(b)(5).

1 This motion is made and based upon the papers and pleadings on file  
2 herein, exhibits attached, the points and authorities set forth herein, all other  
3 evidence that the Court deems just and proper, as well as the arguments of  
4 counsel at the time of the hearing hereon.

5 Dated this 9<sup>th</sup> day of April 2018.  
6

7  
8 /s/ James R. Christensen  
9 **JAMES CHRISTENSEN, ESQ.**  
10 Nevada Bar No. 003861  
11 601 S. 6<sup>th</sup> Street  
12 Las Vegas, NV 89101  
13 Phone: (702) 272-0406  
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16 *Attorney for Daniel S. Simon*  
17  
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**NOTICE OF MOTION**

**TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD**

You, and each of you, will please take notice that the undersigned will bring on for hearing, the MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO 12(b)(5) before the above- entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the 15th day of MAY, 2018, at 9:30 AM a.m./p.m. in Department 10.

DATED this 9<sup>th</sup> day of April 2018.

/s/ James R. Christensen  
**JAMES CHRISTENSEN, ESQ.**  
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Email: jim@christensenlaw.com  
*Attorney for Daniel S. Simon*

1 **I. INTRODUCTION**

2 Plaintiffs filed the amended complaint to attack their lawyer because of a fee  
3 dispute. The attack is pointless. The fee dispute will be resolved by this Court  
4 pursuant to NRS 18.015 via an evidentiary hearing on May 29, 30 & 31, 2018.  
5

6 The Law Office of Daniel S. Simon, A Professional Corporation, ("Law  
7 Office") performed exemplary service for Plaintiffs. The Law Office recovered  
8 over Six Million Dollars on a half million-dollar property loss claim. Despite the  
9 incredible result, Plaintiffs do not want to pay their lawyer a reasonable fee.  
10 Instead, when the Law Office sought its statutory right to a reasonable fee under  
11 NRS 18.015, Plaintiffs sued the Law Office and Mr. Simon.  
12

13 The amended complaint refers to the Law Office and Mr. Simon  
14 interchangeably. (A.C., at para. #2.) This is an error. Contract claims against a  
15 law firm/lawyer are governed by contract law. The contract was with the Law  
16 Office; as such, Mr. Simon is not a proper defendant under corporate law. Mr.  
17 Simon should be dismissed from the First, Second and Fourth Causes of Action.  
18  
19

20 The Third Cause of Action is for conversion. Plaintiffs allege they have a  
21 right of possession of money based on a "CONTRACT". (A.C. at para. #39.) As a  
22 matter of law, a conversion claim cannot be brought on a right of possession  
23 grounded on a contract. The Conversion claim does not state a claim under the law  
24 and must be dismissed.  
25

1 In addition, the disputed funds are in a separate account, safekept pursuant to  
2 NRPC 1.15, until this Court resolves the fee dispute pursuant to NRS 18.015. No  
3 money was taken or “converted” by the Law Office or by Mr. Simon. Plaintiffs  
4 did not plead wrongful dominion, and cannot establish a *prima facie* case of  
5 conversion.  
6

7 The Amended Complaint added a Fourth Cause of Action for breach of the  
8 implied duty of good faith and fair dealing. The Law Office asked this Court to  
9 resolve a fee dispute pursuant to statute and the rules of ethics - which does not  
10 breach a duty. NRS 18.015(5). As a matter of law, asking a court to resolve a fee  
11 dispute does not violate the spirit of an alleged fee agreement.  
12

## 13 **II. STATEMENT OF RELEVANT FACTS**

### 14 **A. The timeline.**

15  
16 Brian Edgworth decided to build a house as an investment. The build was  
17 funded by Edgworth family businesses and/or trusts. Plaintiffs made the decision  
18 to build without builders risk/course of construction insurance.  
19

20 On April 10, 2016, during construction, a Viking fire sprinkler caused a  
21 flood which damaged the unfinished house.

22 In May of 2016, Mr. Simon of the Law Office agreed to “send a few letters”.  
23

24 In June of 2016, the Viking case was filed.  
25

1 In December of 2016, a certificate of occupancy was issued for the  
2 investment house. Following, the house was listed for sale for \$5.5M. The house  
3 is currently off the market.

4 In December of 2016, the Law Office sent a bill for some fees and costs to  
5 Plaintiffs.  
6

7 In August of 2017, Brian Edgeworth and Daniel Simon discussed fees. Mr.  
8 Edgeworth admitted in an e-mail that they had not had a "structured discussion" on  
9 fees and ran over some fee options. (Exhibit A.)  
10

11 The Viking case was heavily litigated. Through extensive legal work, the  
12 Law Office was prepared to establish that the fire sprinkler flood was one of many,  
13 caused by a defect known to Viking, which Viking had failed to warn of or repair.  
14

15 By the fall of 2017, the Law Office had motions on file to strike the Viking  
16 answer, to strike the Viking product expert, and had positioned the case for an  
17 excellent trial result.

18 In November/December of 2017, Viking offered \$6M to settle.  
19

20 In late November, the reasonable fee due the Law Office was again raised.  
21 Although the clients promised to discuss the issue, they soon refused to speak to  
22 their lawyers. On November 30, 2017, Plaintiffs retained the Vannah law firm.  
23 The Vannah firm instructed the Law Office to stop communication with its clients.  
24  
25

1 On December 1, 2017, the Law Office served a charging lien pursuant to  
2 NRS 18.015.

3 On December 18, 2017, settlement checks from Viking, totaling \$6M, were  
4 picked up by the Law Office. The Law Office immediately contacted the Vannah  
5 firm to arrange endorsement. The Vannah firm declined. Eventually, the Vannah  
6 firm relayed an allegation that the checks would not be endorsed because Mr.  
7 Simon would steal the money. The baseless accusation was made to support the  
8 false narrative that the current dispute is something more than a fee dispute - which  
9 can be easily and timely resolved by lien adjudication.  
10  
11

12 On January 2, 2018, the Law Office served an amended lien.

13 On January 4, 2018, Plaintiffs sued their lawyers. (Who they have not  
14 fired.)  
15

16 In early January, an interest-bearing account, with interest going to Mr.  
17 Edgeworth, was opened at Bank of Nevada. Disbursal requires the signatures of  
18 both Mr. Vannah and Mr. Simon.  
19

20 On January 8, 2018, the Viking settlement checks were endorsed and  
21 deposited.

22 On January 9, 2018, the complaint was served.

23 On January 18, 2018, the bank hold lifted and Brian Edgeworth got a check  
24 for the undisputed amount of \$3,950,561.27.  
25

1           **B.     The Law Office of Daniel S. Simon, A Professional Corporation.**

2           Plaintiffs named Defendant “Daniel S. Simon dba Simon Law”, alleging  
3 Breach of Contract, Declaratory Relief and Conversion. *See* Complaint, attached  
4 hereto as Exhibit “B.” All allegations against Daniel Simon individually are  
5 without basis as a matter of law and should be dismissed. Plaintiffs contend that  
6 Daniel S. Simon was doing business as Simon Law. *See id.*, ¶ 2. This contention  
7 is incorrect as Daniel S. Simon did not do business with the Edgeworth’s and did  
8 not provide any services in his individual capacity. Any legal services provided to  
9 Plaintiffs were done by The Law Office of Daniel S. Simon, P.C., a domestic  
10 professional corporation. *See* Nevada Secretary of State Business License Record  
11 for Law Office of Daniel S. Simon, P.C., attached hereto as Exhibit “C.”

