IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; AND THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION,

Respondents/Cross-Appellants.

NO. 77678

Electronically Filed
Jan 15 2020 01:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC,

Appellants

vs.

DANIEL S. SIMON; AND THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION

Respondents.

NO. 78176

THE LAW OFFICE OF DANIEL S. SIMON,

Petitioner

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TIERRA DANIELLE JONES, DISTRICT JUDGE,

Respondents,
and

NO. 79821

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Real Parties in Interest.

INDEX TO RESPONDENTS/ PETITIONERS COMBINED ANSWERING BRIEF AND OPENING BRIEF APPENDIX

VOLUME III OF XI

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 Respondents/ Petitioners

INDEX TO RESPONDENTS/ PETITIONERS COMBINED ANSWERING BRIEF AND OPENING BRIEF APPENDIX

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Volume IX:

Volume X:

Volume XI:

23305

94-177/1224
2131

LAW OFFICE OF DANIEL S. SIMON
A PROFESSIONAL CORPORATION
GENERAL ACCOUNT
810 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

BANK OF NEVADA
A division of Western Alliance Bank,
Member FDIC.

11/27/2017

PAY TO THE ORDER OF Verbatim Digital Reporting

$ **390.78

Three Hundred Ninety and 78/100********** DOLLARS

Verbatim Digital Reporting, LLC
3317 W. Layton Ave.
Englewood, CO 80110

MEMO Inv # 2195 / Edgeworth

AUTHORIZED SIGNATURE

⑈023305⑈ ⑆122401778⑆ 022001961 4⑈

AA00501

Edgeworth

Domesticating a Subpoena in Cook County, IL for UL Laboratori

Ashley Ferrel

From: Judicial Attorney Services, Inc. <receipts+tB34iBDZFbMl06DmXKXh@stripe.com>
Sent: Friday, October 13, 2017 9:20 AM
To: Ashley Ferrel
Subject: Your Judicial Attorney Services, Inc. receipt [#1265-7890]

$590.30 at Judicial Attorney Services, Inc.

Daniel Simon — AMERICAN EXPRESS 7002

October 13, 2017 #1265-7890

Description	Amount
Amount	$590.30
Total	**$590.30**

Have a question or need help? Send us an email or give us a call at +1 630-221-9007.

Something wrong with the email? View it in your browser.
You are receiving this email because you made a purchase at Judicial Attorney Services, Inc.

Jen

From: Direct Legal Support In <notifications@paytrace.com>
Sent: Tuesday, October 17, 2017 5:08 PM
To: Jen
Subject: Direct Legal Support In transaction receipt. 10/17/2017 5:03:11 PM Pacific - Invoice: 45953

Direct Legal Support In

1541 Wilshire Blvd
LOS ANGELES, CA 90017
800-675-5376

10/17/2017 5:00:27 PM

Reference Number:	179723017
Total:	$280.00
Transaction Type:	Sale
Transaction Status:	Pending Settlement
Card Type:	American Express
Card Number:	xxxxxxxxxxx7002
Entry Method:	Keyed
Approval Code:	280890
Approval Message:	EXACT MATCH
AVS Result:	Full Exact Match
CSC Result:	Match
Customer Name:	
Invoice:	45953

X_____

Please sign here to agree to payment.

Jen

From: Janelle
Sent: Tuesday, October 17, 2017 4:48 PM
To: Jen
Cc: Ashley Ferrel
Subject: FW: Edgeworth v. Lange et al. - domesticate subpoena

Jen
can you please pay this asap. thanks

JANELLE WHITE
LEGAL ASSISTANT
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655
JANELLE@SIMONLAWLV.COM

From: Sheri Kern [mailto:skern@directlegal.com]
Sent: Tuesday, October 17, 2017 4:36 PM
To: Janelle <Janelle@SIMONLAWLV.COM>; Subpoena <subpoena@directlegal.com>
Cc: Ashley Ferrel <Ashley@SIMONLAWLV.COM>
Subject: RE: Edgeworth v. Lange et al. - domesticate subpoena

The total due is $280.00

Inv # 459530

Thank you,

pd. by phone w/Amex
10/17/17

Sheri J. Kern
Vice President / CFO
Direct Legal Support, Inc.
Office: 800-675-5376 Ext 238
Fax: 866-241-0051
www.directlegal.com | skern@directlegal.com
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Effective 12-1-16 - Our New Address is: 1541 Wilshire Blvd, Suite 550, Los Angeles, CA 90017**

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From: Janelle [mailto:Janelle@SIMONLAWLV.COM]
Sent: Friday, October 13, 2017 2:48 PM
To: Subpoena <subpoena@directlegal.com>
Cc: Ashley Ferrel <Ashley@SIMONLAWLV.COM>
Subject: Edgeworth v. Lange et al. - domesticate subpoena

Attached please find the following documents to be domesticated:

- SUBP-030
- SUBP-045
- NV SDT
- NV Notice
- NV Commission to Take out of State Depo

Please advise the amount and I will pay online with a credit card. If you have any questions or need anything else please let me know. Thank you.

JANELLE WHITE
SIMON LAW
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655

KC INVESTIGATIONS, LLC

1148 S. MARYLAND PKWY
LAS VEGAS, NV 89104
PHONE# 702-474-4102
FAX# 702-474-4137

Invoice

Date	Invoice #
10/19/2017	5621

Bill To
SIMON LAW 810 S. CASINO CENTER BLVD. LAS VEGAS, NV 89101 ATTN: JANELLE

Client
EDGEWORTH FAMILY TRUST

Date Served	Terms	Server
09/06/2017	Due on receipt	

Item	Description	Amount
SERVE	SERVED SUBPOENA-CIVIL DUCES TECUM AND RE-NOTICE OF DEPOSITION DUCES TECUM OF THE CUSTODIAN OF RECORDS FOR RIMKUS CONSULTING GROUP, INC. TO COR RIMKUS CONSULTING GROUP, INC WITH DAVID M. BURDICK, CPA (CHIEF FINANCIAL OFFICER) AT EIGHT GREENWAY PLAZA SUITE 500, HOUSTON, TX 77046	150.00

Rcd. 10/19/17
Ck# 23225

Thank you for your business.

Total $150.00

DIRECT LEGAL SUPPORT

1541 Wilshire Blvd., Suite 550 Los Angeles, CA 90017
Phone: (213) 483-4900 Fax: (866) 241-0051

TAX ID: 20-2821265

ACCOUNT NO:	INVOICE DATE:	INVOICE NO:
012940	11/28/2017	48372

Bill To:
SIMON LAW
ATTN: JANELLE WHITE
810 SOUTH CASINO CENTER BLVD
LAS VEGAS, NV 89101

File No:
Servee: CUSTODIAN OF RECORDS FOR RENE STONE & ASSSOCIATES
Case No: A-16-738444-C
Court: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
Plaintiff: EDGEWORTH FAMILY TRUST & AMERICAN GRATIN
Defendant: LANGE PLUMBING, LLC; THE VIKING CORP., E

Documents: APPLICATION FOR DISCOVERY SUBPOENA IN ACTION PENDING OUTSIDE CALIFORNIA;DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS,ELECTRONICALLY STORED INFORMATION,AND THINGS IN ACTION PENDING OUTSIDE CALIFORNIA;

DESCRIPTION OF SERVICES RENDERED	QUANTITY	UNIT PRICE	AMOUNT
Issue and Serve Subpoena			250.00
Advance			30.00
Pd. 11/29/17 Ck # 23201			
SUMMARY Servee: CUSTODIAN OF RECORDS FOR RENE STONE & ASSSOCIATES Address: 1399 W. COLTON AVE, # 4 REDLANDS, CA 92374 Result: Personally Served Completed on 11/17/2017		TOTAL DUE	$ 280.00

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For proper credit please detatch this section and return with your payment. **Remittance Copy**

ACCOUNT NO:	INVOICE DATE:	INVOICE NO:
012940	11/28/2017	48372

Remit To:

Direct Legal Support, Inc.
1541 Wilshire Blvd., Suite 550
Los Angeles, CA 90017

TOTAL DUE: $ 280.00

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.
2. MAKE CHECKS PAYABLE TO **Direct Legal Support, Inc.**

Order#:48372 /INVOICEP

610 SOUTH CASINO CENTER BLVD LAS VEGAS, NV 89101 CASE NUMBER: A-16-738444-C	DIRECT LEGAL SUPPORT SUMMARY OF SERVICE JOB COMPLETE 48372 PROCESS SERVICE
	COMPLETED BY Maurice Polan REG: 1173 - Riverside
SUMMARY OF SERVICE	Reference No.:

DOCUMENTS SERVED: APPLICATION FOR DISCOVERY SUBPOENA IN ACTION PENDING OUTSIDE CALIFORNIA;DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS,ELECTRONICALLY STORED INFORMATION,AND THINGS IN ACTION PENDING OUTSIDE CALIFORNIA;

PARTY SERVED: CUSTODIAN OF RECORDS FOR RENE STONE & ASSSOCIATES

DATE & TIME OF SERVICE: 11/17/2017
12:25 PM

ADDRESS, CITY, AND STATE: 1399 W. COLTON AVE, 4
REDLANDS, CA 92374

PHYSICAL DESCRIPTION:

Age: 28	Weight: 120	Hair: DARK
Sex: Female	Height: 5'8	
Race: WHITE		

MANNER OF SERVICE:
Personal Service - By personally delivering copies to CUSTODIAN OF RECORDS FOR RENE STONE & ASSSOCIATES.

OFFICIAL AFFIDAVIT OF SERVICE/NON-SERVICE WILL FOLLOW IN THE MAIL

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NOT A PROOF OF SERVICE | SUMMARY OF SERVICE | NOT A PROOF OF SERVICE

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SUMMARY OF SERVICE

KC INVESTIGATIONS, LLC
1148 S. MARYLAND PKWY
LAS VEGAS, NV 89104
PHONE# 702-474-4102
FAX# 702-474-4137

Invoice

Date	Invoice #
11/22/2017	5892

Bill To	Client
SIMON LAW 810 S. CASINO CENTER BLVD. LAS VEGAS, NV 89101 ATTN: JANELLE	EDGEWORTH FAMILY TRUST

Date Served	Terms	Server
11/20/2017	Due on receipt	JR

Item	Description	Amount
SERVE	SERVED SUBPOENA DUCES TECUM AND NOTICE OF VIDEO DEPOSITION OF ATHANASIA E. DALACAS, ESQ. DUCES TECUM TO ATHANASIA E. DALACAS, ESQ. WITH STEPHANIE GESCHKE (FRONT OFFICE) AT 1720 W. HORIZON RIDGE PKWY #140, HENDERSON, NV 89012	70.00
COST	WITNESS FEE CHECK	26.00

Pd. 12/6/17
Ck# 23344

Thank you for your business.

Total $96.00

INVOICE

OASIS REPORTING SERVICES

400 South Seventh Street
Suite 400, Box 7
Las Vegas, NV 89101

Tel. (702) 476-4500
info@oasisreporting.com
www.oasisreporting.com

Invoice No.	Invoice Date	Job No.
29438	9/26/2017	23828
Job Date	**Case No.**	
9/18/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

1 CERTIFIED COPY OF TRANSCRIPT OF:

Angela M. Edgeworth	154.00 Pages	500.50
Exhibit	14.00 Pages	7.70
Rough-Draft ASCII	154.00 Pages	300.30
E-Bundle With Certified Copy		50.00
Condensed Transcript With Certified Copy		35.00
Statutory Administration of Transcript Subsequent to Publication		25.00
Color Copies	10.00 Pages	20.00
Local Delivery		20.00
	TOTAL DUE >>>	**$958.50**
	AFTER 10/26/2017 PAY	$1,054.35

There is never a charge for word index pages at Oasis Reporting Services, which can save you and your clients up to 27% compared to other firms charging per page for word indexes.

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pd. 9/26/17 ck# 23144

Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

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Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 29438
Invoice Date : 9/26/2017
Total Due : **$958.50**
AFTER 10/26/2017 PAY $1,054.35

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 23828
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

Beck Video Productions LLC

5770 Speaking Rock Ave
Las Vegas, NV 89131
(702) 307-6250 Tax ID# 20-5337464

Invoice

Number: 5783

Date: September 30, 2017

Bill To:

Simon Law Office
810 S. Casino Center Blvd
Las Vegas, NV 89101

Ship To:

Daniel Simon
Simon Law Office
810 S. Casino Center Blvd
Las Vegas, NV 89101

Description	Tax	Amount
Videotaped Deposition on Sept, 26, 2017 of Raul De La Rosa		
Case: Edgeworth Family Trust vs. Lange Plumbing LLC et al		
set up fee		50.00
2 hour min @ $95 per hour		190.00
USPS shipping		3.00
Standard DVD (non-sync) Included with Order		
Pd. 10/3/17 Ck# 23172		
	Sub-Total	**$243.00**
	Sales Tax 8.10% on 0.00	0.00
	Total	**$243.00**

Thank You for choosing Beck Video Productions!

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Las Vegas, NV 89101

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info@oasisreporting.com
www.oasisreporting.com

Invoice No.	Invoice Date	Job No.
29661	10/9/2017	24035
Job Date	**Case No.**	
9/26/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:		
Raul De La Rosa	87.00 Pages	456.75
Exhibit	12.00 Pages	6.60
Half-Day Attendance		110.00
Color Copies	10.00 Pages	20.00
E-Bundle With O&1 ($20 Discount)		30.00
Condensed Transcript With O&1 ($10 Discount)		25.00
Local Delivery		20.00
	TOTAL DUE >>>	**$668.35**
	AFTER 11/8/2017 PAY	$735.19

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pd. 10/12/17
Ck# 23185

Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

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Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 29661
Invoice Date : 10/9/2017
Total Due : $668.35
AFTER 11/8/2017 PAY $735.19

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 24035
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

INVOICE

SOUSA
COURT REPORTERS
800-843-7348 PH - 877-843-8443 FX

Invoice No.	Invoice Date	Job No.
635406	9/27/2017	606969
Job Date	**Case No.**	
9/7/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust vs. Lange Plumbing, LLC		
Payment Terms		
Due upon receipt		

Daniel S. Simon
Law Offices of Daniel Simon
810 S. Casino Center Blvd.
Las Vegas, NV 89101

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:		
Robert Carnahan, P.E.		2,924.90
Exhibits - Onsite copies - B/W	51.00	
LITIGATION SUPPORT OF:		
Robert Carnahan, P.E. - VIDEO		1,440.00
	TOTAL DUE >>>	**$4,364.90**

Thank you for choosing Sousa Court Reporters + Trial Solutions! Please send payment within 30 days of receiving this invoice. There will be a 10% finance charge per month on late invoices.

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Law Offices of Daniel Simon
810 S. Casino Center Blvd.
Las Vegas, NV 89101

Job No. : 606969 BU ID :1-HB
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust vs. Lange Plumbing, LLC
Invoice No. : 635406 Invoice Date :9/27/2017
Total Due : $ 4,364.90

PAYMENT WITH CREDIT CARD

Cardholder's Name:
Card Number:
Exp. Date: Phone#:
Billing Address:
Zip: Card Security Code:
Amount to Charge:
Cardholder's Signature:
Email:

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Invoice No.	Invoice Date	Job No.
29665	10/9/2017	24171
Job Date	**Case No.**	
9/28/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

1 CERTIFIED COPY OF TRANSCRIPT OF:		
Colin A. Kendrick	58.00 Pages	188.50
Exhibit	64.00 Pages	35.20
E-Bundle With Certified Copy		50.00
Condensed Transcript With Certified Copy		35.00
	TOTAL DUE >>>	**$308.70**
	AFTER 11/8/2017 PAY	$339.57

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Pd. 10/12/17
Ck# 23184

Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

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Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 29665
Invoice Date : 10/9/2017
Total Due : $308.70
AFTER 11/8/2017 PAY $339.57

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 24171
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

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Tel. (702) 476-4500
info@oasisreporting.com
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Invoice No.	Invoice Date	Job No.
29626	10/5/2017	23322
Job Date	**Case No.**	
9/21/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

1 CERTIFIED COPY OF TRANSCRIPT OF:		
Mark C. Giberti	322.00 Pages	1,046.50
Exhibit	147.00 Pages	80.85
E-Bundle With Certified Copy		50.00
Condensed Transcript With Certified Copy		35.00
Color Copies	7.00 Pages	14.00
Local Delivery		20.00
	TOTAL DUE >>>	**$1,246.35**
	AFTER 11/4/2017 PAY	$1,370.99

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pd 10/12/17
Ck# 23187

Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

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Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 29626
Invoice Date : 10/5/2017
Total Due : $1,246.35
AFTER 11/4/2017 PAY $1,370.99

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 23322
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

INVOICE

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Las Vegas, NV 89101

Tel. (702) 476-4500
info@oasisreporting.com
www.oasisreporting.com

Invoice No.	Invoice Date	Job No.
29766	10/13/2017	23999
Job Date	**Case No.**	
9/29/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Pd 10/19/17
Ck# 23215

1 CERTIFIED COPY OF TRANSCRIPT OF:		
Brian J. Edgeworth	301.00 Pages	978.25
Exhibit	54.00 Pages	29.70
Color Copies	31.00 Pages	62.00
E-Bundle With Certified Copy		50.00
Condensed Transcript With Certified Copy		35.00
Statutory Administration of Transcript Subsequent to Publication		25.00
Rough-Draft ASCII	8.00 Pages	15.60
Local Delivery		20.00
TOTAL DUE >>>		**$1,215.55**
AFTER 11/12/2017 PAY		$1,337.11

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Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

Please detach bottom portion and return with payment.

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 29766
Invoice Date : 10/13/2017
Total Due : $1,215.55
AFTER 11/12/2017 PAY $1,337.11

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 23999
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

INVOICE

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400 South Seventh Street
Suite 400, Box 7
Las Vegas, NV 89101

Tel. (702) 476-4500
info@oasisreporting.com
www.oasisreporting.com

Invoice No.	Invoice Date	Job No.
29957	10/25/2017	24328
Job Date	**Case No.**	
10/12/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Ashley M. Ferrel
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

CERTIFICATE OF NONAPPEARANCE OF:		
30(b)(6) for Zurich American Insurance Company	6.00 Pages	28.50
Exhibit	31.00 Pages	17.05
Certificate of Nonappearance Attendance		250.00
E-Bundle With Nonappearance ($30 Discount)		20.00
Local Delivery		20.00
	TOTAL DUE >>>	**$335.55**
	AFTER 11/24/2017 PAY	$369.11

There is never a charge for word index pages at Oasis Reporting Services, which can save you and your clients up to 27% compared to other firms charging per page for word indexes.

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pd 10/23/17 Ck# 23233

Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

Please detach bottom portion and return with payment.

Ashley M. Ferrel
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 29957
Invoice Date : 10/25/2017
Total Due : $335.55
AFTER 11/24/2017 PAY $369.11

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 24328
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

INVOICE

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Suite 400, Box 7
Las Vegas, NV 89101

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info@oasisreporting.com
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Invoice No.	Invoice Date	Job No.
30038	10/30/2017	24429
Job Date	**Case No.**	
10/16/2017	A-16-738444-C	
Case Name		
Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.		
Payment Terms		
Net 21		

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

1 CERTIFIED COPY OF TRANSCRIPT OF:		
Margaret Ho	30.00 Pages	105.00
E-Bundle With Certified Copy		50.00
Condensed Transcript With Certified Copy		35.00
Statutory Administration of Transcript Subsequent to Publication		25.00
Local Delivery		20.00
	TOTAL DUE >>>	**$235.00**
	AFTER 11/29/2017 PAY	$258.50

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pd. 11/1/17
Ck# 23248

Tax ID: 26-3403945

Phone: 702-364-1650 Fax:702-364-1655

Please detach bottom portion and return with payment.

Daniel S. Simon
Simon Law
810 South Casino Center Boulevard
Las Vegas NV 89101

Invoice No. : 30038
Invoice Date : 10/30/2017
Total Due : $235.00
AFTER 11/29/2017 PAY $258.50

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 24429
BU ID : 1-MAIN
Case No. : A-16-738444-C
Case Name : Edgeworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

SKLAR WILLIAMS
—PLLC—
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145
(702) 360-6000 Fax: (702) 360-0000
E.I.N.: 88-0417280

October 01, 2017

Edgeworth Family Trust
Attn.: Brian Edgeworth
1191 Center Point Drive
Henderson, NV 89024

Invoice # 94805

REMITTANCE FORM AND BILLING SUMMARY

	Fees	Costs	Previous Balance	Payments	New Balance
Re: 17020.001 Expert Witness in Edgeworth Family Trust, et al. v. The Viking Corporation, et al. Invoice # 94805	$13,770.00	$0.00	$4,100.00	($4,100.00)	$13,770.00

PAYMENTS RECEIVED AFTER SEPTEMBER 30, 2017 WILL NOT APPEAR ON THIS INVOICE.

PAYMENT IS DUE UPON RECEIPT.

PLEASE MAKE ALL CHECKS PAYABLE, IN U.S. FUNDS, TO: SKLAR WILLIAMS PLLC

WE ACCEPT CREDIT CARDS!
PLEASE CALL (702) 360-6000 FOR AUTHORIZATION.

PLEASE REMIT THIS SUMMARY TOGETHER WITH YOUR PAYMENT. THANK YOU!

Pd. 10/12/17
Ck# 2392

SKLAR WILLIAMS
—PLLC—
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145
(702) 360-6000 Fax: (702) 360-0000
E.I.N.: 88-0417280

November 15, 2017

Edgeworth Family Trust
Attn.: Brian Edgeworth
1191 Center Point Drive
Henderson, NV 89024

Invoice # 95158

REMITTANCE FORM AND BILLING SUMMARY

	Fees	Costs	Previous Balance	Payments	New Balance
Re: 17020.001 Expert Witness in Edgeworth Family Trust, et al. v. The Viking Corporation, et al. Invoice # 95158	$5,500.00	$0.00	$13,770.00	($13,770.00)	$5,500.00

PAYMENTS RECEIVED AFTER NOVEMBER 15, 2017 WILL NOT APPEAR ON THIS INVOICE.

PAYMENT IS DUE UPON RECEIPT.

PLEASE MAKE ALL CHECKS PAYABLE, IN U.S. FUNDS, TO: SKLAR WILLIAMS PLLC

WE ACCEPT CREDIT CARDS!
PLEASE CALL (702) 360-6000 FOR AUTHORIZATION.

PLEASE REMIT THIS SUMMARY TOGETHER WITH YOUR PAYMENT. THANK YOU!

Pd. 11/21/17
Ck# 23295

Re: 17020.001
Expert Witness in Edgeworth Family Trust, et al. v. The Viking Corporation, et al.

PROFESSIONAL SERVICES

		Hours	Amount
11/07/17 CMP	Meeting with D. Simon regarding supplemental report.	0.30	150.00
11/08/17 CMP	Review additional documents provided; begin first draft of supplemental report.	1.20	600.00
11/09/17 CMP	Continue first draft of supplemental opinion.	3.90	1,950.00
11/10/17 CMP	Phone call with client and counsel regarding status of supplemental opinion; continue review of documents.	0.30	150.00
11/12/17 CMP	Continue first draft of supplemental opinion; continue review of relevant documents.	2.20	1,100.00
11/13/17 CMP	Complete draft of supplemental opinion letter; edit and review same (x2); call with D. Simon regarding sending final draft.	3.10	1,550.00
	SUBTOTAL OF CHARGES		$5,500.00
		11.00	$5,500.00
	PREVIOUS BALANCE		$13,770.00
10/20/2017	Payment - thank you - Fees [CMP]. Check No. 23192		($13,770.00)
	Total payments and adjustments		($13,770.00)
	BALANCE DUE (Due Upon Receipt)		$5,500.00

Attorney Summary

Name	Hours	Rate	Amount
Crane M. Pomerantz	11.00	500.00	$5,500.00

Ivey Engineering, Inc.
8330 Juniper Creek Lane
San Diego, CA 92126
Phone: (858) 587-2874
Fax: (858) 587-6749

Invoice

Date	Number
10/17/2017	16620

Terms
Due Upon Receipt Credit Cards Accepted

Tax ID Number
33-0860901

To: Accounts Payable
Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, NV 89101

CC:

Job No: 114-01R

Re: Edgeworth Residence

Date		Description	Rate	Hours	Amount
9/6/2017	Kevin H.	Review documents received from client.	$190.00	2.90	551.00
9/8/2017	Kevin H.	Review documents received from client.	$190.00	5.90	1,121.00
9/11/2017	Kevin H.	Correspondence with client, review documents from client.	$190.00	3.90	741.00
9/12/2017	Kevin H.	Review documents received from client.	$190.00	2.90	551.00
9/13/2017	Kevin H.	Review documents received from client.	$190.00	2.00	380.00
9/14/2017	Kevin H.	Review documents received from client.	$190.00	6.20	1,178.00
9/15/2017	Kevin H.	Draft report and perform research and analysis.	$190.00	8.00	1,520.00
9/18/2017	Kevin H.	Draft rebuttal report.	$190.00	8.00	1,520.00
9/19/2017	Nova S.	Organize project documents.	$75.00	0.50	37.50
9/19/2017	Kevin H.	Review documents received from client.	$190.00	1.10	209.00
9/20/2017	Kevin H.	Review load on link test data.	$190.00	0.40	76.00
9/21/2017	Kevin H.	Review documents received from client, review attic data.	$190.00	2.30	437.00
9/22/2017	Kevin H.	Review documents received from client.	$190.00	4.00	760.00

TOTAL CURRENT CHARGES	**$9,081.50**
Interest on past due balance	**$186.06**

#24,802.13 pd. 10/26/17 Check 23235

HVAC, Plumbing, Electrical and Fire Sprinkler Consultants

Re: Edgeworth Residence

Date: 10/17/2017
Invoice #: 16620

	Amount
TOTAL THIS INVOICE	**$9,267.56**
Previous balance	**$15,720.63**
BALANCE DUE	**$24,988.19**

pd. 9/14/17
ck# 23119
VOIDED

#15,720.63
previously billed
& paid on
last invoice

per
Gloria - waiving
interest
10/26/17
JW

Ivey Engineering, Inc.
8330 Juniper Creek Lane
San Diego, CA 92126
Phone: (858) 587-2874
Fax: (858) 587-6749

Invoice

Date	Number
11/13/2017	16700

Terms
Due Upon Receipt Credit Cards Accepted

Tax ID Number
33-0860901

To: Accounts Payable
Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, NV 89101

CC:

Job No: I14-01R

Re: Edgeworth Residence

Date		Description	Rate	Hours	Amount
10/2/2017	Kevin H.	Review documents received from client.	$190.00	4.50	855.00
10/3/2017	Kevin H.	Review documents received from client.	$190.00	4.40	836.00

TOTAL CURRENT CHARGES	**$1,691.00**
Previous balance	**$24,988.19**
10/30/2017 Pmt inv 16543 & 16620 by Law Office of Daniel S. Simon. Check No. 23235	($24,802.13)
BALANCE DUE	**$1,877.06**

pd 11/27/17
Ck# 23298

HVAC, Plumbing, Electrical and Fire Sprinkler Consultants

VOLLMER-GRAY
ENGINEERING LABORATORIES, INC.
2421 Palm Drive, Signal Hill, CA 90755
Tel: 562-427-VGEL (8435) Fax: 562-427-8434

STATEMENT

DATE
10/25/2017

TO:
Law Offices of Daniel S. Simon
Attention: Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, NV 89101

NOTE: All invoices are due and payable on receipt regardless of the status of a case. Any invoices not paid within 30 days are subject to collection activity. Please make timely payments.

