

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

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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.

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BRIEF AND OPENING BRIEF APPENDIX**

VOLUME X OF XI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16
17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

- 24 1. An attorney at law shall have a lien:
25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated
26 damages, which has been placed in the attorney's hands by a client for suit or
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

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

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

13

14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

29 Id.

30 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
31 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
32 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
33

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

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

18 Id.

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

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

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

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

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

27 //

28

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

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

9
10 *Implied Contract*

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

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

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
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1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
2 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
6 Office retained the payments, indicating an implied contract was formed between the parties. The
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
8 date they were constructively discharged, November 29, 2017.

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 *Costs Owed*

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

14
15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRCP 1.5.

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

CONCLUSION

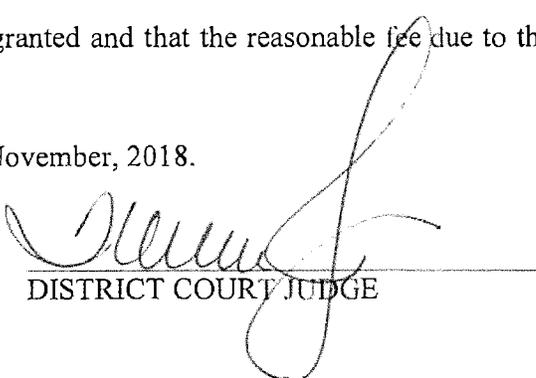
The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the Edgeworths once Simon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

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

9
10 **ORDER**

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

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

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18 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

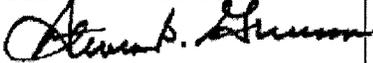
I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 3



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ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

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.

Consolidated with

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

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

**DECISION AND ORDER ON SPECIAL
MOTION TO DISMISS ANTI-SLAPP**

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

Defendants.

DECISION AND ORDER ON SPECIAL MOTION TO DISMISS ANTI-SLAPP

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

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

8
9 **FINDINGS OF FACT**

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

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

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

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

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

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

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

15 It reads as follows:

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

(Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

7 20. Also on this date, the Law Office of Danny Simon filed an attorney’s lien for the
8 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the
9 Law Office filed an amended attorney’s lien for the sum of \$2,345,450, less payments made in the
10 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and
11 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.
12

13 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
14 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset
15 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the
16 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
17 due to the Law Office of Danny Simon.
18

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

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

22 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in
23 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.
24 Simon, a Professional Corporation, case number A-18-767242-C.
25

26 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate
27 Lien with an attached invoice for legal services rendered. The amount of the invoice was
28

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

2 **CONCLUSION OF LAW**

3
4 The Court has adjudicated all remaining issues in the Decision and Order on Motion to
5 Dismiss NRCP 12(b)(5), and the Decision and Order on Motion to Adjudicate Lien; leaving no
6 remaining issues.

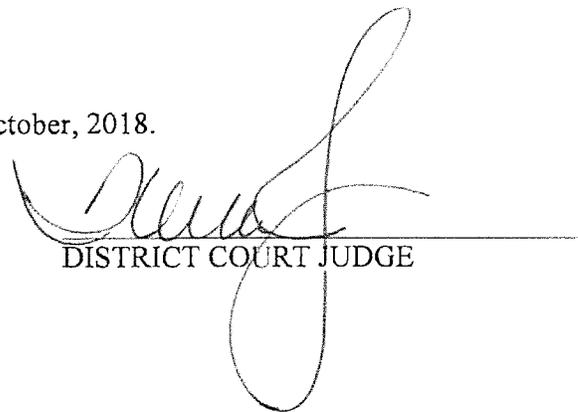
7
8 **CONCLUSION**

9
10 The Court finds that the Special Motion to Dismiss Anti-Slapp is MOOT as all remaining
11 issues have already been resolved with the Decision and Order on Motion to Dismiss NRCP 12(b)
12 and Decision and Order on Motion to Adjudicate Lien.

13
14 **ORDER**

15 It is hereby ordered, adjudged, and decreed, that the Special Motion to Dismiss Anti-Slapp is
16 MOOT.

17
18
19 IT IS SO ORDERED this 10th day of October, 2018.

20
21 
22 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

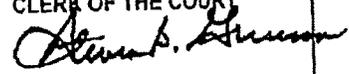
Electronically served to:

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 4



1 COMP
2 ROBERT D. VANNAH, ESQ.
3 Nevada Bar. No. 002503
4 JOHN B. GREENE, ESQ.
5 Nevada Bar No. 004279
6 VANNAH & VANNAH
7 400 South Seventh Street, 4th Floor
8 Las Vegas, Nevada 89101
9 Telephone: (702) 369-4161
10 Facsimile: (702) 369-0104
11 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, d/b/a SIMON LAW; DOES
20 I through X, inclusive, and ROE
21 CORPORATIONS I through X, inclusive,

22 Defendants.

23 CASE NO.: A-18-767242-C
24 DEPT NO.: Department 14

25 COMPLAINT

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400 South Seventh Street, 4th Floor - Las Vegas, Nevada 89101
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26 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC
27 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.
28 GREENE, ESQ., of VANNAH & VANNAH, and for their causes of action against Defendants,
complain and allege as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall
5 of 2017, and thereafter blossomed from one of mere property damage to one of significant and
6 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the
7 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the
8 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,
9 neither PLAINTIFFS nor SIMON agreed on any terms.
10

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

19 14. A reason given by SIMON to modify the CONTRACT was that he purportedly
20 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go
21 through his invoices and create, or submit, additional billing entries. According to SIMON, he
22 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason
23 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that
24 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement
25 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.
26

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

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

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

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

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

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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
16
17 **SECOND CLAIM FOR RELIEF**

18 **(Declaratory Relief)**

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

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

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

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

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

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

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

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;

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- 5. Costs of suit; and,
- 6. For such other and further relief as the Court may deem appropriate.

DATED this 3 day of January, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ. (4272)

Exhibit 5

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

3 STATE OF NEVADA)
4) ss.
5 COUNTY OF CLARK)

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

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

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

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

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

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

24 6. At the outset of the attorney-client relationship, SIMON and I orally agreed that
25 SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd
26

27
28

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

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

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

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

21 10. Plus, SIMON didn't express an interest in taking what amounted to a property
22 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
23 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
24 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
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1 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
2 of loss in the LITIGATION was gone.

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

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

24 13. Following that meeting, SIMON would not let the issue alone, and he was
25 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
26 agreed on any terms to alter, modify, or amend our fee agreement. Knowing SIMON as I do, if
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1 we had agreed to modify our fee agreement, SIMON would have attached that agreement in large
2 font to his Motion as Exhibit 1.

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

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

22 16. Another reason why we were so surprised by SIMON’S demands is because of the
23 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
24 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
25 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
26 flooding event. Since SIMON hadn’t presented these “new” damages to defendants in the
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1 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
2 be presented at trial.

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

16
17 18. Despite SIMON'S requests and demands on us for the payment of more in fees, we
18 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
19 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
20 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
21 time that he'd never previously produced to us and that never saw the light of day in the
22 LITIGATION.
23

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

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

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

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

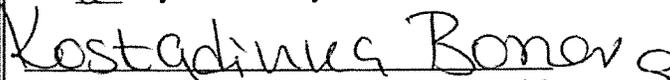
17 23. I ask this Court to deny SIMON'S Motions and give us the right to present our
18 claims against SIMON before a jury.

19 FURTHER AFFIANT SAYETH NAUGHT.

20
21 

22 BRIAN EDGEWORTH

23
24 Subscribed and Sworn to before me
25 this 2nd day of February 2018.

26 
27 Notary Public in and for said County and State

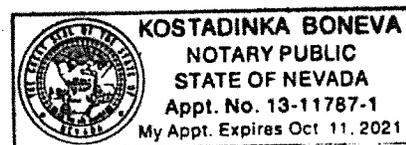
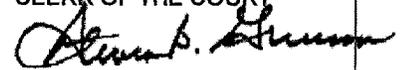


Exhibit 6



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

8 *Attorneys for Plaintiffs*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 EDGEWORTH FAMILY TRUST; AMERICAN
12 GRATING, LLC,

13 Plaintiffs,

14 vs.

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

19 Defendants.

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

Consolidated with

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

AMENDED COMPLAINT

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

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

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

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

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

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

26 5. DOES I through V are Defendants and/or employers of Defendants who may be
27 liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:
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[e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

23 **SECOND CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

25 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in
26 Paragraphs 1 through 30, as set forth herein.
27

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

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

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

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

9
10 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in
11 the LITIGATION was produced in updated form on or before September 27, 2017. The full
12 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to
13 PLAINTIFFS and that PLAINTIFFS paid in full.

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

23
24 **THIRD CLAIM FOR RELIEF**

25 **(Conversion)**

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

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

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

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

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

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

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

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

26
27 ///

28 ///

FOURTH CLAIM FOR RELIEF

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

1
2
3 46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1
4 through 45, as though the same were fully set forth herein.

5
6 47. In every contract in Nevada, including the CONTRACT, there is an implied
7 covenant and obligation of good faith and fair dealing.

8
9 48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS
10 in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to
11 October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

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

16
17 50. Thereafter, SIMON produced a super bill where he added billings to existing
18 invoices that had already been paid in full and created additional billings for work allegedly
19 occurring after the LITIGATION had essentially resolved. The amount of the super bill is
20 \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

21
22 51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that
23 SIMON had some secret unexpressed thought or plan that the invoices were merely partial
24 invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted
25 to continue using SIMON as their attorney.

26
27 52. When SIMON failed to reduce the CONTRACT to writing, and to remove all
28 ambiguities that he claims now exist, including, but not limited to, how his fee was to be

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

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

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

12 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an
13 amount that was far in excess of any amount of fees that he had billed from the date of the
14 previously paid invoice to the date of the service of the lien, that he could bill for the work
15 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing
16 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON
17 breached the implied covenant of good faith and fair dealing.

18
19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.

24
25 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a
26 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or
27 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are
28 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.

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

4
5 **PRAYER FOR RELIEF**

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

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

14 DATED this 15 day of March, 2018.

15
16 VANNAH & VANNAH

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18 
19 ROBERT D. VANNAH, ESQ. (4279)
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Exhibit 7

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

AFFIDAVIT OF BRIAN EDGEWORTH

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

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

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

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

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

12 4. The damage from the flood caused in excess of \$500,000 of property damage to
13 the home. It was initially hoped that SIMON drafting a few letters to the responsible parties
14 could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the
15 defendants to do the right thing and pay the damages
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17 5. When it became clear the litigation was likely, I had options on who to retain.
18 However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems
19 to liken our transaction as an act of charity performed by him for a friend = me. Hardly.
20 Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also,
21 those "few letters" mentioned above were not done for free by SIMON, either. I paid over \$7,500
22 in hourly fees to SIMON for his services for these tasks alone.
23

24 6. At the outset of the attorney-client relationship, SIMON and I orally agreed that
25 SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd
26 reimburse him for his costs. No other form or method of compensation such as a contingency fee
27 was ever brought up at that time, let alone ever agreed to.
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1 7. SIMON never reduced the terms of our fee agreement to writing. However, that
2 formality didn't matter to us, as we each recognized what the terms of the agreement were and
3 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his
4 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the
5 invoices in full in less than one week from the date they were received.

6 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,
7 August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in
8 those invoices totaled \$486,453.09. There were hundreds of entries in these invoices. The hourly
9 rate that SIMON billed us in all of his invoices was at \$550 per hour. I paid the invoices in full to
10 SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of
11 approximately \$72,000. However, SIMON withdrew the invoice and failed to resubmit the
12 invoice to us, despite an email request from me to do so. I don't know whether SIMON ever
13 disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those
14 fees and costs to the mandated computation of damages. I do know, however, that when SIMON
15 produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018,
16 for an additional \$692,120 in fees, his hourly rate for all of his work was billed out at our agreed
17 to rate of \$550.

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

23 10. Plus, SIMON didn't express an interest in taking what amounted to a property
24 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
25 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
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1 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
2 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
3 of loss in the LITIGATION was gone.

4 11. Please understand that I was incredibly involved in this litigation in every respect.
5 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
6 good work SIMON performed, I was the one who dug through the thousands of documents and
7 found the trail that led to the discovery that Viking had a bad history with these sprinklers, and
8 that there was evidence of a cover up. I was the one who located the prior case involving Viking
9 and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's
10 insurer), and from fire marshals, etc. I was also the one who did the research and made the calls
11 to the scores of people who'd had hundreds of problems with these sprinklers and who had
12 knowledge that Viking had tried to cover this up for years. This was the work product that caused
13 this case to grow into the one that it did.

14 12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an
15 expert. This was around the time that the value of the case had blossomed from one of property
16 damage of approximately \$500,000 to one of significant and additional value due to the conduct
17 of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for
18 the first time broached the topic of modifying our fee agreement from a straight hourly contract to
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21 Weeks then passed without SIMON mentioning the subject again.

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1 if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to
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3 14. SIMON scheduled an appointment for my wife and I to come to his office to
4 discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to
5 a \$6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was
6 to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid
7 far more than \$550.00 per hour and the \$486,453.09 he'd received from us for the preceding
8 eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was
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17 15. Following that meeting, SIMON would not let the issue alone, and he was
18 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
19 agreed on any terms to alter, modify, or amend our fee agreement.

20 16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the
21 amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be paid in
22 light of a favorable settlement that was reached with the defendants in the LITIGATION. We
23 were stunned to receive this letter. At that time, these additional "fees" were not based upon
24 invoices submitted to us or detailed work performed. The proposed fees and costs were in
25 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
26 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to
27 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
28

1 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON
2 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep
3 and review, or the reasons.

4 17. A reason given by SIMON to modify the fee agreement was that he claims he
5 under billed us on the four invoices previously sent and paid, and that he wanted to go through his
6 invoices and create, or submit, additional billing entries. We were again stunned to learn of
7 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in
8 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work
9 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON
10 prepared a proposed settlement breakdown with his new numbers and presented it to us for our
11 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also
12 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly
13 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency
14 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was
15 now entitled to receive.
16

17
18 18. Another reason why we were so surprised by SIMON'S demands is because of the
19 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
20 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
21 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
22 flooding event. Since SIMON hadn't presented these "new" damages to defendants in the
23 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
24 be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe
25 until the claims against defendant Viking were resolved. How can that be? All of our claims
26 against Viking and Lange were set to go to trial in February of this year.
27
28

1 19. On September 27, 2017, I sat for a deposition. Lange’s attorney asked specific
2 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the
3 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what
4 transpired, I’ve since reviewed the transcript, as well. At page 271 of that deposition, a question
5 was asked of me as to the amount of attorneys’ fees that PLAINTIFFS had paid to SIMON in the
6 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: “They’ve all been
7 disclosed to you.” At lines 23-25, SIMON further stated: “The attorneys’ fees and costs for both
8 of these plaintiffs as a result of this claim have been disclosed to you long ago.” Finally, at page
9 272, lines 2-3, SIMON further admitted concerning his fees and costs: “And they’ve been
10 updated as of last week.” At no point did SIMON inform Lange’s attorney that he’d either be
11 billing more hours that he hadn’t yet written down, or that additional invoices for fees or costs
12 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS
13 before he could determine the amount of his fee. At that time, I felt I had reason to believe
14 SIMON that he’d done everything necessary to protect PLAINTIFFS claims for damages in the
15 LITIGATION.
16

17
18 20. Despite SIMON’S requests and demands on us for the payment of more in fees, we
19 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
20 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
21 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
22 time that he’d never previously produced to us and that never saw the light of day in the
23 LITIGATION. The settlement proceeds are ours, not SIMON’S. To us, what SIMON did was
24 nothing short of stealing what was ours.
25

26 21. When SIMON refused to release the full amount of the settlement proceeds to us
27 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable
28 alternative available to us was to file a complaint for damages against SIMON.

1 22. Thereafter, the parties agreed to create a separate account, deposit the settlement
2 proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to
3 have the settlement funds deposited like they were, as SIMON flatly refused to give us what was
4 ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

5 23. In Motions filed in another matter, SIMON makes light of the facts that we haven't
6 fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're
7 not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've
8 already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to
9 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION
10 were, for all intents and purposes, resolved. Since we've already paid him for this work to
11 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?
12

13 24. Please understand that we've paid SIMON in full every penny of every invoice
14 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.
15 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one
16 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused
17 to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the
18 LITIGATION.
19

20 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive
21 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period
22 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless
23 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.
24

25 26. SIMON in his motion, and in open court, made claims that he was effectively fired
26 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
27 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
28 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false

1 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club
2 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses
3 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if
4 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is
5 responsible for making contact about absences (that had already been outlined at the mandatory
6 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls,
7 SIMON sent the follow-up email, again carefully worded, with the clear accusation that
8 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.
9 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable
10 position of confronting me about it. I read the email, and was forced to have a phone
11 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell
12 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
13 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
14 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
15 paperwork for another background check by USA Volleyball even though I have no coaching or
16 any contact with any of the athletes for the club. My involvement is limited to sitting on the
17 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
18 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
19 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
20 from the charity are minors, an accusation of this severity, from someone he assumed I was
21 friends with and further from my own attorney could not be ignored. While I was embarrassed
22 and furious that someone who was actively retained as my attorney and was billing me would
23 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
24 dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not
25 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
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400 S. Seventh Street, 4th Floor • Las Vegas, Nevada 89101
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1 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
2 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
3 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
4 him to not send anything like that again. Simon claimed he did not intend the meaning
5 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
6 damage our reputation and trying to smear our names with accusations that are impossible to
7 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
8 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
9 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
10 period. In short, we never fired SIMON, though we asked him to communicate to us through an
11 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
12 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
13 LITIGATION.
14

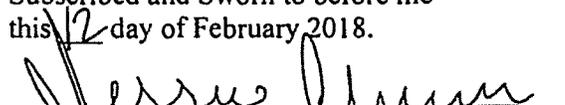
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16 27. I ask this Court to deny SIMON'S Motion and give us the right to present our
17 claims against SIMON before a jury.

18 FURTHER AFFIANT SAYETH NAUGHT.

19 

20 BRIAN EDGEWORTH

21 Subscribed and Sworn to before me
22 this 12 day of February 2018.

23 
24 Notary Public in and for said County and State

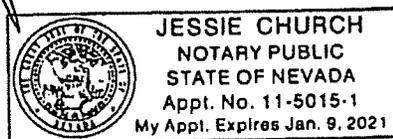


Exhibit 8

VANNAH & VANNAH
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AFFIDAVIT OF BRIAN EDGEWORTH

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4 I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions
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3 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
4 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON
5 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep
6 and review, or the reasons.

7
8 17. A reason given by SIMON to modify the fee agreement was that he claims he
9 under billed us on the four invoices previously sent and paid, and that he wanted to go through his
10 invoices and create, or submit, additional billing entries. We were again stunned to learn of
11 SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in
12 excess of \$1,000,000.00. An additional reason given then by SIMON was that he felt his work
13 now had greater value than the \$550.00 per hour that was agreed to and paid for. SIMON
14 prepared a proposed settlement breakdown with his new numbers and presented it to us for our
15 signatures. This, too, came with a high-pressure approach by SIMON. This new approach also
16 came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly
17 \$500,000 from us. He said that "any judge" and "the bar" would give him the contingency
18 agreement that he now wanted, that he was now demanding he get, and the fee that he said he was
19 now entitled to receive.
20

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

1 be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe
2 until the claims against defendant Viking were resolved. How can that be? All of our claims
3 against Viking and Lange were set to go to trial in February of this year.

4 19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific
5 questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the
6 amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what
7 transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question
8 was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the
9 LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been
10 disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both
11 of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page
12 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been
13 updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be
14 billing more hours that he hadn't yet written down, or that additional invoices for fees or costs
15 would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS
16 before he could determine the amount of his fee. At that time, I felt I had reason to believe
17 SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the
18 LITIGATION.
19
20

21 20. Despite SIMON'S requests and demands on us for the payment of more in fees, we
22 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
23 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
24 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
25 time that he'd never previously produced to us and that never saw the light of day in the
26 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was
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28

1 nothing short of stealing what was ours.

2 21. When SIMON refused to release the full amount of the settlement proceeds to us
3 without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable
4 alterative available to us was to file a complaint for damages against SIMON.