12           Simon Law is not an entity that can be sued. At most it is a fictitious name  
13 owned by The Law Office of Daniel S. Simon, P.C. *See* Clark County Fictitious  
14 Firm Name Record for Simon Law, attached hereto as Exhibit “D.” This is not a  
15 surprise to Plaintiffs, they directed partial payments for legal services to The Law  
16 Office of Daniel S. Simon, P.C. *See* check payment by Angela and Brian  
17 Edgeworth to The Law Office of Daniel S. Simon, P.C., attached hereto as Exhibit  
18 “E.” Consequently, Plaintiffs have no viable claims against Daniel S. Simon as an  
19 individual and Defendant is entitled to dismissal of the entire complaint as a matter  
20 of law.  
21  
22  
23  
24  
25

### III. ARGUMENT

#### A. Defendant Daniel S. Simon Is Not a Proper Party and Should Be Dismissed from the First, Second and Fourth Causes of Action.

Nevada Rule of Civil Procedure 12(b)(5) allows dismissal of causes of action when a pleading fails to state a claim upon which relief can be granted.

"This court's task is to determine whether ... the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief." *Vacation Vill.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (quoting *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1988) (emphasis added). Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008). This Court should not assume the truth of legal conclusions, merely because they are cast in the form of factual allegations. *Crockett & Myers, Ltd. V. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184, 1190 (D. Nev. 2006).

Plaintiffs allege that there is a contract between them and Defendant Daniel S. Simon. However, this assertion is incorrect and improper. Taking the allegation as true, the agreement was not between Plaintiffs and Daniel S. Simon. Mr. Simon does not contract in an individual capacity; and, Mr. Simon does not do business individually. *See* Exhibits "C" and "D."

1 The Law Office is a licensed domestic professional corporation in the State  
2 of Nevada. *See* Exhibit “C.” Simon Law is a fictitious firm name owned by the  
3 Law Office. *See* Exhibit “D.” Any alleged agreement for legal services provided  
4 for Plaintiffs would be through the professional corporation.

5  
6 As a matter of law, contract claims against a law firm or a lawyer are  
7 governed by contract law, which necessarily includes corporate law:

8 “A lawyer is subject to liability to a client for injury caused by breach of  
9 contract in the circumstances and to the extent provided by contract law.”

10 Restatement Third, The Law Governing Lawyers §55(1).

11 The first, second and fourth causes of action all seek relief under the alleged  
12 contract. Under contract law and Nevada corporate law, Mr. Simon is not a proper  
13 defendant. Mr. Simon is an officer and stockholder of the corporation, Mr. Simon  
14 may not be named individually in a contract action. Plaintiffs’ Complaint fails to  
15 state a claim pursuant to NRCP 12(b)(5); and, Defendant Daniel S. Simon should  
16 be dismissed.  
17  
18

19 **B. Plaintiffs’ Conversion Action Should Be Dismissed.**

20 Plaintiffs’ Conversion Cause of Action fails to state a claim and should be  
21 dismissed.  
22  
23  
24  
25

1 For a conversion claim, Plaintiffs must prove that a Defendant:

2 1) committed a distinct act of dominion wrongfully exerted over  
3 Plaintiffs' personal property; and,

4 2) the act was in denial of, or inconsistent with, Plaintiffs' title or rights  
5 therein; or,

6 3) the act was in derogation, exclusion, or defiance of Plaintiffs' title or  
7 rights in the personal property.

8 *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000); *Ferriera*  
9 *v. P.C.H. Inc.*, 105 Nev. 305, 774 P.2d 1041 (1989); *Wantz v. Redfield*, 74 Nev.  
10 196, 326 P.2d 413 (1958). Plaintiffs cannot establish conversion as a matter of  
11 law.

12  
13 1. Plaintiffs did not plead a right to possession sufficient to allege  
14 conversion.

15 In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*,  
16 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court  
17 recognized the need to establish the right to "exclusivity" of the chattel or property  
18 alleged to be converted (*M.C. Multi-Family* addressed alleged conversion of  
19 intangible property). Plaintiffs claim they are due money via a settlement contract,  
20 and that they have compensated Defendant in full for legal services provided  
21 pursuant to a contract. *See* Exhibit "B," ¶ 19. Thus, Plaintiffs have pled a right to  
22 payment based upon contract.  
23  
24  
25

1 An alleged contract right to possession is not exclusive enough, without  
2 more, to support a conversion claim:

3 “A mere contractual right of payment, without more, will not suffice” to  
4 bring a conversion claim.

5 *Plummer v. Day/Eisenberg*, 184 Cal.App.4<sup>th</sup> 38, 45 (Cal. CA, 4<sup>th</sup> Dist. 2010). *See*,  
6 Restatement (Second) of Torts §237 (1965), comment d.

7 Nevada law expressly allows an attorney to recover fees via a charging lien,  
8 and expressly states such an effort is not a breach of duty. NRS 18.015(5). Thus,  
9 as a matter of law, asserting a charging lien, or expressing a desire to be paid,  
10 cannot serve to change a lien claim into conversion.  
11

12  
13 2. A charging lien is allowed by statute.

14 NRS 18.015 allows an attorney to file a charging lien. The Law Office  
15 followed the law. Following the law is not *wrongful*. Thus, as a matter of law,  
16 Plaintiffs cannot satisfy the *wrongful* dominion element.  
17

18 3. The money was placed into a trust account, per agreement of the  
19 parties.

20 The Law Office acted properly pursuant to Nevada Rule of Professional  
21 Conduct 1.15 “Safekeeping Property”. The Rule states in relevant part:

22 (e) When in the course of representation, a lawyer is in possession of funds  
23 or other property in which two or more persons (one of whom may be the  
24 lawyer) claim interests, the property shall be kept separate by the lawyer  
25 until the dispute is resolved. The lawyer shall promptly distribute all  
portions of the funds or other property as to which the interests are not in  
dispute.

1           The Law Office followed the exact course mandated by the Rules of  
2 Professional Conduct. The Law Office followed the law and placed the settlement  
3 money into a separate account-which requires the signature of Mr. Vannah to  
4 disburse funds. *See* Bank of Nevada letter establishing joint trust account for  
5 settlement proceeds, attached as Exhibit "F." Plaintiffs' have control over the  
6 funds and interest goes to Brian Edgeworth. No funds were taken, nor can any  
7 funds be taken.  
8  
9

10           Plaintiffs' conversion Cause of Action fails as a matter of law. No money  
11 has been taken. Plaintiffs have joint control over the money. Even more telling is  
12 the letter drafted by Plaintiffs and presented to the Bank consenting to the handling  
13 of the funds. *See*, Letter from Vannah and Vannah to the Bank of Nevada attached  
14 as Exhibit "F." How can you wrongfully convert funds when the complaining  
15 party agrees to where the funds should be placed and when Mr. Simon fully  
16 complied with the Plaintiffs' direction and placed the funds in a protected account?  
17  
18

19           4.     The complaint is not ripe.

20           It is axiomatic that a person not in possession cannot convert. Restatement  
21 (Second) of Torts §237 (1965), comment f. Plaintiffs sued Defendant for  
22 conversion before checks were endorsed or deposited. Likewise, the demands of  
23 Plaintiffs preceded the date funds were deposited and available and cannot serve as  
24 a predicate for a conversion claim.  
25

1 Deposit of funds into a trust account is not an act of dominion contrary to  
2 any stakeholder interest. In fact, it is the opposite. The Nevada Supreme Court  
3 has ruled that holding disputed funds in an attorney trust account is the same as the  
4 Court holding the funds in an interpleader action. *Golightly & Vannah, PLLC v TJ*  
5 *Allen LLC*, 373 P.3d 103 (Nev. 2016). A conversion claim cannot be ripe as a  
6 matter of law, until funds are removed from trust without legal basis. Which is  
7 impossible in this case, because Mr. Vannah is a signer on the account.  
8

9 An attorney is allowed by statute and the rules of ethics to resolve a fee  
10 dispute via a charging lien. Assertion of a lien right provided by statute is not  
11 conversion. *See*, Restatement (Second) of Torts §240 (1965). The undisputed  
12 money was provided to the client promptly upon funds becoming available. Thus,  
13 no conversion.  
14  
15

16 **C. The Fourth Cause of Action should be dismissed.**

17 The Fourth Cause of Action seeks damages for breach of an implied  
18 covenant in the alleged fee contract. The cause of action fails to state a claim as a  
19 matter of law. The covenant prohibits arbitrary or unfair acts. *Nelson v. Herr*, 163  
20 P.3d 420 (Nev. 2007). The Nevada Supreme Court has held that acting in accord  
21 with statutory law is not arbitrary or unfair. *Ibid*.  
22

23 The covenant provides recovery in “rare and exceptional cases” for  
24 “grievous and perfidious misconduct”. *Great American Insurance v. General*  
25

1 *Builders*, 924 P.2d 257, 263 (Nev. 1997) (internal citations omitted). Plaintiffs  
2 admit this is a fee dispute. Use of the statute specifically created by the Legislature  
3 to resolve a fee dispute is not perfidious, or rare.