AMOUNT DUE	AMOUNT ENCL.
$20,105.00	

DATE	TRANSACTION	AMOUNT	BALANCE
08/14/2017	Balance forward		0.00
	170045-		
08/31/2017	INV #47013. Edgeworth Family Trust vs. Lange Plumbing	22,977.50	22,977.50
09/08/2017	PMT #23085. by Daniel Simon	-22,977.50	0.00
09/12/2017	INV #47081. Edgeworth Trust vs. Lange Plumbing	100.00	100.00
09/27/2017	INV #47120. Edgeworth Family Trust vs. Lange Plumbing	14,830.00	14,930.00
10/05/2017	INV #47182. Edgeworth Family Trust vs. Lange Plumbing.	1,675.00	16,605.00
10/25/2017	INV #47237. Edgeworth Family Trust vs. Lange Plumbing	3,500.00	20,105.00

DUE AND PAYABLE ON RECEIPT
IRS No. 95-4773872

pd. 11/1/17 Ck# 23244

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
3,500.00	16,505.00	100.00	0.00	0.00	$20,105.00

A-CORE Consultants, Inc.

Chatsworth, CA 91311
(818) 350-0660 (818) 350-0667 FAX
20555 Devonshire Street

Invoice

DATE	INVOICE #
11/3/2017	17-228

BILL TO
Daniel S. Simon Law Office Daniel Simon 810 S Casino Center Blvd Las Vegas, NV 89101
PROJECT
17049B-645 St Corix, M'Donlad H'lands, NV

DESCRIPTION	AMOUNT
Reviewed Kirkendall Report, David Suggs Reports, and Glen Rigdon Appraisal Review, deposition preparation & discussions with attorney (4hrs @ $500/Hr.)	2,000.00
Travel Expenses, airfare, car rental, gas & other sundries.	250.00

Pd. 11/29/17
Ck# 23312

Total	$2,250.00
Payments/Credits	$0.00
Balance Due	$2,250.00

Federal Tax ID Number: 95-4610379

McDonald Carano
George Ogilvie $10K
George Ogilvie 10K retainer

LAW OFFICE OF DANIEL S. SIMON
A PROFESSIONAL CORPORATION
GENERAL ACCOUNT
810 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

23296
94-177/1224
2131
CHECK MEMO

BANK OF NEVADA
A division of Western Alliance Bank,
Member FDIC.

11/27/2017

PAY TO THE ORDER OF McDonald Carano

$ **10,000.00

Ten Thousand and 00/100********** DOLLARS

McDonald Carano
George Ogilvie, Esq.
2300 W Sahara Ave #1200
Las Vegas, NV 89102

MEMO Retainer for Edgeworth

AUTHORIZED SIGNATURE

⑈023296⑈ ⑆122401778⑆ 02200196 14⑈

McDONALD CARANO

FEDERAL TAX ID 88-0074283

Edgeworth Family Trust/ American Grating
c/o Simon Law
Attn: Daniel S. Simon, Esq.
810 South Casino Center Boulevard
Las Vegas, NV 89101

Invoice No. 12362930
January 12, 2018

FOR PROFESSIONAL SERVICES RENDERED through December 31, 2017:

Re: Client.Matter: 19412 - 1
EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC V. LANGE PLUMBING, ET AL.

Current Fees		$ 5,062.50
Current Disbursements		$ .00
TOTAL THIS INVOICE		**$ 5,062.50**
Trust Funds Applied		$ -5,062.50
BALANCE DUE THIS INVOICE		**$ .00**
Trust Balance	$ 4,937.50	

Invoice No. 12362930
January 12, 2018

Re: Client.Matter: 19412 - 1
EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC V. LANGE PLUMBING, ET AL.

PROFESSIONAL SERVICES

Date	Atty	Description of Services	Hours
11/14/17	GFO	Exchange emails with Dan Simon	.20
11/25/17	GFO	Review emails, briefs and case law from Dan Simon; Evaluate client's position	4.40
11/28/17	GFO	Finish reviewing materials; Evaluate client's position; Prepare and send evaluation to Dan Simon	3.50

Current Fees $ 5,062.50

SUMMARY OF PROFESSIONAL SERVICES

Timekeeper	Title	Rate	Hours	Amount	N/C $
George F. Ogilvie	Partner	625.00	8.10	5,062.50	.00
Total			**8.10**	**$ 5,062.50**	**$ .00**

TOTAL THIS INVOICE **$ 5,062.50**

Trust Funds Applied $ -5,062.50

BALANCE DUE THIS INVOICE **$ .00**

McDONALD CARANO

FEDERAL TAX ID 88-0074283

REMITTANCE PAGE

Edgeworth Family Trust/ American Grating
c/o Simon Law
Attn: Daniel S. Simon, Esq.
810 South Casino Center Boulevard
Las Vegas, NV 89101

Invoice No. 12362930
January 12, 2018

FOR PROFESSIONAL SERVICES RENDERED through December 31, 2017:

Re: Client.Matter: 19412 - 1
EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC V. LANGE PLUMBING, ET AL.

BALANCE DUE THIS INVOICE **$ .00**

Payment Is Due Upon Receipt. We Prefer To Avoid the Accrual of Interest: However, the Rate of 1.50% Will Be Charged Monthly, Compounded, on Any Balance After 30 Days. Thank You.

To Ensure Proper Credit Refer to Matter No. 19412 - 1
Please return this copy with your payment to:
McDonald Carano LLP
P.O. Box 2670
Reno, Nevada 89505

Wire Transfer Instructions:

Nevada State Bank
1 West Liberty Street
Reno, Nevada 89501
McDonald Carano LLP
Account No. 0542004190
Routing No. 122400779
Swift Code No. ZFNBUS55

To Pay by Credit Card:

___ Visa ___ Mastercard ___ American Express
Account Number: _____
Expiration Date: ___/___
CVV Security Code: _____
Amount $_____
Name on Account: _____
_____

EXHIBIT 22

DECLARATION AND EXPERT REPORT OF DAVID A. CLARK

This Report sets forth my expert opinion on issues in the above-referenced matter involving Nevada law and the Nevada Rules of Professional Conduct[1] as are intended within the meaning of NRS 50.275, *et seq.* I was retained by Defendant, Daniel S. Simon, in the above litigation. The following summary is based on my review of materials provided to me, case law, and secondary sources cited below which I have reviewed.

I have personal knowledge of the facts set forth below based on my review of materials referenced below. I am competent to testify as to all the opinions expressed below. I have been a practicing attorney in California (inactive) and Nevada since 1990. For 15 years I was a prosecutor with the Office of Bar Counsel, State Bar of Nevada, culminating in five years as Bar Counsel. I left the State Bar in July 2015 and reentered private practice. I have testified once before in deposition and at trial as a designated expert in a civil case. I was also retained and produced a report in another civil case. My professional background is attached as Exhibit 1.

SCOPE OF REPRESENTATION.

I was retained to render an opinion regarding the professional conduct of attorney Daniel S. Simon, arising out of his asserting an attorney's lien and the handling of settlement funds in his representation of Plaintiffs in *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C.

SUMMARY OPINION.

It is my opinion to a reasonable degree of probability that Mr. Simon's conduct is lawful, ethical and does not constitute a breach of contract or conversion as those claims are pled in *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018, in the Eighth Judicial District Court.

BACKGROUND FACTS.

In May 2016, Mr. Simon agreed to assist Plaintiffs in efforts to recover for damages resulting from flooding to Plaintiffs' home. Eventually, Mr. Simon filed suit in June 2016. The case was styled *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C and was litigated in the Eighth Judicial District Court, Clark County, Nevada.

As alleged in the Complaint (*Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018), the parties initially agreed that Mr. Simon would charge $550.00 per hour for the representation. There was no written fee agreement. Complaint, ¶ 9. Toward the end of discovery, and on the eve of trial, the matter settled for $6 million, an amount characterized in the Complaint as having "blossomed from one of mere property damage to one of significant and additional value." Complaint, ¶ 12.

On or about November 27, 2017, Mr. Simon sent a letter to Plaintiffs, setting forth

---

[1] The Nevada Rules of Professional Conduct ("RPC") did not enact the preamble and comments to the ABA Model Rules of Professional Conduct. However, Rule 1.0A provides in part that preamble and comments to the ABA Model Rules of Professional Conduct may be consulted for guidance in interpreting and applying the NRPC, unless there is a conflict between the Nevada Rules and the preamble or comments.

additional fees in an amount in excess of $1 million. Complaint, ¶ 13. Thereafter, Mr. Simon was notified that the clients had retained Robert Vannah to represent them, as well. On December 18, 2017, Mr. Simon received two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon."

That same morning, Mr. Simon immediately called and then sent an email to the clients' counsel requesting that the clients endorse the checks so they could be deposited into Mr. Simon's trust account. According to the email thread, in a follow up telephone call between Mr. Simon and Mr. Greene, Mr. Greene informed that the clients were unavailable to sign the checks until after the New Year. Mr. Simon informed Mr. Greene that he was available the rest of the week but was leaving town Friday, December 22, 2017, for a family vacation and not returning until the New Year.

In a reply email, Mr. Greene stated that he would "be in touch regarding when the checks can be endorsed." Mr. Greene acknowledged that Mr. Simon mentioned a dispute regarding the fee and requested that Mr. Simon provide the exact amount to be kept in the trust account until the dispute is resolved. Mr. Greene asked that this information be provided "either directly or indirectly" through Mr. Simon's counsel.

On December 19, 2017, Mr. Simon's counsel, James Christensen, sent an email indicating that Mr. Simon was working on the final bill but that the process might take a week or two, depending on holiday staffing. However, since the clients were unavailable until after the New Year, this discussion was likely moot.

On Saturday evening, December 23, 2017, Plaintiff's counsel, Robert Vannah, replied by email asking if the parties would agree to placing the settlement monies into an escrow account instead of Mr. Simon's attorney trust account. Mr. Vannah indicated that he needed to know "right after Christmas." Mr. Christensen replied on December 26, 2017, reiterating that Mr. Simon is out of town through the New Year and was informed the clients are, as well.

Mr. Vannah then replied the same day indicating that the clients are available before the end of the year, and that they will not sign the checks to be deposited into Mr. Simon's trust account. Mr. Vannah again suggested an interest-bearing escrow account. By letter dated December 27, 2017, Mr. Christensen replied in detail to Mr. Vannah's email, discussing problems with using an escrow account as opposed to an attorney's trust account.

I am informed that following the email and letter exchange, Mr. Simon provided an amended attorneys' lien dated January 2, 2018, for a net sum of $1,977, 843.80 as the reasonable value for his services. Thereafter, the parties opened a joint trust account for the benefit of the clients on January 8, 2018. The clients endorsed the settlement checks for deposit. Due to the size of the checks, there was a hold of 7 business days, resulting the monies being available around January 18, 2018.

On January 4, 2018, Plaintiffs filed a Complaint in District Court, styled *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C (Complaint). The Complaint asserts claims for relief against Mr. Simon: breach of contract, declaratory relief, and conversion.

The breach of contract claim states:

> 25. SIMON's demand for additional compensation other that what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds

is a material breach of the CONTRACT.

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

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

As to the third claim for relief for conversion, the Complaint states:

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

ANALYSIS AND OPINIONS.

Breach of Contract

All attorneys' fees that are contracted for, charged, and collected, must be reasonable.[2] An attorney may also face disciplinary investigation and sanction pursuant to the inherent authority of the courts for violating RPC 1.5 (Fees).[3] As such, all attorney fees and fee agreements are subject to judicial review.

Nevada law grants to an attorney a lien for the attorney's fees even without a fee agreement,

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

NRS 18.015(2) (emphasis added).[4] This statute provides for the mechanism to perfect the lien and for the court to adjudicate the rights and amount of the fee. The Rules of Professional Conduct direct the ethical attorney to comply with such procedures. "Law may prescribe a procedure for determining a lawyer's fee. . . . The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure." Model R. Prof. Conduct 1.5 cmt 9 (ABA 2015).

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[2] RPC 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."); *see, also* Restatement (Third) of the Law Governing Lawyers §34 (2000) ("a lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law.").

[3] SCR 99, 101; *see, also* Restatement (Third) of the Law Governing Lawyers §42, cmt b(*v*) (2000) ("A court in which a case is pending may, in its discretion, resolved disputes between a lawyer and client concerning fees for services in that case. . . . Ancillary jurisdiction derives historically from the authority of the courts to regulate lawyers who appear before them.").

[4] *See, also* Restatement (Third) of the Law Governing Lawyers §39 (2000) ("If a client and a lawyer have not made a valid contract providing for another measure of compensation, a client owes a lawyer who has performed legal services for the client the fair value of the lawyer's services").

In this instance, the fact that Mr. Simon has availed himself of his statutory lien right under Nevada law, a lien that attaches to every attorney-client relationship, regardless of agreement, cannot be a breach of contract. Mr. Simon is simply submitting his claim for services to judicial review, as the law not only allows, but requires.

In Nevada, "the plaintiff in a breach of contract action [must] show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach."[5] Here, there is neither breach nor damages arising from Mr. Simon's actions. The parties cannot contract for fees beyond the review of the courts. Mr. Simon cannot even contract for an unreasonable fee, much less charge or collect one. Likewise, Plaintiff has an obligation to compensate Mr. Simon the fair value of his services.

By operation of law, NRS 18.015, and this court's review, is an inherent term of the attorney-client fee arrangement, both with and without an express agreement. And, asserting his rights under the law, as encouraged by the Rules of Professional Conduct ("should comply with the prescribed procedure") does not constitute a breach of contract. Moreover, as discussed below, under these facts, Plaintiffs cannot establish damages and the cause of action fails.

RPC 1.15 requires that the undisputed sum should be promptly disbursed. Based upon the facts as I know them, Mr. Simon has promptly secured the money in a trust account and promptly conveyed the amount of his claimed additional compensation on January 2, 2018, which is prior to the filing of the Complaint and prior to the funds becoming available for disbursement. Thus, Mr. Simon has complied with the requirements of RPC 1.15 and his actions do not support a claimed breach of contract on the alleged basis of delay in paragraphs 26 and 27 of the Complaint.

Conversion

RPC 1.15 (Safekeeping Property) addresses a lawyer's duties when safekeeping property for clients or third-parties. It provides in pertinent part:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.
>
> . . . . .
>
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

---

[5] *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919–20 (D.Nev.2006) (*citing Richardson v. Jones*, 1 Nev. 405, 408 (1865)).

Normally, client settlement funds are placed in the attorney's IOLTA trust account (Interest On Lawyer's Trust Account) with the interest payable to the Nevada Bar Foundation to fund legal services. Supreme Court Rules (SCR) 216-221. However, these accounts are for "clients' funds which are nominal in amount or to be held for a short period of time." SCR 78.5(9).

In our case, the settlement amount is substantial and the parties have agreed to place the sums into a separate trust account with interest accruing to the clients. This action comports entirely with Supreme Court Rules:

> **SCR 219. Availability of earnings to client.** Upon request of a client, when economically feasible, earnings shall be made available to the client on deposited trust funds which are neither nominal in amount nor to be held for a short period of time.
>
> **SCR 220. Availability of earnings to attorney.** No earnings from clients' funds may be made available to a member of the state bar or the member's law firm except as disbursed through the designated Bar Foundation for services rendered.

Therefore, Plaintiff's settlement monies are both segregated from Mr. Simon's own funds in a designated trust account, interest accruing to the client, and, by Supreme Court rule, Mr. Simon cannot obtain any earnings.

Conversion has been defined as "'a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.'" [6]

At the time of the filing of the complaint, Mr. Simon had already provided the clients with the amount of his claimed charging lien. Further, at the time of the filing of the Complaint, the clients had not endorsed nor deposited the settlement checks. Even if the funds had cleared the account when the complaint was filed, the monies are still segregated from Mr. Simon's ownership and benefit. He has followed the established rules of the Supreme Court governing the safekeeping of such funds when there is a dispute regarding possession. There is neither conversion of these funds (either in principal or interest) nor damages to Plaintiffs.

Based upon the foregoing, it is my opinion that Mr. Simon's conduct in this matter fails to constitute a breach of contract or conversion of property belonging to Plaintiffs.

AMENDMENT AND SUPPLEMENTATION.

Each of the opinions set forth herein is based upon my personal review and analysis. This report is based on information provided to me in connection with the underlying case as reported herein. Discovery is on-going. I reserve the right to amend or supplement my opinions if further compelling information is provided to me to clarify or modify the factual basis of my opinions.

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[6] *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 542–43 (Nev. 2008).

INFORMATION CONSIDERED IN REVIEWING UNDERLYING FACTS AND IN RENDERING OPINIONS.

In reviewing this matter, and rendering these opinions, I relied on and/or reviewed the authorities cited throughout this report and the following materials:

Doc No.	Document Description	Date
1.	Complaint – (A-18-767242-C) *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*	1/4/2018
2.	Letter from James R. Christensen to Robert D. Vannah, consisting of four (4) pages and referenced Exhibits 1 and 2, consisting of two (2) and four (4) pages, respectively.	12/27/2017
3.	Exhibit 1 to letter - Copies of two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon	12/18/2017
4.	Exhibit 2 to letter - Email thread between and among Daniel Simon, John Greene, James R. Christensen, and Robert D. Vannah, consisting of four (4) pages	12/18/201– 12/26/2017
5.	Notice of Amended Attorneys Lien, filed and served in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	1/2/2018
6.	Deposition Transcript of Brian J. Edgeworth, in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	9/29/2017

BIOGRAPHICAL SUMMARY/QUALIFICATIONS.

Please see the attached curriculum vitae as Exhibit 1. Except as noted, I have no other publications within the past ten years.

OTHER CASES.

1. I was engaged and testified as an expert in:

   Renown Health, et al. v. Holland & Hart, Anderson
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016

   Deposition Testimony August 2016; Trial testimony October 2016

2. I was engaged and prepared a report in:

   Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.
   Case No. A-16-737889-C

Report December 2016.

COMPENSATION.

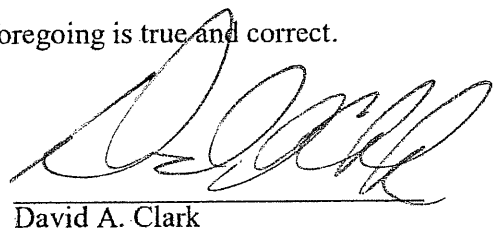
For this report, I charged an hourly rate is $350.00.

DECLARATION

I am over the age of 18 and competent to testify to the opinions stated herein. I have personal knowledge of the facts herein based on my review of the materials referenced herein. I am competent to testify to my opinions expressed in this Declaration.

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

Date: January 18, 2018



David A. Clark

David A. Clark

Lipson | Neilson
9900 Covington Cove Drive, Suite 120
Las Vegas, Nevada 89144-7052 (702) 382-1500 – office
(702) 382-1512 – fax
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Biographical Summary

For 15 years, Mr. Clark was a prosecutor in the Office of Bar Counsel, culminating in five years as Bar Counsel. Mr. Clark prosecuted personally more than a thousand attorney grievances from investigation through trial and appeal, along with direct petitions to the Supreme Court for emergency suspensions and reciprocal discipline. Two of his cases resulted in reported decisions, *In re Discipline of Droz*, 123 Nev. 163, 160 P.3d 881 (2007) and *In re Discipline of Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008).

Mr. Clark established the training regimen and content for members of the Disciplinary Boards, which hears discipline prosecutions. He proposed and obtained numerous rule changes to Nevada Rules of Professional Conduct and the Supreme Court Rules governing attorney discipline. He drafted the first-ever Discipline Rules of Procedure that were adopted by a task force and the Board of Governors in July 2014.

Mr. Clark has presented countless CLE-accredited seminars on all aspects of attorney ethics for the State Bar of Nevada, the Clark County Bar Assn., the National Organization of Bar Counsel (NOBC), the National Assn. of Bar Executives (NABE), and the Association of Professional Responsibility Lawyers (APRL). He has spoken on ethics and attorney discipline before chapters of paralegal groups and SIU fraud investigators, as well as in-house for the Nevada Attorney General's office and the Clark County District Attorney.

Mr. Clark received his Juris Doctor from Loyola Law School of Los Angeles following a B.S. in Political Science from Claremont McKenna College. He is admitted in Nevada and California (inactive), the District of Nevada, the Central District of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

Work Experience

August 2015 - present	**Lipson | Neilson** 9900 Covington Cove Drive, Suite 120 Las Vegas, Nevada 89144-7052 *Partner*

November 2000 – July, 2015	**Office of Bar Counsel** **State Bar of Nevada**
January 2011 - July 2015	Bar Counsel
May 2007 - December 2010	Deputy Bar Counsel/ General Counsel to Board of Governors
April 2010 - September 2010	Acting Director of Admissions
January 2007 - May 2007	Acting Bar Counsel
November 2000 - December 2006	Assistant Bar Counsel
May 1997 – October 2000	**Stephenson & Dickinson** *Litigation Associate Attorney*
November 1996 - May 1997	**Earley & Dickinson** *Litigation Associate Attorney*
April 1995 - August 1996	**Thorndal, Backus, Armstrong & Balkenbush** *Litigation Associate Attorney*
May 1992 - March 1995	**Brown & Brown** *Associate Attorney*
September 1990 -	**Gold, Marks, Ring & Pepper** (California) March 1992 *Litigation Associate Attorney*

Education

1987 - 1990	Loyola of Los Angeles Law School *Juris Doctor*
1980 – 1985	Claremont McKenna College (CA) *B.S., Political Science*

Expert Retention and Testimony

1. *Renown Health, et al. v. Holland & Hart, Anderson*
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016
   Deposition Testimony August 2016; Trial testimony October 2016

2. *Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.*
   Case No. A-16-737889-C

   Report December 2016.

Reported Decisions

In re Discipline of Droz, 123 Nev. 163, 160 P.3d 881 (2007) (Authority of Supreme Court to discipline non-Nevada licensed attorney).

In re Discipline of Lerner, 124 Nev. 1232, 197 P.3d 1067 (2008) (Only third Nevada case defining practice of law).

