

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.

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.

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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 6 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 NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	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 • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	2	AA000479

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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 • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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.

Date Filed	Document Title	VOL. No.	Bates Number
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 • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	2	AA000277
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1 The Court can grant attorney fees based solely on the most egregious cause
2 of action for conversion (and punitive damages) which was a legal impossibility
3 based on the uncontroverted facts known to Plaintiffs at the time they filed the
4 complaint. In addition, the Court may grant attorney fees based on the frivolous
5 and vexatious nature of the lawsuit which is shown by the totality of the
6 circumstances, including the wild accusations contained in the Complaints and
7 three separate affidavits of Brian Edgeworth that were confirmed as false at the
8 evidentiary hearing. The mere fact that Vannah and Edgeworth attempted to name
9 Mr. Simon personally underscores their willfulness and transparent motives.
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12 **III. Argument**

13 **A. Applicable Law.**

14
15 There are several provisions within Nevada law that favor awarding attorney
16 fees and costs when the claims maintained by a party are not well-grounded in fact
17 or warranted by existing law to deter vexatious and frivolous claims. Nevada
18 Revised Statute 18.010(2)(b) and (3) state:
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22 2. In addition to the cases where an allowance is authorized by specific
23 statute, the court may make an allowance of attorney's fees to a prevailing
24 party:

25 (b) Without regard to the recovery sought, when the court finds that
26 the claim, counterclaim, cross-claim or third-party complaint or
27 defense of the opposing party was brought or maintained without
28 reasonable ground or to harass the prevailing party. *The court shall
liberally construe the provisions of this paragraph in favor of
awarding attorney's fees in all appropriate situations.* It is the intent

1 of the Legislature that the court award attorney's fees pursuant to this
2 paragraph and impose sanctions pursuant to Rule 11 of the Nevada
3 Rules of Civil Procedure in all appropriate situations to punish for and
4 deter frivolous or vexatious claims and defenses because such claims
5 and defenses overburden limited judicial resources, hinder the timely
6 resolution of meritorious claims and increase the costs of engaging in
7 business and providing professional services to the public.

8 3. In awarding attorney's fees, the court may pronounce its decision on the
9 fees at the conclusion of the trial or special proceeding without written
10 motion and with or without presentation of additional evidence.

11 (Emphasis added.)

12 Further, Nevada Revised Statute 7.085 states:

13 1. If a court finds that an attorney has:

14 (a) Filed, maintained or defended a civil action or proceeding in any
15 court in this State and such action or defense is not well-grounded in
16 fact or is not warranted by existing law or by an argument for
17 changing the existing law that is made in good faith; or

18 (b) Unreasonably and vexatiously extended a civil action or
19 proceeding before any court in this State,

20 ~ the court shall require the attorney personally to pay the additional
21 costs, expenses and attorney's fees reasonably incurred because of
22 such conduct.

23 2. The court shall liberally construe the provisions of this section in favor
24 of awarding costs, expenses and attorney's fees in all appropriate situations.
25 It is the intent of the Legislature that the court award costs, expenses and
26 attorney's fees pursuant to this section and impose sanctions pursuant to
27 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations
28 to punish for and deter frivolous or vexatious claims and defenses because
such claims and defenses overburden limited judicial resources, hinder the
timely resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

1 Additionally, under Nevada's Anti-SLAPP statutes that protect
2 communications made to courts -- such as requesting adjudication of an attorney
3 lien -- attorney fees and costs are also provided to deter frivolous and vexatious
4 claims:
5

6 1. If the court grants a special motion to dismiss filed pursuant to NRS
7 41.660:

8 (a) The court shall award reasonable costs and attorney's fees to the
9 person against whom the action was brought, except that the court
10 shall award reasonable costs and attorney's fees to this State or to the
11 appropriate political subdivision of this State if the Attorney General,
12 the chief legal officer or attorney of the political subdivision or special
 counsel provided the defense for the person pursuant to NRS 41.660.

13 (b) The court may award, in addition to reasonable costs and
14 attorney's fees awarded pursuant to paragraph (a), an amount of up to
15 \$10,000 to the person against whom the action was brought.

16 (c) The person against whom the action is brought may bring a
17 separate action to recover:

18 (1) Compensatory damages;

19 (2) Punitive damages; and

20 (3) Attorney's fees and costs of bringing the
21 separate action.
22

23 2. If the court denies a special motion to dismiss filed pursuant to NRS
24 41.660 and finds that the motion was frivolous or vexatious, the court shall
25 award to the prevailing party reasonable costs and attorney's fees incurred in
26 responding to the motion.
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1 3. In addition to reasonable costs and attorney's fees awarded pursuant to
2 subsection 2, the court may award:

3 (a) An amount of up to \$10,000; and

4 (b) Any such additional relief as the court deems proper to punish and
5 deter the filing of frivolous or vexatious motions.

6 4. If the court denies the special motion to dismiss filed pursuant to NRS
7 41.660, an interlocutory appeal lies to the Supreme Court.

8 NRS 41.670.
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10 Finally, NRCP 11 provides sanctions as follows:

11 (b) Representations to Court. By presenting to the court (whether by
12 signing, filing, submitting, or later advocating) a pleading, written
13 motion, or other paper, an attorney or unrepresented party is certifying
14 that to the best of the person's knowledge, information, and belief,
15 formed after an inquiry reasonable under the circumstances, —

16 (1) it is not being presented for any improper purpose, such as
17 to harass or to cause unnecessary delay or needless increase in the cost
18 of litigation;

19 (2) the claims, defenses, and other legal contentions therein are
20 warranted by existing law or by a nonfrivolous argument for the
21 extension, modification, or reversal of existing law or the
22 establishment of new law;

23 (3) the allegations and other factual contentions have
24 evidentiary support or, if specifically so identified, are likely to have
25 evidentiary support after a reasonable opportunity for further
26 investigation or discovery; and

27 (4) the denials of factual contentions are warranted on the
28 evidence or, if specifically so identified, are reasonably based on a
lack of information or belief.

1 c) Sanctions. If, after notice and a reasonable opportunity to respond,
2 the court determines that subdivision (b) has been violated, the court
3 may, subject to the conditions stated below, impose an appropriate
4 sanction upon the attorneys, law firms, or parties that have violated
5 subdivision (b) or are responsible for the violation.

6 (1) How initiated.

7 (A) By Motion. A motion for sanctions under this rule
8 shall be made separately from other motions or requests and
9 shall describe the specific conduct alleged to violate
10 subdivision (b). It shall be served as provided in Rule 5, but
11 shall not be filed with or presented to the court unless, within
12 21 days after service of the motion (or such other period as the
13 court may prescribe), the challenged paper, claim, defense,
14 contention, allegation, or denial is not withdrawn or
15 appropriately corrected. If warranted, the court may award to
16 the party prevailing on the motion the reasonable expenses and
17 attorney's fees incurred in presenting or opposing the motion.
18 Absent exceptional circumstances, a law firm shall be held
19 jointly responsible for violations committed by its partners,
20 associates, and employees.

21 (B) On Court's Initiative. On its own initiative, the court
22 may enter an order describing the specific conduct that appears
23 to violate subdivision (b) and directing an attorney, law firm, or
24 party to show cause why it has not violated subdivision (b) with
25 respect thereto.

26 (2) Nature of Sanction; Limitations. A sanction imposed for
27 violation of this rule shall be limited to what is sufficient to deter
28 repetition of such conduct or comparable conduct by others similarly
situated. Subject to the limitations in subparagraphs (A) and (B), the
sanction may consist of, or include, directives of a nonmonetary
nature, an order to pay a penalty into court, or, if imposed on motion
and warranted for effective deterrence, an order directing payment to
the movant of some or all of the reasonable attorney's fees and other
expenses incurred as a direct result of the violation.

1 (A) Monetary sanctions may not be awarded against a
2 represented party for a violation of subdivision (b)(2).

3 (B) Monetary sanctions may not be awarded on the
4 court's initiative unless the court issues its order to show cause
5 before a voluntary dismissal or settlement of the claims made
6 by or against the party which is, or whose attorneys are, to be
sanctioned.

7 (3) Order. When imposing sanctions, the court shall describe
8 the conduct determined to constitute a violation of this rule and
9 explain the basis for the sanction imposed.

