

**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 01:06 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 IV OF XI**

JAMES R. CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6<sup>th</sup> Street

Las Vegas, NV 89101

(702) 272-0406

(702) 272-0415 fax

[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)

*Attorney for Respondents/ Petitioners*

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

<b>Document</b>	<b>Page No.</b>
-----------------	-----------------

**Volume I:**

Email chain between Brian Edgeworth to Daniel Simon regarding initial discussions about case, beginning May 27, 2016 (Exhibit 23 admitted in Evidentiary Hearing) .....	AA00001- AA00002
---	---------------------

Email chain between Brian Edgeworth and Daniel Simon regarding Simple Loan contract, dated June 5, 2016 (Exhibit 80 admitted in Evidentiary Hearing) .....	AA00003
--	---------

Email chain between Brian Edgeworth to Daniel Simon regarding loans, dated June 10, 2016 (Exhibit 80 admitted in Evidentiary Hearing) .....	AA00004
---	---------

Invoice, dated December 2, 2016 (Exhibit 8 admitted in Evidentiary Hearing) .....	AA00005- AA00008
---	---------------------

Invoice, dated April 7, 2017 (Exhibit 9 admitted in Evidentiary Hearing) .....	AA00009- AA00014
--	---------------------

Invoice, dated July 28, 2017 (Exhibit 10 admitted in Evidentiary Hearing) .....	AA00015- AA00025
---	---------------------

Email chain between Daniel Simon and Brian Edgeworth regarding Invoices, dated August 1, 2017 (Exhibit 26 admitted in Evidentiary Hearing).....	AA00026
---	---------

Email chain between Daniel Simon and Brian Edgeworth regarding Contingency, dated August 22, 2017 (Exhibit 27 admitted in Evidentiary Hearing).....	AA00027
---	---------

Email chain between Daniel Simon and Brian Edgeworth regarding Settlement, dated August 23, 2017 (Exhibit 28 admitted in Evidentiary Hearing).....	AA00028
--	---------

Email chain between Brian Edgeworth and Daniel Simon regarding cashing check, dated August 29, 2017 (Exhibit 30 admitted in Evidentiary Hearing) .....	AA00029
Invoice, dated September 19, 2017 (Exhibit 11 admitted in Evidentiary Hearing) .....	AA00030- AA00039
Email chain between Daniel Simon and Brian Edgeworth regarding Settlement tolerance, dated October 5, 2017 (Exhibit 34 admitted in Evidentiary Hearing).....	AA00040- AA00041
Email chain between Daniel Simon and Brian Edgeworth regarding Mediator's proposal, dated November 11, 2017 (Exhibit 36 admitted in Evidentiary Hearing).....	AA000042
Text Messages between Angela Edgeworth and Eleya Simon beginning November 15, 2017 (Exhibit 73 admitted in Evidentiary Hearing).....	AA00043- AA00048
Email chain between Daniel Simon and Brian Edgeworth regarding updated costs, dated November 21, 2017 (Exhibit 39 admitted in Evidentiary Hearing).....	AA00049
Email chain between Angela Edgeworth and Daniel Simon regarding settlement, dated November 27, 2017 (Exhibit 42 admitted in Evidentiary Hearing).....	AA00050
Letter from Daniel Simon to the Edgeworths, dated November 27, 2017 (Exhibit 40 admitted in Evidentiary Hearing).....	AA00051- AA00055
Christmas Card from the Edgeworths to the Simons, dated November 27, 2017 (Exhibit 72 admitted in Evidentiary Hearing).....	AA00056 AA00058
Email chain between Angela Edgeworth and Daniel Simon regarding settlement, dated November 29, 2017 (Exhibit 44 admitted in Evidentiary Hearing).....	AA00059

Letter of Direction from Brian Edgeworth to Daniel Simon, dated November 29, 2017 (Exhibit 43 admitted in Evidentiary Hearing).....	AA00060
Vannah & Vannah Fee Agreement, dated November 29, 2017 (Exhibit 90 admitted in Evidentiary Hearing) .....	AA00061
Notice of Attorney Lien, dated November 30, 2017 (Exhibit 3 admitted in Evidentiary Hearing) .....	AA00062- AA00070
Executed Release and Viking Settlement Checks, dated December 1, 2017 (Exhibit 5 admitted in Evidentiary Hearing).....	AA00071- AA00079
Consent to Settle, dated December 7, 2017 (Exhibit 47 admitted in Evidentiary Hearing).....	AA00080- AA00081
Letter to Robert Vannah from Daniel Simon, dated December 7, 2017(Exhibit 46 admitted in Evidentiary Hearing).....	AA00082- AA00083
Email chain between James Christensen and Robert Vannah, dated December 26, 2017 (Exhibit 48 admitted in Evidentiary Hearing).....	AA00084- AA00087
Letter to Robert Vannah from James Christensen, dated December 27,2017 (Exhibit 49 admitted in Evidentiary Hearing).....	AA00088- AA00097
Email chain between James Christensen and Robert Vannah regarding bank account, dated December 28, 2017 (Exhibit 50 admitted in Evidentiary Hearing).....	AA00098- AA00103
Notice of Amended Attorney Lien, dated January 2, 2018 (Exhibit 4 admitted in Evidentiary Hearing) .....	AA00104- AA00110
Complaint, filed January 4, 2018 (Exhibit 19 admitted in Evidentiary Hearing) .....	AA00111- AA00120

Letter from Robert Vannah to Sarah Guindy regarding  
account, dated January 4, 2018 (Exhibit 51 admitted in  
Evidentiary Hearing) ..... AA00121

Email chain between Robert Vannah and James Christensen  
regarding not terminating Daniel Simon, dated January 9, AA00122-  
2018 (Exhibit 53 admitted in Evidentiary Hearing)..... AA00124

Check to Client in amount of \$3,950,561.27, dated  
January 18, 2018 (Exhibit 54 admitted in Evidentiary Hearing).. AA00125

Declaration and Expert Report of David A. Clark, dated AA00126-  
January 18, 2018 (Exhibit 2 admitted in Evidentiary Hearing) ... AA00136

Motion to Adjudicate Attorney Lien of the Law Office AA00137-  
Daniel Simon PC with Exhibits, dated January 24, 2018 ..... AA00250

## **Volume II:**

Motion to Adjudicate Attorney Lien of the Law Office AA00251-  
Daniel Simon PC with Exhibits, dated January 24, 2018 ..... AA00500

## **Volume III:**

Motion to Adjudicate Attorney Lien of the Law Office AA00501-  
Daniel Simon PC with Exhibits, dated January 24, 2018 ..... AA00545

Declaration of Will Kemp, Esq., dated January 31, 2018 AA00546-  
(Exhibit 1 admitted in Evidentiary Hearing) ..... AA00553

Affidavit of Brian Edgeworth, dated February 2, 2018 AA00554-  
(Exhibit 16 admitted in Evidentiary Hearing) ..... AA00559

Plaintiffs Oppositions to Defendant's Motions to Consolidate AA00560-  
and to Adjudicate Attorney Lien, dated February 2, 2018 ..... AA00593

Reply in Support of Motion to Adjudicate Attorney Lien and AA00594-  
Motion for Consolidation, dated February 5, 2018 ..... AA00640

Executed Release and Lange Settlement check, dated February 5, 2018 (Exhibit 6 admitted in Evidentiary Hearing).....	AA00641- AA00657
Affidavit of Brian Edgeworth, dated February 12, 2018 (Exhibit 17 admitted in Evidentiary Hearing) .....	AA00658- AA00666
Supplement to Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, dated February 16, 2018 .....	AA00667- AA00677
Affidavit of Brian Edgeworth, dated March 15, 2018 (Exhibit 18 admitted in Evidentiary Hearing) .....	AA00678- AA00687
Amended Complaint, filed March 15, 2018 (Exhibit 20 admitted in Evidentiary Hearing) .....	AA00688- AA00699
Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRCP 12(b)(5), dated April 9, 2018 .....	AA00700- AA00750

#### **Volume IV:**

Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRCP 12(b)(5), dated April 9, 2018 .....	AA00751
Plaintiffs Opposition to Defendant's (Third) Motion to Dismiss, dated April 24, 2018 .....	AA00752- AA00769
Special Motion to Dismiss the Amended Complaint: Anti-Slapp, dated May 10, 2018 .....	AA00770- AA00859
Plaintiffs Opposition to Defendants Second Special Motion to Dismiss: Anti-Slapp, dated May 23, 2018 .....	AA00860- AA00879
Evidentiary Hearing Transcript, dated August 27, 2018 .....	AA00880- AA01000

**Volume V:**

Evidentiary Hearing Transcript, dated August 27, 2018 ..... AA01001-  
AA01084

Evidentiary Hearing Transcript, dated August 28, 2018 ..... AA01085-  
AA01250

**Volume VI:**

Evidentiary Hearing Transcript, dated August 28, 2018 ..... AA01251-  
AA01257

Evidentiary Hearing Transcript, dated August 29, 2018 ..... AA01258-  
AA01484

Picture of the boxes of Emails at Evidentiary Hearing,  
dated August 29, 2018 ..... AA01485

Picture of the boxes of Discovery at Evidentiary Hearing,  
dated August 29, 2018 ..... AA01486

Evidentiary Hearing Transcript, dated August 30, 2018 ..... AA01487-  
AA01500

**Volume VII:**

Evidentiary Hearing Transcript, dated August 30, 2018 ..... AA01501-  
AA01728

Evidentiary Hearing Transcript, dated September 18, 2018 ..... AA01729-  
AA01750

**Volume VIII:**

Evidentiary Hearing Transcript, dated September 18, 2018 ..... AA01751-  
AA01942

Simon Law Closing Arguments, dated September 24, 2018 ..... AA01943-  
AA02000



## Volume IX:

Simon Law Closing Arguments, dated September 24, 2018 .....	AA02001- AA02003
Vannah & Vannah Closing Arguments, dated September 24, 2018 .....	AA02004- AA02025
Decision and Order on Motion to Adjudicate Lien, dated October 11, 2018 .....	AA02026- AA02051
Decision and Order on Motion to Dismiss NRCP 12(b)(5), dated October 11, 2018 .....	AA02052- AA02062
Decision and Order on Special Motion to Dismiss Anti-Slapp dated October 11, 2018.....	AA02063- AA02070
Motion to Amend Findings Under NRCP 52; and/or for Reconsideration, dated October 29, 2018 .....	AA02071- AA02142
Opposition to Motion to Amend Findings Under NRCP 52; and/ or for Reconsideration, dated November 8, 2018.....	AA02143- AA02159
Reply to Motion to Amend Findings Under NRCP 52; and/ or for Reconsideration, dated November 14, 2018 .....	AA02160- AA02173
Amended Decision and Order on Motion to Adjudicate Lien, dated November 19, 2018.....	AA02174- AA02196
Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5), dated November 19, 2018.....	AA02197- AA02206
Motion for Attorney Fees and Costs, dated December 7, 2018.....	AA02207- AA02250

## Volume X:

Motion for Attorney Fees and Costs, dated December 7, 2018.....	AA02251- AA02366
Plaintiffs' Opposition to Simon's Motion for Fees and Costs, dated December 17, 2018 .....	AA02367- AA02392
Notice of Entry of Orders for Motion to Adjudicate Lien and Motion to Dismiss Pursuant to NRCP 12(B)(5), with attached Orders, dated December 27, 2018 .....	AA02393- AA02429
Reply in Support of Motion for Attorney Fees and Costs, dated January 8, 2019 .....	AA02430- AA02446
Hearing Transcript for Motion for Attorney's Fees & Costs, dated January 15, 2019 .....	AA02447- AA02468
Minute Order regarding hearing for Motion for Attorney's Fees & Costs, dated January 15, 2019 .....	AA02469- AA02470
Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs, dated February 8, 2019 .....	AA02471- AA02474
Amended Decision and Order on Special Motion to Dismiss Anti-Slapp, dated September 17, 2019 .....	AA02475- AA02484
Time Sheet for Daniel S. Simon (Exhibit 13 admitted in Evidentiary Hearing) .....	AA02485- AA02500

**Volume XI:**

Time Sheet for Daniel S. Simon (Exhibit 13 admitted in AA02501-  
Evidentiary Hearing) ..... AA02563

Time Sheet for Ashley M. Ferrel (Exhibit 14 admitted in AA02564-  
Evidentiary Hearing) ..... AA02665

Time Sheet for Benjamin J. Miller (Exhibit 15 admitted in AA02666-  
Evidentiary Hearing) ..... AA02667

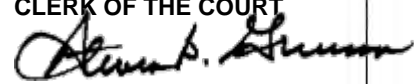
	Ethical Issues in Law Practice Promotion (Advertising)
	Going Solo: Building and Marketing Your Firm
Nevada Attorney General December 2013	Civility and Professionalism
Clark County Bar Assn. June 2014	Legal Ethics: Current Trends
UNLV Boyd School of Law July 2014	Discipline Process
2014 NV Prosecutors 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.



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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

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

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

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

///

///

AA00752

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

DATED this 24 day of April, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

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 the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.) 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 8<sup>th</sup> 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.

AA00753

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

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

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

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



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

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

22  
23 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the  
24 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into modifying  
25 the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be paid far more  
26 than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for the preceding  
27 eighteen (18) months. (Id.)  
28



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

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

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

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

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

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

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

AA00757

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

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

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

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

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

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

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

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

## II.

### ARGUMENTS

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

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

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

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

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

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

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

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.” (Please see Exhibit 2 to PLAINTIFFS Opposition to SIMON’S Motion to Adjudicate.)

These are the same invoices that contain the agreed to hourly rate of \$550 per hour, which were 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 intransigent litigant that there is a CONTRACT that he has to abide by? It’s been the same since the beginning. A jury may agree. 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 NRCPP 11(b) and NRCPP 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.

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

Thus we see that all of the conduct by SIMON in the LITIGATION from the beginning to the end refutes his newfound position that there was no agreement to pay an hourly fee. To the contrary, it 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.

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

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

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



1 Even today, SIMON the person maintains dominion and control over the balance of  
2 PLAINTIFFS settlement proceeds despite the foregoing facts AND the despite the fact that his  
3 actual hourly bill for his services after his “comprehensive” review are “only” \$692,120. (Please  
4 see SIMON’S billings attached as Exhibit 19 to the Motion to Adjudicate.) Simple math again  
5 reveals that SIMON the person has willfully converted at least \$1,285,723.80 of PLAINTIFFS  
6 property. Those are sufficient facts under any standard for PLAINTIFFS to maintain a claim for  
7 breach of the CONTRACT, conversion, breach of the implied covenant of good faith and fair  
8 dealing, and the remedy of punitive damages against SIMON the person.  
9

10 SIMON also continues to seek refuge in his wrongfully asserted charging lien in its  
11 unsupportable amount. As argued in other pleadings, SIMON had no basis to assert that lien in its  
12 stated amount. Each invoice he’s presented to PLAINTIFFS in the LITIGATION had been paid in  
13 full. Also, there is nothing in fact or at law to support any argument that SIMON’S fee was  
14 dependant in any way on the existence of, or the amount of, the settlement reached with the  
15 defendants in the LITIGATION. Rather, this Court or a jury could find that SIMON asserted one  
16 because he wanted to and because his law licensed cloaked him with the ability to do so. That  
17 finding could trigger a valid remedy of punitive damages.  
18

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

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

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

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

AA00765

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

5  
6 Of utmost importance here, SIMON the person doesn't really dispute that SIMON the  
7 person is the real-party-in-interest here. We know this by simply reading what he wrote in his  
8 Motion to Adjudicate Attorney Lien, which was his first Motion to this Court, when all of this was  
9 most fresh in his mind and before he had time to contemplate other conflicting legal theories. At  
10 page 5, lines 3-8, SIMON the person began the story by letting us know that "Danny and Eleyna  
11 Simon were close family friends with Brian and Angela Edgeworth for many years." SIMON the  
12 person continues by telling us, "In May of 2016, Mr. Simon agreed to help his friend with the flood  
13 claim. Because they were friends, Mr. Simon worked without an express fee agreement."  
14 (Emphasis added.)  
15

16 At pages 9 of his Motion to Adjudicate, SIMON the person continues the human interest  
17 aspect of the facts by reiterating that, "the families (Simons and Edgeworths) became close," and  
18 that "they helped each other during difficult times." At page 10, SIMON the person stated, "Mr.  
19 Simon was comfortable waiting until the end of the case to be paid in full." Finally, at page 11,  
20 SIMON the person admitted, "Mr. Edgeworth asked his friend (Danny Simon) for help" and that,  
21 "Mr. Simon agreed to lend a helping hand, and send a few letters." Several other references are  
22 made in that Motion of Danny Simon the person saying this and Mr. Simon the person doing that.  
23 SIMON'S subsequent iterations of these facts in later Motions shift to the law firm doing this and  
24 saying that, but the story had already been written and embraced by SIMON the person, as common  
25 sense and the law say it should be.  
26

27 PLAINTIFFS' claims against SIMON the person as the lawyer are proper in fact, by Rule,  
28 and at law. SIMON the person is the one who was practicing law for PLAINTIFFS, not his  
AA00766

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

6  
7 **C. PLAINTIFFS HAVE PROPERLY SET FORTH THEIR CLAIMS FOR RELIEF FOR**  
8 **CONVERSION AND FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**  
9 **AND FAIR DEALING. AS INTENTIONAL TORTS, AND WITH THESE FACTS,**  
10 **PLAINTIFFS ARE ENTITLED TO THE REMEDY THEY SEEK, WHICH ARE PUNITIVE**  
11 **DAMAGES.**

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

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

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

7 Finally, a trier-of-fact may also find sufficient evidence exists to show that SIMON'S  
8 conduct of: failing to reduce the CONTRACT to writing; later claiming ambiguities in the  
9 CONTRACT; demanding a bonus from PLAINTIFFS; creating a super bill after the LITIGATION  
10 had settled, including a block bill of over 135 hours; harboring a plan to merely submit partial  
11 invoices without consulting PLAINTIFFS of this plan so they could evaluate whether SIMON  
12 should continue as counsel; executing his secret plan by going back and adding substantial time to  
13 his invoices that had already been billed and paid in full; and, but not limited to, asserting a lien on  
14 PLAINTIFFS' property, knowingly doing so in an amount that was far in excess of any amount of  
15 fees that he had billed from the date of the previously paid invoice to the date of the service of the  
16 lien, that he could bill for the work performed, that he actually billed, or that he could possible claim  
17 under the CONTRACT, that SIMON failed to deal fairly and in good faith with PLAINTIFFS and  
18 thus breached the implied covenant of good faith and fair dealing.  
19  
20

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

III.

**CONCLUSION**

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

DATED this 24 day of April, 2018.

**VANNAH & VANNAH**

  
ROBERT D. VANNAH, ESQ.

**CERTIFICATE OF SERVICE**

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

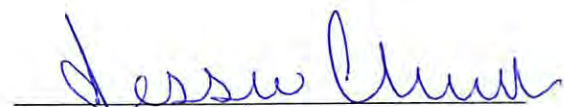
Electronically:

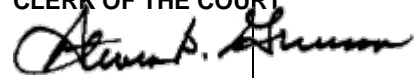
James Christensen, Esq.  
**JAMES R. CHRISTENSEN, PC**  
601 S. Third Street  
Las Vegas, Nevada 89101

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

Traditional Manner:  
*None*

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

  
An employee of the Law Office of  
Vannah & Vannah



MTD

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

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**SPECIAL MOTION TO DISMISS  
THE AMENDED COMPLAINT:  
ANTI-SLAPP**

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 26

AA00770

1 The LAW OFFICE OF DANIEL S. SIMON, P.C. moves the Court for an  
2 Order dismissing the amended complaint pursuant to the Nevada Anti-SLAPP law.

3 DATED this 10<sup>th</sup> day of May, 2018.

4 /s/ James R. Christensen

5 James R. Christensen Esq.  
6 Nevada Bar No. 3861  
7 601 S. Sixth Street  
8 Las Vegas NV 89101  
9 (702) 272-0406  
10 (702) 272-0415 fax  
11 jim@jchristensenlaw.com  
12 Attorney for SIMON

13 **NOTICE OF MOTION**

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

15 You, and each of you, will please take notice that the undersigned will bring  
16 on for hearing, the SPECIAL MOTION TO DISMISS THE AMENDED  
17 COMPLAINT: ANTI-SLAPP before the above- entitled Court located at the  
18 Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the  
19 14<sup>th</sup> day of JUNE, 2018, at 9:30 A a.m./p.m. in Department  
20 10.

21 DATED this 10<sup>th</sup> day of May 2018.

22 /s/ James R. Christensen

23 **JAMES CHRISTENSEN, ESQ.**  
24 Nevada Bar No. 3861  
25 601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
Phone: (702) 272-0406  
jim@jchristensenlaw.com  
Attorney for Daniel S. Simon



## **POINTS AND AUTHORITIES**

### **I. ANTI-SLAPP**

Anti-SLAPP statutes protect those who exercise their right to free speech, petition their government on an issue of concern, or try to resolve a conflict through use of the judiciary. The right to “petition the government for a redress of grievances” is a right guaranteed by the First Amendment (“the petition clause”).<sup>1</sup>

In the 1980s, two law professors coined the phrase “Strategic Lawsuit Against Public Participation” or “SLAPP” to describe a growing trend of bringing a civil suit in response to an exercise of free speech or the right to petition.<sup>2</sup> Anti-SLAPP statutes arose to combat the growing trend. An Anti-SLAPP statute typically provides for early judicial intervention and dismissal of a SLAPP lawsuit.

The Law Office of Daniel S. Simon P.C. (“law office”), filed an attorney charging lien and asked the Court to resolve a client fee dispute. When the law office requested help from the Courts, the law office followed the attorney lien statute, passed by the Nevada Legislature and signed into law by the Governor. In

---

<sup>1</sup> “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Constitution of the United States of America 1789 (rev. 1992) Amendment I.

<sup>2</sup> See, George W. Pring and Penelope Canan, SLAPPS: Getting Sued for Speaking Out (Temple University Press 1996). Canan and Pring coined the term SLAPP. The book contains a SLAPP summary, reviews legislation and suggests a model bill.

1 response, the clients sued the law office and made allegations premised upon the  
2 use of the judicial remedy by the law office.

3 The statute calls for lien adjudication within five days. The statute provides  
4 for quick resolution so a client or an attorney will not suffer prejudice from waiting  
5 for their money. In this case, the clients have done their utmost to delay prompt  
6 adjudication; while, simultaneously claiming money damages from delay.  
7

8 The clients' suit was brought in response to the legal use of the charging  
9 lien. The clients' amended complaint ("ACOM") is a SLAPP and must be  
10 dismissed under Nevada's Anti-SLAPP law.  
11

## 12 **II. INTRODUCTION**

13 The Nevada Anti-SLAPP statute shields those who make a protected  
14 communication. NRS 41.635-41.670. The act of filing and seeking relief by an  
15 attorney lien is a protected communication under the statute. Thus, when a law  
16 office is sued for asking the Court to promptly resolve a fee dispute, the law office  
17 can file a special motion to dismiss under the Anti-SLAPP statute.  
18

19 In *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017), the Nevada Supreme Court  
20 adopted California law interpreting California's similar Anti-SLAPP statute.  
21 California courts grant Anti-SLAPP special motions in favor of attorneys who ask  
22 the Court to resolve a fee dispute with their client. *Beheshti v. Bartley*, 2009 WL  
23 5149862 (Calif, 1<sup>st</sup> Dist, C.A. 2009); *Transamerica Life Insurance Co., v. Rabaldi*,  
24  
25

1 2016 WL 2885858 (D.C. Calif. 2016); *Kattuah v. Linde Law Firm*, 2017 WL  
2 3033763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished); *Becerra v. Jones, Bell,*  
3 *Abbott, Fleming & Fitzgerald LLP*, 2015 WL 881588 (C.A. 2nd Dist. Div. 8 Calif  
4 2015) (unpublished); and, *Roth v. Badener*, 2016 WL 6947006 (C.A. 2nd Dist. Div  
5 2 Calif 2016) (reversing a denial of an Anti-SLAPP motion)(unpublished). This  
6 Court is respectfully requested to grant the special motion to dismiss.  
7

### 8 **III. FACTS**

9  
10 Danny and Eleya Simon were close family friends with Brian and Angela  
11 Edgeworth for many years. On April 10, 2016, a house Brian Edgeworth was  
12 building suffered a flood. In May of 2016, Mr. Simon agreed to help his friend  
13 with the flood claim. Because they were friends, Mr. Simon worked without a fee  
14 agreement.  
15

16 The families knew the others background from their close relationship.  
17 Danny Simon knew that Brian Edgeworth went to Harvard Business School; that  
18 the Edgeworths founded Pediped Footwear, a successful shoe company with  
19 production sites in Nevada and China and a worldwide retail presence; that the  
20 Edgeworths' company, American Grating LLC, was a global manufacturer of  
21  
22  
23  
24  
25

1 “fiberglass reinforced plastic” products used in settings from offshore oil to  
2 pedestrian walkways; and, that Brian Edgeworth was involved in construction,  
3 including speculation houses.<sup>3</sup>

4 Brian Edgeworth knew that Danny Simon was a successful Las Vegas  
5 attorney. Mr. Edgeworth understood that Mr. Simon almost exclusively took cases  
6 on a contingency fee basis, and that Mr. Simon was comfortable waiting until the  
7 end of a case to be paid in full, unlike the intellectual property and business  
8 attorneys Mr. Edgeworth commonly used.  
9

10 In 2016, the plumber’s work caused a flood in a speculation home being  
11 built by Mr. Edgeworth. The plumber blamed a fire sprinkler and refused to pay  
12 for or repair the flood damage. On June 16, 2016, a complaint was filed against  
13 the plumber and fire sprinkler manufacturer. The original cost of construction of  
14 the house was about \$3M. In late 2017, early 2018, the case settled for \$6.1M<sup>4</sup>.  
15

16 A dispute arose over the reasonable fee due the law office. The law office  
17 petitioned the Court to promptly resolve the fee dispute as allowed by Nevada law,  
18 NRS 18.015. Before any money was available, the client sued the law office for  
19 conversion, alleged damages from delay while trying to block lien adjudication,  
20 and sought damages for filing the lien.  
21  
22

23  
24 <sup>3</sup> The flooded house started as a speculation project.

25 <sup>4</sup> Brian Edgeworth did not pay \$24,117.50 owed to the plumber. The settlement  
was for \$6,075,882.50; \$6.1M less \$24,117.50.

### A. The Flood

The house is in McDonald Ranch at 645 St. Croix. Brian Edgeworth built the house as an investment. The general contractor on the build was Giberti Construction LLC, who had built other speculation houses for Mr. Edgeworth. Brian Edgeworth funded the build through his plastics company, American Grating. The total cost of the build was about \$3.3M. The house was listed for sale at \$5.5M. The house is not currently on the market.

Viking fire sprinklers were installed in the house by plumbing sub-contractor Lange Plumbing & Fire Control, per their contract.

On April 10, 2016, during the build, a Viking fire sprinkler(s) malfunctioned, which caused a destructive flood.

Before the build began, Mr. Edgeworth decided to go without builder's risk/course of construction insurance. Without insurance, Mr. Edgeworth looked to Lange for repairs based on contract. Lange breached the contract and did not pay or repair, so Mr. Edgeworth asked his friend, Danny Simon, for help.

Brian Edgeworth spoke with other attorneys, but wanted Danny Simon to help him. In May of 2016, Mr. Simon agreed to lend a hand, and “send a few letters”.<sup>5</sup>

<sup>5</sup> See, e.g., Exhibit 1; 5.27.2016 email string.

1 Danny Simon did not have a structured discussion with Brian Edgeworth  
2 about the fee for the case.<sup>6</sup> Mr. Simon began work without a written agreement or  
3 an express agreement on attorney fees.

4 On June 14, 2016, a complaint was filed against Lange and Viking.

5 Brian Edgeworth paid the cost of repair for the house, around \$500k; and, in  
6 December of 2016, a certificate of occupancy was issued for the house.

8 B. The Case

9 Viking was sued for a product defect in their fire sprinkler and Lange was  
10 sued on the contract. There was a clear route to recover attorney fees against  
11 Lange based on the contract. There was no easy road for fees against Viking.

12 The case became complex with multiple parties, cross and counter-claims.  
13 In short order, the case went from a friends and family matter to a major litigation,  
14 which soon dominated time at the law office; and, involved the advancement of  
15 about \$200,000.00 in total costs.

16 In December of 2016, the law office started sending bills on the file. The  
17 bills enabled the clients to demonstrate damages, while allowing the law office to  
18  
19  
20  
21  
22

---

23  
24 <sup>6</sup> See, e.g., Exhibit 2; 8.22.2017 email from Brian Edgeworth, "Subject:  
25 Contingency"- "We never really had a structured discussion about how this might  
be done." Mr. Edgeworth mentioned a hybrid or greater hourly payments as fee  
options.

1 recover some costs advanced, and to defray some of the business loss caused by  
2 being unable to devote time to other contingency cases.

3 The bills submitted to Brian Edgeworth do not cover all the time spent on  
4 the case. The law office does not take hourly cases. The firm does not have hourly  
5 billing software, nor experienced time keepers. Also, Mr. Simon understood that  
6 Brian Edgeworth had decided to finance his share of the litigation through high  
7 interest loans<sup>7</sup> (presumably, based on a solid business rationale). Mr. Simon knew  
8 the case might not generate a return beyond the cost of repair, and he did not fully  
9 bill the case. Mr. Simon was willing to wait until the end of the case to final the  
10 bill considering the money obtained; that was his normal practice.  
11  
12

13 C. The Fee Dispute  
14

15 The case was aggressively pursued, well over 100,000 pages of documents  
16 were disclosed. The law office established that the fire sprinkler defect was known  
17 to Viking; had caused other floods; and, that Viking had done nothing to fix, or  
18 warn of, the defect.  
19  
20  
21  
22  
23

---

24 <sup>7</sup> The high interest loans were contested by defendants. The loans were from the  
25 mother-in-law of Brian Edgeworth and a close friend of Mr. Edgeworth. The  
interest rate was 33%, well above market rate.

1 In the late summer of 2017<sup>8</sup>, and into the fall, there were talks with the  
2 clients about the fee; but, no agreement was reached. Danny Simon was occupied  
3 with the case and Brian Edgeworth was content to leave the issue alone.

4 By the fall of 2017, the case was positioned for an excellent trial result with  
5 a strong chance of a finding against Viking for punitive damages; with motions  
6 pending to strike the main defense expert, and to strike the defendants' answers.  
7

8 In November of 2017, Viking offered \$6M to settle. To place the offer in  
9 context, the cost basis for the entire house was \$3.3M. The high offer was a direct  
10 result of the extraordinary effort and skill of Mr. Simon in preparing the case for a  
11 great trial outcome.  
12

13 In mid to late November of 2017, while the details of the Viking settlement  
14 were being worked on by Mr. Simon, Mr. Edgeworth became difficult to reach.  
15 Previously, Brian Edgeworth frequently called and e-mailed Mr. Simon.  
16 Communication came to an end when Mr. Simon tried to resolve the fee.  
17

18 On November 27, 2018, Mr. Simon wrote to the clients about the fee.  
19

20 On November 30, 2017, the clients sent Mr. Simon a fax stating that the  
21 Vannah firm had been retained.<sup>9</sup>  
22  
23  
24

---

25 <sup>8</sup> See, fn. 6.

<sup>9</sup> Exhibit 3.



1 On December 1, 2017, the law office issued a charging lien pursuant to NRS  
2 18.015.<sup>10</sup> On December 4, 2017, the clients were served by certified mail return  
3 receipt requested.<sup>11</sup>

4 In December of 2017, Lange made a settlement offer, \$100,000.00 less the  
5 money Brian Edgeworth had refused to pay.  
6

7 On December 7, 2017, Mr. Simon, his counsel, and Mr. Vannah held a  
8 conference call. Mr. Vannah told Mr. Simon not to contact the clients. Mr.  
9 Vannah was told the clients could seek attorney fees from Lange based on contract,  
10 and that the law office was working on a bill that would include all previously  
11 unbilled events. Mr. Vannah was told that the fee and cost claim against Lange  
12 might be in the \$1.5M range. Mr. Vannah did not tell Mr. Simon to cease work or  
13 to transfer the file. Mr. Simon documented the call.<sup>12</sup>  
14  
15

16 On December 7, 2017, the clients signed a “Consent to Settle” prepared by  
17 Mr. Vannah. In the Consent, the clients knowingly abandoned the attorney fee  
18 claim against Lange and directed Mr. Simon to settle the Lange claim for \$100,000  
19 minus the unpaid bill, based upon advice from Mr. Vannah. Mr. Simon was not  
20 told to cease work or to transfer the file.<sup>13</sup>  
21  
22

---

23 <sup>10</sup> Exhibit 4.

24 <sup>11</sup> Exhibit 5.

25 <sup>12</sup> Exhibit 6.

<sup>13</sup> Exhibit 7.

1 In December of 2017, Mr. Simon finalized the details of the Viking  
2 settlement, which were approved by the Vannah office.

3 On Monday, December 18, 2017, two checks with an aggregate value of  
4 \$6M for the Viking settlement were picked up.

5  
6 On Monday, December 18, 2017, Mr. Simon called the Vannah office to  
7 arrange check endorsement. Mr. Simon left a message.<sup>14</sup>

8 On Monday, December 18, 2017, Mr. Greene of the Vannah office called  
9 and spoke to Mr. Simon. Mr. Simon said he was leaving on a holiday trip starting  
10 Friday, December 22, 2017, until after the new year. Mr. Simon asked that the  
11 clients endorse the checks prior to December 22<sup>nd</sup>. Mr. Greene told Mr. Simon that  
12 the clients were not available to endorse until after the New Year. Mr. Greene  
13 stated that he would contact the law office about scheduling endorsement.<sup>15</sup>  
14  
15

16 On Friday, December 22, 2017, the Simon family went on their holiday trip.

17 On Saturday, December 23, 2017, at 10:45 p.m., Mr. Vannah sent an email  
18 which stated:  
19

20 Are you agreeable to putting this into an escrow account? The client does  
21 not want this money placed into Danny Simon's account. How much money  
22 could be immediately released? \$4,500,000? Waiting for any longer is not  
23 acceptable. I need to know right after Christmas.<sup>16</sup>

---

24 <sup>14</sup> Exhibit 8.

25 <sup>15</sup> Exhibit 8.

<sup>16</sup> Exhibit 8.