4 **D. Plaintiffs' Punitive Damages Claims Should Be Dismissed.**

5  
6 The allegations of fraud or malice to support a punitive damages claim is  
7 equally false without any basis in law or fact. Plaintiffs have not alleged facts  
8 sufficient to establish that Defendant committed any type of fraudulent conduct.  
9 Fraud must be pled with particularity, and Plaintiffs must meet the higher clear and  
10 convincing burden of proof. Plaintiffs' complaint is not pled with particularity,  
11 and the conversion claim cannot be brought on the conduct described as a matter of  
12 law.  
13

14 Plaintiffs try to further their claims for fraud and punitive damages by  
15 manufacturing causes of action that have no basis in the law based upon the facts.  
16

17 Plaintiffs' allegations against Defendant do not rise to the level of a plausible  
18 or cognizable claim for relief for conversion and equally, the claims for punitive  
19 damages are so lacking that they should be dismissed. In fact, the Law Office did  
20 everything required by the rules of ethics and the Nevada Revised Statutes. *See*,  
21 Declaration of David Clark, Esq. attached as Exhibit "G" outlining the duties, the  
22 law and proper procedure for an attorney lien.  
23  
24  
25

1 Nevada has long recognized that "a plaintiff is never entitled to punitive  
2 damages as a matter of right." *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev.  
3 372, 380, 989 P.2d 882, 887 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824,  
4 826, 711 P.2d 1, 2 (1985)). Tort liability alone is insufficient to support an award  
5 of punitive damages. *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727 (1993).  
6 The punitive damage statutes in Nevada require conduct exceeding recklessness or  
7 gross negligence. *Wyeth v. Rowatt*, 244 P.3d 765, 126 Nev. Adv. Rep. 44 (2010);  
8 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243,  
9 255 (2008). Plaintiffs' Complaint is interspersed with terms such as "willful,  
10 malicious and oppressive and in a conscious disregard" in their accusations against  
11 Defendants. However, the causes of action and the facts alleged therein do not rise  
12 to an action of fraud, intentional misrepresentation, deceit, concealment, willful or  
13 malicious conduct; because, there is not a scintilla of evidence, and the allegations  
14 contained in the complaint are false and contrary to the facts of the settlement. All  
15 information suggests that Defendants did everything possible to protect the clients,  
16 there cannot be a basis for punitive damages in the complaint.  
17  
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25

1 **IV. CONCLUSION**

2 Defendants respectfully request the motion to dismiss the second amended  
3 complaint be GRANTED.

4 Dated this 9<sup>th</sup> day of April, 2018.

6 /s/ James R. Christensen  
7 **JAMES R. CHRISTENSEN, ESQ.**  
8 Nevada Bar No. 003861  
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13 Email: jim@christensenlaw.com  
14 *Attorney for Daniel Simon*

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



1 **OPPS**  
2 **ROBERT D. VANNAH, ESQ.**  
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4 **JOHN B. GREENE, ESQ.**  
5 Nevada Bar No. 004279  
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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; 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**

**PLAINTIFFS OPPOSITION TO**  
**DEFENDANT'S (THIRD) MOTION TO**  
**DISMISS**

**Date of Hearing: May 15, 2018**  
**Time of Hearing: 9:30 a.m.**

25 **Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC**  
26 **(PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN**  
27 **B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby files this Opposition to the**  
28 **(Third) Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A**  
**PROFESSIONAL CORPORATION (SIMON) to Dismiss (the Motion).**

**///**

**///**

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

VOL. 2 PART 4 of 9

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

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

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

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

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

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

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

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

1 This Opposition is based upon the attached Memorandum of Points and Authorities, NRCP  
2 8(a), the Nevada Rules of Professional Conduct (NRPC), the pleadings and papers on file herein,  
3 PLAINTIFFS Points and Authorities raised in Opposition to SIMON'S Motions to Adjudicate and  
4 Consolidate, PLAINTIFFS Points and Authorities raised in Opposition to SIMON'S (First) Motion  
5 to Dismiss and to SIMON'S Special (Second) Motion to Dismiss, the Affidavits of Brian Edgeworth  
6 attached to his Oppositions to SIMON'S numerous Motions filed thus far, all of which  
7 PLAINTIFFS adopt and incorporate by this reference, and any oral argument this Court may wish to  
8 entertain.  
9

10 DATED this 24 day of April, 2018.  
11

12 VANNAH & VANNAH

13   
14 ROBERT D. VANNAH, ESQ.  
15

16 I.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**  
18

19 On or about May 27, 2016, PLAINTIFFS retained SIMON to represent their interests  
20 following a flood that occurred on April 10, 2016, in a home under construction that was owned by  
21 PLAINTIFFS. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to  
22 SIMON'S numerous Motions filed thus far.) The damage from the flood caused in excess of  
23 \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters  
24 to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that  
25 dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as Case Number A-16-738444-C  
26 (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for  
27 a substantial amount of money was reached with defendants not long before the trial date.  
28

1 At the outset of the attorney-client relationship, PLAINTIFFS and SIMON the person  
2 orally agreed that SIMON the person and the lawyer would be paid for his services by the hour and  
3 at an hourly rate of \$550. (Id.). No other form or method of compensation such as a contingency  
4 fee was ever brought up at that time, let alone agreed to. (Id.) Despite SIMON serving as the  
5 attorney in this business relationship, and the one with the requisite legal expertise, SIMON never  
6 reduced the terms of the CONTRACT to writing in the form of a Fee Agreement. However, that  
7 formality didn't matter to the parties as they each recognized what the terms of the CONTRACT  
8 were and performed them accordingly with exactness. (Id.)  
9

10 For example, SIMON sent invoices to PLAINTIFFS that were dated December 16, 2016,  
11 May 3, 2017, August 16, 2017, and September 25, 2017. (SIMON'S invoices that were actually  
12 sent to PLAINTIFFS are attached to SIMON'S Motion to Adjudicate as Exhibit 20.) The amount  
13 of fees and costs SIMON billed PLAINTIFFS in those invoices totaled \$486,453.09. Simple  
14 reading and math shows that SIMON billed for his time at the hourly rate of \$550 per hour.  
15 PLAINTIFFS paid the invoices in full to SIMON. (Id.)  
16

17 SIMON also submitted an invoice to PLAINTIFFS on November 10, 2017, in the amount  
18 of approximately \$72,000. (Please see the Affidavits of Brian Edgeworth attached to his  
19 Oppositions to SIMON'S numerous Motions filed thus far.) However, SIMON withdrew the  
20 invoice and failed to resubmit the invoice to PLAINTIFFS, despite an email request from Brian  
21 Edgeworth to do so. (Id.) It is unknown to PLAINTIFFS whether SIMON ever disclosed that  
22 "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to  
23 the mandated computation of damages.  
24

25 From the beginning of his representation of PLAINTIFFS, SIMON was aware that  
26 PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION.  
27 SIMON was also aware that the loans secured by PLAINTIFFS accrued interest. Rather, SIMON  
28