5 22. Thereafter, the parties agreed to create a separate account, deposit the settlement
6 proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to
7 have the settlement funds deposited like they were, as SIMON flatly refused to give us what was
8 ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

9
10 23. In Motions filed in another matter, SIMON makes light of the facts that we haven't
11 fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're
12 not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've
13 already had to pay to get someone else up to speed. Plus, we've already paid nearly \$500,000 to
14 SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION
15 were, for all intents and purposes, resolved. Since we've already paid him for this work to
16 resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

17
18 24. Please understand that we've paid SIMON in full every penny of every invoice
19 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.
20 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one
21 ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused
22 to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the
23 LITIGATION.

24
25 25. I also feel that it's remarkable and so wrong that an attorney can agree to receive
26 an hourly rate of \$550 an hour, get paid \$550 an hour to the tune of nearly \$500,000 for a period
27 of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless
28

1 we agree to pay him a bonus that ranges between \$692,000 to \$1.9 million dollars.

2 26. SIMON in his motion, and in open court, made claims that he was effectively fired
3 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
4 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
5 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false
6 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club
7 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses
8 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if
9 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is
10 responsible for making contact about absences (that had already been outlined at the mandatory
11 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls.
12 SIMON sent the follow-up email, again carefully worded, with the clear accusation that
13 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.
14 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable
15 position of confronting me about it. I read the email, and was forced to have a phone
16 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell
17 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
18 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
19 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
20 paperwork for another background check by USA Volleyball even though I have no coaching or
21 any contact with any of the athletes for the club. My involvement is limited to sitting on the
22 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
23 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
24 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
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1 from the charity are minors, an accusation of this severity. from someone he assumed I was
2 friends with and further from my own attorney could not be ignored. While I was embarrassed
3 and furious that someone who was actively retained as my attorney and was billing me would
4 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
5 dollars into. I politely sent SIMON an email on December 5, 2017, telling him that I had not
6 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
7 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
8 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
9 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
10 him to not send anything like that again. Simon claimed he did not intend the meaning
11 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
12 damage our reputation and trying to smear our names with accusations that are impossible to
13 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
14 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
15 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
16 period. In short, we never fired SIMON, though we asked him to communicate to us through an
17 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
18 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
19 LITIGATION.

22 27. We did not cause the Complaint or the Amended Complaint to be filed against
23 SIMON or his business entities to prevent him from participating in any public forum. We also
24 didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid
25 under the CONTRACT.

27 28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to
28

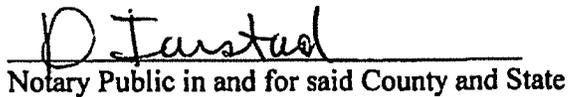
1 present our claims against SIMON before a jury.

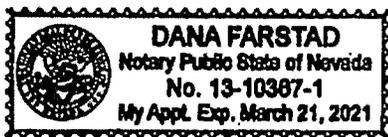
2 FURTHER AFFIANT SAYETH NAUGHT.

3 

4 BRIAN EDGEWORTH

5 Subscribed and Sworn to before me
6 this 15 day of March 2018, by BRIAN EDGEWORTH.

7 
8 Notary Public in and for said County and State



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

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Exhibit 9

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

November/December 2017 Billing Statement

I. ATTORNEY

11.27.17	Meeting with client	.50
	Email exchange and [REDACTED]	.30
11.28.17	Email exchange with client	n/c
11.29.17	Meeting with client	n/c
11.30.17	T/C with client	.50
	Email exchange with client & review attachments	.30
12.1.17	T/C #1 with client	.50
	T/C #2 with client	.20
12.4.17	T/C with client	n/c
	V/M for Robert Vannah	n/c
	Meeting with client	.50
12.5.17	T/C with David Clark	.20
	Meeting with client	n/c
	T/C with John Green	n/c
	T/C with Dave Clark	n/c

12.7.17	Westlaw research re: [REDACTED]. Meeting with client w/conference call with Vannah. Draft and edit letter to Vannah.	1.0
12.11.17	Review of [REDACTED]; and, t/c with client re: same	.20
12.12.17	T/C with client	.30
12.19.17	Review recent email re check endorsement and undisputed amount. T/C with client. E-mail to Vannah's office.	.30
12.26.17	Review Vannah email of 11.23. T/C with client. Draft reply email.	.50
12.27.17	Multiple calls with client/review and respond to Vannah email of 12.26.17	1.5
12.28.17	Forward Vannah email of 12.28.17 to client.	n/c
	T/c with client re: [REDACTED]	.40
	Review of [REDACTED] and t/c with David Clark re: separate trust account	.20

TOTAL Attorney Time: 7.4 hours @ \$400.00 = \$2,960.00

II. PARALEGAL

N/A

TOTAL Paralegal Time: -0- hours @ \$100.00 = \$ -0-

III. COSTS

Postage	\$ -0-
Copies	\$2.20
Wiznet filing fees	\$ -0-

TOTAL Costs	\$ 2.20
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IV. TOTAL DUE THIS INVOICE	\$2,962.20
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V. RETAINER SUMMARY

Beginning balance	\$10,000.00
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Payment of this Invoice	- 2,962.20
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RETAINER BALANCE	\$7,037.80
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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

January – February 2018 Billing Statement

I. ATTORNEY

1.4.18	T/C with client	.20
	Review of recent email. Reply to Greene et al. Call to Sarah G.	.30
1.5- 1.9.18	Multiple phone calls	n/c
1.9.18	Call from John Greene re: service. Discussion with client. Email back to John.	.30
1.10.18	Meeting at Simon law.	.50
1.12.18	T/C w/ David Clark. Email documents to DC	.30
1.15.18	Work on motion to adjudicate lien	3.0
1.16.18	Work on motion to adjudicate lien	8.0
1.17.18	Discussion with client. Work on motion to adjudicate. Telephone discussion with D. Clark.	4.0 .20
1.18.18	Work on motion to adjudicate	2.0
1.24.18	Review emails from J. Greene. Calls to and from J. Greene.	.40

1.26.18	Review of emergency motion to continue/setting and change of hearing dates	.20
	T/C with client	.40
	Work on motion to dismiss	1.0
1.27.18	Work on motion to dismiss	2.0
1.29.18	T/c with client (x2)	.50
	Research and final MTD	1.3
1.30.18	Additional research. Review. Email to client	1.6
2.3.18	Review Kemp declaration. Work on supplement provided by Client.	2.0
2.5.18	Review opposition. Research and draft reply. Multiple t/c with client	5.0
2.6.18	Prepare and attend court hearing on motions to Consolidate/adjudicate	3.4
2.9.18	Read minute order re: motion to consolidate	.20
2.10.18	T/c with Westlaw and [REDACTED]	.40
2.12.18	Edit draft Order	.20
2.12.18	Research and draft Anti-SLAPP motion. T/C with client	6.0
2.13.18	Edit Anti-SLAPP motion	1.4
2.13.18	Review email from J. Greene	.20
2.14.18	Review emails from client re: [REDACTED]	.40
2.15.18	Final Anti-SLAPP motion	.40

2.15.18	Edit supplement to motion to adjudicate. T/C with client	1.0
2.19.18	Review email from J. Greene	.20
2.20.18	Prep for, travel to and attend hearing	1.0
2.20.18	Multiple emails (#11) regarding 100k check and MSC. Related T/C with client	.50
2.26.18	T/c with client (x2)	.20
	Emails to Vannah (x2). Email to client	.20
TOTAL Attorney Time: 48.9 hours @ \$400.00 =		\$19,560.00

II. PARALEGAL

1.9.18	Receipt and review of Complaint, calendar, copy, forward to client	.20
1.16.18	Review and format Motion to Adjudicate	.55
1.18.18	Review and final Motion to Adj., Motion to Dismiss, Motion to Consolidate	1.5
1.24.18	Review, process, file, Motion to Dismiss, Motion to Adjudicate and Motion to Consolidate	1.1
1.26.18	Review and revise Motion to Dismiss	.50
1.29.18	Review and revise Motion to Dismiss	N/C
2.5.18	Review, revise, format, file Reply	1.4
2.7.18	Attempts to obtain brief filed in Beheshti v. Bartley	.50
2.12.18	Prep Order for attorney review	.20

2.13.18	Contactannah re: Order	.20
2.15.18	Review, revise and format MTD Anti-Slapp	1.3
2.26.18	Review ltr from District Court and calendar	.20
3.2.18	Serve and calendar MTD Anti-Slapp	.20
TOTAL Paralegal Time: 7.85 hours @ \$100.00 =		\$785.00

III. COSTS

Postage	\$ -0-	
Copies	\$ 52.60	
Wiznet filing fees	\$250.69	
TOTAL Costs		\$303.29

IV. TOTAL DUE THIS INVOICE \$20,648.29

V. RETAINER SUMMARY

Beginning balance	\$7,037.80
Retainer applied to this invoice	\$7,037.80
RETAINER BALANCE	\$ -0-

VI. BALANCE DUE \$13,610.49

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

March - April 2018 Billing Statement

I. ATTORNEY

3.1.18	Review latest proposed amended complaint	.20
3.2.18	Multiple calls with client and E-mail to adverse re: checks	.30
3.5.18	T/c with client	.20
3.8.28	Start on MSC draft	.70
3.12.18	MSC brief	1.8
3.15.18	MSC brief	2.0
3.20-21.18	Read opposition and draft reply to special MTD	3.5
3.23.18	Meet client, and attend MSC	5.0
4.3.18	Prep/attend hearing on MTDs and Adjudication	1.5
4.7.18	Work on MTD AC	2.0

TOTAL Attorney Time: 17.2 hours @ \$400.00 = \$6,880.00

II. PARALEGAL

3.5.18	Begin Settlement brief draft	.20
3.21.18	Review, revise, format, serve and file Reply re Anti-Slapp MTD	1.3
4.9.18	Review/revise MTD Amended Complaint	.75

TOTAL Paralegal Time: 2.25 hours @ \$100.00 = \$225.00

III. COSTS

Postage	\$ -0-
Copies	\$ 83.20
Wiznet filing fees	\$ 14.00

TOTAL Costs \$97.20

IV. TOTAL DUE THIS INVOICE \$7,202.20

V. RETAINER SUMMARY

Beginning balance \$1,389.51

Retainer applied to this invoice \$1,389.51

RETAINER BALANCE \$ -0-

VI. BALANCE DUE \$5,812.69

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

May - June 2018 Billing Statement

I. ATTORNEY

5.3.18	Meeting with client	.60
	Telephone conference with potential hearing witness 1 and t/c with client	.40
5.7.18	Edit SLAPP for re-filing	.80
	Call to potential witness 1 and call to potential witness 2	.20
5.15.18	Meeting with Will Kemp	1.2
5.16.18	Research on [REDACTED] Email to client	.40
5.18.18	Draft Adjudication hearing brief	2.0

TOTAL Attorney Time: 5.6 hours @ \$400.00 = \$2,240.00

II. PARALEGAL

5.8.18	Review, revise and format Anti-slapp MTD and amended Complaint	.60
5.10.18	Final, prep, file, serve Anti-slapp MTD and calendar	1.5
5.18.18	Review, revise, format, final, prep, file, serve Evidentiary Brief	1.1

TOTAL Paralegal Time: 3.2 hours @ \$100.00 = \$320.00

III. COSTS

Postage	\$ -0-
Copies	\$ 63.80
Wiznet filing fees	\$ 3.50

TOTAL Costs \$67.30

IV. TOTAL DUE THIS INVOICE \$2,627.30

V. **BALANCE DUE \$2,627.30**

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

July - August 2018 Billing Statement

I. ATTORNEY

8.20.18	Meeting with client	1.0
8.21.18	Email exchange with John Greene & t/c with client	.20
8.22.18	Meeting with client	1.0
	Meeting with client and expert	2.0
8.23.18	email exchange with Vannah office	.20
	t/c(s) with client	.20
8.24.18	Meeting at client's office	1.5
8.25.18	Telephone conversations with Vannah and client	.50
8.26.18	Meeting at client's office	5.0
8.27.18	Draft Vannah agreement bench brief	1.0
	Hearing attendance and preparation – Day 1	7.0
8.28.18	Hearing preparation and attendance – Day 2	8.0
8.29.18	Hearing preparation and attendance – Day 3	8.0

8.30.18	Hearing preparation and attendance – Day 4	8.0
8.31.18	Work on Offer of Judgment	.20
	TOTAL Attorney Time: 43.80 hours @ \$400.00 =	\$17,520.00
II.	PARALEGAL	
	N/A	
III.	COSTS	
	N/A	
IV.	TOTAL DUE THIS INVOICE	\$17,520.00
V.	BALANCE DUE	\$17,520.00

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

September - October 2018 Billing Statement

I. ATTORNEY

9.10-11.18	Review and draft party correspondence to Judge Jones and review reply	.30
9.16.18	Review and edit findings of fact; and, add conclusions of law	3.5
9.17.18	Work on proposed orders, findings and conclusions	1.0
	Hearing preparation with client	2.0
9.18.18	Attend evidentiary hearing-day 5	5.0
9.23.18	Review closing brief	2.0
	Review of findings and discussion with client	1.0
10.24.18	Review and reply to adverse email	.20
10.25.18	Work on Rule 52 motion	2.0
10.26.18	Continue work on Rule 52 motion.	2.0
10.26.18	Took call from John Greene, email to client following	.30

10.27.18	Continue work on Rule 52 motion	2.0
10.29.18	Final Rule 52 motion	2.0
10.30.18	Review emails from law clerk re: OST and respond.	.20
	Review emails from Vannah office and respond.	.20
10.31.18	Review and reply to emails from adverse, t/c with client.	.30
10.31.18	Review and edit motion for attorney fees.	3.0

TOTAL Attorney Time: 27.0 hours @ \$400.00 = \$10,800.00

II. PARALEGAL

10.24.18	File Notice of Entry of Order	.20
10.25.18	Review/format/Motion for reconsideration	1.1
10.29.18	Final Motions, regular and OST	.40
10.31.18	Review/revise/Motion for Attorney Fees	1.4

TOTAL Paralegal Time: 3.1 hours @ \$100.00 = \$ 310.00

III. COSTS

Wiznet \$ 14.00

IV. TOTAL DUE THIS INVOICE \$11,124.00

V. **BALANCE DUE \$11,124.00**

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

Through November 15, 2018 Billing Statement

I. ATTORNEY

11.1.2018	Reply to adverse emails (2) and forward to client (3)	.20
11.1.2018	Review of Plaintiffs closing	.40
11.12.2018	Read opposition and draft reply	1.4
11.13.18	Final reply	1.5
11.15.18	Attend motion hearing	1.0

TOTAL Attorney Time: 4.5 hours @ \$400.00 = \$1,800.00

II. PARALEGAL

11.13.18	Review/revise/final Motion to Amend	1.1
11.14.18	File and serve Motion to Amend	n/c

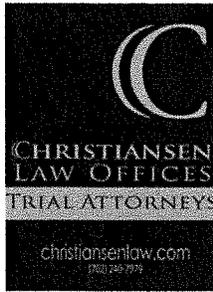
TOTAL Paralegal Time: 1.1 hours @ \$100.00 = \$ 110.00

III. COSTS

N/A

IV.	TOTAL DUE THIS INVOICE	\$1,910.00
V.	BALANCE DUE	\$1,910.00

Exhibit 10



INVOICE

Invoice # 15648
Date: 11/29/2018
Due On: 12/29/2018

Christiansen Law Offices

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Law Office of Daniel S. Simon
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2018-03891-Law Office of Daniel S. Simon-Simon adv Edgeworth

Simon adv Edgeworth

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	01/10/2018	PSC	Meeting with Client re: case history	2.50	\$850.00	\$2,125.00
Service	02/01/2018	PSC	Review file; Discussions with Client.	3.80	\$850.00	\$3,230.00
Service	02/03/2018	PSC	Review Motions to Adjudicate Lien.	1.30	\$850.00	\$1,105.00
Service	02/04/2018	PSC	Review motion to Dismiss; Discussions with Client.	2.30	\$850.00	\$1,955.00
Service	02/06/2018	PSC	Notice to Associate in on case	0.10	\$850.00	\$85.00
Service	02/06/2018	PSC	Attend Hearing on Motion for Determination of Good Faith Settlement, Simon's Motion to Adjudicate the Lien, Motion to Consolidate/New Lawsuit.	2.50	\$850.00	\$2,125.00
Service	02/14/2018	PSC	Review of hearing transcript	0.50	\$850.00	\$425.00
Service	02/15/2018	PSC	Assist in preparing, revising and finalizing Supplement to Motion to Adjudicate Attorney Lien	3.50	\$850.00	\$2,975.00
Service	02/21/2018	PSC	Review Vannah's Opp to Defendant's Motion to Dismiss and Countermotion to Amend; conference with client	2.30	\$850.00	\$1,955.00
Service	02/26/2018	PSC	Draft and fax letter to Williams re settlement conference	0.50	\$850.00	\$425.00

AA02351

Service	03/01/2018	PSC	Review Vannah's Supplement to their Countermotion to amend Complaint; conference with client	1.80	\$850.00	\$1,530.00
Service	03/02/2018	PSC	Review and revise Special Motion to Dismiss- Anti-Slapp on OST	1.30	\$850.00	\$1,105.00
Service	03/15/2018	PSC	Review Amended Complaint filed by Vannah; conference with client	1.30	\$850.00	\$1,105.00
Service	03/16/2018	PSC	R&R MSC brief; conference with client	3.50	\$850.00	\$2,975.00
Service	03/16/2018	PSC	Review Opp to Special motion to Dismiss: Anti-Slapp; conference with client	1.80	\$850.00	\$1,530.00
Service	03/21/2018	PSC	Assist R&R Reply to Motion to Dismiss: Anti-Slapp	1.30	\$850.00	\$1,105.00
Service	03/22/2018	PSC	Assist R&R Reply to Motion to Dismiss 12(b)(5)	1.80	\$850.00	\$1,530.00
Service	03/23/2018	PSC	Meeting re settlement conference with Jim, DS and AF; Prepare for and Attend Mandatory Settlement Conference	5.00	\$850.00	\$4,250.00
Service	04/09/2018	PSC	Assist R&R Motion to Dismiss Plaintiff's Amended Complaint; meet with client.	1.80	\$850.00	\$1,530.00
Service	04/24/2018	PSC	Review Opp to Defendants' (Third) Motion to Dismiss; conference with client	1.30	\$850.00	\$1,105.00
Service	05/09/2018	PSC	Assist R&R Special Motion to Dismiss Amended Complaint: Anti-Slapp	2.30	\$850.00	\$1,955.00
Service	05/15/2018	PSC	Meeting with Will Kemp	1.50	\$850.00	\$1,275.00
Service	05/18/2018	PSC	Assist R&R Bench Brief on Evidentiary Hearing	3.50	\$850.00	\$2,975.00
Service	05/19/2018	PSC	Review Plaintiffs' bench brief on evidentiary hearing; conference with client	1.50	\$850.00	\$1,275.00
Service	05/23/2018	PSC	Review calendar and scheduling issues and draft letter to Judge Jones re: evidentiary Hearing regarding continuing the evidentiary hearing due to trial conflict	0.50	\$850.00	\$425.00
Service	05/24/2018	PSC	Review Opposition to Defendants' 2nd Motion to Dismiss: Anti-Slapp	1.50	\$850.00	\$1,275.00
Service	08/10/2018	PSC	Assist in preparing subpoena to Floyd Hale; finalize and email same.	0.90	\$850.00	\$765.00
Service	08/18/2018	PSC	Reviewed file in preparation for evidentiary hearing.	8.50	\$850.00	\$7,225.00
Service	08/19/2018	PSC	Reviewed file in preparation for evidentiary hearing.	10.50	\$850.00	\$8,925.00
Service	08/20/2018	PSC	Meeting with Jim, DS and AMF; prepare for hearing	7.50	\$850.00	\$6,375.00