1 On Tuesday, December 26, 2017, counsel for Mr. Simon sent a reply  
2 indicating that endorsement could be arranged after the new year when everyone  
3 was available.

4 Mr. Vannah responded the same day. He began:

5 The clients are available until Saturday.<sup>17</sup> However, they have lost all faith  
6 and trust in Mr. Simon. Therefore, they will not sign the checks to be  
7 deposited into his trust account. Quite frankly, they are fearful that he will  
8 steal the money.<sup>18</sup>

9 Mr. Simon was not fired or told to transfer the file.

10 On December 27, 2017, a response was sent to Mr. Vannah. In sum, Mr.  
11 Vannah was asked to act collaboratively and to avoid hyperbole.<sup>19</sup>

12 On December 28, 2017, Mr. Vannah wrote he did not believe Mr. Simon  
13 would steal money, he was simply “relaying his clients’ statements to me”. Mr.  
14 Vannah proposed opening a single client trust account.<sup>20</sup>

15 The same day, Mr. Simon agreed to open a single client non-IOLTA trust  
16 account at Bank of Nevada, with all interest going to the clients.<sup>21</sup>  
17  
18  
19  
20

---

21  
22 <sup>17</sup> On December 18, 2017, Mr. Greene indicated the clients were out of town until  
23 after the new year. (Exhibit 8.) It appears the clients became available to  
24 endorse checks the day after Mr. Simon left town.

25 <sup>18</sup> Exhibit 8.

<sup>19</sup> Exhibit 9.

<sup>20</sup> Exhibit 10.

<sup>21</sup> Exhibit 10.

1 On January 2, 2018, an amended lien was filed.<sup>22</sup> On January 4, 2018, the  
2 lien was served.<sup>23</sup>

3 On January 4, 2018, collaborative efforts continued to set up the trust  
4 account.

5 On January 4, 2018, the clients sued the law office for use of an attorney  
6 lien.<sup>24</sup>

7 On January 8, 2017, a meeting occurred at Bank of Nevada. Account forms  
8 were signed, the checks were endorsed and deposited, and the \$6M deposit was  
9 placed on a large item hold.  
10  
11

12 The morning of January 9, 2017, the complaint was served. At the same  
13 moment as the acceptance of service was being signed, Mr. Greene sent an email  
14 asking for an update on the Lange settlement.<sup>25</sup>  
15

16 Later in the day, Mr. Vannah confirmed that the law office had not been  
17 fired, despite being sued for conversion.<sup>26</sup> Mr. Vannah stated if Mr. Simon  
18 withdrew, the damages sought would go up.<sup>27</sup>  
19  
20

---

21 <sup>22</sup> Exhibit 11.

22 <sup>23</sup> Exhibit 12.

23 <sup>24</sup> Exhibit 13 - the Complaint.

24 <sup>25</sup> Exhibit 14.

25 <sup>26</sup> The clients are walking a tightrope. Mr. Simon was sued for conversion to  
create an argument against lien adjudication, but firing Mr. Simon would moot  
the alleged contract claim. The clients are left in the odd, contrary position of  
keeping an attorney they have accused of converting millions of dollars.

1 On February 6, 2018, Mr. Vannah acknowledged in open court that this was  
2 a fee dispute case. To quote Mr. Vannah: “This is a fee dispute.”<sup>28</sup> The law office  
3 agrees. Adjudication of the attorney lien is the Legislature approved method to  
4 resolve a fee dispute. The law office cannot be sued for following the law.

#### 5 6 **IV. Argument**

7 The Nevada Anti-SLAPP statute allows a defendant to file a special motion  
8 to dismiss claims based on protected communication; such as, asking this Court to  
9 resolve a fee dispute by lien adjudication.

10  
11 A special motion to dismiss first requires the defendant to establish by  
12 preponderance of the evidence that the plaintiffs’ claim is based on a protected  
13 communication. NRS 41.665. If yes, then the burden shifts, and the plaintiff must  
14 establish, by clear and convincing evidence, a likelihood of prevailing. NRS  
15 41.665. If the plaintiff does not establish a likelihood of prevailing, then the  
16 special motion to dismiss must be granted.  
17  
18  
19  
20  
21

---

22 <sup>27</sup> On January 9, 2018, at 10:24 a.m., Mr. Greene from the Vannah office wrote,  
23 “He settled the case, but we’re just waiting on a release and the check.” The  
24 same day at 3:32 p.m., Mr. Vannah wrote, “I’m pretty sure that you see what  
25 would happen if our client has to spend lots more money to bring someone else  
up to speed.” Exhibit 14.

<sup>28</sup> Exhibit 15, transcript at page 35 line 24.

1 A plaintiff cannot establish a likelihood of prevailing if the claim is based  
2 upon a protected communication to a court, because the litigation privilege  
3 provides absolute immunity, even for otherwise tortious or untrue claims.  
4 *Greenberg Taurig v. Frias Holding Co.*, 331 P.3d 901, 902 (Nev. 2014); and,  
5 *Blaurock v. Mattice Law Offices* 2015 WL 3540903 (Nev. App. 2015).  
6 Submission of an attorney lien to a court for adjudication is a protected  
7 communication. The law office cannot be sued for following the law and making a  
8 protected communication to the court.  
9

10  
11 A. The Edgeworth ACOM is based on a protected communication made  
12 by the law office.

13 Using an attorney charging lien pursuant to the statute is a petition to the  
14 judiciary for relief. *Beheshti*, 2009 WL 5149862; and, *Transamerica Life*  
15 *Insurance Co.*, WL 2885858. As such, an attorney lien qualifies as a protected  
16 communication pursuant to NRS 41.637(3), which states:  
17

18 “Good faith communication in furtherance of the right to petition or the right  
19 to free speech in direct connection with an issue of public concern” means  
20 any:

21 ...

22 ...

23 3. Written or oral statement made in direct connection with an issue  
24 under consideration by a legislative, executive or judicial body, or any other  
25 official proceeding authorized by law; or,

...  
26

1 The Edgeworth AC describes the use of the attorney charging lien to resolve  
2 the fee dispute as the grounds for each of its three causes of action. For example,  
3 paragraphs 18-20, which are common to all claims, state as follows:

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

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

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

19 The Edgeworth ACOM describes, without using the words “attorney lien”,  
20 every act undertaken by the law office pursuant to the attorney lien statute. For  
21 example, the refusal to disburse contested funds complained of in para. 19, was  
22 done pursuant to the attorney lien statute and the Rules of Professional Ethics.

23 As another example, Edgeworth complains, “SIMON’S retention of  
24 PLAINTIFFS’ property is done intentionally with a conscious disregard of, and  
25 contempt for, PLAINTIFFS property rights.” (ACOM at para. 43.) However, the  
money is being safekept in a separate, segregated account set up by agreement of

1 the parties, and pursuant to the rules of ethics and the attorney lien statute. Simon  
2 is being sued for following the law.

3 As another example, Edgeworth directly ties breach of the duty of good faith  
4 and resultant damages to the use of the attorney lien in para. 55 of the amended  
5 complaint, “When Simon asserted a lien on PLAINTIFFS’ property...”. The  
6 Edgeworth(s) complaint is based upon Simon’s use of the attorney lien statute,  
7 which is a protected communication.  
8

9 The answer to the question of whether the ACOM is based on a protected  
10 communication is not subject to debate or inference. The Edgeworth ACOM states  
11 that it was filed because of the attorney lien. The Edgeworth ACOM describes a  
12 fee dispute and seeks damages from the law office for seeking to resolve the fee  
13 dispute by use of the attorney lien statute.  
14  
15

16 The parties clearly have a fee dispute. Use of an attorney lien is not only a  
17 good faith resolution to a fee dispute, it is allowed by statute and encouraged by  
18 the rules of ethics. The use of an attorney’s lien by the law office is a protected  
19 communication under NRS 41.637, and the use of the attorney’s lien serves as the  
20 basis for the Edgeworth ACOM. Thus, the law office has satisfied its burden  
21 under NRS 41.660 & 41.665.  
22

23 Nevada looks to California for guidance on Anti-SLAPP law. *Shapiro*, 389  
24 P.3d 262. Courts in California have repeatedly examined this issue, and resolved  
25



1 the question in favor of law offices seeking Anti-SLAPP protection. *Beheshti v.*  
2 *Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica Life*  
3 *Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016); *Kattuah v. Linde*  
4 *Law Firm*, 2017 WL 3033763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished);  
5 *Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald LLP*, 2015 WL 881588 (C.A.  
6 2nd Dist. Div. 8 Calif 2015) (unpublished); and, *Roth v. Badener*, 2016 WL  
7 6947006 (C.A. 2nd Dist. Div 2 Calif 2016) (reversing a denial of an Anti-SLAPP  
8 motion) (unpublished).  
9

10  
11 The California cases cited above all hold that suing a lawyer for filing a lien  
12 is subject to Anti-SLAPP dismissal. In other words, a lawyer (or a client) gets to  
13 resolve a fee dispute by court adjudication of a lien, without getting sued.  
14

15 The opposite side of the coin was examined in *Drell v. Cohen*, 232  
16 Cal.App.4<sup>th</sup> 24 (2014). *Drell* involved a lien dispute between two lawyers. One  
17 lawyer asked the Court to resolve the lien dispute, and the other filed a special  
18 motion to dismiss the lien adjudication. The court denied the motion, because  
19 court adjudication of the lien was the legal method to resolve the fee dispute. (No  
20 one was sued for conversion in *Drell*.)  
21

22 As background, the California Legislature has not provided attorneys with a  
23 statutory process to adjudicate an attorney lien, as the Nevada Legislature has  
24 done. *See, e.g., Carroll v. Interstate Brands*, 99 Cal. App. 4<sup>th</sup> 1168 (2002) (the  
25

1 *Carroll* Court called on the California Legislature to create a statutory procedure  
2 for expeditious lien adjudication). In California, a lien must be litigated in a new  
3 action. *Id.*, at 1177 (“Rather we raise a concern, as a matter of policy, that the  
4 interest of the client and of the attorney-claimant merit a more expeditious  
5 resolution than is currently afforded by the practice of filing a notice of lien that  
6 must then be litigated in a new action.”). In *Drell*, suit was not brought against an  
7 attorney for use of a lien, rather suit was brought to resolve the lien; in effect, to  
8 adjudicate the lien; and, the motion to dismiss was brought to stop adjudication.  
9

10  
11 The holding in *Drell* supports the actions of the law office. Use of an  
12 attorney lien and prompt adjudication is the legal way to resolve a fee dispute.  
13 And, you can’t be sued for following the law.

14  
15 B. The plaintiffs do not have a likelihood of prevailing.

16 The use of the attorney’s lien is a protected communication under NRS  
17 41.637. Accordingly, the burden shifts to plaintiffs to establish, by clear and  
18 convincing evidence, a likelihood of prevailing. NRS 41.665.

19  
20 The ACOM seeks relief from the use of an attorney lien by the law office.  
21 Use of an attorney lien is protected by the litigation privilege. NRS 41.650;  
22 *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica*  
23 *Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016); *Kattuah v.*  
24 *Linde Law Firm*, 2017 WL 3033763 (C.A. 2nd Dist. Div. 1 Calif. 2017)  
25

1 (unpublished); *Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald LLP*, 2015  
2 WL 881588 (C.A. 2nd Dist. Div. 8 Calif 2015) (unpublished); and, *Roth v.*  
3 *Badener*, 2016 WL 6947006 (C.A. 2nd Dist. Div 2 Calif 2016) (reversing a denial  
4 of an Anti-SLAPP motion) (unpublished). Thus, the law office is immune, and the  
5 Edgeworths cannot carry their heightened burden.  
6

7 The litigation privilege is absolute and applies to any communication uttered  
8 or published in a judicial proceeding. *Greenberg*, 331 P.3d at 902.<sup>29</sup> Further:  
9

10 The privilege, which even protects an individual from liability for statements  
11 made with knowledge of falsity and malice, applies “so long as [the  
12 statements] are in some way pertinent to the subject of  
13 controversy.” *Id.* Moreover, the statements “need not be relevant in the  
14 traditional evidentiary sense, but need have only ‘some relation to the  
15 proceeding; so long as the material has some bearing on the subject matter of  
16 the proceeding, it is absolutely privileged.” (Internal citations omitted.)

17 *Blaurock*, 2015 WL 3540903.  
18

19 Use of an attorney lien when there is a fee dispute is protected  
20 communication and is absolutely privileged. As a matter of law, the law office is  
21 immune, and the Edgeworths cannot prevail.  
22  
23  
24

---

25 <sup>29</sup> The sole recognized exception is in the context of a legal malpractice claim,  
which is not presented here.

1 **V. CONCLUSION**

2 Nevada follows California Anti-SLAPP law. *Shapiro*, 389 P.3d 262. Courts  
3 in California have held that an attorney's use of a lien is protected communication  
4 and have granted special motions to dismiss brought by an attorney. This Court is  
5 respectfully requested to rule the same.  
6

7 DATED this 10<sup>th</sup> day of May, 2018.

8 /s/ James R. Christensen

9 James R. Christensen Esq.  
10 Nevada Bar No. 3861  
11 James R. Christensen PC  
12 601 S. 6<sup>th</sup> Street  
13 Las Vegas NV 89101  
14 (702) 272-0406  
15 (702) 272-0415 fax  
16 jim@jchristensenlaw.com  
17 Attorney for SIMON

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing SPECIAL MOTION TO DISMISS  
20 THE AMENDED COMPLAINT: ANTI-SLAPP was made by electronic service  
21 (via Odyssey) this 10<sup>th</sup> day of May, 2018, to all parties currently shown on the  
22 Court's E-Service List.  
23

24 /s/ Dawn Christensen

25 an employee of JAMES R. CHRISTENSEN

# Exhibit 1

## 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 2**

## 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 3**

**FAX****Date:** 11/30/2017**Pages including cover sheet:** 2

<b>To:</b>	
<b>Phone</b>	
<b>Fax Number</b>	(702) 364-1655

<b>From:</b>	Jessie Romero
	Vannah & Vannah
	400 S. 7th Street
	Las Vegas
	NV 89101
<b>Phone</b>	(702) 369-4161 * 302
<b>Fax Number</b>	(702) 369-0104

**NOTE:**

November 29, 2017

VIA FACSIMILE: (702) 364-1655

Daniel S. Simon, Esq.  
LAW OFFICE OF DANIEL S. SIMON  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101

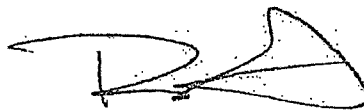
RE: Letter of Direction

Dear Mr. Simon:

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

Thank you for your understanding and compliance with the terms of this letter.

Sincerely,

A handwritten signature in black ink, appearing to be "B. Edgeworth", with a stylized, looped flourish at the end.

Brian Edgeworth

# **Exhibit 4**

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

1 ATLN  
DANIEL S. SIMON, ESQ.  
2 Nevada Bar No. 4750  
ASHLEY M. FERREL, ESQ.  
3 Nevada Bar No. 12207  
810 S. Casino Center Blvd.  
4 Las Vegas, Nevada 89101  
Telephone (702) 364-1650  
5 lawyers@simonlawlv.com  
*Attorneys for Plaintiffs*  
6

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 EDGEWORTH FAMILY TRUST; and )  
AMERICAN GRATING, LLC.; )  
10 )  
Plaintiffs, )  
11 )  
vs. )  
12 )  
LANGE PLUMBING, L.L.C.; )  
13 THE VIKING CORPORATION, )  
a Michigan corporation; )  
14 SUPPLY NETWORK, INC., dba VIKING )  
SUPPLYNET, a Michigan corporation; )  
15 and DOES I through V and ROE )  
CORPORATIONS VI through X, inclusive, )  
16 )  
Defendants. )  
17

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

18 NOTICE OF ATTORNEY'S LIEN

19 NOTICE IS HEREBY GIVEN that the Law Office of Daniel S. Simon, a Professional  
20 Corporation, rendered legal services to EDGEWORTH FAMILY TRUST and AMERICAN  
21 GRATING, LLC., for the period of May 1, 2016, to the present, in connection with the above-entitled  
22 matter resulting from the April 10, 2016, sprinkler failure and massive flood that caused substantial  
23 damage to the Edgeworth residence located at 645 Saint Croix Street, Henderson, Nevada 89012.

24 That the undersigned claims a lien, pursuant to N.R.S. 18.015, to any verdict, judgment, or  
25 decree entered and to any money which is recovered by settlement or otherwise and/or on account of  
26 the suit filed, or any other action, from the time of service of this notice. This lien arises from the  
27 services which the Law Office of Daniel S. Simon has rendered for the client, along with court costs  
28 and out-of-pocket costs advanced by the Law Office of Daniel S. Simon in an amount to be

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

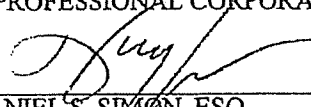
1 determined.

2 The Law Office of Daniel S. Simon claims a lien for a reasonable fee for the services rendered  
3 by the Law Office of Daniel S. Simon on any settlement funds, plus outstanding court costs and out-  
4 of-pocket costs currently in the amount of \$80,326.86 and which are continuing to accrue, as  
5 advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution.  
6 The above amount remains due, owing and unpaid, for which amount, plus interest at the legal rate,  
7 lien is claimed.

8 This lien, pursuant to N.R.S. 18.015(3), attaches to any verdict, judgment, or decree entered  
9 and to any money which is recovered by settlement or otherwise and/or on account of the suit filed,  
10 or any other action, from the time of service of this notice.

11 Dated this 30<sup>th</sup> day of November, 2017.

12 THE LAW OFFICE OF DANIEL S. SIMON,  
13 A PROFESSIONAL CORPORATION

14   
15 DANIEL S. SIMON, ESQ.  
16 Nevada Bar No. 4750  
17 ASHLEY M. FERREL, ESQ.  
18 Nevada Bar No. 12207  
19 SIMON LAW  
20 810 South Casino Center Blvd.  
21 Las Vegas, Nevada 89101  
22  
23  
24  
25  
26  
27  
28

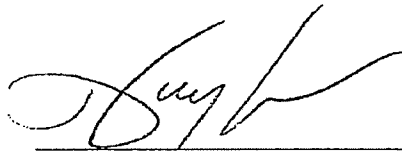
SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF CLARK )

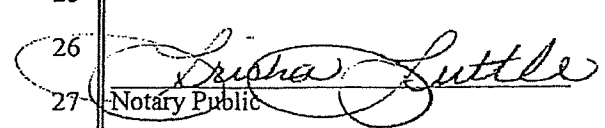
4 DANIEL S. SIMON, being first duly sworn, deposes and says:

5 That he is the attorney who has at all times represented EDGEWORTH FAMILY TRUST and  
6 AMERICAN GRATING, LLC., as counsel from May 1, 2016, until present, in its claims for damages  
7 resulting from the April 16, 2016, sprinkler failure that caused substantial damage to the Edgeworth  
8 residence located at 645 Saint Croix Street, Henderson, Nevada.

9 That he is owed for attorney's fees for a reasonable fee for the services which have been  
10 rendered for the client, plus outstanding court costs and out-of-pocket costs, currently in the amount  
11 of \$80,326.86, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon  
12 in an amount to be determined upon final resolution of any verdict, judgment, or decree entered and  
13 to any money which is recovered by settlement or otherwise and/or on account of the suit filed, or any  
14 other action, from the time of service of this notice. That he has read the foregoing Notice of  
15 Attorney's Lien; knows the contents thereof, and that the same is true of his own knowledge, except  
16 as to those matters therein stated on information and belief, and as to those matters, he believes them  
17 to be true.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
DANIEL S. SIMON

23 SUBSCRIBED AND SWORN  
24 before me this 30 day of November, 2017

26  
27  
28  
  
Notary Public



SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 30<sup>th</sup> day of November, 2017, I served the foregoing **NOTICE OF ATTORNEY'S LIEN** on the following parties by electronic transmission through the Wiznet system and also via Certified Mail- Return

Receipt Requested:

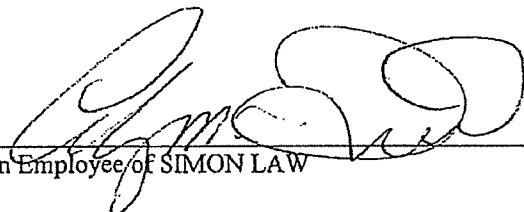
Theodore Parker, III, Esq.  
PARKER NELSON & ASSOCIATES  
2460 Professional Court, Ste. 200  
Las Vegas, NV 89128  
*Attorney for Defendant*  
*Lange Plumbing, LLC*

Michael J. Nunez, Esq.  
MURCHISON & CUMMING, LLP  
350 S. Rampart Blvd., Ste. 320  
Las Vegas, NV 89145  
*Attorney for Third Party Defendant*  
*Giberti Construction, LLC*

Janet C. Pancoast, Esq.  
CISNEROS & MARIAS  
1160 N. Town Center Dr., Suite 130  
Las Vegas, NV 89144  
*Attorney for Defendant*  
*The Viking Corporation and*  
*Supply Network, Inc. dba Viking Supplynet*

Randolph P. Sinnott, Esq.  
SINNOTT, PUEBLA, CAMPAGNE  
& CURET, APLC  
550 S. Hope Street, Ste. 2350  
Los Angeles, CA 90071  
*Attorney for Zurich American Insurance Co.*

Angela Bullock  
Kinsale Insurance Company  
2221 Edward Holland Drive, Ste. 600  
Richmond, VA 23230  
*Senior Claims Examiner for*  
*Kinsale Insurance Company*

  
An Employee of SIMON LAW

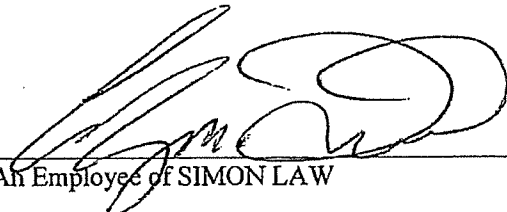


SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF MAIL

I hereby certify that on this 1<sup>st</sup> day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Brian and Angela Edgeworth  
645 Saint Croix Street  
Henderson, Nevada 89012

  
An Employee of SIMON LAW

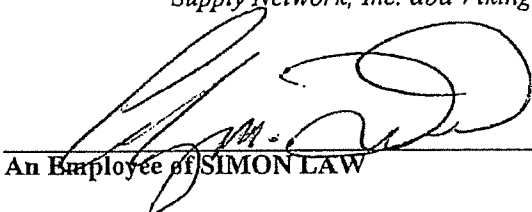
SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF MAIL

I hereby certify that on this 15<sup>th</sup> day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing NOTICE OF ATTORNEY'S LIEN on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Bob Paine  
Zurich North American Insurance Company  
10 S. Riverside Plz.  
Chicago, IL 60606  
Claims Adjustor for  
Zurich North American Insurance Company

Daniel Polsenberg, Esq.  
Joel Henriod, Esq.  
**Lewis Roca Rothgerber Christie**  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, NV 89169  
The Viking Corporation and  
Supply Network, Inc. dba Viking Supplynet

  
An Employee of SIMON LAW

# **Exhibit 5**

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.  
Print your name and address on the reverse so that we can return the card to you.  
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
Edgeworth Family Trust  
445 Saint Croix St.  
Henderson, NV 89012

1. Article Addressed to:  
Brian & Angela Edgeworth  
645 Saint Croix St.  
Henderson, NV 89012

2. Article Number (Transfer from service label)  
9590 9402 2854 7069 0893 09  
Article Number (Transfer from service label)  
115 1520 0001 4968 1730

3. Service Type  
☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)  
☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☒ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery (over \$500)

Domestic Return Receipt  
Form 3811, July 2015 PSN 7530-02-000-9053

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.  
Print your name and address on the reverse so that we can return the card to you.  
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
Joel Henrich, Esq.  
Lewis Roca Rothgerber  
Christie  
3993 Howard Hughes Pkwy  
Ste. 6000  
Las Vegas, NV 89169

1. Article Addressed to:  
American Grating  
1191 Center Point Drive  
Ste. A.  
Henderson, NV 89074

2. Article Number (Transfer from service label)  
9590 9402 2854 7069 0892 93  
Article Number (Transfer from service label)  
7008 3230 0001 1011 3509

3. Service Type  
☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)  
☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☒ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery (over \$500)

Domestic Return Receipt  
Form 3811, July 2015 PSN 7530-02-000-9053

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.  
Print your name and address on the reverse so that we can return the card to you.  
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
Brian & Angela Edgeworth  
645 Saint Croix St.  
Henderson, NV 89012

1. Article Addressed to:  
Brian & Angela Edgeworth  
645 Saint Croix St.  
Henderson, NV 89012

2. Article Number (Transfer from service label)  
9590 9402 2854 7069 0886 85  
Article Number (Transfer from service label)  
7005 1160 0003 6591 2385

3. Service Type  
☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)  
☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☒ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery (over \$500)

Domestic Return Receipt  
Form 3811, July 2015 PSN 7530-02-000-9053

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.  
Print your name and address on the reverse so that we can return the card to you.  
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
American Grating  
1191 Center Point Drive  
Ste. A.  
Henderson, NV 89074

1. Article Addressed to:  
American Grating  
1191 Center Point Drive  
Ste. A.  
Henderson, NV 89074

2. Article Number (Transfer from service label)  
9590 9402 2854 7069 0892 93  
Article Number (Transfer from service label)  
7008 3230 0001 1011 3509

3. Service Type  
☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)  
☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☒ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery (over \$500)

Domestic Return Receipt  
Form 3811, July 2015 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p>Angela Bullock Hinsale Insurance Comp. 221 Edward Holland Dr. Ste 600 Richmond, VA 23230</p> <p>9590 9402 2854 7069 0893 54</p> <p>Article Number (Transfer from service label)</p> <p>7015 1520 0001 4968 140</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <i>Angela Bullock</i></p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input checked="" type="checkbox"/> Return Receipt for Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Insured Mail (over \$500) <input type="checkbox"/> Restricted Delivery</p> <p>Domestic Return Receipt</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p>Heodore Parker, III, Esq. Arther Nelson &amp; Associates 4100 Professional Court Ste 200 Las Vegas, NV 89128</p> <p>9590 9402 2854 7069 0886 78</p> <p>Article Number (Transfer from service label)</p> <p>7005 1160 0003 6591 2361</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature <i>Arther Nelson</i></p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input checked="" type="checkbox"/> Return Receipt for Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Insured Mail (over \$500) <input type="checkbox"/> Restricted Delivery</p> <p>Domestic Return Receipt</p>	

**SENDER: COMPLETE THIS SECTION**

- ☒ Complete items 1, 2, and 3.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet C. Pancoast, Esq.  
Cisneros & Marias  
1160 N. Town Center Dr. Ste. 130  
Las Vegas NV 89144



9590 9402 2854 7069 0886 54

2. Article Number (transfer from service label)

7005 1160 0003 6591 2354

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent

X ☒ Address

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature Restricted Delivery
  - ☐ Adult Signature Restricted Delivery
  - ☒ Certified Mail®
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Insured Mail
  - ☐ Insured Mail Restricted Delivery (over \$500)
  - ☐ Priority Mail Express®
  - ☐ Registered Mail™
  - ☐ Registered Mail Restricted Delivery
  - ☒ Return Receipt for Merchandise
  - ☐ Signature Confirmation®
  - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

# **Exhibit 6**

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

TELEPHONE (702) 364-1650

FACSIMILE (702) 364-1655

December 7, 2017

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

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

Dear Mr. Vannah,

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

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

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

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

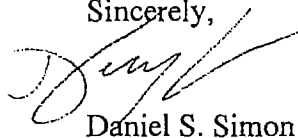


based upon the Lange contract with American Grating LLC. If the current Lange offer is accepted the potential recovery of attorney fees and costs pursuant to the contract will be waived. If the Lange motion to void the contract is granted, then the claim against Lange for attorney fees and costs will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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Simon', with a stylized flourish extending from the end.

Daniel S. Simon

# **Exhibit 7**

**VANNAH & VANNAH**  
AN ASSOCIATION OF ATTORNEYS  
INCLUDING PROFESSIONAL CORPORATIONS

December 7, 2017

**CONSENT TO SETTLE**

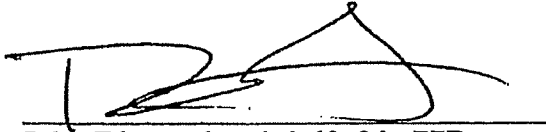
**RE: EFT & AMERICAN GRATING v. LANGE**

WE, Brian Edgeworth and Angela Edgeworth, on behalf of the Edgeworth Family Trust (EFT) and American Grating, consent to settle all claims against LANGE for the gross amount of \$100,000, minus sums owed to LANGE pursuant to the Contract. We acknowledge that our attorneys have advised us that by settling the outstanding claims with LANGE, we will be waiving all claims for attorneys' fees, including any contingency fee that a court may award to the Law Office of Daniel S. Simon. By settling our claims with LANGE, we understand that LANGE will also agree to dismiss all claims against VIKING entities, including claims for contribution and indemnity. Also, we understand that no party to the litigation will oppose any motion for Good Faith Settlement. We understand and agree that by settling our claims against LANGE and VIKING, all aspects and claims related to the litigation will be resolved and dismissed with prejudice.

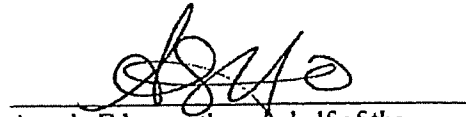
We acknowledge that Mr. Vannah has also explained to us that to continue to litigate with LANGE is economically speculative, as we've already been made more than whole with the settlement with the VIKING entities, and LANGE may be legally entitled to an offset for the amount of the settlement paid to us by VIKING. We also understand that to continue to litigate with LANGE over the payment of attorneys fees is also not only speculative, but is akin to throwing good money after bad by spending considerably more money on attorneys fees in an effort to recover attorneys fees.

Rather, we acknowledge that Mr. Vannah has advised us to settle with LANGE for the negotiated amount of \$100,000 and we consent to settle.

DATED this 7<sup>th</sup> day of December, 2017.

A handwritten signature in black ink, appearing to be 'B Edgeworth', written over a horizontal line.

Brian Edgeworth on behalf of the EFT  
and American Grating

A handwritten signature in black ink, appearing to be 'A Edgeworth', written over a horizontal line.

Angela Edgeworth on behalf of the  
EFT and American Grating

# **Exhibit 8**

## Re: Edgeworth v. Viking

Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>

Tue 12/26/2017 12:18 PM

To: James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)>;

Cc: John Greene <[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)>; Daniel Simon <[dan@simonlawlv.com](mailto:dan@simonlawlv.com)>;

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)> wrote:

Bob,

Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.

Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.

Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.

Las Vegas NV 89101  
(702) 272-0406

---

**From:** Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>  
**Sent:** Saturday, December 23, 2017 10:10:45 PM  
**To:** James R. Christensen  
**Cc:** John Greene; Daniel Simon  
**Subject:** Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? \$4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)> wrote:

Folks,

Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.

The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.

If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.

Any concerns, please let me know.

Happy Holidays!

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

---

**From:** John Greene <[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)>  
**Sent:** Monday, December 18, 2017 1:59:02 PM  
**To:** James R. Christensen  
**Subject:** Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

----- Forwarded message -----

From: John Greene <[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)>

Date: Mon, Dec 18, 2017 at 1:56 PM

Subject: Re: Edgeworth v. Viking

To: Daniel Simon <[dan@simonlawlv.com](mailto:dan@simonlawlv.com)>

Cc: Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>, [jim@christensenlaw.com](mailto:jim@christensenlaw.com)

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <[dan@simonlawlv.com](mailto:dan@simonlawlv.com)> wrote:

Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!

<image001.jpg>

--

John B. Greene, Esq.  
VANNAH & VANNAH  
400 S. 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
Phone: (702) 369-4161  
Fax: (702) 369-0104  
[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)


--

John B. Greene, Esq.  
VANNAH & VANNAH  
400 S. 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
Phone: (702) 369-4161  
Fax: (702) 369-0104  
[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)



From: Daniel Simon  
Sent: Monday, December 18, 2017 11:03 AM  
To: John Greene <jgreene@vannahlaw.com>  
Cc: Daniel Simon <dan@simonlawlv.com>  
Subject: Edgeworth v. Viking

I have received the settlement checks. Please have the client's come in to my office to sign so I can promptly put them in my trust account. Thanks!!

DANIEL S. SIMON  
ATTORNEY AT LAW  
 SIMON LAW  
810 South Casino Center Blvd.  
Las Vegas, NV 89101  
(P) 702.564.1630  
(F) 702.564.1635  
DAN@SIMONLAWLV.COM

# **Exhibit 9**

James R. Christensen Esq.  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
Ph: (702)272-0406 Fax: (702)272-0415  
E-mail: jim@jchristensenlaw.com  
*Admitted in Illinois and Nevada*

December 27, 2017

*Via E-Mail*

Robert D. Vannah  
400 S. 7<sup>th</sup> Street  
Las Vegas, NV 89101  
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Bob:

I look forward to working with you to resolve whatever issues may exist concerning the disbursement of funds in the Edgeworth case. To that end, I suggest we avoid accusations or positions without substance.

This letter is in response to your email of December 26, 2017. I thought it best to provide a formal written response because of the number of issues raised.

Please consider the following time line:

- On Monday, December 18, 2017, Simon Law picked up two Zurich checks in the aggregate amount of \$6,000,000.00. (Exhibit 1; copies of checks.)
- On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called Mr. Greene to arrange check endorsement. Mr. Simon left a message.

- On Monday, December 18, 2017, Mr. Greene returned the call and spoke to Mr. Simon. (Exhibit 2; confirming email string.)
- During the Monday call, Mr. Simon advised that he would be on a holiday trip and unavailable beginning Friday, December 22, 2017, until after the New Year. Mr. Simon asked that the clients endorse the checks prior to December 22<sup>nd</sup>. (Exhibit 2.)
- During the Monday call, Mr. Greene told Mr. Simon that the clients would not be available to sign checks until after the New Year. (Exhibit 2.)
- During the Monday call, Mr. Greene stated that he would contact Simon Law about scheduling endorsement. (Exhibit 2.)
- On Friday, December 22, 2017, the Simon family went on their holiday trip.
- On Saturday, December 23, 2017, at 10:45 p.m., an email was sent which indicated that delay in endorsement was not acceptable. The email also raised use of an escrow account as an alternative to the Simon Law trust account. (Exhibit 2.)
- On Tuesday, December 26, 2017, I responded by email and invited scheduling endorsement after the New Year, and discounted the escrow account option. (Exhibit 2.)