10 NRCp 11(b) and (c).

11 **B. Attorney Fees and Costs Is Proper and Necessary.**

12
13 Simon properly asserted a charging lien pursuant to Nevada law. *See*
14 **Exhibit 1**, p. 8. Plaintiffs' claims *were not* maintained upon reasonable grounds.
15 *See* NRS 18.010(2)(b). The claims were not "well-grounded" in fact, "warranted
16 by existing law" or warranted "by an argument for changing the existing law that
17 [was] made in good faith." *See* NRS 7.085(1)(a). In fact, Plaintiffs and their
18 counsel openly admitted the falsity of the allegations and that conversion was a
19 legal impossibility. This is disturbing since the conversion claim is an accusation
20 of stealing and severely tarnishes the reputation of the lawyer accused.
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1 Plaintiffs did not present any “well-grounded” facts as alleged in their
2 Complaint (and also their Amended Complaint) to prove 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;
- 11 • Plaintiffs were entitled to Declaratory Relief because they had paid Simon in
12 full; and,
- 13 • Simon extorted, blackmailed or did anything remotely similar.

14 Plaintiffs’ claims were maintained via the Complaint, Amended Complaint,
15 and three affidavits provided by Brian Edgeworth that Simon had been paid in full
16 already; that Simon tried to steal the settlement proceeds; and that Simon tried to
17 “blackmail” the Edgeworths. *See Exhibit 4*, ¶¶ 36-37 and 40-44; and Affidavit of
18 Brian Edgeworth, dated February 2, 2018, pp. 3, ¶ 12, ll. 23-24, attached hereto as
19 **Exhibit 5**. These were false facts that were asserted to smear the reputation of
20 Simon, to harass Simon and were brought for an improper purpose to prevent
21 adjudication of the attorney lien.

1 Plaintiffs and their counsel knew the facts were false when the complaint
2 was filed and when the complaint was served. Plaintiffs and their counsel knew
3 Simon did not have possession of the settlement funds and knew that an allegation
4 that Simon had stolen the money was an impossibility. Plaintiffs and counsel knew
5 that a conversion action brought on a contractual claim was a legal impossibility
6 and knew that a conversion action against Simon when Simon did not have
7 possession of the funds was an impossibility. Yet, counsel signed the complaint
8 under NRCP 11 without any regard for the falsity of the allegations. In fact, Mr.
9 Vannah conceded in an email that he personally did not believe Simon would steal
10 the money, yet his office prepared and filed a public lawsuit on January 4, 2018
11 alleging the theft via the conversion claim.
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16 Following the first Simon motion to dismiss, Mr. Edgeworth reaffirmed the
17 false and impossible allegations in his three affidavits. Rather than acknowledging
18 that Simon did not and could not steal or convert the settlement money as a matter
19 of law, Plaintiffs and counsel continued to assert these facts in pleading after
20 pleading. Even at the most recent reconsideration motion, Mr. Vannah told this
21 court that the money in the trust account was all of the Edgeworth's. This is
22 baffling in light of the representations by Mr. Vannah and Edgeworth during the
23 evidentiary hearing when they both admitted "we always knew we owed Mr.
24 Simon money for his work" and at the time the complaint for conversion was filed
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1 he was owed in excess of \$68,000 for costs alone. By maintaining the frivolous
2 and serious claim of theft, this conduct compelled Simon to vigorously defend
3 these false accusations incurring substantial fees and costs.
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5 Simon followed the law for asserting an attorney lien. There was no
6 blackmail, stealing or conversion. Yet, Plaintiffs and their counsel asserted those
7 false claims beginning with the filing of the Complaint on January 4, 2018, through
8 the Amended Complaint on March 15, 2018; and, in three affidavits by Brian
9 Edgeworth -- all the way up to the Evidentiary Hearing. *See Exhibits 4 and 6* and
10 Affidavits of Brian Edgeworth, dated February 12, 2018 and March 15, 2018,
11 attached respectively hereto as **Exhibits 7 and 8**.
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15 In addition to being false, the claims were made for an improper purpose.
16 The Court should recall that at every opportunity, Plaintiffs and their counsel
17 argued against this Court adjudicating the lien, a remedy provided by statute, based
18 solely on the nature of their fallacious conversion claim.
19

20 It was only at the evidentiary hearing, and upon thorough cross examination,
21 that Plaintiffs conceded that Plaintiffs owe Simon money and that was never in
22 dispute. Mr. Vannah also conceded this crucial fact only at the time of the
23 evidentiary hearing when the plaintiffs and their counsel all stated "We never
24 disputed that we have always owed Simon money." This confirms the frivolous
25 nature of the complaints at the time of the filing in January and again in March,
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1 2018. Further, there were no contentions, much less actual evidence, of Simon's
2 "reckless disregard" of Plaintiffs' rights that rose to the level of fraud, malice and
3 oppression to support Plaintiffs' claims for punitive damages.
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5 Plaintiffs and their attorneys' conduct is clear evidence of maintaining
6 claims that had no grounding in fact or law. Their actions warped a lien
7 adjudication matter into vexatious false claims of blackmail and oppressive
8 conduct that were directed both personally and professionally against Daniel
9 Simon which necessitated hiring counsel and experts to vigorously defend against
10 those claims.
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13 Simon can certainly adjudicate his lien without counsel as he had done on
14 other occasions, but in light of the serious nature of the false claims filed by
15 Plaintiffs, Simon had to hire his own legal team at great expense. Plaintiffs should
16 be held accountable for the consequences of their decision to pursue frivolous
17 claims against Simon.
18

19 **3. Nevada law favors the award of attorney's fees and costs.**

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21
22 The Nevada Supreme Court addressed awarding attorney fees for frivolous
23 claims directly in *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993)
24 (*superseded* by statute on other grounds). In *Bergmann*, Fred and Harriet Boyce
25 consulted their former attorney, Roger Bergmann, for advice regarding investment
26 strategies. *Id.* at 673. Bergmann mentioned an investment brokerage firm named
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1 Lemons & Associates during the consultation, and the Boyces invested a
2 significant amount of money with Lemons & Associates. *Id.* Subsequently,
3 Lemons & Associates became insolvent and Steve Lemons was incarcerated. *Id.*
4 The Boyces then sued Bergmann, alleging six causes of action, including fraud and
5 misrepresentation; breach of the implied covenant of good faith and fair dealing;
6 intentional and negligent infliction of emotional distress; attorney malpractice;
7 negligent misrepresentation; and a claim for the Boyce's daughter's losses. *Id.* The
8 Boyces also sought punitive damages against Bergmann. *Id.*

12 Bergmann filed a motion for attorney's fees pursuant to NRS 18.010(2)(b),
13 NRCP 11 and NRCP 68. The district court denied Bergmann's motion for fees,
14 finding that the Boyce's claims had survived the NRCP 12(b)(5) motion and that
15 only some of the claims had been dismissed pursuant to NRCP 41(b) during the
16 trial. *Id.*

19 The Nevada Supreme Court concluded that the district court abused its
20 discretion and remanded the case back to the district court to conduct the proper
21 analysis for awarding attorney's fees. The *Bergmann* Court stated that "[i]n
22 assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must
23 determine whether the plaintiff had reasonable grounds for its claims. **Such an**
24 **analysis depends upon the actual circumstances of the case rather than a**
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1 **hypothetical set of facts favoring plaintiff's averments."** *Id.* at 675 (emphasis
2 added). Further, the Court specifically noted:

3 [T]he fact that the Boyce's complaint survived a 12(b)(5) motion to dismiss
4 was irrelevant to the trial court's inquiry as to whether the claims of the
5 complaint were groundless. The trial court could not base its refusal to
6 award attorney's fees upon the 12(b)(5) ruling. The trial court also based its
7 refusal to award fees upon the fact that it dismissed only a few of the
8 Boyce's claims for failure to present sufficient evidence. In fact, only one of
9 the Boyce's claims survived at trial. **The prosecution of one colorable
claim does not excuse the prosecution of five groundless claims.**

10 *Id.* (Emphasis added) (*citing Trus Joist Corp. v. Safeco Ins. Co. of Am.*, 153 Ariz.