Service	08/21/2018	PSC	Review of file and prepare for hearing	9.50	\$850.00	\$8,075.00
Service	08/23/2018	PSC	Started reviewing exhibits AMF put in dropbox and continue preparing for hearing	8.50	\$850.00	\$7,225.00
Service	08/24/2018	PSC	Review case and exhibits and prepare for hearing.	8.50	\$850.00	\$7,225.00
Service	08/25/2018	PSC	Prepare for Hearing--Brian and Angela as witness	10.10	\$850.00	\$8,585.00
Service	08/26/2018	PSC	Prepare for Hearing--Brian as witness	9.80	\$850.00	\$8,330.00
Service	08/27/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	12.20	\$850.00	\$10,370.00
Service	08/28/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	11.90	\$850.00	\$10,115.00
Service	08/29/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel; prepare for next day of hearing	12.00	\$850.00	\$10,200.00
Service	08/30/2018	PSC	Prepare for and attend evidentiary hearing; conferences with client and co-counsel.	11.80	\$850.00	\$10,030.00
Service	08/31/2018	PSC	Conference with client; prepare and serve OOJ and cover letter	1.50	\$850.00	\$1,275.00
Service	09/02/2018	PSC	Assist with Findings of Fact and Conclusions of Law; conference with client	7.50	\$850.00	\$6,375.00
Service	09/10/2018	PSC	Review letter from Vannah re continuing hearing and discuss with client	1.30	\$850.00	\$1,105.00
Service	09/10/2018	PSC	Review and discuss production of cell phone records with client	0.80	\$850.00	\$680.00
Service	09/11/2018	PSC	Prepare response and serve to Vannah letter re continuing hearing; conference with client	0.80	\$850.00	\$680.00
Service	09/13/2018	PSC	Assist R&R updated findings of fact and conclusions of law for motions to dismiss; meet with client re: same	2.50	\$850.00	\$2,125.00
Service	09/14/2018	PSC	R&R updated draft findings of fact and conclusions of law for motion to adjudicate and Motions to Dismiss review of record with respect to evidentiary support of same	2.20	\$850.00	\$1,870.00
Service	09/15/2018	PSC	Assist R&R findings of fact and conclusions of law for motion to adjudicate; Motion to dismiss/proposed order to dismiss complaint.	3.20	\$850.00	\$2,720.00
Service	09/15/2018	PSC	Prepare for Hearing	4.00	\$850.00	\$3,400.00
Service	09/16/2018	PSC	Prepare for Hearing	2.80	\$850.00	\$2,380.00

Service	09/16/2018	PSC	Assist R&R spousal privilege brief; Discuss with client.	1.80	\$850.00	\$1,530.00
Service	09/17/2018	PSC	Prepare for hearing (prepping for Angela and closing)	2.50	\$850.00	\$2,125.00
Service	09/18/2018	PSC	Prepare for and attend Evidentiary Hearing	7.50	\$850.00	\$6,375.00
Service	09/19/2018	PSC	Discussion with client and prepare closing	2.20	\$850.00	\$1,870.00
Service	09/23/2018	PSC	Review and revise closing arguments	1.20	\$850.00	\$1,020.00
Service	10/11/2018	PSC	Review of Court's decision on Motion to Adjudicate, Motion to Dismiss 12(b)(5) and Motion to Dismiss: Anti-Slapp; meet with client and discuss necessary action re: same	2.50	\$850.00	\$2,125.00
Service	10/12/2018	PSC	Discussion with client re: orders; legal research and assess options in light of same	3.00	\$850.00	\$2,550.00
Service	10/26/2018	PSC	Review motion to reconsider; discuss with AF and client re: same	2.20	\$850.00	\$1,870.00
Service	11/02/2018	PSC	Assist with preparing Motion for Attorney Fees	3.00	\$850.00	\$2,550.00
Service	11/09/2018	PSC	Review Opposition to Motion for Reconsideration	1.00	\$850.00	\$850.00
Service	11/12/2018	PSC	Assist in preparation of Reply.	1.50	\$850.00	\$1,275.00
Service	11/13/2018	PSC	Meeting with client re hearing and prepare for same.	1.00	\$850.00	\$850.00
Service	11/14/2018	PSC	Prepare for hearing on Motion for Reconsideration; Disc. with client	1.50	\$850.00	\$1,275.00
Service	11/15/2018	PSC	Prepare for and attend hearing on Motion for reconsideration	2.50	\$850.00	\$2,125.00
Service	11/25/2018	PSC	Final review and revision of Motion for Attorneys Fees	2.00	\$850.00	\$1,700.00
				Subtotal		\$199,495.00
				Total		\$199,495.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
----------------	--------	------------	-------------------	-------------

15648	12/29/2018	\$199,495.00	\$0.00	\$199,495.00
			Outstanding Balance	\$199,495.00
			Total Amount Outstanding	\$199,495.00

Please make all amounts payable to: Christiansen Law Offices
Tax Identification Number: 88-0497171

Exhibit 11

**EDGEWORTH
COSTS FOR FEE DISPUTE**

Date	Description	Amount
12/19/17	copy costs for lawyers emails 1,859 pages (.25 per page)	\$464.75
12/20/17	copy costs for dss sent emails to brian@pediped 653 pages (.25 per page)	\$163.25
1/18/18	Lipson Neilson *David Clark Retainer Fee	\$5,000.00
2/14/18	Brittany Mangelson Transcriber	\$369.38
2/15/18	AT&T *Phone records	\$85.00
3/1/18	Brittany Mangelson Transcriber	\$87.40
3/14/18	Copy fee - Ashley's emails 1856 pages x .25	\$464.00
4/18/18	Verbatim Digital Reporting *4/3/18 Hearing Transcript	\$117.80
5/31/18	KC Investigations *Service on Angela & Brian Edgeworth	\$120.00
9/19/18	Clark County Treasurer	\$65.00
10/24/18	Kemp, Jones & Coulthard, LLP *Expert Fees	\$11,498.15
	TOTAL:	\$18,434.73

LAW OFFICE OF DANIEL S. SIMON A PROFESSIONAL CORPORATION GENERAL ACCOUNT 810 S. CASINO CENTER BLVD. LAS VEGAS, NV 89101		23437 <small>4-177/7124 2131 @00000000</small> 1/16/2018
PAY TO THE ORDER OF Lipson Neilson Cole Seltzer & Garin, P.C.		\$ 5,000.00
Five Thousand and 00/100*		DOLLARS
Lipson Neilson Cole Seltzer & Garin, P.C. David Clark, Esq. 9900 Covington Cross Dr #120 Las Vegas, NV 89144		 AUTHORIZED SIGNATURE
MEMO	Retainer Fee / Edgeworth	

INVOICE

BRITTANY MANGELSON
TRANSCRIBER
4613 Standing Bluff Way
Las Vegas, NV 89130
(916) 753-8199
bdmangelson@gmail.com

Attention:		Job #:	218
Attorney's Name:	Daniel Simon/Ashley Ferrel	Department #:	X
Date Ordered:	02/13/18	Case #:	A-16-738444-C
Date Delivered:	02/14/18	Tax ID #	46-3765787

RATE: 24-hour Expedite

# OF PAGES	CASE INFORMATION A-16-738444-C	PRICE PER PAGE	TOTAL CHARGES
46	<i>Edgeworth Family Trust versus Lange Plumbing</i> 02/06/18 Hearing	\$8.03	\$369.38
TOTAL OWED:			\$369.38

pd. 2/14/18
ck# 23517

Invoice Date: January 31, 2018

Invoice Number: 267865

Billing Fax: (702) 364-1655

Bill To:

LAW OFC DANIEL S SIMON 89101
DANIEL SIMON
810 S CASINO CTR BLVD
LAS VEGAS NV 89101



Global Legal Demand Center

Phone: 1-800-635-6840

Fax: 1-888-938-4715

11760 US HIGHWAY 1, SUITE 600
NORTH PALM BEACH, FL 33408-3029

REF #

Invoice

File Code	Case Description	Description of	Units	Rate	Amount
2395234	EDGEWORTH FAMILY TRUST ET AL. VS. LANGE PLUMBING LLC ET AL. CASE NO.: A-16-738444-C	Billed Usage	5.0	\$10.00	\$50.00
2395234	EDGEWORTH FAMILY TRUST ET AL. VS. LANGE PLUMBING LLC ET AL. CASE NO.: A-16-738444-C	Processing Fee	1.0	\$35.00	\$35.00

Federal Tax ID: 91-1379052

Subtotal: \$85.00

Payments Received: - \$0.00

Total Due: \$85.00

Cost dispute

*pd 2/15/18
OK# 23523*

JM

✓

INVOICE

BRITTANY MANGELSON
TRANSCRIBER
4613 Standing Bluff Way
Las Vegas, NV 89130
(916) 753-8199
bdmangelson@gmail.com

Attention:		Job #:	220
Attorney's Name:	Daniel Simon/Ashley Ferrel	Department #:	X
Date Ordered:	02/20/18	Case #:	A-16-738444-C
Date Delivered:	02/28/18	Tax ID #	46-3765787

RATE: Ordinary

# OF PAGES	CASE INFORMATION A-16-738444-C	PRICE PER PAGE	TOTAL CHARGES
23	<i>Edgeworth Family Trust versus Lange Plumbing</i> 02/20/18 Hearing	\$3.80	\$87.40
TOTAL OWED:		\$87.40	

pd. 3/1/18
C/C# 23564



Verbatim Digital Reporting
 3317 West Layton Avenue
 Englewood, CO 80110

Invoice

Date	Invoice #
4/18/2018	2239

Daniel S. Simon, Esq.
 c/o Janelle
 Simon Law
 810 S. Casino Center Blvd.
 Las Vegas, NV 89101

Terms	Due Date
Due on receipt	4/18/2018

Description	Qty	Rate	Amount
Transcript of Hearing held on 4/3/2018 Motions Hearing In Re Edgeworth Family Trust, et al. v. Lange Plumbing, LLC, et al. Case No. A-16-738444-C District Court, Clark County, Nevada <i>pd. 4/18/18</i> <i>Ac# 23607</i>	31	3.80	117.80

Phone #	Fax #	E-mail
303-798-0890	303-797-0432	Julie@VerbatimDigitalReporting.Com

Total	\$117.80
Payments/Credits	\$0.00
Balance Due	\$117.80

AA02362

OW

KC INVESTIGATIONS, LLC

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

Invoice

Date	Invoice #
5/24/2018	6723

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

Client
EDGEWORTH FAMILY TRUST

Date Served	Terms	Server
05/21/2018	Duc on receipt	JR

Item	Description	Amount
SERVE	SERVED SUBPOENA-CIVIL FOR ANGELA EDGEWORTH AN NOTICE TO APPEAR FOR EVIDENTIARY HEARING TO ANGELA EDGEWORTH WITH BRIAN EDGEWORTH (HUSBAND) AT 1191 CENTER POINT DR., HENDERSON, NV 89074.	70.00
SERVE	SERVED SUBPOENA-CIVIL FOR BRIAN EDGEWORTH AND NOTICE TO APPEAR FOR EVIDENTIARY HEARING TO BRIAN EDGEWORTH AT 1191 CENTER POINT DR., HENDERSON, NV 89074.	50.00
<p><i>pd. 5/31/18</i> <i>ck# 23833</i></p>		
Thank you for your business.		Total \$120.00

TRANSCRIBER'S BILLING INFORMATION

CASE #	A-16-738444		
CASE NAME:	Edgeworth Family Trust		
HEARING DATE:	9-18-18		
DEPARTMENT #	10		
COURT RECORDER/ EXTENSION	VICTORIA BOYD 671-4388		
ORDERED BY:	Ashley Ferrel		
FIRM:	Ashley@simonlawlv.com		
EMAIL:	702-364-1650		
PAYABLE TO:			
	Make check payable to: Clark County Treasurer County Tax ID#: 88-6000028 Include case number on check		
	<u>Mailing Address:</u> Regional Justice Center Fiscal Services Attn: Kim Ockey 200 Lewis Ave. Las Vegas, NV 89155		
BILL AMOUNT:	1	CDs @ \$25 each =	\$25
	1	hours @ \$40 an hour recording fee =	\$40
		pages @ \$ per page of trans.	\$0
	Total		\$65
PAYABLE TO OUTSIDE TRANSCRIBER:			
BILL AMOUNT:	pages @	\$	per page of trans \$
DATE PAID:			
TRANSCRIPTS WILL NOT BE FILED OR RELEASED UNTIL PAYMENT IS RECEIVED			

PD 9/19/18
 OK# 24147

Kemp, Jones & Coulthard, LLP

3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, NV 89169

September 21, 2018

Daniel Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101

Invoice #: 65151
Billed through: August 31, 2018
Our file #: 02160 00002

REGARDING: Lange Plumbing

Current professional services (detail follows)	\$11,475.00
Current expenses advanced (detail follows)	\$23.15

Total Current Charges	\$11,498.15

TOTAL CHARGES THIS INVOICE	\$11,498.15
Net balance forward	\$0.00
	=====
TOTAL NOW DUE - INCLUDING PAST DUE AMOUNTS	\$11,498.15

PROFESSIONAL SERVICES RENDERED			<u>Hours</u>	<u>Amount</u>
08/16/18	WK	Meeting with Special Master.	1.00	675.00
08/22/18	WK	Meeting with Danny Simon, Pete Christiansen and Jim Christiansen; prepare testimony; review materials.	2.00	1,350.00
08/23/18	WK	Review materials.	2.00	1,350.00
08/27/18	WK	Review materials.	1.20	810.00
08/28/18	WK	Review materials.	1.50	1,012.50
08/29/18	WK	Review materials; update research; conference with Eric Pepperman; telephone conference with Pete Christiansen.	3.50	2,362.50
08/30/18	WK	Meeting with counsel; court appearance at hearing.	5.80	3,915.00
			<u>17.00</u>	<u>\$11,475.00</u>
EXPENSES ADVANCED				
08/28/18		Computer Disk/DVD/Flash Drive (ONE 16 GB FLASH DRIVE)		20.00
08/29/18		Printing Expense B/W		0.45
08/29/18		Printing Expense B/W		0.30

02160 00002

Invoice # 65151

Page 2

08/29/18	Printing Expense B/W	0.45
08/29/18	Printing Expense B/W	0.60
08/29/18	Printing Expense B/W	0.45
08/29/18	Printing Expense B/W	0.45
08/29/18	Printing Expense B/W	0.45
		\$23.15

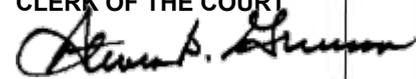
EXPENSE SUMMARY

150	Printing Expense B/W	3.15
701	Computer Disk/DVD/Flash Drive	20.00
		\$23.15

TIMEKEEPER SUMMARY

WK	Kemp, Will	<u>17.00</u> hrs @	\$675.00 /hr	<u>11,475.00</u>
		17.00		\$11,475.00

DUE AND PAYABLE UPON RECEIPT
 ONE AND ONE-HALF PERCENT PER MONTH ADDED
 TO ANY BALANCE NOT PAID WITHIN 30 DAYS



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

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**
11 **--000--**

12 EDGEWORTH FAMILY TRUST; AMERICAN
13 GRATING, LLC,

14 Plaintiffs,

15 vs.

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

22 Defendants.

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

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

23 EDGEWORTH FAMILY TRUST; AMERICAN
24 GRATING, LLC,

25 Plaintiffs,

26 vs.

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

Defendants.

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

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

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

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

13 DATED this 17 day of December, 2018.

14 VANNAH & VANNAH

15
16 
17 ROBERT D. VANNAH, ESQ.

18
19
20 I.

21 SUMMARY

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

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

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

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

21 SIMON again made his desire for far more in fees clear in his written Motion to
22 Adjudicate Lien, and it was his consistent theme at the multi-day evidentiary hearing on that
23 motion. He once again made that wish clear in his Motion to Reconsider at page 19:9-10, when
24 he asked for \$1.9 million, the same basic number he'd asked for since he served his Amended
25 Lien in January of 2018 for \$1,977,843.80 in additional fees. Even a political science major can
26
27
28

1 see that simple math shows that 40% of the Viking settlement of \$6 million is \$2.4 million, an
2 amount that is eerily similar to what PLAINTIFFS had already paid SIMON in fees, plus the
3 amount of his Amended Lien.

4 If that desire weren't so, why would SIMON not have just sent PLAINTIFFS another
5 invoice for fees and costs as PLAINTIFFS undisputedly requested via email on November 15,
6 2018, as opposed to demanding a percentage of the Viking settlement two days later? And why
7 would SIMON then demand \$1,100,000 ten days after that? And then demand \$1,500,000
8 several days after that? And why would SIMON then serve the Amended Lien for \$1,977,843.80
9 the following month? If SIMON thought keeping concurrent time sheets was a miserable chore,
10 try keeping track of the moving target that has been his demands for more in fees.
11

12 Now that he lost his bid for a contingency fee in his Motions to Adjudicate Lien and to
13 Reconsider/Clarify, SIMON impermissibly seeks to shake down PLAINTIFFS for more in fees
14 and costs when: 1.) The fees and costs SIMON is now seeking were incurred litigating the
15 Motion to Adjudicate Lien, not SIMON'S collateral Motion to Dismiss on NRCP 12(b)(5)
16 grounds; 2.) An award of additional attorney's fees and costs to seek and obtain an award of
17 attorneys fees under NRS 18.015 isn't contemplated under that statute; 3.) SIMON was not and is
18 not a prevailing party; and, 4.) PLAINTIFFS' complaints were filed and maintained in good faith.
19

20 For all of the reasons that this Court has entertained thus far in properly managing and
21 containing this matter, PLAINTIFFS respectfully request that SIMON'S latest Motion for Fees
22 and Costs be denied in its entirety.
23

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II.

ARGUMENTS

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

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

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

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

11 On that note, how much ink did SIMON use in his Brief re: Evidentiary Hearing to discuss
12 the merits of PLAINTIFFS' Amended Complaint and whether or not it should be dismissed
13 pursuant to NRCP 12(b)(5)? Absolutely none. Rather, every argument made, each exhibit
14 attached, and the only expert report submitted focused solely on reasons for SIMON to get either
15 a contingency fee via quantum meruit or another \$692,120 in fees from his super bill. Similarly,
16 how much time or effort did SIMON spend, incur, and/or make at the multi-day evidentiary
17 hearing on his Motion to Dismiss? Fifteen minutes? Likely much, much less, if any.
18

19 For example, the purpose for the participation of Peter S. Christiansen, Esq., in all of this
20 was to take the lead in the evidentiary hearing. To highlight this obvious point, while Mr.
21 Christiansen was present on behalf of SIMON at court proceedings on February 8 & 20, 2018,
22 those hearings did not involve arguments on SIMON'S Motions to Dismiss, and he merely noted
23 his appearances. At the April 3, 2018, hearing on SIMON'S Motions to Dismiss, Mr.
24 Christiansen wasn't present at all.
25

26 Rather, a perusal of court minutes clearly shows that Mr. Christiansen's first substantive
27 appearance occurred when the evidentiary hearing on the Motion to Adjudicate Lien was initially
28 scheduled. Thereafter, all of his time, questions and arguments at the multi-day evidentiary
29

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

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

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

21 Three, because SIMON demanded an additional \$1,114,000 in fees from PLAINTIFFS on
22 November 27, 2018, without any evidentiary or legal basis. Four, because SIMON sent a letter to
23 PLAINTIFFS’ then co-counsel on December 7, 2018, stating that SIMON’S additional fees “may
24 well exceed \$1.5M.” Five, because SIMON served an Amended Attorney’s Lien attaching
25 PLAINTIFFS settlement proceeds to the tune of \$1,977,843.80, knowing full well (as the attorney
26
27
28

1 of the stature and reputation as described by Mr. Clark and Mr. Kemp) that: a.) the Rules
2 precluded him from getting a contingency fee without a written contingency fee agreement; and,
3 b.) his hourly fees for work performed on the case would never come even close to the amount of
4 his Amended Lien. And, of course, SIMON’S additional billed fees were far less than his
5 estimates, coming in at \$692,120.