Recent Continuing Legal Education Taught

Office of Bar Counsel 2011 – 2015	Training of New Discipline Board members (twice yearly)
2011 SBN Family Law Conf. March 2011	Ethics and Malpractice
2011 State Bar Annual Meeting June 2011	Breach or No Breach: Questions in Ethics
Nevada Paralegal Assn./SBN April 2012	Crossing the UPL Line: What Attorneys Should Not Delegate to Assistants
2012 State Bar Annual Meeting July 2012	Lawyers and Loan Modifications: Perfect Storm or Perfect Solution
State Bar Ethics Year in Review December 2012	How Not to Leave a Firm
State Bar of Nevada June 2013	Ethics in Discovery
2013 State Bar Annual Meeting July 2013	Practice like an Attorney, not a Respondent

	Ethical Issues in Law Practice Promotion (Advertising)
	Going Solo: Building and Marketing Your Firm
Nevada Attorney General December 2013	Civility and Professionalism
Clark County Bar Assn. June 2014	Legal Ethics: Current Trends
UNLV Boyd School of Law July 2014	Discipline Process
2014 NV Prosecutors Conf. September 2014	Unauthorized Practice of Law
State Bar of Nevada November 2014	Let's Be Blunt: Ethics of Medical Marijuana
State Bar Ethics Year in Review December 2014	Ethics, civility, discipline process
LV Valley Paralegal Assn. Annual Meeting, April 2015	Paralegal Ethics
UNLV Boyd SOL May 2015	Navigating the Potholes: Attorney Ethics of Medical Marijuana
Assn. of Professional Responsibility Lawyers (APRL) February 2016 Mid-Year Mtg.	Patently different? Duty of Disclosure under USPTO and State Law (Panel member)
The Seminar Group July 2017	Medical & Recreational Marijuana in Nevada
State Bar of Nevada SMOLO Institute October 2017	Attorney-Client Confidentiality

Press Appearances

May 8, 2014 Channel 3 (Las Vegas)	Ralston Report. Ethics of attorneys owning medical marijuana businesses.

Practice Areas

Insurance and Commercial Litigation, Legal Malpractice, Ethics, Discipline Defense.

Exhibit 23

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

TELEPHONE (702)364-1650 *FACSIMILE (702)364-1655*

CURRICULUM VITAE

NAME: Daniel S. Simon

OFFICE ADDRESS: 810 S. Casino Center Blvd.
Las Vegas, Nevada 89101

OFFICE PHONE: (702) 364-1650

OFFICE FAX: (702) 364-1655

SCHOLASTIC BACKGROUND:

UNDERGRADUATE: Arizona State University
(Business and Marketing Degree -1988)

LAW SCHOOL: Whittier College School of law
(Juris Doctor Degree - 1992)

OTHER: University of San Diego School of Law
Institute On International And
Comparative Law, Oxford, England

LEGAL EXPERIENCE: May 1, 1995 - Present
Law Office of Daniel S. Simon

Specializing in all personal injury matters, including motor vehicle accidents, workers compensation, premises liability, products liability, medical malpractice, and catastrophic injuries.

October 1992 through April, 1995
Greenman, Goldberg, Raby & Martinez,
Associate

Specializing in all personal injury matters, including motor vehicle accidents, workers compensation, premises liability, products liability, medical malpractice, and catastrophic injuries.

January, 1992 through April, 1992
Beverly Hills Bar Association,
Lawyer Referral Service

June, 1991 through August, 1991
U.S. Attorney, Organized Crime
Division, Civil Division

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS:

Clark County Bar Association,
American Bar Association,
Nevada American Inn of Court
Nevada Justice Association
State Bar of Nevada
Citizens for Justice
Super Lawyers 2014

Personal Profile

I am born and raised in Las Vegas.. My parents have been involved in the community for 50 years as business and property owners. I have operated my own law practice for 26 years.

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
601 S. 6th Street
Las Vegas, Nevada 89101
(702) 272-0406
(702) 272-0415 fax
jim@christensenlaw.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 I through 5 and ROE entities 6 through 10; Defendants.	CASE NO.: A738444 DEPT NO.: X **DECLARATION OF WILL KEMP, ESQ.**

1. I have been a licensed attorney in the State of Nevada since September, 1978. I have litigated high profile products liability cases in Nevada and around the country. I have presented arguments before all the courts in the state of Nevada, as well as the First, Third and Ninth Circuit Court of Appeals and the United States Supreme Court. I have been an AV Preeminent Lawyer by Martindale Hubbell since the 1980's, which is the highest AV rating for competency and ethics. I have also been named as a Super Lawyer, named in the Mountain States Top 10, selected in the Legal Elite of Nevada Business Magazine and selected as Nevada Trial Lawyer of the year in 2012.

I have served on multiple steering committees, including but not limited to Plaintiffs' Legal Committee, MGM Multi-District Fire Litigation, 1980-1987, (the seminal mass tort case in Nevada) Plaintiffs' Steering Committee and Plaintiffs' Trial Counsel, San Juan Dupont Plaza Multi-District Fire Litigation, 1987-98, Plaintiffs' Steering Committee, Peachtree 25th Fire Litigation, 1991-94, Plaintiffs' Steering Committee and Executive Committee in Castano Tobacco Litigation, 1993-2010, Orthopedic Bone Screw Products Liability Litigation, 1994-1998, Plaintiff's Management Committee, Fen/Phen

Diet Drug Litigation, 1998-2003 (the largest pharmaceutical settlement in history--$25 Billion plus), Plaintiffs' Steering Committee, Baycol Products Liability Litigation, 2002-07, Minnesota Syngenta Litigation State Court Committee (2016-____) ($1.3 Billion settlement pending). I was the Liaison Counsel for Plaintiffs and lead attorney on the product liability committee of Plaintiffs' Legal Committee in the MGM Fire Litigation. I have tried numerous complex product liability cases, including the San Juan Dupont Plaza Multi-District Fire Litigation (15 ½ month product liability case against 200 Defendants resulting in plaintiffs' verdict). I was also lead counsel on the largest product liability verdict in the history of Nevada: $505 Million verdict in Chanin v. Teva in 2010 (defective propofol packaging theory).

2. In connection with many of the foregoing cases, I have presented the work effort of our firm to multiple state and federal courts in fee presentations. In addition, I was on the Fee Committee in the Castano Tobacco Litigation and decided on the allocation of a $1.3 Billion fee among 57 law firms based upon their relative efforts in that landmark litigation.

3. In my practice, I have represented both plaintiffs and defendants in all types of litigation, including negligence cases and product liability. I am personally familiar with the efforts required to both prosecute and defend serious cases in general, including hotly contested product liability litigation against a worldwide manufacturer.

4. I have been retained by the Law Office of Daniel Simon (hereinafter LODS) to review the case of Edgeworth Family Trust and American Grating v. Lange Plumbing and the Viking entities, hereinafter "The Edgeworth Matter." In preparing my opinion, I have reviewed the register of actions; the e-service filings, pleadings, motions, the relevant court orders; voluminous e-mails, the list of depositions taken, notices of depositions, extensions of discovery in other LODS cases and expert reports. I have a qualified understanding of the work performed on this case and the results achieved.

5. I am also aware of the billing statements produced to the client in this case and the payments that were made for these billing statements.

6. Before the mediation that occurred on November 10, 2017, LODS filed numerous motions that effectively forced the Viking entities to settle this matter prior to any rulings on the pending motions. At the time of mediation, the Trial Judge, the Honorable Tierra Jones had already set

an evidentiary hearing to occur in December 2017 in order to determine whether Viking's answer should be stricken for discovery abuses or other sanctions. Notably, the motion for to Strike Answer was filed on September 29, 2017, after Mr. Edgeworth commented in the August 22, 2017 email set forth below that no one expected "this case would meet the hurdle of punitives" and proposed a hybrid "that incents" LODS to vigorously pursue punitives. The Trial was set for February 5, 2018. The Motion to Strike Answer was obviously one of the key threats that coerced the settlement.

7. At the same time, LODS also had pending motions for summary judgment against Lange Plumbing. Lange Plumbing had cross-claims against the Viking entities.

8. The case was worked up with many experts consisting of several engineering experts, an appraiser to establish damages, litigation loan experts to justify non-recourse interest on loans and a fraud expert. The defense hired many experts that needed to be rebutted.

9. The document production was voluminous and consisted of more that 100,000 pages, there was substantial motion work and the emails with the client show continuous communication to an extent that is relatively unusual. This close communication with the client on a daily (if not more) basis obviously took much attention from LODS but appears to have been productive in multiple ways.

10. I have reviewed the email dated November 21, 2017, that Mr. Edgeworth sent to Mr. Simon setting forth damage elements. The amounts discussed in that email that I would consider to be "hard" damages were $512,636 paid for repairs to the damaged house, $24,117 (repairs owed) and $194,489 (still to repair). This totals $731,242 of "hard" damages. The other damages items such as "stigma" for $1,520,000 and the interest of $285,104 are what I would consider "soft" damages. In evaluating the value of a case, many attorneys give more credence to "hard" damages.

11. I have also reviewed the email dated August 22, 2017 from Mr. Edgeworth to Mr Simon wherein Mr. Edgeworth states as follows:

> **We never really had a structured discussion about how this might be done.** I am more that happy to keep paying hourly but **if we are going for punitive we should probably explore a hybrid** of hourly on the claim and then **some other structure that incents both of us** to win an[d] go after the appeal that these scumbags will file etc.
>
> **Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.**
>
> I could also swing hourly for the whole case (unless I am off what this is going to cost).

> I would likely borrow another $450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
>
> I doubt we will get Kinsale [the insurer for Lange Plumbing] to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Bold added) The August 22, 2017 email is significant for several reasons. First, as discussed in more detail, the settlement had to have included at least $3.3 Million of punitive damages and more likely $4 or $5 Million of punitive damages because the $6.1 Million settlement is $5,368,580 above the "hard" damages of $731,420.00 and $2,272,855 above the total damages of $3,827,147 (as set forth in the November 21, 2017 email). It should be noted that the $3,827,147 figure includes $1,520,000 for "stigma" to the house damages (of which there is not strong legal support). Under any view, the settlement included millions of dollars of punitive damages. It is unprecedented to get that much in punitive damages in a case of this nature where only property damage is involved. Indeed, some courts would hold that a 5 to 1 ratio ($5 Million punitive to $1M compensatory) is unconstitutionally excessive.

12. The second reason that the August 22, 2017 email is significant is that, Mr. Edgeworth acknowledges that he does not believe that the parties have a fee agreement ("We never really had a structured discussion about how this might be done.") and then proposed "a hybrid" fee arrangement "if we are going for punitive." Not only did Mr. Edgewroth and LODS "go for punitive" after August 22, 2017, they got millions of dollars in punitives. Mr. Edgeworth also explains why a fee agreement to pursue the punitives could not be made earlier ("Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.") Given the volume of the emails between Mr. Edgeworth and LODS between this August 22, 2017 and the mediation, it appears that a herculean (and successful) effort was made to "go for punitive."

13. The third reason that the August 22, 2017 email is significant is that Mr. Edgeworth expresses the firm opinion therein that the only way to obtain satisfactory resolution of his claim is to succeed at trial and then succeed on appeal: "some other structure that incents both of us to win [at trial] and go after the appeal that these scumbag [Defendants] will file..." Mr. Edgeworth is obviously a very sophisticated client (based on a review of his emails to LODS) and his general

expectation that the usual course to an adequate recovery would be years of litigation and success at trial and appeal is consistent with what could typically occur. This will be referred to later as "Edgeworth's expected result."

14. I have been informed and believe that, at the mediation on November 10th, 2017, the parties could not reach a settlement. Viking offered $2.5 Million. The Mediator, Floyd Hale, requested to send a mediator proposal for $5 million. LODS only agreed to a mediator proposal of $6 million. Subsequently, on November 15, 2017, Viking accepted the $6 million proposal, subject to a determination of a good faith settlement extinguishing the claims Lange Plumbing has against Viking and a confidentiality provision. Later, LODS was able to negotiate better terms, including a mutual release and omitting the confidentiality provision.

15. I am familiar with NRPC 1.5, and the Brunzell Factors that control Nevada law. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 455 P.2d 31, 33 (Nev. 1969) ("From a study of the authorities it would appear such factors may be classified under four general headings (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.") I am also familiar with the detailed analysis of the Lodestar approach for determining a reasonable attorney fee in the absence of a contract with the client. I have also argued fee dispute issues at the First Circuit Court of Appeals. See In re Thirteen Appeals Arising Out of the San Juan Dupont Hotel Fire Litigation, 56 F.3d 295, 307 (1st Cir. 1995) (approving the percentage of fund method for mass tort cases instead of the lodestar technique); In re Nineteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation (1st Cir. 1992).

16. An attorney who does not have a signed contract with a client is entitled to receive a reasonable attorneys fee for the value of his/her services. There are many factors to consider in determining the value of an attorneys services. To determine reasonableness, Nevada state courts rely heavily on the "Brunzell factors." The state court decisions applying the Brunzell factors suggest that

the analysis focuses primarily on the quantity, quality of work and advocacy rather than the hourly rate. NRCP 1.5 lists eight non-exclusive factors to consider. One of the primary factors is the fees "customarily charged in the locality for similar legal services."

17. The Edgeworth matter involved one house that was heavily damaged by flooding due to a defective sprinkler. This type of case, i.e., one client with property damage, is not attractive to most experienced product liability litigators for several reasons. First, the amount of energy involved in litigating a complex product case usually requires multiple clients (or at a minimum serious personal injury) to justify the time expended to obtain an award. Second, product liability is a legal concept that is not familiar to many jurors (and even some judges). This creates an element of uncertainty in predicting liability outcomes that is greater than most garden variety negligence cases. Third, property damage typically does not invoke sympathy with jurors needed to drive a punitive award. Fourth, no experienced litigator will take a case wherein punitive damages are the primary damages element because punitive damages are rarely awarded and paid even less often.

18. For these reasons, despite expertise in both product liability and construction defect litigation, our office probably would have not have taken this case for the reasons outlined above. If we had taken the case, the minimum contingent fee would have been 40% and more likely 45%. A settlement of $6.1 Million in a complex product liability case with no personal injury or death and only $731,242 in "hard costs" is truly remarkable.

19. When reviewing the Edgeworth matter to determine a reasonable fee, the analysis must start with the fourth Brunzell factor; the result achieved. As set forth in Paragraph 13 above, Mr. Edgeworth, a sophisticated client, expressed the opinion on August 2, 2017, that it would take a trial and appeal to get "Edgeworth's expected result." Given how involved Mr. Edgeworth was with the case (including minute details) and that he is a very sophisticated client, his belief in this regard would normally be correct. Indeed, most lawyers would agree that it would take years to even get the "hard costs." But instead of getting "Edgeworth's expected result" after years of litigation, LODS got a truly extraordinary result in less than 3 months after the date of the August 2, 2017 email. LODS secured a six million, one hundred thousand dollar ($6,100,000) settlement for a complex products liability case where the "hard" damages were only $791,242.00. The total claimed past "hard" and "soft" damages

involved, excluding attorney's fees, experts fees and costs were approximately $1.5 million dollars. Getting millions of dollars of punitives in a settlement in a case of this nature is remarkable. For these reasons, the fourth Brunzell factor (result) overwhelmingly favors a large fee.

20. The quality and quantity of the work (the third Brunzell factors) were exceptional for a products liability case against a worldwide manufacturer that is very experienced in litigating cases. LODS had to advocate against several highly experienced law firms for Viking, including local and out of state counsel. In this regard, the Motion to Strike Answer filed on September 29, 2017 is of utmost significance.

21. LODS retained multiple experts to secure the necessary opinions to prove the case. It also creatively advocated to pursue unique damages claims (e.g., the "stigma" damages) and to prosecute a fraud claim and file many motions that most lawyers would not have done. LODS also secured rulings that most firms handling this case would not have achieved. The continued aggressive representation prosecuting the case was a substantial factor in achieving the exceptional results. This (especially the Motion to Strike Answer and impending evidentiary hearing) is the second Brunzell factor.

22. I am familiar with the size of the LODS firm and the amount of work performed would have significantly impaired LODS from simultaneously working on other cases. Our firm has over a dozen litigators and a long track record of successful litigation and we often find it difficult to support a "hot" products case (i.e., one requiring the full time attention of several lawyers). It is very impressive that a small firm made the sacrifice to do so.

23. LODS does not represent clients on an hourly basis and the fee customarily charged in the locality for similar legal services should be substantial in light of the work actually performed, the LODS lost opportunities to work on other cases and the ultimate amazing result achieved. Absent a contract, LODS is entitled to a reasonable fee customarily charged in the community based on the services performed.

24. When evaluating the novelty and difficulty of the questions presented; the adversarial nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved

given the total amount of the settlement compared to the "hard" damages involved, the reasonable value of the services performed in the Edgeworth matter by LODS, in my opinion, would be in the sum of $2,440,000. This evaluation is reasonable under the Brunzell factors.

25. I make this Declaration under penalty of perjury.

Dated this 31st day of January, 2018.

Will Kemp, Esq.

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Kostadinka Boneva
Notary Public in and for said County and State

KOSTADINKA BONEVA
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 13-11787-1
My Appt. Expires Oct. 11, 2021

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA
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EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X **PLAINTIFFS OPPOSITIONS TO DEFENDANT'S MOTIONS TO CONSOLIDATE AND TO ADJUDICATE ATTORNEY LIEN**
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, d/b/a SIMON LAW; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendant.	CASE NO.: A-18-767242-C DEPT. NO.: XXIX Date of Hearing: February 6, 2018 Time of Hearing: 9:30 a.m.

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

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

DATED this 2 day of February, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ.

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I.

MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PLAINTIFFS right to a jury trial and to present their claims against SIMON, as set forth in their COMPLAINT, is the fair and reasonable remedy here. PLAINTIFFS claims have merit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III.

CONCLUSION

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

DATED this 2 day of February, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ.

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CERTIFICATE OF SERVICE

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

Electronically:

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

Traditional Manner:
None

DATED this 2 day of February, 2018.

An employee of the Law Office of
Vannah & Vannah

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Exhibit 1

Exhibit 1

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Kostadinka Boneva
Notary Public in and for said County and State

KOSTADINKA BONEVA
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 13-11787-1
My Appt. Expires Oct. 11, 2021

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KOSTADINKA BONEVA
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 13-11787-1
My Appt. Expires Oct. 11, 2021

Exhibit 2

Exhibit 2

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED CLAIMS.

Case No. A738444

DEPOSITION OF BRIAN J. EDGEWORTH

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

Taken on Friday, September 29, 2017

By a Certified Court Reporter

At 9:35 a.m.

At 1160 North Town Center Drive, Suite 130

Las Vegas, Nevada

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

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

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

A. No.

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

A. No.

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

A. Yes, I could.

Q. You could?

A. Yes.

Q. Okay.

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

MS. DALACAS: The reconciliations?

MR. SIMON: No.

MS. DALACAS: The attorney --

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

MS. DALACAS: I'm --

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

MS. DALACAS: I understand that.

BY MS. DALACAS:

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

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

Q. American Grating owes the attorneys' fees?

A. Correct.

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

A. Yes, they would owe that.

Q. Okay. And why is that?

A. Because obviously it's their case.

Q. American Grating's case?

A. Yes.

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

Exhibit 3

Exhibit 3

Informational Brochure

How Lawyers Charge

HOW LAWYERS CHARGE

Many people who need legal help are reluctant to see a lawyer because they are afraid that legal services are expensive. Actually, in many cases, fees are moderate in comparison with the benefits gained or the losses avoided. It often turns out to be more expensive in the long run not to see a lawyer.

$ How can I find out what it will cost for the legal services I need?

When you first contact a lawyer's office to make an appointment, ask what the lawyer charges for an initial consultation. When you consult the lawyer in person, ask at the outset about fees. It is in the best interests of both the lawyer and the client to have a clear understanding of the fee for the lawyer's services in advance so there will be no misunderstanding later.

$ How do lawyers charge?

There are three basic types of fees for legal services. In some cases, particularly civil litigation and contested domestic matters, the lawyer will charge an hourly fee. The lawyer will keep accurate time sheets describing the time spent on your case.

In certain other cases, lawyers charge a contingency fee, in which an agreement is made with the client in advance that the lawyer will get, as a fee, a percentage of the amount recovered after certain expenses are deducted. In this case, the lawyer is paid only if the client wins the case. In most cases, the client will be responsible for the costs regardless of the court decision. This is most commonly seen in personal injury cases.

Finally, there is a flat fee in which the lawyer has a set fee for the service to be provided, regardless of the time involved. Flat fees are commonly used in defense of criminal charges, some civil cases and routine matters such as uncontested domestic matters, and preparation of simple wills, deeds and other similar documents.

$ How does a lawyer set a fee?

No two situations are alike. A lawyer will consider many of the following factors in arriving at a fair fee:

- Time - A lawyer's main stock in trade is time and advice.
- Office overhead - When you hire a lawyer, you are hiring the lawyer's entire law office.
- Ability, skill and reputation - A lawyer often charges based upon his or her skill and reputation acquired in the professional community.
- The relationship between lawyer and client - In an on-going relationship, in which the client uses the lawyer's services regularly with a continual history of payment, the charge for a particular matter may be less than if the employment of the lawyer is on a one-time or casual basis.

Other issues may be considered in setting fees: novelty and difficulty of the problem; amount of responsibility assumed by the attorney; custom in the geographical area; or preclusion of other employment during a particular case.

$ Does any court set rules on legal fees?

Yes. Nevada Rule of Professional Conduct 1.5 defines the factors to be considered in determining the reasonableness of a lawyer's fees:

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

Over for more ➔

How Lawyers Charge - *(continued from other side)*

$ *Are there any restrictions on a contingency fee?*

Yes. A lawyer may not charge a contingency fee in a criminal case where the fee depends upon the outcome. Likewise, a lawyer may not charge a contingency fee in a contested domestic relations matter. Public policy dictates that a lawyer's fee not be dependent upon securing a divorce, or the amount of alimony or child support or property settlement ultimately awarded.

$ *Must the lawyer-client fee agreement be in writing?*

In Nevada, a contingent fee agreement must be in writing and signed by the client. Further, the contingent fee agreement must state the method by which the fee is to be determined, including the percentage of the recovery and whether expenses are to be deducted before or after the contingent fee is calculated, and whether the client is liable for expenses, regardless of the outcome. Ask your lawyer to explain what expenses will be charged and when the client costs are to be paid. Obtaining a written fee agreement in advance is in the best interests of the client, so that there will be a written record in the event that there is a dispute later about the lawyer/client relationship.

$ *What is a retainer?*

A retainer is the initial fee paid by the client to begin representation on a particular matter. The lawyer and client should have a firm understanding of exactly what is contemplated and covered by that initial retainer. Your lawyer is required to place these retainers in a special account called a trust account, against which the fees for your legal matter will be billed until it is completed. If the retainer is insufficient, the attorney may ask for additional funds to be used in the same manner. Likewise, unused funds at the end of the legal matter remain the property of the client and should be reimbursed to the client after all expenses are paid.

$ *What are "costs?"*

A lawyer must spend money to file papers with the court and to hire other persons such as court reporters or investigators. These expenses are knows as "costs" and are normally paid by the client in addition to the lawyer's fees. Costs are in addition to the attorney's bill for his or her time and effort.

$ *What is the State Bar's role in how lawyers charge?*

You should know that lawyers as a group are concerned that their clients are satisfied with their work, and with any fees charged for services rendered. Your attorney should discuss fees with you and respond to your reasonable questions on this subject during the course of your professional relationship.

$ *How do I find an attorney ?*

You can contact the State Bar of Nevada's ***Lawyer Referral & Information Service*** at **702-382-0504** (toll-free in Nevada at **1-800-789-5747**) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The State Bar's main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

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07/2011

This brochure is a publication of the
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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5 and ROE entities 6 through 10; Defendants.	Case No.: A738444 Dept. No.: 10 **REPLY IN SUPPORT OF MOTION TO ADJUDICATE ATTORNEY LIEN AND MOTION FOR CONSOLIDATION** Date of Hearing: 2.6.18 Time of Hearing: 9:30
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC Plaintiffs, vs. DANIEL S. SIMON d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	Case No.: A-18-767242-C Dept. No.: 26 Date of Hearing: N/A Time of Hearing: N/A

I. INTRODUCTION

Plaintiffs' opposition misses the point, and misstates the meaning of a basic contract law term. The fact that the client disputes the amount of the lien does not divest this Court of jurisdiction. This Court has jurisdiction to hear the motion for adjudication; and, the Opposition does not cite contrary authority.

As to the facts, the e-mails between Mr. Simon and Mr. Edgeworth contradict the story told in the Opposition. On May 27, 2016, Mr. Simon agreed to "send a few letters" in response to the stated desire of Mr. Edgeworth that he did "not want to waste your time". Exhibit A. There are no writings that support the story of the Opposition of contract formation in May of 2016; instead, the documents support the conclusion that Mr. Simon took the case without a formal agreement.

Likewise, the story of the Opposition that an express contract was reached on attorney fees is contradicted by Mr. Edgeworth's own words. On August 22, 2017, Mr. Edgeworth wrote in response to continued fee discussions:

"We never really had a structured discussion about how this might be done"

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And, in acknowledgment that the case was not handled on a strict hourly basis:

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

Exhibit B. Obviously, if the case was on strict hourly, the above statements would not have been made by Mr. Edgeworth, as he was already on the hook for the fee. Instead, Mr. Edgeworth's own words confirm that his friend was not fully billing the case to ease the strain on Mr. Edgeworth, and because of an expectation of a fee based on results and not time.

II. ARGUMENT

When there is no express contract, an attorney is due a reasonable fee under the Nevada attorney lien statute, NRS 18.015(2).[1] The court has wide discretion on the method of calculation of the attorney fee. *Albios v. Horizon Communities, Inc.,* 132 P.3d 1022, 1034 (Nev. 2006). Whatever method of calculation is used by the court, the amount of the attorney fee must be reasonable under the *Brunzell* factors. *Id*. The court should enter written findings of the reasonableness of the fee under the *Brunzell* factors. *Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, at fn2 (Nev. 2009).