11 95, 735 P.2d 125, 140 (Ariz. Ct. App. 1986) (case remanded for trial court to

12 apportion attorney's fees between grounded and groundless claims); *Department of*

13 *Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98, 101 (Ariz. Ct. App. 1986) ("The fact

14 that not all claims are frivolous does not prevent an award of attorneys' fees.");

15 *Fountain v. Mojo*, 687 P.2d at 501 ("[A] prevailing party must be afforded an

16 opportunity to establish a reasonable proration of attorney fees incurred relative to

17 the defense of a frivolous or groundless claim.")).

1 The *Bergmann* Court also found that the lower court abused its discretion in
2 denying attorney's fees under NRCP 11: "NRCP 11 sanctions *should* be imposed
3 for frivolous actions." *Id.* at 676 (emphasis added). The Court stated as follows:
4

5 A frivolous claim is one that is 'both baseless and made without a reasonable
6 and competent inquiry.' Thus, a determination of whether a claim is
7 frivolous involves a two-pronged analysis: (1) the court must determine
8 whether the pleading is 'well-grounded in fact and is warranted by existing
9 law or a good faith argument for the extension, modification, or reversal of
10 existing law'; and (2) whether the attorney made a reasonable and competent
11 inquiry.

12 The first prong of the test has a component which is similar to the analysis
13 required under NRS 18.010(2)(b): The trial court must examine the actual
14 circumstances surrounding the case to determine whether the suspect claims
15 were brought without reasonable grounds. As we noted previously, the trial
16 court did not base its decision upon such an examination, but instead upon
17 the fact that the complaint survived a Rule 12(b)(5) motion to dismiss. The
18 legal standard applied to a rule 12(b)(5) motion to dismiss differs from the
19 legal standard applied to a Rule 11 motion for sanctions. Thus, the trial court
20 abused its discretion by applying an incorrect legal standard to the question
21 whether Bergmann could recover fees as a sanction under NRCP 11.

22 *Id.* at 676-77 (citations omitted).

23 When applying the foregoing analysis, the *Bergmann* Court noted that the
24 record contained "ample evidence" for which the trial court could have concluded
25 that the Boyce's attorney failed to make a reasonable and competent inquiry, and,
26 therefore, the trial court's error "may well have affected Bergmann's substantial
27 rights." *Id.* at 677.
28

1 The facts in the present case are much stronger than in *Bergmann*, and the
2 evidence is more than substantial. Plaintiffs filed their lawsuit and included claims
3 for Conversion and punitive damages. This Court found that Simon had not even
4 received the settlement proceeds until after Plaintiffs had filed their lawsuit:
5
6 “When the Complaint was filed on January 4, 2018, Mr. Simon was not in
7 possession of the settlement proceeds as the checks were not endorsed or deposited
8 in the trust account.” *See, Exhibit 1*, pp. 7:15-16. In fact, this was conceded and
9 known to Plaintiffs when filing the complaint. Plaintiffs had actual knowledge of
10 the when and how the settlement money was deposited into a special trust account
11 controlled by Vannah. Thus, Plaintiffs and their counsel had actual knowledge that
12 no money was stolen or converted. Rather than correcting the wild accusations,
13 Vannah maintained the frivolous theft claims in pleading after pleading.
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15 Additionally, there was no breach of contract; no breach of fiduciary duty; no
16 breach of the covenant of good faith and fair dealing; and Plaintiffs were not
17 entitled to Declaratory Relief, much less punitive damages. *Id.*, pp.6-8. Instead,
18 Simon followed the law in asserting an attorney lien and aggressively represented
19 his former clients throughout the entire process.
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25 Plaintiffs and their counsel knew the facts of this case and that this was a fee
26 dispute and nothing more. Nevertheless, they chose to pursue their claims through
27 a separate action asserting wild accusations in multiple pleadings, oppositions and
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1 affidavits, despite admitting at the start of the evidentiary hearing that Simon was
2 always owed money. It is undisputed that there were not any reasonable grounds to
3 file a lawsuit.
4

5 Nevada law on this matter is clear. Courts must “*liberally construe*” the
6 provisions “*in favor*” of awarding attorney fees against parties who maintain
7 claims without reasonable grounds for doing so. *See* NRS 18.010(2)(b) and NRS
8 7.085(2) (emphasis added). Here, the Court must determine if Plaintiffs’ claims
9 were well-grounded in fact or existing law or they had made a good faith argument
10 for a change in the existing law. *See Bergmann*, 109 Nev. at 675-77; *see also Iorio*
11 *v. Check City P’ship*, LLC, 2015 Nev. Unpub. LEXIS 658, *9-10 (affirming the
12 lower court’s *Bergmann* analysis and upholding the court’s award of attorney fees
13 and sanctions pursuant to NRCP 11 and NRS 18.010(2)(b)); and *Ginena v. Alaska*
14 *Airlines, Inc.*, 2013 U.S. Dist. LEXIS, *13-14 (holding that plaintiffs’ voluntarily
15 dismissed claims right before trial were groundless and weighed in favor of
16 awarding fees). In *Bennett v. Baxter Group*, 224 p.3d 230 (Ariz 2010), a lawyer
17 was sanctioned for holding onto a claim long after he should have dropped it and
18 then the lawyer dropped it on the eve of trial.
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25 In Edgeworth, they should not have pursued the impossible claim of theft
26 initially and certainly should have dropped the theft claim from the amended
27 complaint.
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1 This Court has found that Plaintiffs and their counsel did not show that their
2 claims were well-grounded in fact or existing law, as was established in the
3 evidentiary hearing and concluded in the Court's ruling on Simon's Motion to
4 Dismiss pursuant to NRCP 12(b)(5). *See Exhibit 1.*

6 Consequently, NRCP 11 and NRS 7.085 sanctions are appropriate, and
7 attorney fees and costs for Simon are proper pursuant to NRS 18.010(2)(b), NRS
8 7.085, NRCP 11, and NRS 41.670.

10 While Simon recognizes that the Court determined the Anti-SLAPP Motion
11 to Dismiss to be moot as the NRCP 12(b)(5) motion was granted, the same facts
12 can still apply within NRS 41.670 to provide attorney's fees and costs to Simon.
13 The attorney lien was a communication to the court and was protected via
14 Nevada's Anti-SLAPP statutes; therefore, Plaintiffs' claims were – once again –
15 not grounded in fact or law to allow prosecution against Simon. This was made
16 clear to Plaintiffs in the initial special motion to dismiss –Anti-SLAPP, yet they
17 continued to maintain the frivolous action, which is the exact conduct the
18 legislature intended to deter. Therefore, Simon respectfully requests that its Motion
19 be granted and that the Court award attorney's fees and costs as detailed below.
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1 **C. Simon's Attorney's Fees and Costs**

2 As discussed above, Simon has adjudicated liens in the past without
3 retaining counsel. This usually involves a simple motion hearing and the Court
4 decides based on the pleadings and argument. Instead, Plaintiffs' lawsuit asserting
5 false and wild accusations necessitated retaining counsel to defend himself and his
6 firm against their frivolous claims. Simon retained James Christensen, Esq. and
7 Peter Christiansen, Esq. to defend the wild accusations and litigate all of the issues
8 and claims within the Evidentiary Hearing. Thus, Simon has incurred the following
9 attorney's fees and costs:
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13	1. James Christensen, Esq. Legal Fees	\$ 62,604.48 ¹
14		
15	2. Peter Christiansen, Esq. Legal Fees	\$199,495.00 ²
16		
17	3. Total Costs	\$ 18,434.73 ³
18		
19	a. Will Kemp, Esq. Expert Fees	\$ 11,498.15
20	b. David Clark, Esq.	\$ 5,000.00
21	c. Miscellaneous Costs	\$ 1,936.58
22	TOTAL ATTORNEY'S FEES AND COSTS	\$280,534.21
23		
24		
25		
26		

27 ¹ James Christensen's Invoices, attached hereto as Exhibit 9

28 ² Peter Christiansen's Invoices, attached hereto as Exhibit 10

³ Costs Summary and supporting documentation attached hereto as Exhibit 11

1 Please note that these fees and costs do not include substantial time
2 expended by Simon and his firm in defending the frivolous claims that were filed
3 solely to harass Simon in a vexatious manner to destroy his reputation. The effects
4 of the theft claim of conversion still remain unknown on his practice and
5 reputation, but are clearly substantial. The fees and costs are the reasonable
6 expenses Simon incurred in defending Plaintiffs' claims that went far beyond an
7 attorney lien adjudication.
8
9