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

12 For SIMON to replay the victim card and tell this Court in his Motion at page 27 (!) that
13 this lien adjudication should have been simple and easy like all his others, he’s just not seeing
14 either the error of his ways or what the rest of us are seeing. He did a really bad thing when he
15 violated the Nevada Rules of Professional Conduct out of the gate and compounded his
16 unbecoming conduct when he continued (and continues) to lay claim to a substantial sum of
17 money that was not and now is not his to claim. In short, PLAINTIFFS did not ask for any of
18 this, though they did ask SIMON on November 15, 2018, to provide them his invoice for fees and
19 costs owed, which SIMON promptly ignored. Instead, PLAINTIFFS have had to fight, and have
20 to continue to fight, to get their settlement proceeds. As such, PLAINTIFFS respectfully request
21 that SIMON’S Motion be denied.
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1 **B. AN AWARD OF ADDITIONAL ATTORNEYS FEES AND COSTS TO SEEK OR**
2 **OBTAIN AN AWARD OF FEES AND COSTS UNDER NRS 18.015 ISN'T**
3 **CONTEMPLATED IN THE STATUTE.**

4 If there were a basis or authority for SIMON to request or obtain fees and costs in order to
5 obtain fees and costs pursuant to NRS 18.015, SIMON would have cited it over and over. But,
6 there isn't so he didn't. Rather, to quote SIMON'S counsel, who was addressing the issue of
7 discovery in general in lien adjudication proceedings: "It's not contemplated in the statute. If
8 you have a problem with the statute, appear in front of the legislature and argue against it." (See
9 Exhibit 1, at p. 20:21-22.) Getting fees for pursuing fees under NRS 18.015 isn't contemplated in
10 the statute, either. It's not there. If SIMON has a problem with the fact that he can't get fees and
11 costs to obtain fees and costs per NRS 18.015, he can take it up with the folks in Carson City.
12 However, it's inappropriate to ask for or receive them in these proceedings. As a result,
13 SIMON'S Motion must be denied.
14

15 **C. SIMON WAS NOT AND IS NOT THE PREVAILING PARTY OF ANYTHING OF**
16 **MERIT.**
17

18 As argued above, NRS 18.015 does not contemplate an award of fees and costs in a lien
19 adjudication proceeding filed to obtain fees and costs. Thus, awarding fees and cost under that
20 statute would be improper. Furthermore, NRS 18.010 states that a prevailing party cannot recover
21 fees if that party has recovered more than \$20,000. Even if one could assume that SIMON is a
22 prevailing party, which he is not, SIMON has sought additional fees from PLAINTIFFS ranging
23 from a low of \$692,120 to a high of \$1,977,843.80, amounts that are all well north of \$20,000.
24

25 In several instances, SIMON presented letters containing different amounts demanded
26 from PLAINTIFFS in fees. In another, he presented a fee proposal. In yet another instance, he
27 served attorneys liens, one without an amount for fees, another with \$1,977,843.80 affixed. In a
28 final instance, SIMON served an improper Offer of Judgment on August 31, 2018, 2018-02-075

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

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

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

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

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

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

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

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

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

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III.

CONCLUSION

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

DATED this 17 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

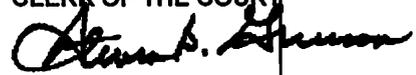
Traditional Manner:
None

DATED this 17 day of December, 2018.


An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-16-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

**RECORDER'S PARTIAL TRANSCRIPT OF HEARING
STATUS CHECK: SETTLEMENT DOCUMENTS
DEFENDANT DANIEL S. SIMON D/B/A SIMON LAW'S MOTION TO
ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL
SIMON PC; ORDER SHORTENING TIME**

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.

For Daniel Simon:

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

For the Viking Entities:

JANET C. PANCOAST, ESQ.

Also Present:

DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 distinguishable facts. Be happy to brief it if you'd like. Simply wasn't
2 enough time this weekend to do that. But that's the thumbnail sketch.

3 THE COURT: Okay. Mr. Christensen, do you have any
4 response to that?

5 MR. CHRISTENSEN: Sure, Judge. We move for adjudication
6 under a statute. The statute is clear. The case law is clear. A couple of
7 times we've heard the right to jury trial, but they never established that
8 the statute is unconstitutional. They've never established that these are
9 exclusive remedies. And in fact, the statute implies that they are not
10 exclusive remedies. You can do both.

11 The citation of the *Hardy Jipson* case, is illustrated. If you look
12 through literally every single case in which there's a lien adjudication in
13 the state of Nevada, in which there is some sort of dispute, you -- the
14 Court can take evidence, via statements, affidavits, declarations under
15 Rule 43; or set an evidentiary hearing under Rule 43.

16 That's the method that you take to adjudicate any sort of a
17 disputed issue on an attorney lien. That's the route you take. The fact
18 that the *Hardy* case is a slightly different procedural setting doesn't
19 argue against or impact the effect of Rule 43. In fact, it reinforces it.
20 Just shows that's the route to take.

21 So, you know their -- they've taken this rather novel tact in
22 filing an independent action to try to thwart the adjudication of the lien
23 and try to impede the statute and they've supplied absolutely no
24 authority, no case law, no statute, no other law that says that that
25 actually works. They're just throwing it up on the wall and seeing if it'll

1 stick. And Judge, it won't stick. This is the way you resolve a fee
2 dispute under the lien.

3 Whatever happens next, if they want to continue on with the
4 suit, if they survive the Motion to Dismiss -- the anti-SLAPP Motion to
5 Dismiss, we'll see. That's a question for another day. But the question
6 of the lien adjudication is ripe, this Court has jurisdiction, and they don't
7 have a legal argument to stop it. So, we should do that.

8 If the Court wants to set a date for an evidentiary hearing, we
9 would like it within 30 days. Let's get this done. And then they can sit
10 back and take a look and see what their options are and decide on what
11 they want to do. But, there's nothing to stop that lien adjudication at this
12 time.

13 THE COURT: Okay. Well, I mean, basically this is what I'm
14 going to do in this case. I mean, it was represented last time we were
15 here, that this is something that both parties eagerly want to get this
16 resolved -- they want to get this issue resolved. So I'm ordering you
17 guys to go to a mandatory settlement conference in regards to the issue
18 on the lien. Tim Williams has agreed to do a settlement conference for
19 you guys, as well as Jerry Wiese has also agreed to do a settlement
20 conference.

21 So if you guys can get in touch with either of those two and set
22 up the settlement conference and then you can proceed through that,
23 and if it's not settled then we'll be back here.

24 Mister --

25 MR. PARKER: Your Honor, my own selfish concern here, my

1 what the statutes says, hearing in five days. We're all happy. We'll all
2 go participate in a settlement conference, but this notion that there's
3 discovery and adjudication, unless somebody knows how to do
4 discovery in five days, which I don't, that's not contemplated. You have
5 a hearing you take evidence, whether it takes us a day or three days to
6 do the hearing, that's how it works.

7 THE COURT: Okay.

8 MR. VANNAH: Well, that's not how it works, because I have
9 done this before, and it was discovery ordered by another Judge saying
10 yeah, you're going to have discovery. Judge Israel ordered discovery.
11 But we're looking at two million dollars here.

12 THE COURT: And I understand that, Mr. Vannah.

13 MR. VANNAH: This is not some old fight over a fee of
14 \$15,000, which I agree would --

15 MR. CHRISTENSEN: Your Honor, I'm sorry, but I've been
16 doing lien work for a quarter century now --

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

20 MR. CHRISTENSEN: -- you don't get discovery to adjudicate
21 a lien. It's not contemplated in the statute. If you have a problem with
22 the statute, appear in front of the legislature and argue against it.

23 THE COURT: Okay --

24 MR. VANNAH: No, there's nothing --

25 THE COURT: -- well today, we're going to go to the

Exhibit 2

Exhibit 2

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LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

[Case called at 9:38 A.M.]

THE COURT: -- in the consolidated case of Edgeworth Family Trust versus Daniel S. Simon, doing business as Simon Law. Good morning, counsel. If we could have everyone's appearance.

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

THE COURT: Okay.

MR. CHRISTENSEN: Jim Christensen on behalf of the Law Office.

THE COURT: Okay. So this is on for several things. And what I did notice, counsel, is Mr. Simon had filed a Motion to Adjudicate the Lien. And I believe when we were here last time, I ordered you guys to a mandatory settlement conference. So, it was my fault that we did not recalendar the motion to adjudicate the lien, so it did not appear on the calendar today.

However, I believe that the Motion to Adjudicate the Lien is very, very important in making the decisions on the other motions that are on calendar today. You guys have already argued that motion, so I'm prepared to deal with all of those issues today, if you guys are prepared to go forward on that.

MR. VANNAH: We -- we are, Your Honor.

1 thing as giving it to us. You're okay.

2 So there's just -- there's no way to stop the anti-
3 SLAPP motion. They haven't cited any case law; we have. They
4 don't point to any section of the statute; we have. It
5 applies. Their -- their initial Complaint and their Amended
6 Complaint both have to be dismissed, because Mr. Simon was
7 sued because, and solely because he followed the lien statute.

8 THE COURT: Okay.

9 MR. CHRISTENSEN: Thank you, Your Honor.

10 THE COURT: Thank you, counsel.

11 I've read everything, and considering the arguments
12 today, it appears to me on the face of the regular Complaint
13 as well as on the face of the Amended Complaint that they were
14 not suing Mr. Simon for bringing the lien; they were suing him
15 for conversion, breach of contract, and the other causes of
16 action, which includes the last one that was added in the
17 Amended Complaint.

18 So the Special Motion to Dismiss is going to be
19 denied.

20 Moving on to -- there is a Motion to -- sorry, I'm
21 just on the wrong page -- a Motion to Dismiss Plaintiff's
22 Complaint pursuant to NRCP 12(b)(5), as well as the -- I want
23 to do the Motion to Adjudicate the Attorney Lien at the same
24 time. If you guys -- and I know you guys have made a lot of
25 arguments, and I do recall everything that was said the last

1 time we were here on the Motion to Adjudicate the Attorney
2 Lien.

3 But in regards to both of those motions, Mr.
4 Christensen, do you have anything to add to those two motions?

5 MR. CHRISTENSEN: Well, the initial Motion to
6 Dismiss only addressed the original first three causes of
7 action of the original Complaint.

8 THE COURT: Not the new one.

9 MR. CHRISTENSEN: So there's a fourth cause of
10 action floating around out there?

11 THE COURT: Yeah.

12 MR. CHRISTENSEN: As to the first three causes of
13 action, you can't sue for conversion when someone hasn't
14 converted money. In this case, Mr. Simon was sued for
15 conversion before anyone even had any money. He was sued
16 before the checks were even deposited, before the clients had
17 even signed the backs of the checks, they had sued him for
18 conversion.

19 So I would incorporate all of the arguments I made
20 on conversion with regard to anti-SLAPP.

21 THE COURT: Okay.

22 MR. CHRISTENSEN: They just don't have conversion.
23 There is not conversion if you haven't taken the money and put
24 it in your pocket. This is different from a case where a
25 lawyer has reached into their trust account and moved money

1 over to the business account, or put it in their pocket, or
2 they have a debit card off their trust account or whatever.
3 This is different.

4 Mr. Simon followed the rules. He can't be sued for
5 following the rules.

6 THE COURT: Okay. And, Mr. Vannah, you in the
7 Supplement to the Motion to Adjudicate that was filed by Mr.
8 Christensen, you did not file an Opposition. Is there
9 anything you want to add to that or anything you want to add
10 to the Motion to Dismiss?

11 MR. VANNAH: No. No, Your Honor.

12 THE COURT: Okay.

13 MR. VANNAH: It's -- it's -- I think we've -- we've
14 burned a lot of paper with the --

15 THE COURT: No, and I understand that. I just
16 wanted to give you --

17 MR. VANNAH: Right.

18 THE COURT: -- guys that opportunity because you
19 hadn't filed anything, if you wanted to.

20 Okay. So in regards to the Motion to Adjudicate the
21 Lien, we're going to set an evidentiary hearing to determine
22 what Mr. Simon's remaining fees are. Whether or not there is
23 a contract is a question of fact that this Court needs to
24 determine. This Court is going to determine if there is a
25 contract in implied, in fact, between Mr. Simon and between

1 the Edgeworths, because there were promises exchanged and
2 general obligations and there was services performed as well
3 as there was payment made on those services.

4 During the course of that evidentiary hearing, I
5 will also rule on the Motion to Dismiss at the end of the
6 close of evidence, because I think that evidence is
7 interrelated in the sense that it is my understanding from
8 everything that has happened, that after all of this arose the
9 end of November, the beginning of December of last year, then
10 there was the discussion between Mr. Simon and Mr. Vannah
11 where the money was placed into the account where Mr. Vannah
12 and Mr. Simon are the signors on the account, and then the
13 undisputed money, it's my understanding -- and correct me if
14 I'm wrong -- has already been disbursed to the plaintiffs and
15 only the disputed money remains in the account, is my
16 understanding.

17 MR. CHRISTENSEN: That's correct.

18 THE COURT: And so I think that is the subject that
19 needs to be addressed during the evidentiary hearing as to
20 what the fees are in regards to that disputed amount. So
21 after the close of evidence at the evidentiary hearing I will
22 be able to rule on the Motion to Dismiss.

23 Now, when do you guys want to have this hearing?

24 MR. VANNAH: Well --

25 THE COURT: How long do you guys think it's going to

Exhibit 3

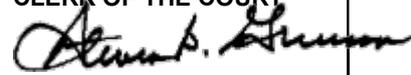
Exhibit 3

EVENTS & ORDERS OF THE COURT

04/03/2018 All Pending Motions (9:30 AM) (Judicial Officer Jones, Tierra)**Minutes****04/03/2018 9:30 AM**

- APPEARANCES CONTINUED: Robert Vannah, and Robert Greene, present. Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp; Order Shortening Time....Status Check: Settlement Conference...Defendant Daniel S. Simon's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint Following arguments by counsel, COURT ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp, DENIED. COURT FURTHER ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, Set for Evidentiary Hearing on the dates as Follows: 05-29-18 11:00 a.m., 05-30-18, at 10:30 a.m., and 5-31-18 at 9:00 a.m. Court notes is will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/29/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties PresentReturn to Register of Actions



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

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

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

NOTICE OF ENTRY OF ORDERS

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

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

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

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

DATED this 27 day of December, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:
None

DATED this 27 day of December, 2018.

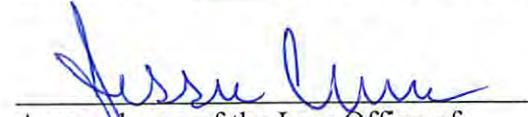

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1

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ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

7
8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

16 CONCLUSION OF LAW

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

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

22 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 *Fee Agreement*

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

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

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

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

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

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

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

29 Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRC
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
26 paid in full and there was never any indication given that anything less than all the fees had been
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
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1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
2 the NRCPC 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
6 Office retained the payments, indicating an implied contract was formed between the parties. The
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
8 date they were constructively discharged, November 29, 2017.

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 *Costs Owed*

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

15 *Quantum Meruit*

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

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

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

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

18 1. Quality of the Advocate

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

26 2. The Character of the Work to be Done

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRCP 1.5.

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

CONCLUSION

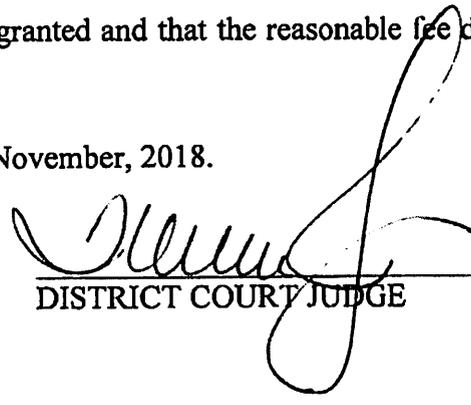
The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the Edgeworths once Simon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

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

9
10 **ORDER**

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

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

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17 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2

Exhibit 2

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ORD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

6
7 **FINDINGS OF FACT**

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

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

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

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

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
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1 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
2 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
3 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (Def. Exhibit 43).

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

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

27 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly
28

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

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

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

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

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

14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

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

22 23 ***Declaratory Relief***

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

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

5 *Conversion*

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

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

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

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

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

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

Punitive Damages

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

CONCLUSION

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

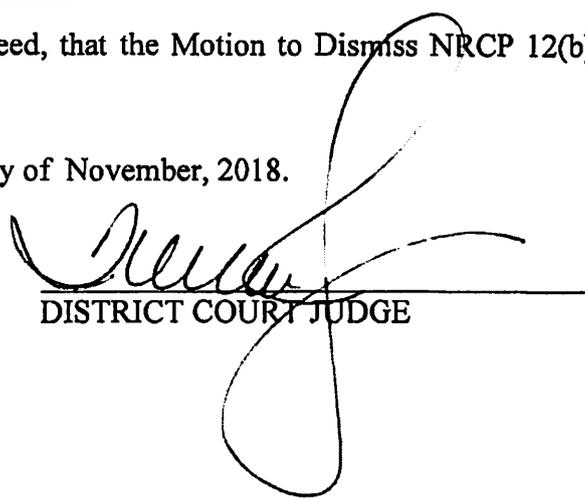
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ORDER

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

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



DISTRICT COURT JUDGE

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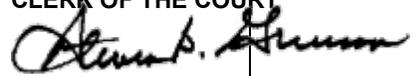
CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10



RPLY

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7 (702) 272-0415 fax
8 jim@jchristensenlaw.com
9 Attorney for SIMON

Eighth Judicial District Court

District of Nevada

10 EDGEWORTH FAMILY TRUST, and
11 AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

18 EDGEWORTH FAMILY TRUST;
19 AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**REPLY IN SUPPORT OF MOTION
FOR ATTORNEY FEES AND
COSTS**

Date of Hearing: 1.15.19

Time of Hearing: 9:30 A.M.

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 **I. Argument**

2 The Edgeworths sued Simon for conversion, case no. A-18-767242-C. This
3 Court dismissed the conversion case pursuant to NRCP 12(b)(5) as a matter of law.
4 Simon moved for fees because the conversion case was not well-grounded in fact
5 and was not warranted by existing law.
6

7 The focus of the subject motion is on the conversion case: whether the
8 conversion case was filed on reasonable grounds; whether the conversion case was
9 warranted under the law; and, whether counsel made a “reasonable and competent
10 inquiry” into the facts and law prior to filing the conversion complaint, and then
11 pursuing the conversion case after facts and law were made known to counsel.¹
12

13 The Edgeworths opposed the subject motion by making personal attacks
14 against Mr. Simon. *Argumentum Ad Hominem* attacks - that is, name calling - is a
15 deceptive argument tactic. Name calling is a sign of a flawed argument.
16

17 The flaws in the Edgeworths’ position is also exposed by what the
18 opposition did not address. The Edgeworths *did not* oppose the substance of the
19 motion². The Edgeworths *did not* provide the Court with facts which made filing
20 or pursuit of the conversion case reasonable. The Edgeworths *did not* provide the
21 Court with legal authority under which the filing and pursuit of the conversion case
22
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24 ¹ See, e.g., *Bergman v. Boyce*, 856 P.2d 560 (Nev. 1993).

25 ² The Edgeworths argue that NRS 18.015 does not contemplate an award of fees,
however, Simon did not ask for fees pursuant to NRS 18.015.

1 was warranted. The Edgeworths *did not* provide the Court with a description of an
2 inquiry into the basis of the conversion case. Lastly, the Edgeworths *did not*
3 contradict any of the applicable law set forth in the motion for fees or the earlier
4 motions to dismiss.³

5
6 Instead, the Edgeworths opposed the motion for fees by making an
7 unsupported statement of personal belief:

8 “PLAINTIFFS strenuously object to any such characterization or
9 representation, as it is unfounded in fact and law.”

10 (Opp., at 11:10-11.) The strength of the Edgeworths’ subjective belief is
11 meaningless. What matters is the basis for filing and then maintaining the
12 conversion case. On what matters, the Edgeworths fall short. The Edgeworths
13 have not provided this Court with any objective support for its subjective belief.
14

15 The Court’s analysis of a motion seeking fees for filing and pursuing a
16 frivolous complaint is an objective review of the facts and law of the conversion
17 case. Thus, the Court’s analysis must focus on such things as:
18

- 19 • That Plaintiffs cannot sue for conversion when no money was converted.
- 20 • That Plaintiffs cannot sue for conversion when Plaintiffs share control of the
21 money under an agreement of the Parties.
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25 ³ *But see*, fn. 2.

- 1 • That Plaintiffs cannot sue for conversion when Plaintiffs receive the benefit
2 of all interest from the money (including interest earned off funds due Simon
3 for costs and fees).
- 4 • That Plaintiffs cannot sue for conversion when using an attorney's lien is
5 permitted by statute.
- 6 • That Plaintiffs cannot sue for conversion, when an attorney is due money for
7 advanced costs and fees secured by an attorney lien, only the amount is
8 disputed.
- 9 • That Plaintiffs cannot sue for conversion when filing an attorney lien is not
10 conversion as a matter of law.
- 11 • That Plaintiffs cannot sue for conversion when filing an attorney lien is not
12 conversion as a matter of law.