1 knew that PLAINTIFFS could not get traditional loans to pay SIMON'S fees and costs. (Id.) Plus,  
2 SIMON didn't express an interest in taking what amounted to a property damage claim with a  
3 value of \$500,000 on a contingency basis. Easy math shows that 40% of \$500,000 is \$200,000;  
4 SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. In  
5 reality, SIMON only wanted what amounts to a bonus after he'd received \$500,000 in fees and  
6 costs and after the risk of loss was gone.  
7

8 As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017,  
9 after the value of the case blossomed from one of property damage of approximately \$500,000 to  
10 one of significant and additional value due to the conduct of one of the defendants, and after a  
11 significant sum of money was offered to PLAINTIFFS from defendants, SIMON became  
12 determined to get more, so he started asking PLAINTIFFS to modify the CONTRACT. (Id.)  
13 Thereafter, Mr. Edgeworth sent an email labeled "Contingency." (See Exhibit 4 to the Motion to  
14 Adjudicate.) (Remarkably, SIMON misleads the Court in his Motion at page 11 by using this email  
15 from August of 2017 that discusses modifying the original terms of fee agreement) to support his  
16 unsupportable and untenable position that the parties didn't have a "structured discussion" in 2016  
17 on fees.) The sole purpose of that email was to make it clear to SIMON that PLAINTIFFS never  
18 had a structured conversation about modifying the existing fee agreement from an hourly agreement  
19 to a contingency agreement. (Please see the Affidavits of Brian Edgeworth attached to his  
20 Oppositions to SIMON'S numerous Motions filed thus far.)  
21  
22

23 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the  
24 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into modifying  
25 the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be paid far more  
26 than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for the preceding  
27 eighteen (18) months. (Id.)  
28

1 The timing of SIMON'S request for the CONTRACT to be modified was deeply troubling  
2 to PLAINTIFFS, for it came at the time when the risk of loss in the LITIGATION had been nearly  
3 extinguished and the appearance of a large gain from a settlement offer had suddenly been  
4 recognized. SIMON put on a full court press for PLAINTIFFS to agree to his proposed  
5 modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being blackmailed  
6 by SIMON, who was basically saying "agree to this or else." (Id.)  
7

8 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees  
9 in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be  
10 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.  
11 (Id.) At that time, these additional "fees" were not based upon invoices submitted to PLAINTIFFS  
12 or detailed work performed by SIMON. The proposed fees and costs were in addition to the  
13 \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the  
14 invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the  
15 LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in  
16 the LITIGATION.  
17

18 One reason given by SIMON to modify the CONTACT was he claimed he was losing  
19 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was  
20 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and  
21 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)  
22 According to SIMON, he under billed in the LITIGATION in an amount in excess of  
23 \$1,000,000.00. SIMON doubled down on that position of under billing in a letter to co-counsel for  
24 PLAINTIFFS dated December 7, 2017, where SIMON claimed that the worked performed by him  
25 from the outset that has not been billed "may well exceed \$1.5M." (Please see Exhibit 9 to  
26 SIMON'S Motion to Adjudicate.)  
27  
28

1       We've now learned through SIMON'S latest invoices (attached to his Motion to Adjudicate  
2 as Exhibit 19) that he actually allegedly under-billed by \$692,120, not the \$1.5M set forth in the  
3 letter of December 7, 2017. On the one hand, it's odd for SIMON to assert that he's losing money  
4 then, on the other hand, have SIMON admit that he under-billed PLAINTIFFS to the tune of  
5 \$692,120 to \$1.5M. But, that's the essence of the oddity to SIMON'S conduct with PLAINTIFFS  
6 since the settlement offers in the LITIGATION began to roll in.  
7

8       Yet an additional reason given then by SIMON was that he felt his work now had greater  
9 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.  
10 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to  
11 PLAINTIFFS for their signatures. They refused to bow to SIMON'S pressure or demands.  
12 (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous  
13 Motions filed thus far.)  
14

15       Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and  
16 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees  
17 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following  
18 the flooding event. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to  
19 NRCP 16.1, SIMON was required to present prior to trial a computation of damages that  
20 PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that  
21 PLAINTIFFS paid.  
22

23       There is nothing in the computation of damages signed by and served by SIMON to reflect  
24 fees and costs other than those contained in his invoices that were presented to and paid in full by  
25 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
26 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let  
27 alone those in excess of \$692,120 of his invoices from January of 2018, or \$1.5M set forth in his  
28

1 letter of December 7, 2017, or the exorbitant figure set forth in SIMON'S amended lien of  
2 \$1,977,843.80, dated January 2, 2018.

3 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a  
4 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.  
5 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the  
6 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a  
7 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had  
8 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:  
9 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees  
10 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."  
11 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And  
12 they've been updated as of last week." (Excerpts of the Deposition are attached as Exhibit 2 to  
13 PLAINTIFFS Opposition to SIMON'S Motion to Adjudicate.)  
14

15 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS  
16 refused to alter or amend the terms of the CONTRACT. (Please see the Affidavits of Brian  
17 Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.) When  
18 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree to  
19 release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served two  
20 attorneys liens and reformulated his billings to add entries and time that never saw the light of day  
21 in the LITIGATION. (Id.) Even when he finally submitted his new billings on January 24, 2018,  
22 the invoice totaled \$692,120 for his "additional" services, and billed them at the agreed to rate of  
23 \$550 (for SIMON'S time). Yet, SIMON wrongfully continued to lay claim to nearly \$1,977,843  
24 of PLAINTIFFS property (Please see Amended Lien attached as Exhibit 15 to SIMON'S Motion  
25 to Adjudicate.) and he refused to release PLAINTIFFS' funds.  
26  
27  
28

1 When SIMON refused to release the full amount of the settlement proceeds to PLAINTIFFS,  
2 litigation was filed and served. (A copy of PLAINTIFFS' original Complaint is attached as Exhibit  
3 A to SIMON'S First Motion to Dismiss.) Thereafter, the "undisputed funds" were deposited in a  
4 bank account and can only be released on agreement by SIMON the person and counsel for  
5 PLAINTIFFS. The present claims of PLAINTIFFS against SIMON are for Breach of Contract,  
6 Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair  
7 Dealing, and they are set forth in an AMENDED COMPLAINT that has been filed and served.  
8

9 As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a  
10 short and plain statement of the claim showing that the pleader is entitled to relief." PLAINTIFFS  
11 have easily met that requirement with each of their claims. PLAINTIFFS' claims against SIMON  
12 personally are properly raised, too. NRPC 1(c) defines the work of a law firm as the work of a  
13 lawyer. In fact, nearly every Rule speaks to that effect. It's undisputed that SIMON the person did  
14 the work. Therefore, the claims against him personally are proper in fact and by Rule.  
15

16 PLAINTIFFS' claims for conversion, for breach of the implied covenant of good faith and  
17 fair dealing, and for punitive damages, are also perfectly proper and timely. These claims are based  
18 on a very simple premise that is accentuated by SIMON'S words and deeds. SIMON has converted  
19 (misappropriated; taken; etc.) PLAINTIFFS' property by intentionally and wrongfully formulating a  
20 plan that's visible through agreements, letters, and the like to take PLAINTIFFS property. It's also a  
21 plan that flies in the face of the CONTRACT of the parties and the Rules governing lawyers.  
22

23 That plan was perfected by asserting a lien and by refusing to release PLAINTIFFS property  
24 to them upon demand. While the balance of PLAINTIFFS property (settlement proceeds) is  
25 presently parked in a bank account, they don't want it to be there. PLAINTIFFS wanted and want  
26 their property then and now. Demands to SIMON went unheeded. (Please see the Affidavits of  
27 Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.)  
28

1 Pursuant to NRCP 8(a)(1), a plain reading of PLAINTIFFS complaint clearly sets forth  
2 simple facts sufficient to maintain all of their claims, including the intentional tort of conversion,  
3 and its remedy of punitive damages, against SIMON.