In response to your December 26, 2017 email, please consider the following:

1. The clients are available until Saturday. This is new information and it is different from the information provided by Mr. Greene. Regardless, Mr. Simon is out of town until after the New Year.
2. Loss of faith and trust. This is unfortunate, in light of the extraordinary result obtained by Mr. Simon on the client's behalf. However, Mr. Simon is still legally due a reasonable fee for the services rendered. NRS 18.015.
3. Steal the money. We should avoid hyperbole.

4. Time to determine undisputed amount. The time involved is a product of the immense amount of work involved in the subject case, which is clearly evident from the amazing monetary result, and the holidays. And, use of a lien is not “inconsistent with the attorney’s professional responsibilities to the client.” NRS 18.015(5).
5. Time to clear. The checks are not cashier’s checks. (Exhibit 1.) Even a cashier’s check of the size involved would be subject to a “large deposit item hold” per Regulation CC.
6. Interpleader. The interpleader option - deposit with the Court - was offered as an alternative to the Simon Law trust account, to address the loss of faith issue. The cost and time investment is also minimal.
7. Escrow alternative. Escrow does not owe the same duties and obligations as those that apply to an attorney and a trust account. Please compare, *Mark Properties v. National Title Co.*, 117 Nev. 941, 34 P.3d 587 (2001); with, Nev. Rule of Professional Conduct 1.15; SCR 78.5; etc. The safekeeping property duty is also typically seen as non-delegable.

To protect everyone involved, the escrow would have to accept similar duties and obligations as would be owed by an attorney. That would be so far afield from the usual escrow obligations under *Mark*, that it is doubtful that an escrow could be arranged on shorter notice, if at all; and, such an escrow would probably come at great cost.

We are not ruling out this option, we simply see it as un-obtainable. If you believe it is viable and wish to explore it further, please do so.

8. File suit ourselves. An independent action would be far more time consuming and expensive than interpleader. However, that is an option you will have to consider on your own.

9. Fiduciary duty. Simon Law is in compliance with all duties and obligations under the law. *See, e.g.*, NRS 18.015(5).

10. Client damages. I can see no discernable damage claim.

Please let me know if you are willing to discuss moving forward in a collaborative manner.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

*/s/ James R. Christensen*

**JAMES R. CHRISTENSEN**

JRC/dmc

cc: Daniel Simon

enclosures

# **Exhibit 10**

## Re: Edgeworth v. Viking

Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>

Thu 12/28/2017 3:21 PM

To: James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)>;

Cc: John Greene <[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)>; Daniel Simon <[dan@simonlawlv.com](mailto:dan@simonlawlv.com)>;

Sarah called me back. Apparently Danny is a bank client also. That works out well. The way she would do this is to make it a "locked" account. I wasn't very familiar with that concept, but since there will only be a few checks that is fine. Any disbursements will require both his and my signature. She asked me to give her the name of the account: it should probably read something like "Danny Simon and Robert Vannah in trust for..." Another issue that she raised is that they need a Social Security number or something like that because it is an interest-bearing account. Should it be the clients' Social Security or corporate ID number, or should it be Danny's? Obviously, at the end of the year the IRS will have to be notified as to who the real party in interest is. Just some thoughts. Since Danny is back in the office on January 4, why don't we set the account up then?

Sent from my iPad

On Dec 28, 2017, at 3:08 PM, James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)> wrote:

Bob,

I am available tomorrow for a call.

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

---

**From:** Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>

**Sent:** Thursday, December 28, 2017 3:07:06 PM

**To:** James R. Christensen

**Cc:** John Greene; Daniel Simon

**Subject:** Re: Edgeworth v. Viking

I took the liberty of calling Bank Of Nevada and left a message for Sarah Guindy, asking her if we can do exactly what we seem to be agreeing to. I left her my phone number, and am expecting a call back. If she thinks we can do that, we can set up a conference call between you and me and work out the details with her. This seems to be the best way to get this money distributed to Danny and to the clients.

Sent from my iPad

On Dec 28, 2017, at 2:03 PM, James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)> wrote:



Bob,

A separate trust account is a good idea. Agreed to you and Danny being co-signers, with both needed. I suggest a non-IOLTA account. The interest can inure to the clients.

How about Bank of Nevada?

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

---

**From:** Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>  
**Sent:** Thursday, December 28, 2017 4:17:36 AM  
**To:** James R. Christensen  
**Cc:** John Greene; Daniel Simon  
**Subject:** Re: Edgeworth v. Viking

I'm not suggesting I have concerns over Danny stealing the money, I'm simply relaying his clients' statements to me. I have an idea. Why don't we set up a separate trust account dedicated to these clients. Any disbursement requires 2 signatures, Danny's and mine. Have Danny, expeditiously, determine exactly what his lien claim is going to be. We recognize that there will be an undisputed amount for his incurred costs and time since the last invoice. We also recognize that the clients are entitled to all the funds immediately after the checks clear, exclusive of Danny's undisputed final billing for fees and costs, since the last statement, and his claimed lien. We were under the impression that the 2 checks totaling \$6,000,000 were cashiers checks. We were wrong apparently; we got that impression from the settlement agreement. In any event, I recognize that it takes time to clear the checks. The damage to the clients in delaying this disbursement is the high interest loans made by the clients to fund the underlying litigation. The pressing concern here is to get the clients, and Danny, their funds which are not in dispute. Agreed? I'm not commenting on the merits of Danny's claim. I just want to get the majority of the money distributed to both Danny and the clients. There is a fiduciary duty to get that done expeditiously. The "disputed lien" funds will be adequately segregated and protected. We are not going to allow this case to be decided in a summary interpleader action. Whatever bank we use is fine with me, I just want it done ASAP.

Sent from my iPad

On Dec 27, 2017, at 1:14 PM, James R. Christensen <[jjim@jchristensenlaw.com](mailto:jjim@jchristensenlaw.com)> wrote:

Please see attached

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.

Las Vegas NV 89101  
(702) 272-0406

---

**From:** Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>  
**Sent:** Tuesday, December 26, 2017 12:18:41 PM  
**To:** James R. Christensen  
**Cc:** John Greene; Daniel Simon  
**Subject:** Re: Edgeworth v. Viking

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)> wrote:

Bob,

Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.

Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.

Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

---

**From:** Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>  
**Sent:** Saturday, December 23, 2017 10:10:45 PM  
**To:** James R. Christensen  
**Cc:** John Greene; Daniel Simon  
**Subject:** Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? \$4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen  
<[jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)> wrote:

Folks,

Simon Law is working on the final bill.  
That process may take a week or two,  
depending on holiday staffing, etc.

The checks can be endorsed and  
deposited into trust before or after the  
final bill is generated-the only impact  
might be on the time horizon regarding  
when funds are available for  
disbursement.

If the clients are ok with adding in a week  
or so of potential delay, then Simon Law  
has no concerns. As a practical  
matter, if the clients are not available to  
endorse until after New Year, then the  
discussion is probably moot anyway.

Any concerns, please let me know.

Happy Holidays!

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

---

**From:** John Greene  
<[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)>  
**Sent:** Monday, December 18, 2017 1:59:02 PM  
**To:** James R. Christensen  
**Subject:** Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

----- Forwarded message -----

From: John Greene <[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)>  
Date: Mon, Dec 18, 2017 at 1:56 PM  
Subject: Re: Edgeworth v. Viking  
To: Daniel Simon <[dan@simonlawlv.com](mailto:dan@simonlawlv.com)>  
Cc: Robert Vannah <[rvannah@vannahlaw.com](mailto:rvannah@vannahlaw.com)>, [jim@christensenlaw.com](mailto:jim@christensenlaw.com)

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <[dan@simonlawlv.com](mailto:dan@simonlawlv.com)> wrote:

Thanks for returning my call. You advised that the clients were unable to execute the settlement

AA00831

checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!

<image001.jpg>

--  
John B. Greene, Esq.  
VANNAH & VANNAH  
400 S. 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
Phone: (702) 369-4161  
Fax: (702) 369-0104  
jgreene@vannahlaw.com

--  
John B. Greene, Esq.  
VANNAH & VANNAH  
400 S. 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
Phone: (702) 369-4161  
Fax: (702) 369-0104  
jgreene@vannahlaw.com

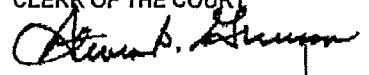
<Ltr to Mr. Vannah.pdf>

<Zurich\_Check[1].pdf>

<Zurich\_Check[1].pdf>

<Email string.pdf>

# **Exhibit 11**



1 ATLN  
2 DANIEL S. SIMON, ESQ.  
3 Nevada Bar No. 4750  
4 ASHLEY M. FERREL, ESQ.  
5 Nevada Bar No. 12207  
6 810 S. Casino Center Blvd.  
7 Las Vegas, Nevada 89101  
8 Telephone (702) 364-1650  
9 lawyers@simonlawlv.com  
10 Attorneys for Plaintiffs

DISTRICT COURT  
CLARK COUNTY, NEVADA

810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

SIMON LAW

9 EDGEWORTH FAMILY TRUST; and )  
10 AMERICAN GRATING, LLC.; )  
11 Plaintiffs, )  
12 vs. )  
13 LANGE PLUMBING, L.L.C.; )  
14 THE VIKING CORPORATION, )  
15 a Michigan corporation; )  
16 SUPPLY NETWORK, INC., dba VIKING )  
17 SUPPLYNET, a Michigan corporation; )  
18 and DOES I through V and ROE )  
19 CORPORATIONS VI through X, inclusive, )  
20 Defendants. )

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

NOTICE OF AMENDED ATTORNEY'S LIEN

21 NOTICE IS HEREBY GIVEN that the Law Office of Daniel S. Simon, a Professional  
22 Corporation, rendered legal services to EDGEWORTH FAMILY TRUST and AMERICAN  
23 GRATING, LLC., for the period of May 1, 2016, to the present, in connection with the above-entitled  
24 matter resulting from the April 10, 2016, sprinkler failure and massive flood that caused substantial  
25 damage to the Edgeworth residence located at 645 Saint Croix Street, Henderson, Nevada 89012.

26 That the undersigned claims a total lien, in the amount of \$2,345,450.00, less payments made  
27 in the sum of \$367,606.25 for a final lien for attorney's fees in the sum of \$1,977,843.80, pursuant  
28 to N.R.S. 18.015, to any verdict, judgment, or decree entered and to any money which is recovered  
by settlement or otherwise and/or on account of the suit filed, or any other action, from the time of  
service of this notice. This lien arises from the services which the Law Office of Daniel S. Simon has

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

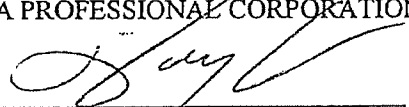
1 rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office  
2 of Daniel S. Simon in the sum of \$76,535.93, which remains outstanding.

3 The Law Office of Daniel S. Simon claims a lien in the above amount, which is a reasonable  
4 fee for the services rendered by the Law Office of Daniel S. Simon on any settlement funds, plus  
5 outstanding court costs and out-of-pocket costs currently in the amount of \$76,535.93, and which are  
6 continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be  
7 determined upon final resolution. The above amount remains due, owing and unpaid, for which  
8 amount, plus interest at the legal rate, lien is claimed.

9 This lien, pursuant to N.R.S. 18.015(3), attaches to any verdict, judgment, or decree entered  
10 and to any money which is recovered by settlement or otherwise and/or on account of the suit filed,  
11 or any other action, from the time of service of this notice.

12 Dated this 2<sup>nd</sup> day of January, 2018.

13 THE LAW OFFICE OF DANIEL S. SIMON,  
14 A PROFESSIONAL CORPORATION

15   
16 DANIEL S. SIMON, ESQ.  
17 Nevada Bar No. 4750  
18 ASHLEY M. FERREL, ESQ.  
19 Nevada Bar No. 12207  
20 810 South Casino Center Blvd.  
21 Las Vegas, Nevada 89101  
22  
23  
24  
25  
26  
27  
28



SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 22<sup>nd</sup> day of January, 2018, I served the foregoing **NOTICE OF AMENDED ATTORNEY'S LIEN** on the following parties by electronic transmission through the Wiznet system and also via Certified Mail- Return

Receipt Requested:


Theodore Parker, III, Esq.  
PARKER NELSON & ASSOCIATES  
2460 Professional Court, Ste. 200  
Las Vegas, NV 89128  
*Attorney for Defendant*  
*Lange Plumbing, LLC*

Michael J. Nunez, Esq.  
MURCHISON & CUMMING, LLP  
350 S. Rampart Blvd., Ste. 320  
Las Vegas, NV 89145  
*Attorney for Third Party Defendant*  
*Giberti Construction, LLC*

Janet C. Pancoast, Esq.  
CISNEROS & MARIAS  
1160 N. Town Center Dr., Suite 130  
Las Vegas, NV 89144  
*Attorney for Defendant*  
*The Viking Corporation and*  
*Supply Network, Inc. dba Viking Supplynet*

Randolph P. Sinnott, Esq.  
SINNOTT, PUEBLA, CAMPAGNE  
& CURET, APLC  
550 S. Hope Street, Ste. 2350  
Los Angeles, CA 90071  
*Attorney for Zurich American Insurance Co.*

Angela Bullock  
Kinsale Insurance Company  
2221 Edward Holland Drive, Ste. 600  
Richmond, VA 23230  
*Senior Claims Examiner for*  
*Kinsale Insurance Company*

  
An Employee of SIMON LAW

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

**CERTIFICATE OF U.S. MAIL**

I hereby certify that on this 2<sup>nd</sup> day of January, 2018, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF AMENDED ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Brian and Angela Edgeworth  
645 Saint Croix Street  
Henderson, Nevada 89012

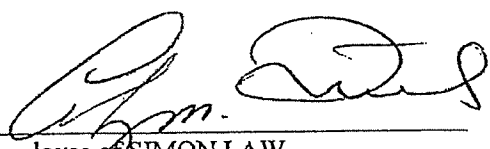
American Grating  
1191 Center point Drive, Ste. A  
Henderson, NV 89074

Edgeworth Family Trust  
645 Saint Croix Street  
Henderson, Nevada 89012

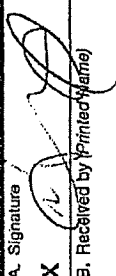
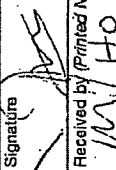
Robert Vannah, Esq.  
VANNAH & VANNAH  
400 South Seventh Street, Ste. 400  
Las Vegas, NV 89101

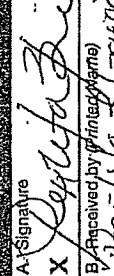
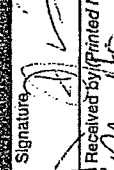
Bob Paine  
Zurich North American Insurance Company  
10 S. Riverside Plz.  
Chicago, IL 60606  
*Claims Adjustor for*  
*Zurich North American Insurance Company*

Joel Henriod, Esq.  
Lewis Roca Rothgerber Christie  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, NV 89169  
*The Viking Corporation and*  
*Supply Network, Inc. dba Viking Supplynet*

  
An Employee of SIMON LAW

# **Exhibit 12**

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY		SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p><b>American Grating</b>  <b>1191 Center Point Dr.</b>  <b>Ste. A</b>  <b>Henderson, NV 89074</b></p>		<p>A. Signature </p> <p>B. Received by (Printed Name) <b>Brian &amp; Angela Edgeworth</b></p> <p>C. Date of Delivery <b>1-4-18</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p>		<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p><b>Brian &amp; Angela Edgeworth</b>  <b>645 Saint Croix St.</b>  <b>Henderson, NV 89012</b></p>		<p>A. Signature </p> <p>B. Received by (Printed Name) <b>Brian &amp; Angela Edgeworth</b></p> <p>C. Date of Delivery <b>1-4-18</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 33</p> <p>7017 1450 0001 0575 6342</p>		<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 33</p> <p>7017 1450 0001 0575 6342</p>		<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 33</p> <p>7017 1450 0001 0575 6342</p>		<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 33</p> <p>7017 1450 0001 0575 6342</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053		PS Form 3811, July 2015 PSN 7530-02-000-9053		PS Form 3811, July 2015 PSN 7530-02-000-9053		PS Form 3811, July 2015 PSN 7530-02-000-9053	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY		SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p><b>Robert Vanniah, Esq.</b>  <b>Vanniah &amp; Vanniah</b>  <b>400 S. Seventh St., Ste 400</b>  <b>Las Vegas, NV. 89101</b></p>		<p>A. Signature </p> <p>B. Received by (Printed Name) <b>Robert Vanniah</b></p> <p>C. Date of Delivery <b>1-4-18</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p>		<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:</p> <p><b>Edgeworth Family Trust</b>  <b>645 Saint Croix St.</b>  <b>Henderson, NV. 89012</b></p>		<p>A. Signature </p> <p>B. Received by (Printed Name) <b>Edgeworth Family Trust</b></p> <p>C. Date of Delivery <b>1-4-18</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 02</p> <p>017 1450 0001 0575 6366</p>		<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 40</p> <p>7017 1450 0001 0575 6335</p>		<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 40</p> <p>7017 1450 0001 0575 6335</p>		<p>2. Article Number (Transfer from service label)</p> <p>9590 9402 2854 7069 0807 40</p> <p>7017 1450 0001 0575 6335</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053		PS Form 3811, July 2015 PSN 7530-02-000-9053		PS Form 3811, July 2015 PSN 7530-02-000-9053		PS Form 3811, July 2015 PSN 7530-02-000-9053	

**SENDER: COMPLETE THIS SECTION**

1. Complete items 1, 2, and 3.  
 2. Print your name and address on the reverse so that we can return the card to you.  
 3. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
 Michael Nunez, Esq.  
 Lurchison & Cunningham  
 50 S. Rampart, Ste. 300  
 Las Vegas, NV. 89145

1. Article Addressed to:  
 Joel Henricod, Esq.  
 Lewis Roca Rothgerber  
 Christie  
 3993 Howard Hughes Parkway  
 Ste. 600, Las Vegas, NV 89169

2. Article Number (Transfer from service label)  
 9590 9402 2854 7069 0807 64  
 7017 1450 0001 0575 6311

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent  
 B. Received by (Printed Name) ☒ Addressee  
 C. Date of Delivery 7-4-18  
 D. Is delivery address different from item 1? ☒ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)

4. Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

1. Complete items 1, 2, and 3.  
 2. Print your name and address on the reverse so that we can return the card to you.  
 3. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
 Theodore Parker, Esq.  
 Parker Nelson & Associates  
 2400 Professional Court  
 Ste. 200  
 Las Vegas, NV. 89128

1. Article Addressed to:  
 Theodore Parker, Esq.  
 Parker Nelson & Associates  
 2400 Professional Court  
 Ste. 200  
 Las Vegas, NV. 89128

2. Article Number (Transfer from service label)  
 9590 9402 2854 7069 0807 88  
 7017 1450 0001 0575 6261

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent  
 B. Received by (Printed Name) ☒ Addressee  
 C. Date of Delivery 7-4-18  
 D. Is delivery address different from item 1? ☒ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)

4. Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

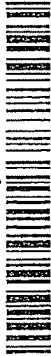
Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- ☒ Complete items 1, 2, and 3.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet Bancroft, Esq.  
Cisneros & Marias  
1160 N. Town Center Dr.  
Ste. 130  
Las Vegas, NV 89144



9590 9402 2854 7069 0807 95

2. Article Number (Transfer from service label)

7017 1450 0001 0575 6298

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature *[Signature]*

☐ Agent  
☐ Addressee

B. Received by (Printed Name) *[Signature]*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
  - ☐ Adult Signature Restricted Delivery
  - ☒ Certified Mail®
  - ☒ Certified Mail Restricted Delivery
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Insured Mail
  - ☐ Insured Mail Restricted Delivery (over \$500)
  - ☐ Priority Mail Express®
  - ☐ Registered Mail™
  - ☐ Registered Mail Restricted Delivery
  - ☒ Return Receipt for Merchandise
  - ☐ Signature Confirmation™
  - ☐ Signature Confirmation Restricted Delivery

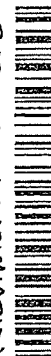
Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- ☒ Complete items 1, 2, and 3.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Angela Bullock  
Kinsale Insurance Co.  
2221 Edward Holland Dr.  
Ste. 600  
Richmond, VA 23230



9590 9402 2854 7069 0892 79

2. Article Number (Transfer from service label)

7017 1450 0001 0575 6274

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature *[Signature]*

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
  - ☐ Adult Signature Restricted Delivery
  - ☒ Certified Mail®
  - ☒ Certified Mail Restricted Delivery
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Insured Mail
  - ☐ Insured Mail Restricted Delivery (over \$500)
  - ☐ Priority Mail Express®
  - ☐ Registered Mail™
  - ☐ Registered Mail Restricted Delivery
  - ☒ Return Receipt for Merchandise
  - ☐ Signature Confirmation™
  - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

# Exhibit 13

Electronically Filed  
1/4/2018 11:56 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

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

12 *Attorneys for Plaintiffs*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

22 Defendants.

CASE NO.:  
DEPT NO.:

A-18-767242-C  
Department 14

COMPLAINT

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

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



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.

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 8<sup>th</sup> 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.

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

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

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

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

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

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

3 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP  
4 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS  
5 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS  
6 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect  
7 fees and costs other than those contained in his invoices that were presented to and paid by  
8 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
9 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let  
10 alone those in excess of \$1,000,000.00.  
11

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

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

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

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

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

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

15 **SECOND CLAIM FOR RELIEF**

16 **(Declaratory Relief)**

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

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

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

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

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

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

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

18  
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

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

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

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

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

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

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

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

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

22 **PRAYER FOR RELIEF**

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

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




VANNAH & VANNAH  
400 South Seventh Street, 4<sup>th</sup> Floor - Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

1 5. Costs of suit; and,

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

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

5  
6   
7 ROBERT D. VANNAH, ESQ. (4272)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 14**

Fwd: Edgeworth

James R. Christensen

Tue 1/9/2018 4:30 PM

Sent Items

To: Daniel Simon <dan@danielsimonlaw.com>;

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Robert Vannah <rvannah@vannahlaw.com>

Date: 1/9/18 3:32 PM (GMT-08:00)

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

Cc: John Greene <jgreene@vannahlaw.com>

Subject: Re: Edgeworth

I guess he could move to withdraw. However, that doesn't seem in his best interests. I'm pretty sure that you see what would happen if our client has to spend lots more money bringing someone else up to speed. So, it's up to him. Our client hasn't terminated him. We want this fee matter resolved by a Judge and jury.

Sent from my iPad

On Jan 9, 2018, at 3:21 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

John,

That is factually correct. However, Mr. Simon was served today. You must have understood that act could have impact.

The Lange status is that Mr. Simon made changes to the proposed closing documents last week. The ball is currently in defense attorney's court.

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

AA00854

---

**From:** John Greene <jgreene@vannahlaw.com>  
**Sent:** Tuesday, January 9, 2018 10:23:56 AM  
**To:** James R. Christensen  
**Cc:** rvannah@vannahlaw.com  
**Subject:** Re: Edgeworth

Jim:

I believe that Danny is still the attorney of record in that litigation. He settled the case, but we're just waiting on a release and the check.

John

On Tue, Jan 9, 2018 at 9:57 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

John,

I need to look into the propriety of Danny wrapping up Lange-after he has been sued and served. I will need to read the complaint.

I have a full schedule today and tomorrow, but will try to get to this as soon as I can.

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

---

**From:** John Greene <jgreene@vannahlaw.com>  
**Sent:** Tuesday, January 9, 2018 9:50:49 AM  
**To:** James R. Christensen  
**Cc:** rvannah@vannahlaw.com  
**Subject:** Re: Edgeworth

Jim:

Is there an update that Danny can provide on the Lange settlement? The clients would like to get everything wrapped up as soon as possible. Thank you.

John

On Tue, Jan 9, 2018 at 9:12 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

John,

Thanks for the call. I am authorized to accept service.

As I mentioned during the call, I anticipate an hourly bill will be completed next week prior to funds clearing. I suggest you wait until receipt & review of the hourly bill. We may be able to avoid unnecessary litigation costs and expenses.

Jim

James R. Christensen  
Law Office of James R. Christensen PC  
601 S. 6th St.  
Las Vegas NV 89101  
(702) 272-0406

--

John B. Greene, Esq.  
VANNAH & VANNAH  
400 S. 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
Phone: (702) 369-4161  
Fax: (702) 369-0104  
jgreene@vannahlaw.com

--

John B. Greene, Esq.  
VANNAH & VANNAH  
400 S. 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
Phone: (702) 369-4161  
Fax: (702) 369-0104  
jgreene@vannahlaw.com

# **Exhibit 15**

1 **RTRAN**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-116-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 06, 2018

12 **RECORDER'S PARTIAL TRANSCRIPT OF HEARING**  
13 **MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS**

14  
15 APPEARANCES:

16 For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

17  
18 For the Defendant:

THEODORE PARKER, ESQ.  
(Via telephone)

19 For Daniel Simon:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

20  
21 For the Viking Entities:

JANET C. PANCOAST, ESQ.

22 Also Present:

DANIEL SIMON, ESQ.

23  
24 RECORDED BY: VICTORIA BOYD, COURT RECORDER

25 TRANSCRIBED BY: MANGELSON TRANSCRIBING

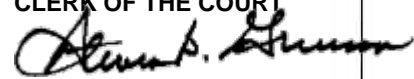
1 being the judge and I have no problem with the other judge being the  
2 judge, that's never been an issue in the case. What we do have a  
3 problem with is -- and I don't understand and maybe Mr. Christensen  
4 can clear that up. He's saying well, we can go ahead and have you take  
5 this case and make a ruling without a jury; that you can go through here  
6 and have a hearing and make a decision on what the fee should be.  
7 And then we can have the jury make a decision as to what the fee  
8 should be, but the problem is if you make a decision on what the fee  
9 should be that's issue preclusion on the whole thing and it ends up with  
10 being a preclusion.

11           So, we want this heard by a jury and no disrespect to the  
12 judge, but we'd like a jury to hear the facts, we'd like to hear the jury  
13 hear Mr. Simon get up and say to him \$550 an hour is dog meat, you  
14 know, he can't make a living on that and I would never bill at such a  
15 cheap rate and he's much greater than that. And I'd like to hear the jury  
16 hear that, people making \$12 an hour hear that kind of a conversation  
17 that Mr. Simon is apparently going to testify to.

18           So there -- so bottom line, we get right down -- I -- so what  
19 we're asking, it's -- what we'd like you to do -- this case over. The  
20 underlying case with the sprinkler system and the flooding of the house,  
21 it's over. In re has nothing to do with determining what the fee should  
22 be. The fee -- whole issue is based on what was the agreement. I don't  
23 know much about the underlying case and I'm not having a problem  
24 understanding the fee dispute. This is a fee dispute.

25           We're just -- and if you want to hear it -- I don't think there's





**OPPS**

ROBERT D. VANNAH, ESQ.

Nevada Bar. No. 002503

JOHN B. GREENE, ESQ.

Nevada Bar No. 004279

**VANNAH & VANNAH**

400 South Seventh Street, 4<sup>th</sup> Floor

Las Vegas, Nevada 89101

Telephone: (702) 369-4161

Facsimile: (702) 369-0104

[jgreene@vannahlaw.com](mailto:jgreene@vannahlaw.com)

*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.: XIV

Consolidated with

CASE NO.: A-16-738444-C

DEPT. NO.: X

**PLAINTIFFS OPPOSITION TO  
DEFENDANTS SECOND SPECIAL  
MOTION TO DISMISS: ANTI-SLAPP**

Date of Hearing: June 14, 2018

Time of Hearing: 9:30 a.m.

Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC  
(PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN  
B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby files this Opposition to  
Defendants SECOND Special Motion to Dismiss: Anti-SLAPP, the first of which was DENIED by  
this Court on April 3, 2018.

///

///

///

AA00860

This Opposition is based upon the attached Memorandum of Points and Authorities, NRS 41.660(3)(b), NRS 41.665(2), Cal. Code Civ. Proc 425.16(b)(3), *Drell v. Cohen*, 232 Cal.App. 4th 24, 181 Cal.Rptr. 3d 191 (2014), *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901 (Nev. 2014), the pleadings and papers on file herein, PLAINTIFFS Points and Authorities (and Exhibits) raised in Opposition to SIMON'S previously-filed Motions, including the Opposition to SIMON'S previously-filed and DENIED Special Motion to Dismiss: Anti-SLAPP, the affidavits of Brian Edgeworth to the prior Opposition, the attached Exhibits, and any oral argument this Court may wish to entertain.

DATED this 22 day of May, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

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 8<sup>th</sup> Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of early 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants not long before the trial date.

AA00861

1 At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed  
2 that SIMON would be paid for his services by the hour and at an hourly rate of \$550. (Id.). No  
3 other form or method of compensation such as a contingency fee was ever brought up at that time,  
4 let alone agreed to. (Id.) Despite SIMON serving as the attorney in this business relationship, and  
5 the one with the requisite legal expertise, SIMON never reduced the terms of the CONTRACT to  
6 writing in the form of a Fee Agreement. However, that formality didn't matter to the parties as  
7 they each recognized what the terms of the CONTRACT were and performed them accordingly  
8 with exactness through September of 2017. (Id.)

10 For example, SIMON sent invoices to PLAINTIFFS that were dated December 16, 2016,  
11 May 3, 2017, August 16, 2017, and September 25, 2017 (the Invoices). (The Invoices are attached  
12 as Exhibit 2.) The amount of fees and costs SIMON billed PLAINTIFFS in the Invoices totaled  
13 \$486,453.09. Simple reading and math shows that SIMON billed for his time at the hourly rate of  
14 \$550 per hour. PLAINTIFFS paid the Invoices in full to SIMON. (Id.)

16 SIMON also submitted an invoice to PLAINTIFFS on November 10, 2017, in the amount  
17 of approximately \$72,000. (Id.) However, SIMON withdrew the invoice and failed to resubmit  
18 the invoice to PLAINTIFFS, despite an email request from Brian Edgeworth to do so. (Please see  
19 Exhibit 1.) It is unknown to PLAINTIFFS whether SIMON ever disclosed that "final" invoice to  
20 the defendants in the LITIGATION or whether he added those fees and costs to the mandated  
21 computation of damages.

23 From the beginning of his representation of PLAINTIFFS, SIMON was aware that  
24 PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION.  
25 SIMON was also aware that the loans secured by PLAINTIFFS accrued interest. SIMON knew  
26 that PLAINTIFFS could not get traditional loans to pay SIMON'S fees and costs. (Id.) Plus,  
27 SIMON didn't express an interest in taking what amounted to a property damage claim with a  
28

1 value of \$500,000 on a contingency basis. Easy math shows that 40% of \$500,000 is \$200,000;  
2 SIMON billed over twice that in fees in the Invoices that he disclosed in the LITIGATION. In  
3 reality, SIMON only wanted what amounts to a bonus after he'd received nearly \$500,000 in fees  
4 and costs and after the risk of loss was gone.

5  
6 As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017,  
7 after the value of the case blossomed from one of property damage of approximately \$500,000 to  
8 one of significant and additional value due to the conduct of one of the defendants, and after a  
9 significant sum of money was offered to PLAINTIFFS from defendants, SIMON became  
10 determined to get more, so he started asking PLAINTIFFS to modify the CONTRACT. (Id.)  
11 Thereafter, Mr. Edgeworth sent an email labeled "Contingency." (See Exhibit 4 to the Motion to  
12 Adjudicate.) The sole purpose of that email was to make it clear to SIMON that PLAINTIFFS  
13 never had a structured conversation about modifying the existing fee agreement from an hourly  
14 agreement to a contingency agreement. (Id.)

15  
16 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the  
17 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into modifying  
18 the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be paid far more  
19 than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for the preceding  
20 eighteen (18) months. (Id.) SIMON portrays himself in his papers and pleadings as a close family  
21 friend who performed an act of charity by representing PLAINTIFFS by "sending a few letters."  
22 (See SIMON'S latest iteration at page 6, lines 9.5-15.5; and page 8, lines 19.5-20.5.) "Close"  
23 family "friends" don't take or lay claim to the property of their friends, and billing and accepting  
24 nearly \$500,000 in fees and costs can hardly be deemed a favor, a charitable act, or a mere letter  
25 writing campaign under any definition.  
26  
27  
28

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

8 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees  
9 in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be  
10 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.  
11 (Id.) (Please also see a copy of SIMON'S 11/27/17 letter, plus his letter of 12/7/17, attached as  
12 Exhibit 3.) At that time, these additional "fees" were not based upon invoices submitted to  
13 PLAINTIFFS or detailed work performed by SIMON. The proposed fees and costs were in  
14 addition to the \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the  
15 CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to  
16 defendants in the LITIGATION, and the amounts set forth in the computation of damages  
17 disclosed by SIMON in the LITIGATION. The proposed fees were also far in excess of the  
18 amount set forth in the invoice dated November 10, 2017, that SIMON had presented to  
19 PLAINTIFFS, then withdrew. (Please see Exhibit 1.)  
20  
21

22 One reason given by SIMON to modify the CONTRACT was he claimed he was losing  
23 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was  
24 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and  
25 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)  
26 According to SIMON, he under billed in the LITIGATION in an amount in excess of  
27 \$1,000,000.00. SIMON doubled down on that position of under billing in a letter to co-counsel for  
28

1 PLAINTIFFS dated December 7, 2017, where SIMON claimed that the worked performed by him  
2 from the outset that has not been billed “may well exceed \$1.5M.” (Please see Exhibit 3.)

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

10  
11 Yet an additional reason given then by SIMON was that he felt his work now had greater  
12 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.  
13 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to  
14 PLAINTIFFS for their signatures. They refused to bow to SIMON’S pressure or demands.  
15 (Please see Exhibit 1.)

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

24  
25 There is nothing in the computation of damages signed by and served by SIMON to reflect  
26 fees and costs other than those contained in his invoices that were presented to and paid in full by  
27 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
28 in the LITIGATION to support any additional attorneys’ fees generated by or billed by SIMON, let

AA00865



1 alone those in excess of \$692,120 of his invoices from January of 2018, or \$1.5M set forth in his  
2 letter of December 7, 2017, or the exorbitant figure set forth in SIMON'S amended lien of  
3 \$1,977,843.80, dated January 2, 2108.