13 In the motions to dismiss, Simon described in detail the law of conversion and why
14 a conversion did not occur when Simon acted in strict accordance with the lien
15 statute and with the safekeeping property ethical rule, NRPC 1.15 - including an
16 opinion from former Bar Counsel David Clark (an opinion which is not challenged
17 by the Edgeworths). As a matter of law, an attorney cannot be sued for conversion
18 by a client in a fee dispute when the attorney has complied with Nevada statute and
19 the safekeeping property rule. The Edgeworths have yet to provide a case where
20 such a claim was recognized, let alone succeeded. The Edgeworths have yet to
21 provide a statute or rule of law which supports the conversion case.
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1 Antagonism between the Parties and name calling are not grounds to pursue
2 a conversion case against a lawyer who uses an attorney's lien. An objective
3 analysis by the Court of the facts and law of the conversion case necessarily leads
4 to the conclusion that filing and pursuit of the conversion case was frivolous, and
5 that Simon is due his fees and costs incurred in defense of the conversion case.
6

7 **A. Groundless litigation must be sanctioned.**

8 The Court protects the integrity of the judicial system by shielding limited
9 judicial resources against frivolous litigation and by fostering timely and
10 inexpensive resolution of claims.⁴ The Court is provided with substantial tools to
11 protect the administration of justice in Nevada. However, the judicial system will
12 only be protected if the Court acts when cases are brought that are not well
13 grounded in fact and law.
14

15
16 There is a Legislative mandate in Nevada instructing Courts to sanction
17 those who threaten the administration of justice by pursuing warrantless cases.
18 The Nevada Legislature directs Courts to "liberally construe the provisions of this
19 section in favor of awarding costs, expenses and attorney's fees" in both NRS
20 7.085 and 18.010(2)(b).
21
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25 ⁴ See, e.g., NRS 7.085.

1 The Nevada Supreme Court agrees with the Legislature about the need to
2 deter groundless cases. NRCP 11 states that Courts “shall impose” sanctions for
3 frivolous litigation.

4 In this case, Simon served an attorney’s lien as permitted by Nevada statute
5 law to resolve a dispute over fees and costs owed by the Edgeworths for Simon’s
6 work on the Viking sprinkler case. Under the attorney lien statute, the Edgeworths
7 can assert every factual and legal defense available to the fee claim and are given
8 an opportunity to be heard and present their side of the dispute.
9
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11 The problem, which led to this motion, arose when the Edgeworths sued
12 Simon for conversion. The Law requires reasonable grounds for filing the
13 conversion case. If reasonable grounds did not exist, then sanctions must follow.
14

15 The Edgeworths filed the conversion case, and continued the case through
16 their amended complaint and beyond, on the claim that Simon was due nothing
17 from the settlement.⁵ That claim was factually and legally false.⁶ Simon was due
18 advanced costs and Simon was due fees, even if the amount was in dispute.⁷
19

20 Counsel for the Edgeworths has repeatedly conceded this point in making
21 statements to this Court that this is just a fee dispute.
22

23 ⁵ D&O granting 12(b)(5) motion to dismiss at 6:24-7:19. All the causes of action in
24 the conversion case were based on the Edgeworths’ false claim that no money for
costs or fees was owed to Simon.

25 ⁶ See, fn. 5.

⁷ See, fn. 5.

1 This Court has found, and Edgeworths' counsel apparently agrees, that there
2 was no reasonable basis for filing the conversion case.⁸ Because the conversion
3 case was filed without reasonable grounds, the law requires that the Edgeworths,
4 and their attorney, be sanctioned.

5
6 **B. The fees and costs sought are a reasonable sanction amount.**

7 The filing and pursuit of the conversion case forced Simon to incur
8 significant defense fees and costs. Simon has built a law practice over many years
9 of hard work; the practice continues based on reputation and word of mouth.
10 (Simon does not appear on TV or use billboards.) Besides the obvious threat of a
11 conversion case and a prayer for punitive damages, the conversion claim directly
12 threatened manifest reputational harm. When the Edgeworths took the
13 unwarranted and unneeded step of filing the conversion case, they triggered a
14 necessary and foreseeable robust reaction.
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17 All the fees and costs sought are related to the defense of the frivolous
18 conversion complaint. *But for* the conversion case, Simon could have dealt with
19 the fee dispute in house. *But for* the conversion case, Simon would not have
20 retained former Bar Counsel David Clark to opine on the conversion complaint.
21 *But for* the conversion case, Simon would not have retained Will Kemp to support
22 Simon's fee claim against the groundless claims of wrongful dominion over the
23
24

25 ⁸ See, fn. 5.

1 settlement funds. *But for* the conversion case, Simon would not have retained Pete
2 Christiansen to expose the Edgeworths' false factual claims, nor retain Jim
3 Christensen to expose the Edgeworths' baseless legal claims.

4 In an argument against the amount of fees sought, the Edgeworths observe
5 that much of the time spent by Simon counsel was during the evidentiary hearing.
6 However, that observation is another flawed argument because the lien issues and
7 the facts underlying the conversion case were intertwined.
8

9 This Court already ruled the conversion case and the lien adjudication were
10 related when the Court granted consolidation; and, when the Court decided to rule
11 on the motion to dismiss and the motion to adjudicate at the same time - after
12 receiving evidence at the evidentiary hearing.⁹ The Edgeworths did not challenge
13 the Court rulings by motion for reconsideration, writ, or in their notice of appeal.
14 The Edgeworths cannot contest the Court's rulings on the close relationship of the
15 cases now.
16
17

18 Based on this Court's rulings, the time spent in the evidentiary hearing was
19 incurred for the motion to dismiss the conversion case A-18-767242-C; and, to
20 adjudicate the attorney lien in A-16-738444. Based on the Court's rulings,
21 apportionment is not appropriate.
22
23

24 ⁹ The Court found the facts and circumstances of the motion for adjudication and to
25 dismiss to be closely related. Exhibit 2 to the Edgeworth Opposition, April 3,
2018 transcript at 2:19-24, 15:20-16:2, & 17:20-18:16.

1 **C. The *Brunzell* factors**

2 In making its award of fees, the Court must review the amounts sought
3 under the *Brunzell* factors.¹⁰ The factors have been heavily briefed already and
4 will not be repeated here.

5 Retained counsel are highly qualified. The CVs are attached at Exhibit A
6 and B. The hourly fee sought is reasonable for both.

7 The character of the work to be done, and the work actually done, supports
8 the fees sought. The conversion case presented a unique effort to circumvent the
9 impact of the Nevada attorney lien statute. The quality of advocacy was high
10 throughout the prolonged pleadings and evidentiary hearing.

11 The result of dismissal of the conversion case supports the fees sought. The
12 conversion case presented a clear and present threat of reputational harm to Simon.
13 Dismissal of the conversion case as groundless as a matter of law was a major
14 victory for Simon.

15 **D. Costs**

16 Simon is also due recoverable costs as requested in A-18-767242-C pursuant
17 to NRS 18.020(2) & (3). The conversion case was dismissed; therefore, Simon is a
18 prevailing party for the costs incurred, and is due costs in defense of A-18-767242-
19 C, without reaching the frivolous nature of the conversion case.
20
21
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25 ¹⁰ *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

1 **II. Conclusion**

2 There were no reasonable grounds for filing, and then maintaining, the
3 conversion case. The Edgeworths have had several chances to explain why the
4 conversion case was warranted but have not done so.

5
6 The Nevada Legislature and the Supreme Court have told Courts to sanction
7 those who file and pursue baseless litigation. This is such a case.

8 Dated this 8th day of January 2019.

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

18 **CERTIFICATE OF SERVICE**

19 I CERTIFY SERVICE of the foregoing REPLY IN SUPPORT OF
20 MOTION FOR ATTORNEY FEES AND COSTS was made by electronic service
21 (via Odyssey) this 8th day of January, 2019, to all parties currently shown on the
22 Court's E-Service List.

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

EXHIBIT A

Peter S. Christiansen, Esq.
Christiansen Law Offices, Trial Attorneys
810 S. Casino Center Boulevard, Suite 104
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Fax: (866) 412-6992
Email: pete@christiansenlaw.com
Web: www.christiansenlaw.com

Peter S. Christiansen is the founding partner and lead trial attorney at Christiansen Law Offices, a boutique firm focused exclusively on trying catastrophic personal injury cases and criminal matters, as well as fraud and business related disputes. A testament to Mr. Christiansen's advocacy skills, he is among the youngest attorneys ever to be inducted into the American College of Trial Lawyers ("ACTL"), which is widely recognized as the preeminent organization of trial lawyers in North America. The mission of the ACTL is to maintain and improve standards of trial practice, professionalism, ethics and the administration of justice.

Bar Admissions:

Nevada, 1994
U.S. Court of Appeals, 9th Circuit, 1994
U.S. District Court for the District of Nevada, 1994

Education:

University of Wyoming, College of Law, Laramie, Wyoming, 1994
J.D.
Honors: With Honors
Honors: Order of the Coif

University of California at San Diego, La Jolla, CA, 1991, B.A.
Major: Political Science

Representative Cases/Clients:

State v. Maurice Sims

Defense in state prosecution of defendant accused of two counts of murder, one count of attempted murder and multiple counts of conspiracy, robbery and burglary with use of a firearm. During the first trial, in which the State sought the death penalty, the jury hung on all murder and attempted murder counts resulting in a mistrial and the State choosing to not pursue the death penalty but opting to try the defendant a second time. In the re-trial, the jury acquitted the defendant on all but one count of burglary, resulting in the first acquittal of a capital defendant in State history.

United States Anti-Doping Agency v. Jon Jones

Defense of UFC Fighter Jon Jones for alleged second violation of the UFC Anti-Doping Policy. After counsel's presentation of facts and witnesses, an independent

arbitrator sanctioned Jones just fifteen months for his second violation, substantially reducing the thirty month sanction initially imposed pre-hearing. The reduction of the sentence by half was based upon the circumstances of the case and reduced degree of fault demonstrated during the hearing.

Khiabani v. Motor Coach Industries et al.,

Wrongful death action involving allegations of negligence against multiple defendants and strict products liability against bus manufacturer resulting in pre-trial settlement of all negligence claims and jury verdict in favor of plaintiffs and awarding in excess of \$18.7 million against bus manufacturer.

United States of America v. Noel Gage

Defense in federal prosecution of local attorney alleging complex conspiracy between Gage and local surgeons.
Discovery intensive case which included over 200,000 documents produced by the Government.

Jackie Templeton v. EPMG

Prosecution of medical malpractice case brought by decedent's widow for failure to diagnose cancer. Jury verdict returned for \$18 million resulting in judgment of over \$24 million.

Marsha R. Gray, et al. v. Wyeth Pharmaceuticals, Inc., et al.

Lead co-counsel in Mass Tort action regarding hormone replacement therapy ("HRT") drugs. Case settled during trial which led to the settlement of the last 96 HRT cases in the U.S.

Dirk Eldredge v. Granite Construction

Prosecution of personal injury action stemming from on-the-job incident. Jury verdict returned and judgment entered for in excess of \$9 million. Case settled for confidential amount during appeal.

United States of America v. James Hannigan, et al.

State of Nevada v. James Hannigan, et al.

Defense in federal and state prosecutions of members of the Hells Angels Motorcycle Club arising out of incident at Harrah's Laughlin. Defendant faced multiple life sentences. Cases resolved with resulting sentence of 12 months.
Discovery intensive case where government produced over 100,000 documents and over 5 thousand hours of surveillance video and audio recordings.

United States of America v. Floyd Strickland, et al.

Defense of federal prosecution of 18 members of the Rolling Sixties Crips gang. Government sought death penalty. Succeeded in convincing Government to drop death penalty.
Discovery intensive case where government produced over 70,000 documents and hundreds of hours of surveillance video and audio recordings.

United States of America v. Gary Harouff, et al.

Defense in federal white-collar prosecution alleging embezzlement of over \$8 million. Succeeded in convincing government to drop charges in exchange for plea to one count of deprivation of honest goods and services. The Court granted client probation.

Mowen v. Walgreens

Slip and fall case. Jury award was largest verdict against national drug store chain and largest slip and fall verdict in Nevada.

State of Nevada v. Steve Shaw

Defense in state prosecution of chiropractor accused of murder. Successfully obtained dismissal of murder charge and eventual plea agreement resulting in client being afforded opportunity to complete probation.

University of Nevada Las Vegas

Represented University in administrative proceedings before the Board of Regents.

Certifications and Appointments:

Clark County Indigent Defense Panel Attorney, 1995 - present

Criminal Justice Act (CJA) Panel Attorney, 1999 - 2016

Nevada Supreme Court Rule 250 (Death Penalty) Qualified, 1998 - present

Martindale - Hubbell - (Peer Rated for High Professional Achievement)

Professional Associations and Memberships:

American College of Trial Lawyers, Fellow, 2015 - present

National Association of Criminal Defense Lawyers, 1997 - present

Nevada Attorneys for Criminal Justice, 1997 - present

Clark County Bar Association, 1995 - present

Nevada Justice Association, 1994 - present

American Bar Association, 1994 - present

Law Related Education Positions:

University of Nevada Las Vegas, William S. Boyd School of Law, Adjunct Professor:

- Trial Advocacy, Spring 2019
- Opening Statements and Closing Arguments, Spring 2018
- Opening Statements and Closing Arguments, Spring 2017

State Bar of Nevada, Trial Academy Instructor

Nevada Justice Association, Continuing Legal Education Instructor on trial advocacy and related topics

EXHIBIT B

NRPC 1.4(c) BIOGRAPHICAL DATA FORM FOR JAMES R. CHRISTENSEN

EDUCATION

Northern Illinois University, College of Law, DeKalb, Illinois, Juris Doctor, May of 1988; graduated *Cum Laude*. Honors include: Dean's List; Law Review Assistant Editor 1987-88, staff 1986-87; Chicago Bar Association Rep. 1986-87.

Indiana University, Bloomington, Indiana, Bachelor of Arts, Economics, co-department major, History, May, 1985.

PUBLICATIONS

Comment, *Strict Liability and State of the Art Evidence in Illinois*, Vol. 7, No. 2, No. III. L. Rev. 237 (1987)

EXPERIENCE

More than 25 years of litigation, including over 35 trials to a verdict in State and Federal Court, and more than 100 arbitrations. Cases handled include medical malpractice, product defect, premises liability, construction defect, personal injury, wrongful death, land transactions, breach of contract, fraud, insurance bad faith, the financial industry and FINRA, Native American gaming law and governance, ERISA, and disability claims.

Appellate work includes over 10 appearances before the Nevada Supreme Court and several appearances before the 9th Circuit Court of Appeals.

Experience includes serving as an arbitrator on hundreds of cases in Nevada, service on the Nevada Medical Dental Screening Panel in Nevada, and service on the Southern Nevada Disciplinary Panel for the State Bar of Nevada.

Expert experience includes testimony on insurance claims practices and on legal practice standards.

Rated "AV" by Martindale-Hubbell.

REPORTED CASES

Gunderson v. D.R. Horton, Inc., 319 P.3d 606 (Nev. 2014).

D.R. Horton v. The Eighth Judicial District Court, 215 P.3d 697 (Nev. 2009).

D.R. Horton v. The Eighth Judicial District Court, 168 P.3d 731 (Nev. 2007).

Powers v. USAA, 962 P.2d 596 (1998); *rehearing denied*, 979 P.2d 1286 (Nev. 1999)(briefing).

EMPLOYMENT HISTORY

April 2009 – Present
James R. Christensen PC
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Las Vegas NV 89101
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November 2009 – 2016
Fox Rothschild LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169

February 2005 – April 2009
Quon Bruce Christensen Law Firm
2330 Paseo del Prado, Suite C-101
Las Vegas, NV 89102

December 1994 – February 2005
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August 1988 – August 1989
Law Clerk: Honorable Earl W. White
Eighth Judicial District Court of Nevada, Department IV

January 1988 – April 1988
Judicial Externship: Honorable Stanley J. Roszkowski
United States District Court, Northern District of Illinois, Western Division

April 1987 – May 1988
Law Clerk: Office of the Legal Counsel
Northern Illinois University

LICENSES/AFFILIATIONS

State Bar of Illinois (admitted 1989); State Bar of Nevada (admitted 1990); U.S. Court of Appeals 9th Circuit; Nevada Bar Association; Illinois Bar Association; Clark County Bar Association; American Association for Justice; Nevada Justice Association.

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Las Vegas, Nevada, Tuesday, January 15, 2019

[Case called at 9:44 A.M.]

THE COURT: Counsel.

MR. CHRISTENSEN: Good morning, Your Honor. Jim Christensen and Mr. Chris Jansen on behalf of Mr. Simon.

MR. GREENE: And John Greene for the Edgewood Plaintiffs.

THE COURT: Good morning. So, this is on for your motion -- for Mr. Simon's motion for attorney's fees and costs. I've read the motion, I've read the opposition, I've read the reply. Mr. Christensen, do you have anything you want to add? I do have a question.

MR. CHRISTENSEN: I do, Your Honor.

THE COURT: I was a little -- I was interested in the fact that your original motion talks about a lot of reasons. It lists like three or four statutes, as well as the Rule 11 sanctions and all of that. And then it appears in the reply, you kind of deviated to just talking about getting attorney's fees based on the conversion claim and not any of the other things that were referenced in the original motion.

MR. CHRISTENSEN: Your Honor, that was not a conscious attempt to limit any of our amounts of recovery in this matter. That was simply done for clarity of argument.

THE COURT: Okay. Just making sure. Because I mean that's how I read it so I'm just making sure that we were on the same page; that I understood what it was you intended to convey in the

1 reply.

2 MR. CHRISTENSEN: And, thank you, Your Honor. Of
3 course, any questions just let me know.

4 THE COURT: Okay.

5 MR. CHRISTENSEN: We're here on Mr. Simon's motion for
6 attorney's fees following the dismissal of the Edgeworth conversion
7 complaint against Mr. Simon. That dismissal was done pursuant to
8 12(b)(5) following a five day evidentiary hearing. The rules on granting
9 attorney's fees are fairly straightforward and simple.

10 If a claim or defense is filed or maintained without
11 reasonable grounds, then sanctions should issue. That's found in NRS
12 7.085, NRS 18.010(2)(b), NRCP 11, a host of case law, including the
13 *Boyce* case, which we cited to the Court and the very recent *Capanna*
14 *vs. Orth* case that just came down September -- or December 27th.

15 THE COURT: And have you had an opportunity to review
16 that *Capanna* case, Mr. Greene?

17 MR. GREENE: Yes, Your Honor.

18 THE COURT: Okay. Because I did, so I just wanted to make
19 sure that everybody else had the opportunity.

20 MR. CHRISTENSEN: Another way of stating that rule is, if
21 there is no legal basis or factual basis for a claim or defense, then
22 sanctions must issue.

23 I'm going to go over a very abbreviated portion of the facts
24 that focus in on essentially what occurred between November 29th and
25 January 18th.

1 THE COURT: Of 2017, right?

2 MR. CHRISTENSEN: November 29, 2017.

3 THE COURT: To January 18th of '18.

4 MR. CHRISTENSEN: To January 18th of '18.

5 On November 29, 2017, the Edgeworth's retained Mr.
6 Vannah and Mr. Greene. On November 30th, Mr. Vannah gave notice
7 of the hire. The following day, Mr. Simon filed his attorney lien. That
8 was on December 1, 2017. On that same day, December 1, 2017, Mr.
9 Vannah signed the release with Viking for the settlement of \$6 million.
10 On December 18th, 2017, the checks -- there were two checks -- were
11 picked up by Mr. Simon. Mr. Simon notified Mr. Greene that same day
12 said, hey, the checks are available, let's endorse them, get them into
13 the trust accounts so that there's no delay in disbursement of
14 undisputed funds. There was some back and forth. There was
15 confusion about who was in town, who wasn't. Those checks were not
16 immediately endorsed.

17 Fast forward to December 26, 2017, Mr. Vannah sent an
18 email in which he said the clients are fearful that Simon will steal the
19 money. And because of that, Mr. Vannah did not want to use Mr.
20 Simon's trust account. On the 27th, I was involved, and I sent a letter
21 back, and I said that we should avoid hyperbole and went through the
22 history of the claim and then offered to work collaborative with Mr.
23 Vannah to resolve this.

24 On the 28th of December of 2017, Mr. Vannah wrote in an
25 email that he did not believe Simon would steal money, he was simply

1 relaying his client's statements to me. Later that day, Mr. Vannah
2 proposed, and Mr. Simon and we agreed, to a single purpose trust
3 account that has both Simon and Vannah as signators and that the
4 Edgeworth's benefit from the interest on all the money in the account,
5 including that money that may, at some point, be provided to Mr.
6 Simon for fees and advance costs.