4 **II.**

5 **ARGUMENTS**

6  
7 **A. PLAINTIFFS HAVE CLEARLY MET THE TWO-PART STANDARD OF**  
8 **PLEADING SUFFICIENT FACTS TO MAINTAIN CLAIMS AGAINST SIMON FOR**  
9 **BREACH OF CONTRACT, DECLARATORY RELIEF, CONVERSION, AND BREACH OF**  
10 **THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AS WELL AS THE**  
11 **REMEDIES RELATED TO THESE CLAIMS.**

12 Nevada is a notice-pleading jurisdiction with two simple steps for PLAINTIFFS to take to  
13 assert and maintain their claims for relief against SIMON. First, NRCP 8(a)(1) merely requires  
14 PLAINTIFFS to include in their pleading "a short and plain statement of the claim showing that the  
15 pleader is entitled to relief...." PLAINTIFFS have included twenty (20) detailed paragraphs in their  
16 AMENDED COMPLAINT outlining SIMON'S words and deeds that support their claims for relief.  
17 They leave no doubt as to the basis for their claims, who and what they're against, and why they are  
18 making them. Certainly, there can be no reasonable dispute that PLAINTIFFS have met that  
19 minimum standard. If this Court or a jury accepts PLAINTIFFS assertions, and there are facts to  
20 back them up, relief against SIMON will likely be granted. See NRCP 12.

21 Likewise, NRCP 8(a)(2) merely requires PLAINTIFFS to include "a demand for judgment  
22 for the relief the pleader seeks." The jurisdictional amount, per the Rule, is \$15,000 "without further  
23 specification of amount." The amount in the Prayer for Relief portion of PLAINTIFFS AMENDED  
24 COMPLAINT, six (6) demands are made for judgment against SIMON. They leave no doubt that  
25 PLAINTIFFS are seeking judgment and they meet the jurisdictional minimum. Since PLAINTIFFS  
26 have met each of the minimum standards of NRCP 8 to maintain their claims against SIMON,  
27 SIMON'S Motion to Dismiss must be denied.  
28

**B. PLAINTIFFS' CLAIMS AGAINST SIMON, BOTH PERSONALLY AND PROFESSIONALLY, ARE SOUNDLY BASED IN FACT AND LAW.**

SIMON'S words and deeds from day one through the present date, paints a clear picture that a CONTRACT existed between the parties. Here's some of the evidence. First, there are the affidavits of Brian Edgeworth that he's presented in support of PLAINTIFFS Oppositions to SIMON'S numerous Motions that he's filed thus far, where he states time and again that he and SIMON agreed that SIMON'S fee would be \$550 per hour for his services. The discussion between SIMON and PLAINTIFFS was structured enough for the parties to agree that SIMON would be retained as PLAINTIFFS attorney and be paid \$550 per hour for his services, and reimbursed for his costs. That's the essence of a fee agreement. It's not a complicated business relationship that requires anything more for the contracting parties to know and to understand where they stand with the agreement. That's what happened here. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.)

Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the LITIGATION are for an hourly rate of \$550 per hour for SIMON'S services. (See Exhibit 20 to SIMON'S Motion to Adjudicate.) There are hundreds of entries for hundreds of thousands of dollars, all billed by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.) SIMON'S new invoices that he produced on January 24 of this year—invoices that contain thousands of entries and \$692,120 in new billings—are billed by SIMON at \$550 per hour, too. (Please see Exhibit 19 to SIMON'S Motion to Adjudicate.) See the pattern?

Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been

1 disclosed to you long ago.” Finally, at page 272, lines 2-3, SIMON further admitted concerning his  
2 fees and costs: “And they’ve been updated as of last week.” (Please see Exhibit 2 to PLAINTIFFS  
3 Opposition to SIMON’S Motion to Adjudicate.)

4 These are the same invoices that contain the agreed to hourly rate of \$550 per hour, which  
5 were all paid in full by PLAINTIFFS. The \$550 question is: how much more consistent  
6 performance by the parties to the terms of an agreement does it take to convince even the most  
7 intransigent litigant that there is a CONTRACT that he has to abide by? It’s been the same since the  
8 beginning. A jury may agree. Fourth, there are the calculations of damages in the LITIGATION  
9 that SIMON was obligated to submit and serve on PLAINTIFFS behalf and in accordance with  
10 NRCP 11(b) and NRCP 16.1. The calculations of damages submitted by and signed by SIMON set  
11 forth damages, including attorneys’ fees, based on his hourly rate of \$550 and paid in full by  
12 PLAINTIFFS.  
13

14 Last, in a letter to co-counsel for PLAINTIFFS dated December 7, 2017 (attached to  
15 SIMON’S Motion to Adjudicate as Exhibit 9), SIMON states “Simon Law is reviewing the case file  
16 and work performed from the outset that has not been billed (including such things as obtaining the  
17 forensic copy of case related e-mails and phone records) to provide a comprehensive hourly bill.”  
18 (Emphasis added.) This letter from SIMON goes on to state “It is reasonably expected at this time  
19 that the hourly bill may well exceed a total of \$1.5M....” (Emphasis added.) His hourly bill  
20 produced on January 24, 2018, was actually for an additional \$692,120 in fees.  
21

22 Thus we see that all of the conduct by SIMON in the LITIGATION from the beginning to  
23 the end refutes his newfound position that there was no agreement to pay an hourly fee. To the  
24 contrary, it instead supports a finding that the terms of the CONTRACT contain the agreement of  
25 the parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of  
26 \$550.  
27  
28

1 As PLAINTIFFS have argued throughout this surreal journey, the only pathway for SIMON  
2 to prevail on his Motion is to convince a trier of fact that the CONTRACT isn't a contract and that it  
3 didn't contain the agreement of the parties on the amount of SIMON'S fee that everyone abided by  
4 with exactness for over eighteen (18) months. The CONTRACT contains every element of a valid  
5 and enforceable contract. PLAINTIFFS asked SIMON the person to represent them in the  
6 LITIGATION in exchange for an hourly fee of \$550, plus the reimbursement of costs incurred (the  
7 offer). SIMON the person agreed to serve as PLAINTIFFS attorney and to be paid the hourly rate of  
8 \$550 for his services (the acceptance). PLAINTIFFS agreed to pay, and SIMON the person agreed  
9 to receive, \$550 per hour for SIMON'S time, plus the reimbursement of costs (the consideration).  
10

11 Thereafter, SIMON billed PLAINTIFFS for his time at a rate of \$550 per hour, plus incurred  
12 costs, and PLAINTIFFS paid each invoice presented by SIMON in full (the performance), but for  
13 the latest "invoice", which they will review and pay what is fair and reasonable. There isn't a  
14 question of capacity or intent. Therefore, that's a contract, which is the CONTRACT. For SIMON  
15 to argue or assert otherwise in this litigation is belied by every reasonable measure of his words and  
16 deeds, including his letter of December 2, 2017, and his latest billings produced on January 24,  
17 2018.  
18

19 SIMON now wants the equivalent of a contingency fee from PLAINTIFFS without a written  
20 contingency fee agreement, ironically one that he never wanted or would have agreed to in the first  
21 place. SIMON also seems to want a bonus for his efforts, though the parties never agreed to one.  
22 When SIMON didn't get what he wanted, he placed a fugitive lien in a baseless amount on  
23 PLAINTIFFS property for \$1,977,843.80. (Please see Exhibit 15 to SIMON'S Motion to  
24 Adjudicate.) He did so despite the prior knowledge and admission that "...it is reasonably expected  
25 at this time that the hourly bill may well exceed a total of \$1.5M...." (Please see Exhibit 9 to  
26 SIMON'S Motion to Adjudicate.)  
27  
28

1 Even today, SIMON the person maintains dominion and control over the balance of  
2 PLAINTIFFS settlement proceeds despite the foregoing facts AND the despite the fact that his  
3 actual hourly bill for his services after his "comprehensive" review are "only" \$692,120. (Please  
4 see SIMON'S billings attached as Exhibit 19 to the Motion to Adjudicate.) Simple math again  
5 reveals that SIMON the person has willfully converted at least \$1,285,723.80 of PLAINTIFFS  
6 property. Those are sufficient facts under any standard for PLAINTIFFS to maintain a claim for  
7 breach of the CONTRACT, conversion, breach of the implied covenant of good faith and fair  
8 dealing, and the remedy of punitive damages against SIMON the person.