10 Our Supreme Court has also adopted the view in stating that the trial court
11 should "either ... award attorney's fees or ... state the reasons for refusing to do
12 so." *Pandelis Const. v. Jones-Viking Assoc.*, 103 Nev. 129, 734 P.2d 1239
13 (1987). Accordingly, if attorney's fees and costs are not allowed there should be
14
15 very compelling reasons supporting such a decision.
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1 **IV. Conclusion**

2 Simon respectfully requests that the Motion for Attorney Fees and Costs be
3 GRANTED, in the sum of **\$280,534.21** (\$262,099.48 in attorney's fees and
4 \$18,434.73 in costs).
5

6 Dated this 7th day of December, 2018.
7

8 /s/ James R. Christensen
9

10 JAMES R. CHRISTENSEN, ESQ.

11 Nevada Bar No. 003861

12 601 S. 6th Street

13 Las Vegas, NV 89101

14 Phone: (702) 272-0406

15 Facsimile: (702) 272-0415

16 Email: jim@jchristensenlaw.com

17 *Attorney for Daniel S. Simon*

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing **MOTION FOR ATTORNEY**
20 **FEES AND COSTS** was made by electronic service (via Odyssey) this 7th day
21 of December, 2018, to all parties currently shown on the Court's E-Service List.
22
23

24 /s/ Dawn Christensen
25

26 an employee of
27 JAMES R. CHRISTENSEN, ESQ.
28



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

DISTRICT COURT

CLARK COUNTY, NEVADA

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
15 SUPPLY NETWORK, INC., dba VIKING
16 SUPPLYNET, a Michigan corporation; and
DOES I through V and ROE CORPORATIONS
17 VI through X, inclusive,

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

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

**PLAINTIFFS' MOTION FOR AN
ORDER DIRECTING SIMON TO
RELEASE PLAINTIFFS' FUNDS**

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

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

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
2 (Plaintiffs), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN
3 B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an
4 Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S.
5 SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

6 This Motion is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,
8 any oral argument this Court may wish to entertain.
9

10 DATED this 13th day of December, 2018.

11 VANNAH & VANNAH

12
13 *Signature* *Per No: 14530*
14 ROBERT D. VANNAH, ESQ.

15 I.

16 SUMMARY

17 The facts of this matter are well known to this Court. The path to this intricate knowledge
18 was gained by, but not limited to, having listened to five days of comprehensive testimony; by
19 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre
20 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual
21 findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of
22 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an
23 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, SIMON
24 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.
25

26 This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney
27 Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a
28

1 fee of \$550 per hour between SIMON and the Edgeworths, and once SIMON started billing the
2 Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths
3 constructively discharged SIMON as their attorney on November 29, 2017, when they ceased
4 following his advice and refused to communicate with him. The Court then found SIMON was
5 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour
6 for his associates, up and until the last billing of September 19, 2017.

7 For the period between September 19, 2017 and November 29, 2017, the Court held
8 SIMON was entitled to his implied agreement fee of \$550 an hour, and \$275 an hour for his
9 associates, for a total amount of \$284,982.50. Further, the Court decided that for the period after
10 November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the
11 services his office rendered in quantum meruit: an amount the Court determined to be \$200,000.
12 Accordingly, SIMON is owed a total amount of \$484,982.50 in fees—taken from the net lien in
13 the sum of \$1,977,843.80—pursuant to this Court's Order adjudicating the attorneys lien.

14 The Edgeworths have expressed a willingness, in writing, to accept the Court's rulings on
15 all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the
16 trust account. The same cannot be said for SIMON: even after this Court's Order was issued,
17 SIMON has refused to release the balance of the funds held in trust: a sum of \$1,492,861.30. The
18 Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their
19 \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their
20 money—money to which they are legally entitled. Simon's unreasonable, inappropriate
21 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,
22 which is untoward—not to mention unconstitutional.

23 PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to
24 release to Plaintiff the remainder of the funds SIMON is withholding in trust.

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28 II.

ARGUMENTS

A. SIMON'S WITHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14th Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Phipus*, 435 US 247, 259 (1978). Due process requires notice: interested parties must be apprised of any action aimed at depriving them of property and must be afforded the opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Additionally, due process requires individuals be given an adequate hearing before they are deprived of their property interests; this requirement is designed to prevent arbitrary encroachment on an individual's property interests. *Carey v. Phipus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14th Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for a creditor's lawyer to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that **this prejudgment garnishment** violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*

1 Further, Nevada law mandates certain procedures must be followed before a garnishment
2 takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the
3 14th Amendment and Supreme Court precedent, Nevada law includes multiple due process
4 protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS
5 31.260; See also *Frank Settelmeier & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57
6 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must
7 obtain a writ of garnishment from the court—which may only issue at the same time or after the
8 order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be
9 served in the same manner as a summons in a civil action. *Frank Settelmeier & Sons, Inc.*, 197
10 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to
11 answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the
12 garnishee be given a fair hearing: “if the garnishment is contested, the matter must be tried and
13 judgment rendered, in a manner similar to civil cases.” *Id.* at 1056. Providing further protection
14 still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP
15 3A(a) and (b)(1). *Id.*

17 Here, SIMON is holding in trust a huge sum of money: \$1,977,843.80 despite this Court's
18 Order stating that he is entitled *only* to \$484,982.50. He has effectively seized, garnished,
19 Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to
20 Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of
21 Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He
22 did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did
23 not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS
24 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS
25 Chapter 31 whatsoever.
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27
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1 Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not
2 get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that
3 the money be withheld. Au contraire, after listening to five days of comprehensive testimony,
4 reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is
5 entitled to the \$1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018
6 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this
7 Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—
8 withheld Plaintiffs' money and still continues to do so.

9
10 SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs
11 anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far
12 back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg.
13 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien
14 attached hereto as "Exhibit 1")(See also, Email dated December 26, 2018, 12:18 p.m., attached
15 hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have
16 lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into
17 his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's
18 words were not only just a description of client's feelings at the time, but a foreshadowing of S
19 SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two
20 weeks now.

21
22 Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is
23 wholly unconstitutional under United States Supreme Court precedent. His actions are
24 tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach*
25 court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—
26 which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds
27
28

1 without any opportunity to be heard and without the opportunity to tender any defense—is an
2 unconstitutional violation of Due Process.

3 SIMON'S behavior in this case is similar to—but more abusive than—the procedures
4 permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon's
5 purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court
6 to retain the funds, yet he has flatly refused to release Plaintiffs' money. And in terms of its overt
7 deprivation of due process rights, SIMON'S behavior goes much, much further than the statute in
8 *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee
9 before garnishment procedures were to be initiated.
10

11 Here, SIMON has shown nothing but disdain for Plaintiffs' due process rights: SIMON
12 did not follow any of Nevada's garnishment requirements or comply with Nevada statutory
13 garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment.
14 Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object
15 to the withholding of money, and has not been given a hearing to address his objections to
16 SIMON'S behavior. His outright refusal to release the remaining funds held in trust is wholly
17 inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs*
18 *favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust
19 minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he
20 answers to no one. But he does need to answer to this Court—and as such, it is the aim of this
21 Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is
22 legally entitled.
23

24 ///

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26 ///

1 **B. THIS COURT HAS JURISDICTION TO ADJUDICATE THIS**
2 **ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN**
3 **EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S**
4 **MONEY PENDING APPEAL**

5 A Nevada court that presided over a client's underlying action has jurisdiction to
6 adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a
7 retaining lien has been asserted by the attorney and the client asks the court to determine the value
8 of the attorney's services in order to post adequate or substitute security in order to recover the
9 file; or if the client otherwise consents. See *Argentina Consol. Min. Co. v. Jolley Urga*, 216 P. 3d
10 779 (2009).

11 Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate
12 SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate
13 Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018
14 Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid
15 out findings with respect to the entitlements of all parties. SIMON'S lien rights have been
16 exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his
17 lien adjudication rights are *finished*.