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[1] There are two types of attorney liens in Nevada. A "charging" lien, which attaches to a fund of money obtained by the efforts of the attorney; and, a "retaining" lien, which allows an attorney to withhold client documents until paid. The law office asserted a charging lien.

The *Brunzell* factors are:

1. The qualities of the advocate;

2. The character of the work to be done;

3. The work actually performed; and,

4. The result obtained.

Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

The Declaration of William Kemp is attached at Exhibit C. Mr. Kemp is one of the top product liability attorneys in the United States. Mr. Kemp is also very experienced in the determination of the reasonable fee of an attorney in a product liability case. In his Declaration, Mr. Kemp describes his experience in detail, including his work on the determination of a reasonable attorney fee. Mr. Kemp then reviews and applies the Brunzell factors to find a reasonable fee for The Law Office of Daniel Simon P.C. for the amazing work performed on behalf of the Edgeworths. Mr. Kemp reaches a reasonable attorney fee value of $2,440,000.00.

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A. There was no express contract.

The Opposition misstates basic contract law. In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme Court stated:

> In the absence of a fee agreement, NRS 18.015(a) allows an attorney's lien to be "for a reasonable fee." **When an express fee agreement exists**, NRS 18.015 does not specify whether the district court must similarly examine an attorney fees award for reasonableness. (Emphasis added.)

An *express* contract can be oral or written; an *implied* contract is inferred by conduct. This is basic contract law. Black's Law Dictionary states:

> *Express and implied*. An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.
>
> An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. (Italics in original.)

Black's Law Dictionary, Fifth Edition, at 292-93.

The Opposition does not explain away the client's written admission that Mr. Simon and Mr. Edgeworth never had a structed discussion regarding payment. It does not matter that certain billings were paid in an express contract analysis. For any contract to exist, all details and terms must be agreed upon, as a matter of law. *Loma Linda University v. Eckenweiler*, 469 P.2d 54, 56 (1970).

B. This Court has jurisdiction to adjudicate the lien.

The clients did not support their challenge to the jurisdiction of this Court to adjudicate the lien. The clients submit rhetorical questions, but do not supply any legal authority for the proposition that this Court cannot adjudicate the attorney lien. On the other side of the issue, the law office provided extensive Nevada authority, statutory and case law, that this Court has jurisdiction to adjudicate the lien.

Contentions of law within motions and oppositions must be supported by authority. EDCR 2.20. If a legal contention is not supported by authority, then the court may find that the contention is not meritorious. EDCR 2.20. The motion to adjudicate lien set out in detail the applicable Nevada law that provides this Court has jurisdiction over the attorney lien. The client did not provide contrary authority. Simply calling a lien "fugitive" without explaining how or why, and with no supporting legal authority, is not sufficient. Accordingly, this Court has jurisdiction to adjudicate the lien.

To be clear, this Court has jurisdiction to adjudicate the charging lien regardless of the existence of the alleged contract. The court's resolution of the contract issue may impact the method of calculation of fee, but it does not impact jurisdiction.

C. A client does not divest a court of jurisdiction over a charging lien by creating a fee dispute.

The clients did not make a supported argument that this Court is divested of jurisdiction to adjudicate the lien by the alleged contract dispute, nor did the clients support the inferred argument that the lien adjudication and their contract action are mutually exclusive remedies. (They are not. *See, e.g.*, NRS 18.015.)

This Court may address the impact on fees by the alleged contract through motion practice and/or an evidentiary hearing. In, *Hallmark v. Christensen Law Offices*, 381 P.3d 618 (Nev. 2012), the Nevada Supreme Court directed the district court to hold an evidentiary hearing to answer the question of "what is the amount of the lien to be determined by the Court?" In *Hallmark*, the Supreme Court directed the district court to deal with allegations of billing fraud at an evidentiary hearing.

The Supreme Court in *Golightly*, 281 P.3d 1176 upheld a district court lien adjudication when fees were disputed. In, *T.I.P. Holding Corporation v. Bowers*, 2013 WL 782543, the Supreme Court upheld an adjudication of a retaining lien that involved claims of excessive billing. The amount of fees was impliedly disputed in *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 373 P.3d 103 (Nev. 2016), although the decision focused on the failure of the law firm to perfect its lien under NRS 18.015.

In *Ecomares Inc., v. Ovcharik*, 2007 WL 1933573 (D. Nev. 2007), Magistrate Cooke recommended that a motion to adjudicate lien when fees are in dispute be delayed until "resolution of this proceeding", then the law firm could proceed with a

lien adjudication. That thinking was followed by Magistrate Leavitt in *Selimaj v. Henderson Police Department*, 2010 WL 1688763 (D. Nev. 2010), when a dispute over costs was resolved by lien adjudication after settlement of the proceeding.

The statute, NRS 18.015, does not have any exceptions (contract dispute or otherwise) to jurisdiction over a charging lien. The only possible exception that could be argued is when legal malpractice is alleged, based on dicta from *Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009). The legal malpractice comment is dicta because it was not a part of the holding of the case. The *Argentena* opinion recognized that dicta is not controlling at HN 8 when the Court states:

> "Dicta is not controlling. A statement in a case is dictum when it is unnecessary to a determination of the questions involved..."

The *Argentena* case addressed whether a court could adjudicate a retaining lien. The Court concluded that a district court could not adjudicate a retaining lien, because a retaining lien was based on common law and was not mentioned in NRS 18.015. The case did not involve a charging lien and any ruling surrounding a charging lien is merely dictum.

The *Hallmark* opinion concurs. In *Hallmark*, the Supreme Court cited to *Argentena* when it directed the district court to hold an evidentiary hearing to address the allegations of billing fraud:

> "...Accordingly, we reverse the district court's judgment and remand this matter for further proceedings consistent with *Brunzell* or *Argentina Consol. Min. Co*. Upon remand, the district court is directed to conduct an evidentiary hearing to determine the issue of quantum meruit and other allegations, including the allegations of billing fraud. The district court is also instructed to make detailed findings of fact to support its award or denial of attorney fees."

In 2013, the Legislature added a retaining lien to NRS 18.015. Now a district court has unfettered jurisdiction to adjudicate a retaining lien. *Fredianelli v. Fine Carmen Price*, 402 P.3d 1254 (Nev. 2017). In *Fredianelli*, the Nevada Supreme Court found that because the Legislature added a retaining lien to NRS 18.015, a court in a paternity action could determine the amount of attorney fees owed and reduce the retaining lien to a judgment.

D. There was no conversion, and no duties were breached.

There is agreement between the parties that labels (and bananas) are cheap. What matters is the merit of a position.

The clients obliquely dismiss the opinion of Mr. Clark, without once addressing the merits of his opinion. Mr. Clark's opinion is well grounded in the law. Mr. Clark confirms that a law firm is not just within its legal rights to pursue an attorney's lien, but encouraged to do so by the rules of ethics. The clients provide no contrary authority.

Mr. Clark also confirms that placement of money into a trust account is not conversion. The clients' case authority confirms the opinion. *Bader v. Cerri*, 609 P.2d 314 (Nev. 1980), addressed a refusal to release a cattle brand after a dispute over a contract to sell land and the cattle. The refusal to release a cattle brand in *Bader* was not allowed by statute (NRS 18.015). The decision in *Gebhardt v. D.A. Davidson & Co.*, 661 P.2d 855 (Mont. 1983) was based on a procedural error by the district court, and does not apply.

1. Plaintiffs do not have a right to possession sufficient to allege conversion.

In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court recognized the need to establish the right to "exclusivity" of the chattel or property alleged to be converted (*M.C. Multi-Family* addressed alleged conversion of intangible property). Plaintiffs claim they are due money via a settlement agreement, a contract. Thus, Plaintiffs have plead a right to payment based upon contract. However, an alleged contract right to possession is not exclusive enough, without more, to support a conversion claim:

> "A mere contractual right of payment, without more, will not suffice" to bring a conversion claim."

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

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

A lien claim is not conversion. In *Morfeld v. Andrews*, 579 P.2d 426 (Wyo. 1978), the court granted summary judgment in favor of the defendant attorney when a client alleged a lien claim was conversion. More recently in *Behesthi v. Bartley*, 2009 WL 5149862, (Calif. 2009), the court granted a motion to dismiss a similar client claim, and granted the defendant attorney relief under the California Anti-SLAPP statute - which is akin to Nevada's.

2. A charging lien is allowed by statute.

NRS 18.015 allows an attorney to file a charging lien. The Law Office of Daniel S. Simon, A Professional Corporation acted in compliance with the statute. Thus, as a matter of law, Plaintiffs cannot satisfy the wrongful dominion element.

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

The Law Office of Daniel S. Simon, A Professional Corporation acted properly pursuant to Nevada Rule of Professional Conduct 1.15 "Safekeeping Property". The Rule states in relevant part:

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

The law office followed the exact course mandated by the Rules of Professional Conduct. The money was placed into a trust account per agreement of the parties. See Bank of Nevada letter establishing joint trust account for settlement proceeds, attached as Exhibit D. The law office does not have control over the funds and interest on the money inures 100% to Brian Edgeworth. Mr. Vannah is a signer on the account, thus the law office did not convert any funds.

It is axiomatic that a person not in possession cannot convert. Restatement (Second) of Torts §237 (1965), comment f.

Deposit of funds into a trust account is not an act of dominion contrary to any stakeholder interest. In fact, it is the opposite. The Nevada Supreme Court has ruled that holding disputed funds in an attorney trust account is the same as the Court

holding the funds in an interpleader action. *Golightly & Vannah, PLLC v. TJ Allen LLC*, 373 P.3d 103 (Nev. 2016).

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

E. The contract argument is moot, because the clients constructively discharged the law firm.

The settlement funds were received when the funds cleared the bank on January 18, 2018. The clients signed the checks on January 8, 2018. When the Edgeworth's filed suit on January 4, 2018 they constructively discharged Mr. Simon's firm allowing for adjudication of the lien pursuant to quantum meruit.

In a similar case the Ohio Appellate Court confirmed that the Edgeworths constructively discharged their attorney and quantum meruit can be used as the method to calculate a reasonable attorneys fee by the trial judge. The Court also confirmed that the trial judge can make findings and conclusions through an evidentiary hearing on the allegations of an alleged contract.

In *Rosenberg v. Calderon Automation, Inc.,* 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986), a lawyer provided services to the client without a contract. As the case was ready to be resolved the client did not want to pay the lawyer because there was no contract. The client stopped all communication with the lawyer. The Ohio Appellate Court determined that the reasonable value of the lawyer's services were due under quantum meruit. See case attached hereto as Exhibit "E". The Court in Rosenberg held an evidentiary hearing to determine the contract issues and the amount of the services due to the lawyer. As here, the client alleged a contract for past performance and raised other claims including breach of the lawyer's fiduciary duty.

In Rosenberg, the court held an evidentiary hearing and found there was a constructive termination of the lawyer's services when the client refused to speak to the lawyer any longer. The Court also made findings that the lawyer did not breach any of his fiduciary duties.

The Ohio Court of Appeals in *Rosenberg* analyzed the attorney-client relationship, finding that:

> "...As Calderon had no further communications with Rosenberg after he suggested entering into settlement negotiations, the Rosenberg court determined that these events constituted constructive termination: The general rule provides that the "attorney-client relationship is consensual in nature and that the actions of either party can affect its continuance."

Brown v. Johnstone (1982), 5 Ohio App. 3d 165, 167. As the Brown court noted, the termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client. Id., at 166; *Bucaro v. Keegan, Keegan, Hecker & Tully* (1984), 483 N.Y.S. 2d 564. The termination of the principal-agency relationship may occur at the expiration of a reasonable time, Restatement of the Law, Agency (2d Edition 1958) 275, Section 105, or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority. Restatement of the Law, Agency (2d Edition 1958) 283, Section 108.

Id. at *13-14 (emphasis added). Calderon's refusal to communicate with Rosenberg, along with ignoring Rosenberg's letters requesting payment, confirmed that the attorney-client relationship was terminated. Id. at *14-15...."

The Rosenberg court noted that an attorney that is discharged without just cause is entitled to compensation based upon a stated agreement or upon the theory of quantum meruit. Id. at *15. Interestingly, the Rosenberg court cited an unreported case in Ohio, *Wilcox v. Rich*, noting that:

"Where a contract for the performance of labor is wrongfully terminated by one-party, after part performance by the other, the right of the party performing, to recover the value of the labor performed, irrespective of the contract price, depends on whether, having regard to the contract, the party wrongfully terminating it, would thereby enrich himself at the expense of the other." *Wilcox v. Rich* (Dec. 22, 1981), Franklin App. No. 81AP-269, unreported.

Id. at *15-16 (emphasis added.)..."

Thus, the final consideration was how Rosenberg should be compensated – either by a percentage of the contingency fee or by the basis of quantum meruit. The client argued that there was a contract under the prior lawyer's contingency fee

agreement, yet there was no signed agreement between the client and Rosenberg. The Rosenberg court indicated that termination of a contract after part performance of the other entitles allowed the performing party to recover the value of the labor performed irrespective of the contract price. The Rosenberg court did not outright state that the contract or contingency agreement could be refuted but instead, the court adopted Rosenberg's election to be compensated via quantum meruit:

> "Consequently, the reasonable value of Rosenberg's services must be based either on a percentage of the contingency fee or on the basis of quantum meruit. Rosenberg has elected, by his testimony and by his letters to Calderon, to be paid based upon the theory of quantum meruit." Id. at *19.

Notably, Rosenberg did not keep time records, but Rosenberg attempted to estimate the total number of hours on the case. The Rosenberg court found that Rosenberg's testimony on the work he performed was corroborated by Calderon and Brenner and, therefore, upheld the lower court's award to Rosenberg:

> "Upon a review of the record, we find that the trial court exercised its discretion in arriving at a fair and equitable determination of fees for services rendered by Rosenberg. The trial court's award, in our opinion, accomplishes the same and we accordingly affirm." Id. at *20.

In this case, like Calderon, the Edgeworth's constructively terminated Mr. Simon's firm without just cause after receiving a good result on the case but prior to its conclusion. While the "just cause" determination is not necessarily considered in Nevada for determining whether an attorney should be compensated, the facts in Edgeworth support the obvious conclusion that the client constructively terminated

Mr. Simon's firm without just cause. Obtaining a 6.1 million dollar settlement in a property damage case and then being sued before the settlement funds are received is without just cause. Further, as discussed above – both the refusal to pay and the filing of a lawsuit constitute constructive termination. Additionally, when the Edgeworth's made the unfounded comments that Mr. Simon would steal the money, it was evident that the Edgeworth's conduct dissolved the mutual confidence between Edgeworth and Mr. Simon. Additionally, the Edgeworth's ignored Mr. Simons' request for payment of fees and costs provided to them in November of 2017, prior to the conclusion of the settlement. These acts constituted constructive termination.

The Edgeworths may contend that Mr. Simon still represents the Edgeworths and there cannot be a termination. This is not true, as the only reason Mr. Simon continues on the case is to fulfill his ethical obligations and heed the continued threats by the Edgeworths. Mr. Vannah confirmed that the law office had not been fired, despite being sued by the clients. Mr. Vannah stated if Mr. Simon withdrew, the damages sought from him would go up.[2] It is well established that even when there is a contract, contingency or otherwise, once the attorney is discharged, the attorneys can recover for the reasonable value of his services. *Law Offices of*

[2] On January 9, 2018, at 10:24 a.m., Mr. Greene from the Vannah office wrote, "He settled the case, but we're just waiting on the release and the check." The same day at 3:32 p.m., Mr. Vannah wrote, "I'm pretty sure that you see what would happen if our client has to spend lots more money to bring someone else up to speed."

Lawrence J. Stockler, P.C. v. Semaan, 355 N.W.2d 271 (1984). Here, the Edgeworth's clearly discharged Mr. Simon's firm when they refused to speak with him, hired new counsel, falsely alleged he would steal the settlement money and then surreptitiously sued him. Since Mr. Simon's firm was discharged, he is entitled to the reasonable value of his firm's services under quantum meruit. In doing so, the Court merely looks at the Brunzell factors and adjudicates the lien accordingly.

Constructive termination has also been found by other courts. For example, in *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court stated that evidence of constructive termination by a client is evidenced by placing "counsel in a position that precluded effective representation and thereby constructively discharged his counsel or (2) through his obstructionist behavior, dilatory conduct, or bad faith, the defendant de facto waived counsel."

A client's failure to pay attorney's fees also is constructive termination. See e.g., *Christian v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997) ("Further, the court considers Sewer's failure to pay attorneys' fees as a constructive termination of the attorney-client relationship between Sewer and D'Anna.").

Here, the Edgeworths refused to pay any attorney's fees, even though requested in November, 2017, and have refused to pay the outstanding costs of more than $70,000.00, even though the detailed costs were provided to the clients in

November, 2017. Rather than making any attempts to pay, they sued Mr. Simon suggesting no money is due. Therefore, the Edgeworths have constructively terminated Mr. Simon in many ways, and have no basis to assert a contract when the court determines attorney's fees.

Even more compelling is that multiple jurisdictions conclude that the attorney-client relationship is a principal-agent relationship. More so, while it did not concern an attorney and client directly, but an agent acting on behalf of a principal through a power of attorney, the Superior Court of Connecticut held that a lawsuit is a fundamental breach of the principal-agent relationship:

> "Perhaps no more fundamental breach of such a relationship can be imagined than that an agent use the power of attorney to sue the principal, who may even lack the capacity to understand what is going on."

See *Tao v. Probate Court for the Northeast Dist*. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also *Maples v. Thomas*, 565 U.S. 266 (2012); *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*, 2017 Nev. Unpubl. LEXIS 472.

Since Mr. Simon was constructively discharged by the filing of the complaint, among other things, the Law Office of Daniel Simon is entitled to the reasonable value of its services via quantum meruit, irrespective of the prior alleged agreement.

The reasonable value of the services by the Law Office of Daniel Simon is analyzed by Mr. Kemp in his detailed declaration and he opines that the value of the services is in the sum of $2,440,000 for attorney's fees.

F. The Motion to Consolidate is well grounded in law and fact.

Nevada law recognizes that the trial court is best suited to analyze issues relating to lien claims and attorney client fee disputes. *Leventhal v. Black & Lobello*, 305 P.3d 907, 909 (Nev. 2013); superseded by statute on other grounds as stated in, *Fredianelli v. Pine Carman Price*, 402 P.3d 1254 (Nev. 2017); and, Restatement (Third) Law Governing Lawyers §43(3).

Courts are provided with discretion to consolidate cases when there are similar issues which arise from the same set of facts. This is such a case. Further, consolidation will prevent an obvious case of forum shopping by the clients.

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. . .

III. CONCLUSION

This Court has clear, and admitted, jurisdiction to hear the lien dispute. The Court is respectfully requested to set an evidentiary hearing to determine the amount of fees and costs due the law firm.

DATED this 5th day of February, 2018.

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

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing REPLY IN SUPPORT OF MOTION TO ADJUDICATE ATTORNEY'S LIEN AND MOTION TO CONSOLIDATE was made by electronic service (via Odyssey) this 5th day of February, 2018, to all parties currently shown on the Court's E-Service List.

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

EXHIBIT A

Daniel Simon

From: Brian Edgeworth <brian@pediped.com>
Sent: Friday, May 27, 2016 3:30 PM
To: Daniel Simon
Subject: RE: Insurance Claim

Dude, when/how can it get this to you? Even typing up the summary is taking me all day organizing the papers. There is at least 600-1000 pages of crap.

-----Original Message-----
From: Daniel Simon [mailto:dan@simonlawlv.com]
Sent: Friday, May 27, 2016 12:58 PM
To: Brian Edgeworth <brian@pediped.com>
Subject: Re: Insurance Claim

I know Craig. Let me review file and send a few letters to set them up.
Maybe a few letters will encourage a smart decision from them. If not, I can introduce you to Craig if you want to use him. Btw He lives in your neighborhood. Not sure if that is good or bad?

> On May 27, 2016, at 9:30 AM, Brian Edgeworth <brian@pediped.com> wrote:
>
> Hey Danny;
>
> I do not want to waste your time with this hassle (other than to force
> you
to listen me bitch about it constantly) and the insurance broker says I should hire Craig Marquiz and start moving the process forward.
> Should I just do that and not bother you with this?
> My only concern is that some goes nuclear (with billing and time) when
just a bullet to the head was all that was needed to end this nightmare (and I do not know this person from Adam).
>
> --
>
>
> Brian Edgeworth
> pediped Footwear
> 1191 Center Point Drive
> Henderson, NV
> 89074
>
> 702 352-2580

EXHIBIT B

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

To:James R. Christensen <jim@jchristensenlaw.com>;

From: Brian Edgeworth [mailto:brian@pediped.com]
Sent: Tuesday, August 22, 2017 5:44 PM
To: Daniel Simon <dan@simonlawlv.com>
Subject: Contingency

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

EXHIBIT C

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
601 S. 6th Street
Las Vegas, Nevada 89101
(702) 272-0406
(702) 272-0415 fax
jim@christensenlaw.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 I through 5 and ROE entities 6 through 10; Defendants.	CASE NO.: A738444 DEPT NO.: X **DECLARATION OF WILL KEMP, ESQ.**

1. I have been a licensed attorney in the State of Nevada since September, 1978. I have litigated high profile products liability cases in Nevada and around the country. I have presented arguments before all the courts in the state of Nevada, as well as the First, Third and Ninth Circuit Court of Appeals and the United States Supreme Court. I have been an AV Preeminent Lawyer by Martindale Hubbell since the 1980's, which is the highest AV rating for competency and ethics. I have also been named as a Super Lawyer, named in the Mountain States Top 10, selected in the Legal Elite of Nevada Business Magazine and selected as Nevada Trial Lawyer of the year in 2012.

I have served on multiple steering committees, including but not limited to Plaintiffs' Legal Committee, MGM Multi-District Fire Litigation, 1980-1987, (the seminal mass tort case in Nevada) Plaintiffs' Steering Committee and Plaintiffs' Trial Counsel, San Juan Dupont Plaza Multi-District Fire Litigation, 1987-98, Plaintiffs' Steering Committee, Peachtree 25th Fire Litigation, 1991-94, Plaintiffs' Steering Committee and Executive Committee in Castano Tobacco Litigation, 1993-2010, Orthopedic Bone Screw Products Liability Litigation, 1994-1998, Plaintiff's Management Committee, Fen/Phen

Diet Drug Litigation, 1998-2003 (the largest pharmaceutical settlement in history--$25 Billion plus), Plaintiffs' Steering Committee, Baycol Products Liability Litigation, 2002-07, Minnesota Syngenta Litigation State Court Committee (2016-____) ($1.3 Billion settlement pending). I was the Liaison Counsel for Plaintiffs and lead attorney on the product liability committee of Plaintiffs' Legal Committee in the MGM Fire Litigation. I have tried numerous complex product liability cases, including the San Juan Dupont Plaza Multi-District Fire Litigation (15 ½ month product liability case against 200 Defendants resulting in plaintiffs' verdict). I was also lead counsel on the largest product liability verdict in the history of Nevada: $505 Million verdict in Chanin v. Teva in 2010 (defective propofol packaging theory).

2. In connection with many of the foregoing cases, I have presented the work effort of our firm to multiple state and federal courts in fee presentations. In addition, I was on the Fee Committee in the Castano Tobacco Litigation and decided on the allocation of a $1.3 Billion fee among 57 law firms based upon their relative efforts in that landmark litigation.

3. In my practice, I have represented both plaintiffs and defendants in all types of litigation, including negligence cases and product liability. I am personally familiar with the efforts required to both prosecute and defend serious cases in general, including hotly contested product liability litigation against a worldwide manufacturer.

4. I have been retained by the Law Office of Daniel Simon (hereinafter LODS) to review the case of Edgeworth Family Trust and American Grating v. Lange Plumbing and the Viking entities, hereinafter "The Edgeworth Matter." In preparing my opinion, I have reviewed the register of actions; the e-service filings, pleadings, motions, the relevant court orders; voluminous e-mails, the list of depositions taken, notices of depositions, extensions of discovery in other LODS cases and expert reports. I have a qualified understanding of the work performed on this case and the results achieved.

5. I am also aware of the billing statements produced to the client in this case and the payments that were made for these billing statements.

6. Before the mediation that occurred on November 10, 2017, LODS filed numerous motions that effectively forced the Viking entities to settle this matter prior to any rulings on the pending motions. At the time of mediation, the Trial Judge, the Honorable Tierra Jones had already set

an evidentiary hearing to occur in December 2017 in order to determine whether Viking's answer should be stricken for discovery abuses or other sanctions. Notably, the motion for to Strike Answer was filed on September 29, 2017, after Mr. Edgeworth commented in the August 22, 2017 email set forth below that no one expected "this case would meet the hurdle of punitives" and proposed a hybrid "that incents" LODS to vigorously pursue punitives. The Trial was set for February 5, 2018. The Motion to Strike Answer was obviously one of the key threats that coerced the settlement.

7. At the same time, LODS also had pending motions for summary judgment against Lange Plumbing. Lange Plumbing had cross-claims against the Viking entities.

8. The case was worked up with many experts consisting of several engineering experts, an appraiser to establish damages, litigation loan experts to justify non-recourse interest on loans and a fraud expert. The defense hired many experts that needed to be rebutted.