10 SIMON also continues to seek refuge in his wrongfully asserted charging lien in its  
11 unsupportable amount. As argued in other pleadings, SIMON had no basis to assert that lien in its  
12 stated amount. Each invoice he's presented to PLAINTIFFS in the LITIGATION had been paid in  
13 full. Also, there is nothing in fact or at law to support any argument that SIMON'S fee was  
14 dependant in any way on the existence of, or the amount of, the settlement reached with the  
15 defendants in the LITIGATION. Rather, this Court or a jury could find that SIMON asserted one  
16 because he wanted to and because his law licensed cloaked him with the ability to do so. That  
17 finding could trigger a valid remedy of punitive damages.

19 As for the amount of, and the ongoing existence of, the charging lien, there's no basis for  
20 either. As discussed above, SIMON'S amended lien is far more than provided for under the  
21 CONTRACT and his "comprehensive" billings. Again, at least \$1,285,723.80 of SIMON'S  
22 charging lien (in the amount of \$1,977,843.80) has no basis in fact or in law. (PLAINTIFFS have  
23 also seen glaring issues with SIMON'S new billing invoice, including duplicate entries and a huge  
24 block billing entry for over 135 hours for reviewing emails.) And SIMON won't release  
25 PLAINTIFFS property, despite knowing that his consent is required to do so. That's not consent for  
26 PLAINTIFFS, but it is conversion at the hands of SIMON.  
27  
28

1 PLAINTIFFS' claims against SIMON personally are properly raised, too. SIMON seeks to  
2 shield himself behind the façade of his firm to avoid personal responsibility for PLAINTIFFS'  
3 claims. Not so fast. The things that lawyers do and don't do, including their interactions with  
4 clients, are governed by the NRPC. PLAINTIFFS assert, and have claimed, that SIMON'S actions  
5 are in fact SIMON'S actions, personally and professionally. NRPC 1(c) is on point and on all fours  
6 with PLAINTIFFS' claims. This Rule states that a "Firm or law firm denotes a lawyer or  
7 lawyers...." As a result, when SIMON argues that any agreement with PLAINTIFFS was reached  
8 with his firm, the Rules instead determine that the CONTRACT was made with the lawyer, who is  
9 SIMON the person. See NRPC 1(c) and NRPC 1.5.

11 In fact, nearly every Rule in the NRPC uses similar language and speaks directly to lawyers.  
12 For example, the Rules dealing with competence (1.1), scope of representation (1.2), diligence (1.3),  
13 communication (1.4), fees (1.5), confidentiality (1.6), conflicts (1.7 & 1.8), duties to former clients  
14 (1.9), advisor (2.1), and candor to the tribunal (3.3), all begin with, or have in prominent display, "A  
15 lawyer shall...." (Emphasis added.) By definition and via common sense, these Rules in general,  
16 and Rule 1.5 in particular, preclude SIMON from making any successful argument as to who the  
17 CONTRACT is with and who PLAINTIFFS claims can gain traction against. In short, his argument  
18 to shield himself is belied by the Rule and the law. But there's more.

19 Here, it is undisputed that SIMON the person spoke with PLAINTIFFS about the terms of  
20 the CONTRACT. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to  
21 SIMON'S numerous Motions filed thus far.) It's undisputed that SIMON the person did the work  
22 that resulted in the lions share of the \$486,453.09 in invoices that were billed and paid to date in the  
23 LITIGATION. (See Exhibits 19 and 20 to SIMON'S Motion to Adjudicate). It's undisputed that  
24 SIMON the person performed the "comprehensive" review that resulted in \$692,120 in additional  
25 hourly billings. (See Exhibit 9 to SIMON'S Motion to Adjudicate.) It's not reasonably disputed  
26 that SIMON the person formulated the plan to get paid more in fees than he agreed to under the  
27  
28

1 CONTRACT. It's undisputed that SIMON the person prepared and sent the charging lien that  
2 perfected his plan to get a bonus for his work. Finally, it's undisputed that SIMON the person  
3 controls whether PLAINTIFFS' personal property gets released and paid to them, as the account  
4 requires his signature and consent.

5  
6 Of utmost importance here, SIMON the person doesn't really dispute that SIMON the  
7 person is the real-party-in-interest here. We know this by simply reading what he wrote in his  
8 Motion to Adjudicate Attorney Lien, which was his first Motion to this Court, when all of this was  
9 most fresh in his mind and before he had time to contemplate other conflicting legal theories. At  
10 page 5, lines 3-8, SIMON the person began the story by letting us know that "Danny and Eleyana  
11 Simon were close family friends with Brian and Angela Edgeworth for many years." SIMON the  
12 person continues by telling us, "In May of 2016, Mr. Simon agreed to help his friend with the flood  
13 claim. Because they were friends, Mr. Simon worked without an express fee agreement."  
14 (Emphasis added.)

15  
16 At pages 9 of his Motion to Adjudicate, SIMON the person continues the human interest  
17 aspect of the facts by reiterating that, "the families (Simons and Edgeworths) became close," and  
18 that "they helped each other during difficult times." At page 10, SIMON the person stated, "Mr.  
19 Simon was comfortable waiting until the end of the case to be paid in full." Finally, at page 11,  
20 SIMON the person admitted, "Mr. Edgeworth asked his friend (Danny Simon) for help" and that,  
21 "Mr. Simon agreed to lend a helping hand, and send a few letters." Several other references are  
22 made in that Motion of Danny Simon the person saying this and Mr. Simon the person doing that.  
23 SIMON'S subsequent iterations of these facts in later Motions shift to the law firm doing this and  
24 saying that, but the story had already been written and embraced by SIMON the person, as common  
25 sense and the law say it should be.

26  
27 PLAINTIFFS' claims against SIMON the person as the lawyer are proper in fact, by Rule,  
28 and at law. SIMON the person is the one who was practicing law for PLAINTIFFS, not his

1 corporation. It provides no refuge for him here on these facts and with his admissions. Thus, there  
2 are sufficient facts plead under the Rules for PLAINTIFFS claims against SIMON the person as the  
3 lawyer to go forward. Therefore, there's no basis in fact or at law for SIMON to be allowed to  
4 shield himself from personal liability or to request that PLAINTIFFS AMENDED COMPLAINT be  
5 dismissed.  
6

7 **C. PLAINTIFFS HAVE PROPERLY SET FORTH THEIR CLAIMS FOR RELIEF FOR**  
8 **CONVERSION AND FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**  
9 **AND FAIR DEALING. AS INTENTIONAL TORTS, AND WITH THESE FACTS,**  
10 **PLAINTIFFS ARE ENTITLED TO THE REMEDY THEY SEEK, WHICH ARE PUNITIVE**  
11 **DAMAGES.**

12 In bringing a claim against SIMON for conversion and for breach of the implied covenant of  
13 good faith and fair dealing—intentional torts—PLAINTIFFS have properly asserted claims against  
14 SIMON where the remedies are punitive damages. In his Motion, SIMON improperly argues that  
15 PLAINTIFFS can't prove their claims. That's a bold and a false assertion in light of the facts and  
16 that no discovery has taken place. PLAINTIFFS assert that their AMENDED COMPLAINT  
17 contains far more than "a short and plain statement of the claim" for conversion, and that SIMON  
18 did so with the clear knowledge and the intent to harm, in that he was not entitled to any portion of  
19 PLAINTIFFS property.