4  
5 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a  
6 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.  
7 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the  
8 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a  
9 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had  
10 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:  
11 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees  
12 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."  
13 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And  
14 they've been updated as of last week." (Excerpts of the Deposition are attached as Exhibit 2 to  
15 PLAINTIFFS Opposition to SIMON'S Motion to Adjudicate.)  
16

17  
18 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS  
19 refused to alter or amend the terms of the CONTRACT. (Please see Exhibit 1.) When  
20 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree to  
21 release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served two  
22 attorneys liens and reformulated his billings to add entries and time that never saw the light of day  
23 in the LITIGATION. (Id.) (Please also see SIMON'S liens attached as Exhibit 5.)  
24

25 Even when SIMON finally submitted his "new" invoice on January 24, 2018, the invoice  
26 totaled \$692,120 for his "additional" services, and billed them at the CONTRACT rate of \$550 per  
27 hour (for SIMON'S time). Yet, despite the CONTRACT, course of dealing, and the amount of his  
28

1 “new” invoice (\$692,120), SIMON wrongfully continued to lay claim to nearly \$1,977,843 of  
2 PLAINTIFFS property (Please see Exhibit 5.) and he refused to release PLAINTIFFS’ funds.

3  
4 When SIMON refused to release the full amount of the settlement proceeds to PLAINTIFFS,  
5 litigation was filed and served. (An Amended Complaint has also been filed and served. The claims  
6 of PLAINTIFFS against SIMON are for Breach of Contract, Declaratory Relief, Conversion, and  
7 Breach of the Implied Covenant of Good Faith and Fair Dealing.)

8 Finally, on April 3, 2018, this Court heard extensive arguments on SIMON’S previously  
9 filed Special Motion to Dismiss: Anti-SLAPP. At the conclusion of that hearing, this Court denied  
10 SIMON’S “Special” Motion. Then, on May 10, 2018, SIMON filed yet another “Special” Motion to  
11 Dismiss: Anti-SLAPP. (Of note, this marks the fourth Motion to Dismiss that SIMON has filed.)  
12 With this fourth Motion to Dismiss coming so soon on the heels of its predecessor that was denied,  
13 we’re to the point that the motives need to be examined. Even if this Court does not choose to  
14 examine motives at this time, the fate of this identical Motion should be the same as its identical  
15 twin: denial.  
16

17 For the purposes of this Opposition, PLAINTIFFS adopt all of their arguments raised, and  
18 exhibits so attached, to their Opposition to SIMON’S first “Special” Motion to Dismiss: Anti-  
19 SLAPP.  
20

### 21 SIMON’S SECOND “SPECIAL” MOTION

22 To encapsulate, SIMON’S Second Special Motion is without merit. First, SIMON has  
23 incorrectly described the law concerning protected communications. Second, he’s also misstated the  
24 standard of proof under NRS 41.665 that may apply to PLAINTIFFS concerning communications  
25 that may be deemed protected, though they shouldn’t. Third, SIMON’S lien is not a protected  
26 communication under NRS 41.660, or pursuant to *Drell v. Cohen*, 232 Cal.App. 4th 24, 181  
27 Cal.Rptr. 3d 191 (2014), or under *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901 (Nev.  
28 2014). Fourth, SIMON has misstated the purpose for PLAINTIFFS need in the first place to resort



1 to litigation to protect their rights and their property. Last, PLAINTIFFS have shown ample *prima*  
2 *facie* evidence, if necessary, to demonstrate to this Court that they have a likelihood of success on  
3 the merits of each of their claims.

4  
5 **II.**

6 **ARGUMENTS**

7 **A. SIMON'S LIEN IS NOT A PROTECTED COMMUNICATION UNDER ANY**  
8 **DEFINITION AND STANDARD RECOGNIZED BY LAW. THEREFORE, SIMON CAN'T**  
9 **MEET HIS BURDEN UNDER NRS 41.660(3)(a). AS A RESULT, SIMON'S SPECIAL**  
10 **MOTION MUST BE DENIED.**

11 There is no controlling authority cited by SIMON to demonstrate to this Court that his lien is  
12 a protected communication under Nevada law. He's also failed to cite any controlling authority  
13 from California, in which Nevada seems to lean upon in its application of so called anti-SLAPP  
14 issues. See NRS 41.665(2). Instead, SIMON leans on *Beheshti v. Bartley*, 2009 WL 5149862, an  
15 unpublished opinion from 2009 that is "not to be published in Official Reports" and *Transamerica*  
16 *Life Insurance Co.*, 2016 WL 2885858, a federal district court case from California that conflicts  
17 with clear California law as set forth in *Drell v. Cohen*, 232 Cal.App. 4th 24, 181 Cal.Rptr. 3d 191  
18 (2014). Why would SIMON refer to or rely upon cases that are "not to be published" or that conflict  
19 with the law of the state where a federal court resides, when the law is otherwise clear? Because  
20 *Drell* stops SIMON'S Special Motion in its tracks.

21 In *Drell*, the Cohen firm represented a personal injury plaintiff on a contingency fee basis.  
22 (It's not specifically mentioned in the decision whether Cohen had a written fee agreement, though  
23 he'd need one in Nevada.) Cohen later withdrew as counsel and asserted a lien, as he'd not yet been  
24 paid pursuant to his contingency fee agreement. The Drell law firm then took over as counsel for  
25 plaintiff and negotiated a settlement with the insurance company. Thereafter, the insurer made the  
26 settlement check out to plaintiff and both firms. Drell filed a complaint against Cohen, and Cohen  
27  
28

1 filed an anti-SLAPP motion, claiming that Drell's complaint against Cohen arose from an alleged  
2 protected activity of asserting a lien for fees. The trial court denied Cohen's motion.

3 In upholding the district court's decision, the *Drell* court agreed that the lawsuit did not arise  
4 from a protected activity and held that: "...a complaint is not a SLAPP suit unless the gravamen of  
5 the complaint is that defendant acted wrongfully by engaging in the protected activity." *Id.*, at p.  
6 194. PLAINTIFFS' claims do not seek to prevent SIMON from doing what the law allows. Rather,  
7 some of PLAINTIFFS' claims are about SIMON'S conduct that could lead to the imposition of  
8 damages. The claim for Declaratory Relief seeks to confirm the terms of the CONTRACT, which,  
9 in turn, will govern the amount of additional fees that SIMON is entitled to receive, either through  
10 his liens or via his "new" invoice.

11  
12 It wasn't the mere existence of the lien (or the amended lien) that was at issue, or that  
13 PLAINTIFFS denied that additional fees and costs were likely owed to SIMON pursuant to the  
14 CONTRACT. (*Id.*) In fact, PLAINTIFFS had asked, and continued to ask, for SIMON to re-present  
15 the invoice from September of 2017 that he had withdrawn. Rather, PLAINTIFFS protested that  
16 SIMON demanded a bonus, an after-the-fact contingency fee agreement, and thereafter served a lien  
17 in an amount that had no grounds under the CONTRACT, or in Nevada law (or even with the beefy  
18 amount of SIMON'S "new" invoice later submitted in January of 2018.)

19  
20 Thus we see that the gravamen of PLAINTIFFS complaint wasn't and isn't about the  
21 existence of a lien. SIMON has a right to assert one in order to get paid his fee, and PLAINTIFFS  
22 acknowledge that SIMON is owed an additional fee. (*Id.*) It's also not about keeping SIMON from  
23 getting paid for his hourly work, provided the amount is reasonable, which it's not. (See Exhibit 4,  
24 with SIMON'S block billing entry for over 135 hours.) Regrettably, in a proverbial sense, SIMON  
25 intentionally knocked some things over on his way through, causing damages to PLAINTIFFS. As  
26 such, in addition to determining the respective rights of the parties through declaratory relief,  
27 PLAINTIFFS are entitled to be made whole from the damages that SIMON caused.  
28

AA00869

1 The *Drell* court stated further that: “None of the purposes of the anti-SLAPP statute would  
2 be served by elevating a fee dispute to the constitutional arena....” Id. (Emphasis added.) The  
3 holding and the rationale of *Drell* is right on point to the case at hand. To take SIMON at his word,  
4 and as set forth in all of his papers and pleadings to this Court to date, this is a fee dispute. (See  
5 SIMON’S latest iteration at page 5, lines 21-23 of SIMON’S Special Motion.) As directed by *Drell*,  
6 none of the purposes of an anti-SLAPP statute are served by elevating to the constitutional arena  
7 what SIMON has admittedly described as a fee dispute. Since SIMON’S lien is not a protected  
8 communication by law, he cannot meet his burden under NRS 41.660(3)(b). Therefore, his Special  
9 Motion must be denied.

11 SIMON’S backdoor attempt to create a protected communication through some litigation  
12 privilege must also fail, as *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901 (Nev. 2014),  
13 throws shade on their position. First, contrary to the assertion in SIMON’S Special Motion at page  
14 17, lines 14.5-15.5, the litigation privilege neither applies to SIMON’S conduct here nor does it  
15 provide absolute immunity. Rather, the *Greenberg* court holds that the litigation privilege only  
16 protects words and deeds of an attorney done in furtherance of the clients’ benefit/interests/justice  
17 and clearly adopts the legal-malpractice exception, thus eliminating anything absolute about the  
18 privilege.

20 In discussing the purpose of the litigation privilege, the *Greenberg* court states, “... the  
21 litigation privilege applies to attorneys primarily *for the clients benefit*.” (Emphasis added.) Id. The  
22 privilege is also “contingent on the attorney’s representation of his or her client because the privilege  
23 is designed to ensure that attorneys have the utmost freedom to engage in zealous advocacy and are  
24 not constrained in their quest to pursue the interests of, and obtain justice for, their clients.”  
25 (Emphasis added.) Id.

27 As it must be abundantly clear by now (as set forth in this Opposition, the Opposition to  
28 SIMON’S previously filed Special Motion to Dismiss, and in PLAINTIFFS Oppositions to  
AA00870

1 SIMON'S Motions to Adjudicate and to Dismiss), the manner in which SIMON dealt with  
2 PLAINTIFFS and their property in this matter that lead to the filing of their complaint has nothing to  
3 do with SIMON'S pursuit of PLAINTIFFS benefit, interests, or to obtain justice for them. To the  
4 contrary, this has been all about SIMON and his demand for more money, regardless of the amount  
5 or the means. Even after submitting a "new" invoice in January of 2018 for \$692,120, SIMON has  
6 failed to amend his lien from \$1,977,843.80 to \$692,120. He's also refused to release funds to  
7 PLAINTIFFS amounting to the difference between his amended lien and his "new" invoice. As a  
8 result, the litigation privilege doesn't and shouldn't extend to SIMON on these facts.

9  
10 Similarly, even if SIMON could get the benefit of the litigation privilege despite acting for  
11 his sole benefit and at the expense of the interests of PLAINTIFFS—his clients—the rationale  
12 behind the legal malpractice exception applies to the facts of this case. As discussed in *Greenberg*,  
13 "In contrast, while allowing attorneys to breach their professional duties to their clients with  
14 impunity and then assert the privilege against the clients' legal malpractice action might benefit the  
15 attorney, this impairs the attorney-client relationship, hinders the client, and runs afoul of the  
16 privilege's underlying policy of assisting the attorney in pursuing the client's interests." *Id.*  
17 (Emphasis added.)

18  
19 There is nothing in the litigation privilege, or in its rationale, that should provide either  
20 protection to, or solace to, SIMON. It simply doesn't apply to SIMON under these facts, as all he  
21 has done as alleged in PLAINTIFFS Amended Complaint is to act for his own interests and benefit  
22 and in direct contravention of PLAINTIFFS. Again, Since SIMON'S lien is not a protected  
23 communication by the law governing privileges, he cannot meet his burden under NRS 41.665(3)(b).  
24 Therefore, his Special Motion must be denied.

25  
26 ///

27 ///

28 ///

1 **B. IN THE ALTERNATIVE, SHOULD THE COURT NOW DETERMINE THAT**  
2 **SIMON HAS MET HIS INITIAL BURDEN TO SHOW THAT HIS LIEN IS A PROTECTED**  
3 **COMMUNICATION, PLAINTIFFS HAVE MET THEIR BURDEN BY DEMONSTRATING**  
4 **PRIMA FACIE EVIDENCE THAT THEY CAN PREVAIL ON ALL OF THEIR CLAIMS**  
5 **AGAINST SIMON, BOTH PERSONALLY AND PROFESSIONALLY.**

6 Should this Court now determine that SIMON has somehow met his initial burden to show  
7 that his self-interested assertion of a lien in the amount presently asserted is a protected  
8 communication, the burden shifts to PLAINTIFFS to show “with prima facie evidence a probability  
9 of prevailing on the claim.” *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017), citing NRS 41.660(3)(b).  
10 For reasons that are unclear, SIMON stated in this Special Motion that PLAINTIFFS burden was of  
11 a clear and convincing standard, a higher standard of proof than prima facie. (See SIMON’S Special  
12 Motion at page 19, lines 20-21.) SIMON’S assertion is wrong as it conflicts with a plain Nevada  
13 statute, clear case law, and it does not comport with Cal. Code Civ. Proc 425.16(b)(3), which is  
14 referenced in NRS 41.665(2).

15 SIMON’S words and deeds from day one through the present date paint a clear picture that a  
16 CONTRACT existed between the parties. Again, here’s some of the evidence. First, there’s the  
17 affidavit of Brian Edgeworth, where he states that he and SIMON agreed that SIMON’S fee would  
18 be \$550 per hour for his services. The discussion between SIMON and PLAINTIFFS was structured  
19 enough for the parties to agree that SIMON would be retained as PLAINTIFFS attorney and be paid  
20 \$550 per hour for his services, and reimbursed for his costs. That’s the essence of a fee agreement.  
21 It’s not a complicated business relationship that requires anything more for the contracting parties to  
22 know to clearly understand where they stand with the agreement. Mr. Edgeworth also details a  
23 portion of the malice shown to them by SIMON. (Id.)

24  
25 Second, the Invoices presented by SIMON and paid in full by PLAINTIFFS in the  
26 LITIGATION are for an hourly rate of \$550 per hour for SIMON’S services. (See Exhibit 2.)  
27 There are hundreds of entries for hundreds of thousands of dollars, all billed by SIMON at his  
28 agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.) This also represents  
AA00872

1 over 18 months of course and dealing between SIMON and PLAINTIFFS. SIMON'S "new"  
2 invoice that he produced on January 24 of this year—an invoice that contain thousands of entries  
3 and \$692,120 in new billings—are billed by SIMON at \$550 per hour, too. (Please see Exhibit 4.)  
4 See the pattern? It's been there since Day 1.

5  
6 Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. At page 271  
7 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that  
8 PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19,  
9 SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated:  
10 "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been  
11 disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his  
12 fees and costs: "And they've been updated as of last week." (Please see Exhibit 2 to PLAINTIFFS  
13 Opposition to SIMON'S Motion to Adjudicate.)  
14

15 These are the Invoices that contain the agreed to hourly rate of \$550 per hour, which were all  
16 paid in full by PLAINTIFFS. The \$550 per hour question is: how much more consistent  
17 performance by the parties to the terms of an agreement does it take to convince even the most  
18 intransigent litigant that there is a CONTRACT that he must respect? It's been the same since the  
19 beginning. A jury should agree. Fourth, there are the calculations of damages in the LITIGATION  
20 that SIMON was obligated to submit and serve on PLAINTIFFS behalf and in accordance with  
21 NRCP 11(b) and NRCP 16.1. The calculations of damages submitted by and signed by SIMON set  
22 forth damages, including attorneys' fees, based on his hourly rate of \$550 and paid in full by  
23 PLAINTIFFS.  
24

25 Last, in a letter to co-counsel for PLAINTIFFS dated December 7, 2017 (Please see Exhibit  
26 3.), SIMON states "Simon Law is reviewing the case file and work performed from the outset that  
27 has not been **billed** (including such things as obtaining the forensic copy of case related e-mails and  
28 phone records) to provide a comprehensive **hourly bill**." (Emphasis added.) This letter from  
AA00873

1 SIMON goes on to state “It is reasonably expected at this time that the hourly bill may well exceed  
2 a total of \$1.5M....” (Emphasis added.) His hourly bill produced on January 24, 2018, was actually  
3 for an additional \$692,120 in fees.

4 Thus we see that all of the conduct by SIMON in the LITIGATION from the beginning to  
5 the end refutes his newfound position that there was no agreement to pay an hourly fee. To the  
6 contrary, it instead supports a finding that the terms of the CONTRACT contain the agreement of  
7 the parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of  
8 \$550.

9  
10 As PLAINTIFFS have argued throughout this surreal journey, the only pathway for SIMON  
11 to prevail on his Special Motion is to convince a trier of fact that the CONTRACT isn’t a contract  
12 and that it didn’t contain the agreement of the parties on the amount of SIMON’S fee that everyone  
13 abided by with exactness for over eighteen (18) months. The CONTRACT contains every element  
14 of a valid and enforceable contract. PLAINTIFFS asked SIMON to represent them in the  
15 LITIGATION in exchange for an hourly fee of \$550, plus the reimbursement of costs incurred (the  
16 offer)(See Exhibit 1.). SIMON agreed to serve as PLAINTIFFS attorney and to be paid the hourly  
17 rate of \$550 for his services (the acceptance)(See Exhibits 1 and 2.). PLAINTIFFS agreed to pay,  
18 and SIMON agreed to receive, \$550 per hour for SIMON’S time, plus the reimbursement of costs  
19 (the consideration)(Id.).  
20

21  
22 Thereafter, SIMON billed PLAINTIFFS for his time at a rate of \$550 per hour, plus incurred  
23 costs, and PLAINTIFFS paid each invoice presented by SIMON in full (the performance), but for  
24 the latest “invoice”, which they will review and pay what is fair and reasonable. (Id.,; plus, see  
25 Exhibit 4.) There isn’t a question of capacity or intent. Therefore, that’s a contract, which is the  
26 CONTRACT. For SIMON to argue or assert otherwise in this litigation is belied by every  
27 reasonable measure of his words and deeds, including his letter of December 2, 2017, and his latest  
28 billings produced on January 24, 2018.

1 SIMON now wants a contingency fee from PLAINTIFFS without a written contingency fee  
2 agreement, ironically one that he never wanted or would have agreed to in the first place. SIMON  
3 also seems to want a bonus for his efforts, though the parties never agreed to one. When SIMON  
4 didn't get what he wanted, he placed a lien on PLAINTIFFS property for \$1,977,843.80. (Please see  
5 Exhibit 5.) He did so despite the prior knowledge and admission that "...it is reasonably expected at  
6 this time that the hourly bill may well exceed a total of \$1.5M...." (Please see Exhibit 3.) It's  
7 undisputed that his "hourly bill" was for far less, though still not reasonable.  
8

9 Even today, SIMON maintains dominion and control over the balance of PLAINTIFFS  
10 settlement proceeds despite the foregoing facts AND the despite the fact that his actual hourly bill  
11 for his services after his "comprehensive" review are "only" \$692,120. (Please see Exhibit 4.)  
12 Simple math again reveals that SIMON has willfully converted at least \$1,285,723.80 of  
13 PLAINTIFFS property. Those are sufficient facts under any standard for PLAINTIFFS to maintain  
14 a claim for breach of the CONTRACT, conversion, and a remedy of punitive damages against  
15 SIMON.  
16

17 SIMON also continues to seek refuge in the amount of, and the timing of, his charging lien.  
18 As argued in other pleadings, SIMON had no basis to assert that lien in that amount when he did so.  
19 Each invoice he's presented to PLAINTIFFS in the LITIGATION had been paid in full. Also, there  
20 is nothing in fact or at law to support any argument that SIMON'S fee was dependant in any way on  
21 the existence of, or the amount of, the settlement reached with the defendants in the LITIGATION.  
22 Rather, a jury could find that SIMON asserted one because he wanted to and because his law license  
23 cloaked him with the ability to do so. That finding could trigger a valid remedy of punitive  
24 damages.  
25

26 As for the initial amount, and the ongoing amount of the charging lien, there's no basis for it,  
27 either. As discussed above, SIMON'S amended lien is far more than provided for under the  
28 CONTRACT and his "comprehensive" billings. Again, at least **\$1,285,723.80** of SIMON'S  
AA00875



1 charging lien (in the amount of \$1,977,843.80) has no basis in fact or in law. (PLAINTIFFS have  
2 also seen glaring issues with SIMON'S new billing invoice, including duplicate entries and a huge  
3 block billing entry for over 135 hours for reviewing emails.) And SIMON won't release the revised  
4 amount of PLAINTIFFS preceeds, despite knowing that his consent is required to do so. That's not  
5 consent for PLAINTIFFS, but it is conversion at the hands of SIMON.

6  
7 PLAINTIFFS' claims against SIMON personally are properly raised, too. SIMON seeks to  
8 shield himself behind the façade of his firm to avoid personal responsibility for PLAINTIFFS'  
9 claims. Not so fast. The things that lawyers do and don't do, including their interactions with  
10 clients, are governed by the NRPC. PLAINTIFFS assert, and have claimed, that SIMON'S actions  
11 are in fact SIMON'S actions, personally and professionally. NRPC 1(c) is on point and on all fours  
12 with PLAINTIFFS' claims. This Rule states that a "Firm or law firm denotes a lawyer or  
13 lawyers...." As a result, when SIMON argues at pages 10-11 of his Motion that any agreement with  
14 PLAINTIFFS was reached with his firm, the Rules instead determine that the CONTRACT was  
15 made with the lawyer, who is SIMON the person. See NRPC 1(c) and NRPC 1.5.

16  
17 In fact, nearly every Rule in the NRPC uses similar language and speaks directly to lawyers.  
18 For example, the Rules dealing with competence (1.1), scope of representation (1.2), diligence (1.3),  
19 communication (1.4), fees (1.5), confidentiality (1.6), conflicts (1.7 & 1.8), duties to former clients  
20 (1.9), advisor (2.1), and candor to the tribunal (3.3), all begin with, or have in prominent display, "A  
21 lawyer shall...." (Emphasis added.) By definition and via common sense, these Rules in general,  
22 and Rule 1.5 in particular, preclude SIMON from making any successful argument as to who the  
23 CONTRACT is with and who PLAINTIFFS claims can gain traction against. In short, his argument  
24 to shield himself is belied by the Rule and the law.

25  
26 Here, it is undisputed that SIMON the person spoke with PLAINTIFFS about the terms of  
27 the CONTRACT. (See Exhibit 1.) It's undisputed that SIMON the person did the work that  
28 resulted in the \$486,453.09 in invoices that were billed and paid to date in the LITIGATION. (See

AA00876

1 Exhibits 19 and 20 to SIMON'S Motion to Adjudicate). It's undisputed that SIMON the person  
2 performed the "comprehensive" review that resulted in \$692,120 in additional hourly billings. (See  
3 Exhibit 3.) It's not reasonably disputed that SIMON the person formulated the plan to get paid more  
4 in fees than he agreed to under the CONTRACT. It's undisputed that SIMON the person prepared  
5 and sent the charging lien that perfected his plan to get a bonus for his work. Finally, it's undisputed  
6 that SIMON the person controls whether PLAINTIFFS personal property gets released and paid to  
7 them, as the account requires his signature and consent.

9 PLAINTIFFS' claims against SIMON the person as the lawyer are proper in fact, by Rule,  
10 and at law. Thus, there are sufficient facts plead under the Rules for PLAINTIFFS claims against  
11 SIMON the lawyer to go forward. As a result, SIMON'S Special Motion should be denied.

12 In bringing a claim against SIMON for conversion—an intentional tort—PLAINTIFFS have  
13 properly asserted a claim against SIMON where the remedy is punitive damages. In his Special  
14 Motion, SIMON improperly argues that PLAINTIFFS can't prove their claims here, either. That's a  
15 bold and a false assertion in light of the facts and that no discovery has taken place. PLAINTIFFS  
16 assert that their COMPLAINT and Amended Complaint contain far more than "a short and plain  
17 statement of the claim" for conversion, and that SIMON did so with the clear knowledge and the  
18 intent to harm, in that he was not entitled to any portion of PLAINTIFFS property.

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

AA00877

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

6  
7 They may also find sufficient evidence exists to show that SIMON'S conduct of: failing to  
8 reduce the CONTRACT to writing; later claiming ambiguities in the CONTRACT; demanding a  
9 bonus from PLAINTIFFS; creating a super bill after the LITIGATION had settled, including a block  
10 bill of over 135 hours; harboring a plan to merely submit partial invoices without consulting  
11 PLAINTIFFS of this plan so they could evaluate whether SIMON should continue as counsel;  
12 executing his secret plan by going back and adding substantial time to his invoices that had already  
13 been billed and paid in full; and, but not limited to, asserting a lien on PLAINTIFFS property,  
14 knowingly doing so in an amount that was far in excess of any amount of fees that he had billed  
15 from the date of the previously paid invoice to the date of the service of the lien, that he could bill  
16 for the work performed, that he actually billed, or that he could possible claim under the  
17 CONTRACT, that SIMON failed to deal fairly and in good faith with PLAINTIFFS and thus  
18 breached the implied covenant of good faith and fair dealing.  
19

20  
21 This is prima facie evidence that PLAINTIFFS can prevail on all the claims they've made.  
22 *Shapiro v. Welt*, 389 P.3d 262 (Nev. 2017). Therefore, PLAINTIFFS have done all they're required  
23 to do to defeat SIMON'S Special Motion. As a result, it must be denied.

### 24 III.

### 25 CONCLUSION

26 Based on the foregoing, PLAINTIFFS respectfully request the Court again deny SIMON'S  
27 SECOND Special Motion to Dismiss: Anti-SLAPP. SIMON still has failed to meet his burden that  
28 his lien is a protected communication under the law. In the alternative, should the Court find that he  
AA00878

1 did somehow meet his burden in the five weeks since his previously filed "Special" Motion was  
2 denied, PLAINTIFFS have demonstrated prima facie evidence of a probability of prevailing on their  
3 claims. Therefore, SIMON'S Second Special Motion must be denied.

4 DATED this 22 day of May, 2018.

5 VANNAH & VANNAH

6  
7   
8 ROBERT D. VANNAH, ESQ.  
9

10  
11  
12  
13 **CERTIFICATE OF SERVICE**

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

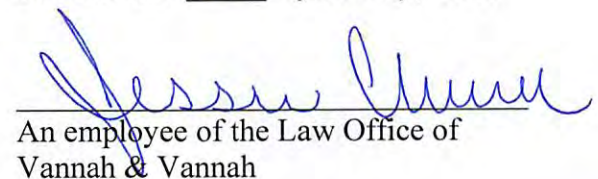
15 Electronically:

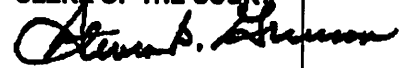
16 James R. Christensen, Esq.  
17 **JAMES R. CHRISTENSEN, PC**  
18 601 S. Third Street  
19 Las Vegas, Nevada 89101

20 Peter S. Christiansen, Esq.  
21 **CHRISTIANSSEN LAW OFFICES**  
22 810 S. Casino Center Blvd., Ste. 104  
23 Las Vegas, Nevada 89101

24 Traditional Manner:  
25 *None*

26 DATED this 23 day of May, 2018.

27   
28 An employee of the Law Office of  
Vannah & Vannah



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

Testimony .....38

WITNESSES FOR THE PLAINTIFF

BRIAN EDGEWORTH

Direct Examination by Mr. Christiansen ..... 38

CRAIG DRUMMOND

Direct Examination by Mr. Christensen ..... 187

Cross-Examination by Vannah ..... 196

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXHIBITS

<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
1 through 9	.....	.....59
<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
90	.....49	.....53
1 through 89	.....	.....59

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Las Vegas, Nevada, Monday, August 27, 2018

[Case called at 10:44 a.m.]

THE COURT: -- Family Trust, American Grating, LLC v. Daniel Simon Law, Daniel Simon, d/b/a Simon Law. Okay.

So, this is the date and time set for an evidentiary hearing. Can we have everyone's appearances for the record?

MR. VANNAH: Yes. Robert Vannah and John Greene on behalf of the Edgeworth Trust and the Edgeworth family.

Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon and his law firm.

MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.

THE COURT: Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case, but I also have Mr. Simon's Law Office filed a trial brief regarding the admissibility of a fee agreement. Did you guys get that?

MR. VANNAH: Yes, Your Honor.

THE COURT: Okay. Are you guys prepared to respond to that or --

MR. VANNAH: We are, Your Honor.

THE COURT: Okay. And I have had an opportunity to review it while we were waiting.

Mr. Christensen, do you have anything you want to add?

Mr. CHRISTENSEN: Just a couple of thoughts, Your Honor. Last week, we requested that Mr. Vannah voluntarily produce the fee



1 agreement. He declined to do so. So, late last week a subpoena was  
2 served duces tecum. The trial brief lays out the reasons why that fee  
3 agreement is relevant and also lays out the law on why, in this situation,  
4 it's not privileged, and it can be introduced.

5 To the extent that there were any particular attorney-client  
6 communications made to Mr. Vannah, which were memorialized in some  
7 fashion in the fee agreement, like he wrote in the margins or something,  
8 those could, of course, be redacted. So, I don't think there's any true  
9 defense to the subpoena. Constructive discharge is an issue, and part of  
10 the evidence of construction discharge is the fact the clients went to a  
11 new lawyer while the underlying litigation was still pending.

12 THE COURT: And correct me if I'm wrong, but I remember --  
13 and correct me because this was a few hearings ago. I remember there  
14 was a discussion in regards to -- at some point, was there a discussion  
15 between Mr. Vannah and Mr. Simon that Mr. Vannah told Mr. Simon that  
16 he was still counsel of record?

17 MR. VANNAH: Correct.

18 Mr. CHRISTENSEN: There was several --

19 THE COURT: Okay. I vaguely remember that, so can  
20 somebody just enlighten me as to the status of that, because I remember  
21 that about two to three hearings ago --

22 Mr. CHRISTENSEN: There were --

23 THE COURT: -- there being a discussion about that.

24 Mr. CHRISTENSEN: There were several evolving  
25 discussions, and it's important to keep the timeline in your mind. At

1 approximately November 30th or so, there was a communication from  
2 the clients to Mr. Simon saying Mr. Vannah is now my lawyer -- or it  
3 might have come from Mr. Vannah's office, saying Mr. Vannah is now  
4 my lawyer, do not communicate directly.

5 THE COURT: Okay.

6 Mr. CHRISTENSEN: That led to the following day. That was  
7 -- the first lien was filed to protect Mr. Simon's and his law office's  
8 interest.

9 Subsequent to that, there were email communications  
10 mainly between Mr. Vannah and myself, some letter communications, in  
11 which, for example, I raised the issue of constructive discharge and the  
12 fact that Mr. Simon is no longer able to talk to his clients, and we had the  
13 important issue, the pending contract claim for recovery of attorney's  
14 fees expended against Lange Plumbing.

15 THE COURT: Right.

16 Mr. CHRISTENSEN: That led to a conference call between  
17 the parties, and then we had a consent to settle provided to Mr. Simon  
18 that was signed by both clients and said, upon the advice of Mr. Vannah,  
19 you know, blah, blah, blah, we're not going to pursue this claim.

20 At one point, I sent an email on over there and I said, look,  
21 you know, we got to make a decision whether Mr. Simon is still going to  
22 be counsel of record here. He can't talk to the clients. They're not  
23 following his advice. He's not able to explain to them the importance  
24 and the significance of that contract claim against Lange Plumbing that's  
25 not subject to offset or any other reduction because of monies recovered

1 by -- from Viking. And that fell on deaf ears, and I said, well, we're going  
2 to have to think about this next step.

3 And then there was a back and forth on an email or two that  
4 said something to the extent of, if you withdraw, that's going to increase  
5 our damages. So, in other words, there was a constructive discharge of  
6 Mr. Simon, and then there was either a direct or indirect threat,  
7 depending on how you want to read it, that if he actually withdrew,  
8 because of the constructive discharge, that would increase the claims  
9 against him. So, that put Mr. Simon in kind of, you know, darned if you  
10 do, darned if you don't situation, where he couldn't talk to the clients, but  
11 he was being threatened that if he withdrew, bad things would happen  
12 to him.

13 Then, of course, they sued him for conversion before he had  
14 any funds to convert and now we're here today.

15 At the current day, there has not been a motion to withdraw.  
16 It would have been filed before Your Honor.

17 THE COURT: Right.

18 Mr. CHRISTENSEN: However, the underlying case has been  
19 wrapped up based upon the advice from Mr. Vannah to settle that lien  
20 claim for 100,000. So, to a certain extent, that -- there's no longer an  
21 underlying case for Mr. Simon to represent them in; however, for our  
22 purpose here today, the issue of constructive discharge is important.

23 We have a difference of opinion on whether there was an  
24 expressed contract and whether there was a meeting of minds on the  
25 payment term.

1 THE COURT: Right.

2 Mr. CHRISTENSEN: We also -- secondarily, we also have a  
3 difference of opinion on whether the conduct of the parties could  
4 establish an implied agreement on payment terms. We say it's clear, it's  
5 not. And we think as you hear the evidence, you're going to understand  
6 why we're saying that.

7 But even if a payment term is determined expressly or  
8 impliedly, it doesn't matter if there is constructive discharge, because if  
9 there's constructive discharge, then there's no contract. And under the  
10 law in the State of Nevada, Mr. Simon gets a quantum meruit recovery  
11 or a reasonable fee.

12 So, in fact, you could almost reverse the analysis and just  
13 take a look at whether there was constructive discharge first because if  
14 there is, it really doesn't matter if there is a meeting of the minds or not  
15 on a payment term because the contract has been blown up. So, then  
16 you go to QM, quantum meruit.

17 So, that's kind of why the fee agreement is important,  
18 because it shows that, while Mr. Simon was involved in active litigation  
19 in the underlying case, and although, there's a seven-figure claim against  
20 Lange pending, and when there's still details to be worked out on the \$6  
21 million Viking settlement, the clients have gone to another lawyer, hired  
22 another lawyer, taken advice from that other lawyer, and told Mr. Simon  
23 not to talk to them.

24 So, we think the fee agreement is going to be another piece  
25 of substantial evidence that would lead this Court to find a constructive

1 discharge. So, we'd like to see it and see what it says.

2 THE COURT: Okay. Mr. Vannah, Mr. Greene.

3 MR. VANNAH: Thank you, Your Honor. Sort of a revision of  
4 his history. Here's what happened. The case had settled. The big case  
5 has settled for 600,000, everybody agreed on that. Mr. Simon had a  
6 meeting in mid-November and told the clients he wanted a larger fee  
7 than what they were going to pay. He then said to the clients, you need  
8 to go out and get independent counsel to look at this for you, which is  
9 what he had to do anyway. He just wants them -- he had a new fee  
10 agreement for them to sign or a fee agreement, and then told them you  
11 need to get independent counsel to look at it and told them that. He said  
12 that's -- that was the --

13 THE COURT: To look at the fee agreement?

14 MR. VANNAH: Yeah, to look at the whole thing.

15 THE COURT: Okay.

16 MR. VANNAH: I mean, he comes up with the fee agreement  
17 and -- after the case settled and has a fee agreement prepared for them,  
18 gives it to them, said here's the fee agreement, I want you to sign in mid-  
19 November 2017, after the \$600,000 settlement took place.