9. The document production was voluminous and consisted of more that 100,000 pages, there was substantial motion work and the emails with the client show continuous communication to an extent that is relatively unusual. This close communication with the client on a daily (if not more) basis obviously took much attention from LODS but appears to have been productive in multiple ways.

10. I have reviewed the email dated November 21, 2017, that Mr. Edgeworth sent to Mr. Simon setting forth damage elements. The amounts discussed in that email that I would consider to be "hard" damages were $512,636 paid for repairs to the damaged house, $24,117 (repairs owed) and $194,489 (still to repair). This totals $731,242 of "hard" damages. The other damages items such as "stigma" for $1,520,000 and the interest of $285,104 are what I would consider "soft" damages. In evaluating the value of a case, many attorneys give more credence to "hard" damages.

11. I have also reviewed the email dated August 22, 2017 from Mr. Edgeworth to Mr Simon wherein Mr. Edgeworth states as follows:

> **We never really had a structured discussion about how this might be done.** I am more that happy to keep paying hourly but **if we are going for punitive we should probably explore a hybrid** of hourly on the claim and then **some other structure that incents both of us** to win an[d] go after the appeal that these scumbags will file etc.
>
> **Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.**
>
> I could also swing hourly for the whole case (unless I am off what this is going to cost).

> I would likely borrow another $450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
>
> I doubt we will get Kinsale [the insurer for Lange Plumbing] to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Bold added) The August 22, 2017 email is significant for several reasons. First, as discussed in more detail, the settlement had to have included at least $3.3 Million of punitive damages and more likely $4 or $5 Million of punitive damages because the $6.1 Million settlement is $5,368,580 above the "hard" damages of $731,420.00 and $2,272,855 above the total damages of $3,827,147 (as set forth in the November 21, 2017 email). It should be noted that the $3,827,147 figure includes $1,520,000 for "stigma" to the house damages (of which there is not strong legal support). Under any view, the settlement included millions of dollars of punitive damages. It is unprecedented to get that much in punitive damages in a case of this nature where only property damage is involved. Indeed, some courts would hold that a 5 to 1 ratio ($5 Million punitive to $1M compensatory) is unconstitutionally excessive.

12. The second reason that the August 22, 2017 email is significant is that, Mr. Edgeworth acknowledges that he does not believe that the parties have a fee agreement ("We never really had a structured discussion about how this might be done.") and then proposed "a hybrid" fee arrangement "if we are going for punitive." Not only did Mr. Edgewroth and LODS "go for punitive" after August 22, 2017, they got millions of dollars in punitives. Mr. Edgeworth also explains why a fee agreement to pursue the punitives could not be made earlier ("Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.") Given the volume of the emails between Mr. Edgeworth and LODS between this August 22, 2017 and the mediation, it appears that a herculean (and successful) effort was made to "go for punitive."

13. The third reason that the August 22, 2017 email is significant is that Mr. Edgeworth expresses the firm opinion therein that the only way to obtain satisfactory resolution of his claim is to succeed at trial and then succeed on appeal: "some other structure that incents both of us to win [at trial] and go after the appeal that these scumbag [Defendants] will file..." Mr. Edgeworth is obviously a very sophisticated client (based on a review of his emails to LODS) and his general

expectation that the usual course to an adequate recovery would be years of litigation and success at trial and appeal is consistent with what could typically occur. This will be referred to later as "Edgeworth's expected result."

14. I have been informed and believe that, at the mediation on November 10th, 2017, the parties could not reach a settlement. Viking offered $2.5 Million. The Mediator, Floyd Hale, requested to send a mediator proposal for $5 million. LODS only agreed to a mediator proposal of $6 million. Subsequently, on November 15, 2017, Viking accepted the $6 million proposal, subject to a determination of a good faith settlement extinguishing the claims Lange Plumbing has against Viking and a confidentiality provision. Later, LODS was able to negotiate better terms, including a mutual release and omitting the confidentiality provision.

15. I am familiar with NRPC 1.5, and the Brunzell Factors that control Nevada law. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 455 P.2d 31, 33 (Nev. 1969) ("From a study of the authorities it would appear such factors may be classified under four general headings (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.") I am also familiar with the detailed analysis of the Lodestar approach for determining a reasonable attorney fee in the absence of a contract with the client. I have also argued fee dispute issues at the First Circuit Court of Appeals. See In re Thirteen Appeals Arising Out of the San Juan Dupont Hotel Fire Litigation, 56 F.3d 295, 307 (1st Cir. 1995) (approving the percentage of fund method for mass tort cases instead of the lodestar technique); In re Nineteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation (1st Cir. 1992).

16. An attorney who does not have a signed contract with a client is entitled to receive a reasonable attorneys fee for the value of his/her services. There are many factors to consider in determining the value of an attorneys services. To determine reasonableness, Nevada state courts rely heavily on the "Brunzell factors." The state court decisions applying the Brunzell factors suggest that

the analysis focuses primarily on the quantity, quality of work and advocacy rather than the hourly rate. NRCP 1.5 lists eight non-exclusive factors to consider. One of the primary factors is the fees "customarily charged in the locality for similar legal services."

17. The Edgeworth matter involved one house that was heavily damaged by flooding due to a defective sprinkler. This type of case, i.e., one client with property damage, is not attractive to most experienced product liability litigators for several reasons. First, the amount of energy involved in litigating a complex product case usually requires multiple clients (or at a minimum serious personal injury) to justify the time expended to obtain an award. Second, product liability is a legal concept that is not familiar to many jurors (and even some judges). This creates an element of uncertainty in predicting liability outcomes that is greater than most garden variety negligence cases. Third, property damage typically does not invoke sympathy with jurors needed to drive a punitive award. Fourth, no experienced litigator will take a case wherein punitive damages are the primary damages element because punitive damages are rarely awarded and paid even less often.

18. For these reasons, despite expertise in both product liability and construction defect litigation, our office probably would have not have taken this case for the reasons outlined above. If we had taken the case, the minimum contingent fee would have been 40% and more likely 45%. A settlement of $6.1 Million in a complex product liability case with no personal injury or death and only $731,242 in "hard costs" is truly remarkable.

19. When reviewing the Edgeworth matter to determine a reasonable fee, the analysis must start with the fourth Brunzell factor; the result achieved. As set forth in Paragraph 13 above, Mr. Edgeworth, a sophisticated client, expressed the opinion on August 2, 2017, that it would take a trial and appeal to get "Edgeworth's expected result." Given how involved Mr. Edgeworth was with the case (including minute details) and that he is a very sophisticated client, his belief in this regard would normally be correct. Indeed, most lawyers would agree that it would take years to even get the "hard costs." But instead of getting "Edgeworth's expected result" after years of litigation, LODS got a truly extraordinary result in less than 3 months after the date of the August 2, 2017 email. LODS secured a six million, one hundred thousand dollar ($6,100,000) settlement for a complex products liability case where the "hard" damages were only $791,242.00. The total claimed past "hard" and "soft" damages

involved, excluding attorney's fees, experts fees and costs were approximately $1.5 million dollars. Getting millions of dollars of punitives in a settlement in a case of this nature is remarkable. For these reasons, the fourth Brunzell factor (result) overwhelmingly favors a large fee.

20. The quality and quantity of the work (the third Brunzell factors) were exceptional for a products liability case against a worldwide manufacturer that is very experienced in litigating cases. LODS had to advocate against several highly experienced law firms for Viking, including local and out of state counsel. In this regard, the Motion to Strike Answer filed on September 29, 2017 is of utmost significance.

21. LODS retained multiple experts to secure the necessary opinions to prove the case. It also creatively advocated to pursue unique damages claims (e.g., the "stigma" damages) and to prosecute a fraud claim and file many motions that most lawyers would not have done. LODS also secured rulings that most firms handling this case would not have achieved. The continued aggressive representation prosecuting the case was a substantial factor in achieving the exceptional results. This (especially the Motion to Strike Answer and impending evidentiary hearing) is the second Brunzell factor.

22. I am familiar with the size of the LODS firm and the amount of work performed would have significantly impaired LODS from simultaneously working on other cases. Our firm has over a dozen litigators and a long track record of successful litigation and we often find it difficult to support a "hot" products case (i.e., one requiring the full time attention of several lawyers). It is very impressive that a small firm made the sacrifice to do so.

23. LODS does not represent clients on an hourly basis and the fee customarily charged in the locality for similar legal services should be substantial in light of the work actually performed, the LODS lost opportunities to work on other cases and the ultimate amazing result achieved. Absent a contract, LODS is entitled to a reasonable fee customarily charged in the community based on the services performed.

24. When evaluating the novelty and difficulty of the questions presented; the adversarial nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved

given the total amount of the settlement compared to the "hard" damages involved, the reasonable value of the services performed in the Edgeworth matter by LODS, in my opinion, would be in the sum of $2,440,000. This evaluation is reasonable under the Brunzell factors.

25. I make this Declaration under penalty of perjury.

Dated this 31st day of January, 2018.

Will Kemp, Esq.

EXHIBIT D

Daniel Simon

From: Sarah Guindy <SGuindy@BankofNevada.com>
Sent: Thursday, January 04, 2018 2:29 PM
To: Robert Vannah; John Greene (jgreene@vannahlaw.com); Daniel Simon; James R. Christensen
Subject: New Account

Good Afternoon all

Mr. Simon came by my office to sign the signature card and the address to forward statements was incorrect. The address should be Mr. Simon firm address. We will revise the signature card and everyone will need to resign our documents. Also in order to open the account the bank will need to receive the requested signed statement from Mr. Vannah and Mr. Simon. Mr. Edgeworth will also be required to sign the W-9 form and endorse the checks. We were advised Mr. Edgeworth is out of town and unavailable until next week.

Thank you

Sarah Guindy
EXECUTIVE VICE PRESIDENT, CORPORATE BANKING MANAGER
BANK OF NEVADA, A DIVISION OF WESTERN ALLIANCE BANK. MEMBER FDIC.
T (702) 252-6452 | C (702) 523-2699 | SGUINDY@BANKOFNEVADA.COM
2700 WEST SAHARA AVENUE | LAS VEGAS, NEVADA 89102

EXHIBIT E

Rosenberg v. Calderon Automation, Inc.

Court of Appeals, Sixth Appellate District of Ohio, Lucas County, Ohio

January 31, 1986

C.A. No. L-84-290

Reporter
1986 Ohio App. LEXIS 5460 *; 1986 WL 1290

Samuel L. Rosenberg, APPELLEE -VS- Calderon Automation, Inc., Albert Calderon, APPELLANTS

Prior History: [*1] APPEAL FROM LUCAS COUNTY COMMON PLEAS COURT, NO. CV 82-1194.

Disposition: On consideration whereof, this court finds that substantial justice has been done the parties complaining, and judgment of the Lucas County Court of Common Pleas is affirmed. This cause is remanded to said court for execution of judgment and assessment of costs. Costs assessed against appellants.

Core Terms

termination, patent, hired, discharged, attorney-client, partnership, patent case, just cause, settlement, trial court, contingency, settle, federal district court, trial court's judgment, special interrogatory, attorney's fees, assigned error, preparation, indicates, services rendered, joint venture, negotiations, unfavorable, couldn't, services, parties, jury's

Case Summary

Procedural Posture
Appellant clients sought review of the judgment of the Lucas County Common Pleas Court (Ohio), which awarded appellee attorney compensation for his services that he rendered for the clients in their patent infringement litigation before the clients terminated the attorney-client relationship.

Overview
The clients hired a lawyer, who involved the appellee attorney in the patent infringement case. When the attorney and the clients refused to negotiate a settlement, the clients had no further contact with the attorney, who believed that he had been discharged from the case. The attorney filed an action to seek compensation for his services. On appeal the court affirmed the trial court's award of compensation. The clients authorized the lawyer to consult the attorney, and the relationship between the two attorneys plus the clients' act of working with the attorney established the attorney-client relationship, which terminated after the conclusion of the jury's favorable answers to the special interrogatories but before the clients received an unfavorable judgment. The attorney's discussion with the opposing party was not an attempt to settle the case and did not constitute a breach of his fiduciary duties. At the time of termination, the clients had not suffered any damage or lost their case. Accordingly, the termination of the attorney's employment was without just cause.

Outcome
The court affirmed the judgment that awarded the attorney compensation for the services he rendered on behalf of the clients in their patent infringement litigation.

LexisNexis® Headnotes

Business & Corporate Law > ... > Actual Authority > Implied Authority > Conduct of Parties

Legal Ethics > Client Relations > Representation > Acceptance

Business & Corporate Law > Agency Relationships > Agents Distinguished > Special Agents

Business & Corporate Law > ... > Authority to Act > Actual Authority > General Overview

Business & Corporate Law > ... > Actual Authority > Implied Authority > General Overview

Business & Corporate Law > ... > Establishment > Elements > General Overview

HN1 **Implied Authority, Conduct of Parties**

The relationship between an attorney and a client is considered to be one of limited agency with respect to the particular suit for which the attorney is hired. The attorney has no implied power to do more than relates to the proper conduct of the suit, and cannot, without specific authority, bind the client by contract. The client will only be liable for the acts of the attorney performed within scope of his authority, but not for illegal acts, unless it can be shown that the client participated therein or had knowledge thereof.

Business & Corporate Law > ... > Authority to Act > Contracts & Conveyances > Formation & Negotiation

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Business & Corporate Law > ... > Authority to Act > Actual Authority > Inherent Authority

Business & Corporate Law > ... > Authority to Act > Business Transactions > Management

Business & Corporate Law > ... > Authority to Act > Contracts & Conveyances > General Overview

HN2 **Contracts & Conveyances, Formation & Negotiation**

An agent's authority to make a contract is inferred from the authority to conduct a transaction, if the making of such a contract is incidental to the transaction or is reasonably necessary to accomplish it. An agent's authority to appoint an agent is inferred when the parties agree to the appointment, the authority is customary within the normal business operations, the authority exercised is within the proper conduct of the principal business and/or the authority is derived out of unforeseen circumstances.

Business & Corporate Law > Agency Relationships > Fiduciaries > Fiduciary Duties

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Agents Distinguished > General Overview

Business & Corporate Law > Agency Relationships > Fiduciaries > General Overview

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Business & Corporate Law > ... > Authority to Act > Apparent Authority > General Overview

Business & Corporate Law > ... > Authority to Act > Contracts & Conveyances > Formation & Negotiation

Business & Corporate Law > Agency Relationships > Duties & Liabilities > General Overview

Business & Corporate Law > Agency Relationships > Ratification > General Overview

Governments > Fiduciaries

HN3 **Fiduciaries, Fiduciary Duties**

The relation of principal and agent is always regarded by the court as a fiduciary one, implying trust and confidence. All acts and contracts of an agent done or made within the discharge of his duties, and within the scope of his authority, whether that authority is express, implied, or apparent, are obligatory upon the principal, and no ratification or assent on the latter's part is necessary to give them validity.

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN4 **Duties to Client, Effective Representation**

Where the case involves litigation outside the attorney's field of expertise, the attorney, in order to retain the case, may consult a second attorney.

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN5 **Client Relations, Attorney Fees**

An attorney is not entitled to compensation where he is discharged for just cause, but if the attorney is discharged without just cause, he is entitled to a fee based on the reasonable value of his services rendered.

Legal Ethics > Client Relations > General Overview

HN6 **Legal Ethics, Client Relations**

The attorney-client relationship is consensual in nature and that the actions of either party can affect its continuance. The termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client.

Business & Corporate Law > Agency Relationships > Termination > Consent

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Duties & Liabilities > General Overview

Business & Corporate Law > Agency Relationships > Termination > General Overview

Business & Corporate Law > Agency Relationships > Termination > Expiration of Time

HN7 **Termination, Consent**

The termination of the principal-agency relationship may occur at the expiration of a reasonable time or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority.

Business & Corporate Compliance > ... > Contracts Law > Standards of Performance > Discharge & Termination

Labor & Employment Law > Wrongful Termination > Remedies > General Overview

HN8 **Standards of Performance, Discharge & Termination**

Where a contract for the performance of labor is wrongfully terminated by one-party, after part performance by the other, the right of the party performing, to recover the value of the labor performed, irrespective of the contract price, depends on whether, having regard to the contract, the party wrongfully terminating it, would thereby enrich himself at the expense of the other.

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN9 **Agency Relationships, Authority to Act**

Unless an attorney has been expressly authorized to do so, he has no implied or apparent authority, solely because he was retained to represent the client, to negotiate or settle the client's case.

Counsel: Michael Briley, Richard Scheich, 1000 National Bank Building, Toledo, OH 43604 for Appellee.

Daniel T. Spitler, Spitler, Vogtsberger & Huffman, 131 E. Court Street, Bowling Green, OH 43402-2495 for Appellant.

Judges: Frank W. Wiley, and Bruce C. Huffman, JJ., JUDGE CONCUR.Judges Frank W. Wiley and Bruce C. Huffman, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

Opinion by: WILKOWSKI

Opinion

DECISION AND JOURNAL ENTRY

WILKOWSKI, P.J.

This cause came on to be heard upon the record in the trial court. Each assignment of error was reviewed by the court and upon review the following disp

made:

This case comes before the court from a judgment of the Lucas County Court of Common Pleas, wherein judgment was rendered for plaintiff-appellee, Samuel Rosenberg, for attorney fees in the sum **[*2]** of $ 27,000.

This action originates out of a patent infringement case filed in the Federal District Court by defendant-appellants, Albert Calderon and Calderon Automation, Inc. Appellants hired Lawrence Brenner to handle the patent infringement case. Mr. Brenner was to be paid on a simple contingency fee basis. Subsequently, a second attorney, appellee Rosenberg, became involved with the case. Rosenberg's participation in the case began in February 1979. At that time, Rosenberg began reviewing the case files and the relevant patent laws. From February 1979 through the trial in June 1979, Rosenberg's sole duties related to the preparation of the patent case. Mr. Brenner and Mr. Calderon also were responsible for the preparation of the material for the trial. At trial, Rosenberg's responsibilities were limited to the direct examination of Calderon and a portion of the closing arguments directly related to the special interrogatories presented to the jury.

After the jury returned favorable findings on the special interrogatories, Rosenberg suggested that settlement negotiations with the adversary, General Motors, Inc., be initiated. Calderon vehemently opposed any attempt to negotiate **[*3]** a settlement with General Motors. Due to Rosenberg's and Calderon's difference of opinion as to the appropriateness of settlement negotiations, Calderon had no further contact with Rosenberg. Rosenberg, believing that he had been discharged from the case, sent letters to Calderon requesting fees for his services.

Subsequently, after the alleged constructive discharge of Rosenberg from the case, the (Federal District Court) judge reversed the jury's findings and entered a judgment unfavorable to the establishment of Calderon's patent rights.

Calderon obtained new representation for the appeal and he eventually obtained a settlement with General Motors restoring a portion of his patent rights; however, no monetary award was obtained.

Rosenberg, claiming that he had been discharged from the case prior to the judge's refusal of the jury findings, sought recompense for his services rendered from February through July. The trial court, after hearing testimony of Rosenberg, Calderon and Brenner, plus reviewing over twenty exhibits, rendered judgment for Rosenberg in the sum of $ 27,000.

In the judgment entry, the trial court made several findings of fact. Upon review of the record, including **[*4]** 386 pages of transcript and over twenty exhibits, we find that the findings of fact were supported by competent, credible evidence and therefore, we incorporate them herein:

> "1. In June, 1973, attorney Lawrence Brenner entered into an
> attorney-client relationship with Albert Calderon and Calderon
> Automation, Inc. for representation in patent litigation.
>
> "2. Cladero[n] [*sic*] subsequently authorized Brenner to employ
> additional counsel to represent him in connection with the patent
> litigation.
> "3. Pursuant to this authorization, and for the dominant if not sole
> purpose of providing additional counsel for the representation,
> Lawrence Brenner entered into a joint venture or partnership with
> attorney Samuel L. Rosenberg with the full consent and agreement of
> Calderon. Rosenberg was thereby employed by Calderon as additional
> counsel for the patent litigation.
>
> "4. The *General Motors* case was tried before Judge Kennedy of the
> Eastern District of Michigan, Southern Division, from May 21, 1979
> through July 5, 1979.
> "5. With respect to the formation and conduct of the joint venture
>
> both Brenner and Calderon failed to disclose to Rosenberg **[*5]** the
> existence of a certain written fee agreement dated May 23, 1977, to
> which Brenner and Calderon were mutually parties.
> "6. Rosenberg entered into the joint venture or partnership with
> Brenner for the principal purpose of acting as attorney in the patent
> litigation. In doing so he relied upon the representations of Brenner

and Calderon to the effect that the litigation had a potential
recovery or value of $ 16,000,000.00 and that the attorneys were
representing Calderon on a simple, unqualified one-third contingent
fee arrangement.
"7. Subsequent to the trial and the performance of the substantial
legal services, Calderon discharged Rosenberg as counsel in the patent
litigation by Calderon's refusal to cooperate or communicate with
Rosenberg, his employment of additional counsel without Rosenberg's
consent, and the contemporaneous termination of the joint venture or
partnership by Brenner.
"8. Calderon additionally failed to cooperate with Rosenberg as one of
his attorneys, by refusing to consider any settlement no matter what
its terms, and by refusing to permit his attorney to discuss even the

subject of settlement with opposing counsel. **[*6]**
"9. All of said acts by which Rosenberg was discharged as counsel
occurred prior to the entry of the court's unfavorable judgment in the
patent litigation.

"10. Rosenberg performed services having a value on a *quantum meruit*
theory of $ 27,000.00.
"11. Brenner has assigned to Rosenberg any interest he might claim in
Rosenberg's fee."

Appellants appealed setting forth seven assignments of error. [1] **[*21]** The assignments of error were not individually briefed, but instead were segregated into several issues concerning Rosenberg's right to compensation. Since all the issues contest Rosenberg's right to receive compensation, the issues will be addressed together.

Appellants contest the trial court's award of attorney fees based on the following: (1) Calderon, neither personally nor through his attorney, authorized the hiring of Rosenberg and, therefore, Calderon was not responsible for the payment of services rendered by Rosenberg; (2) assuming Rosenberg was hired by Calderon, Rosenberg was never discharged as an attorney and, consequently, his fees must be based on the contingency fee arrangement between Calderon and Brenner; (3) if Rosenberg was ostensibly hired as **[*7]** Calderon's attorney and the court determines that he was discharged from the attorney-client relationship, his discharge was based on just cause and, therefore, Rosenberg was not entitled to compensation for his services rendered.

The record indicates that Calderon had hired Brenner to handle his patent infringement case. The question which arises from that relationship is whether Brenner had the

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[1] The seven assignments of error are as follows:

"1. The trial court erred in overruling Calderon's Motion for an Involuntary Dismissal at the close of Plaintiff's case because Rosenberg failed to prove a direct contractual relationship with either Defendant that would provide a basis for recovery.

"2. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Brenner acted as an agent for Calderon and intended, as that agent, to create a new contract between Calderon and Rosenberg.

"3. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Brenner, Calderon's attorney, had actual authority from Calderon to create a new contract between Calderon and Rosenberg or any other attorney.

"4. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Calderon had actual knowledge that Rosenberg had been hired by Brenner in his capacity as agent for Calderon, if that was the case, as opposed to having been hired by Brenner as associate counsel.

"5. The trial court's judgment for Rosenberg was erroneous because, as a matter of agency law, an attorney has no implied or inherent authority to bind his client directly to another attorney absent actual or express authority granted by the client to do so.

"6. The trial court's judgment for Rosenberg was erroneous because, as a matter of agency law, Calderon could not have ratified any direct contract between himself and Rosenberg without actual knowledge that Rosenberg had been hired by Brenner acting solely as an agent for Calderon, and without actual knowledge of the terms of the contract allegedly created thereby.

"7. The trial court's judgment for Rosenberg was erroneous because Rosenberg, by violating a direct instruction from Calderon, first breached any agreement that may have existed between himself and Calderon, and thereby excused Calderon from further performance."

authority to facilitate the preparation of the patent case.

HN1[] The relationship between an attorney and a client is considered to be one of limited agency with respect to the particular suit for which the attorney is hired. The attorney has no implied power to do more than relates to the proper conduct of the suit, and cannot, without specific authority, bind the client by contract. Harrison v. Kickbride (1905), 16 Ohio Dec. 389. The client will only be liable for the acts of the attorney performed within scope of his authority, but not for illegal acts, unless it can be shown that the client participated therein or had knowledge thereof. Stewart v. Elias (App. 1935), 21 Ohio Law Abs. 199, error dismissed, *130 Ohio St. 589*; Prate v. Freedham (C.A. 4, 1978), 583 F. 2d **[*8]** 42; Lloyd v. Carnation Co. (D.C.N.C. 1984), 101 F.R.D. 346.

As this court has previously noted, the relationship between the attorney and client is, in a broad sense, that of an agent and principal. Gaines Reporting Service v. Mack (1982), 4 Ohio App. 3d 234; *Blanton v. Womancare Clinic Inc. (Cal. 1985), 696 P. 2d 645*.