20 A jury may very well find that the CONTRACT governed how much SIMON the lawyer  
21 could charge in fees. That same jury may also find that SIMON the person wanted more than what  
22 he'd agreed to receive, and that he formulated a plan to get it done. The jury could also find that  
23 SIMON'S clear knowledge and intent to wrongfully convert PLAINTIFFS property was crystallized  
24 when he: 1.) Sent his letter of December 7, 2017, prophesying an additional \$1.5M in billings; 2.)  
25 Asserted two liens, namely an amended lien on January 2, 2018, for \$1,977,843.80 in fees; and, 3.)  
26 Submitted additional billings on January 24, 2018, for \$692,120 in billings that followed his  
27 "comprehensive" review of all the work he'd performed to date.  
28

1 They may also find that while the amount of SIMON'S conversion has been a moving target  
2 (thus far it's been "in excess of a million dollars," \$1.5M, \$1,977,843.80, and/or \$692,120!), it was  
3 still done with the knowledge that it's wrong, that it was done with intent to harm and oppress, that  
4 it's in direct violation of the property rights of PLAINTIFFS, and that it was done with the intent to  
5 benefit himself and the expense of and harm to PLAINTIFFS.  
6

7 Finally, a trier-of-fact may also find sufficient evidence exists to show that SIMON'S  
8 conduct of: failing to reduce the CONTRACT to writing; later claiming ambiguities in the  
9 CONTRACT; demanding a bonus from PLAINTIFFS; creating a super bill after the LITIGATION  
10 had settled, including a block bill of over 135 hours; harboring a plan to merely submit partial  
11 invoices without consulting PLAINTIFFS of this plan so they could evaluate whether SIMON  
12 should continue as counsel; executing his secret plan by going back and adding substantial time to  
13 his invoices that had already been billed and paid in full; and, but not limited to, asserting a lien on  
14 PLAINTIFFS' property, knowingly doing so in an amount that was far in excess of any amount of  
15 fees that he had billed from the date of the previously paid invoice to the date of the service of the  
16 lien, that he could bill for the work performed, that he actually billed, or that he could possible claim  
17 under the CONTRACT, that SIMON failed to deal fairly and in good faith with PLAINTIFFS and  
18 thus breached the implied covenant of good faith and fair dealing.  
19

20 In summary, PLAINTIFFS have met their burden under NRCP 8 and NRCP 12 to allege  
21 sufficient facts to support their claims for Breach of Contract, for Declaratory Relief, for Conversion  
22 and its remedy of punitive damages, and for Breach of the Implied Covenant of Good Faith and Fair  
23 Dealing, with all of its remedies. If this Court needs a more definite statement in PLAINTIFFS  
24 AMENDED COMPLAINT, they can provide that. However, PLAINTIFFS believe that SIMON'S  
25 conduct has been sufficiently set forth in their AMENDED COMPLAINT. As a result, they  
26 respectfully request that SIMON'S (Third) Motion to Dismiss be denied.  
27  
28

III.

CONCLUSION

Based on the foregoing, PLAINTIFFS respectfully request the Court deny SIMON'S (Third) Motion to Dismiss and instead allow PLAINTIFFS to present their claims for damages against SIMON before a jury, as provided by Nevada Constitutional, statutory, and case law.

DATED this 24 day of April, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

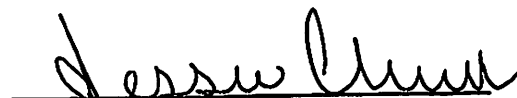
Electronically:

James Christensen, Esq.  
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601 S. Third Street  
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Peter S. Christiansen, Esq.  
CHRISTIENSEN LAW OFFICES  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

Traditional Manner:  
None

DATED this 24<sup>th</sup> day of April, 2018.

  
An employee of the Law Office of  
Vannah & Vannah



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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 I doubt we will get Kinsale to settle for enough to really finance this since I  
18 would have to pay the first \$750,000 or so back to Colin and Margaret and  
why would Kinsale settle for \$1MM when their exposure is only \$1MM?

19  
20 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

---

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

5  
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.  
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the  
8 effect of this AGREEMENT and their release of any and all claims, known or  
9 unknown and, based upon that explanation and their independent judgment by  
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the  
11 legal significance and the consequences of the claims being released by this  
12 Agreement. PLAINTIFFS further represent that they understand and  
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  
28

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

VOL. 2 PART 5 of 9

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

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

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

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

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

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

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

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

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

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

---

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

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

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

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

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
16 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
21 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

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

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

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

<sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.

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

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

### 6 *Costs Owed*

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

### 15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

## 23 CONCLUSION

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

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

9  
10 **ORDER**

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


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

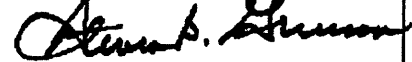
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18 DISTRICT COURT JUDGE  
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1 **CERTIFICATE OF SERVICE**

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:  
5

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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1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

6  
7 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
15 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
16 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
17 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 14 15 **CONCLUSION OF LAW**

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

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

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

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

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

#### 4 5 *Conversion*

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

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

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

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

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

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***Breach of Fiduciary Duty***

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.

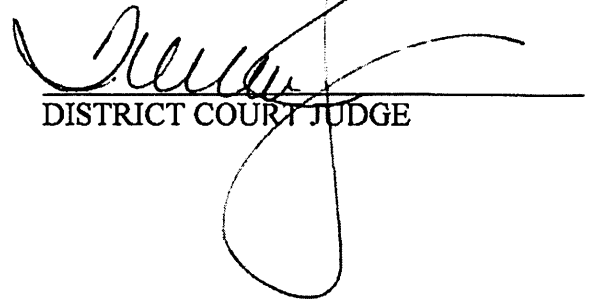
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**ORDER**


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

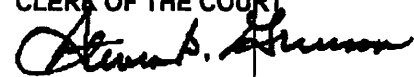
IT IS SO ORDERED this 19 day of November, 2018.

  
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



MATF  
JAMES R. CHRISTENSEN, ESQ.  
Nevada Bar No. 003861  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 272-0406  
(702) 272-0415 fax  
jim@jchristensenlaw.com  
*Attorney for Daniel S. Simon*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON  
LAW; DOES 1 through 10; and, ROE  
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**MOTION FOR ATTORNEY FEES  
AND COSTS**

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 The Law Office of Daniel Simon, Daniel Simon, individually and Simon  
2 Law, by and through their attorneys, Peter Christiansen, Esq. and James R.  
3 Christensen, Esq. move for Attorney's Fees and Costs pursuant to NRS 7.085,  
4 NRS 18.010(2)(b), NRS 41.670 and NRCP 11.  
5

6 This motion is made and based upon the papers and pleadings on file  
7  
8 herein, exhibits attached, the points and authorities set forth herein, and all other  
9 evidence that the Court deems just and proper, as well as the arguments of  
10 counsel at the time of the hearing hereon.  
11

12 Dated this 7<sup>th</sup> day of December, 2018.  
13

14 /s/ James R. Christensen  
15 JAMES CHRISTENSEN, ESQ.  
16 Nevada Bar No. 003861  
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20 (702) 272-0415  
21 jim@jchristensenlaw.com  
22 Attorney for Daniel S. Simon  
23  
24  
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You, and each of you, will please take notice that the undersigned will bring on for hearing the Motion for Attorney's Fees and Costs before the above- entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_\_ 9:30 a.m./p.m. in Department 10, Courtroom 14B.