7 On January 2nd, 2018, Mr. Simon filed an amended lien.
8 On January 4th, 2018, a conversion suit was filed, based upon the
9 allegation brought by the Edgeworths that Mr. Simon was stealing their
10 money. On January 8th, 2018, Mr. Vannah, and Mr. Simon, and the
11 Edgeworths separately went to the bank, endorsed the checks and all
12 \$6 million was deposited into the trust -- into the joint trust account.

13 So, at that time, January 8th of 2018, there's no doubt there
14 was actual notice that the funds were sitting in an account, Mr. Vannah
15 was a signatory on the account so the Edgeworths had control of the
16 money, all the interest was inuring to their benefit and there was --

17 THE COURT: The money can only be moved if Simon and
18 then Vannah signed off on it, right?

19 MR. CHRISTENSEN: Correct.

20 THE COURT: Okay. Just making sure.

21 MR. CHRISTENSEN: Dual signatures are required on that
22 account.

23 THE COURT: Right.

24 MR. CHRISTENSEN: And at that time also, the amended
25 lien had been filed. So, the amount of funds that were in dispute was

1 known and the amount of funds that was not in dispute under the lien
2 was known.

3 The following day, the conversion suit was served on my
4 office. I agreed to accept service. And I reached out and said, you
5 know, what's going on here. They confirmed that although the
6 Edgeworths had sued Mr. Simon, Mr. Simon was not fired, at least in
7 their view of the facts.

8 On the 18th, after the large item hold was withdrawn, the
9 Edgeworths received the undisputed amount of just under \$4 million.
10 Late January through March there was a motion to dismiss and an
11 Anti-SLAPP motion filed. On March 15, 2018, there was an amended
12 complaint filed. A motion to dismiss and an Anti-SLAPP motion to
13 dismiss were filed in response to the amended complaint. The Anti-
14 SLAPP motion was eventually dismissed as moot. The 12(b)(5) motion
15 was granted following the evidentiary hearing. The claims -- the
16 conversion claims and the other claims in that conversion case, were
17 brought and maintained through that evidentiary hearing and beyond.

18 So, we understand the law, and we understand the facts.
19 Sanctions should issue for filing the conversion case and for
20 maintaining it, even after they understood money was safe kept in the
21 trust account over which they had control. When there is a dispute
22 over fees and costs, Nevada statute says the lawyer may file a lien and
23 move for adjudication. There is no basis to claim conversion when
24 Simon followed the lien statute to protect his fee claim and advance
25 costs. And again, that becomes crystal clear when you examine the

1 timing that occurred. By the time that complaint was served, the
2 Edgeworths and their attorneys knew the money was safe kept in the
3 trust account.

4 Now, when looking at whether or not there were
5 reasonable grounds to bring the suit or to maintain the suit, because
6 that's the standard, did you have reasonable grounds to sue. And the
7 law understands that facts change as the case evolves, discovery
8 occurs, what have you, so then the law also says, well, we're also going
9 to look at whether he had reasonable grounds to maintain a suit. And
10 that concept was really brought to light in the, not only *Boyce*, but also
11 in the *Capanna vs. Orth* case. In *Capanna vs. Orth*, -- Dr. Capanna's a
12 neurosurgeon, he's been a neurosurgeon for many years in this town,
13 he operated on Mr. Orth and allegedly operated on the wrong levels in
14 his back, causing Mr. Orth a great deal of trouble, subsequent care,
15 pain and disability. During the case, both parties provided experts. Dr.
16 Capanna had an expert saying well, he didn't violate the standard of
17 care.

18 And the case went to trial with Dr. Capanna defending on
19 liability on the medical malpractice claims. The jury found for Orth.
20 Following that case, there was a motion for attorney's fees and costs
21 under NRS 18.010(2)(b) by Plaintiff's counsel because Plaintiff's counsel
22 said the defense didn't have reasonable grounds to maintain the
23 defense that Dr. Capanna acted within the standard of care when he
24 operated on the wrong level. And the court agreed, the district court
25 agreed, and awarded sanctions and costs for maintaining that defense.

1 And that was upheld by the supreme court recently on December 27th.

2 So, what we see there is the mandate handed down by the
3 legislature and by the supreme court to prevent and deter
4 unreasonable litigation. In this case, sanctions should issue because
5 there were no reasonable grounds for filing the conversion case. In the
6 opposition to this motion, the defense spent a great deal of time of
7 pointing the finger and name calling and understandably, they attacked
8 the fact that Mr. Simon never got a fee agreement with his friends,
9 former friends, Brian and Angela Edgeworth. And that was something
10 we never disputed. There was no fee agreement. We acknowledge
11 that. That's what led to the dispute.

12 The problem is this. The Edgeworths were well within their
13 rights and had reasonable ground to dispute the amount of fees that
14 Mr. Simon was requesting in the lien adjudication. And they can
15 certainly tell their side of the story within the context of that process of
16 that case. When they took the extra step of suing Mr. Simon, in a
17 separate case alleging conversion, when they put pen to paper in their
18 claims that he's going to steal money, when they ask for punitive
19 damages against Mr. Simon, that's when they went too far. They did
20 not have reasonable grounds to sue Mr. Simon for conversion when
21 the money is safe kept in a trust account and only the disputed funds
22 remain in that account. The undisputed funds were promptly
23 disbursed when the large item hold was removed by the bank.

24 And our legislature clearly says, in NRS 7.085 and
25 18.010(2)(b), that when looking at issues like this, the court should

1 liberally grant sanctions to deter unreasonable litigation.

2 Now the defense may argue that the lien was improper.

3 They may argue that it was improper because there was no fee
4 agreement. Well, you don't have to have a fee agreement to file a lien
5 to get quantum meruit. Or, in this case, the court found that at least for
6 a period of time, there is a contract implied by conduct.

7 THE COURT: Right.

8 MR. CHRISTENSEN: Even so, that doesn't mean you don't
9 get anything. It means you should get whatever fees are found under
10 that contract and, of course, you get reimbursement of advanced costs.
11 And of course, the lien was proper under the statute. There is
12 absolutely nothing wrong with that. As this court found, Mr. Simon
13 followed that statute to a T. They may argue that the lien was improper
14 maybe an amount.

15 That was one of the reasons why Mr. Will Kemp was
16 retained. And Mr. Will Kemp came in, as an outside observer, who has
17 immense experience and knowledge in determining the value of
18 product liability cases. And he came in and found what he thought
19 would be a reasonable fee, which was, in fact, slightly less than the
20 amount of Mr. Simon's claim.

21 THE COURT: But you would agree, Mr. Kemp was retained
22 to do the quantum meruit analysis on the motion to adjudicate the lien
23 and that was -- well I'll let you answer.

24 MR. CHRISTENSEN: No, Your Honor, I don't. And --

25 THE COURT: So, what is Mr. Kemp's link to the conversion

1 claim or the lawsuit that was filed by the Edgeworths against Danny
2 Simon. What does Will Kemp -- how does Will Kemp -- because when
3 Will Kemp testified -- I know we will all never forget those five lovely
4 days we all spent together, and I think we went into a day six. But what
5 did Will Kemp testify to in regards to the lawsuit. Give me Will Kemp's
6 connection to and David Clark.

7 MR. CHRISTENSEN: Mr. Kemp had two purposes. One,
8 was obviously, to put a number on the quantum meruit claim. But the
9 second purpose was because there was at least an implied claim,
10 they've never come out and expressly said it, but there was an implied
11 claim that Mr. Simon's lien was improper because it was overreaching
12 or excessive in amount. And Mr. Kemp said, no, no, no, this is a
13 reasonable claim. And in fact, that's why Mr. Kemp's declaration was
14 attached to each of our motions to dismiss under 12(b)(5), to cut off
15 that claim.

16 So, there is no doubt that Mr. Kemp provided, or that his
17 role was in determining the amount of the lien, but that's not the end of
18 the story. He had two roles. And he had a role in each of the two
19 cases, because, as we know, Your Honor consolidated the claims.

20 THE COURT: Right.

21 MR. CHRISTENSEN: And deferred ruling on the 12(b)(5)
22 motion, the motions to dismiss, until after evidence was educed at the
23 evidentiary hearing --

24 THE COURT: Right.

25 MR. CHRISTENSEN: -- because the issues were

1 intertwined. So, as far as apportionment saying well this hour was for
2 this case or the second hour was for this case, that really doesn't apply
3 because everything that was done applied equally to both cases.

4 THE COURT: Okay. What about Clark?

5 MR. CHRISTENSEN: I was actually surprised at the
6 opposition that they raised that. You know, Mr. David Clark is former
7 bar counsel.

8 THE COURT: Right.

9 MR. CHRISTENSEN: His summary opinion was, it is my
10 opinion to a reasonable degree of probability that Mr. Simon's conduct
11 is lawful, ethical and does not constitute a breach of contract or
12 conversion as those claims are pled in Edgeworth Family Trust, on and
13 on, versus Daniel Simon on and on filed January 4, 2018 in the 8th
14 Judicial District Court. So, we didn't call Mr. Clark to testify at the
15 evidentiary hearing. We certainly submitted his declaration.

16 THE COURT: Right.

17 MR. CHRISTENSEN: And we felt that his opinions were
18 valuable to that proceeding, but Mr. Clark was specifically retained to
19 rebut the unreasonable claim that Mr. Simon had committed
20 conversion. So, he is directly, no doubt, related to that conversion
21 case.

22 Getting back to what the defense may argue. The defense
23 may argue that evidence of the reasonableness of their claim can be
24 seen because the -- they beat the motion to dismiss on Ant-SLAPP
25 grounds. Well as we've seen in *Boyce* and yet again in *Orth*, it's the

1 totality of the circumstances that you look at. At the end of the day,
2 was there reasonable grounds.

3 The Court has -- the Nevada Supreme Court has repeatedly
4 said, you know, when you're talking about a motion to dismiss, those
5 are specific distinct standards and the court's looking at specific distinct
6 items and is maybe not looking at the entire case. At the end of the
7 day, as they found in *Orth*, and that's a defense that actually went to
8 trial and at the end of the trial, the judge said in the order that the
9 evidence was overwhelming.

10 So, you look at the totality of the facts and circumstances at
11 the end of the day. And at the end of this day, under your Judge's
12 order, there was no basis for any of the claims that were brought
13 against Mr. Simon, not just conversion. In the opposition, the defense
14 said that they strenuously believed that they brought their claim in
15 good faith. And again, I talked about how that subjective evidence of
16 belief really has to be analyzed for the Court, it needs to be looked at
17 objectively. What facts did they bring their claim on, what case law,
18 and they didn't provide any.

19 Getting to the amounts that we requested, we've already
20 discussed briefly the experts. The amount for attorney's fees is
21 between Mr. Chris Jansen and myself, my fee -- or the fee claimed for
22 my hours was \$62,604.48, for Mr. Chris Jansen, it was \$199,495 and
23 then we have the costs that we requested, 11,498.15 for Will Kemp,
24 5,000 even for Mr. Clark and then there were miscellaneous costs that
25 were later detailed at 1,936.58. The total requested is 280,534.21.

1 I would point out that on the costs, we don't need to
2 establish that there were no reasonable grounds. We are the prevailing
3 party for purposes of costs only in the conversion case, so therefore,
4 the Court can also award expert fees and other costs under that
5 provision. Although you do have to get a money judgment to be a
6 prevailing party under the 18, but that's not an issue that's before the
7 Court.

8 We went through a very brief Brunzell analysis. The
9 amounts requested are reasonable for the quality of counsel and the
10 time spent, which was quite a bit. And again, the defense may argue
11 that most of that time was spent in the evidentiary hearing. That is
12 true, but that argument misses the point, it doesn't go far enough. The
13 fact is, is that this Court consolidated the cases and wanted to hear all
14 the evidence educed at the evidentiary hearing before ruling on the
15 12(b)(5) motion because those issues were intertwined.

16 The Edgeworths had an opportunity to challenge that
17 decision of the Court by a motion for reconsideration. By writ, they
18 could have noted that as error in their recently filed notice of appeal.
19 They did none of those things. So, they missed the opportunity to
20 challenge that. So, while technically, it may not be law in the case, it's
21 about as good as you can get short of an appellate confirmation of it.

22 Lastly on the costs, they may argue against awarding
23 expert's fees in excess of \$1,500. But, of course, that's not a hard rule
24 in the statute As we saw in *Orth*, amounts are routinely awarded above
25 1500. And the quality, experience of Mr. Kemp can't be challenged.

1 He's one of the best trial lawyers in the United States. And it would be
2 hard to challenge Mr. Clark's experience and qualifications for
3 rendering opinions on ethical matters and the bounds of proper
4 conduct from attorney. He was with the state bar for 15 years or so and
5 bar counsel for about 10.

6 There's one last thing I would like to get to. The
7 Edgeworths are -- I anticipate in argument, that Mr. Simon is driving
8 this bus, that they didn't want anything of this to happen and that --

9 THE COURT: They made that argument in their opposition.

10 MR. CHRISTENSEN: -- and that they are the victims here.

11 I'd like to point out a few things. One, before that conversion complaint
12 was filed, I reached out and I said let's resolve this collaboratively, let's
13 work together to resolve these issues. And then when Mr. Vannah
14 suggested a separate trust account, we were debating, you know, an
15 escrow, we were debating interpleading the funds, and Mr. Vannah
16 came up and said, listen, why don't we just open a single purpose trust
17 account, and as soon as I saw that email, I responded immediately the
18 same day and said that's a great idea, Bob, let's do that.

19 I saw that as that we were now on a road to reconciliation,
20 that we could get this thing resolved and get it done without too much
21 blood. And I thought we were well on that way when everybody met at
22 the bank, the funds were deposited, everything seemed to be going in
23 the right direction. And then a complaint for conversion was served
24 and I looked at the date it was filed, and it was filed right around the
25 same time that Mr. Vannah had sent a letter to the bank saying, hey,

1 this is what we're going to do.

2 When we seemed to be working collaboratively to get this
3 thing resolved, they sue Mr. Simon for conversion. I even called up
4 John. I said, John, you know, do you have a case, do you have
5 something to support your position, I'll go on down, I'll have a heart to
6 heart meeting with my client, you know, tell me there's something here
7 because I could see what was going to happen there. That was going
8 to throw everything off the rails. And it did. We got into protracted
9 litigation, we got into the very long evidentiary hearing. And even
10 now, they're going to stand up and say we're still the victims, we're
11 willing to agree with the Judge's decisions and this and that, and the
12 fact remains is that the Edgeworths filed a notice of appeal. And days
13 later, Mr. Simon filed another cross appeal to preserve certain claims.

14 But, you know, those are the hard and fast facts. So, on
15 that basis, I submit it and under the law that says the Court has to
16 literally grant fees for unreasonable litigation, this case fits, the
17 conversion case fits. They did not have a basis to sue Mr. Simon for
18 conversion when the money was sitting in a trust account that they had
19 control over. Thank you, Your Honor.

20 THE COURT: Thank you. Mr. Greene.

21 MR. GREENE: Yes, Your Honor. Thank you so much. I
22 know you've heard so much of this case and I'm sure the end is near
23 but let me just --

24 THE COURT: You guys keep promising me but then I'll get
25 my calendar and it's back on.

1 MR. GREENE: One more.

2 THE COURT: Because there's a motion on 2/5, right?

3 MR. GREENE: Yes. There is one for the release of the
4 funds in excess of what you adjudicated --

5 THE COURT: Okay.

6 MR. GREENE: -- that Mr. Simon was entitled to receive.

7 THE COURT: Okay. Well we'll deal with that. I haven't
8 read any of that. I just saw that we have another hearing coming up. I
9 haven't read that. So, we'll deal with that on February 5th.

10 MR. GREENE: I'm not getting in to that, Your Honor.

11 Let me just begin at the beginning. I'm not going to restate
12 everything. We've heard all of this so many times. Let me focus on
13 what is important from a legal standpoint and a factual standpoint
14 concerning this 12(b)(5).

15 First of all, Your Honor, when you issued your two orders,
16 the one in October, then the one in November concerning Plaintiff's
17 four claims for relief, there wasn't one iota of language that indicated
18 that the Edgeworths claims were not based on reasonable grounds.
19 You dismissed them, but did not make that finding. This was a matter
20 that wasn't litigated, unlike the *Capanna* case, it wasn't a subject of
21 discovery, unlike the *Capanna* case. This was something that you put
22 on hold, Your Honor, while we could adjudicate the beast that was in
23 this room, which is the attorneys lien and adjudicating that.

24 So, again, Your Honor, there's nothing in your orders that
25 indicates that the Edgeworth's amended complaint was based on

1 unreasonable grounds. And you wouldn't have found that because you
2 know the law, Your Honor, the supreme court asks us in this room
3 when we're looking at a 12(b)(5) motion, to take a look at the
4 allegations in the complaint that Plaintiffs have made and accept them
5 as true. And the Edgeworths allege breach of contract, they allege that
6 there was an oral agreement at 550 an hour, they dutifully paid 550 an
7 hour, as you know, from all those entries that we showed. They
8 dutifully paid 387 plus thousand dollars in fees without any review,
9 without any reduction, without any delay, but something happened.

10 On November 17th, at that infamous meeting in Mr.
11 Simon's office, these clients went from paying four invoices without
12 question, asking for a fifth two days before, willing to pay that and all
13 of a sudden that meeting happens. You heard testimony from the
14 Edgeworths on this and something happened in that meeting that
15 changed the relationship that eroded the trust that caused the
16 Edgeworths to believe that their settlement funds were in jeopardy.
17 They still believe that to this day. They maintained that complaint --
18 that claim, one of the four, for conversion, based on good faith.

19 Mr. Simon knew, he is a very good attorney, he knew that
20 the law didn't allow him to get a contingency fee here. You found that.
21 He knew that if he can't have a contingency fee, how in the world is
22 anybody going to allow him to get a contingency fee in the same
23 amount, based on quantum meruit. That's exactly what he's done
24 since day one, despite, if we believe the allegation to be true, like we
25 have to, that there was an oral contract for the purposes of this

1 particular hearing here, they maintain that in good faith. They felt that
2 their settlement proceeds were going to be jeopardized and still to this
3 day.

4 All the amounts of 1.977 million dollars, they're all sitting
5 there still. Two percent interest being earned on them the past year
6 and a half'ish -- well not a year and a half, year. They've lost the
7 investment potential, they've lost the ability to use their money.
8 They're willing to pay Danny Simon. We've sent two letters, we don't
9 want to appeal, don't make us appeal, we'll pay, let us resolve this.
10 Two letters to Mr. Christiansen. We have no desire to do any of this
11 appeal junk. We want this thing to end.

12 What this really comes down to, all these fees, Your Honor.
13 We sat through all this. You didn't hear one minute of testimony, five
14 day evidentiary hearing, five plus days, that dealt with any 12(b)(5).
15 Every bit of Mr. Clark's, Mr. Kemp's testimony, everything that was
16 asked dealt with trying to establish what Mr. Simon felt that he was
17 entitled to in fees. There's nothing in the law that allows him to get
18 fees in an effort to get fees under NRS 18.105. You can't do it, there's
19 no provision for it.

20 Everything that's been submitted here, Your Honor, in
21 summary, one, there's nothing that they can point to that can be
22 pointed to that Plaintiff's claims were not made to anything other than
23 reasonable grounds and in good faith. We have to take their
24 allegations as true. There are facts that they testified to that said they
25 believe that to be true. So, you didn't find that there were no

1 reasonable grounds. And finally, all these fees and costs were
2 associated with this motion to adjudicate. We just want this to end,
3 Your Honor. Please [indiscernible] maintain this and let this matter go,
4 please. Thank you.

5 THE COURT: Thank you, Mr. Greene. Do you have any
6 response to that, Mr. Christiansen?

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 The 12(b) motion did not address the grounds as
9 unreasonable because, as Mr. Greene later confirmed, that's not the
10 standard to be addressed at that stage of the proceeding. What the
11 Court did find was that there were no grounds in which those claims
12 could be brought as a matter of law. The question of
13 unreasonableness, as the supreme court has repeatedly said is
14 reserved for this motion. So, this is the time for that analysis.

15 In making that analysis, one of the things the Court needs
16 to look at, was were there any legal grounds for the claim being
17 brought and then being maintained. Yet again, we have not heard a
18 single case citation from the Edgeworths that underlies, or rule of law,
19 that underlies their claim that an attorney can be sued for conversion
20 because the attorney filed a lien and the amount of the fees and costs
21 ultimately due that attorney are in dispute. There is no such case. If
22 there was, they would have brought it up.