18 For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while
19 he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this
20 Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should
21 not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court
22 allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an
23 unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the
24 *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the*
25 *interim*—between service of the action and a trial on the suit—this Court should strike down
26 SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance
27
28

1 of the Court's November 19, 2018 Order and the final resolution of this matter on appeal.
2 Plaintiffs should not be deprived of his money for months and months—perhaps even years—
3 especially where SIMON'S withholding of these funds is inapposite in light of the Court's
4 substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S
5 ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully
6 request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.

7 **C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018**
8 **ORDER, WHICH IS CLEAR AND UNAMBIGUOUS.**

9 The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon
10 is \$484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate
11 Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the
12 full \$1,977,843.80 in trust. SIMON'S withholding of \$1,492,861.30 from Plaintiffs is in direct
13 contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's
14 Order, the Court must take remedial action and issue an Order for the release of the remainder of
15 the funds to Plaintiffs that SIMON is withholding in trust.

16
17 It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue
18 without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See
19 Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached
20 hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the
21 matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his
22 attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs
23 respectfully request that this Court issue an Order for the release of Plaintiffs' funds.
24

25 ///

26 ///

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III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13th day of December, 2018.

VANNAH & VANNAH


Bar No: 14530
s/s for → ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

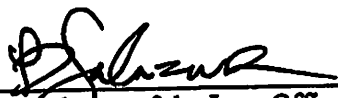
Electronically:

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

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

Traditional Manner:
None

DATED this 13 day of December, 2018.


An employee of the Law Office of
Vannah & Vannah

Electronically Filed
12/7/2018 2:53 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

Electronically Filed
Dec 17 2018 11:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

DISTRICT COURT

CLARK COUNTY, NEVADA

--000--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
15 SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan corporation; and
16 DOES I through V and ROE CORPORATIONS
17 VI through X, inclusive,

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

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

NOTICE OF APPEAL

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

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

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 7 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 NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	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 • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	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 • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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.

Date Filed	Document Title	VOL. No.	Bates Number
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 • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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 • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	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 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from
3 the Decision and Order on Motion to Adjudicate Lien and from the Amended Decision and Order
4 on Motion to Dismiss NRCP 12(B)(5), both of which were entered on November 19, 2018.
5

6 DATED this 7 day of December, 2018.

7 VANNAH & VANNAH

8
9 
10 ROBERT D. VANNAH, ESQ.
11 Nevada Bar No. 002503
12 JOHN B. GREENE, ESQ.
13 Nevada Bar No. 004279
14 400 S. Seventh Street, 4th Floor
15 Las Vegas, Nevada 89101
16 jgreene@vannahlaw.com
17 Telephone: (702) 369-4161
18 Facsimile: (702) 369-0104
19 Attorneys for Plaintiffs/Appellants
20
21
22
23
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27
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CERTIFICATE OF SERVICE

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

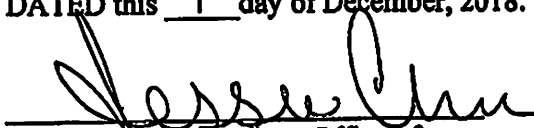
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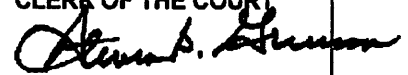
James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

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

Traditional Manner:
None

DATED this 7th day of December, 2018.


An employee of the Law Office of
Vannah & Vannah



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

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
15 SUPPLY NETWORK, INC., dba VIKING
16 SUPPLYNET, a Michigan corporation; and
DOES I through V and ROE CORPORATIONS
17 VI through X, inclusive,

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

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

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

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

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

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC
2 (PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and
3 JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Opposition
4 to the Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A
5 PROFESSIONAL CORPORATION (SIMON) for Attorney's Fees and Costs (the Motion).

6 This Opposition is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; NRCP
8 11 & 12(b)(5); NRS 18.010 & 18.015; and, any oral argument this Court may wish to entertain.
9 PLAINTIFFS also incorporate by this reference all of their factual and legal assertions, arguments
10 made, exhibits presented, and Motions and Oppositions made to and filed before this Court from
11 the inception through the filing of this Opposition.
12

13 DATED this 17 day of December, 2018.

14 VANNAH & VANNAH

15 
16 ROBERT D. VANNAH, ESQ.

17
18
19 I.

20 SUMMARY

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

1 testimony on SIMON'S Motion to Adjudicate Lien; by having reviewed the totality of the
2 evidence presented; by having read hundreds of pages of pre and post hearing briefing, exhibits,
3 notes, and arguments; and, by having carefully crafted two sets of factual findings and orders.
4 Therefore, PLAINTIFFS will spare this Court yet another complete recitation of the facts.
5 However, highlights are necessary to illuminate the darkness that is SIMON'S latest Motion.

6 This ordeal began when SIMON, the attorney, failed to perform the remedial step of
7 preparing a written hourly fee agreement for PLAINTIFFS to sign way back in May or June of
8 2016. Had SIMON simply performed that basic task, arguably none of this would have ever been
9 necessary. SIMON doubled down on his basic error on November 17, 2018, when he told
10 PLAINTIFFS that he wanted to be paid far more than the \$550.00 per hour and the \$387,606.25
11 he'd been paid to that point by PLAINTIFFS in attorneys' fees (incurred from May of 2016
12 through the fourth invoice that was paid in full by PLAINTIFFS on September 25, 2017).

13 While SIMON repeatedly stated in several briefs and testified under oath at the
14 evidentiary hearing that he was not seeking a contingency fee from PLAINTIFFS, he's seeking a
15 contingency fee from PLAINTIFFS one way or the other. SIMON first laid his eyes on that
16 contingency prize in August of 2017, a time when adverse facts against Viking had caused the
17 risk of loss to begin to rapidly diminish and the prospect of a substantial settlement becoming
18 more and more real. However, it is undisputed that SIMON never scratched that itch with an
19 alternative fee proposal until November 17, 2018, when he demanded a very hefty portion of the
20 Viking settlement from PLAINTIFFS.

21 SIMON again made his desire for far more in fees clear in his written Motion to
22 Adjudicate Lien, and it was his consistent theme at the multi-day evidentiary hearing on that
23 motion. He once again made that wish clear in his Motion to Reconsider at page 19:9-10, when
24 he asked for \$1.9 million, the same basic number he'd asked for since he served his Amended
25 Lien in January of 2018 for \$1,977,843.80 in additional fees. Even a political science major can
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1 see that simple math shows that 40% of the Viking settlement of \$6 million is \$2.4 million, an
2 amount that is eerily similar to what PLAINTIFFS had already paid SIMON in fees, plus the
3 amount of his Amended Lien.

4 If that desire weren't so, why would SIMON not have just sent PLAINTIFFS another
5 invoice for fees and costs as PLAINTIFFS undisputedly requested via email on November 15,
6 2018, as opposed to demanding a percentage of the Viking settlement two days later? And why
7 would SIMON then demand \$1,100,000 ten days after that? And then demand \$1,500,000
8 several days after that? And why would SIMON then serve the Amended Lien for \$1,977,843.80
9 the following month? If SIMON thought keeping concurrent time sheets was a miserable chore,
10 try keeping track of the moving target that has been his demands for more in fees.

11
12 Now that he lost his bid for a contingency fee in his Motions to Adjudicate Lien and to
13 Reconsider/Clarify, SIMON impermissibly seeks to shake down PLAINTIFFS for more in fees
14 and costs when: 1.) The fees and costs SIMON is now seeking were incurred litigating the
15 Motion to Adjudicate Lien, not SIMON'S collateral Motion to Dismiss on NRCP 12(b)(5)
16 grounds; 2.) An award of additional attorney's fees and costs to seek and obtain an award of
17 attorneys fees under NRS 18.015 isn't contemplated under that statute; 3.) SIMON was not and is
18 not a prevailing party; and, 4.) PLAINTIFFS' complaints were filed and maintained in good faith.

19
20 For all of the reasons that this Court has entertained thus far in properly managing and
21 containing this matter, PLAINTIFFS respectfully request that SIMON'S latest Motion for Fees
22 and Costs be denied in its entirety.

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II.

ARGUMENTS

A. SIMON'S FEES AND COSTS IN HIS MOTION WERE ALL INCURRED IN THE EVIDENTIARY HEARING TO ADJUDICATE HIS LIEN IN THE GROSSLY INFLATED AMOUNT OF \$1,977,843.80.