/s/ James R. Christensen  
JAMES R. CHRISTENSEN, ESQ.  
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*Attorney for Daniel S. Simon*

## MEMORANDUM OF POINTS & AUTHORITIES

### I. Introduction

This Court found that the attorney lien of Defendant Daniel S. Simon dba Simon Law ("Simon") was proper and that the lawsuit brought by Plaintiffs Edgeworth Family Trust and American Grating, LLC's (hereafter "Plaintiffs") against Simon had no merit. Accordingly, on October 11, this Court dismissed Plaintiffs' Complaint in its entirety and issued three decisions: Decision and Order on Motion to Dismiss NRCP 12(b)(5); Decision and Order on Motion to Adjudicate Lien and Decision; and Decision and Order on Special Motion to Dismiss Anti-SLAPP. On November 19, 2018, this Court filed an Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) ("MTDO"), attached hereto as **Exhibit 1** and an Amended Decision and Order on Motion to Adjudicate Lien ("Lien D&O"), attached hereto as **Exhibit 2**. The Decision and Order on Special Motion to Dismiss Anti-SLAPP ("ASO") is attached hereto as **Exhibit 3**

Plaintiffs' complaint brought claims that were not well grounded in fact or law. For example, it is clear that the conversion claim was frivolous and filed for an improper purpose, when the Court examines the facts known to Plaintiffs when they filed the complaint on January 4, 2018; which were, Simon did not have the money and had not stolen any money. In fact, he did not even have the ability to

1 steal the money as Mr. Vannah equally controlled the account. Additionally, there  
2 was no merit to Plaintiffs' claims that:

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

13 There are several provisions within Nevada law that favor awarding attorney  
14 fees and costs when the claims asserted and maintained by a party are not well-  
15 grounded in fact or warranted by existing law to deter vexatious and frivolous  
16 claims. Consequently, Simon is entitled to attorney fees and costs pursuant to three  
17 separate and distinct grounds under NRS 7.085, NRS 18.010(2)(b), NRS 41.670  
18 and NRCP 11 as described below.  
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## II. Statement Of Relevant Facts

Simon represented Plaintiffs in a complex and hotly contested products liability and contractual dispute stemming from a premature fire sprinkler activation in April of 2016 which flooded Plaintiffs speculation home during its construction causing \$500,000.00 in property damage. **Exhibit 2**, Lien D&O, pp. 2-7.

In May/June of 2016, Simon helped Plaintiffs on the flood claim as a favor, with the goal of ending the dispute by triggering insurance to adjust the property damage loss. Simon and Plaintiffs never had an express written or oral attorney fee agreement.

In June of 2016, a complaint was filed. In November of 2016, a joint case conference was held.

In August/September of 2017, Simon and clients agree that the flood case dramatically changed. The case had become extremely demanding and was dominating the time of the law office precluding work on other cases. Determined to help his friend at the time, Simon and the clients made efforts to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon and Brian Edgeworth agreed that the nature of the case had changed and had discussions about an express fee agreement based on a hybrid of hourly and contingency fees. However, an express agreement could not be reached due to the

1 unique nature of the property damage claim and the amount of work and costs  
2 necessary to achieve a great result. Simon and the clients agree that the attorney  
3 fee was in flux during this period.  
4

5 Although efforts to reach an express fee agreement failed, Simon continued  
6 to forcefully litigate Plaintiffs' claims by serving and assertively pursuing  
7 discovery and dynamic motion practice, including the filing of a motion to strike  
8 Vikings' answer and exclude crucial defense experts.  
9

10 In mid-November of 2017, an offer was made by Viking. The first  
11 meaningful Viking offer was made in the context of mediation, as a counter offer  
12 to a mediator's proposal. The first Viking offer was made as several dispositive  
13 motions and an evidentiary hearing on the request to strike Vikings answer were  
14 pending. The first Viking offer contained contingencies and provisions which had  
15 not been previously agreed to.  
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19 Following the Viking offer in mid-November, Simon continued to  
20 vigorously pursue the litigation against Viking pending resolution of the details of  
21 settlement, and against the co-defendant, Lange Plumbing. Simon also again raised  
22 the desire for an express attorney fee agreement with the clients.  
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25 On November 29, 2017, the Edgeworths constructively fired Simon by  
26 retaining new counsel, Vannah and Vannah, and ceased all direct communications  
27 with Simon.  
28

1 On November 30, 2017, Vannah and Vannah provided Simon notice of  
2 retention.

3 On November 30, 2017, Simon served an attorney lien pursuant to NRS  
4 18.015. However, Simon continued to protect his former clients' interests in the  
5 complex flood litigation, to the extent possible under the unusual circumstances.  
6

7 On December 1, 2017, the Edgeworths entered into an agreement to settle  
8 with Viking and release Viking from all claims in exchange for a promise by  
9 Viking to pay six million dollars (\$6,000,000.00 USD).  
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12 On January 2, 2018, Simon served an amended attorney lien.

13 On January 4, 2018, Edgeworth's, through Vannah, sued Simon, alleging  
14 Conversion (stealing) and various other causes of actions based on the assertion of  
15 false allegations. At the time of this lawsuit, Vannah and Edgeworth actually knew  
16 that the settlement funds were not deposited in any other account and arrangements  
17 were being made at the request of Edgeworth and Vannah to set up a special  
18 account so that Vannah on behalf of Edgeworth would control the funds equally  
19 pending the lien dispute.  
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23 On January 8, 2018, Vannah met Simon at Bank of Nevada and deposited  
24 the Viking settlement check into a special trust account opened by mutual  
25 agreement for this case only. In addition to the normal safeguards for a trust  
26 account, this account required signatures of both Vannah and Simon for a  
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1 withdrawal. Thus, Simon stealing money from the trust account was an  
2 impossibility.

3       On January 9, 2018, Plaintiffs served their complaint which alleged that  
4  
5 Simon stole their money-money which was safe kept in a Bank of Nevada account,  
6 earning them interest. Edgeworth and Vannah both knew Simon did not and could  
7 not steal the money, yet they pursued their serious theft allegations knowing the  
8 falsity thereof.  
9

10       Simon responded with two motions to dismiss, which detailed the facts and  
11 explained the law on why the complaint was frivolous. Rather than conceding the  
12 lack of merit as to even a portion of the complaint, Plaintiffs maintained the actions  
13 and filed an Amended Complaint to include new causes of action for the Breach of  
14 the Implied Covenant of Good Faith and Fair Dealing and Breach of Fiduciary  
15 Duty and reaffirmed all the false facts in support of the conversion claims. The  
16 false facts asserted alleged, among other things, extortion, blackmail, and stealing  
17 by Simon, and sought punitive damages. When these allegations were made and  
18 causes of actions maintained on an ongoing basis, Vannah and Edgeworth both  
19 actually knew they were false and had no legal basis whatsoever because their  
20 allegations were a legal impossibility.  
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1 The facts elicited at the five-day evidentiary hearing further confirmed that  
2 the allegations in both complaints were false and that the complaints were filed for  
3 an improper purpose as a collateral attack on the lien adjudication proceeding;  
4 which forced Simon to retain counsel and experts to defend the suit.  
5

6 On October 11, the Court dismissed Plaintiffs amended complaint. Of  
7 specific importance, the Court found that:  
8

- 9 • On November 29, Simon was constructively discharged.
- 10 • On December 1, Simon appropriately served and perfected a charging  
11 lien on the settlement monies.
- 12 • Simon was due fees and costs from the settlement monies subject to  
13 the proper attorney lien.
- 14 • Found no evidence to support the conversion claim.
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18 The Court *did not find* that Simon converted the clients' money.

19 Based on the ruling of the Court, as a matter of law, Simon is entitled to  
20 attorney fees and costs under Nevada law pursuant to NRS 7.085, NRS  
21 18.010(2)(b), NRS 41.670 and NRCP 11. Because the Court found Simon properly  
22 asserted a charging lien pursuant to Nevada law, Plaintiffs' claims against Simon  
23 had no merit and there was no basis in law or fact for the conversion claim.  
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