23 What we did in the motions to dismiss, is we drilled down
24 into the law of conversion. We brought in cases from every jurisdiction
25 that we could find where this has been looked at. And you can't sue an

1 attorney for filing an attorney lien, for following the law, just because
2 you dispute the fee claim, especially when that fee claim is supported,
3 as was Mr. Simon's, by unrefuted, uncontested expert testimony.

4 There's two issues on the contingency fee argument. The
5 first issue is, that is an issue that is part of their dispute. They're saying
6 that well, Mr. Simon doesn't get quantum meruit because that's like a
7 contingency fee and there wasn't a written agreement. Fine. Make that
8 argument within the four corners of the adjudication proceeding.

9 That's not a basis for suing a lawyer for conversion. And we provided
10 to the Court, which is still unrefuted and unrebutted by the Edgeworths,
11 the basis for the amount claimed by Mr. Simon. It comes right out of
12 the third restatement of the law governing lawyers that says under
13 quantum meruit, you can ask for market rate. It's -- right in the
14 restatement it says it.

15 And, in fact, that's what happens in Nevada after a lawyer is
16 terminated on the courthouse steps. Because at that moment, there is
17 no contract because the client killed it. Does that mean you can't get a
18 quantum meruit recovery that is the same as if that contingency fee
19 contract still existed. Of course not. There's all sorts of cases, starting
20 with the *Camp* case back in California that talks about lawyers getting
21 their full contingency when they're fired on the courthouse steps.

22 So, that's not some weird, bizarre concept that obviously
23 leads to a conversion case. It's not. And they haven't provided any law
24 that supports that claim. Again, you know, we got the subjective belief.
25 We strenuously believe. Okay. That's good as far as it goes. But what

1 was your belief based upon. You have to provide the basis for the
2 belief. These folks sued Mr. Simon for punitive exemplary damages
3 alleging that he acted maliciously because he filed a lien to resolve an
4 attorney fee dispute. Because he was sued for punitive damages, Mr.
5 Simon was, because he followed the law. That is, by definition,
6 unreasonable.

7 Mr. Greene brought up the argument that fees are not
8 contemplated under NRS 18.015. He's absolutely correct, they're not.
9 It's not mentioned in that statute, but we're not requesting fees under
10 NRS 18.015. That's a red herring. We're requesting fees under 7.085
11 and 18.010(2)(b). Just because 18.015 doesn't have a fee provision in
12 it, doesn't mean you can file frivolous litigation.

13 I think that's it, Your Honor, unless Your Honor has a
14 specific question.

15 THE COURT: I don't have any questions.

16 MR. CHRISTENSEN: Thank you, Your Honor.

17 THE COURT: There's a couple other things I want to look at
18 before I rule on this. I'll issue a ruling on Thursday from chambers.

19 MR. CHRISTENSEN: Judge, can I ask the Court to take a
20 quick look at your April 3rd, 2018 transcripts at Pages 15, 16 and 17.
21 Mr. Greene attached it as Exhibit 2 to his opposition. That just goes to
22 Your Honor's initial finding that all these issues were so intertwined
23 you had to do it all at once.

24 THE COURT: Yes. April 3rd of '18.

25 MR. CHRISTENSEN: It's Exhibit 2 to Mr. Greene's

1 opposition, Your Honor. He attached it.

2 THE COURT: I will do that. Exhibit 2 to the opposition.

3 MR. CHRISTENSEN: Thank you, Your Honor.

4 THE COURT: Okay. I will issue an order from chambers.

5 MR. GREENE: Thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 [Proceedings concluded at 10:21 a.m.]

8

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed
19 the audio/video proceedings in the above-entitled case to the best of
20 my ability.

21

22

/s/Jessica B. Cahill

23

Maukele Transcriber, LLC

24

Jessica B. Cahill, Transcriber CER/CET-708

25

REGISTER OF ACTIONS

CASE No. A-16-738444-C

Edgeworth Family Trust, Plaintiff(s) vs. Lange Plumbing, L.L.C., Defendant(s)

§
§
§
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§
§
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§
§

Case Type: **Product Liability**
Date Filed: **06/14/2016**
Location: **Department 10**
Cross-Reference Case Number: **A738444**
Supreme Court No.: **77678**
78176

RELATED CASE INFORMATION

Related Cases

A-18-767242-C (Consolidated)

PARTY INFORMATION

Lead Attorneys

Defendant **Lange Plumbing, L.L.C.**

Theodore Parker
Retained
7028388600(W)

Plaintiff **Edgeworth Family Trust**

Daniel S. Simon, ESQ
Retained
7023641650(W)

EVENTS & ORDERS OF THE COURT

AA02469

01/15/2019 | **Motion for Attorney Fees and Costs** (9:30 AM) (Judicial Officer Jones, Tierra)

01/15/2019, 01/17/2019*Decision***Minutes**

01/15/2019 9:30 AM

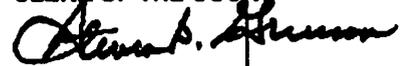
- APPEARANCES CONTINUED: James Christensen Esq., and Pete Christiansen Esq., on behalf of Daniel Simon, and John Greene Esq., of behalf of Edgeworth Family Trust. Following arguments by counsel, COURT ORDERED, matter CONTINUED for Decision of the date given. 01/18/19 (CHAMBERS) DECISION: Motion for Attorney Fees and Costs

01/17/2019 3:00 AM

- The Motion for Attorney s Fees is GRANTED in part, DENIED in part. The Court finds that the claim for conversion was not maintained on reasonable grounds, as the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such, Mr. Simon could not have converted the Edgeworth s property. Further, the Court finds that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien. It has been argued that the Court s statement of during the course of that evidentiary hearing, I will also rule on the Motion to Dismiss at the end of the close of evidence, because I think that evidence is interrelated (Motion Hearing April 3, 2018, pg. 18) should be construed to mean that the evidentiary hearing was for the Motions to Dismiss as well as the Motion to Adjudicate Lien. While the Court acknowledges said statement, during the same hearing, the Court also stated So in regards to the Motion to Adjudicate the Lien, we re going to set an evidentiary hearing to determine what Mr. Simon s remaining fees are. (Motion Hearing April 3, 2018, pg. 17). During that same hearing, it was made clear that the primary focus of the evidentiary hearing was to determine the amount of fees owed to Mr. Simon. So, the primary purpose of the evidentiary hearing was for the Motion to Adjudicate Lien. As such, the Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworth s property, at the time the lawsuit was filed. The Motion for Attorney s Fees is DENIED as it relates to the other claims. In considering the amount of attorney s fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose of adjudicating the lien asserted by Mr. Simon. Further, the Motion to Consolidate The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David Clark Esq. were solely for the purposes of defending the lawsuit filed against Mr. Simon by the Edgeworths. As such, the Court has considered all of the factors pertinent to attorney s fees and attorney s fees are GRANTED in the amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

[Return to Register of Actions](#)

AA02470



1 **ORDER**
2 **JAMES CHRISTENSEN, ESQ.**
3 Nevada Bar No. 003861
4 601 S. 6th Street
5 Las Vegas, NV 89101
6 Phone: (702) 272-0406
7 Facsimile: (702) 272-0415
8 Email: jim@christensenlaw.com
9 Attorney for Daniel S. Simon

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

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

12 **Plaintiffs,**

13 **vs.**

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

20 **Defendants.**

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

23 **Plaintiffs,**

24 **vs.**

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

28 **Defendants.**

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

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

Date of Hearing: 1.15.19
Time of Hearing: 1:30 p.m.

CONSOLIDATED WITH

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

1 This matter came on for hearing on January 15, 2019, in the Eighth Judicial
2 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.
3 Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a
4 Simon Law (jointly the "Defendants" or "Simon") having appeared by and through
5 their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.;
6 and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
7 "Edgeworths") having appeared through by and through their attorneys of record,
8 the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having
9 considered the evidence, arguments of counsel and being fully advised of the
10 matters herein, the **COURT FINDS** after review:
11
12
13

14 The Motion for Attorney s Fees is **GRANTED** in part, **DENIED** in part.
15

16 1. The Court finds that the claim for conversion was not maintained on
17 reasonable grounds, as the Court previously found that when the complaint was
18 filed on January 4, 2018, Mr. Simon was not in possession of the settlement
19 proceeds as the checks were not endorsed or deposited in the trust account.
20

21 (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such,
22 Mr. Simon could not have converted the Edgeworths' property. As such, the
23 Motion for Attorney s Fees is **GRANTED** under 18.010(2)(b) as to the Conversion
24
25
26
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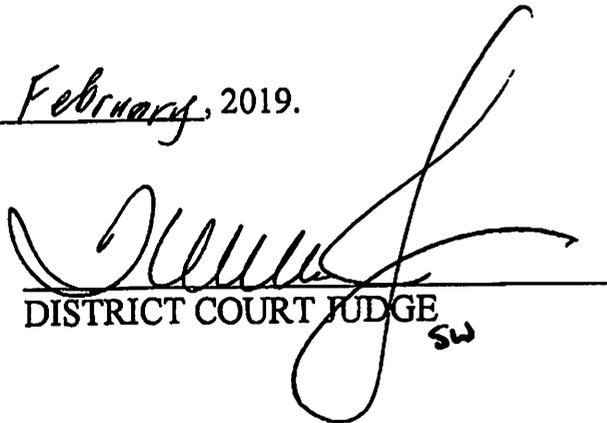
1 claim as it was not maintained upon reasonable grounds, since it was an
2 impossibility for Mr. Simon to have converted the Edgeworths' property, at the
3 time the lawsuit was filed.
4

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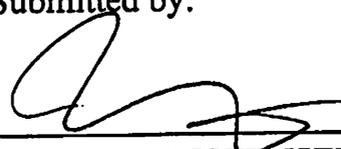
1 factors pertinent to attorney's fees and attorney's fees are GRANTED in the
2 amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

3 IT IS SO ORDERED.

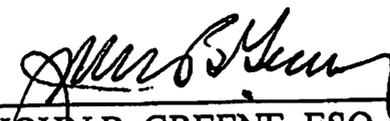
4
5 Dated this 6 day of February, 2019.

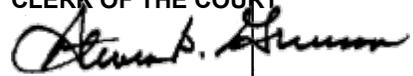
6
7
8 
9 DISTRICT COURT JUDGE
SW

10 Submitted by:

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

21 Approved as to form and content:

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



ORDR

James R. Christensen Esq.
Nevada Bar No. 3861

JAMES R. CHRISTENSEN PC

601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406

Attorney for SIMON

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

**AMENDED DECISION AND ORDER
ON SPECIAL MOTION TO DISMISS**

ANTI-SLAPP

1 Mr. Simon and his wife were close family friends with Brian and Angela
2 Edgeworth.

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

4 3. On April 10, 2016, a house the Edgeworths were building as a
5 speculation home suffered a flood. The house was still under construction and the
6 flood caused a delay. The Edgeworths did not carry loss insurance if a flood
7 occurred and the plumbing company and manufacturer refused to pay for the
8 property damage. A fire sprinkler installed by the plumber, and within the
9 plumber's scope of work, caused the flood; however, the plumber asserted the
10 fire sprinkler was defective and refused to repair or to pay for repairs. The
11 manufacturer of the sprinkler, Viking, et al., also denied any wrongdoing.
12

13 4. In May of 2016, Mr. Simon agreed to help his friend with the flood
14 claim and to send a few letters. The parties initially hoped that Simon drafting a
15 few letters to the responsible parties could resolve the matter. Simon wrote the
16 letters to the responsible parties, but the matter did not resolve. Since the matter
17 was not resolved, a lawsuit had to be filed.
18

19 5. On June 14, 2016, a complaint was filed in the case of Edgeworth
20 Family Trust; and American Grating LLC vs. Lange Plumbing, LLC; the Viking
21 Corporation; Supply Network Inc., dba Viking Supplynet, in case number A-18-
22 738444-C. The cost of repairs was approximately \$500,000. One of the elements of
23
24
25

1 the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation
2 was for reimbursement of the fees and costs that were paid by the Edgeworths.

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

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

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

18 I could also swing hourly for the whole case (unless I am off what this is
19 going to cost). I would likely borrow another \$450K from Margaret in 250
20 and 200 increments and then either I could use one of the house sales for
21 cash or if things get really bad, I still have a couple million in bitcoin I could
22 sell. I doubt we will get Kinsale to settle for enough to really finance this
23 since I would have to pay the first \$750,000 or so back to Colin and
24 Margaret and why would Kinsale settle for \$1MM when their exposure is
25 only \$1MM?

(Def. Exhibit 27).

26 7. During the litigation, Simon sent four (4) invoices to the Edgeworths.
27 The first invoice was sent on December 2, 2016, seven (7) months after the
28 original meeting at Starbucks. This invoice indicated that it was for attorney's fees

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

4 8. On April 7, 2017 a second invoice was sent to the Edgeworths for
5 attorney's fees and costs through April 4, 2017 for a total of \$46,620.69, and was
6 billed at a "reduced" rate of \$550 per hour. (Def. Exhibit 9). This invoice was paid
7 by the Edgeworths on May 3, 2017. There was no indication on the first two
8 invoices if the services were those of Mr. Simon or his associates; but the bills
9 indicated an hourly rate of \$550.00 per hour.
10

11 9. A third invoice was sent to the Edgeworths on July 28, 2017 for
12 attorney's fees and costs through July 28, 2017 totaling of \$142,080.20. (Def.
13 Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate
14 of \$550 per hour totaling \$104,021.20; and services of Ashley Ferrel Esq. for a
15 "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was paid by
16 the Edgeworths on August 16, 2017.
17

18 10. The fourth invoice was sent to the Edgeworths on September 19, 2017
19 in an amount of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being
20 calculated at a "reduced" rate of \$550 per hour for Daniel Simon Esq., \$60,981.25
21 being calculated at a "reduced" rate of \$275 per hour for Ashley Ferrel Esq., and
22 \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for Benjamin
23
24
25

1 Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on
2 September 25, 2017.

3 11. The amount of attorney's fees in the four (4) invoices was
4 \$367,606.25, and \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies
5 were paid to Daniel Simon Esq. and never returned to the Edgeworths. The
6 Edgeworths secured very high interest loans to pay fees and costs to Simon. They
7 made Simon aware of this fact.
8

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

13 13. On the evening of November 15, 2017, the Edgeworth's received the
14 first settlement offer for their claims against the Viking Corporation ("Viking").
15 However, the claims were not settled until on or about December 1, 2017.
16

17 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon
18 asking for the open invoice. The email stated: "I know I have an open invoice that
19 you were going to give me at a mediation a couple weeks ago and then did not
20 leave with me. Could someone in your office send Peter (copied here) any invoices
21 that are unpaid please?" (Def. Exhibit 38).
22
23
24

25 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for
the services of Ashley Ferrel; and \$2,887.50 for the services of Benjamin Miller.

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

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

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

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

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

23 (Def. Exhibit 43).
24

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

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

7
8 21. Mr. Edgeworth alleges that the fee agreement with Simon was only
9 for an hourly express agreement of \$550 an hour; and that the agreement for \$550
10 an hour was made at the outset of the case. Mr. Simon alleges that he worked on
11 the case always believing he would receive the reasonable value of his services
12 when the case concluded. There is a dispute over the reasonable fee due to the Law
13 Office of Danny Simon.
14

15
16 22. The parties agree that an express written contract was never formed.

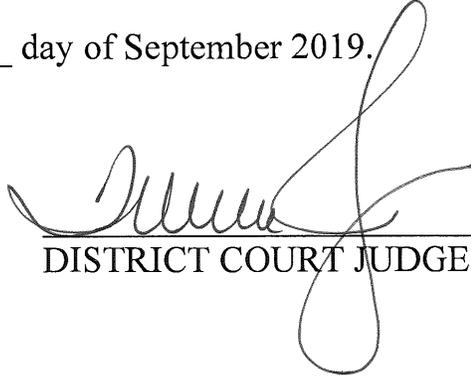
17 23. On December 7, 2017, the Edgeworths signed Consent to Settle their
18 claims against Lange Plumbing LLC for \$100,000.
19

20 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit
21 against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S.
22 Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case
23 number A-18-767242-C.
24
25

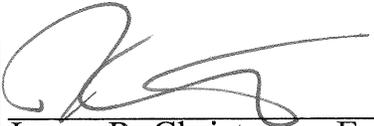
ORDER

1
2 It is hereby ordered, adjudged, and decreed, that the Special Motion to
3 Dismiss Anti-Slapp is MOOT.

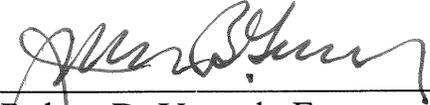
4 IT IS SO ORDERED this ____ day of September 2019.

5
6
7 
8 _____
9 DISTRICT COURT JUDGE

10 Respectfully submitted by:
11 **JAMES R. CHRISTENSEN PC**

12 
13 _____
14 James R. Christensen Esq.
15 Nevada Bar No. 3861
16 601 S. 6th Street
17 Las Vegas, Nevada 89101
18 *Attorney for SIMON*

19 Approved as to form and content:
20 **VANNAH & VANNAH**

21 
22 _____
23 Robert D. Vannah, Esq.
24 Nevada Bar No. 2503
25 John B. Greene, Esq.
Nevada Bar No. 4279
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

INVOICE FOR DANIEL S. SIMON
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

7/20/16	Email Chain with SH, AD with Attachments; Re: Stipulation to Amend and Extension	.50
8/4/16	Receive, Review and Analyze Email from Client	.40
8/4/16	Receive, Review and Analyze Email from Client	.25
8/4/16 - 8/5/16	Receive, Review and Analyze Emails from M. Giberti	.50
8/5/16 - 8/8/16	Email Chain with Client	.75
8/9/16	Call with Client	.25
8/11/16	Receive, Review and Analyze Email from Dalacas with Report; Forward to Client	.40
8/11/16	Receive, Review and Analyze Emails from Giberti with Attachment	.75
8/11/16	Email Chain with A. Dalacas, Scott Holcomb; Re: Rimkus Report with Attachment	.75
8/11/16	Email Chain with SH, AD, GB; Re: Stipulations	.25
8/11/16	Email Chain with AD, SH; Re: Home Inspection	1.25
8/15/16	Email Chain with Client	.25
8/15/16 (9:21am)	Receive, Review and Analyze Email from Client with Attachment	.40
8/16/16	Email Chain with SH, AD, GB; Re: Chain of Custody	.25
8/16/16	Draft and Send Email to AD; Re: Lange Coverage	.40
8/16/16	Email Chain with Client	.40
8/19/16	Email Chain with AD; Re: Inspection	.25
8/19/16	Email Chain with Client	.40
8/22/16 - 8/24/16	Email Chain with Client	.40
8/22/16	Call with Client	.15
8/25/16	Call with Client	.15
9/1/16	Email Chain with AD, SH; Re: Transfer of Sprinkler Heads and Chain of Custody	.75

9/7/16	Email Chain with Client with Attachment	.75
9/8/16	Email Chain with Client	.75
9/12/16	Call with Client	.15
9/12/16	Email Chain from Ivey with Attachments; Email Chain with Client	.50
9/12/16	Email Chain with RP, KH, GR with Attachments; Re: Retention	1.25
9/14/16	Email Chain with RP, KH; Re: Retention and Telephone Call with Bill Ivey Re: Retention	1.35
9/15/16	Email Chain with RP; Re: List of Cases	.50
9/16/16	Email Chain with RP; Re: Signed Retainer Agreement and Check	.50
9/19/16	Email Chain with RP, KH; Re: Shipping of Sprinklers from Rimkus. Telephone Call with Hastings.	.75
9/22/16	Receive, Review and Analyze Email From AD with Attachment from Kreason	.40
9/28/16	Email Chain with Client	.50
9/28/16	Email Chain with Client Re: Installation Guide Info., with Attachments	.75
9/28/16	Call with Client	.40
9/29/16	Draft Email to JW	.10
9/29/16	Receive, Review and Analyze Email from Dalacas	.25
9/30/16	Receive, Review and Analyze Emails with Website Info.; Receive, Review and Analyze Email from B. Lange and Client; Draft Email to JW	.85
10/3/16	Email Chain with Client	.50
10/4/16	Call with Client	.25
10/4/16	Call with Client	.15
10/4/16	Email Chain with Client	.50
10/6/16	Receive, Review and Analyze Email from Client with Attachment	.50