With respect to the principal agency relationship, unless otherwise agreed, HN2[] an agent's authority to make a contract is inferred from the authority to conduct a transaction, if the making of such a contract is incidental to the transaction or is reasonably necessary to accomplish it. Restatement of the Law, Agency (2d Edition, 1958), 151-153, Sections 50, 51. An agent's authority to appoint an agent is inferred when the parties agree to the appointment, the authority is customary within the normal business operations, the authority exercised is within the proper conduct of the principal business and/or the authority is derived out of unforeseen circumstances.

As this court said in Foust v. Valley Brook Realty Co. (1981), 4 Ohio App. 3d 164, at paragraph three of the syllabus:

> HN3[] "The relation of principal and agent is always regarded **[*9]** by the court as a fiduciary one, implying trust and confidence. All acts and
>
> contracts of an agent done or made within the discharge of his duties,
>
> and within the scope of his authority, whether that authority is
>
> express, implied, or apparent, are obligatory upon the principal, and
>
> no ratification or assent on the latter's part is necessary to give
>
> them validity."

In this case, Calderon was aware that Brenner was a recent law school graduate and a new member of the state bar. Having recently entered the practice of law, Brenner, pursuant to Canon Six and Seven of the Code of Professional Responsibility and the relevant ethical considerations, had an obligation to Calderon to act competently in handling the legal matter in question. HN4[] Where the case involves litigation outside the attorney's field of expertise, the attorney, in order to retain the case, may consult a second attorney. Calderon was aware of Brenner's lack of experience and in fact was aware that Brenner had obtained advice from another attorney on this particular case. Although Calderon did not want to associate himself personally with the second attorney, he, in fact, conferred upon Brenner the authority **[*10]** to consult with a second attorney.

Mr. Calderon testified as follows:

> "Q. Did you discuss at that time the possibility that Mr. Rosenberg
> might become involved in presenting your case?
> "A. I had some problems before with another lawyer, a patent lawyer
> that Mr. Brenner appointed or he wanted to bring into the case, and
> the idea was that -- and I had this problem having an agreement with
>
> more than one lawyer, so I just -- we had an agreement, and *Larry*
>
> *Brenner had the right to appoint anybody he wanted to help him on the*
>
> *case*, and the reason I had a problem with another lawyer is because he
> wanted to -- you had pre-conditions, irrespective of this agreement.
> "In other words, he wanted Calderon Automation to give him other
> business, and if I don't give him other business he's not interested.
> In other words, he put some conditions which were outside the

agreement." (Emphasis added.)

Based on the foregoing admission and the remaining testimony of Calderon and Brenner, it is evident that Brenner had the authority to hire a second attorney to aid in the preparation of the patent case. The. only restriction on the second attorney was that his **[*11]** fee was to be based upon a share of Brenner's contingency fee. In lieu of Brenner's partnership with Rosenberg on this case, an attorney-client relationship was established between Calderon and Rosenberg. This conclusion is buttressed by the parties' testimony which clearly indicates that Calderon had spent a substantial amount of time and energy with Rosenberg during pretrial preparation. Calderon's conduct is indicia of his ratification of the role of Rosenberg as attorney on the patent case.

Important to the outcome of this case, however, is the relationship between Brenner and Rosenberg. An exhibit admitted into evidence, signed July, 1979, several days after the jury verdict, indicates that Brenner and Rosenberg had formed a partnership. The document was entitled a partnership agreement. The testimony of Brenner and Rosenberg, however, indicates that the partnership was limited only to the Calderon case. Both attorneys framed their relationship as a "one-case partnership." Although there is some evidence to the contrary, the trial court found, and we too conclude, that Brenner and Rosenberg were engaged in a joint venture with its sole objective being the favorable outcome of **[*12]** the Calderon patent case. This conclusion is supported by the fact that the partnership apparently dissolved at the conclusion of the jury's favorable answers to the special interrogatories, and did not continue in any respect past that point in time. Further, Rosenberg had only minimal contact with other cases during their association.

Having determined that Brenner had the authority to hire a second attorney and that Rosenberg was hired to assist in Calderon's patent case, we must determine whether Rosenberg's attorney-client relationship with Calderon was terminated. If the relationship was not terminated, then Rosenberg was entitled to a fee based upon a percentage of the contingency fee agreed upon between Calderon and Brenner. If the relationship was terminated, our inquiry necessitates a determination of whether the termination was with just cause or without just cause. The latter inquiry is based upon the general rule that *HN5*[] an attorney is not entitled to compensation where he is discharged for just cause, but if the attorney is discharged without just cause, he is entitled to a fee based on the reasonable value of his services rendered.

At the conclusion of the jury's answers **[*13]** of the special interrogatories, Rosenberg approached Calderon with the suggestion that General Motors might be willing to settle the case for a total of $ 3,000,000 in damages. Calderon refused and informed Rosenberg that no negotiations were to be permitted. After this point in time, which was after the special interrogatories, but prior to the subsequent ruling of the Federal District Court reversing the jury's findings, Calderon and Rosenberg had no further contact. Rosenberg argued, and the trial court adopted, the position that the ensuing sequence of events between the two individuals constituted a ***constructive termination*** of the ***attorney***-client relationship.

The general rule provides that *HN6*[] the "***attorney***-client relationship is consensual in nature and that the actions of either party can affect its continuance." *Brown v. Johnstone (1982), 5 Ohio App. 3d 165, 167*. As the *Brown* court noted, the termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client. *Id., at 166*; *Bucaro v. Keegan, Keegan, Hecker & Tully (1984), 483 N.Y.S. 2d 564*.

HN7[] The termination of **[*14]** the principal-agency relationship may occur at the expiration of a reasonable time, Restatement of the Law, Agency (2d Edition 1958) 275, Section 105, or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority. Restatement of the Law, Agency (2d Edition 1958) 283, Section 108.

Rosenberg testified that after he approached Calderon concerning his suggestion to attempt to settle the case, Calderon would no longer communicate with Rosenberg. Rosenberg attempted to communicate with Calderon by mail, but received no response. Contemporaneously, the Rosenberg-Brenner partnership dissolved. During the period of time from the jury's answers to the special interrogatories until the district court judge's judgment, Rosenberg was not asked to participate in the preparation of any post-trial briefs. Rosenberg further testified that he was not informed about the decision of the federal district court judge until nearly six weeks after the judgment had been rendered.

In rebuttal, Calderon testified that he did not consider Rosenberg his attorney at any point in time. Further,

that while he did **[*15]** receive and read Rosenberg's letters, he threw them into the waste basket. These letters apparently requested payment of fees for services rendered. Having already determined that Rosenberg and Calderon did have an attorney-client relationship, we find that there is sufficient evidence to indicate that any trust which had developed between the two parties had dissolved and, therefore, the attorney-client relationship had terminated.

In view of the foregoing conclusion that the attorney-client relationship had terminated, we must address the cause of the termination of the relationship.

The general rule provides that where an attorney is discharged with cause he is not entitled to compensation; where the attorney is discharged without cause the attorney is entitled to compensation based either on the stated agreement or upon the theory of quantum meruit. See *Law Offices Of Lawrence J. Stoekler v. Semaan (Mich. App. 1984), 355 N.W. 2d 271, 273-274*; *Teichner by Teichner v. W. & J. Holsteins Inc. (1985), 489 N.Y.S. 2d 36*.

With respect to attorney fees, the Franklin County Court of Appeals stated the proposition in the following manner:

> ***HN8***[⬆]
>
> "Where a contract for the performance **[*16]** of labor is *wrongfully*
>
> *terminated* by one-party, after part performance by the other, the
> right of the party performing, to recover the value of the labor
> performed, irrespective of the contract price, depends on whether,
> having regard to the contract, the party wrongfully terminating it,
> would thereby enrich himself at the expense of the other." [Citation
>
> omitted.] *Wilcox* v. *Rich* (Dec. 22, 1981), Franklin App. No. 81AP-269,
> unreported. (Emphasis added.)

Appellants contend that Rosenberg was discharged with just cause. Appellants' sole argument is that Rosenberg acted in direct contradiction of appellant's orders concerning the prohibition to settle the patent case. Appellants argue that Rosenberg breached his contractual obligations when he purportedly contacted General Motors in order to attempt to settle the case, despite Calderon's express orders prohibiting such contact.

This court's decision in *Ottawa County Commissioners* v. *Mitchell* (Oct. 12, 1984), Ottawa App. No. OT-84-9, unreported, reiterates the position of the Ohio Supreme Court in *Moor v. Crouch (1969), 19 Ohio St. 2d 24*, which provides that: ***HN9***[⬆] "Unless an attorney has **[*17]** been expressly authorized to do so, he has no implied or apparent authority, solely because he [*sic*] retained to represent the client, to negotiate or settle the client's case." See also, *Paxton* v. *Dietz* (May 28, 1985), Franklin App No. 84AP-972, unreported.

In this case, Calderon, while testifying, speculates that Rosenberg attempted to settle the case with General Motors. Rosenberg, however, while admitting that he telephoned General Motors, described the telephone discussion in the following manner:

> "Q. Now, how did -- what had to be done, Mr. Rosenberg, that lack of
> communication prevented?
> "What did you have to do that you couldn't do because Mr. Calderon
> wouldn't talk to you?
> "A. I couldn't do anything. I couldn't go over the briefs with Larry
> and Mr. Calderon when he would come in, because he wouldn't talk to
> me. I couldn't talk to the other side, because he forbid me to talk to
>
> them about settlement, *but I did call up the other side and speak to*
>
> *the attorney for General Motors just to discuss with him at the end of*
>
> *the trial what his views were and so forth of the case, just to see*
>
> *if I could feel out where they were* **[*18]** *the kind of assess what the*
>
> *situation was, but never discussed settlement with them.* I couldn't do
> a thing on the case."

Absent evidence to the contrary, we cannot conclude that Rosenberg's discussion with General Motors was an attempt to settle the case and, therefore, Rosenberg's conduct, while inadvisable, did not constitute a breach of his fiduciary duties. Accordingly,

the termination of Rosenberg's employment was without just cause.

In summary of the early portions of this opinion, we have found that Mr. Rosenberg was hired and did establish an attorney-client relationship with Calderon; that Mr. Rosenberg was discharged from the relationship, and that Mr. Rosenberg's discharge/termination was without just cause. We must now determine the appropriate measure of damages.

It is axiomatic that had Mr. Rosenberg continued to represent Mr. Calderon in the patent case, he would have been entitled to his share of the contingency fee arrangement between Calderon and Rosenberg. However, as previously noted, Calderon terminated the relationship without just cause prior to the Federal Court's ruling. Due to this factual setting, the issue remains concerning the method or **[*19]** the measure of damages that Rosenberg has incurred.

Calderon argues that Rosenberg's measure of attorney fees should be based upon the result of the patent case. Calderon further argues that since the federal district court judge entered a finding unfavorable to his patent rights, and since upon settlement of the case, Mr. Calderon did not receive any substantial gain in patent rights or in monetary gain, Rosenberg is not entitled to fees. We disagree.

Mr. Rosenberg's award of attorney fees cannot be based upon the unfavorable outcome of the case. Mr. Rosenberg was constructively terminated from his position as an attorney for Mr. Calderon after the favorable findings of the jury, but prior to the unfavorable findings of the federal district court. At the time of his termination, Mr. Calderon had not suffered any damage or lost his case. Consequently, the reasonable value of Rosenberg's services must be based either on a percentage of the contingency fee or on the basis of quantum meruit. Rosenberg has elected, by his testimony and by his letters to Calderon, to be paid based upon the theory of quantum meruit. Cf. *Gross v. Lamb (1980), 1 Ohio App. 3d 1*; *G. Douglass* v. **[*20]** *Downend* (1908), 20 O.C.D. 649.

The record indicates that no time records were kept by Mr. Rosenberg. Mr. Rosenberg did, however, attempt to estimate the total number of hours spent on this case. His testimony was corroborated, at least in part, by the testimony of Calderon and Brenner. Based upon this testimony, the trial court awarded Rosenberg damages [for attorney fees] in the sum of $ 27,000.

Upon a review of the record, we find that the trial court exercised its discretion in arriving at a fair and equitable determination of fees for services rendered by Rosenberg. The trial court's award, in our opinion, accomplishes the same and we accordingly affirm.

In view of the foregoing, we find appellants' seven assignments of error to be not well-taken. [2]

A certified copy of this entry shall constitute the mandate pursuant to *Rule 27 of the Rules of Appellate Procedure.* See also Supp. R. 4, amended 1/1/80.

End of Document

[2] The record indicates that appellee filed a cross appeal; however, no briefs or assignments of error were filed. Therefore, appellee's cross-appeal is, hereby, dismisse

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Settlement Agreement") is entered on ~~December~~ FEB 5, 2018 ("Effective Date"), among EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC ("Plaintiffs") and LANGE PLUMBING, LLC ("Lange Plumbing") and its insurance companies, KINSALE INSURANCE COMPANY ("Kinsale") and AIG (hereinafter collectively "Lange Plumbing"). Plaintiffs and Lange Plumbing are individually referred to in this Settlement Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff EDGEWORTH FAMILY TRUST, in the State of Nevada, County of Clark, Case Number A-16-738444-C, against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO.

B. On August 24, 2016, an Amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION and SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET.

C. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION and SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET.

D. On April 4, 2017, VIKING filed a Third Party Complaint against GIBERTI CONSTRUCTION, LLC.

E. On June 12, 2017, GIBERTI filed a counter-claim against VIKING and a Cross-Complaint against LANGE PLUMBING, LLC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to add VIKING GROUP, INC. as a Defendant (hereinafter collectively the "Action").

F. Except as provided in the following Recital, the Parties have reached an arms-length and negotiated settlement of the following (collectively, "Released Claims"): (i) the Plaintiffs' Complaint against Lange Plumbing, and any amendments thereto, and (ii) any cross claims that may have been filed by any of the other parties in the Action.

G. This Settlement Agreement is intended to fully settle, release and waive all Released Claims in accordance with the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing factual recitals, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to the terms, provisions and covenants contained below, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein, as though fully set forth.

2. **Exchange of Settlement Documents and Payment Terms.**

a. On or before December 31, 2017, the Parties (through their respective counsel) shall exchange their signed counterparts of this Settlement Agreement. If necessary, the Parties agree to provide each other with reasonable extensions to provide the necessary signature pages.

b. By no later than 15 days after the settlement funds clear, ("Settlement Amount Payment Date"), Plaintiffs (through their counsel of record) shall pay to Lange Plumbing the total sum of Twenty Two Thousand Dollars ($22,000.00 — the "Settlement Amount") in full and complete satisfaction of the Released Claims, as follows:

c. Within ten (10) calendar days of Plaintiffs' receipt of the Settlement Amount, the attorneys for the Parties shall file a Stipulation and Order Dismissing the Released Claims with prejudice, and to take such action as may be necessary or appropriate to have an order entered dismissing the same. Each Party shall bear their own attorney's fees and costs with respect to such Released Claims.

3. **Releases.** Concurrent with the Settlement Amount having been paid to Plaintiffs, the Parties on behalf of their Related Persons and Entities,[1] shall have fully released, waived and discharged each of the other Parties and their Related Persons and Entities, for, from and against any and all Claims, whether seen or unforeseen, known or unknown, alleged or which could have been alleged, brought or asserted as part of the Released Claims (collectively, "Release"). Plaintiffs represent, warrant and agree that payment of the Settlement Amount, shall be in full, final and complete settlement of all Claims that are the subject of the Release. Lange agrees not to assert a lien on the property as all outstanding invoices will be deemed satisfied in full.

4. **Waiver of All Claims.** The Parties acknowledge that they may hereafter discover Claims that are the subject of the Release provided in this Settlement Agreement, or facts now unknown or unsuspected from those which they now know or believe to be true. Nevertheless, by way of this Settlement Agreement and except for those Claims that are relating to a breach of this Settlement Agreement, (i) the Parties fully, finally, and forever Release all such Claims even those that may be unknown as of the Effective Date of this Settlement Agreement, including any additional insured obligations, and (ii) the Release contained in this Settlement Agreement shall remain in full force and effect as a complete release and bar of any and all such Claims notwithstanding the discovery or existence of any such additional or different claims or facts before or after the Effective Date of this Settlement Agreement.

5. **No Admission of Liability.** This Settlement Agreement is intended as a compromise of disputed Claims that are the subject of the Release. This Settlement Agreement and compliance with its terms shall not be construed as an admission of any liability, misconduct, or wrongdoing whatsoever, or of any violation of any order, law, statute, duty, or contract whatsoever as to any of the Parties to this Settlement Agreement, and that liability or wrongdoing is expressly denied by the Parties.

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[1] "Related Persons and Entities" shall mean any and all past, present and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stock holders, commissioners, directors, officers, employees, agents, insurers, warranty providers, attorneys, experts, lenders, mortgage holders, predecessors, partners, joint venturers, legal representatives, heirs, administrators, trustors, trustees, beneficiaries, creditors, assigns, successors, lessees, tenants, and legal and equitable owners, individuals as applicable to the Parties, contractors, subcontractors, sellers of products, etc.

6. **Good Faith Settlement.** The Parties stipulate and agree that the Release provided herein is made in good faith pursuant to the provisions NRS Section 17.245, and this settlement is contingent upon a determination of good faith settlement by the District Court pursuant to that Section.

7. **Covenant Not to Sue.** Claims relating to a breach of this Settlement Agreement, the Parties covenant and agree that they have not, and shall not, bring any other Claim (that is the subject of the Release) against any Party to this Settlement Agreement, including all Related Person and Entities regarding the matters that are the subject of the Release. This Settlement Agreement may be pled as a full and complete defense to any such action or other proceeding as well as a basis for abatement of, or injunction against, such action or other proceeding as provided herein.

8. **Representations and Warranties.**

a. Plaintiffs represent and warrant that it is the real party-in-interest and has standing to assert the Claims that are the subject of the Release.

b. The Parties, and each of them, represent and warrant that they are each duly authorized to compromise and settle the Claims that are the subject of the Release, which the Parties, and each of them, have or may have against another Party, and to release all such Claims in the manner and scope set forth in this Settlement Agreement.

c. The Parties, and each of them, represent and warrant that they have selected and retained their own experts and consultants to inspect, analyze, reach conclusions and advise them regarding the nature, extent, cause and repair of the alleged Claims that are the subject of the Release.

d. The Parties, and each of them, represent and warrant that they have not sold, transferred, assigned, or hypothecated, whether voluntarily or involuntarily, by subrogation, operation of law or otherwise, to any other person or entity, except as otherwise expressly stated herein, pursuant to any assignments attached hereto.

e. The Parties, and each of them, represent and warrant that they have been fully advised by their attorneys, concerning the effect, finality and the issues contained in this Settlement Agreement, and that the Parties, and each of them, understand the effect and finality of this Settlement Agreement.

f. The Parties, and each of them, represent and warrant that they have had the right to enforce any provisions of this Settlement Agreement by filing any appropriate action, proceeding or motion in the Court. The Parties further agree, acknowledge, stipulate, and request that the Court in this action shall retain jurisdiction over the Parties to reopen the action after it is dismissed and to hear any motion.

9. **Time of Essence.** The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

10. **Express Disclaimer.** The Parties expressly disclaim any reliance of any kind or nature, whether in discovery or otherwise, on statements, actions or omissions of any kind made or allegedly made by any of the Parties, or their attorneys and agents, regarding the facts of

Released Claims, any other facts pertinent to this Settlement Agreement or the subjects therein, or the contents and legal consequences of this Settlement Agreement.

11. **Entire Agreement.** This Settlement Agreement sets forth the entire understanding between the Parties in connection with the subject matter discussed herein, and may not be modified except by an instrument in writing signed by all Parties.

12. **Construction.** This Settlement Agreement has been jointly prepared by all Parties hereto. The Parties and their respective advisors believe that this Settlement Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against any Party.

13. **Attorney Representation.** In negotiation, preparation and execution of this Settlement Agreement, the Parties hereby acknowledge that each Party has been represented by counsel, that each Party has had an opportunity to consult with an attorney of its own choosing prior to the execution of this Settlement Agreement, and has been advised that it is in its best interests to do so. The Parties have read this Settlement Agreement in its entirety and fully understand the terms and provisions contained herein. The Parties execute this Settlement Agreement freely and voluntarily and accept the terms, conditions and provisions of this Settlement Agreement, and state that the execution by each of them of this Settlement Agreement is free from any coercion whatsoever.

14. **Governing Law.** This Settlement Agreement is intended to be performed in the State of Nevada, and the laws of Nevada shall govern its interpretation and effect. The Parties hereto consent to the exclusive jurisdiction of any Federal or State court located in the County of Clark, State of Nevada, for any action commenced hereunder.

15. **Severability.** The Parties understand and agree that, if any provision of this Settlement Agreement is declared to be invalid or unenforceable by a court of competent jurisdiction, such provision or portion of this Settlement Agreement will be deemed to be severed and deleted from this Settlement Agreement, but this Settlement Agreement in all other respects will remain unmodified and continue in full force and effect; provided, however, that this provision does not preclude a court of competent jurisdiction from refusing to sever any provision if severance would be inequitable.

16. **Settlement Agreement Survives Breach.** If any Party to this Settlement Agreement should breach (material breach or otherwise) any provision or any part of any provision of this Settlement Agreement, such breach shall not void the Settlement Agreement for non-breaching Parties, nor shall such breach affect the rights or obligations of non-breaching Parties to this Settlement Agreement, which shall remain in full force and effect for those non-breaching Parties.

17. **Prevailing Party.** In the event of the bringing of any action or suit by a Party hereto by reason of any breach of any of the covenants, agreements or provisions arising out of this Settlement Agreement, then in that event, the prevailing Party shall be entitled to recover all reasonable costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other reasonable professional fees resulting therefrom.

18. **Counterparts; Facsimile Signatures.** This Settlement Agreement may be executed in one or more counterparts, each which shall constitute one and the same instrument,

and shall become effective when one or more counterparts have been signed by each of the parties. The Parties agree that facsimile signatures will be treated in all manner and respects as a binding and original document, and the signature of any Party shall be considered for these purposes as an original signature.

19. **Successors and Assigns.** This Settlement Agreement is binding upon and inures to the benefit of the successors, assigns, and nominees of the Parties hereto.

20. **Titles and Headings.** Titles and headings of Sections of this Settlement Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Settlement Agreement.

21. **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural as the identity of the person or persons may require.

22. **Further Documents.** Each Party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary or proper to carry out the intent of this Settlement Agreement.

23. **Acknowledgment.** The Parties acknowledge and agree that they were supplied a copy of this Settlement Agreement, that they or their authorized representative has carefully read and understands the Settlement Agreement, that they have been advised as to the content of this Settlement Agreement by counsel of their own choice, and that they voluntarily accept the terms and conditions of this Settlement Agreement.

24. **Authority.** The Parties, and each of them, represent and warrant that each Party hereto holds the requisite power and authority to enter this Settlement Agreement.

25. **Admissibility of Settlement Agreement.** In an action or proceeding related to this Settlement Agreement, the Parties stipulate that a fully executed copy of this Settlement Agreement may be admissible to the same extent as the original Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the day and year first above written.

[SIGNATURES ON SUBSEQUENT PAGES]

EDGEWORTH FAMILY TRUST

By: _____
Name: BRIAN EDGEWORTH
Title: TRUSTEE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 5 day of February, 2018, before me, the undersigned Notary Public in and for said County and State, appeared Brian Edgeworth, as Trustee of **EDGEWORTH FAMILY TRUST**, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes therein mentioned.

_____
NOTARY PUBLIC

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

APPROVED AS TO FORM AND CONTENT:

SIMON LAW

_____
DANIEL S. SIMON, ESQ.
810 S. Casino Center Boulevard
Las Vegas, Nevada 89101

ATTORNEYS FOR PLAINTIFFS

AMERICAN GRATING, LLC

By: _____
Name: BRIAN EDGEWORTH
Title: MEMBER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 5 day of February, 2018, before me, the undersigned Notary Public in and for said County and State, appeared BRIAN EDGEWORTH, as MEMBER of **AMERICAN GRATING, LLC**, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes therein mentioned.

_____
NOTARY PUBLIC

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

APPROVED AS TO FORM AND CONTENT:

SIMON LAW

_____
DANIEL S. SIMON, ESQ.
810 S. Casino Center Boulevard
Las Vegas, Nevada 89101

ATTORNEYS FOR PLAINTIFFS

LANGE PLUMBING, LLC

By:_____
Name: _____
Title:_____

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 2017, before me, the undersigned Notary Public in and for said County and State, appeared _____, as _____ of **LANGE PLUMBING, LLC**, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes therein mentioned.

_____
NOTARY PUBLIC

APPROVED AS TO FORM AND CONTENT:

PARKER NELSON & ASSOCIATES, CHTD.

_____
THEODORE PARKER, III, ESQ.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

ATTORNEYS FOR LANGE PLUMBING, LLC

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

FGThis Settlement Agreement and Release of Claims ("Settlement Agreement") is entered on ~~December~~ 5, 2018 ("Effective Date"), among EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC ("Plaintiffs") and LANGE PLUMBING, LLC ("Lange Plumbing") and its insurance companies, KINSALE INSURANCE COMPANY ("Kinsale") and AIG (hereinafter collectively "Lange Plumbing"). Plaintiffs and Lange Plumbing are individually referred to in this Settlement Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff EDGEWORTH FAMILY TRUST, in the State of Nevada, County of Clark, Case Number A-16-738444-C, against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO.