It's difficult to choose an appropriate word to describe SIMON'S latest Motion. Remarkable is a tame selection; sanctionable is yet another (though PLAINTIFFS don't seek sanctions at this time—just closure). Why? SIMON has caused to be filed under NRCP 11(b)(1) & (3) a Motion that asks for fees under the pretense of being incurred arguing a Motion to Dismiss when the overwhelming evidence supports a finding that they were actually incurred litigating his Motion to Adjudicate Lien. SIMON knows this to be true, though he still caused this Motion to be filed. Under NRCP 11(b)(1), that's an improper purpose designed to increase PLAINTIFFS fees and costs. Under NRCP 11(b)(3), it's a Motion that lacks factual and evidentiary support.

How do we know this for sure? First, this is all about SIMON'S Motion to Adjudicate. At the hearing on February 20, 2018, James R. Christensen, Esq., told this Court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit 1, at p. 13:5-6.) He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute...the Court can take evidence...or set an evidentiary hearing...This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing...Let's get this done...But there's nothing to stop that lien adjudication at this time." (Id., at 14:8-12.) This Court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018.

At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to Dismiss (Please see Excerpts from Transcript attached as Exhibit 2, at p. 15:18-19) and ordered that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary Hearing on the dates as Follows: 05-29-18 1:00 a.m., 5-30-18 at 10:30 a.m., and 5-31-18 at 9:00 a.m." (Please see minutes of the Court attached as Exhibit 3.) The minutes also indicate that the Court would rule on the NRCP 12(b)(5) Motion to Dismiss at the conclusion of the hearing. (Id.) What hearing was the Court referring to? The evidentiary hearing for SIMON'S Motion to Adjudicate Lien, a proceeding that this Court deemed "...very, very important...." (See Exhibit 2, at p. 2:19-20.) The Court also ordered the parties to submit briefs prior to the hearing.

On that note, how much ink did SIMON use in his Brief re: Evidentiary Hearing to discuss the merits of PLAINTIFFS' Amended Complaint and whether or not it should be dismissed pursuant to NRCP 12(b)(5)? Absolutely none. Rather, every argument made, each exhibit attached, and the only expert report submitted focused solely on reasons for SIMON to get either a contingency fee via quantum meruit or another \$692,120 in fees from his super bill. Similarly, how much time or effort did SIMON spend, incur, and/or make at the multi-day evidentiary hearing on his Motion to Dismiss? Fifteen minutes? Likely much, much less, if any.

For example, the purpose for the participation of Peter S. Christiansen, Esq., in all of this was to take the lead in the evidentiary hearing. To highlight this obvious point, while Mr. Christiansen was present on behalf of SIMON at court proceedings on February 8 & 20, 2018, those hearings did not involve arguments on SIMON'S Motions to Dismiss, and he merely noted his appearances. At the April 3, 2018, hearing on SIMON'S Motions to Dismiss, Mr. Christiansen wasn't present at all.

Rather, a perusal of court minutes clearly shows that Mr. Christiansen's first substantive appearance occurred when the evidentiary hearing on the Motion to Adjudicate Lien was initially scheduled. Thereafter, all of his time, questions and arguments at the multi-day evidentiary

1 hearing were directed at establishing and/or increasing SIMON'S fee. There is nothing in the
2 minutes that PLAINTIFFS found where Mr. Christiansen directed any measurable amount of time
3 to matters concerning SIMON'S pending Motion to Dismiss on NRCP 12(b)(5) grounds. Rather,
4 he focused solely on SIMON'S Motion to Adjudicate Lien and getting more compensation for
5 SIMON. And, he did an excellent job for his client.

6 On the topic of sole purpose and focus, what were those of David Clark, Esq., and Will
7 Kemp, Esq.? Both were used to establish and bolster the reputation of SIMON and/or the amount
8 of additional fees that SIMON should get in quantum meruit. A simple re-reading of Mr. Kemp's
9 Report retells that story in full. And all of his testimony focused on case value and fees. Neither
10 offered a word of opinion or a morsel of testimony on the merits of PLAINTIFFS' Amended
11 Complaint or whether or not it should be dismissed on any ground.

12 Why, then, would SIMON file this Motion and make the representations he did that
13 \$280,534.21 in fees and costs was spent getting PLAINTIFFS' Amended Complaint dismissed
14 pursuant to NRCP 12(b)(5)—a collateral matter to the Motion to Adjudicate Lien—when that is
15 patently false by any measure? And why was the evidentiary hearing on Motion to Adjudicate
16 Lien necessary? One, because SIMON filed the motion (on an OST) and, per Mr. Christensen, an
17 evidentiary hearing to adjudicate a lien is how it's done under Nevada law. Two, because
18 SIMON wasn't content with the largesse that was an hourly rate of \$550 totaling hundreds of
19 thousands of dollars in fees paid to him by PLAINTIFFS and instead demanded a percentage of
20 the Viking settlement for himself.

21 Three, because SIMON demanded an additional \$1,114,000 in fees from PLAINTIFFS on
22 November 27, 2018, without any evidentiary or legal basis. Four, because SIMON sent a letter to
23 PLAINTIFFS' then co-counsel on December 7, 2018, stating that SIMON'S additional fees "may
24 well exceed \$1.5M." Five, because SIMON served an Amended Attorney's Lien attaching
25 PLAINTIFFS settlement proceeds to the tune of \$1,977,843.80, knowing full well (as the attorney
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1 of the stature and reputation as described by Mr. Clark and Mr. Kemp) that: a.) the Rules
2 precluded him from getting a contingency fee without a written contingency fee agreement; and,
3 b.) his hourly fees for work performed on the case would never come even close to the amount of
4 his Amended Lien. And, of course, SIMON'S additional billed fees were far less than his
5 estimates, coming in at \$692,120.

6 Last, and most importantly, despite all of the above, SIMON would not agree to release
7 PLAINTIFFS settlement proceeds (that remain on deposit) that are in excess of SIMON'S largest
8 additional fee estimate of \$1.5M. In fact, SIMON still won't release PLAINTIFFS settlement
9 proceeds in excess of the \$484,982.50 that this Court awarded him on November 19, 2018.
10 That's the subject of yet another pleading that PLAINTIFFS did not want to file but were left with
11 no other reasonable option due to SIMON'S refusal to put this matter behind us all.

12 For SIMON to replay the victim card and tell this Court in his Motion at page 27 (!) that
13 this lien adjudication should have been simple and easy like all his others, he's just not seeing
14 either the error of his ways or what the rest of us are seeing. He did a really bad thing when he
15 violated the Nevada Rules of Professional Conduct out of the gate and compounded his
16 unbecoming conduct when he continued (and continues) to lay claim to a substantial sum of
17 money that was not and now is not his to claim. In short, PLAINTIFFS did not ask for any of
18 this, though they did ask SIMON on November 15, 2018, to provide them his invoice for fees and
19 costs owed, which SIMON promptly ignored. Instead, PLAINTIFFS have had to fight, and have
20 to continue to fight, to get their settlement proceeds. As such, PLAINTIFFS respectfully request
21 that SIMON'S Motion be denied.

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B. AN AWARD OF ADDITIONAL ATTORNEYS FEES AND COSTS TO SEEK OR OBTAIN AN AWARD OF FEES AND COSTS UNDER NRS 18.015 ISN'T CONTEMPLATED IN THE STATUTE.

If there were a basis or authority for SIMON to request or obtain fees and costs in order to obtain fees and costs pursuant to NRS 18.015, SIMON would have cited it over and over. But, there isn't so he didn't. Rather, to quote SIMON'S counsel, who was addressing the issue of discovery in general in lien adjudication proceedings: "It's not contemplated in the statute. If you have a problem with the statute, appear in front of the legislature and argue against it." (See Exhibit 1, at p. 20:21-22.) Getting fees for pursuing fees under NRS 18.015 isn't contemplated in the statute, either. It's not there. If SIMON has a problem with the fact that he can't get fees and costs to obtain fees and costs per NRS 18.015, he can take it up with the folks in Carson City. However, it's inappropriate to ask for or receive them in these proceedings. As a result, SIMON'S Motion must be denied.