20 And the fee agreement he wanted them to sign said,  
21 basically --

22 THE COURT: And this is the \$6 million settlement that you're  
23 talking about?

24 MR. VANNAH: Yes, that had already happened.

25 THE COURT: Right, but you keep saying 600,000, so I'm just

1 making sure --

2 MR. VANNAH: You know what? It's hard to spit the big  
3 numbers out.

4 THE COURT: It's all right, but you're talking about the \$6  
5 million settlement?

6 MR. VANNAH: I am, and I --

7 THE COURT: Okay.

8 MR. VANNAH: So, the \$6 million settlement had occurred,  
9 was over with. Mr. Simon had the clients, both Mr. and Mrs. Edgeworth,  
10 come to his office, and he had prepared a fee agreement saying, look, I  
11 want to be fair about this to myself and this is what I want you guys to  
12 sign. I want you to sign this fee agreement that gives me basically a \$2  
13 million bonus. And he showed it to them, and then he said -- they said,  
14 well, you know, we're not prepared to -- for you to bring us in out of the  
15 blue and show us this. And we're not at all happy about it, but having  
16 said that, he said, well, then you need to get independent counsel.  
17 That's me. I'm the independent counsel.

18 So, they obviously retained me, and I did a get written fee  
19 agreement. Of all cases, this is the one I'm going to get a written fee  
20 agreement on. I have a written fee agreement. There's nothing in the  
21 margins, but in the subpoena, it said to bring everything with me, which  
22 would have included my notes that day. Those are attorney-client notes.  
23 He's, obviously -- he's not entitled to even that, but it's his fee agreement  
24 where I got retained.

25 I don't -- there's no constructive discharge. So, the only

1 thing left in the case, at that point, was to do the releases. They looked  
2 at the release and signed them, the case was settled, so I --

3 THE COURT: But this is prior to the Lange settlement, but  
4 this is the settlement with --

5 MR. VANNAH: But there was an offer --

6 THE COURT: -- Viking?

7 MR. VANNAH: -- there was an offer on the table in Lange.

8 THE COURT: Okay. So, the offer was still pending, but  
9 Lange had -- Lange hadn't settled?

10 MR. VANNAH: It hadn't settled.

11 THE COURT: Okay.

12 MR. VANNAH: It was on the table, and there was an offer.  
13 The clients asked me to look at it. Mr. Simon gave me the information.  
14 We talked. I looked at it and I concluded that the best interests in the  
15 clients, in my opinion, was -- my advice to them was, you know what, if I  
16 were you, rather than to continue with Danny on this case and bring in  
17 somebody else, just take the settlement; accept it. That was it, that was  
18 my advice, accept the settlement. They wanted me to put that in writing,  
19 I put it in writing, and I explained it to the client and, based on everything  
20 we're looking at, they wanted to accept it; please accept the settlement.

21 The communication had broken down really badly between  
22 the clients, you know, the client and the other lawyer. So, I said, look,  
23 you know, it doesn't seem to me a great idea for you guys to be having  
24 meetings and stuff. My clients don't want to meet with you anymore,  
25 but you are counsel of record, go ahead and finish it up, do the releases,

1 and sign whatever you have to do to get the Lange settlement done.  
2 Just accept it. Accept it and whatever you have to do, that's it. Do what  
3 you have to do with the Judge, and you do that.

4 I'm not -- I'm not substituting in as counsel. I'm not  
5 associating as counsel. I made that very clear. You guys are counsel of  
6 record. If you want to withdraw -- if that's your threat, you're going to  
7 withdraw from the case, you can withdraw, but if you withdraw from the  
8 case at the last minute, and I have to come into the case because you  
9 withdraw and spend 40, 50 hours bringing myself up to speed, you  
10 know, I -- the client is not going to be very happy about that. And I'm not  
11 even sure Your Honor would allow them to withdraw with that going on.  
12 The case was over. I mean, the \$600,000 settlement had been made. It  
13 was over, signed and gone --

14 THE COURT: Six million, Mr. Vannah? Six million?

15 MR. VANNAH: Six million, I'm sorry. And the settlement for  
16 the 100- was on the table, and my sole part in that was to say my clients  
17 want to accept it, do whatever you got to do to accept it, which is his  
18 obligation. And he did, accepted it, and then we came to court because  
19 you wanted me to be in court when this thing went down to just express  
20 our opinions that we're happy with that. We had that settlement  
21 agreement with Teddy Parker who was hearing everybody, and then I  
22 wasn't going to say anything, but I asked to say that -- stand up and say  
23 that's what the client wants to do, and I said, yeah, I'm communicating,  
24 they're here too, but that's what they want to do. They want to settle the  
25 case. Now that's it.



1                   So, my fee agreement it's -- there's no relevance to it. It's --  
2 I'm -- it's just a fee agreement with a client, and it's a fee agreement I had  
3 that Mr. Simon suggested that they do, to go out and hire somebody to  
4 be independent counsel and to -- you know, he's trying to get them to  
5 sign some fee agreement they don't want to sign, and they want to know  
6 what their rights are. So, he said get independent counsel. They did,  
7 and here I am, and that's how they got to where they got to. So, I don't  
8 see any relevance whatsoever to this fee agreement between me and the  
9 Edgeworths. That's the bottom line.

10                  THE COURT: Okay. Well, I mean, this issue of constructive  
11 discharge, the issue that's hanging there, and I agree with Mr.  
12 Christensen's legal analysis of, if there is constructive discharge, then we  
13 have a whole completely different discussion in regards to the contract.  
14 So, based upon this Court having to make that determination, Mr.  
15 Vannah, I believe that the fee agreement is relevant, but only the fee  
16 agreement itself. No notes, no notes you took that day, no  
17 conversations, just the fee agreement itself. So, I'm going to order you  
18 to provide a copy of that to Mr. Christensen. Can you --

19                  MR. VANNAH: I got it right now.

20                  THE COURT: Okay. I was going to say; I know you have  
21 people at your office who work there --

22                  MR. VANNAH: No, no, we brought it.

23                  THE COURT: -- you can -- okay. So --

24                  MR. CHRISTENSEN: Have his people do it.

25                  THE COURT: Okay. So, can you just make sure he has that

1 by the -- is that going to become relevant to someone's testimony today?

2 MR. VANNAH: I'll have it to him right now. It's just going to  
3 take a second. I have it.

4 THE COURT: Okay.

5 MR. VANNAH: So, we can get that over with and --

6 THE COURT: And then we'll be ready.

7 MR. VANNAH: I think it's one page, right?

8 THE COURT: Because it's just the agreement. It's no notes  
9 or anything --

10 MR. VANNAH: No, no, no, just a one-page agreement. So,  
11 when they hired me, they paid me so much dollars per hour, and that's  
12 it.

13 THE COURT: Okay.

14 MR. VANNAH: Simple as that.

15 THE COURT: Okay. So, this is the motion to -- in regards to  
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are  
17 you ready to call your first witness?

18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not  
19 quite as fast a reader as I used to be.

20 THE COURT: It's okay. Me either.

21 [Pause]

22 MR. CHRISTENSEN: Okay. We do have an opening  
23 PowerPoint --

24 THE COURT: Okay.

25 MR. CHRISTENSEN: -- that we'd like to go through --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- if that's acceptable to the Court?

3 THE COURT: Sure. Any objection, Mr. Vannah?

4 MR. VANNAH: I don't care.

5 THE COURT: Okay. And I was wondering if this was a  
6 PowerPoint or if this was going to be demonstrative to like share photos.

7 MR. CHRISTENSEN: Right.

8 THE COURT: I wasn't sure.

9 MR. CHRISTENSEN: Okay. Okay.

10 DEFENDANT'S OPENING STATEMENT

11 BY MR. CHRISTENSEN:

12 Your Honor, we believe that the theme of this case is no  
13 good deed goes unpunished. What you see is, this is a --

14 MR. VANNAH: I'm not sure whether that's evidence, Your  
15 Honor, so are we going to have evidence like an opening statement or  
16 are we going to have argument? I mean --

17 THE COURT: Counsel?

18 MR. VANNAH: -- this is clearly argument; no good deed goes  
19 unpunished. That's -- is this going to be an opening argument or is this  
20 an opening statement, I guess?

21 THE COURT: Well, it's going to be an opening statement and  
22 we're going to get to what they -- what the evidence is going to show.

23 Mr. Christensen?

24 MR. CHRISTENSEN: Your Honor, we believe the evidence  
25 will show that no good deed goes unpunished. What you see here is a

1 street-side picture of the house where the flood occurred. This is  
2 available on the internet. This is one of those pictures that was made  
3 available when the house was being marketed for sale.

4 THE COURT: And this is 2017, so this is after the flood, right?

5 MR. CHRISTENSEN: Correct, that's a post-flood picture.  
6 That's after the certificate of occupancy has been issued. All original  
7 construction and any repair and remediation after the fire sprinkler flood  
8 has already been taken of.

9 That's a picture of the interior. That's essentially the area  
10 where the flood occurred. Of course, water goes where water goes, so.  
11 There was also damage in the kitchen area. The cabinets in that area are  
12 quite expensive. They're several hundred thousand dollars, and they  
13 sustained some damage in the flood. This is another picture, another  
14 angle of that same general area of the home. The costs to repair, for the  
15 flood, as you can see, it's quite a nice home with very nice finishes, was  
16 approximately in the ballpark of a half a million dollars.

17 So as things developed, Mr. Edgeworth tried to handle the  
18 claim on his own, didn't reach much success. He probably should have  
19 been able to, truth be told, be able to handle it on his own, but he was  
20 dealing with a plumber that was being rather recalcitrant and he -- Viking  
21 wasn't stepping up. He didn't have course of construction coverage. He  
22 didn't have any other route of recovery, so he first asked Mr. Simon to  
23 give him some suggestions as to attorneys who could help him out.  
24 Those attorneys all quoted very high numbers to him. He didn't want to  
25 lay out \$50,000 for a retainer or something of that sort.

1                   So, there was a meeting at Starbucks and in connection with  
2 that, Mr. Simon agreed to send a few letters. I think that's actually the  
3 quote from the email. And that was in May of 2016. And from then on,  
4 the case progressed until it was filed in June, and then when it became  
5 active really in late 2016 through 2017 before Your Honor.

6                   So, we are here because, of course, there was a very large  
7 settlement. Mr. Simon got a result, and there's a dispute over the fees.  
8 So, the first question we have is whether there was an expressed  
9 contract to the fees or expressed contract regarding the retention. We all  
10 know, and we all agree, there was no expressed written contract. It  
11 started off as a friends and family matter. Mr. Simon probably wasn't  
12 even going to send them a bill if he could have triggered adjusters  
13 coming in and adjusting the loss early on, after sending a letter or two.

14                  So, the claim of Mr. Edgeworth is that, in the -- as stated in  
15 the complaint, is that there was an expressed oral contract formed in  
16 May of 2016 to pay Mr. Simon \$550 per hour. So, a meeting of the  
17 minds exist when the parties have agreed upon the contract's essential  
18 terms.

19                  MR. VANNAH: I'm sorry, Your Honor, this isn't facts  
20 anymore. Now, we're arguing the law. We're getting beyond what -- I  
21 mean, I thought this was going to be a fact -- opening statement is  
22 supposed to be the factual presentation. This is an argument of the law.  
23 If we're going to do that, that's fine, I guess, but I don't think it's proper.

24                  THE COURT: Mr. Christensen?

25                  MR. CHRISTENSEN: Your Honor, the evidence is going to

1 show that there was no meeting of the minds in May of 2016, that the  
2 parties agree that Mr. Simon was going to work on this friends and  
3 family matter for 550 an hour.

4 MR. VANNAH: That's not what --

5 MR. CHRISTENSEN: The evidence is going to show  
6 otherwise, that there was no expressed payment term reached in May of  
7 2016, or at any time.

8 MR. VANNAH: Again, here's my problem. I mean, the  
9 evidence isn't going to show citations, and this is a statement of law,  
10 citations. I mean, he wouldn't do this in front of a jury, he wouldn't do  
11 this in a bench trial. This is argument, pure and simple. Now, we're  
12 even arguing what the law is in the case. I thought this was going to be  
13 a factual presentation of what the facts were going to show. We're way  
14 beyond all that.

15 MR. CHRISTENSEN: Your Honor, if I could. First of all, we're  
16 not arguing what the law is. The law is the law, but I mean, we might be  
17 arguing over its application of the case, but that's a whole other issue.

18 Secondly, this is a lien adjudication hearing. This is not  
19 opening statement. We don't have a jury. This is being presented to the  
20 Court in order for the Court to have a full understanding of the facts as  
21 they come in. We believe this is useful and will be helpful to the Court.  
22 There's really no rules governing what you can say or can't say in an  
23 introductory statement to a court in an adjudicatory -- in a adjudication  
24 hearing. I mean, when we submitted our briefs to you, we submitted  
25 law, and we submitted facts, and we argued the application of the law to

1 the facts submitted. And this is an extension of that and that's what  
2 we're doing here.

3 I understand Mr. Vannah's objections. I understand what  
4 goes on in jury trials, when you're presenting things to the jury and  
5 when the Judge is going to present the law to them at the end of the  
6 case through the jury instructions. That ain't what we got here. This is  
7 different.

8 So, you know, I can get on through this, and we can move on  
9 or, you know, Mr. Vannah can --

10 THE COURT: Well, I mean --

11 MR. CHRISTENSEN: -- continue to object.

12 THE COURT: -- Mr. Christensen --

13 MR. CHRISTENSEN: This law -- you're going to get this law  
14 sooner or later anyway, so let's --

15 THE COURT: Right. And, I mean, that's what I'm saying. I  
16 don't --

17 MR. CHRISTENSEN: -- get it done now so that you  
18 understand what's going on.

19 THE COURT: Right, and I mean, I -- and I hate to sound frank  
20 about this, but I've been presiding over this case almost the entire time  
21 I've been on the bench, so there's not a lot of things about the law of this  
22 case that I think I'm confused about. I mean, I would hope I could at  
23 least earn that much credit, as well as I was up late last night reading all  
24 the briefs that you guys submitted in this case, and I have five binders  
25 worth of stuff.

1                   So, if we could just get to the facts of this case and get to the  
2 evidentiary part, and I will let you argue this case until there's no  
3 tomorrow at the end, but I've already read like all the stuff because this  
4 is absolutely in the trial brief that was submitted, and I have read that.

5                   MR. CHRISTENSEN: Okay. Well, I guess I'll abandon the  
6 PowerPoint and finish up pretty --

7                   THE COURT: Okay. And, I mean, I --

8                   MR. CHRISTENSEN: -- quickly.

9                   THE COURT: -- just the legal portion of it. I mean, because I  
10 think this -- and this is a fact-finding hearing. I'm going to have to make  
11 legal determinations at the end, but I have to give everyone the credit  
12 that they're due, that you guys have spent massive amounts of times  
13 thoroughly briefing this case.

14                  MR. CHRISTENSEN: That's true, Your Honor. So, what  
15 you're going to find, as the evidence is presented, is that the claim made  
16 in the complaint, that there was an expressed agreement in 2016,  
17 doesn't hold up. What you're going to find is that there was never a firm  
18 agreement on the payment term. That issue was always in flux. There  
19 was debate that came up at various times, including in August of 2017,  
20 which you've seen the email concerning what are the payment terms for  
21 this.

22                  And you're -- it's also important to pay attention to the  
23 timeline of the evolution of the case, of when it moves from a friends  
24 and family matter to there being litigation, and then when the thing  
25 really blows up and things are really flying, and that's when there's more



1 effort to reach a term and that fails. So, at the end of the day, there's no  
2 expressed term on the payment and there's no implied term.

3 Now, of course, they're going to point to the bills. Bills were  
4 sent and paid, that's not the end of the story. That's more the beginning  
5 of the story on the bills. What you're going to hear is evidence  
6 concerning the reason why the bills were sent. That the bills were sent  
7 to bolster the contract claim against Lange and also to put Lange on  
8 notice of the existence of that significant claim that was later waived.

9 You'll hear testimony concerning how the \$550 number was  
10 reached, and it certainly, from our position, wasn't reached as a result of  
11 the meeting of the minds. And then you're also going to see evidence  
12 concerning the actual content of the bills, the knowledge of Mr.  
13 Edgeworth, and then how no reasonable person in his position could --  
14 should not be able to argue that these bills were both the beginning and  
15 the end of the story.

16 What you're going to hear is that there was a tremendous  
17 amount of work that was done in this file that was not billed for. That's  
18 part of the reason why we had these bills that were submitted as part of  
19 the adjudication process. That was done for several reasons. One of the  
20 reasons is that it's well-known, if you go on over the case law, my  
21 apologies to Mr. Vannah, that sometimes the courts like to see an overall  
22 listing of time because that's evidence of work. Whether or not they get  
23 paid on an hourly or on quantum meruit.

24 So, we provided it for that reason. We also provided it so  
25 that you have a good look of what's going on and in case the worst case

1 scenario, from our point, comes true.

2           What's important to understand about those bills is that Mr.  
3 Simon's firm is not an hourly firm. They don't have regular timekeepers.  
4 They don't have regular billing or timekeeping software. They don't  
5 even have the old books that we used to use. They don't have any of  
6 that stuff. So not only were there bills that were sent during the  
7 underlying litigation incomplete, sometimes grossly so, but when they  
8 went through and tried to do a listing of the time spent for the  
9 adjudication hearing, they made some errors. And when they'd go on in,  
10 what they do is, they would look at a landmark date. So, for example,  
11 the date that something was filed and that's what they would key the  
12 billing off of.

13           Now, not necessarily all the hours were done that day, but in  
14 going back, they wanted to make sure that they got the dates right. As a  
15 result of this process, they know that there is a document with a date for  
16 every single billing entry. That also means that they didn't capture a lot  
17 of their work in those bills because if they couldn't find a piece of paper  
18 with a date on it, they didn't bill for it.

19           And before I turn this over to Mr. Vannah, if he cares to make  
20 a statement, I do just want to impress on the Court the evidence that  
21 you're going to see about the amount of work that was done on this file,  
22 that was not reflected on those initial billings and try to give Your Honor  
23 an idea of the scale of this litigation and the fact that it dominated the  
24 time of this law firm. And what we've done is, there was an awful lot of  
25 email correspondence between Mr. Simon, his staff, and Mr. Edgeworth.

1 Mr. Edgeworth really dominated their time, which is fair to do if you pay  
2 for it.

3 What we did was, we printed out the emails between these  
4 folks during the time the underlying litigation was going, just so that you  
5 understand the scale of it. I think a standard banker's box has -- if you  
6 don't have any binders in it, it has 5,000 sheets of paper in it. This is  
7 obviously a little bit more than that -- or a little bit less than that because  
8 we've got binders in here. Just a couple more.

9 THE COURT: These are just the emails?

10 MR. CHRISTENSEN: These are just the emails, Your Honor.  
11 Normally, I would carry two at a time, but while I'm not seeking  
12 sympathy, I did kind of tweak a muscle in my back a couple days ago.

13 THE COURT: Tell them downstairs, we prefer safety in  
14 Department 10.

15 MR. CHRISTENSEN: Yeah, safety first.

16 [Pause]

17 MR. CHRISTENSEN: Now, in full disclosure, Your Honor,  
18 there are two of these binders of about this size that are attachments that  
19 were, you know, hooked to whatever it linked to the email, but of course,  
20 those were -- oh, and there's more. Those were done over and  
21 discussed in the context of many of the emails, so we included them as  
22 well. So that just gives you a little bit of scale. Later on, we're going to  
23 be demonstrating to you the size of the actually underlying file. We're,  
24 of course, not going to copy it and bring it all in because it's dozens and  
25 dozens of banker's boxes, and we wanted to save a few trees.

1 But at the end of the day, we think that the Court should find  
2 -- should reach a fee for Mr. -- a reasonable fee for Mr. Simon and his  
3 law firm pursuant to quantum meruit. Thank you.

4 THE COURT: Okay. Thank you. Mr. Vannah, would you  
5 wish to make an opening?

6 MR. VANNAH: Yes, Your Honor. Thank you.

7 THE COURT: Okay.

8 PLAINTIFFS' OPENING STATEMENT

9 BY MR. VANNAH:

10 A lot of things here we agree on. So, there was a bad flood,  
11 and it was a sprinkler system that was in the house. And so, in May of  
12 2016 -- Mr. Edgeworth's wife is good friends with Mrs. Simon and said,  
13 you know, why don't you talk to Danny and see what he can do for you?  
14 So, Mr. Edgeworth met with Danny. They had a meeting and Danny  
15 said, I'll send him some letters and see what we can do. So, he sends  
16 him the letters. Didn't do any good, which is not surprising to either one  
17 of them, I'm sure.

18 So, what happened is Danny then says to him, look, I'll  
19 represent you. I can do your case. I'm going to bill you \$550 an hour.  
20 Tells him that point blank. That's what we charge \$550, and then my  
21 associate will charge \$275 an hour. And they have an understanding on  
22 that. You're going to learn that Mr. Edgeworth was a little concerned  
23 about the fee, because that's about twice what he ended up paying his  
24 firm that he uses out in California.

25 We brought some of those bills to prove that. But he had a

1 large firm that he used out of California that has done some patent work  
2 for them, at a much lesser fee. But he actually ended up having a  
3 conversation with his wife and says, I'm thinking about using somebody  
4 else. Danny had written the letters and the wife said that might be a  
5 problem. Why don't you just use Danny and pay him the higher fee?  
6 And against his better judgment, he agreed to do that, but he told Dany  
7 all right, fine. I'll hire you, and I'll pay you. Send me the bills.

8               So, Danny does the work, does a fine job. We're not  
9 complaining about the work. He files the complaint. He goes forward,  
10 and he sends -- he starts sending bills. Now, this is the interesting part.  
11 His bills just through September 22nd, which is where the last bill ended  
12 that was paid, the bills that were sent were four invoices. They added up  
13 to almost \$400,000 in attorney fees. Now this is over a case that  
14 everybody suspected had a maximum value between 500 and \$750,000.

15              So, Mr. Kemp -- I like what Mr. Kemp said. Mr. Kemp said, I  
16 would have never, under any circumstances, taken this case under a  
17 contingency fee. I just wouldn't have done it. It doesn't pencil out. So, I  
18 mean, you know, frankly, to be honest with you, I'm looking at my client  
19 thinking you know, here's a guy with a Harvard MBA, but he's paid out --  
20 and I'm not talking about costs. There's another \$111,000 in costs.

21              By September the 22nd, he had paid out -- just paid out up to  
22 that date over \$500,000 in attorney fees and costs on a case that  
23 probably did have a value between 500 and \$750,000, so that doesn't  
24 make a lot of sense, to be honest with you, from a standpoint of just  
25 economic law.

1                   And it's not surprising why Mr. Simon -- he apparently  
2 agrees with Mr. Kemp that this would be a bad case to take on a  
3 contingency, because if you did it at 40 percent, I mean, your -- 40  
4 percent of \$750,000 is I think 300,000, and he's already billed \$387,000.  
5 So, what happened was -- is -- up through this meeting that took place in  
6 San Diego -- so what happened is they went to San Diego, because they  
7 weren't happy with the expert. The expert had done a really lousy job,  
8 billed a lot of money, and so they both agreed let's just go to San Diego,  
9 meet with the experts, talk to them and say what are you doing here? I  
10 mean, this isn't a very good job you're doing.

11                   So, they go down. That was the purpose of their meeting.  
12 So, at this point in time -- and this is really important. This is in August  
13 of -- I wrote down the date. August 8, 2017, I believe is the date that they  
14 had the meeting in San Diego. That's the critical -- up to that point,  
15 everything is pretty clear. I mean, there's been an express  
16 understanding that the billing's going to be 550 an hour and 275 with the  
17 associate. Two bills had come in at this point in time, and they're paid.

18                   So, on August 8th, they go to a bar. They're waiting for the  
19 plane back to Las Vegas, and they go have a couple drinks together in a  
20 bar, and they get into a discussion about you know what -- you know,  
21 this is really expensive. The client saying, well, I'm paying a lot of  
22 money out. I wonder if there's some kind of a hybrid kind of thing we  
23 could come up with maybe that I wouldn't -- I -- because this is becoming  
24 very expensive.

25                   So, what happened -- Mr. Edgeworth was borrowing money

1 to pay the legal fees. Generally, I wouldn't recommend that. That's  
2 probably not a really great idea to go out and borrow money to pay legal  
3 fees, but that's what he had done. He'd gone and borrowed money from  
4 his mother-in-law, high interest loans and was paying legal fees with  
5 borrowed money. Mr. Simon understood that and realized that.

6           So, on August 8th, they had a discussion in the bar and the  
7 discussion was -- I mean, is there a possibility that my future billings  
8 would be a little less or maybe even give some of the money back that  
9 I've billed and do this case on a contingency, because the case -- Mr.  
10 Edgeworth thought the case had more value than Mr. Simon did at that  
11 time, but they had that discussion.

12           So, it ended up with Mr. Edgeworth saying to Mr. Simon --  
13 now, keep in mind, nobody had ever reduced anything to writing. I'll get  
14 back to you about that, and I'll tell you what I'm willing to do. So, Mr.  
15 Edgeworth said all right. You make me a proposal, if you want to. Well,  
16 that's not what happened. So, what happened, Mr. Simon goes back to  
17 his office. A couple weeks go by, some time goes by, doesn't hear  
18 anything -- Mr. Edgeworth doesn't hear anything about any proposal.

19           What does Mr. Simon do? He prepares another hourly bill  
20 and sends another hourly bill out. My client finally writes an email --  
21 that's the one that you read -- saying, look, I mean, if you want, I can pay  
22 you hourly, if that's what you want me to do. I'm just going to have to  
23 go out and borrow money. I might have to sell some of my Bitcoin. He  
24 was investing in Bitcoin. He thought it was a good investment. I can  
25 borrow more money. You know, whatever it's going to cost. I'll do

1 whatever it takes. And that email says that if you want to do it hourly, I'll  
2 just continue paying you hourly.

3 Mr. Simon's response to all that was to send an hourly bill,  
4 send another bill. Mr. Edgeworth borrowed the money, paid the bill in  
5 full. After that, Mr. Simon sends another hourly bill. That takes it right  
6 up to September 26th, is another hourly bill. Mr. Edgeworth goes out  
7 and borrows money. No further discussion. The way he sees it, I guess,  
8 Mr. Simon is talking with the bill, do you want to do something different?  
9 Mr. Simon just continues sending two more bills.

10 Those bills add up to -- those four invoices that were paid, all  
11 of them paid, added up to \$387,000 in attorney fees, almost \$400,000 in  
12 attorney fees and over \$100,000 in costs that Mr. Simon -- Mr. Edgeworth  
13 paid, all four of those invoices. You're going to also learn in this case  
14 that when Mr. Simon -- and I don't want to denigrate Mr. Simon's efforts.  
15 I mean, it was a good result, but I want to tell you something.

16 Mr. Edgeworth, as you'll learn from the testimony, is a bright  
17 guy. Harvard MBA. Intelligent. He's very involved in the case. He's the  
18 one that went out -- and so essentially what had happened is Viking had  
19 been dishonest with the Court and with them about how many of these  
20 sprinkler systems had malfunctioned in the past. What you're going to  
21 learn is that my client -- he's a very -- he micromanages things, and he  
22 went on his own and started going on the internet, looking up Viking,  
23 finding out that other people had these problems.

24 He went and contacted originally other lawyers in California  
25 that had -- were handling these cases, other litigants, had conversations



1 with them, and then learned from them that they're -- a lot more about  
2 Viking and about these failures than Viking had admitted. In other  
3 words, they had just not been candid about that. And I'm sure Your  
4 Honor remembers all that stuff. So that's -- my client goes and does all  
5 that and provides all that stuff to Danny's office. Now, you know, I'm not  
6 denigrating Danny's efforts or Mr. Simon's efforts. I mean, he's a good  
7 lawyer, but my client went out a dug all that stuff up.

8               So, then they had this mediation. And the first mediation,  
9 didn't do it, but at the second mediation, they reached a settlement for  
10 \$6 million. Right after that happened, there's a meeting -- Danny calls a  
11 meeting -- Mr. Simon calls a meeting in the office and that's November  
12 17th, 2017, another big day. Mr. and Mrs. Edgeworth go to the meeting,  
13 and they're like wow, what's this all about? They're thinking maybe this  
14 is some really great meeting.

15              Well, what it's all about is Mr. Simon has now prepared this  
16 letter, prepared this fee agreement and tells them, you know what, I want  
17 you guys to do the right thing. I understand we had an hourly  
18 agreement. I understand you paid all your bills one after another after  
19 another, but, you know, nobody expected this case to do as well as it's  
20 doing. I'm losing money at \$550 an hour, because my time's worth a lot  
21 more than \$550 an hour and, you know, I'm losing money. I'm losing  
22 money. Now, let's do the case for 25 percent.

23              So, then he presents this agreement to him saying I want you  
24 to pay me 25 percent of the \$6 million. I want 25 percent of that as a fee,  
25 and I will give you back credit for the money you've already paid in, the

1 \$400,000 you've already paid in. So -- and on the Lange case, that's  
2 going to be separate. We'll work out something different on that, but I  
3 want 25 percent of that \$6 million settlement we got. That's \$1.5 million.  
4 I'll give you -- but I'll give you credit for what you've already paid in.  
5 That's what happened here. So, they're stunned. They're actually  
6 stunned. And the words -- conversation wasn't particular friendly.

7           So, Mr. Simon said you need independent counsel. You  
8 ought to do that, is what he's supposed to be doing anyway. The rules  
9 are very clear that when you start entering into an agreement with your  
10 client halfway through the litigation, you want to change the terms, you  
11 need to advise them to get an independent counsel. That's what they  
12 did. They came to my office. Came to my office and laid out the thing  
13 and that's where we are now. That's basically where we are. There was  
14 no constructive discharge. There wasn't a discharge at all.

15           So, you know, I -- we had a communication. It was a nice  
16 communication with Mr. Simon and Mr. Christensen. We talked on the  
17 phone. I made it clear that look, we want you to finish the case off, wrap  
18 up the -- all you gotta do is do the release. That's the only thing that was  
19 left to do on the \$6 million is sign the release and get the terms down,  
20 you know, confidentiality, some things you've got to deal with. Wrap it  
21 up. Do that. But, by the way, you guys have reached a point here where  
22 the words in the last meeting were pretty bad. If you want, I'll stay in  
23 between.

24           You know, I'll -- tell me what you want me to tell them, and I  
25 will tell them and vice versa, or we can all have a meeting together.

1 What do you want to do? But I think it ought to be civil. I just didn't  
2 want it to become uncivil and -- you know, a screaming match and all  
3 that. I don't like all that kind of stuff. I didn't want that to happen, so I  
4 said you're not being fired. I'm not coming in on this case. No way I'm  
5 going to associate on the case. I'm not going to substitute in on the  
6 case. I don't want anything to do with the case. This is all about the fee.  
7 The case is over.

8 And he said what about the Lange case? What do you want  
9 to do about that? Well, why don't you just give me the proposal? I  
10 looked at the proposal. I looked at Mr. Simon's idea, and I ran it by the  
11 client, and they said what do you think? I said you know what, you  
12 already got \$6 million. You got another 100 on the table. Take it. Just  
13 take the money and call it a day. Just wrap it up. Accept the offer as is,  
14 and they did. And that was -- that's it. So, I made it clear to Mr. Simon,  
15 you know -- I talked to Mr. Christensen, you know. I don't -- nobody  
16 needs to do anything.

17 Just wrap this thing up, and we'll deal with the fee issue later  
18 with the Judge. We'll deal with that, but right now, let's get the case  
19 wrapped up. I mean, you can't hold the clients up on a case, because  
20 you're -- it becomes extortion. Then here comes the money. And so, the  
21 bottom line was like what are we going to do with this money and look, I  
22 made it clear. I said I know Mr. Simon's not going to steal the money.  
23 I'm not worried about that. I know he would honor everything. The  
24 clients are concerned.

25 So why don't we just go open a trust account? Eventually,

1 that's what we did. Open a trust account. You and I will be the trustee  
2 on the trust account. Let's open a trust account, put the \$6 million into  
3 the account, let it clear, and then I think at that point, you're obligated to  
4 give the clients anything that's not disputed. I mean, you can't hold the  
5 whole \$6 million. We all agreed on that and that's what we're here for.  
6 There's been no constructive discharge. In fact, Mr. Simon never  
7 withdrew from the case.

8           And I don't want to call it a veiled threat. I just said look, if  
9 you withdraw from the case, and I've got to spend 50, 60 hours bringing  
10 it up to speed and going through all these documents, and then advising  
11 the client and doing this, I mean, you know, that's not fair to them.  
12 You've already -- you can wrap this case up in an hour. It would take me  
13 50 hours to do that, and I don't think that's a particularly good idea.

14           So that's why we're here and that's what the whole case is  
15 about. I look at it this way is that you know, it was great for Mr. Simon to  
16 get his 550 an hour and the 275 and to bill \$400,000, but when suddenly  
17 he realized -- one day it just dawned on everybody, wow, with all this  
18 new information, my client dug up, this may be a -- you know, why did  
19 Viking settle for that amount of money? They didn't settle for that  
20 amount of money, because they thought they were going to have to pay  
21 for the house, because that was 500 to 750.

22           They settled for that amount of money, basically, because  
23 they recognized and realized that this would be a really, really bad case  
24 to go in front of the jury with when it became so obvious that they had  
25 been so deceptive and that they knew that these were defective sprinkler

1 systems, and the case just blew up from there. And they were willing to  
2 pay whatever to get out of this case, whatever it cost to get away from all  
3 this. And the law firm might have had some serious problems, too, in  
4 this case, because they were all signing all these agreements, and  
5 they're a captive firm.

6 I don't know why, but all I know is that it got really ugly really  
7 fast, and they decided, you know, let's just pay whatever it takes to get  
8 out of this. They have other cases litigating all over the country right  
9 now, class actions and everything else on this and that was -- that's why  
10 the case settled. But at the very end, it's just not fair. If my clients agree  
11 to pay an hourly fee, and they pay an hourly fee, you can't have the  
12 lawyer at the end say you know what, I deserve a bonus. You can say I  
13 deserve a bonus; I'd like a million-five bonus.