B. On August 24, 2016, an Amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION and SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET.

C. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION and SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET.

D. On April 4, 2017, VIKING filed a Third Party Complaint against GIBERTI CONSTRUCTION, LLC.

E. On June 12, 2017, GIBERTI filed a counter-claim against VIKING and a Cross-Complaint against LANGE PLUMBING, LLC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to add VIKING GROUP, INC. as a Defendant (hereinafter collectively the "Action").

F. Except as provided in the following Recital, the Parties have reached an arms-length and negotiated settlement of the following (collectively, "Released Claims"): (i) the Plaintiffs' Complaint against Lange Plumbing, and any amendments thereto, and (ii) any cross claims that may have been filed by any of the other parties in the Action.

G. This Settlement Agreement is intended to fully settle, release and waive all Released Claims in accordance with the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing factual recitals, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to the terms, provisions and covenants contained below, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein, as though fully set forth.

2. **Exchange of Settlement Documents and Payment Terms.**

a. On or before December 31, 2017, the Parties (through their respective counsel) shall exchange their signed counterparts of this Settlement Agreement. If necessary, the Parties agree to provide each other with reasonable extensions to provide the necessary signature pages.

b. By no later than January 30, 2018 ("Settlement Amount Payment Date"), Lange Plumbing (through their respective insurance carriers, Kinsale and AIG) shall pay to Plaintiffs the total sum of One Hundred Thousand Dollars ($100,000.00 — the "Settlement Amount") in full and complete satisfaction of the Released Claims, as follows:

c. Within ten (10) calendar days of Plaintiffs' receipt of the Settlement Amount, the attorneys for the Parties shall file a Stipulation and Order Dismissing the Released Claims with prejudice, and to take such action as may be necessary or appropriate to have an order entered dismissing the same. Each Party shall bear their own attorney's fees and costs with respect to such Released Claims.

3. **Releases.** Concurrent with the Settlement Amount having been paid to Plaintiffs, the Parties on behalf of their Related Persons and Entities,[1] shall have fully released, waived and discharged each of the other Parties and their Related Persons and Entities, for, from and against any and all Claims, whether seen or unforeseen, known or unknown, alleged or which could have been alleged, brought or asserted as part of the Released Claims (collectively, "Release"). Plaintiffs represent, warrant and agree that payment of the Settlement Amount, shall be in full, final and complete settlement of all Claims that are the subject of the Release. Lange agrees not to assert a lien on the property as all outstanding invoices will be deemed satisfied in full.

4. **Waiver of All Claims.** The Parties acknowledge that they may hereafter discover Claims that are the subject of the Release provided in this Settlement Agreement, or facts now unknown or unsuspected from those which they now know or believe to be true. Nevertheless, by way of this Settlement Agreement and except for those Claims that are relating to a breach of this Settlement Agreement, (i) the Parties fully, finally, and forever Release all such Claims even those that may be unknown as of the Effective Date of this Settlement Agreement, including any additional insured obligations, and (ii) the Release contained in this Settlement Agreement shall remain in full force and effect as a complete release and bar of any and all such Claims notwithstanding the discovery or existence of any such additional or different claims or facts before or after the Effective Date of this Settlement Agreement.

5. **No Admission of Liability.** This Settlement Agreement is intended as a compromise of disputed Claims that are the subject of the Release. This Settlement Agreement and compliance with its terms shall not be construed as an admission of any liability, misconduct, or wrongdoing whatsoever, or of any violation of any order, law, statute, duty, or contract whatsoever as to any of the Parties to this Settlement Agreement, and that liability or wrongdoing is expressly denied by the Parties.

[1] "Related Persons and Entities" shall mean any and all past, present and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stock holders, commissioners, directors, officers, employees, agents, insurers, warranty providers, attorneys, experts, lenders, mortgage holders, predecessors, partners, joint venturers, legal representatives, heirs, administrators, trustors, trustees, beneficiaries, creditors, assigns, successors, lessees, tenants, and legal and equitable owners, individuals as applicable to the Parties, and contractors, subcontractors, sellers of products, etc.

6. **Good Faith Settlement.** The Parties stipulate and agree that the Release provided herein is made in good faith pursuant to the provisions NRS Section 17.245, and this settlement is contingent upon a determination of good faith settlement by the District Court pursuant to that Section.

7. **Covenant Not to Sue.** Claims relating to a breach of this Settlement Agreement, the Parties covenant and agree that they have not, and shall not, bring any other Claim (that is the subject of the Release) against any Party to this Settlement Agreement, including all Related Person and Entities regarding the matters that are the subject of the Release. This Settlement Agreement may be pled as a full and complete defense to any such action or other proceeding as well as a basis for abatement of, or injunction against, such action or other proceeding as provided herein.

8. **Representations and Warranties.**

a. Plaintiffs represent and warrant that it is the real party-in-interest and has standing to assert the Claims that are the subject of the Release.

b. The Parties, and each of them, represent and warrant that they are each duly authorized to compromise and settle the Claims that are the subject of the Release, which the Parties, and each of them, have or may have against another Party, and to release all such Claims in the manner and scope set forth in this Settlement Agreement.

c. The Parties, and each of them, represent and warrant that they have selected and retained their own experts and consultants to inspect, analyze, reach conclusions and advise them regarding the nature, extent, cause and repair of the alleged Claims that are the subject of the Release.

d. The Parties, and each of them, represent and warrant that they have not sold, transferred, assigned, or hypothecated, whether voluntarily or involuntarily, by subrogation, operation of law or otherwise, to any other person or entity, except as otherwise expressly stated herein, pursuant to any assignments attached hereto.

e. The Parties, and each of them, represent and warrant that they have been fully advised by their attorneys, concerning the effect, finality and the issues contained in this Settlement Agreement, and that the Parties, and each of them, understand the effect and finality of this Settlement Agreement.

f. The Parties, and each of them, represent and warrant that they have had the right to enforce any provisions of this Settlement Agreement by filing any appropriate action, proceeding or motion in the Court. The Parties further agree, acknowledge, stipulate, and request that the Court in this action shall retain jurisdiction over the Parties to reopen the action after it is dismissed and to hear any motion.

9. **Time of Essence.** The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

10. **Express Disclaimer.** The Parties expressly disclaim any reliance of any kind or nature, whether in discovery or otherwise, on statements, actions or omissions of any kind made or allegedly made by any of the Parties, or their attorneys and agents, regarding the facts of

Released Claims, any other facts pertinent to this Settlement Agreement or the subjects therein, or the contents and legal consequences of this Settlement Agreement.

11. **Entire Agreement.** This Settlement Agreement sets forth the entire understanding between the Parties in connection with the subject matter discussed herein, and may not be modified except by an instrument in writing signed by all Parties.

12. **Construction.** This Settlement Agreement has been jointly prepared by all Parties hereto. The Parties and their respective advisors believe that this Settlement Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against any Party.

13. **Attorney Representation.** In negotiation, preparation and execution of this Settlement Agreement, the Parties hereby acknowledge that each Party has been represented by counsel, that each Party has had an opportunity to consult with an attorney of its own choosing prior to the execution of this Settlement Agreement, and has been advised that it is in its best interests to do so. The Parties have read this Settlement Agreement in its entirety and fully understand the terms and provisions contained herein. The Parties execute this Settlement Agreement freely and voluntarily and accept the terms, conditions and provisions of this Settlement Agreement, and state that the execution by each of them of this Settlement Agreement is free from any coercion whatsoever.

14. **Governing Law.** This Settlement Agreement is intended to be performed in the State of Nevada, and the laws of Nevada shall govern its interpretation and effect. The Parties hereto consent to the exclusive jurisdiction of any Federal or State court located in the County of Clark, State of Nevada, for any action commenced hereunder.

15. **Severability.** The Parties understand and agree that, if any provision of this Settlement Agreement is declared to be invalid or unenforceable by a court of competent jurisdiction, such provision or portion of this Settlement Agreement will be deemed to be severed and deleted from this Settlement Agreement, but this Settlement Agreement in all other respects will remain unmodified and continue in full force and effect; provided, however, that this provision does not preclude a court of competent jurisdiction from refusing to sever any provision if severance would be inequitable.

16. **Settlement Agreement Survives Breach.** If any Party to this Settlement Agreement should breach (material breach or otherwise) any provision or any part of any provision of this Settlement Agreement, such breach shall not void the Settlement Agreement for non-breaching Parties, nor shall such breach affect the rights or obligations of non-breaching Parties to this Settlement Agreement, which shall remain in full force and effect for those non-breaching Parties.

17. **Prevailing Party.** In the event of the bringing of any action or suit by a Party hereto by reason of any breach of any of the covenants, agreements or provisions arising out of this Settlement Agreement, then in that event, the prevailing Party shall be entitled to recover all reasonable costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other reasonable professional fees resulting therefrom.

18. **Counterparts; Facsimile Signatures.** This Settlement Agreement may be executed in one or more counterparts, each which shall constitute one and the same instrument,

and shall become effective when one or more counterparts have been signed by each of the parties. The Parties agree that facsimile signatures will be treated in all manner and respects as a binding and original document, and the signature of any Party shall be considered for these purposes as an original signature.

19. **Successors and Assigns.** This Settlement Agreement is binding upon and inures to the benefit of the successors, assigns, and nominees of the Parties hereto.

20. **Titles and Headings.** Titles and headings of Sections of this Settlement Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Settlement Agreement.

21. **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural as the identity of the person or persons may require.

22. **Further Documents.** Each Party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary or proper to carry out the intent of this Settlement Agreement.

23. **Acknowledgment.** The Parties acknowledge and agree that they were supplied a copy of this Settlement Agreement, that they or their authorized representative has carefully read and understands the Settlement Agreement, that they have been advised as to the content of this Settlement Agreement by counsel of their own choice, and that they voluntarily accept the terms and conditions of this Settlement Agreement.

24. **Authority.** The Parties, and each of them, represent and warrant that each Party hereto holds the requisite power and authority to enter this Settlement Agreement.

25. **Admissibility of Settlement Agreement.** In an action or proceeding related to this Settlement Agreement, the Parties stipulate that a fully executed copy of this Settlement Agreement may be admissible to the same extent as the original Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the day and year first above written.

[SIGNATURES ON SUBSEQUENT PAGES]

EDGEWORTH FAMILY TRUST

By: _____
Name: BRIAN EDGEWORTH
Title: TRUSTEE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 5 day of February, 2018, before me, the undersigned Notary Public in and for said County and State, appeared Brian Edgeworth, as Trustee of **EDGEWORTH FAMILY TRUST**, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes therein mentioned.

_____
NOTARY PUBLIC

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

APPROVED AS TO FORM AND CONTENT:

SIMON LAW

_____
DANIEL S. SIMON, ESQ.
810 S. Casino Center Boulevard
Las Vegas, Nevada 89101

ATTORNEYS FOR PLAINTIFFS

AMERICAN GRATING, LLC

By: _____
Name: BRIAN EDGEWORTH
Title: MEMBER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 5th day of February, 2018, before me, the undersigned Notary Public in and for said County and State, appeared BRIAN EDGEWORTH, as Member of **AMERICAN GRATING, LLC**, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes therein mentioned.

_____
NOTARY PUBLIC

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

APPROVED AS TO FORM AND CONTENT:

SIMON LAW

_____
DANIEL S. SIMON, ESQ.
810 S. Casino Center Boulevard
Las Vegas, Nevada 89101

ATTORNEYS FOR PLAINTIFFS

LANGE PLUMBING, LLC

By:_____
Name: _____
Title:_____

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 2017, before me, the undersigned Notary Public in and for said County and State, appeared _____, as _____ of **LANGE PLUMBING, LLC**, known to me to be the person who executed the above and foregoing instrument, and who acknowledged to me that he/she did so freely and voluntarily and for the purposes therein mentioned.

_____
NOTARY PUBLIC

APPROVED AS TO FORM AND CONTENT:

PARKER NELSON & ASSOCIATES, CHTD.

_____
THEODORE PARKER, III, ESQ.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

ATTORNEYS FOR LANGE PLUMBING, LLC

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Kinsale Insurance Company
2221 Edward Holland Drive, Suite 600
Richmond, VA 23230

Check No.	Check Date
0100019689	01/25/2018

2-648
710

The Private Bank
Chicago, IL

PAY One Hundred Thousand And 00/100 Dollars

CHECK AMOUNT
$**********100,000.00

TO THE ORDER OF
EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC AND

LAW OFFICE OF DANIEL S. SIMON

Full and Final Settlement of any and all Claims

RUB RED IMAGE FADES WITH HEAT

BY_______________
AUTHORIZED SIGNATURE

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVE INK

For American Grating
For American Grating
For Edgeworth Family Trust
For Edgeworth Family Trust

AA00657

SIMONEH0000061

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

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

8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in those invoices totaled $486,453.09. There were hundreds of entries in these invoices. The hourly rate that SIMON billed us in all of his invoices was at $550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of approximately $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I don't know whether SIMON ever disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages. I do know, however, that when SIMON produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018, for an additional $692,120 in fees, his hourly rate for all of his work was billed out at our agreed to rate of $550.

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

10. Plus, SIMON didn't express an interest in taking what amounted to a property damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in

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the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

11. Please understand that I was incredibly involved in this litigation in every respect. Regrettably, it was and has been my life for nearly two years. While I don't discount some of the good work SIMON performed, I was the one who dug through the thousands of documents and found the trail that led to the discovery that Viking had a bad history with these sprinklers, and that there was evidence of a cover up. I was the one who located the prior case involving Viking and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's insurer), and from fire marshals, etc. I was also the one who did the research and made the calls to the scores of people who'd had hundreds of problems with these sprinklers and who had knowledge that Viking had tried to cover this up for years. This was the work product that caused this case to grow into the one that it did.

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that

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if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

15. Following that meeting, SIMON would not let the issue alone, and he was relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never agreed on any terms to alter, modify, or amend our fee agreement.

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

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SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

17. A reason given by SIMON to modify the fee agreement was that he claims he under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. We were again stunned to learn of SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to us for our signatures. This, too, came with a high-pressure approach by SIMON. This new approach also came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly $500,000 from us. He said that "any judge" and "the bar" would give him the contingency agreement that he now wanted, that he was now demanding he get, and the fee that he said he was now entitled to receive.

18. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe until the claims against defendant Viking were resolved. How can that be? All of our claims against Viking and Lange were set to go to trial in February of this year.

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19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be billing more hours that he hadn't yet written down, or that additional invoices for fees or costs would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS before he could determine the amount of his fee. At that time, I felt I had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the LITIGATION.

20. Despite SIMON'S requests and demands on us for the payment of more in fees, we refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and time that he'd never previously produced to us and that never saw the light of day in the LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was nothing short of stealing what was ours.

21. When SIMON refused to release the full amount of the settlement proceeds to us without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable alterative available to us was to file a complaint for damages against SIMON.

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22. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to have the settlement funds deposited like they were, as SIMON flatly refused to give us what was ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

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

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

25. I also feel that it's remarkable and so wrong that an attorney can agree to receive an hourly rate of $550 an hour, get paid $550 an hour to the tune of nearly $500,000 for a period of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless we agree to pay him a bonus that ranges between $692,000 to $1.9 million dollars.

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false

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accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls, SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit from the charity are minors, an accusation of this severity, from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he

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needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON, though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

Subscribed and Sworn to before me
this 12 day of February 2018.

Notary Public in and for said County and State

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

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SUPP

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Attorney for SIMON

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5 and ROE entities 6 through 10; Defendants.	Case No.: A738444 Dept. No.: 10 **SUPPLEMENT TO MOTION TO ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL SIMON PC**

The LAW OFFICE OF DANIEL S. SIMON, P.C. hereby supplements the

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motion for an Order adjudicating its attorney lien.

DATED this 16th day of February 2018.

/s/ James R. Christensen

James R. Christensen Esq.
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Attorney for LAW OFFICE OF
DANIEL S. SIMON, P.C.

POINTS AND AUTHORITIES

Adjudication of the lien is ripe. Adjudication means that the trial judge determines the amount of the lien pursuant to NRS 18.015. A jury does not decide the amount of the lien pursuant to the statute, only the trial judge.

The public policy confirmed by the Nevada Supreme Court many times is that the trial judge is charged with the duty to resolve the lien as expeditiously as possible. The reason is that the trial judge is the one that knows the case best, it promotes judicial economy and resolves the matter expeditiously. NRS 18.015 has been the law in the state of Nevada for a long time and the statute requires prompt adjudication.

If a factual dispute surrounding the lien exists, then the proper procedure is to conduct an evidentiary hearing so that the trial judge can make findings of fact, conclusions of law and determine the amount of the lien. *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev. 2012) (unpublished)(on remand the Supreme Court directed the district court to hold an evidentiary hearing for an attorney lien adjudication to resolve an issue of alleged billing fraud and the amount of the lien). There is nothing in the statute or other law that holds that a factual dispute overrules the statute.

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A. Attorney fees are properly decided by the court, not a jury.

The Nevada Supreme Court has consistently approved taking evidence pursuant to NRCP 43(c) to resolve a factual issue surrounding the determination of attorney fees. *See, e.g., James Hardie Gypsum (Nevada) Inc., v. Inquipco*, 929 P.2d 903 (Nev. 1996); disapproved of on other grounds by, *Sandy Valley Associates v. Sky Ranch Estates owners Ass'n*, 35 P.3d 964 (Nev. 2001). In *James Hardie Gypsum,* Hardie argued:

> "under the due process clause[s] of the United States and Nevada Constitution[s], due process requires that Hardie be entitled to confront witnesses and cross examine them on the issue of damages."

Id., at 908-909. Hardie lost the argument. The Supreme Court held that due process was served by submission of evidence via affidavit or an evidentiary hearing pursuant to NRCP 43(c).

In this case, Mr. Vannah forthrightly admitted:

> "This is a fee dispute."

(Ex. A; Transcript of 2.6.18 hearing at page 35, line 24.) Mr. Vannah also made clear that he wanted the fee to be determined by a jury:

> "So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts…"

(Ex. A; page 35 at lines 11-12.)

Mr. Vannah confirmed there are no malpractice claims or other complaints about Mr. Simon, "other than on the billing situation". (Ex. A; page 32 at lines 5-9.) Thus, Mr. Simon was sued solely as a legal tactic to try to stop adjudication of the lien by this Court. Filing a lawsuit solely as a litigation tactic is more than questionable. Regardless, the tactic must fail, because this Court cannot re-write the statute to suit the clients' litigation strategy.

The law in Nevada is clear, when a charging lien is perfected and adjudication is ripe, the court "shall" adjudicate the lien. NRS 18.015(6). There is no discretion allowed the court under the statute, adjudication must be done. This Court is allowed discretion regarding the taking of evidence under NRCP 43(c) and the case law. This Court may rule based upon affidavits and other submissions, or the Court may take additional evidence via an evidentiary hearing.

This honorable Court is not the Legislature. The statute mandates this Court "shall" adjudicate the lien.

B. Consolidation does not prevent prompt lien adjudication.

NRS 18.015 requires prompt adjudication of the lien. It is of no consequence that a separate action was filed. The separate action does not stop adjudication, the statute says "shall" and there are no exceptions. If the separate action was not filed, the court would proceed with adjudication. If the separate action is dismissed, the court proceeds with adjudication.

This Court should address each matter before it separately as required by the law. There are pending motions to dismiss the complaint. If the Court dismisses the complaint, then the unsupported argument that the complaint stops adjudication fails. If the motions to dismiss are denied in part, the court still "shall" adjudicate the lien. The court should consider each motion and/or claim separately on the merits of the law.

C. NRS 18.015 does not allow discovery.

NRS 18.015 does not permit discovery. Quite the opposite, the statute provides for adjudication on five days' notice.

NRCP 43(c) and case law allow this Court discretion to hold an evidentiary hearing to take evidence; but, there is no statute, code or case that permits lengthy and expensive discovery. NRCP 43 satisfies any legitimate due process concern.

In this case, the conduct of the Edgeworth's cuts against the legitimacy of a due process argument. The clients were first unavailable to endorse checks until after the New Year. The day after Mr. Simon left on Christmas break, the clients became available and complained of continued delay and costs. Now, as it serves them, the clients want delay and increased costs from discovery. However, the changing positions do not change the statute. Pursuant to the statute, this Court shall adjudicate the lien.

CONCLUSION

The Law Office of Daniel Simon respectfully requests that this court set this matter for an evidentiary hearing at the earliest possible convenience of the Court.

Dated this _16th___ day of February, 2018.

/s/ James R. Christensen

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Attorney for LAW OFFICE OF DANIEL S. SIMON, P.C.

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing SUPPLEMENT TO MOTION TO ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE OF DANIEL S. SIMON, P.C.; ORDER SHORTENING TIME was made by electronic service (via Odyssey) this ___16th___ day of February, 2018, to all parties currently shown on the Court's E-Service List.

an employee of
CHRISTIANSEN LAW OFFICES

Exhibit A

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

to -- I don't really work at 550 an hour, I'm much greater than that. $550 an hour to me is dog food. It's dog crap. It's nothing. So why don't you give me a big bonus. You ought to pay me a percentage of what I've done in the case because I did a great job.

Now, nobody's going to quarrel that it wasn't a great result. There's certainly some quall as to why the result was done, my client was very, very involved in this case, but I don't want to get into all of that and I'm certainly not criticizing Mr. Simon for anything he did, other than on the billing situation.

At that time Mr. Simon said well, I don't know if I can even continue in this case and wrap this case up unless we reach an agreement that you're going to pay me some sort of percentage, you know, I want a contingency fee and I want you guys to agree to sign that. My client said no, we're not doing that. You didn't take the risk. I've paid you hourly, I've paid you over a half a million dollars. I'm willing to continue finishing up paying you hourly.

So, Mr. Simon said well, that's not going to work, I want a contingency fee. They came to us, we got involved, we had a conversation with all of us, and at that point in time everybody agreed, he cannot have a contingency fee in this case because there's nothing in writing. You don't even have an oral agreement, much less in writing.

So what happened is -- and this is an amazing part, Judge -- and not at the time that Mr. Simon goes to one of the depositions, we quoted that, the other side said to him how much are fees in this case, have they actually been paid. And Mr. -- and that's the point of that. Mr.

being the judge and I have no problem with the other judge being the judge, that's never been an issue in the case. What we do have a problem with is -- and I don't understand and maybe Mr. Christensen can clear that up. He's saying well, we can go ahead and have you take this case and make a ruling without a jury; that you can go through here and have a hearing and make a decision on what the fee should be. And then we can have the jury make a decision as to what the fee should be, but the problem is if you make a decision on what the fee should be that's issue preclusion on the whole thing and it ends up with being a preclusion.

So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts, we'd like to hear the jury hear Mr. Simon get up and say to him $550 an hour is dog meat, you know, he can't make a living on that and I would never bill at such a cheap rate and he's much greater than that. And I'd like to hear the jury hear that, people making $12 an hour hear that kind of a conversation that Mr. Simon is apparently going to testify to.

So there -- so bottom line, we get right down -- I -- so what we're asking, it's -- what we'd like you to do -- this case over. The underlying case with the sprinkler system and the flooding of the house, it's over. In re has nothing to do with determining what the fee should be. The fee -- whole issue is based on what was the agreement. I don't know much about the underlying case and I'm not having a problem understanding the fee dispute. This is a fee dispute.

We're just -- and if you want to hear it -- I don't think there's

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee

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was ever brought up at that time, let alone ever agreed to.

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

8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in those invoices totaled $486,453.09. There were hundreds of entries in these invoices. The hourly rate that SIMON billed us in all of his invoices was at $550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of approximately $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I don't know whether SIMON ever disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages. I do know, however, that when SIMON produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018, for an additional $692,120 in fees, his hourly rate for all of his work was billed out at our agreed to rate of $550.

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

10. Plus, SIMON didn't express an interest in taking what amounted to a property

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damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

11. Please understand that I was incredibly involved in this litigation in every respect. Regrettably, it was and has been my life for nearly two years. While I don't discount some of the good work SIMON performed, I was the one who dug through the thousands of documents and found the trail that led to the discovery that Viking had a bad history with these sprinklers, and that there was evidence of a cover up. I was the one who located the prior case involving Viking and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's insurer), and from fire marshals, etc. I was also the one who did the research and made the calls to the scores of people who'd had hundreds of problems with these sprinklers and who had knowledge that Viking had tried to cover this up for years. This was the work product that caused this case to grow into the one that it did.

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email

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was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

15. Following that meeting, SIMON would not let the issue alone, and he was relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never agreed on any terms to alter, modify, or amend our fee agreement.

16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. We were stunned to receive this letter. At that time, these additional "fees" were not based upon invoices submitted to us or detailed work performed. The proposed fees and costs were in

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addition to the $486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the invoices that SIMON had presented to us, the evidence that we understand SIMON produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages that SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

17. A reason given by SIMON to modify the fee agreement was that he claims he under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. We were again stunned to learn of SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to us for our signatures. This, too, came with a high-pressure approach by SIMON. This new approach also came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly $500,000 from us. He said that "any judge" and "the bar" would give him the contingency agreement that he now wanted, that he was now demanding he get, and the fee that he said he was now entitled to receive.

18. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to

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be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe until the claims against defendant Viking were resolved. How can that be? All of our claims against Viking and Lange were set to go to trial in February of this year.