C. SIMON WAS NOT AND IS NOT THE PREVAILING PARTY OF ANYTHING OF MERIT.

As argued above, NRS 18.015 does not contemplate an award of fees and costs in a lien adjudication proceeding filed to obtain fees and costs. Thus, awarding fees and cost under that statute would be improper. Furthermore, NRS 18.010 states that a prevailing party cannot recover fees if that party has recovered more than \$20,000. Even if one could assume that SIMON is a prevailing party, which he is not, SIMON has sought additional fees from PLAINTIFFS ranging from a low of \$692,120 to a high of \$1,977,843.80, amounts that are all well north of \$20,000.

In several instances, SIMON presented letters containing different amounts demanded from PLAINTIFFS in fees. In another, he presented a fee proposal. In yet another instance, he served attorneys liens, one without an amount for fees, another with \$1,977,843.80 affixed. In a final instance, SIMON served an improper Offer of Judgment on August 31, 2018, for

1 \$1,500,000, even though SIMON wasn't a party in the (A-16-738444-C) matter (and the only
2 matter) in which the attorney's liens were (or could have been) served. Yet, at the end of the
3 proverbial five days, SIMON was awarded \$484,982.50.

4 As also argued above, the lien adjudication proceedings were the creation of SIMON'S
5 desire for far more in fees than either the facts or the law allowed. He then refused and continues
6 to refuse to release PLAINTIFFS settlement proceeds to them, despite knowing that the best he
7 could hope to achieve in extra fees is the amount contained in his super bill = \$692,120. For
8 SIMON to assert or maintain that PLAINTIFFS were doing anything but following their rights in
9 these proceedings under these facts is, again, remarkable for shortsightedness, together with just
10 plain wrong.

11
12 PLAINTIFFS asked SIMON for a bill for his outstanding fees and costs on November 15,
13 2018, that they knew they owed. SIMON ignored that request and instead held firm at demanding
14 between \$1,500,000 (the defective Offer of Judgment) and \$1,977,843.80 (the Amended
15 Attorney's Lien) in extra fees. Receiving \$484,982.50, while a win in most circles, cannot be
16 deemed as such in the manner in which SIMON played this game and kept the score.

17
18 Again, PLAINTIFFS wanted none of this. They are the only victims here and they are the
19 ones who want all of this to end. Through the present date, SIMON has refused and continues to
20 refuse to do so. For these reasons, PLAINTIFFS request that SIMON'S Motion be denied.

21 **D. PLAINTIFFS' COMPLAINTS AGAINST SIMON WERE FILED AND**
22 **MAINTAINED IN GOOD FAITH.**

23
24 It's one thing for this Court to agree with SIMON'S iteration of the story that comprises
25 PLAINTIFFS' Amended Complaint and enter an order of dismissal on NRCP 12(b)(5) grounds.
26 (Of note, this Court previously denied SIMON'S Special Motion to Dismiss on Anti-SLAPP
27 grounds.) While PLAINTIFFS respectfully disagree that dismissal of their Amended Complaint
28 was justified on these facts and according to the governing law, considering that the law provides

1 a very steep hurdle to overcome to reach the harsh and final decision of dismissal without
2 discovery, etc., and that a jury could have just as easily agreed with PLAINTIFFS' version of the
3 facts as set forth in their Amended Complaint, as opposed to those of their attorney, PLAINTIFFS
4 are still willing to put an end to all of this and abide by the Court's Decision and Order on Motion
5 to Adjudicate Lien.

6 Yet, it's another thing entirely for SIMON to misrepresent the content of the Decision and
7 Order of Dismissal on NRCP 12(b)(5) grounds as one based on a frivolous, vexatious, or a
8 pleading that was not filed or maintained in good faith. Or that fees and costs are somehow
9 justified on based on NRS 18.010, NRS 7.085, or any other legal ground. PLAINTIFFS
10 strenuously object to any such characterization or representation, as it is unfounded in fact and
11 law. More importantly, there isn't any language in the Decisions and Orders of this Court
12 concerning the dismissal on 12(b)(5) or Anti-SLAPP grounds that supports any of SIMON'S
13 assertions in his Motion. Why would he continue to take positions that he knows are unsupported
14 and false?
15

16 For what they hope is the last time they have to state this in court filings, PLAINTIFFS
17 want this to end. They are ready, willing, and able to accept this Court's Decision and Order
18 Adjudicating Lien, pay \$484,982.50 to SIMON, and move on. Please continue to encourage
19 SIMON to do so as well by denying his baseless Motion for Fees and Costs.
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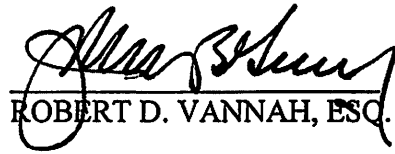
III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court deny SIMON'S Motion, as indicated in this Opposition.

DATED this 17 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ. 1/2018

CERTIFICATE OF SERVICE

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

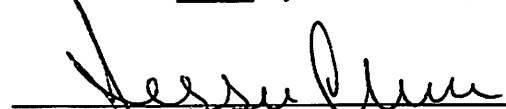
Electronically:

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

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

Traditional Manner:
None

DATED this 17 day of December, 2018.


An employee of the Law Office of
Vannah & Vannah



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

Electronically Filed
Dec 26 2018 10:53 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**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; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE entities 1
through 10;

Defendants.

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

NOTICE OF CROSS APPEAL

CONSOLIDATED WITH

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

1 NOTICE IS HEREBY GIVEN that Defendants/Appellants DANIEL S.
2 SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL
3 CORPORATION, hereby appeal to the Supreme Court of Nevada from the
4 Decision and Order on Special Motion to Dismiss Anti-Slapp, which was entered
5 on October 11, 2018; and, appeals to the Supreme Court of Nevada from the
6 Decision and Order on Motion to Adjudicate Lien, which was entered on
7 November 19, 2018.
8
9

10 DATED this 17th day of December 2018.
11

12 /s/ James R. Christensen
13 JAMES CHRISTENSEN, ESQ.
14 Nevada Bar No. 003861
15 601 S. 6th Street
16 Las Vegas, NV 89101
17 (702) 272-0406
18 (702) 272-0415
19 jim@jchristensenlaw.com
20 Attorney for Daniel S. Simon

21 **CERTIFICATE OF SERVICE**

22 I CERTIFY SERVICE of the foregoing NOTICE OF CROSS APPEAL
23 was made by electronic service (via Odyssey) this 17th day of December, 2018, to
24 all parties currently shown on the Court's E-Service List.
25

26 /s/ Dawn Christensen
27 an employee of
28 JAMES R. CHRISTENSEN



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

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING
CORPORATION, a Michigan corporation;
15 SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan corporation; and
16 DOES I through V and ROE CORPORATIONS
17 VI through X, inclusive,

18 Defendants.

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

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

NOTICE OF ENTRY OF ORDERS

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

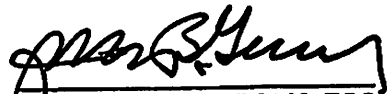
VANNAH & VANNAH
400 S. Seventh Street, 4th Floor • Las Vegas, Nevada 89101
Telephone (702) 369-4161 Facsimile (702) 369-0104

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

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

DATED this 27 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:

None

DATED this 27 day of December, 2018.

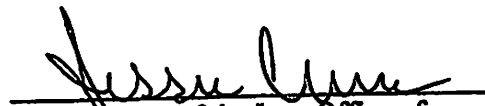

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1

1 **ORD**

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

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

8 **Plaintiffs,**

9 **vs.**

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

16 **Defendants.**

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

19 **Plaintiffs,**

20 **vs.**

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

25 **Defendants.**

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

Consolidated with

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

DECISION AND ORDER ON MOTION
TO ADJUDICATE LIEN

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

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

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

7 8 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
going to cost). I would likely borrow another \$450K from Margaret in 250
16 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 \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

19 **Court**

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

29 Id.

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

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

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

13 Id.

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

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

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 //

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 8 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 NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	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 • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	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 • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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.

Date Filed	Document Title	VOL. No.	Bates Number
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 • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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 Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	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 Simon from effectively representing the clients. The Court finds that Danny Simon was
2 constructively discharged by the Edgeworths on November 29, 2017.