14 You can say that, but there's no obligation to pay a bonus.  
15 And they don't want to pay a bonus. They got that he got paid fairly.  
16 And that's what this case is all about is -- oh and going back on the other  
17 thing. So, what they did is they -- you know, they hedged their bets.  
18 They went back, and they took all those bills that they had billed out  
19 \$387,000 on and what did they do? They've gone back and added a  
20 couple hundred thousand dollars here and there. We're going to talk  
21 about some of that.

22 Some of those days they added -- on some of those days  
23 they're billing 21, 22 hours a day. I'll show you that bill, and we'll have  
24 an associate on the stand explaining what she added time on days now  
25 that add up to 22 hours a day. That's a lot of time. A lot of people sleep,

1 they eat, they take showers. They do other things. So, I'm going to  
2 show you that bill, where they -- I'll show you those -- some of those  
3 days where they've added days up to where we've got one person  
4 working 22 hours in a day on a bill on a normal day.

5 The other thing that happened in this case that's really  
6 interesting is the deposition of my client. He's at this deposition. And  
7 when he's there, in two different sections of the deposition, two different  
8 sections, when Viking is asking -- they ask him -- they don't believe he  
9 paid the bill. I know what happened. I do this work.

10 So, the Viking guy is saying well, you've got all these legal  
11 billings that you've accumulated. You put that in as a cost and what it's  
12 going to cost us eventually under the indemnity agreement to pay you  
13 for these legal fees. Okay. Well, we're looking here at \$500,000 or so.

14 I mean, they were -- they misadded it, but it's like -- it was  
15 closer to -- it was over 500, but they were a little off. But she was  
16 saying -- one of the things was like you've got a 500 and some odd  
17 thousand dollar bill. You haven't paid this, have you? You haven't paid  
18 this, have you? And my client said, yeah, I have paid it. I've paid every  
19 single bill that's on there. I've paid all this. All these bills have been  
20 paid. And I can see the stunned silence. You know, you don't usually  
21 have clients that pay those kind of bills.

22 And they've all been paid. And then the question was asked  
23 right there in the deposition. Mr. Simon's there and he said, well, is this  
24 all of the billing? And Mr. Simon says, yeah, I've given this stuff to you  
25 over and over and over again. He was kind of irritated that they're

1 asking. He said, I've given you guys this over and over again. This is the  
2 billing. This is all the billing. So, the new story is that Mr. Simon -- I  
3 mean, the story -- I guess, in -- nobody -- this will be a secret intention  
4 that nobody told my client. So, Mr. Schoenstein (phonetic), he had this  
5 secret idea and that only he knew.

6 Only he knew this, that he would just bill a lesser billing at  
7 \$550 an hour and 275, submit those billings to the client. And the reason  
8 he's doing that is so he can show these bills to Lange and say to Lange,  
9 oh, look, this is how much money you guys are going to be stuck on the  
10 hook for. But he never tells my client that he's got this secret intent, but  
11 in reality, his real intent is to do this on a percentage. Well, the problem  
12 with that is -- and that's why they can't go there, and they know that.  
13 You can't do a contingency fee orally. That's Bar rule. Not -- it's not  
14 maybe, maybe not. It says flat-out, if a client's going to enter --

15 MR. CHRISTENSEN: I thought we weren't going to talk about  
16 the law, Mr. Vannah.

17 MR. VANNAH: We are -- we did a little bit, yes.

18 THE COURT: Okay. Well, Mr. Vannah, we're going to get to  
19 the loan. We're going to litigate all this stuff.

20 MR. VANNAH: Well, I'm going to be asking Mr. Simon this  
21 question.

22 THE COURT: Right. And we're going to get --

23 MR. VANNAH: I'm going to --

24 THE COURT: -- to that when you ask him.

25 MR. VANNAH: Right. So, you'll hear the evidence. I'm

1 going to ask Mr. Simon did you not know, did you not read the Bar  
2 rules? Were you not familiar with the fact, Mr. Simon, that you cannot  
3 enter into a contingency fee with a client that's oral? Did you not know  
4 that? I'm going to be asking him that question.

5 THE COURT: Okay.

6 MR. VANNAH: I presume he's going to say he read those  
7 rules, he knew that, and he knew that when he entered into it. And I'm  
8 going to also ask him about the rule that says at the bottom of the rule,  
9 the 1.5(b), I think it is, that says if you're going to have a fee with a  
10 client --

11 MR. CHRISTENSEN: Same objection to the argument.  
12 What's good for --

13 MR. VANNAH: So, this is --

14 MR. CHRISTENSEN: -- the goose is good for the gander. If I  
15 can't talk about those rules, Mr. Vannah can't either, because I was going  
16 to talk about 1.5(a) and 1.5(b), but --

17 THE COURT: And we're going to --

18 MR. CHRISTENSEN: -- but I was foreclosed by Mr. Vannah.

19 THE COURT: Right. We're going to get into all of those  
20 when we get into the argument section. This is just simply the facts and  
21 as I've already restated, you guys have argued this stuff 80 times.

22 MR. VANNAH: You know what, Your Honor, you're right as  
23 rain, and you've read all this. It's all been read.

24 THE COURT: I have. I've read everything --

25 MR. VANNAH: I know you've read everything.



1 THE COURT: -- in this case.

2 MR. VANNAH: So, with that, let's hear the case.

3 THE COURT: All right. Mr. Christensen, your first witness?

4 MR. CHRISTENSEN: Judge, it'll be handled by Mr.  
5 Christiansen.

6 THE COURT: Christiansen. Okay. And just so you two know.  
7 I'm going to apologize ahead of time, if I mix you up.

8 MR. CHRISTENSEN: I'm fine with Jim, Your Honor.

9 THE COURT: Okay. And who's first Mr. Christiansen?

10 MR. CHRISTIANSEN: Brian Edgeworth, please, Your Honor.

11 THE COURT: Okay. Mr. Edgeworth. And just so you guys  
12 know, I'm going to probably go for like an hour, and then me and my  
13 staff have to have a break. We've been on the bench since 8:30. So  
14 then, we'll go to lunch, and then we'll come back.

15 MR. CHRISTIANSEN: Why don't I have sort of a short portion  
16 of the cross --

17 THE COURT: Okay.

18 MR. CHRISTIANSEN: -- and then I'll stop.

19 THE COURT: Okay.

20 MR. CHRISTIANSEN: The lengthier stuff I'll keep for after  
21 lunch.

22 THE COURT: That would be perfect, Mr. Christiansen.

23 MR. CHRISTIANSEN: Is that okay with you?

24 BRIAN EDGEWORTH, PLAINTIFF, SWORN

25 THE CLERK: Please be seated, stating your full name,

1 spelling your first and last name for the record.

2 THE WITNESS: Brian Edgeworth, B-R-I-A-N E-D-G-E-W-O-R-  
3 T-H.

4 THE COURT: Okay. And nobody has problems hearing him?

5 MR. VANNAH: No.

6 THE COURT: Okay. Mr. Christiansen, your witness.

7 MR. CHRISTIANSEN: May I proceed, Your Honor?

8 DIRECT EXAMINATION

9 BY MR. CHRISTIANSEN:

10 Q Mr. Edgeworth, you are the Plaintiff, or you're the principal,  
11 the Plaintiff in the case proceeded against Viking and Lange that Mr.  
12 Simon represented you on. Is that fair?

13 A Is that a legal term? I think I am, but I don't know if that's a  
14 legal term, being the principal.

15 Q Okay. Did you sit as the principal for a department for those  
16 two --

17 A The PMK?

18 Q -- entities?

19 A Like the person most knowledgeable? I think so.

20 Q Are you represented today by Mr. Vannah?

21 A Yes, I am.

22 Q Okay. You're not represented by Mr. Simon today. You're  
23 represented by Mr. Vannah, correct?

24 A I still retain Simon on the case, though.

25 Q Okay. In this matter, who's your lawyer?

1 A I don't under -- I'm sorry. I just understand --

2 Q This fine gentleman --

3 A -- the question.

4 Q -- here is representing you today, correct?

5 A Is this evidentiary hearing --

6 Q Yes.

7 A -- about your lien, right?

8 Q Yes.

9 A Correct? Yes. Mr. Vannah is my lawyer.

10 MR. CHRISTIANSEN: Permission to treat as an adverse  
11 witness and lead, Your Honor.

12 THE COURT: Okay.

13 MR. CHRISTIANSEN: Judge, this new Elmo's got me fooled.

14 THE COURT: You and me both, Mr. Christiansen, so I won't  
15 be of any assistance to you. I would hope, you know, my Marshal could  
16 help you.

17 UNIDENTIFIED SPEAKER: Oh, I think we have to disconnect  
18 over here.

19 THE COURT: Oh, okay.

20 MR. CHRISTIANSEN: I just don't want to break it.

21 THE COURT: I don't know that we've ever used the new one.  
22 We just recently got our JAVS upgrade, so I'm not confident. As you  
23 see, I --

24 MR. CHRISTIANSEN: It's got like some free download sticker  
25 on it.

1 THE COURT: I peeled the plastic off my screen when we  
2 started this hearing, so I'm not confident.

3 [Pause]

4 THE COURT: Can you call IT?

5 MR. CHRISTIANSEN: Maybe we'll break before I get started,  
6 then.

7 THE COURT: Yeah. Can you get IT in here?

8 THE CLERK: Yeah.

9 THE COURT: Okay. We'll contact IT and get them over here,  
10 Mr. Christiansen.

11 MR. CHRISTIANSEN: Judge, I'm happy if you want to take  
12 your lunch break now, and then IT can come.

13 THE COURT: Yeah. Are you guys okay with that?

14 MR. CHRISTIANSEN: Whatever's convenient to Mr. Vannah.  
15 I don't -- whatever --

16 MR. VANNAH: Whatever works is fine.

17 THE COURT: Okay. So, let's do that. Let's just break, so that  
18 we make sure --

19 MR. CHRISTIANSEN: Okay.

20 THE COURT: -- all the stuff works. We'll get IT up here.

21 MR. CHRISTIANSEN: Okay.

22 MR. VANNAH: Sure.

23 THE COURT: So --

24 MR. CHRISTIANSEN: Thank you, Your Honor.

25 THE COURT: -- we'll come back at 1:00. So, Mr. Edgeworth,

1 we'll come back at 1:00. I'll remind you, sir, that you are still under oath.  
2 So, we'll come back at 1:00. We'll get IT here and hopefully get all this  
3 worked out. I apologize.

4 MR. CHRISTIANSEN: That's fine. That's great, Judge.

5 MR. CHRISTENSEN: See you at 1:00, Your Honor. Thank  
6 you.

7 THE COURT: Okay. 1:00. Okay.

8 MR. CHRISTIANSEN: Thank you, ma'am.

9 MR. VANNAH: Thank you, Your Honor.

10 [Recess at 11:42 a.m., recommencing at 1:02 p.m.]

11 MR. CHRISTIANSEN: Judge, I don't recall. I asked for  
12 permission to treat as an adverse witness, and then we got sort of  
13 sidetracked with the Elmo, but may I treat as an adverse --

14 THE COURT: Yes.

15 MR. CHRISTIANSEN: -- witness and lead?

16 DIRECT EXAMINATION CONTINUED

17 BY MR. CHRISTIANSEN:

18 Q Mr. Edgeworth, what that -- Her Honor's ruling means is I'm  
19 going to ask questions that call for yes or no answers and expect you to  
20 respond accordingly. Is that fair?

21 A Yes.

22 Q Okay. Great. You are Canadian?

23 A Yes.

24 Q All right. You are not an American Citizen?

25 A All right.

1 Q Is -- parts of Canada are French Canada and English Canada.  
2 Is English your first language?

3 A Yes.

4 Q And I heard Mr. Vannah tell Her Honor this morning that at  
5 this initial meeting you had with Danny Simon on or about the 27th or  
6 28th of November 2000, and -- I'm sorry -- May 2016, you were told that  
7 Danny's rate was 550 an hour. Is that fair? Is that your testimony?

8 A No.

9 Q It's not your testimony?

10 A No.

11 Q You heard your lawyer tell the Judge that, right?

12 A Yes, I believe so.

13 Q And similarly, it's not your testimony that at this initial  
14 meeting, Danny Simon ever told you that Ashley Ferrel was going to get  
15 275 an hour --

16 A No.

17 Q -- correct?

18 A Correct.

19 Q That was never discussed at your initial meeting?

20 A No.

21 Q Sir, do you know what perjury is?

22 A Yes.

23 Q Do you know when you sign an affidavit under -- it's the  
24 same as -- in a court of law, and you submit it to a judge, the oath you  
25 take is the same oath you took when you came in her court?

1 A No, but I believe you.

2 Q Okay. You signed three affidavits relative to this proceeding  
3 and the other case in which you sued Danny Simon leading up to this  
4 hearing. Is that fair?

5 A I think so.

6 Q Okay. You signed one on February the 2nd, correct?

7 A If you show them to me, I can confirm.

8 Q You signed one on the 12th, correct?

9 A I don't know. I think so.

10 Q Okay. And you signed one on March the 15th, correct?

11 A I do not know, but I think so.

12 Q In all three affidavits, you told Her Honor, because that's who  
13 the -- they were sent to, that at the outset -- that's the word you used --  
14 the outset, Mr. Simon told you his fee would be 550, correct? That's  
15 what you put in --

16 A Correct.

17 Q -- all three affidavits, correct?

18 A Correct.

19 Q That's not your testimony today, is it?

20 A Yes, it is.

21 Q I just asked you, sir, did Mr. Simon at the initial meeting at  
22 the outset tell you his rate was 550, and you just told me no, correct?

23 A Correct.

24 Q Okay. So, in all three of your affidavits, when you say Dan  
25 Simon told me, Brian Edgeworth, at the outset, his rate was 550, all three

1 of those statements in all three affidavits are false, correct?

2 A I don't think so.

3 Q English is your first language, right?

4 A Correct.

5 Q Outset means the beginning, correct?

6 A The beginning of the case, correct.

7 Q Beginning of the case would be when you say you retained  
8 Mr. Simon, correct?

9 A Yes.

10 Q And your position is you retained him the 27th of May 2016,  
11 correct?

12 A No, not correct.

13 Q When did you retain him?

14 A On June 10th, he called me, when they had to file a lawsuit,  
15 because nobody responded.

16 Q Sir, tell me when you put in all three affidavits --

17 MR. VANNAH: Excuse me, Your Honor. He just interrupted  
18 the answer. I don't know why he's doing that. It's rude for one thing and  
19 wrong.

20 MR. CHRISTIANSEN: I apologize, Mr. Vannah.

21 MR. VANNAH: Can I hear the answer?

22 BY MR. CHRISTIANSEN:

23 Q Go ahead. Do you have anything else, sir?

24 A Can you restate your question, please?

25 Q Sure. I'll restate it.



1 MR. CHRISTIANSEN: I apologize, Mr. Vannah.

2 BY MR. CHRISTIANSEN:

3 Q In all three of your affidavits, sir, didn't you tell the Judge  
4 under oath, under penalty of perjury, that you hired Danny Simon -- you  
5 used the word retained -- May the 27th, 2016?

6 A I don't know. It might have been in there. It might be a typo.  
7 I don't know. I --

8 Q Did you --

9 A -- if you show it to me, I can tell you.

10 Q Sir, I get to decide how I conduct cross-examination.

11 A I understand that.

12 Q Okay. All right.

13 A I just asked you --

14 Q Did you read the affidavits before you signed them?

15 A Yes.

16 Q And in all three affidavits, isn't it true you said you retained  
17 Danny Simon May the 27th, 2016?

18 A Probably.

19 Q Yes or no?

20 A I don't know.

21 Q What do you mean, you don't know?

22 A I mean, if you show it to me, I can read it and tell you yes --

23 Q Did you read them --

24 A -- or no.

25 Q Did you read them in preparation of today?

1           A     No, I did not.

2           Q     Okay. And so, your testimony here under oath is that you  
3 didn't retain Danny Simon May the 27th, 2016. Is that -- do I understand  
4 that correctly?

5           A     On that date --

6           Q     Sir, that's a yes or no question. Is that your testimony that  
7 you did not retain Danny Simon May the 27, 2016?

8           A     No.

9           Q     Poorly worded question. So, the record is clear, is it your  
10 testimony under oath that Danny Simon was retained by Brian  
11 Edgeworth on behalf of American Grating and the Edgeworth Family  
12 Trust May the 27th or the 28th, 2016?

13          A     Yes.

14          Q     That is your testimony?

15          A     Yes.

16          Q     Well, I just asked you five seconds ago.

17          A     You said it wasn't your testimony. You're confusing me with  
18 the different questions. He --

19          Q     Well sir, do you understand that perjury as a non-American  
20 citizen is a deportable offense?

21          A     Yes.

22               MR. VANNAH: Your Honor, I've got to object --

23               THE WITNESS: This is --

24               MR. VANNAH: -- to this whole thing. This thing about  
25 talking about he's a foreign -- that he's not a -- first of all, it's against the

1 rules, and it's against the law --

2 MR. CHRISTIANSEN: It's not.

3 MR. VANNAH: -- to bring up anybody's ethnicity or their  
4 citizenship. That's the rule in this state and that everybody's treated the  
5 same, whether they're a citizen or not a citizen in a courtroom. Why are  
6 we talking about whether he's a Canadian citizen or not and whether it is  
7 a deportable offense? He's not perjuring himself, for one thing.

8 MR. CHRISTIANSEN: Judge, that's a speaking --

9 THE COURT: Okay.

10 MR. CHRISTIANSEN: -- objection, but.

11 MR. VANNAH: No, it's not a speaking objection. It's an  
12 objection about ethnicity and citizenship, and it's absolutely improper to  
13 bring that up.

14 THE COURT: Mr. Christiansen, your response?

15 MR. CHRISTIANSEN: As the Court knows, I do a  
16 considerable amount of criminal defense work and when the witness  
17 tells me that three times he put something in an affidavit that he then  
18 backs away from, I feel compelled to inform the witness that, you know,  
19 changing your story under oath can have ramifications, if you're not an  
20 American citizen. That was it. I intend to move on --

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: -- from it.

23 THE COURT: We can move on, Mr. Christiansen.

24 MR. VANNAH: We don't need the legal advice to my client.

25 Thank you, though.

1 MR. CHRISTIANSEN: And, Judge, just so we're clear going  
2 forward, it's my understanding this is Mr. Greene's witness and so in the  
3 future, I think it's probably appropriate one lawyer, one witness.

4 THE COURT: Okay. This is Mr. Greene's witness?

5 MR. CHRISTIANSEN: That's my understanding, Your Honor.

6 MR. VANNAH: That's correct.

7 THE COURT: Okay.

8 MR. CHRISTIANSEN: Okay.

9 THE COURT: Okay.

10 BY MR. CHRISTIANSEN:

11 Q All right. So, Mr. Edgeworth, I'm just trying to understand  
12 what your testimony is. Okay. What your version of events are. When I  
13 started out, I asked you did you hire Danny Simon May the 27th. You  
14 told me no, correct?

15 A I believe what you said, did I hire him at \$550 an hour on  
16 May the 27th, sir. I believe that's what you said. I might be mistaken,  
17 but I believe that's what you said, and I said no.

18 Q Okay. Did you retain him May the 27th?

19 A Correct. Yes, I did.

20 Q And at that outset, the day you retained him, did he tell you  
21 his rate was 550 an hour?

22 A No. He said he would do me a favor.

23 Q And at the outset, the say you retained him, did he tell you  
24 what his associate's fee was going to be?

25 A No, he did not.

1 Q He said he would do you a favor?

2 A Yes.

3 Q Because he was your friend?

4 A Our wives were friends, correct.

5 Q And you guys had traveled together?

6 A Correct.

7 Q And his wife, Elaina [phonetic] had done things for your wife.

8 Fair?

9 A Perhaps, yes.

10 Q Like organ -- I mean, simple stuff. Like she organized a  
11 birthday party, I think, for your wife. Helped with a funeral. Things of  
12 that nature. Social things.

13 A You could ask my wife. I -- likely.

14 Q Okay. When you signed all three of those affidavits, did you  
15 read them before you signed them?

16 A Yes.

17 Q Did you write them?

18 A No.

19 Q All right. I want to work with you -- backwards with you, sir,  
20 a little bit. Mr. Vannah was nice enough this morning to give us the  
21 retainer agreement. And I'll have it marked. What's the next in line,  
22 Ash?

23 MS. FERREL: Our number 90.

24 MR. CHRISTIANSEN: I'll mark it as 90, John, if that's okay.

25 (Defendant's Exhibit 90 marked for identification)

1 BY MR. CHRISTIANSEN:

2 Q And I'll just put it up for proposed Plaintiff's (sic) Exhibit 90.  
3 Is that the retainer agreement that you saw Mr. Vannah give us this  
4 morning?

5 A Yeah. I think so. I can't see it. Can I see it on this monitor  
6 here?

7 Q If it's on you can.

8 THE COURT: You can't see it.

9 MR. CHRISTIANSEN: May I approach, Judge? I'll help him.

10 THE COURT: Yes, please. Is there nothing on your monitor?

11 THE WITNESS: No, it's just blank.

12 MR. CHRISTIANSEN: There's not judge. Just blank.

13 THE COURT: Okay.

14 THE WITNESS: Should I move this microphone then?

15 THE COURT: Sure.

16 MR. CHRISTIANSEN: Tell me when -- if it comes on, Mr.  
17 Edgeworth.

18 THE WITNESS: No.

19 MR. CHRISTIANSEN: There.

20 THE WITNESS: Okay.

21 THE COURT: And can you see the document or no?

22 THE WITNESS: It's just booting up.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: Judge, are these Elmo screens such  
25 that he can touch it?

1 THE COURT: You can't do that anymore, Mr. Christiansen.

2 MR. CHRISTIANSEN: Can't do that anymore?

3 THE COURT: They took that away from us. You get 1 plus  
4 and three minuses. No, apparently you can't.

5 BY MR. CHRISTIANSEN:

6 Q I'll try to put it in the middle, Mr. Edgeworth, and if you tell  
7 me you can't see it, I'll try to blow it up.

8 A Mine's out of focus, is yours?

9 THE COURT: Yeah, mine is a little blurry too, Mr.  
10 Christiansen, but I don't think there's anything you can do.

11 MR. CHRISTIANSEN: Oh, let me see if I can zoom in, Judge,  
12 and then I'll hit auto focus or auto --

13 THE COURT: There we go.

14 MR. CHRISTIANSEN: Oh, got a little crazy.

15 THE COURT: Okay. Is that clear enough?

16 THE WITNESS: Yeah, that's good. That's very good.

17 THE COURT: Okay.

18 BY MR. CHRISTIANSEN:

19 Q Is that the fee agreement you executed, Mr. Edgeworth?

20 A Yes.

21 Q And you see how it says down here on behalf of the  
22 Edgeworth Family Trust and American Grating?

23 A Yes.

24 Q You were acting as --

25 A Correct.

1 Q -- as an agent, correct?

2 A Correct.

3 Q You understood that when you signed the fee agreement,  
4 right?

5 A Yes.

6 Q Okay. Just checking. And this was entered into July the 29th  
7 of 2017?

8 A Yes, I believe so.

9 THE COURT: November 29th, Mr. Christiansen?

10 MR. CHRISTIANSEN: Did I say July?

11 THE COURT: Yeah.

12 MR. CHRISTIANSEN: I'm sorry, Judge. November.

13 BY MR. CHRISTIANSEN:

14 Q I misspoke. I apologize. November the 29th, 2017. Is that  
15 fair?

16 A Yes.

17 Q Was this your first meeting with Mr. Vannah, the day -- I  
18 mean, is this the date of the meeting with -- first meeting with Mr.  
19 Vannah?

20 A Yes.

21 Q And this is the day you hired him?

22 A Yes.

23 Q Okay. And from November the 29th forward in time, you  
24 have not spoken verbally to Danny Simon, correct?

25 A I don't know. I don't think so.



1 Q You think that's a fair statement? You probably have not  
2 talked to him?

3 A It's -- the date. The date you're giving. I'm not positive 100  
4 percent of that date --

5 Q Okay.

6 A -- but in the range of that, yes, I have not spoken to him.

7 Q And from the time you signed the agreement with Mr.  
8 Vannah, you were looking to Mr. Vannah and Mr. Greene for advice as  
9 your lawyer in this case, the case where Danny had been representing  
10 you for the years prior, right?

11 A No. That's incorrect.

12 Q All right. Well, let's --

13 MR. CHRISTIANSEN: Judge, I'd move for admission of  
14 Exhibit 90.

15 THE COURT: Any objection to 90?

16 MR. GREENE: No.

17 MR. CHRISTIANSEN: That's the fee agreement, John.

18 THE COURT: Okay. So, Defense's 90 will be admitted.

19 (Defendant's Exhibit 90 received)

20 MR. CHRISTIANSEN: 43 is next, John.

21 BY MR. CHRISTIANSEN:

22 Q I'm going to show you what's been marked for identification  
23 purposes is Def -- Exhibit 43, and I'll just move it up, so you can -- I  
24 handwrote my exhibits, and it's Bates stamped Simon evidentiary  
25 hearing 420. Is that your signature, sir?

1           A     Yes, it is.

2           THE COURT: And just one second. So, Mr. Christiansen,  
3 what you're showing him is a copy of what the Clerk has?

4           MR. CHRISTIANSEN: Yes, ma'am.

5           THE COURT: Okay. So, the Clerk has that?

6           MR. CHRISTIANSEN: Yes, ma'am.

7           THE COURT: Okay. Just making sure we have it. Okay.

8           MR. CHRISTIANSEN: So, Judge, just by way of  
9 housekeeping, the Clerk has a hard copy of all of our exhibits, with the  
10 exception of Exhibit 80, which is all of those.

11          THE COURT: Okay. That's 80. Okay.

12          MR. CHRISTIANSEN: And we gave you a CD of that. And I  
13 think we gave Mr. Vannah and Mr. Greene copies as well.

14          MR. GREENE: Correct, Your Honor.

15          THE COURT: Okay.

16          MR. GREENE: We have our exhibits also with the Clerk.

17          THE COURT: Okay. Okay.

18 BY MR. CHRISTIANSEN:

19          Q     Mr. Edgeworth, the date on this letter is November the 29th,  
20 2017, correct?

21          A     Correct.

22          Q     And the letters are signed by you and addressed to Mr.  
23 Simon?

24          A     Yes.

25          Q     By November the 29th, 2017, Danny Simon, who had been

1 representing you in the case, either in the claim stage or in the litigation  
2 against Lange Plumbing and Viking -- and there's some entities for  
3 Viking in front of them -- for about 18 months. May of '16 to November  
4 of 17.

5 A 18 months seems correct, if --

6 Q Okay.

7 A -- your math is right.

8 Q And up until this day, November the 29th, 2017, you had  
9 looked to Mr. Simon for advice as your lawyer, correct?

10 A Correct.

11 Q And what this letter says is it tells Mr. Simon that Mr. Vannah  
12 and Mr. Greene -- that you've retained Mr. Vannah and Mr. Greene to  
13 assist in the litigation with the Viking entities. Did I get that first part  
14 right?

15 A Correct, yes.

16 Q And then you instruct Mr. Simon to cooperate with Mr.  
17 Vannah and Mr. Greene in every regard concerning the litigation and any  
18 settlement. Did I get that part right?

19 A Correct.

20 Q You were also instructing Mr. Simon to give them complete  
21 access to the file and allow them to review whatever documents they  
22 request to review?

23 A Yes.

24 Q And, finally, you direct Mr. Simon to allow them to  
25 participate without limitation in any proceeding concerning our case,

1 whether it be at depositions, court hearings, discussions, et cetera. Is  
2 that right?

3 A That is correct.

4 Q Okay. And when you say our case, you mean the case  
5 Edgeworth Family Trust and American Grating v. Lange Plumbing and  
6 Viking?

7 A Yes.

8 Q Fair enough.

9 MR. CHRISTIANSEN: Move for admission of Exhibit 43, Your  
10 Honor.

11 THE COURT: Any objection to 43?

12 MR. GREENE: No, Your Honor. Actually, Jim, Mr.  
13 Christensen and our respective law firms agreed that any  
14 communications going back and forth from the clients to the lawyers and  
15 emails as well are all going to be admitted. We have no issue with the  
16 exhibits that we presented to each other, so I think --

17 THE COURT: Okay.

18 MR. CHRISTIANSEN: I'll move quicker. I'm sorry. I was  
19 unaware of that. Sorry, John.

20 MR. GREENE: No worries.

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: So maybe right now is a good  
23 administrative time to be able to move to admit the respective exhibit --  
24 exhibits, excuse me -- that the parties have presented to the Court at this  
25 time.

1 THE COURT: Okay. And I have Defense Exhibits 1 through  
2 86. But Mr. Christiansen said 80 is that. So, 1 through 86 is what I have  
3 here. And where's 87, 88, 89?

4 MR. CHRISTIANSEN: They're in the last book, Your Honor.  
5 They probably didn't make it to the cover page, because we had some  
6 extra exhibits --

7 THE COURT: Okay. You're right.

8 MR. CHRISTIANSEN: -- and then --

9 THE COURT: They're -- hold on. Let me see if there's  
10 anything. Yeah, I do have -- it just says 1 through 86 on the cover.

11 MR. CHRISTIANSEN: That's right.

12 THE COURT: But I have -- there's nothing under the -- okay. I  
13 have 1 through 89, and then Mr. Christensen just admitted 90.

14 MR. CHRISTIANSEN: That's the fee agreement.

15 THE COURT: So, you have no objection to 1 through 90, Mr.  
16 Greene?

17 MR. GREENE: Provided that we have a reciprocal consent or  
18 stipulation that our exhibits --

19 THE COURT: Right. And then yours --

20 MR. GREENE: -- 1 through 9 --

21 THE COURT: Yeah. I have --

22 MR. GREENE: -- are also to be admitted.

23 THE COURT: -- 1 through 9 on yours. Mr. Christiansen, do  
24 you have any objection to 1 through 9?

25 MR. CHRISTIANSEN: Judge. I think Jim talked to -- I think

1 Mr. Greene spoke to Mr. Christensen, and I --

2 THE COURT: Okay.

3 MR. CHRISTIANSEN: -- and I don't want to speak out of turn.

4 MR. GREENE: I -- let me hold forth on this one, Judge.

5 THE COURT: Okay. Mr. Christensen, do you have any  
6 objection to 1 through 9?

7 MR. CHRISTENSEN: We have no objection to 1 through 9  
8 with the exception of the piece of paper entitled, Howard & Howard fees.  
9 We're going to need some foundation for that.

10 MR. GREENE: Totally understood.

11 THE COURT: Which one?

12 MR. GREENE: There's a --

13 THE COURT: Oh, Howard & Howard fees --

14 MR. CHRISTENSEN: Yeah.

15 THE COURT: -- in Exhibit 9?

16 MR. GREENE: Correct.

17 MR. CHRISTENSEN: Yeah. It's part of 9.

18 THE COURT: Okay.

19 MR. GREENE: So, we'll hold that one in abeyance, Your  
20 Honor. We'll deal with that on direct exam.

21 THE COURT: So, we'll have 1 through 8 going on and then  
22 when we get to 9, we'll deal with 9 when you move for 9?

23 MR. GREENE: Just a portion of 9 has not been stipulated to,  
24 all but --

25 THE COURT: The Howard exhibit.

1 MR. GREENE: -- I think there are three pages of documents  
2 that deal with some fees that Brian will testify to that he's paid at two of  
3 the law firms.

4 THE COURT: Okay. So, we'll -- 1 through 8 and all of 9,  
5 except the Howard & Howard fees has been admitted. And then we will  
6 deal with the remainder of 9 when you get around to that with your  
7 client.

8 (Plaintiff's Exhibits 1-9 (except for Howard & Howard fees)  
9 received)

10 (Defendant's Exhibits 1-90 received)

11 MR. GREENE: Okay. Thank you, Judge.

12 THE COURT: Okay?

13 MR. CHRISTENSEN: That's fine with us, Your Honor.

14 THE COURT: Thank you.

15 MR. CHRISTIANSEN: Judge, maybe the last sort of  
16 housekeeping matter. I spoke to Mr. Vannah and Greene beforehand  
17 and for the sake of expeditiously moving through everything, we agreed  
18 we would both try to get witnesses completed in their entirety, even  
19 though it might be out of order or whatever. So, they'll finished with Mr.  
20 Edgeworth when I'm done and --

21 THE COURT: Okay. Rather than recall him when it's your  
22 turn?

23 MR. GREENE: Yeah.

24 THE COURT: Oh, perfect. Okay.

25 MR. CHRISTIANSEN: I think I got everything, Judge.

1 THE COURT: Okay.

2 MR. CHRISTIANSEN: All right.

3 BY MR. CHRISTIANSEN:

4 Q Now, the Lange case. I want to talk to you about the Lange  
5 case. You have an understanding about the claims that were sort of  
6 derivative in nature that you could have been reimbursed for, should you  
7 have prevailed against the Lange Plumbing Defendant, correct?

8 A I'm sorry. I'm not sure I understood your question.

9 Q Okay. Lange was the plumber that installed the Viking  
10 sprinkler in your house?

11 A Yes.

12 Q Lange and you had a contract?

13 A Correct.

14 Q Under the terms of the contract, which you're very familiar  
15 with, fair? You understand the terms?

16 A Yes.

17 Q Lange, if it failed to pursue a warranty on your behalf and  
18 you had to go do that on your own, like you hired Danny to do, then you  
19 could seek your attorney's fees as reimbursement from Lange?

20 A Yes, that's my understanding. Yes.

21 Q You understood that from talking to Danny.

22 A That's correct. That's what my lawyer told me.

23 Q I'm sorry. I should say Mr. Simon. I apologize. You  
24 should -- you understood that from talking to your lawyer for 18-ish  
25 months, Mr. Simon?



1 A Yes.

2 Q Okay. And then on the 29th of November 2017, you hired  
3 Vannah & Vannah. That's Exhibit 90, the fee agreement we just looked  
4 at.