19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be billing more hours that he hadn't yet written down, or that additional invoices for fees or costs would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS before he could determine the amount of his fee. At that time, I felt I had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the LITIGATION.

20. Despite SIMON'S requests and demands on us for the payment of more in fees, we refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and time that he'd never previously produced to us and that never saw the light of day in the LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was

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nothing short of stealing what was ours.

21. When SIMON refused to release the full amount of the settlement proceeds to us without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable alterative available to us was to file a complaint for damages against SIMON.

22. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to have the settlement funds deposited like they were, as SIMON flatly refused to give us what was ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

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

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

25. I also feel that it's remarkable and so wrong that an attorney can agree to receive an hourly rate of $550 an hour, get paid $550 an hour to the tune of nearly $500,000 for a period of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless

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we agree to pay him a bonus that ranges between $692,000 to $1.9 million dollars.

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls. SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit

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from the charity are minors, an accusation of this severity. from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into. I politely sent SIMON an email on December 5. 2017. telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this. as the email. which he denied ever sending. was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON. though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

27. We did not cause the Complaint or the Amended Complaint to be filed against SIMON or his business entities to prevent him from participating in any public forum. We also didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid under the CONTRACT.

28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to

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present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

Subscribed and Sworn to before me
this 15 day of March 2018, by BRIAN EDGEWORTH.

Notary Public in and for said County and State

DANA FARSTAD
Notary Public State of Nevada
No. 13-10367-1
My Appt. Exp. March 21, 2021

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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

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

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

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

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

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FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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MTD

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Attorney for SIMON

Eighth Judicial District Court

District of Nevada

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 Consolidated with CASE NO.: A-18-767242-C DEPT NO.: 26 **MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(5)** Date of Hearing: N/A Time of Hearing: N/A

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

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

Dated this 9th day of April 2018.

/s/ James R. Christensen
JAMES CHRISTENSEN, ESQ.
Nevada Bar No. 003861
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Las Vegas, NV 89101
Phone: (702) 272-0406
Facsimile: (702) 272-0415
Email: jim@christensenlaw.com
Attorney for Daniel S. Simon

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

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

DATED this 9th day of April 2018.

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

I. INTRODUCTION

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

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

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

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

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

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

II. STATEMENT OF RELEVANT FACTS

A. The timeline.

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

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

In May of 2016, Mr. Simon of the Law Office agreed to "send a few letters".

In June of 2016, the Viking case was filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

On January 9, 2018, the complaint was served.

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

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

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

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

III. ARGUMENT

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

Nevada Rule of Civil Procedure 12(b)(5) allows dismissal of causes of action when a pleading fails to state a claim upon which relief can be granted. "This court's task is to determine whether ... the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief."' *Vacation Vill.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (quoting *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1988) (emphasis added). Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008). This Court should not assume the truth of legal conclusions, merely because they are cast in the form of factual allegations. *Crockett & Myers, Ltd. V. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184, 1190 (D. Nev. 2006).

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

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

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

> "A lawyer is subject to liability to a client for injury caused by breach of contract in the circumstances and to the extent provided by contract law."

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

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

B. Plaintiffs' Conversion Action Should Be Dismissed.

Plaintiffs' Conversion Cause of Action fails to state a claim and should be dismissed.

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

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

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

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

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

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

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

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

> "A mere contractual right of payment, without more, will not suffice" to bring a conversion claim.

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

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

2. A charging lien is allowed by statute.

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

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

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

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

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

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

4. <u>The complaint is not ripe</u>.

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

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

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

C. The Fourth Cause of Action should be dismissed.

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

The covenant provides recovery in "rare and exceptional cases" for "grievous and perfidious misconduct". *Great American Insurance v. General*

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

D. Plaintiffs' Punitive Damages Claims Should Be Dismissed.

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

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

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

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

IV. CONCLUSION

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

Dated this 9th day of April, 2018.

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

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(5) was made by electronic service (via Odyssey) this 9th day of April, 2018, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN, ESQ.

EXHIBIT A

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

To:James R. Christensen <jim@jchristensenlaw.com>;

From: Brian Edgeworth [mailto:brian@pediped.com]
Sent: Tuesday, August 22, 2017 5:44 PM
To: Daniel Simon <dan@simonlawlv.com>
Subject: Contingency

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

EXHIBIT B

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

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, d/b/a SIMON LAW; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: Department 14 **COMPLAINT**

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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Telephone (702) 369-4161 Facsimile (702) 369-0104

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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5. Costs of suit; and,

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

DATED this 3 day of January, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4274)

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

EXHIBIT C

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION

Business Entity Information

Status:	Active	File Date:	12/11/1995
Type:	Domestic Professional Corporation	Entity Number:	C21756-1995
Qualifying State:	NV	List of Officers Due:	12/31/2018
Managed By:		Expiration Date:	
NV Business ID:	NV19951165575	Business License Exp:	12/31/2018

Registered Agent Information

Name:	DANIEL S. SIMON	Address 1:	810 S CASINO CENTER BLVD
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89101
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	25,000.00	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

President - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	
Secretary - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	
Treasurer - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	

Status:	Active	Email:	
Director - DANIEL S SIMON			
Address 1:	810 S CASINO CENTER BLVD	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Incorporation		
Document Number:	C21756-1995-001	# of Pages:	6
File Date:	12/11/1995	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-008	# of Pages:	1
File Date:	11/23/1998	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	C21756-1995-003	# of Pages:	1
File Date:	12/29/1998	Effective Date:	
DANIEL S. SIMON SUITE 283			
3900 PARADISE ROAD LAS VEGAS NV 89109 MJM			
Action Type:	Annual List		
Document Number:	C21756-1995-009	# of Pages:	1
File Date:	11/4/1999	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-007	# of Pages:	1
File Date:	11/27/2000	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-006	# of Pages:	1
File Date:	12/7/2001	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-004	# of Pages:	1
File Date:	11/8/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C21756-1995-005	# of Pages:	1
File Date:	11/5/2003	Effective Date:	
(No notes for this action)			

EXHIBIT D

20120827100118990 HELP

Instrument Number: 20120827100118990

Search Results

Record Date:	8/27/2012
Book Type:	FFN - FICTITIOUS FIRM NAMES
Instrument #:	20120827100118990
Number of Pages:	1
Doc Type:	FFN - FFN CERTIFICATE
Business Name:	SIMON LAW GROUP
Mailing Addr 1:	810 S. CASINO CENTER BLVD
Mailing City:	LAS VEGAS
Mailing State:	NV
Mailing Zip:	89101
Owner Name:	LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION
Expiration Date:	8/30/2017

EXHIBIT E

ANGELA EDGEWORTH
BRIAN EDGEWORTH
637 SAINT CROIX STREET
HENDERSON, NV 89012
310-985-0105

3571

16-24/1220-4470
9524763879

DEC 16 2016
Date

Pay to the Order of LAW OFFICE OF DANIEL | $ 42,564.95

forty two thousand five hundred sixty four 95/100 Dollars

Wells Fargo Bank, N.A.
California
wellsfargo.com

For 645 St Croix Legal Bills

[redacted]

EXHIBIT F

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

January 4, 2018

VIA EMAIL: sguindy@bankofnevada.com

Sarah Guindy
Executive Vice President,
Corporate Banking Manager
BANK OF NEVADA
2700 W. Sahara Avenue
Las Vegas, NV 89102

Re: Joint Trust Account

Dear Ms. Guindy:

As requested, please let this letter serve as the written basis for the creation of the subject Joint Trust Account (the Account). A litigated matter was recently settled for a considerable amount of money and Daniel S. Simon, Esq., has asserted an attorneys' lien to a portion of the proceeds. Thereafter, Brian Edgeworth retained Robert D. Vannah, Esq., as his personal counsel and Mr. Simon retained James R. Christensen, Esq., as his personal counsel. The parties and their counsel have agreed that the subject proceeds shall be deposited in the Account pending the resolution this matter. It's the desire of the parties that the account be created, named, and administered as discussed and that the proceeds accrue interest pending the resolution.

If you have any questions, please contact me directly at (702) 853-4338.

Sincerely,

VANNAH & VANNAH

JOHN B. GREENE, ESQ.

JBG/jr
Cc James R. Christensen, Esq. (via email)
Robert D. Vannah, Esq. (via email)

EXHIBIT G

DECLARATION AND EXPERT REPORT OF DAVID A. CLARK

This Report sets forth my expert opinion on issues in the above-referenced matter involving Nevada law and the Nevada Rules of Professional Conduct[1] as are intended within the meaning of NRS 50.275, *et seq.* I was retained by Defendant, Daniel S. Simon, in the above litigation. The following summary is based on my review of materials provided to me, case law, and secondary sources cited below which I have reviewed.

I have personal knowledge of the facts set forth below based on my review of materials referenced below. I am competent to testify as to all the opinions expressed below. I have been a practicing attorney in California (inactive) and Nevada since 1990. For 15 years I was a prosecutor with the Office of Bar Counsel, State Bar of Nevada, culminating in five years as Bar Counsel. I left the State Bar in July 2015 and reentered private practice. I have testified once before in deposition and at trial as a designated expert in a civil case. I was also retained and produced a report in another civil case. My professional background is attached as Exhibit 1.

SCOPE OF REPRESENTATION.

I was retained to render an opinion regarding the professional conduct of attorney Daniel S. Simon, arising out of his asserting an attorney's lien and the handling of settlement funds in his representation of Plaintiffs in *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C.

SUMMARY OPINION.

It is my opinion to a reasonable degree of probability that Mr. Simon's conduct is lawful, ethical and does not constitute a breach of contract or conversion as those claims are pled in *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018, in the Eighth Judicial District Court.

BACKGROUND FACTS.

In May 2016, Mr. Simon agreed to assist Plaintiffs in efforts to recover for damages resulting from flooding to Plaintiffs' home. Eventually, Mr. Simon filed suit in June 2016. The case was styled *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C and was litigated in the Eighth Judicial District Court, Clark County, Nevada.

As alleged in the Complaint (*Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018), the parties initially agreed that Mr. Simon would charge $550.00 per hour for the representation. There was no written fee agreement. Complaint, ¶ 9. Toward the end of discovery, and on the eve of trial, the matter settled for $6 million, an amount characterized in the Complaint as having "blossomed from one of mere property damage to one of significant and additional value." Complaint, ¶ 12.

On or about November 27, 2017, Mr. Simon sent a letter to Plaintiffs, setting forth

[1] The Nevada Rules of Professional Conduct ("RPC") did not enact the preamble and comments to the ABA Model Rules of Professional Conduct. However, Rule 1.0A provides in part that preamble and comments to the ABA Model Rules of Professional Conduct may be consulted for guidance in interpreting and applying the NRPC, unless there is a conflict between the Nevada Rules and the preamble or comments.

additional fees in an amount in excess of $1 million. Complaint, ¶ 13. Thereafter, Mr. Simon was notified that the clients had retained Robert Vannah to represent them, as well. On December 18, 2017, Mr. Simon received two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon."

That same morning, Mr. Simon immediately called and then sent an email to the clients' counsel requesting that the clients endorse the checks so they could be deposited into Mr. Simon's trust account. According to the email thread, in a follow up telephone call between Mr. Simon and Mr. Greene, Mr. Greene informed that the clients were unavailable to sign the checks until after the New Year. Mr. Simon informed Mr. Greene that he was available the rest of the week but was leaving town Friday, December 22, 2017, for a family vacation and not returning until the New Year.

In a reply email, Mr. Greene stated that he would "be in touch regarding when the checks can be endorsed." Mr. Greene acknowledged that Mr. Simon mentioned a dispute regarding the fee and requested that Mr. Simon provide the exact amount to be kept in the trust account until the dispute is resolved. Mr. Greene asked that this information be provided "either directly or indirectly" through Mr. Simon's counsel.

On December 19, 2017, Mr. Simon's counsel, James Christensen, sent an email indicating that Mr. Simon was working on the final bill but that the process might take a week or two, depending on holiday staffing. However, since the clients were unavailable until after the New Year, this discussion was likely moot.

On Saturday evening, December 23, 2017, Plaintiff's counsel, Robert Vannah, replied by email asking if the parties would agree to placing the settlement monies into an escrow account instead of Mr. Simon's attorney trust account. Mr. Vannah indicated that he needed to know "right after Christmas." Mr. Christensen replied on December 26, 2017, reiterating that Mr. Simon is out of town through the New Year and was informed the clients are, as well.

Mr. Vannah then replied the same day indicating that the clients are available before the end of the year, and that they will not sign the checks to be deposited into Mr. Simon's trust account. Mr. Vannah again suggested an interest-bearing escrow account. By letter dated December 27, 2017, Mr. Christensen replied in detail to Mr. Vannah's email, discussing problems with using an escrow account as opposed to an attorney's trust account.

I am informed that following the email and letter exchange, Mr. Simon provided an amended attorneys' lien dated January 2, 2018, for a net sum of $1,977, 843.80 as the reasonable value for his services. Thereafter, the parties opened a joint trust account for the benefit of the clients on January 8, 2018. The clients endorsed the settlement checks for deposit. Due to the size of the checks, there was a hold of 7 business days, resulting the monies being available around January 18, 2018.

On January 4, 2018, Plaintiffs filed a Complaint in District Court, styled *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C (Complaint). The Complaint asserts claims for relief against Mr. Simon: breach of contract, declaratory relief, and conversion.

The breach of contract claim states:

> 25. SIMON's demand for additional compensation other that what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds

is a material breach of the CONTRACT.

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

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

As to the third claim for relief for conversion, the Complaint states:

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

ANALYSIS AND OPINIONS.

Breach of Contract

All attorneys' fees that are contracted for, charged, and collected, must be reasonable.[2] An attorney may also face disciplinary investigation and sanction pursuant to the inherent authority of the courts for violating RPC 1.5 (Fees).[3] As such, all attorney fees and fee agreements are subject to judicial review.

Nevada law grants to an attorney a lien for the attorney's fees even without a fee agreement,

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

NRS 18.015(2) (emphasis added).[4] This statute provides for the mechanism to perfect the lien and for the court to adjudicate the rights and amount of the fee. The Rules of Professional Conduct direct the ethical attorney to comply with such procedures. "Law may prescribe a procedure for determining a lawyer's fee. . . . The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure." Model R. Prof. Conduct 1.5 cmt 9 (ABA 2015).

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[2] RPC 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."); *see, also* Restatement (Third) of the Law Governing Lawyers §34 (2000) ("a lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law.").

[3] SCR 99, 101; *see, also* Restatement (Third) of the Law Governing Lawyers §42, cmt b(v) (2000) ("A court in which a case is pending may, in its discretion, resolved disputes between a lawyer and client concerning fees for services in that case. . . . Ancillary jurisdiction derives historically from the authority of the courts to regulate lawyers who appear before them.").

[4] *See, also* Restatement (Third) of the Law Governing Lawyers §39 (2000) ("If a client and a lawyer have not made a valid contract providing for another measure of compensation, a client owes a lawyer who has performed legal services for the client the fair value of the lawyer's services").

In this instance, the fact that Mr. Simon has availed himself of his statutory lien right under Nevada law, a lien that attaches to every attorney-client relationship, regardless of agreement, cannot be a breach of contract. Mr. Simon is simply submitting his claim for services to judicial review, as the law not only allows, but requires.

In Nevada, "the plaintiff in a breach of contract action [must] show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach."[5] Here, there is neither breach nor damages arising from Mr. Simon's actions. The parties cannot contract for fees beyond the review of the courts. Mr. Simon cannot even contract for an unreasonable fee, much less charge or collect one. Likewise, Plaintiff has an obligation to compensate Mr. Simon the fair value of his services.

By operation of law, NRS 18.015, and this court's review, is an inherent term of the attorney-client fee arrangement, both with and without an express agreement. And, asserting his rights under the law, as encouraged by the Rules of Professional Conduct ("should comply with the prescribed procedure") does not constitute a breach of contract. Moreover, as discussed below, under these facts, Plaintiffs cannot establish damages and the cause of action fails.

RPC 1.15 requires that the undisputed sum should be promptly disbursed. Based upon the facts as I know them, Mr. Simon has promptly secured the money in a trust account and promptly conveyed the amount of his claimed additional compensation on January 2, 2018, which is prior to the filing of the Complaint and prior to the funds becoming available for disbursement. Thus, Mr. Simon has complied with the requirements of RPC 1.15 and his actions do not support a claimed breach of contract on the alleged basis of delay in paragraphs 26 and 27 of the Complaint.

Conversion

RPC 1.15 (Safekeeping Property) addresses a lawyer's duties when safekeeping property for clients or third-parties. It provides in pertinent part:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.
>
> . . . . .
>
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

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[5] *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919–20 (D.Nev.2006) (*citing Richardson v. Jones*, 1 Nev. 405, 408 (1865)).

Normally, client settlement funds are placed in the attorney's IOLTA trust account (Interest On Lawyer's Trust Account) with the interest payable to the Nevada Bar Foundation to fund legal services. Supreme Court Rules (SCR) 216-221. However, these accounts are for "clients' funds which are nominal in amount or to be held for a short period of time." SCR 78.5(9).

In our case, the settlement amount is substantial and the parties have agreed to place the sums into a separate trust account with interest accruing to the clients. This action comports entirely with Supreme Court Rules:

> **SCR 219. Availability of earnings to client.** Upon request of a client, when economically feasible, earnings shall be made available to the client on deposited trust funds which are neither nominal in amount nor to be held for a short period of time.
>
> **SCR 220. Availability of earnings to attorney.** No earnings from clients' funds may be made available to a member of the state bar or the member's law firm except as disbursed through the designated Bar Foundation for services rendered.

Therefore, Plaintiff's settlement monies are both segregated from Mr. Simon's own funds in a designated trust account, interest accruing to the client, and, by Supreme Court rule, Mr. Simon cannot obtain any earnings.

Conversion has been defined as "'a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.'"[6]

At the time of the filing of the complaint, Mr. Simon had already provided the clients with the amount of his claimed charging lien. Further, at the time of the filing of the Complaint, the clients had not endorsed nor deposited the settlement checks. Even if the funds had cleared the account when the complaint was filed, the monies are still segregated from Mr. Simon's ownership and benefit. He has followed the established rules of the Supreme Court governing the safekeeping of such funds when there is a dispute regarding possession. There is neither conversion of these funds (either in principal or interest) nor damages to Plaintiffs.

Based upon the foregoing, it is my opinion that Mr. Simon's conduct in this matter fails to constitute a breach of contract or conversion of property belonging to Plaintiffs.

AMENDMENT AND SUPPLEMENTATION.

Each of the opinions set forth herein is based upon my personal review and analysis. This report is based on information provided to me in connection with the underlying case as reported herein. Discovery is on-going. I reserve the right to amend or supplement my opinions if further compelling information is provided to me to clarify or modify the factual basis of my opinions.

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[6] *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 542–43 (Nev. 2008).

INFORMATION CONSIDERED IN REVIEWING UNDERLYING FACTS AND IN RENDERING OPINIONS.

In reviewing this matter, and rendering these opinions, I relied on and/or reviewed the authorities cited throughout this report and the following materials:

Doc No.	Document Description	Date
1.	Complaint – (A-18-767242-C) *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*	1/4/2018
2.	Letter from James R. Christensen to Robert D. Vannah, consisting of four (4) pages and referenced Exhibits 1 and 2, consisting of two (2) and four (4) pages, respectively.	12/27/2017
3.	Exhibit 1 to letter - Copies of two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon	12/18/2017
4.	Exhibit 2 to letter - Email thread between and among Daniel Simon, John Greene, James R. Christensen, and Robert D. Vannah, consisting of four (4) pages	12/18/201– 12/26/2017
5.	Notice of Amended Attorneys Lien, filed and served in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	1/2/2018
6.	Deposition Transcript of Brian J. Edgeworth, in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	9/29/2017

BIOGRAPHICAL SUMMARY/QUALIFICATIONS.

Please see the attached curriculum vitae as Exhibit 1. Except as noted, I have no other publications within the past ten years.

OTHER CASES.

1. I was engaged and testified as an expert in:

   Renown Health, et al. v. Holland & Hart, Anderson
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016

   Deposition Testimony August 2016; Trial testimony October 2016

2. I was engaged and prepared a report in:

   Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.
   Case No. A-16-737889-C

Report December 2016.

COMPENSATION.

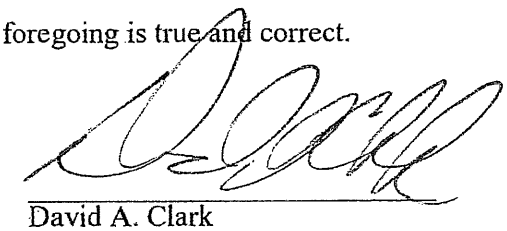
For this report, I charged an hourly rate is $350.00.

DECLARATION

I am over the age of 18 and competent to testify to the opinions stated herein. I have personal knowledge of the facts herein based on my review of the materials referenced herein. I am competent to testify to my opinions expressed in this Declaration.

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

Date: January 18, 2018



David A. Clark

David A. Clark

Lipson | Neilson
9900 Covington Cove Drive, Suite 120
Las Vegas, Nevada 89144-7052 (702) 382-1500 – office
(702) 382-1512 – fax
(702) 561-8445 – cell
dclark@lisponneilson.com

Biographical Summary

For 15 years, Mr. Clark was a prosecutor in the Office of Bar Counsel, culminating in five years as Bar Counsel. Mr. Clark prosecuted personally more than a thousand attorney grievances from investigation through trial and appeal, along with direct petitions to the Supreme Court for emergency suspensions and reciprocal discipline. Two of his cases resulted in reported decisions, *In re Discipline of Droz*, 123 Nev. 163, 160 P.3d 881 (2007) and *In re Discipline of Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008).

Mr. Clark established the training regimen and content for members of the Disciplinary Boards, which hears discipline prosecutions. He proposed and obtained numerous rule changes to Nevada Rules of Professional Conduct and the Supreme Court Rules governing attorney discipline. He drafted the first-ever Discipline Rules of Procedure that were adopted by a task force and the Board of Governors in July 2014.

Mr. Clark has presented countless CLE-accredited seminars on all aspects of attorney ethics for the State Bar of Nevada, the Clark County Bar Assn., the National Organization of Bar Counsel (NOBC), the National Assn. of Bar Executives (NABE), and the Association of Professional Responsibility Lawyers (APRL). He has spoken on ethics and attorney discipline before chapters of paralegal groups and SIU fraud investigators, as well as in-house for the Nevada Attorney General's office and the Clark County District Attorney.

Mr. Clark received his Juris Doctor from Loyola Law School of Los Angeles following a B.S. in Political Science from Claremont McKenna College. He is admitted in Nevada and California (inactive), the District of Nevada, the Central District of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

Work Experience

August 2015 - present

Lipson | Neilson
9900 Covington Cove Drive, Suite 120
Las Vegas, Nevada 89144-7052
Partner

November 2000 – July, 2015	**Office of Bar Counsel** **State Bar of Nevada**
January 2011 - July 2015	Bar Counsel
May 2007 - December 2010	Deputy Bar Counsel/ General Counsel to Board of Governors
April 2010 - September 2010	Acting Director of Admissions
January 2007 - May 2007	Acting Bar Counsel
November 2000 - December 2006	Assistant Bar Counsel
May 1997 – October 2000	**Stephenson & Dickinson** *Litigation Associate Attorney*
November 1996 - May 1997	**Earley & Dickinson** *Litigation Associate Attorney*
April 1995 - August 1996	**Thorndal, Backus, Armstrong & Balkenbush** *Litigation Associate Attorney*
May 1992 - March 1995	**Brown & Brown** *Associate Attorney*
September 1990 -	**Gold, Marks, Ring & Pepper** (California) March 1992 *Litigation Associate Attorney*

Education

1987 - 1990	Loyola of Los Angeles Law School *Juris Doctor*
1980 – 1985	Claremont McKenna College (CA) *B.S., Political Science*

Expert Retention and Testimony

1. *Renown Health, et al. v. Holland & Hart, Anderson*
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016
   Deposition Testimony August 2016; Trial testimony October 2016

2. *Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.*
   Case No. A-16-737889-C

   Report December 2016.

Reported Decisions

In re Discipline of Droz, 123 Nev. 163, 160 P.3d 881 (2007) (Authority of Supreme Court to discipline non-Nevada licensed attorney).

In re Discipline of Lerner, 124 Nev. 1232, 197 P.3d 1067 (2008) (Only third Nevada case defining practice of law).

Recent Continuing Legal Education Taught

Office of Bar Counsel 2011 – 2015	Training of New Discipline Board members (twice yearly)
2011 SBN Family Law Conf. March 2011	Ethics and Malpractice
2011 State Bar Annual Meeting June 2011	Breach or No Breach: Questions in Ethics
Nevada Paralegal Assn./SBN April 2012	Crossing the UPL Line: What Attorneys Should Not Delegate to Assistants
2012 State Bar Annual Meeting July 2012	Lawyers and Loan Modifications: Perfect Storm or Perfect Solution
State Bar Ethics Year in Review December 2012	How Not to Leave a Firm
State Bar of Nevada June 2013	Ethics in Discovery
2013 State Bar Annual Meeting July 2013	Practice like an Attorney, not a Respondent