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 *Costs Owed*

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

14
15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 **3. The Work Actually Performed**

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

18 **4. The Result Obtained**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

23 CONCLUSION

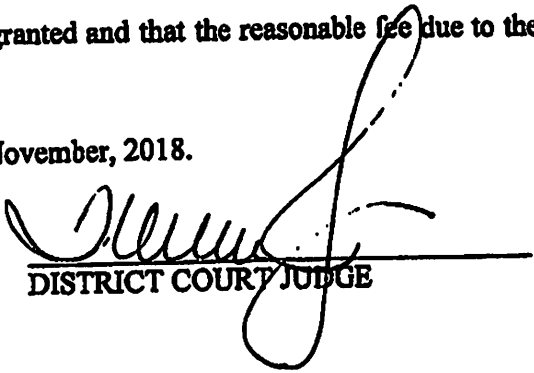
24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths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

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

9
10 **ORDER**

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

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

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DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2

Exhibit 2

1 **ORD**

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

5
6 **EDGEWORTH FAMILY TRUST; and**
7 **AMERICAN GRATING, LLC,**

8 **Plaintiffs,**

9 **vs.**

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

16 **Defendants.**

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

19 **Plaintiffs,**

20 **vs.**

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

25 **Defendants.**

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

Consolidated with

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

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

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

29 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
30 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
31 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
32 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
33 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

14 CONCLUSION OF LAW

15 *Breach of Contract*

16
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 *Declaratory Relief*

23
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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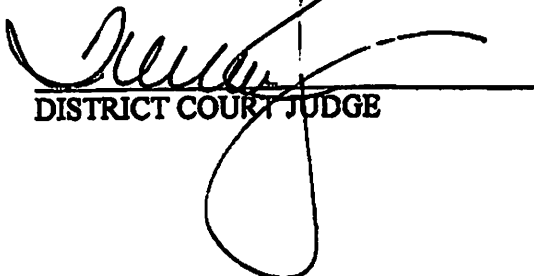
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ORDER

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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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10



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

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

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

Date of Hearing: N/A

Time of Hearing: N/A

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A

1 PLEASE TAKE NOTICE, a Decision and Order Granting in Part and
2 Denying in Part, Simon's Motion for Attorney's Fees and Costs was entered on the
3 docket on the 8th day of February, 2019. A true and correct copy of the file-
4 stamped Decision and Order is attached hereto.
5

6 DATED this 8th day of February, 2019.

7 /s/ James R. Christensen

8 James R. Christensen Esq.
9 Nevada Bar No. 3861
10 JAMES R. CHRISTENSEN PC
11 601 S. 6th Street
12 Las Vegas NV 89101
13 (702) 272-0406
14 (702) 272-0415 fax
15 jim@jchristensenlaw.com
16 Attorney for SIMON
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14 **CERTIFICATE OF SERVICE**

15 I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF
16
17 DECISION AND ORDER was made by electronic service (via Odyssey) this 8th
18 day of February, 2019, to all parties currently shown on the Court's E-Service List.
19

20 /s/ Dawn Christensen

21 an employee of
22 JAMES R. CHRISTENSEN, ESQ
23
24
25

Steven D. Grierson

ORDR

JAMES CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6th Street

Las Vegas, NV 89101

Phone: (702) 272-0406

Facsimile: (702) 272-0415

Email: jim@christensenlaw.com

Attorney for Daniel S. Simon

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

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

Date of Hearing: 1.15.19

Time of Hearing: 1:30 p.m.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 This matter came on for hearing on January 15, 2019, in the Eighth Judicial
2 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.
3 Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a
4 Simon Law (jointly the "Defendants" or "Simon") having appeared by and through
5 their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.;
6 and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
7 "Edgeworths") having appeared through by and through their attorneys of record,
8 the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having
9 considered the evidence, arguments of counsel and being fully advised of the
10 matters herein, the **COURT FINDS** after review:
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15 The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

16 1. The Court finds that the claim for conversion was not maintained on
17 reasonable grounds, as the Court previously found that when the complaint was
18 filed on January 4, 2018, Mr. Simon was not in possession of the settlement
19 proceeds as the checks were not endorsed or deposited in the trust account.
20 (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such,
21 Mr. Simon could not have converted the Edgeworths' property. As such, the
22 Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion
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1 claim as it was not maintained upon reasonable grounds, since it was an
2 impossibility for Mr. Simon to have converted the Edgeworths' property, at the
3 time the lawsuit was filed.
4

5 2. Further, the Court finds that the purpose of the evidentiary hearing was
6 primarily for the Motion to Adjudicate Lien. The Motion for Attorney s Fees is
7 DENIED as it relates to the other claims. In considering the amount of attorney's
8 fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and
9 Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against
10 Mr. Simon, on January 4, 2018. However, they were also the attorneys in the
11 evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found
12 was primarily for the purpose of adjudicating the lien asserted by Mr. Simon.
13 The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the
14 purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr.
15 David Clark Esq. were solely for the purposes of defending the lawsuit filed
16 against Mr. Simon by the Edgeworths. As such, the Court has considered all of the
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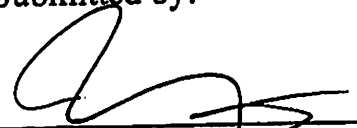
1 factors pertinent to attorney's fees and attorney's fees are GRANTED in the
2 amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

3 IT IS SO ORDERED.

4 Dated this 6 day of February, 2019.

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DISTRICT COURT JUDGE SW

9 Submitted by:

10 
11
12 JAMES CHRISTENSEN, ESQ.
13 Nevada Bar No. 003861
14 601 S. 6th Street
15 Las Vegas, NV 89101
16 Phone: (702) 272-0406
17 Facsimile: (702) 272-0415
18 Email: jim@jchristensenlaw.com
19 Attorney for Daniel S. Simon

20 Approved as to form and content:

21 
22 JOHN B. GREENE, ESQ.
23 Nevada Bar No. 004279
24 VANNAH & VANNAH
25 400 South Seventh Street, 4th Floor
26 Las Vegas, Nevada 89101
27 Phone: (702) 369-4161
28 Facsimile: (702) 369-0104
jgreene@vannahlaw.com
Attorney for Plaintiffs



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

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 --000--

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

12 **Plaintiffs,**

13 **vs.**

14 **LANGE PLUMBING, LLC; THE VIKING**
15 **CORPORATION, a Michigan corporation;**
16 **SUPPLY NETWORK, INC., dba VIKING**
17 **SUPPLYNET, a Michigan corporation; and**
18 **DOES I through V and ROE CORPORATIONS**
19 **VI through X, inclusive,**

20 **Defendants.**

21 **EDGEWORTH FAMILY TRUST; AMERICAN**
22 **GRATING, LLC,**

23 **Plaintiffs,**

24 **vs.**

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

Defendants.

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

NOTICE OF APPEAL

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

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 9 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 NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time • Simon's Invoices • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	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 • Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	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 • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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.

Date Filed	Document Title	VOL. No.	Bates Number
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 • Simon's Invoices • Email to Simon labeled "Contingency • Itemization of Costs • Simon's 11/27/18 Letter to Edgeworth's	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien • Affidavit of Brian Edgeworth (2/2/18) • Deposition of Brian Edgeworth (9/29/17)	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 Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs	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 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from
3 the Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees
4 and Costs, which was entered on February 8, 2019.
5

6 DATED this 15th day of February, 2019.

7 VANNAH & VANNAH

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9 
10 ROBERT D. VANNAH, ESQ.
11 Nevada Bar No. 002503
12 JOHN B. GREENE, ESQ.
13 Nevada Bar No. 004279
14 400 S. Seventh Street, 4th Floor
15 Las Vegas, Nevada 89101
16 jgreene@vannahlaw.com
17 Telephone: (702) 369-4161
18 Facsimile: (702) 369-0104
19 Attorneys for Plaintiffs/Appellants
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CERTIFICATE OF SERVICE

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

Electronically:

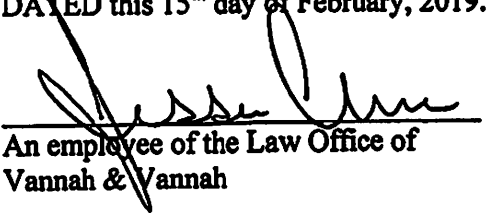
James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

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

Traditional Manner:

None

DATED this 15th day of February, 2019.


An employee of the Law Office of
Vannah & Vannah