5 A Yes. I hired them.

6 Q And Vannah & Vannah took over advising you relatively to  
7 the Lange claim, correct?

8 A They provided advice. That's not what they were retained  
9 for.

10 Q Well sir, you quit talking to Mr. Simon after November the  
11 29th, you told me, right?

12 A Correct.

13 Q All right. And you didn't stop -- you continued  
14 communicating with these nice gentlemen?

15 A Correct.

16 Q All right. And they were advising you, as we read, about  
17 things like the settlement, correct?

18 MR. GREENE: Objection, Your Honor. That is -- it's attorney  
19 client privilege of what he retained us to do, in what turned into a slight  
20 adversarial proceeding. So, again, we're going into notes. Like you've  
21 already ruled on before, they're allowed to see our fee agreement.

22 THE COURT: Right.

23 MR. GREENE: But to go into discussions that we had; I think  
24 that's beyond the purview.

25 MR. CHRISTIANSEN: Judge, they -- number one, Mr. Vannah

1 signed, in open court, that settlement in your courtroom with Lange.

2 THE COURT: I remember.

3 MR. CHRISTIANSEN: So, it's nothing that's privileged. They  
4 gave a consent to settle, which Mr. Vannah provided to us, that's -- that  
5 talks about what they advised him on. I'm just talking about that same  
6 stuff.

7 MR. GREENE: I think our issue is what was discussed. It's  
8 not --

9 THE COURT: Oh, and I'm fine with not getting into what was  
10 discussed --

11 MR. CHRISTIANSEN: I'll rephrase. I apologize.

12 THE COURT: -- but I think the issue of the constructive --

13 MR. CHRISTIANSEN: Discharge.

14 THE COURT: -- discharge. I'm sorry. The issue of  
15 constructive discharge is an active issue in this case, so whether or not  
16 Vannah's office advised him in what to do in the Lange settlement is  
17 absolutely relevant, because that came after you guys were already in.  
18 We all did that right here in this courtroom. So in regards to specifics of  
19 what you guys talked to, that's not going to be allowed, Mr. Christiansen.

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 THE COURT: But with regards to who advised him in the  
22 Lange settlement, that's absolutely relevant, and I'm going to allow Mr.  
23 Christiansen to ask him questions about that.

24 MR. GREENE: Thank you.

25 BY MR. CHRISTIANSEN:

1 Q So, Mr. Edgeworth, I'll try to phrase my questions consistent  
2 with the Court's order. From the time you hired Vannah & Vannah in  
3 Exhibit 90, which is the 29th day of November 2017, until you settled  
4 with Lange, in that window, you never spoke verbally to Danny Simon,  
5 correct?

6 A In some window. I'm not positive that the window you're  
7 making is the window.

8 Q Okay. Did you email Mr. Simon between the 29th and the  
9 settlement with Lange?

10 A I would think so.

11 Q Did you ask Mr. Simon for legal advice about the settlement  
12 with Lange?

13 A That was provided through my lawyers.

14 Q Through Vannah & Vannah?

15 A No. Simon told them. They told me.

16 Q So the answer is you only talked to Vannah & Vannah -- I  
17 don't want the substance -- not Danny Simon, between the time you  
18 hired Vannah & Vannah, and you settled with Lange?

19 A Yeah.

20 Q Fair?

21 A They spoke with Simon and --

22 Q Sir, I just asked you a question. Is that a fair statement?

23 THE COURT: Sir, he's asking you did you speak directly to  
24 Mr. Simon via email -- and I'm concerned. I want to know did you talk to  
25 him via email? Did you call him? Did you text him? Did you have any

1 communication directly between you and Mr. Simon from the date you\  
2 hired Mr. Vannah's office to the date we all signed the Lange settlement  
3 agreements right here?

4 THE WITNESS: Yes, we did.

5 THE COURT: Okay.

6 BY MR. CHRISTIANSEN:

7 Q You talked to him?

8 A I'm sorry. You asked one question, but then the Judge asked  
9 me if I had emailed with Mr. Simon between the date of -- Vannah &  
10 Vannah -- the 29th and later and the answer is yes.

11 THE COURT: You personally?

12 THE WITNESS: Me personally.

13 THE COURT: Okay.

14 BY MR. CHRISTIANSEN:

15 Q Did you -- is it true you did not verbally talk to him? I want to  
16 make sure I'm getting it accurate.

17 A He left me a voicemail.

18 Q But you didn't verbally talk to him?

19 A No. I listened to the voicemail.

20 Q And you were relying on legal advice provided you from  
21 Vannah & Vannah in terms of the Lange settlement? I'm just talking  
22 about that.

23 A They were communicating what his legal advice was,  
24 correct?

25 THE COURT: Who was he?

1 BY MR. CHRISTIANSEN:

2 Q Who was --

3 A The Vannah -- John -- Mr. Greene and Mr. Vannah  
4 communicated to me what Mr. Simon communicated to them about his  
5 advice to proceed in the Lange settlement.

6 Q Okay. Well, let's talk about Mr. Simon. And can we agree,  
7 Mr. Edgeworth, that Mr. Simon's view on what to do with Lange was  
8 different than the Vannah & Vannah lawyer's view with what to do with  
9 Lange?

10 A Yes.

11 Q Different sets of advice. Can we agree on that?

12 A Yes.

13 Q Ultimately, you decided to do what Mr. -- what the Vannah &  
14 Vannah Firm advised you of?

15 A Correct.

16 Q Okay. And that's reflected, sir, in what's now in evidence as  
17 Exhibit 47, which is the consent to settle signed by yourself on December  
18 the 7th, and is that Mrs. Edgeworth -- that's your wife, sir?

19 A That's correct.

20 Q And it's on Vannah & Vannah letterhead, correct?

21 A Correct.

22 Q And this consent to settle reflects the Vannah & Vannah  
23 advice you were receiving in this time frame about what to do with  
24 Lange, correct?

25 A Not all of it, but it does reflect --

1 Q It does --

2 A -- some of their advice, correct.

3 Q It -- it's inconsistent with the advice Mr. Simon was giving to  
4 you about what to do with Lange, correct?

5 A Correct.

6 Q So you chose to disregard Mr. Simon's advice and listen to  
7 these nice gentlemen here?

8 A Correct.

9 Q All right. And, specifically, what you say is EFT, that's the  
10 Edgeworth Family Trust; is that right?

11 A Correct.

12 Q And American Grating v. Lange?

13 A Oh, you're at the top, sir?

14 Q Yeah. I'm sorry, sir. I'm right here at the top.

15 A Oh, that's good. Yeah, if you do the finger, that's good.

16 Q Okay.

17 A Yeah. Yes.

18 Q And you can look at whichever one you want, Mr.  
19 Edgeworth. You don't have to --

20 A Well, this one is easier to read. That's easier to see.

21 Q Okay. This says you and your wife on behalf of the Trust and  
22 American Grating consent to settle all claims against Lange for the gross  
23 amount of \$100,000 minus sums owed to Lange pursuant to the  
24 contract?

25 A Correct.

1 Q All right. And that was -- that term of the settlement was not  
2 a term Mr. Simon advised you to enter into, correct? It was inconsistent  
3 with his advice about Lange.

4 A Correct.

5 Q Okay. And these are my highlights, Mr. Edgeworth, so I  
6 apologize for that. Don't take anything by them. It says, we  
7 acknowledge that our attorneys have advised us that by settling the  
8 outstanding claims with Lange, we will be waiving all claims for  
9 attorney's fees, including any contingency fee that a court may award to  
10 the Law Office of Danny Simon.

11 Did I read that correctly?

12 A Yes.

13 Q And before you signed this, did you read it?

14 A Yes, I sure did.

15 Q So you know -- you knew back in December the 7th from  
16 listening to your Vannah & Vannah that a court could award Mr. Simon a  
17 contingency fee, correct?

18 A Pardon me? I'm sorry --

19 Q I just --

20 A -- I thought you were going to keep reading, and then --

21 Q Okay.

22 A -- I got confused.

23 Q Well, look up here at me. I'm sorry. That's all right. You  
24 knew from the sentence I just read that a court could award Mr. Simon a  
25 contingency fee award, correct? That's right in the -- I just read it.

1           A     I suppose it's possible.

2           Q     And you chose to settle the Lange case pursuant to the  
3 Vannah & Vannah advice?

4           A     Correct.

5           Q     All right. And what -- it goes down here a little bit. And I'm  
6 just looking at my highlight, Mr. Edgeworth, so you can follow along,  
7 that you acknowledge that Mr. Vannah has also explained that to  
8 continue to litigate with Lange is economically speculative, as we've  
9 already made more than whole with the settlement with the Viking  
10 entities, and Lange may be legally entitled to an offset for the amount of  
11 the settlement paid to us by Viking.

12           Did I read that correct?

13           A     Yes.

14           Q     And so, you agreed when you signed this with Mr. Vannah's  
15 assessment that Danny Simon's representation had made you more than  
16 whole, correct?

17           A     I'm not sure what you mean by more than whole.

18           Q     Well, this is a document you signed sir, not me. It said, we  
19 have already been made more than whole with the settlement against  
20 Viking. Did I read that correctly?

21           A     Yes.

22           Q     And Danny Simon effectuated the settlement against Viking,  
23 correct?

24           A     Effectuated?

25           Q     He was your lawyer --



1           A     Correct.

2           Q     -- that obtained a --

3           A     He was my lawyer --

4           Q     -- \$6 million settlement, yes?

5           A     Correct.

6           Q     And that settlement, according to Mr. Vannah, and you made  
7 you more than whole?

8           A     Correct.

9           Q     And you chose in this consent to settle, to listen to Vannah &  
10 Vannah, and they had advice. I'm not saying right, wrong or indifferent,  
11 but that advice was different than Danny Simon's advice relative to  
12 Lange?

13          A     Correct.

14          Q     All right. After you settled with Lange -- and this in the -- sort  
15 of over the holiday times, right. It's like about the Thanksgiving, getting  
16 into Christmas, the times where the settlements are getting done and  
17 people are getting checks and the like?

18          A     Can you define what settled means? Does it mean when  
19 they give us the offer, when they send over the --

20          Q     Sure. That's actually a fair question, sir. Let me see if -- I'll  
21 be more specific, okay? You sued Danny Simon. Mr. Vannah sued  
22 Danny Simon on your behalf, January the 4th, 2018?

23          A     Correct.

24          Q     That's about three days shy of a month from when Mr.  
25 Vannah advised you to settle with Lange?

1           A     Correct.

2           Q     And when you sued Mr. Simon, the check for the Viking  
3 money had not been deposited in a bank, correct?

4           A     Correct.

5           Q     Ultimately, Mr. Sim -- Mr. -- sorry -- Mr. Vannah and Mr.  
6 Christensen made an agreement where they were going to open a joint  
7 trust type of an account, Danny and -- I'm sorry -- Mr. Simon and Mr.  
8 Vannah. Those checks would be -- that check -- \$6 million check would  
9 be deposited there. Fair?

10          A     You're wrong. There's two checks. You're right, but you  
11 said that check, the one check. There's two checks.

12          Q     You're right. Thank you for correcting me. Technically -- the  
13 checks totaling \$6 million. One was from Viking, right, or its insurance  
14 company?

15          A     They were from Zurich Insurance, correct.

16          Q     And they totaled 6 million bucks? Before the --

17          A     I have a confidentiality --

18          Q     -- Lange settlement.

19          A     -- agreement about the size of the settlement that I signed.

20               MR. GREENE: I'm sorry, Your Honor. That's kind of an issue  
21 that he's facing. They signed a confidentiality agreement to the amount.  
22 I know that it's just kind of a sticking point with them, so --

23               THE COURT: Okay. Well, this Court is aware of what the  
24 amount is, as I was involved in the settlement. It was \$6 million.

25               THE WITNESS: Correct.

1 THE COURT: So, we can go forward.

2 THE WITNESS: So, I can --

3 THE COURT: I mean, you can abide by your confidentiality  
4 agreement, but I mean, in regards to what the amount is, I mean, I'm  
5 aware of what the amount was.

6 MR. CHRISTIANSEN: Judge, I could be wrong, but there is  
7 no confidentiality agreement as to the Viking settlement. Mr. Simon  
8 negotiated that away.

9 MR. GREENE: As to the amount?

10 MR. CHRISTENSEN: It doesn't exist, right?

11 THE COURT: There's a -- I mean, I was not aware, because I  
12 was here when they brought in the documents and everything on the --  
13 so is there a settlement agreement about the amount? I mean, a  
14 confidentiality agreement? Because I'm not aware of that.

15 THE WITNESS: That's what Ms. Pancoast sent over in the  
16 letter on November 15th, that the confidentiality would be limited to the  
17 settlement amount.

18 THE COURT: Well, I mean, this Court can take judicial notice  
19 of the \$6 million, because, also, it's interesting that that would be  
20 brought up as confidentiality, because it's all littered through these briefs  
21 like there's no tomorrow.

22 So, I'm not really sure, if he's under a confidentiality  
23 agreement, why this office wouldn't be under a confidentiality  
24 agreement, and Mr. Simon clearly didn't know about it, because it's in  
25 these briefs about 800 times that this was \$6 million. And so, I'm very

1 well aware that this was a \$6 million settlement, and you guys have been  
2 writing about it for eight months.

3 So, I mean, sir, you can answer the question, because it's out  
4 in the open that this settlement was \$6 million.

5 BY MR. CHRISTIANSEN:

6 Q So where were we, Mr. Edgeworth, before we -- others  
7 started helping me understand facts that I'm probably not as fluent in as  
8 I should be, is that the lawsuit filed by you against Danny Simon -- filed  
9 by Mr. Vannah on your behalf against Danny Simon was January the  
10 4th, 2018, correct?

11 A Yes.

12 Q And so, you don't have to take my word for it.

13 MR. CHRISTIANSEN: That's Exhibit 19, John.

14 THE COURT: Did you say 19, Mr. Christiansen?

15 MR. CHRISTIANSEN: 19, Your Honor.

16 BY MR. CHRISTIANSEN:

17 Q That's Mr. Vannah and Mr. Greene on your be -- on behalf of  
18 your entity suing Daniel Simon?

19 A Yes.

20 Q And so, you know, I'm being square with you about the date.  
21 It's up there in the right corner. It's January the 4th.

22 A I agree.

23 Q Okay. So, you hadn't verbally spoken to Danny since before  
24 November the 29th, and then you sued him January the 4th, after you  
25 settled the Lange claims, pursuant to Mr. Vannah's advice. Fair?

1           A     Did we settle the Lange before the 4th? Because you guys  
2 didn't --

3           Q     You signed the consent to settle. Remember, I just showed  
4 you.

5           A     Oh, the consent to settle. I thought you said the settlement.

6           Q     All that is fair chronologically --

7           A     Correct.

8           Q     -- for you so far?

9           A     Right. Yes. Yeah.

10          Q     Okay. And when you sued Danny Simon, the checks for the  
11 Viking settlement hadn't even been negotiated. In other words, put into  
12 a bank account?

13          A     Correct.

14          Q     Ultimately, that happened, I think about ten days later,  
15 pursuant to Mr. Vannah and Mr. Christensen having an agreement?

16          A     Correct.

17          Q     All right. So, you quit taking Mr. Simon's advice the end of  
18 November, settled with Lange the 7th of December, and then sued  
19 Danny Simon for his representation of you in the Edgeworth v. Viking  
20 lawsuit January the 4th, fair?

21          A     No. Parts of your sentence are fair, and parts aren't. I didn't  
22 quit taking advice from Mr. Simon.

23          Q     What day did --

24          A     I listened to it.

25          Q     No, you didn't. You just told the Judge you disregarded

1 Danny's advice relative to Lange, and you listened to Vannah & Vannah.  
2 Do you remember telling her that?

3 A I listened to both advices, sir.

4 Q But you followed theirs.

5 A Okay, then I would agree with that statement.

6 Q Okay.

7 A But you didn't say that, sir.

8 Q You didn't follow Danny's advice?

9 A I did not take his advice, correct.

10 Q And then you turned around and sued him January the 4th?

11 A Correct.

12 Q And you sued him for his representation of you in getting the  
13 \$6 million settlement, correct?

14 A I'm sorry?

15 MR. GREENE: Misstates the plain nature of the text of the  
16 complaint, Your Honor. It's not -- he didn't sue his representation of him.  
17 He sued based upon his conduct during the representation, not the way  
18 he was represented.

19 MR. CHRISTIANSEN: I'll rephrase to try to placate Mr.  
20 Greene, Judge, if the Court would allowed me.

21 BY MR. CHRISTIANSEN:

22 Q You sued Danny, arising out of his representation of you?

23 A Well, what he said to us, correct.

24 Q Okay. And you sued him, just chronologically --

25 A Uh-huh.

1 Q -- I just mean in time, before the settlement checks with  
2 Viking had even been deposited?

3 A Correct.

4 Q All right. And you heard Mr. Vannah give an opening  
5 statement today, sir?

6 A Yes.

7 Q Do you recall how he told the Court he wasn't involved in  
8 any of the settlement negotiations?

9 A I don't recall that. I'm sorry. I don't recall everything he said.

10 Q We just -- you and I can agree that he was the one advising  
11 you of the Lange settlement, because you signed on his letterhead to  
12 consent to settle December the 7th.

13 A He advised me why to do that, yes.

14 Q And I have your settlement agreement.

15 MR. CHRISTIANSEN: Which is Exhibit 5, John. And I'm  
16 looking at page 4, Mr. Greene.

17 BY MR. CHRISTIANSEN:

18 Q This is the settlement agreement with Viking?

19 A You just asked about Lange, sir. The --

20 Q I did.

21 A Okay.

22 Q Now, I'm shifting gears. I want to talk to you about Viking,  
23 too, because if you see paragraph E -- do you see that, sir?

24 A Yes, I do.

25 Q Who's the lawyers that advised you? Right in the document

1 you signed about settling with Viking?

2 A It says Robert Vannah, Esquire and John Green, Esquire.

3 Q Show me where it says Danny Simon.

4 THE COURT: This is the Viking settlement?

5 MR. CHRISTIANSEN: It is.

6 THE COURT: Okay.

7 BY MR. CHRISTIANSEN:

8 Q Go ahead.

9 A On the page that I'm looking at, the fractional page, I don't  
10 see it.

11 Q And is that your settlement? You and your wife's  
12 settlement? Sorry, signature?

13 A On the 1st of December, correct.

14 Q All right. So as early as December 1st, according to Exhibit 5,  
15 you were not relying on Danny Simon's advice, but instead relying on  
16 the advice of Vannah & Vannah when settling the Viking claims, correct?

17 A When signing contracts, correct.

18 Q Okay. And I think you've already told me that was the same  
19 situation about five or six days thereafter, when you signed that consent  
20 to settle with Lange on the Vannah & Vannah letterhead, right?

21 A They had advised me of other things than the settlement,  
22 yes.

23 Q Okay. And, sir, let's look at Exhibit 90 again. This is your  
24 retainer with Vannah & Vannah. Did you sign a separate retainer  
25 agreement for the lawsuit, where they sued Danny Simon for you?



1 A This is the retainer agreement.

2 Q I'm sorry?

3 A This is the retainer agreement.

4 Q Well, that's the retainer agreement for the case where you  
5 sued Danny Simon?

6 A Correct.

7 Q Okay. Let's look at the caption of the Danny Simon lawsuit  
8 and see if we can get some clarification. Exhibit 90 says that you are  
9 hiring -- client retains attorneys. I'm looking at the second paragraph,  
10 sir. Here. I'll put my finger on it.

11 A I see, yes.

12 Q To represent him as his attorneys regarding Edgeworth  
13 Family Trust and American Grating et al. v. Viking -- all Viking entities, all  
14 damages, including, but not limited to, and it goes on, correct?

15 A Correct.

16 Q Show me the fee agreement that says -- or show me in here  
17 where it says -- and I'll just show you the title. This is Exhibit 19. This is  
18 your lawsuit against Danny Simon. It's called Edgeworth Family Trust  
19 and American Grating v. Daniel Simon. Where is that in Exhibit 90?

20 A Where is what, sir?

21 Q The fee agreement for the new lawsuit.

22 A What do you mean? I don't understand your question.

23 Q Sure. This fee agreement is for the lawsuit Danny had been  
24 your lawyer on for 18 months, correct?

25 A No.

1 Q It's not?

2 A No. This fee agreement was signed -- am I allowed to say?

3 Q Mr. Edgeworth, don't look at them for answers. Just --

4 THE COURT: Okay, sir. You can't ask them any questions.

5 THE WITNESS: Oh, I'm sorry.

6 THE COURT: You have to answer Mr. Christiansen's

7 question.

8 BY MR. CHRISTIANSEN:

9 Q So sir --

10 A I retained --

11 Q -- just read right here. Edgeworth Family Trust and American  
12 Grating v. all Viking entities. That's the case Danny was your lawyer on  
13 for 18 months, correct?

14 A Correct.

15 Q That's different, do you agree with me, than the case entitled  
16 Edgeworth v. Danny Simon?

17 A Yes.

18 Q And do you agree with me there is no retainer agreement  
19 for --

20 A No, I do not.

21 Q -- Vannah -- or Edgeworth v. Danny Simon contained in  
22 Exhibit 90?

23 A No, I do not.

24 Q Do you see a cap -- do you see Edgeworth v. Danny Simon?

25 A No, I do not see that.

1 Q It's not in there, right?

2 A No.

3 Q All right. And during this time, where you come into court --  
4 we had a bunch of court hearings. Were you present during those court  
5 hearings?

6 A I went to two court hearings during the entire case.

7 Q February 6, 2018 and February 20th, 2018?

8 A Maybe one of those. I went two hearings over the entire 18  
9 months, I believe.

10 Q All right. Sir, can we agree that once you sued Danny Simon,  
11 you no longer were looking to him for legal advice?

12 A I expected him to complete his job.

13 Q That's not my question to you. My question is can we agree  
14 that since you're not verbally communicating with him, you listened to  
15 advice from a different office that's inconsistent with his advice, and you  
16 sued him, and that you have effectively stopped listening to his advice?

17 A No.

18 Q No?

19 A No.

20 Q You just think you can sue lawyers and make them work for  
21 free?

22 A No.

23 Q Well, that's what you put in your affidavit is that Danny was  
24 paid in full as of September of 2017, and you expected him to finish what  
25 you paid him for?

1 A Correct. I did expect him to finish what he was paid for.

2 Q But I thought, sir, you were paying him an hourly rate.

3 A Correct.

4 Q So he was supposed to work those hours for free?

5 A No.

6 Q Sir, you put three different times he was paid in full in  
7 September of 2017.

8 A He was paid in full for every bill he submitted, correct.

9 Q But you expected him to finish the job while you were suing  
10 him?

11 A Yes.

12 Q For free?

13 A No.

14 Q Okay. When -- you're going to pay him?

15 A If he submitted a bill, correct.

16 Q See, that's what I'm trying to figure out, Mr. Edgeworth.

17 What was this agreement you think you had with Mr. Simon? Because  
18 what you put in your affidavits, all of them, is that Mr. Simon was paid  
19 for the hours he captured and put in his will. Captured is my word, not  
20 yours. Right?

21 A Yes, he was paid for all his time.

22 Q But you know darn good and well and have from the outset  
23 of talking to your friend, Danny Simon, who to quote you was going to  
24 do it as a favor, that he wasn't putting all his time in those bills. You  
25 know that?

1           A     No.

2           Q     Sir, you just told the Court Danny took the case as a favor.  
3 Do you remember that?

4           A     Yeah, and a week later, he started billing me.

5           Q     And you -- a week later, he started billing you?

6           A     Yeah. On June 10th, when it became clear that he had to file  
7 a lawsuit, because they weren't going to agree, he phoned me and told  
8 me he was going to incur a bunch of costs and that he would need to  
9 start billing me \$550 an hour, which was his board approved rate, and I  
10 would get it back when I won from the Lange parties and the 550 was  
11 based on his experience in litigation and everything else and was  
12 approved by judges.

13          Q     So now that conversation took place June the 10th. Is that  
14 what your testimony is?

15          A     It always took place June the 10th.

16          Q     No. In all three of your affidavits, it took place at the outset  
17 of your retention, which was May the 27th. We've already determined  
18 that.

19          A     The outset --

20          Q     Sir -- sir --

21          A     -- of the case.

22          Q     -- did you put the --

23               MR. GREENE: May he answer the question, Your Honor? He  
24 just cuts him off.

25               MR. CHRISTIANSEN: It's leading, and it's permissible.

1 THE COURT: Okay. Mr. Christiansen, I want to know what  
2 the answer to this question is, so, sir, answer the question.

3 THE WITNESS: Danny met with me at the 28th at Starbucks  
4 and took the case. He said --

5 THE COURT: 28th of May?

6 THE WITNESS: 28th of May 2016. I emailed him on the 27th  
7 of May 2016, to see if he could help me out with this thing, because  
8 everyone said it's a slam-dunk. They have to pay. They're all liable.  
9 There's a contract, everything else. They're just yanking you around. I  
10 reached out to him. He agreed to meet with me. We met at Starbucks. I  
11 gave him a summary of all the entities involved and who's who, et  
12 cetera. We talked about it.

13 He said that he would write a few letters, which is why when  
14 you asked me when was he retained, he sent letters to these other  
15 people who was Kinsale at the time, Viking, someone else, saying that I  
16 had retained him. That's what the letters said. They were like retention  
17 letters. Then they blew him off back and forth a little bit. Around, I  
18 believe it was the 9th of June, he said they aren't going to settle. They  
19 aren't going to do it. We need to file a lawsuit against them. This is  
20 going to start costing me some money.

21 And he gave me the whole pitch, and I agreed. I said I  
22 accept. That's fine. And on the Tuesday -- that's on a Friday. On the  
23 Tuesday, he filed a lawsuit on June 14th against these entities. It's as  
24 simple as that. That should clarify it.

25 Q Okay. Did I allow you to complete that answer?

1 A I believe so.

2 Q Okay. So, it is true that on May the 27th or the 28th at  
3 Starbucks, Danny never told you his fee was 550 an hour?

4 A No.

5 Q No, he did or no he didn't?

6 A I'm sorry. I'm getting flipped with the way you asked the  
7 question.

8 Q Okay.

9 A No, he never told me that date that his fee -- of May 27th or  
10 28th, that his fee was 550 an hour.

11 Q Nor did he ever tell you his associate's fee was 275 an hour?

12 A Correct.

13 Q And sir, you didn't get a bill from an associate until 14  
14 months after Mr. Simon was retained by you according to your  
15 affidavits. Is that fair?

16 A Likely. I'd need to review the bills to be positive, but likely.

17 Q Okay. You're a smart guy, right? Harvard MBA?

18 A I assume so.

19 Q Got lots of lawyers, right?

20 A What do you mean, lots of lawyers?

21 Q You've hired -- for -- I'll give you a simple example. You  
22 hired a lawyer as an expert in this -- in the underlying case, correct?

23 A Under the advice of my lawyer, yes, I did.

24 Q All right. You hire lawyers. I mean, you have businesses, I  
25 think in China, correct?

1 A Yes.

2 Q All right. You've dealt with lawyers in your life, correct?

3 A Yes, I have.

4 Q In the underlying case, you hired a guy named Crane  
5 Pomerantz, former United States Attorney?

6 A Correct.

7 Q To opine about the conduct of one of the defendants, fair?

8 A I think the scope was broader, but correct, he was hired.

9 Q And can we agree that Mr. Simon never presented you an  
10 hourly retainer fee agreement?

11 A No, he never presented me one.

12 Q And you know what those look like, right?

13 A Somewhat, yes. They look --

14 Q I'll show you --

15 A -- different.

16 Q -- Exhibit 62 and that's your signature, Mr. Pomerantz'  
17 signature. Crane works over at Sklar Williams. Dated September 6,  
18 2017. Fair?

19 A Fair.

20 Q It's an hourly retainer, where it talks about you having to  
21 advance costs, right?

22 A I don't think I advanced Crane costs. He bills me for them in  
23 arrears.

24 Q Monthly?

25 A I don't think he billed monthly, either. He didn't send me the



1 bills, he sent them to Simon.

2 Q Generally monthly? See where I've got my finger?

3 A Maybe they wrote down their agreement. I don't know if  
4 they billed monthly or not. You could find out, because it would be in  
5 the case file.

6 Q When you're late, you have to pay him interest?

7 A Okay.

8 Q Nothing like this was ever presented to you by Mr. Simon,  
9 fair?

10 A Nothing like that was ever presented to me by Mr. Simon.

11 Q And other than yourself and this June phone call, which by  
12 the way, in any of the three affidavits you signed, do you talk about a  
13 June 10th phone call, where Danny told you his rate was 550 an hour?

14 A I don't know.

15 Q What do you mean you don't know?

16 A I don't think so.

17 Q I'm sorry?

18 A I didn't reread these before the case, sir. I'd be more than  
19 happy to read them now and tell you positively. I don't think so.

20 Q You don't think so. So, that's new testimony here mid-  
21 August\ 2018, if it's not in your affidavits.

22 A Okay.

23 Q Correct?

24 A Correct.

25 Q Okay. Because --

1 A Unless it's been --

2 Q Unless what?

3 A Unless it's been presented, and one is -- something that  
4 John's written. I don't know.

5 Q Okay. Well, you -- I'll show you your affidavit. This is your  
6 first one. Oops, sorry.

7 MR. CHRISTIANSEN: It's -- sorry, John, 16 -- Exhibit 16.

8 BY MR. CHRISTIANSEN:

9 Q It is dated the 2nd of February 2018. Is that right?

10 A Correct. I see it down there.

11 Q See my finger again?

12 A Yeah.

13 Q All right. And that's your signature?

14 A Correct.

15 Q Let's just look right above here. You just told the Judge you  
16 didn't think Mr. Simon should have to finish your work for free.  
17 Remember that? Remember just testifying to that?

18 A Yes.

19 Q Let's look at paragraph 21. We're not thrilled to have him as  
20 an attorney, but we don't want to pay more than we've already had to  
21 pay to get someone else up to speed. Plus, we've already paid nearly  
22 500,000 to Simon and his change of heart and fee only came about when  
23 the claims in the litigation were, for all intents and purposes, resolved.  
24 Since we've already paid him for this work to resolve the litigation, can't  
25 he at least finish what he's been retained and paid for?

1 Did I read that correctly?

2 A Correct.

3 Q So in this paragraph, under oath, you claim that finishing up  
4 the litigation is something you've already paid Danny in full for, correct?

5 A That doesn't say that.

6 Q He's been retained and paid for. It absolutely says that.

7 A Since we've already paid him for this work to resolve the  
8 litigation, can he at least finish what he's been retained and paid for?

9 Q You've already paid him is what you're telling the Judge  
10 when you --

11 A For all the work he's done to that point.

12 Q Can't he just finish what he's been retained and paid for?  
13 That's what you told the Judge in this affidavit, right?

14 A Correct.

15 Q Okay. That's inconsistent with what you just told me a few  
16 minutes ago, which was that you were still willing to pay Danny.

17 A I don't think it's inconsistent.

18 Q All right. Let's look, sir, if you would --

19 MR. CHRISTIANSEN: -- I'm looking at page 1 of Exhibit 16,  
20 Mr. Greene.

21 BY MR. CHRISTIANSEN:

22 Q Line 3 says, on or about May 27th, on behalf of -- I, on behalf  
23 of Plaintiffs, retained Simon.

24 Did I get that correct?

25 A Correct.

1 Q And if I go down to paragraph 6, it says, at the outset of the  
2 attorney-client relationship, Simon and I orally agreed Simon would be  
3 paid for his services by the hour at an hourly rate of 550. Did I read that  
4 correctly?

5 A Correct.

6 Q That's inconsistent with your testimony today, correct?

7 A I don't think it is.

8 Q Okay. You didn't know what outset meant when you wrote it  
9 back then?

10 A I didn't write it. I signed it, but I don't think it's inconsistent,  
11 regardless.

12 Q Okay. You go on to say, for example, Simon billed us at 550.  
13 His associate billed us at 250 -- 275 --

14 A 275.

15 Q -- an hour. You didn't know Danny Simon was going to  
16 charge you 275 an hour until 14 or 15 months after you retained him,  
17 right?

18 A Correct.

19 Q So, you never had an agreement with Danny Simon about  
20 his associate's bill from the outset of your litigation. That's a fantasy,  
21 correct?

22 A Correct.

23 Q All right. And to imply or tell the Court that you did is very  
24 similar to saying what you did on page 1, that from the outset, Danny  
25 Simon told you he was 550 an hour, right? That's a fantasy, too, because

1 the outset was May 27th or May 28th, right?

2 A That's incorrect.

3 Q Sir, I didn't write these, and I didn't sign them.

4 A Okay.

5 Q Right? You said you retained Danny May 27th, right?

6 A Correct.

7 Q Then you said at the outset, he told you his fee was 550 an  
8 hour and that's what you agreed to, correct?

9 A Correct.

10 Q That's a fantasy. That's not true, correct?

11 A No, it's not. That's ridiculous. The -- it's --

12 Q Mr. Edgeworth --

13 A -- a 24-month case. You're trying to define the outset as one  
14 day and not one week later. It's a general term.

15 Q Sort of like when you write all these affidavits saying that he  
16 told you his associate was going to bill you at 275 an hour, and then hit  
17 the stand and agree in front of Her Honor that you never knew that until  
18 14 or 15 months after he was retained?

19 MR. GREENE: Your Honor, these questions have been  
20 asked --

21 THE WITNESS: Is that a question, sir?

22 MR. GREENE: -- and answered.

23 MR. CHRISTIANSEN: It is.

24 THE COURT: Hold on --

25 THE WITNESS: No.

1 THE COURT: -- sir.

2 THE WITNESS: Is there a question on the end of it?

3 THE COURT: Hold on, Mr. Edgeworth.

4 THE WITNESS: Sorry.

5 MR. GREENE: Your Honor, this is like the fourth or fifth time  
6 this question has been asked and answered. It just keeps getting asked,  
7 Your Honor. We'd ask that he be asked to move on.

8 THE COURT: Well, I mean, he said that 275 was never told to  
9 him until 14 months later, Mr. Christiansen. He's already acknowledged  
10 that, so we can ask another question.

11 MR. CHRISTIANSEN: Okay.

12 BY MR. GREENE:

13 Q Other than yourself, Mr. Edgeworth, did anybody else hear  
14 Danny Simon tell you his rate was 550 an hour at the outset?

15 A I don't know if anybody was on the phone at his end.

16 Q Anybody on your end on the phone?

17 A No.

18 Q Did you record it?

19 A No.

20 Q There's -- Mr. Christensen had some estimation for pages of  
21 emails over here.

22 A How many pages?

23 Q A lot more than I felt like reading this weekend, I can tell you  
24 that much. Did you find a single email from yourself confirming that  
25 rate?

1 A I didn't look through the emails, sir.

2 Q Can you point me to a single email confirming that rate?

3 A Yeah, Danny Simon emailed me bills constantly.

4 Q That's not what I asked you, sir. I asked you can you point  
5 me to an email of yours confirming the rate of Danny Simon at 550 an  
6 hour from the outset of this litigation that you told the Judge he took as  
7 a favor?

8 A I don't know. I'd have to look.

9 Q So, is that a different way of saying you've never been able  
10 to identify an email confirming that in writing?

11 A I guess so.

12 Q Okay. Getting a little out of order, which is making Ms. Ferrel  
13 nervous, but let's turn to paragraph 11. As I understand from listening to  
14 Mr. Vannah's opening statement this morning and from reading your  
15 affidavits, it's your contention that Danny -- or that you really did all the  
16 heavy lifting in the case that effectuated or made it worth 6 million bucks  
17 against Viking, correct?

18 A Definitely.

19 Q Okay. And sir -- and I mean this not in a pejorative sense, but  
20 you're not a lawyer, fair?

21 A No, I'm not a lawyer, sir.

22 Q You can't walk into a courtroom in the 8th Judicial District  
23 Court for the State of Nevada, County of Clark and make an appearance,  
24 correct?

25 A I don't know. Can I? I don't know.

1 Q You didn't make any court appearances?

2 A No, I did not.

3 Q Didn't argument any motions?

4 A No, I did not.

5 Q Didn't file any motions?

6 A No, I did not.

7 Q You didn't get any experts excluded?

8 A No, I edited those things, but I didn't file them.

9 Q You didn't get evidentiary hearings to strike answers

10 granted?

11 A No.

12 Q You didn't do any of that?

13 A No.

14 Q But your work is what made the case worth 6 million bucks?

15 A Correct.

16 Q Have you ever been qualified to testify as an expert on the

17 value of services rendered by a nonlawyer?

18 A No.

19 Q Right. Because you bill at like a buck-fifty an hour, right?

20 A No.

21 Q You were billing American Grating to be reimbursed for your

22 time, right?

23 A No, I billed during the remediation cleanup.

24 Q All right. How was -- what did you make an hour?

25 A Pardon me?



1 Q What were you billing at per hour?

2 A \$150 --

3 Q That's what I said. I'm sorry, I said buck-fifty.

4 A That's not what you said that I was doing. You said I billed  
5 on the case on \$150 an hour. Just to clarify what I billed on.

6 Q And in fact -- and if you want to look at what you think  
7 attorneys should be paid at, I mean, you're paying very fine lawyers, Mr.  
8 Greene and Mr. Vannah 975 bucks an hour, right?

9 THE COURT: 925, Mr. --

10 MR. CHRISTIANSEN: 925. Sorry. My eyes are terrible,  
11 Judge. I apologize.

12 THE WITNESS: Correct.

13 MR. CHRISTIANSEN: Mr. Vannah wishes it was 975.

14 MR. VANNAH: Probably should be, but I'm not trying to get  
15 quantum meruit here.

16 BY MR. CHRISTIANSEN:

17 Q Now, you're willing to pay lawyers to come sort of button up  
18 a settlement at 925 an hour, fair?

19 A When somebody threatens me, yes.

20 Q Okay. And that wasn't litigating a complex product case,  
21 fair?

22 A Pardon me?

23 Q Mr. Vannah and Mr. Greene didn't come in to litigate a  
24 complex products defect case. Isn't that true?

25 A They're litigating a pretty complicated case.

1 Q And for that they're fudging or disputing with you what Mr.  
2 Vannah's worth. You're willing to pay him 925 an hour?

3 A I had little choice.

4 Q And Mr. Greene as well?

5 A Correct.

6 Q And as I read your first affidavit, Mr. Edgeworth -- because  
7 you took it out of the second two -- in your first affidavit, you told Her  
8 Honor that the case blossomed in the fall of 2017, right?

9 A Late summer.

10 Q I'm sorry?

11 A Yeah, later summer, early fall.

12 Q That's not what you said. You said fall.

13 A Okay.

14 Q Did you say fall, or did you say summer?

15 A I don't know. Why don't we look? I'm not sure.

16 Q I mean, it's convenient today you're trying to make it  
17 summer, because in the affidavit, you said fall, right?

18 A Can I see the words, please?

19 Q Just tell me if you remember what you said.

20 A No, I do --

21 Q I'll show them to you.

22 A -- not remember.

23 Q All right. Paragraph 11, I think is the --

24 THE COURT: And which affidavit, is this Mr. Christiansen.

25 MR. CHRISTIANSEN: This -- the February 2nd one, Your

1 Honor, is Exhibit 16.

2 THE COURT: Okay.

3 BY MR. CHRISTIANSEN:

4 Q It says, s discovery in the underlying litigation neared its  
5 conclusion in late fall, 2017. Let's just stop right there. Was my memory  
6 accurate or yours? You said fall, right?

7 A Can you read back your question, please?

8 Q No. We can't. This isn't a deposition. We can --

9 A Yeah, I believe you said --

10 Q -- you can answer my question.

11 A -- as the case blossomed in the late fall of 2017.

12 Q Okay. We're going to get there.

13 THE COURT: And is that what the document says, sir?

14 THE WITNESS: That's not what he just read. He said as  
15 the -- if I read the document, it says, as discovery in the underlying  
16 litigation neared its conclusion in the late fall of 2017, after the value of  
17 the case blossomed from one of property damage of approximately half  
18 a million to one of significant.

19 It doesn't define when the case blossomed. You put that  
20 before --

21 BY MR. CHRISTIANSEN:

22 Q I didn't write it, man, you did.

23 THE COURT: Okay. So, sir, you dispute that you're saying  
24 that in this affidavit that the case blossomed in the fall of 2017?

25 THE WITNESS: Well, I don't know what he means by

1 blossomed. It really started --

2 THE COURT: Well, that's -- it says blossomed in this  
3 document. Are you looking at it right here. Are you disputing that --  
4 nowhere in there does it say summer. Would you disagree with that  
5 statement?

6 THE WITNESS: Correct.

7 THE COURT: Okay. Mr. Christiansen.

8 BY MR. CHRISTIANSEN:

9 Q All right. Sir, so we're clear, you and/or attorneys working on  
10 your behalf, not employed at Danny Simon's law office wrote this --

11 A Correct.

12 Q -- affidavit?

13 A Correct.

14 Q So to quarrel with me about the word fall or summer makes  
15 very little sense, since I didn't write it. Fair?

16 A Correct.

17 Q Okay. And you say the value of the case -- after the value of  
18 the case blossomed -- that's another term not chosen by me. It's just  
19 simply in your affidavit, correct?

20 A Correct.

21 Q And then you go on to say you wrote an email, right? The  
22 purpose of which was -- the purpose of the email was to make it clear to  
23 Simon and then it says, we'd never had a structured conversation about  
24 modifying the existing fee agreement from an hourly to a contingency  
25 agreement.

1 Did I read that correctly?

2 A Yes, you did.

3 Q Did you mean to say structured conversation?

4 A Oh yeah, I see the typo.

5 Q All right. Now, that email, sir, is dated August the 22nd,  
6 2017, correct?

7 A Correct.

8 Q That email -- is it written -- according to you -- your historical  
9 version of events contained in these affidavits, is that that email was  
10 written at a time after the case had blossomed, correct?

11 A Yes, it was.

12 Q Tell the Judge what the global offer was between all the  
13 Defendants, any of them, the day you wrote that letter? Did you have  
14 one --

15 A Which letter?

16 Q -- dollar on the table for you to accept the day you wrote the  
17 August 22nd email to Danny Simon about a contingency fee?

18 A No.

19 Q Not one dollar?

20 A No.

21 Q Had Mr. Simon filed -- been able to obtain a second 30(b)(6)  
22 deposition?

23 A I don't know what a 30 --

24 Q I know you don't. That's the point. Had Mr. Simon been able  
25 to have experts like Rosenthal [phonetic] precluded by the Court?

1 A By August 22nd?

2 Q Yeah.

3 A I'm not sure.

4 Q Had Mr. Simon moved for summary judgment against  
5 Lange?

6 A He moved for that, yes.

7 Q Before August 22nd?

8 A He --

9 Q I got the registered action, so if you want to bicker with me  
10 about dates --

11 A I'm not bickering with you, sir. I'm -- you're asking me about  
12 a specific date.

13 Q Yeah.

14 A If I'm not sure, I'm just telling you.

15 Q Okay. So, you don't know?

16 A I don't know.

17 Q All right. Had he moved to strike the answer of Viking?

18 A I don't know by that date.

19 Q Had he effectuated a protective order, so that you guys could  
20 receive a document dump from the Viking entities?

21 A I don't know if it was by that date. We did receive documents  
22 and some large dumps well before that date.

23 Q All right. And those documents were received -- when you  
24 told the Court or you heard Mr. Vannah say that you went out and did all  
25 this work, the documents that ultimately you and Mr. Simon's office

1 reviewed were an overwhelming majority of which came from these  
2 document dumps obtained in the litigation, correct?

3 A The key pieces of evidence. Some of it was there. Some of it  
4 was not, correct.

5 Q Okay. It wasn't your efforts that got those documents. It was  
6 Danny's, right?

7 A It was my efforts that got the documents.

8 Q Well, what did you file that got those documents? You're not  
9 a lawyer.

10 A I didn't file something to get documents. I found the  
11 documents.

12 Q No. You looked at documents. Ashley Ferrel put in a  
13 Dropbox link for you --

14 A Correct.

15 Q -- that were obtained by Danny Simon's law office as your  
16 lawyer, correct?

17 A Correct.

18 Q Okay. So, you didn't obtain the documents. Danny did.

19 A That's not exactly true. There was a whole bunch missing,  
20 which he said they weren't missing, and I kept demanding, which  
21 actually became the essential documents in the case, and he had to keep  
22 refiling and refiling and refiling to get the UL documents.

23 Q And those refiling and refiling and refiling, did you do any of  
24 that work?

25 A I edited a lot of the stuff, yes.

1 Q Did you sign any of the pleadings?

2 A No.

3 Q Did you go to court for any of the hearings?

4 A No, I did not.

5 Q Did you obtain favorable rulings on any of it?

6 A No, I did not.

7 Q That was all done by Mr. Simon?

8 A Correct.

9 Q On this case he took as a favor, right? That's what you said,  
10 not me.

11 A Wasn't a --

12 Q Yes or no?

13 A -- favor after half a million dollars of fees were paid.

14 Q Sir, you know, you've done that throughout your affidavits,  
15 and I want to call you on it right now. You haven't paid Danny Simon a  
16 half a million dollars in attorney's fees. That's another one of your  
17 fantasies, correct?

18 A No. What's a fantasy?

19 Q Fake, pretend.

20 A I paid him --

21 Q Conjured out of whole cloth.

22 A I've paid him \$560,000.

23 Q How much in attorney's fees, sir? I know you like to use the  
24 big number, because it makes you feel better. How much in attorney's  
25 fees? Mr. Vannah was candid with the Court this morning, and he told



1 the Judge --

2 MR. CHRISTIANSEN: -- it was like 580, Bob? 380.

3 BY MR. CHRISTIANSEN:

4 Q 380 in attorney's fees, right?

5 A That sounds correct.

6 Q So every time -- just like you did just now, when you're under  
7 oath, in these affidavits and just now on the stand say you've paid him,  
8 as if it's fees, 500,000, that's misleading, right?

9 A It most certainly isn't.

10 Q Because --

11 A I've written checks to Simon for \$560,000, and they've been  
12 cashed and cleared. I don't see how that's misleading, sir.

13 Q Because it presumes those were monies to be kept by him as  
14 opposed to like in a personal injury case, he was fronting your costs to  
15 the tune of 200,000 bucks, right? Because that's the truth, right?

16 A What is the truth, sir?

17 Q Sir, it doesn't seem like you understand it, but isn't it true he  
18 fronted? In other words, he --

19 MR. GREENE: Your Honor, that's just completely  
20 inappropriate to be making that kind of an accusation against a witness.  
21 I mean, we're all getting along here just fine, but he can't say stuff like  
22 that for heaven sakes.

23 MR. CHRISTIANSEN: Judge, he told me he didn't  
24 understand the truth. I don't --

25 MR. GREENE: He just called him a flat-out liar, Judge, and

1 that's just inappropriate. Just -- can we just ask questions and get  
2 answers for heaven's sake?

3 MR. CHRISTIANSEN: I'm trying.

4 THE COURT: Okay, Mr. Christiansen, can we just phrase --

5 MR. CHRISTIANSEN: Sure, Your Honor.

6 THE COURT: -- and ask a question?

7 BY MR. CHRISTIANSEN:

8 Q Isn't it true you have paid Danny Simon attorney fees less  
9 than \$400,000?

10 A That sounds about right.

11 Q So would you agree with me that when you say you've paid  
12 Danny Simon -- and you do it everywhere in these affidavits -- in excess  
13 of \$500,000, you implicitly know that a big chunk of that he paid off to  
14 front your costs, right?

15 A Every business you pay pays something for whatever. It  
16 doesn't deny the fact --

17 Q Sir, that's a yes or no question.

18 A -- you paid the business.

19 Q It's a yes or no question. Every time you wrote, you paid  
20 Danny in excess of 500,000, implying that he kept all that money, you  
21 knew darn good and well, part of what he paid -- close to 200,000 in  
22 costs, he fronted for your case, right?

23 A I know he paid costs, correct.

24 Q And so, every time when you say I paid Danny in excess of  
25 500,000, as if that money Danny kept, you knew that to be misleading,

1 correct?

2 A It's not misleading in the least.

3 Q All right. Let's go back to your affidavit, when this case had  
4 blossomed from all your hard work. And that's your version of events,  
5 sir? Did I get that correct?

6 A Correct.

7 Q All right. The date of your email is August 22nd, 2017,  
8 correct?

9 A Correct.

10 Q Tell the Judge what the offer was from Lange to pay you the  
11 day you wrote that contingency email to Danny Simon.

12 A I don't know that there was one.

13 Q Tell the Judge what the offer was from Viking, the entity that  
14 ultimately paid you \$6 million the day you wrote that email?

15 A Nothing.

16 Q Zero. Right?

17 A Yes.

18 Q So nothing had blossomed, as you wrote in your affidavit. If  
19 the offer is zero, nothing blossomed. Can we agree on that?

20 A I don't agree, but --

21 Q Well, what can you buy with zero?

22 A I agree the offer was zero.

23 Q Okay. This morning, you heard Mr. Vannah tell the Judge  
24 that in your last meeting with Danny Simon, he presented you a contract  
25 and wanted you to sign it. Remember hearing that?

1           A     Yes.

2           Q     That's not true, is it? When you and your wife, Angela, went  
3 to Danny's office November the 17th to meet with him about what was  
4 going on in court that very morning, right, he had to come over here in  
5 front of Judge Jones that morning --

6           A     Correct.

7           Q     -- right? He didn't give you anything and try to force you to  
8 sign it, did he?

9           A     He tried to force us to sign something, yes.

10          Q     He gave you a document.

11          A     No, he wouldn't let us leave with anything.

12          Q     What did he try to force you to sign?

13          A     We don't know. That was such a free for all meeting, where  
14 he was saying you need to sign a fee agreement where I get \$1.2 million.  
15 You need to sign this, so I get one and a half million. That's fair. There  
16 was so much said, even as we left. That's why we asked for something  
17 to leave with. As we drove back, neither one of us could agree on what  
18 he was even asking for.

19          Q     So to date, you don't have any document he supposedly was  
20 trying to force you to sign?

21          A     No. He emailed it on the 27th, when I insisted he put it down  
22 in writing.

23          Q     And that was in response to your November 21st email,  
24 right? Where you were laying out for him what you thought the real  
25 value of your case was?

1           A     I beg your pardon?

2           Q     You wrote an email to him the 21st saying here's the value of  
3 my case. This was after you'd settled it for 6 million bucks. You only  
4 thought the value was 3.8. Remember that?

5           A     No. Danny Simon called me while he was in Machu Picchu  
6 repeatedly after the 17th asking what we were going to agree to on his  
7 bonus fees and insisting we come to an agreement on something, and  
8 then at one point on one of the phone calls he says, give me a list of all  
9 your costs in this case, what you feel your damages, or costs, or  
10 whatever was. I cut and pasted an Excel thing and emailed it to him. A  
11 couple days later, he called. Every time he had cell reception, he'd call  
12 and kept saying well, are you going to give me this? I feel I deserve this.  
13 I feel I deserve this.

14               And then finally, when I said look, I'm not going to keep talking  
15 about this topic until you put something down that is structured in  
16 writing that is cogent, and I can read and understand what you're even  
17 talking about, I'm not going to discuss this anymore. And then on the  
18 27th, he sent the email. So, if that's in response to the 21st, I agree, but  
19 there was other stuff.

20           Q     Let me show you your email from the 21st.

21               MR. CHRISTIANSEN: John, it's 39.

22           BY MR. CHRISTIANSEN:

23           Q     That's your email address at pediped?

24           A     Pediped.

25           Q     I'm sorry. I apologize, pee-dee-ped (phonetic)??

1           A     Everybody says pedi, but it's not a big deal. Pee-dee-ped,  
2     though.

3           Q     Pee-dee-ped. All right.

4           A     The I makes the E long.

5           Q     Okay. This is dated November 21, '17?

6           A     Yes.

7           Q     And this is from you to Danny?

8           A     Yes.

9           Q     And you have line items on this; is that accurate?

10          A     It is very accurate.

11          Q     And you have legal bills, costs not billed yet.

12          A     Correct.

13          Q     That's blank.

14          A     Correct.

15          Q     So you know you owe him money?

16          A     Yeah. His last bill was like September 26th or something like  
17     that. And this is November.

18          Q     So you're aware you owe him money?

19          A     Correct.

20          Q     So when you signed those affidavits that I just showed you,  
21     saying that he'd been paid in full, that wasn't accurate, correct?

22          A     It depends what -- you're twisting words here.

23                 MR. GREENE: How -- Your Honor, how many times are we  
24     going to be asked. I object. Asked and answered. He's already  
25     answered this question. To him, that's not what it means. And he's

1 admitted that he owes more fees. Do we need to go into this again?

2 MR. CHRISTIANSEN: Judge, he sued him, saying he'd been  
3 paid in full, and he was owed nothing else. Do you want me to show the  
4 paragraph in --

5 THE COURT: I mean, he said that in the affidavit, but there's  
6 also this \$72,000 that's undisputed that is like there's a bill, and then it  
7 was submitted, now resubmitted, so I know that that's still an issue. Is  
8 that what you're referring to?

9 MR. CHRISTIANSEN: No, Judge. That's -- those are some  
10 costs. I just want to know whether -- I'll change it around, so nobody can  
11 say I'm taking stuff out of order, Judge.

12 THE COURT: Okay.

13 BY MR. CHRISTIANSEN:

14 Q Do you know, Mr. Edgeworth, one way or another, when you  
15 filed the lawsuit on January the 4th, did -- isn't it true you claimed that  
16 Danny Simon had been paid in full?

17 A No, I don't think that that claim was made.

18 Q You don't think that was made?

19 A Because he was paid in full for every bill he has given us.  
20 That's the claim.

21 Q Okay. I'm looking --

22 MR. CHRISTIANSEN: This Exhibit 19, John.

23 BY MR. CHRISTIANSEN:

24 Q -- at the complaint, Mr. Edgeworth. Are you with me?

25 A Yeah, that's the 4th?

1 Q That's the 1st -- yes, sir, the 4th. I'll show you the date, so  
2 you can --

3 A I see it, yeah.

4 Q Got it? All right. See paragraph 36 and just read along with  
5 me. Simon admitted in the litigation that the full amount of his fees  
6 incurred in the litigation was produced in updated form on or about  
7 September 27, 2017.

8 Did I read that correctly?

9 A Correct.

10 Q The full amount of his fees, as produced, are the amounts set  
11 forth in the invoice that Simon presented to the Plaintiffs and that the  
12 Plaintiffs paid in full.

13 Did I read that correctly?

14 A Correct.

15 Q Then I go down to -- see my highlights there?

16 A Yes.

17 Q That the contract has been fully satisfied by Plaintiffs, that  
18 Simon is in material breach of the contract, and that the Plaintiffs are  
19 entitled to the full amount of settlement proceeds.

20 Did I read that correctly?

21 A Correct.

22 Q So in your law suit, you claim that you're entitled to all the  
23 settlement proceeds and Danny's been paid in full, right?

24 A For everything he's invoiced, yes.

25 Q Did the word invoice appear in any of what you and I just



1 read?

2 A I don't know. I believe you're taking it out of the context,  
3 but --

4 Q Sir, did the word invoice appear in anything I just read?

5 A No.

6 Q That's not what it said, right? You took the position when  
7 you sued your lawyer that got you 6 million bucks, a figure you agree  
8 made you more than whole, that he was entitled to nothing, correct?

9 A That's not the position I took, and it isn't --

10 Q Is that the position that --

11 A -- the position we've ever taken.

12 Q Is that the position I just read for you in the complaint?

13 A I just told you I don't think that's what that means.

14 Q Do you remember saying that the money was solely yours  
15 that was put in this trust account?

16 A It should be solely mine, correct.

17 Q So that means Danny's not entitled to anything, correct?

18 A That's not true. I have money in my Wells Fargo account. If  
19 somebody gives me an invoice, the money in my Wells Fargo account is  
20 still solely mine, but it would still paid their invoice.

21 Q All right. When you hired Danny, did he tell you he didn't bill  
22 clients?

23 A No. He said he's had cases like ours and he repeated this,  
24 that he's billed hourly and got 40 percent contingency at the end of the  
25 case, and he says he infrequently bills, and it's uncomfortable when he

1 has to send bills to people, but he incurs costs when doing, you know,  
2 filings and stuff.

3 Q Okay. So, I think you're missing apples and oranges. Is what  
4 you're trying to explain where Danny told you that at times, he had  
5 prevailed on a thing called an offer of judgment, and then he has to go  
6 and tell a court how much time he put into something, so that attorney's  
7 fees might be awarded? Is that something you're sort of confusing?

8 A No, I don't think I'm confusing. Over the series of the case,  
9 he's told me a lot of things, which I don't know -- I have no -- you know,  
10 I'm not his accountant.

11 Q I didn't hear you. I'm sorry.

12 A I'm not his accountant, so I don't know for a fact anything  
13 about the way he bills or anything else.

14 Q All right.

15 A He's said a lot of things over the course of the case. I don't  
16 know which are true and which are not.

17 Q So let's start back in the beginning now. I've jumped around  
18 a bit. Now I'm going to walk you through some stuff to see if I can use  
19 your words, what you put in emails, and what you received in emails to  
20 refresh your recollection.

21 A Okay.

22 Q All right.

23 MR. CHRISTIANSEN: So, the first is Exhibit 80, Bates stamp  
24 3557, John.

25 THE COURT: And what did you say? Exhibit 80. And then

1 what did you say, Mr. Christiansen?

2 MR. CHRISTIANSEN: Bates stamp 3557.

3 THE COURT: Okay.

4 BY MR. CHRISTIANSEN:

5 Q All right. That's the day you've been talking to us about, Mr.  
6 Edgeworth, when you were emailing and talking to Mr. Simon?

7 A Correct.

8 Q May the 27th?

9 A Correct.

10 Q And emails are goofy things. They go in reverse order, so if I  
11 go to where this string begins, it's from you to Danny. Here, I'll move it  
12 down. I'm sorry, Mr. Edgeworth.

13 A Yeah. You can't see it.

14 Q Is that right?

15 A Correct.

16 Q And it starts actually by -- again, this is just how the threads  
17 work. It says, hey, Danny. This is you sending Danny an email at 9:30  
18 a.m.

19 A Correct.

20 Q I do not want to waste your time with this hassle. And then  
21 in parenthesis, other than to force you to listen to me bitch about it  
22 constantly, close paren. And the insurance broker says I should hire  
23 Craig Marquis and start moving the process forward. So, I just do that  
24 and not bother you with this?

25 Did I read that correctly so far?

1           A     So far.

2           Q     My only concern is that some (sic) goes nuclear, open paren,  
3 with billing and time, close paren, when just a bullet to the head was all  
4 that was needed to end this nightmare, open paren, and I do not know  
5 this person from Adam, close paren.

6           Did I get that all correctly?

7           A     Yes.

8           Q     This is you initiating discussions with a friend of yours or an  
9 acquaintance of yours about helping you?

10          A     Correct.

11          Q     All right. This is during the time he told you it was a favor?

12          A     Correct.

13          Q     But you had no discussion about hourly rates?

14          A     Correct.

15          Q     In response, Danny writes to you, I know Craig. Let me  
16 review the file and send a few letters to set them up.

17          Did I read that correctly?

18          A     Correct.

19          Q     And what you and Danny had talked about was that he didn't  
20 really want the case, right? He wanted to send a few letters to see if  
21 some insurance company would come in, and cover your damages, and  
22 go about and try to redeem their money they pay you from Viking or  
23 whoever else. He's trying to set up an insurance company, right?

24          A     We hadn't spoken about any of that at this point.

25          Q     Okay. Maybe a few letters will encourage a smart decision

1 from them.

2 A Correct.

3 Q If not, I can introduce you to Craig, if you want to use him.

4 By the way, he lives in your neighborhood. Not sure if that's good or  
5 bad.

6 A Correct.

7 Q All right. Somebody had recommended to you to hire Craig;  
8 I think it's Marquis.

9 A Correct.

10 Q And you were reaching out to your friend saying, hey, can  
11 you help me with this, because I don't want to get crushed or -- I don't  
12 want somebody going nuclear, to use your words -- on the bills?

13 A Correct.

14 Q You were looking for a favor, too.

15 A Correct.

16 Q From your friend.

17 A For a referral, correct.

18 Q And he agreed to do you a favor.

19 A Correct.

20 Q No discussion of hourly rate, none?

21 A No.

22 Q And he started working, right, on your case?

23 A Not after this. The next day, maybe.

24 Q All right. He starts -- you brought him -- and I'll find the other  
25 thread, because there's two threads from that day, from the 27th. The

1 other thread is -- you told Danny is it had taken you hours to put together  
2 a summary, and you had read about somewhere between 600 and 1,000  
3 documents?

4 A Correct.

5 Q And you had a box?

6 A Correct.

7 Q Like one of those boxes. Not a Dropbox. Like a box box.

8 A Close enough. It was a plastic box.

9 Q And it was too big, I think, you said to scan, or email, or  
10 something. You wanted to give it to him. You had to physically give it  
11 to him.

12 A Sounds about right.

13 Q All right. And then you say, after Danny emails you about  
14 Craig and his willingness to introduce you to him, okay. I'll type up a  
15 summary with all the documents today and get them to you somehow.  
16 I'd rather pay you and get it resolved than have someone like Craig drag  
17 this on forever.

18 A Correct.

19 Q And Danny says back to you, let's cross that bridge later.

20 A Correct.

21 Q He doesn't say I charge 550 an hour. Fair?

22 A No.

23 Q And this is the outset of your relationship with Mr. Simon in  
24 this case, correct?

25 A Yes. It's --

1 Q The very beginning.

2 A -- it's the beginning, yes.

3 Q And then just so you -- your recollection from that same day,  
4 Mr. Edgeworth, May 27th, you say -- and again, this is one of those goofy  
5 emails that starts with the same exchange down here at the bottom.

6 A Uh-huh.

7 Q And then you -- somehow it becomes a different thread and  
8 that's above my technical skills, but you say, dude, when and how can I  
9 get this to you? Even typing up the summary is taking me all day  
10 organizing the papers. There's at least 600 to 1,000 pages of crap.

11 A Correct.

12 Q And Danny writes, our job is not easy, laugh out loud,  
13 however you want, right?

14 A Correct.

15 Q Too big to scan. I could drop it off at your house or meet you  
16 somewhere tomorrow. I will not be done until very late tonight.

17 A Correct.

18 Q It was an all day project just to summarize?

19 A Yeah, I wrote a two-page summary, so that he wouldn't have  
20 to read through all the junk, yeah.

21 Q Then he agrees on his day off, Saturday, to meet you at  
22 Starbucks, right?

23 A Yeah.

24 Q 28th's a Saturday. I'll just tell you that.

25 A It is a Saturday, correct.

1 Q It is.

2 A I know.

3 Q And he takes time out of his family time to come meet you  
4 Saturday at Starbucks?

5 A Correct. He met me at Starbucks on [indiscernible].

6 Q No discussion of fee?

7 A No.

8 Q It's a favor?

9 A Yes.

10 Q Okay. And that's the outset of your relationship with Danny  
11 Simon?

12 A That's the very start of it, correct.

13 MR. CHRISTIANSEN: I'm sorry, Mr. Greene. I didn't tell you.  
14 That second string is Exhibit 80, Bates stamp 3552 and 3. Sorry, Judge.

15 THE COURT: That's all right.

16 BY MR. CHRISTIANSEN:

17 Q Is it fair, Mr. Edgeworth, that at the time you go to your  
18 friend looking for a favor -- I'll use your words -- you thought maybe a  
19 carefully crafted bullet might get you some results, versus getting billed  
20 a whole bunch by a lawyer you didn't know from Adam?

21 A Yeah. I thought if they -- if a lawyer just sent a letter, that  
22 they would just say okay, we were just seeing if, you know, we could  
23 reject your claim --

24 Q Got it.

25 A -- basically.



1 Q And that's what you were looking to Danny to do.

2 A Correct.

3 Q And you concede to me today, under oath, that you never  
4 codified your relationship via a written agreement?

5 A Correct.

6 Q You never agreed those days, 27, 28 to 550 an hour?

7 A Correct.

8 Q Never agreed to an associate rate?

9 A Correct.

10 Q Never even talked about advancing costs?

11 A No.

12 Q No, you didn't talk about it? Or no, you did talk about it?

13 A No, we did not talk about advancing costs --

14 Q Thank you.

15 A -- on those two dates.

16 Q That was a poorly worded question by me, and I just want  
17 the record to be clear. And so, this favor, for -- to use your words, was at  
18 the beginning and there were no well-defined terms of your relationship.  
19 Fair?

20 A Yeah.

21 Q And an example of that is just June 5th.

22 MR. CHRISTIANSEN: Mr. Greene, Exhibit 80, Bates stamp  
23 3505.

24 BY MR. CHRISTIANSEN:

25 Q Which is June 5th, five days, a week later, maybe, of 2016,

1 when you -- these are those goofy emails again -- you write to Danny,  
2 would you be writing this or do you need -- do I need to get Mark  
3 Gatz -- in parenthesis, estate guy -- to do it? I would like to start moving  
4 money Friday.

5 Did I read that correctly?

6 A Correct.

7 Q I think what you're referring to, Mr. Edgeworth, is like a  
8 promissory note or a loan document?

9 A Correct.

10 Q Danny didn't know how to write a loan document, right?

11 A I don't know if he does or doesn't.

12 Q Well, you asked him if he'd be writing, and he answered you  
13 back, send it to somebody else. That's not -- he said Mark Katz. That's  
14 another lawyer.

15 A Correct.

16 Q Your lawyer?

17 A Correct.

18 Q He wanted you to have your other lawyer do this work?

19 A Correct.

20 Q And you were going to borrow money from -- I think you  
21 borrowed it from your friend, who works at -- works for you and from  
22 your mother-in-law?

23 A Correct.

24 Q And you borrowed money at an interest rate?

25 A Correct.

1 Q Two or 3 percent a month?

2 A Two and -- yeah, 2.65, and then 3 on the next notes.

3 Q So somewhere between 34 and 36 percent a year?

4 A I think -- well, 30 and 37 or something. Correct. Close  
5 enough.

6 Q And those interest rates that you were -- those -- the interest  
7 that you were incurring was in your mind -- and I'll show you how you  
8 break it down here in a minute -- damages you were incurring because of  
9 Viking's faulty sprinkler and/or Lange installing them?

10 A Yeah. The failure for them to pay to repair the damage,  
11 definitely.

12 Q Got it. And it wasn't like at the time you didn't have the  
13 money to finance the litigation different ways. That was just the method  
14 with your Harvard MBA that you chose. Fair?

15 A Yeah, it's prudent.

16 Q It's -- I just didn't hear you.

17 A Prudent.

18 Q Prudent. You chose to borrow other people's money, give  
19 them a big return on their loan or return on their investment, as opposed  
20 to, for example, cashing your Bitcoin out?

21 A Correct. That's very prudent.

22 Q And those interest payments were monies over and above  
23 whatever the hard number, the hard costs of the property damage was  
24 done to your residence. Right? That's how you ultimately list them out?

25 A I'm not sure I understand. They're an expense of the

1 damages. Is that what you mean?

2 Q Yep.

3 A Yes, they're expenses.

4 Q And so everybody -- because you get involved in these cases,  
5 you forget maybe some things aren't super clear when you start, but you  
6 had about \$500,000 in hard cost damage to your house, and then some  
7 future hard card cost damage that you needed to repair, correct?

8 A Yeah. It was between 3 and 8. You know, there was a lot of  
9 different estimates, but that's fair.

10 Q And then ultimately, you had several hundred thousand  
11 dollars' worth of interest you owed?

12 A Highly likely over two years, yes.

13 Q And those future damages, like replacing your kitchen  
14 cabinets?

15 A Yes.

16 Q Have you replaced those kitchen cabinets?

17 A Yes. We've paid -- well, no. They haven't replaced them.  
18 They've been paid to make them. They haven't come back to put them  
19 in.

20 Q So a line item of damages that you collected for haven't been  
21 replaced yet?

22 A No.

23 Q They're on their way, but just not yet?

24 A I don't know. I haven't called the guy.

25 Q All right.

1           A     They better be on their way.

2           Q     And as of June 5th, not even the scope of Mr. Simon's  
3 representation has been determined, because he doesn't know if he's  
4 supposed -- you don't know if he's going to write your loan agreements  
5 or you should have somebody else?

6           A     Correct.

7           Q     Was in flux?

8           A     Correct.

9                     MR. CHRISTIANSEN: And Exhibit 80, Mr. Greene. Bate  
10 stamps 3425 and 6.

11 BY MR. CHRISTIANSEN:

12          Q     And so we're clear, did you get a bill in June for Mr. Simon's  
13 work in May?

14          A     June of 2016, sir?

15          Q     Yes, sir.

16          A     No.

17          Q     Did you get a bill in July for Mr. Simon's work in May or  
18 June?

19          A     No.

20          Q     Did you get a bill in August for May, June or July?

21          A     No.

22          Q     September?

23          A     No.

24          Q     October?

25          A     No.