10/6/16	Receive, Review and Analyze Email from Dalacas; Forward Email to Client; Receive, Review and Analyze Email from Client; Receive, Review and Analyze Email from B. Lange; S. Simmons Emails included	.75
10/6/16	Call with Client	.40
10/7/16	Call with Client	.15
10/7/16	Receive, Review and Analyze Email from Client	.50
10/7/16	Receive, Review and Analyze Email from Giberti	.25
10/7/16	Draft Email to Dalacas; Forward Email to Client	.75
10/11/16	Receive, Review and Analyze Email from Client	.25
10/11/16	Draft Email to Dalacas with Attachments	.25
10/12/16	Email Chain with KB, KH, and File Manager; Re: Travel for Inspection	.50
10/12/16	Call with Client	.15
10/12/16	Call with Client	.10
10/12/16	Call with Client	.25
10/13/16	Call with Client	.40
10/13/16	Receive, Review and Analyze Email from Client	.25
10/13/16	Email Chain with S. Holcomb and Dalacas and Client	1.25
10/13/16	Receive, Review and Analyze Emails from Client with Email Chain from Viking/Lange	.50
10/13/16	Receive, Review and Analyze Email from Client	.25
10/14/16	Email Chain with Client	.50
10/14/16	Receive, Review and Analyze Email from M. Giberti with Attachments; Forward Emails	1.25
10/14/16	Email Chain with Client	.75
10/15/16	Call with Client	.25
10/15/16	Draft Email to Client with Attachments	.25

10/15/16	Draft and Send Email to KH; Re: Sprinkler Heads to Take Back to San Diego	.15
10/15/16	Prepare, Revise and Finalize Affidavit for DSS, Re: Chain of Custody	.50
10/16/16	Receive, Review and Analyze Email from Client	.40
10/17/16	Receive, Review and Analyze Email from M. Giberti	.40
10/17/16	Receive, Review and Analyze Email from Client	.40
10/17/16	Receive, Review and Analyze Email from Dalascas; Email Chain with Client; Email from S. Holcomb; Email to Client	.90
10/17/16	Receive, Review and Analyze Email from M. Giberti	.15
10/17/16	Email Chain with Client Re: Website	.40
10/17/16	Receive, Review, and Analyze Letter from Dalacas	.25
10/18/16	Email Chain with Client Re: Dalacas Ladder	.50
10/18/16	Call with Client	.15
10/ 19/16	Call with Client	.10
10/19/16	Call with Client	.10
10/20/16	Email Chain with KH; Re: Receipt of Sprinkler Heads	.25
10/21/16	Call with Client	.25
10/21/16	Email Chain with Client and Dalacas with Attachments	1.25
10/22/16 - 10/24/16	Email Chain with Dalacas and Client	1.25
10/24/16	Call with Client	.15
10/24/16	Email Chain with Dalacas/Holcomb, A. Bullock and Client with Attachments	.75
10/25/16	Receive, Review and Analyze Email from Client	.50
10/26/16	Send Email Chain with Client; Receive, Review and Analyze Email from Dalacas with Attachments	.75
11/4/16	Email Chain with Client; Email Chain with Dalacas	.80

11/9/16	Email Chain with Client with Attachment	.50
11/9/16	Draft and Send Email to KH with ECC Disclosures	.35
11/10/16	Email Chain with KH; Re: Visual Inspection of Sprinklers	.25
11/10/16	Receive, Review and Analyze Email from M. Giberti	.25
11/17/16	Email Chain with Client and Dalacas	.75
11/18/16	Email Chain with Dalacas	.40
11/18/16	Email Chain with Client with Attachment	1.0
11/21/16	Receive, Review and Analyze Email from Client	.25
11/21/16	Call with Client	.25
11/22/16	Draft and Send Email to Dalacas and Client	.40
11/29/16	Email Chain with M. Giberti and Client	.75
11/29/16	Draft and Send Email to Dalacas	.50
11/29/16	Email Chain with Client	.40
11/30/16	Receive, Review and Analyze Email from Dalacas; Draft and Email Chain with Client	.50
11/30/16	Receive, Review and Analyze Email from M. Giberti and Client	.50
12/2/16	Email Chain with Client with Attachments	.75
12/2/16	Receive, Review and Analyze Email from Ivey and Forward to Client	.25
12/2/16	Call with Client	.50
12/3/16	Call with Client	.25
12/5/16	Receive, Review and Analyze Email from M. Giberti	.35
12/5/16	Receive, Review and Analyze Email from Client	.25
12/5/16	Draft and Send Email to Duggan with Attachments	.50
12/5/16	T/C with Duggan	.40
12/5/16	Draft and Send Email to Dalacas	.75
12/5/16	Receive, Review and Analyze Email from Dalacas	.40

12/5/16	Receive, Review and Analyze Email from Client with Attachment Re: Updated Damages Estimate	.40
12/6/16	Email Chain with Client with Attachments	.50
12/6/16	Receive, Review and Analyze Email from Dalacas; Forward to Client; Receive, Review and Analyze Email from M. Giberti	.40
12/7/16	Receive, Review and Analyze Email from M. Giberti	.25
12/13/16	Email Chain with JY, KH; Re: Retainer with Attachment	.75
12/22/16	Email Chain with AD; Re: Mediation	.25
1/3/17	Email Chain with KH; Re: Visual Inspection in San Diego	.25
1/3/17	Email Chain with Blumberg	.35
1/4/17	Email Chain with JP and AD	.75
1/4/17	Receive, Review and Analyze Email From JP; Re: Mediation	.15
1/4/17	Receive, Review and Analyze Email from JW to Pancoast; Receive, Review and Analyze Email from JP; Receive, Review and Analyze Email from Dalacas	.50
1/4/17	Draft email to JP and Receive and Review Email from JP	.40
1/4/17	Draft and Send Email to Client	.50
1/4/17	Email Chain with Client	.75
1/6/17	Received, reviewed and responded to email from AF Lange K inserts added to MSJ	.15
1/10/17	Draft and Send Email to Client with Attachment	.25
1/10/17	Email Chain with KH; Re: Metallurgist	.50
1/11/17	Call with Client	.15
1/11/17	Call with Client	.25
1/11/17	Draft and send email to AF re making small changes to MSJ	.15
1/11/17	Email Chain with Client with attachment	.25
1/17/17	Draft and Send Email to JP and Response	.25
1/17/17	Draft and Send Email to GZ	.15

1/17/17	Draft and send email to AF re preparing written discovery and depo notices	.15
1/19/17	Draft and Send Email to KH with Attachment MSJ; Re: Request for Call	.20
1/19/17	Email chain with AF re Viking's Opposition to MSJ	.50
1/20/17	Email chain with AF re Stackiewicz case and Discussion with AF	.50
1/23/17	Received, reviewed and responded to email from AF re business court judge	.15
1/23/17	Received, reviewed and responded to email from AF re draft notices and SDT for review	.15
1/24/17	Call with Client	.15
1/24/17	Email chain with AF re business court jurisdiction and discussion with AF	.35
1/24/17	Email chain with AF re breach of contract COAs and discussion with AF	.50
1/24/17	Receive, Review and Analyze Email from M. Giberti	.25
1/24/17	Review COR Depositions and Forward to Client via Email	.50
1/24/17	Receive, Review and Analyze Email from G. Zamiski; Email Chain with Client	.50
1/24/17	Receive, Review and Analyze Email From GZ; Re: Scope of Work	.15
1/25/17	Draft and Send Email to GZ; Re: Starting Work and Retainer	.25
1/25/17	Draft and Send Email to AF and JW; Objection to Subpoena; Review of COR's, Analyze Objections	.50
1/25/17	Email Chain with AD, AF; Re: Depositions	.25
1/26/17	Draft and send email to AF re Lange 30(b)(6) depo and discussion with AF	.35
1/27/17	Email Chain with Client with Attachments	.50
1/27/17	Draft and Send Email to Client with Attachment	.25
1/27/17	Call with Client	.25

1/27/17	Draft and send email to AF re preparing Viking 30(b)(6) depo notice	.15
1/28/17	Draft and Send Email to KH; Re: Ziminsky, Depositions, Request to Discuss Case	.25
1/28/17	Draft and Send Email to KH with Viking 16.1 Disclosures	.25
1/30/17	Call with AMF	.15
1/30/17	Receive, Review and Analyze Email from M. Giberti	.25
1/31/17	Email Chain with Client	.25
2/1/17	Receive, Review and Analyze Email from Client	.25
2/3/17	Receive, Review and Analyze Email from Client with Attachment	.25
2/3/17	Receive, Review and Analyze Email From KH; Re: Viking Expert Opinions and Request for a TC	.15
2/3/17	Receive, Review and Analyze Email from Client to S. Dugan	.25
2/6/17	Receive, Review and Analyze Email from S. Dugan and Response	.25
2/6/17	Receive, Review and Analyze Email from Client Re: Trailer Temps and Website Attachment	.50
2/6/17	Draft and send email to AF re email client sent re trailer temperatures and link	.50
2/6/17	Call with Client	.40
2/6/17	Email chain with AF re Motion to Amend Complain	.15
2/6/17	Draft and Send Email to JP	.25
2/7/17	Receive, Review and Analyze Email From JP and Response	.25
2/7/17	Draft and send email to AF re Viking 30(b)(6) notice	.15
2/9/17	Receive, Review and Analyze Letter from Dalacas re Lange 30(b)(6) depositions	.25
2/9/17	Call with Client	.15
2/10/17	Receive, Review and Analyze Letter from Dalacas re Lange 30(b)(6) depositions and Brandon Lange Deposition	.15
2/10/17	Email chain with AF re response to Pancoast re Dustin Hamer	.15

2/10/17	Draft and send email to AF re correspondence from Sia about moving depositions	.15
2/10/17	Receive, Review and Analyze Email From JP and Response	.25
2/10/17	Email Chain with JP and AD	.95
2/12/17	Email chain with AF re re-noticing depositions of Hamer and Diorio	.25
2/13/17	Email chain with AF re court's availability for MSJ hearing	.15
2/13/17	Call with Client	.15
2/13/17	Email Chain with AD, JP and JR	.35
2/15/17	Call with AMF	.40
2/15/17	Draft and Send Email to AD and JP	.25
2/15/17	Email Chain with AD, JP and AF; Re: Depositions	.25
2/15/17	Draft and send email to AF re document needing to be supplemented (attachment)	.25
2/15/17	Draft and send email to AF re noticing depositions of Lange employees	.15
2/15/17	Receive, Review and Analyze Email from M. Giberti with Attached Letter	.50
2/17/17	Receive, Review and Analyze Email From JP; Re: Depositions	.25
2/21/17	Draft and send email to AF to print Exhibits 1-8	.15
2/21/17	Email chain with AF re exhibits for Dustin Hamer deposition	.15
2/22/17	Email Chain with Client; T/C with Dalacas	.50
2/25/17	Email Chain with Client	.25
2/26/17	Received, reviewed and responded to email from AF re draft reply to motion to amend	.15
2/27/17	Email chain with AF re COR Depositions for Giberti and American Grating	.15
2/27/17	Draft and Send Email to AD; Re: Kreason	.15
2/28/17	Receive, Review and Analyze Email From AD; Re: Kreason	.15
2/28/17	Receive, Review and Analyze Email From AD; Re: Kreason	.15

2/28/17	Receive, Review and Analyze Email from Client with Attachment	.75
2/28/17	Call with Client	.25
2/28/17	Call with Client	.10
2/28/17	Call with AMF	.15
2/28/17	Call with AMF	.10
2/28/17	Call with AMF	.15
2/28/17	Draft and Send Email to JP	.25
3/1/17	Received, reviewed and responded to email from AF re Pancoast coming to office to review documents	.15
3/1/17	Call with AMF	.15
3/1/17	Call with Client	.15
3/1/17	Call with Client	.10
3/1/17	Received, reviewed and responded to email from AF re Edgeworth trial order	.15
3/2/17	Draft and Send Email to Client with Attachment	.25
3/7/17	Email Chain with AF, AD and JP; Re: Orders	.15
3/7/17	Email Chain with AD; Re: Brandon Lange Deposition	.35
3/7/17	Email Chain with AF, AD, JW; Re: Calculation of Damages	.35
3/8/17	Email Chain with AD, JW, AF, JP; Re: Depositions	.30
3/8/17	Email Chain with JP, AF, AD; Re: Motions To Amend	.15
3/9/17 -3/14/17	Email Chain with AD, JW, AF, JP; Re: Deposition	.95
3/9/17	Call with Client	.15
3/10/17	Call with Client	.15
3/10/17	Email chain with AF re letter from Sia on withdrawing MSJ and her signature on proposed orders	.25
3/13/17	Receive, Review and Analyze Email from Dalacas; Forward Email to Client with Attachment	.65

3/13/17	Text Message with AMF	.10
3/13/17	Call with AMF	.10
3/13/17	Call with AMF	.15
3/13/17	Call with Client	.15
3/14/17	Call with Client	.65
3/14/17	Email Chain with Client with Attachments	.50
3/15/17	Call with AMF	.10
3/15/17	Call with AMF	.15
3/15/17	Call with AMF	.25
3/16/17	Email Chain with Client	.40
3/16/17	Email Chain with AD, AF, JP; Re: Bate Stamps	.15
3/17/17	Receive, Review and Analyze Email From AD; Re: OOJ	.25
3/17/17	Email Chain with AD, AF; Re: OJ	.15
3/17/17	Email chain with AF re extension for Lange's response to OOJ	.25
3/20/17	Email Chain with AD, AF; Re: Bate Stamp	.25
3/20/17	Draft and Send Email to Client with Attachment	.25
3/21/17	Email chain with AF re documents attached to supplement and review of the Kinsale file	.15
3/21/17	Email Chain with AF, AD, JP; Re: Bate Stamps	.25
3/24/17	Email Chain with AF, AD, JW; Re: Service	.50
3/24/17	Receive, Review and Analyze Email from JP; Forward Email to Client	.65
3/27/17	Email Chain with JF, AD, LV, LF; Re: Lawyer Contact	.25
3/28/17	Review Lange 5 th Supp and Email Chain with Client	.50
3/29/17	Email Chain with Client	.25
3/29/17	Call with AMF	.15
3/29/17	Call with AMF	.15

3/29/17	Call with AMF	.10
3/29/17	Email Chain with Client	.25
3/31/17	Call with AMF	.15
3/31/17	Email Chain with JP, AF, JR, TG, AD; Re: Deposition of Viking	.15
4/3/17	Email Chain with AD, JP, JW, JR; Re: Depositions	.50
4/3/17	Receive, Review and Analyze Email from Client with Attachment	.25
4/4/17	Receive, Review and Analyze Email from Client	.15
4/5/17	Email chain with AF re exhibits he needs for Kreason and Brandon Lange depo	.15
4/6/17	Received, reviewed and responded to email from AF re: 3 day notice of intent to default Lange and discussion with AF	.50
4/6/17	Receive, Review and Analyze Questions Email from Client	.50
4/6/17	Email Chain with Client	.25
4/6/17	Draft and Send Email to KH with Attachments; Re: Visual Inspection	.25
4/6/17	Receive, Review and Analyze Email from Client with Attachment	.25
4/6/17	Email Chain with Client	.25
4/6/17 - 4/20/17	Email Chain with AD, JP; Re: Inspection of Sprinklers	.65
4/6/17	Email Chain with AD, AF; Re: Testing of Heads	.15
4/7/17	Receive, Review and Analyze Email from Client with Attachment	.50
4/7/17	Receive, Review and Analyze Email from Client with Attachment; Receive, Review and Analyze Email from JW	.50
4/7/17	Receive, Review and Analyze Email from Client	.25
4/10/17	Email Chain JP, AD, JR; Re: PMK of Viking	.50
4/13/17	Draft and send email to AF re re-notice depo of Viking 30(b)(6)	.20
4/18/17	Draft and send email to AF re dropping off cc to Judge of Motion to compel Kreason	.15
4/18/17	Draft and Send Email to Client with Attachment	.75

4/18/17	T/C with Attorney Hulet and Draft and Send Email to Client	.50
4/18/17	Receive, Review and Analyze Email from Client	.25
4/18/17	Receive, Review and Analyze Email from Client	.40
4/18/17	Receive, Review and Analyze Email from Client	.40
4/18/17	Receive, Review and Analyze Email from Client	.25
4/18/17	Email Chain with AD, AF, Re: Kreason Deposition	.25
4/19/17	Call with Client	.50
4/19/17	Receive, Review and Analyze Email from Client	.65
4/19/17	Receive, Review and Analyze Email from Client with Attachments	.50
4/20/17	Email Chain with Client	.50
4/20/17	Receive, Review and Analyze Email from Client with Attachments	.50
4/20/17	Receive, Review and Analyze Email from M. Giberti	.15
4/20/17	Email Chain with AD, AF; Re: Testing of Heads	.25
4/21/17	Email Chain with AD, JP, AF; Re: Written Protocol	.50
4/23/17	Draft and send email to AF re research on the contract prior to the MSJ hearing	.15
4/24/17	Draft and send email to AF re printing 3 rd party complaint Lange filed against Viking	.15
4/24/17	Draft and Send Email to Client with Attachment	.25
4/24/17	Receive, Review and Analyze Email from Client	.15
4/24/17	Receive, Review and Analyze Email from Client	.15
4/24/17	Receive, Review and Analyze Email from Client with Attachments	.25
4/24/17	Draft and Send Email to Client	.15
4/25/17	Draft and Send Email to Bullock with Attachment and Draft and Send Email to Client	.50
4/25/17	Call with Client	.40

4/25/17	Draft and send email to AF re emailing 3 rd party complaint Lange filed against Viking	.15
4/25/17	Email Chain with Client and Office	.50
4/26/17	Email Chain with Client	.75
4/26/17	Email Chain with Client	.40
4/26/17	Receive, Review and Analyze Email from Client	.25
4/26/17	Receive, Review and Analyze Email from Client and Draft and Send Email to AF	.35
4/27/17	Draft and send email to AF re draft notice of depo and SDT for Dan Cadden	.15
4/27/17	Draft and send email to AF re what motions we need to file in Edgeworth and begin drafting	.20
4/27/17	Email chain with AF and JW re written discovery for Viking	.15
4/27/17	Draft and send email to AF re pulling invoices from Viking to Lange showing heads purchased	.15
4/27/17	Draft and send email to AF re forward from client	.40
4/28/17	Draft and Send Email to GZ; Re: Protocol with Attachments	.15
4/28/17	Email chain with AF re American Grating ECC and EFT Supp	.15
4/28/17	Review and analyze Viking's responses to written discovery	1.25
5/1/17	Draft and Send Email to Client with Attachment	.50
5/1/17	Email Chain with Client	.25
5/1/17	Draft and send email to AF re Viking's 2 nd Supp	.50
5/2/17	Email chain with AF requesting Viking 30(b)(6) notice, 3 rd party complaint and amended complaint emailed and printed	.20
5/2/17	Receive, Review and Analyze Email from Client	.15
5/2/17	Receive, Review and Analyze Email from Client	.15
5/2/17	Receive, Review and Analyze Email from Client	.25
5/2/17	Email Chain with KH with Attachment - Care & Handling	.25

5/2/17	Email Chain with KH with Attachments; Re: Testing Protocol	.50
5/2/17	Receive, Review and Analyze Email from Client	.50
5/2/17	Email Chain with AD, JP; Re: PMK Deposition	.25
5/2/17	T/C with Expert Hastings	.25
5/2/17	Call with Client	1.15
5/2/17	Call with Client	.15
5/3/17	Call with Client	.10
5/3/17	Call with Client	.15
5/3/17	Email chain with attachments to AF forwarded from Hastings and Viking supply invoices	.25
5/3/17	Draft and Send Email to Client	.15
5/3/17	Receive, Review and Analyze Email from Client with Attachment	.50
5/4/17	Call with Client	.75
5/4/17	Receive, Review and Analyze Email from M. Giberti with Attachments	.50
5/4/17	Receive, Review and Analyze Email from Client	.25
5/4/17	Receive, Review and Analyze Email from Client with Attachment	.25
5/4/17	Draft and Send Email to Kinsale	.40
5/4/17	Receive, Review and Analyze Email from Kinsale and Forward to Client	.15
5/4/17	Receive, Review and Analyze Email from Client with Attachment	.25
5/4/17	Receive, Review and Analyze Email from Client	.40
5/4/17	Email Chain with AD, AC, LF; Re: Giberti's 3 rd Party Complaint	.25
5/5/17	Email Chain with AD, AF; Re: Names of Employees	.25
5/5/17	Email chain with AF and Janelle re June 7 th hearing	.15
5/5/17	Receive, Review and Analyze Email from Client	.25
5/5/17	Receive, Review and Analyze Email from Client with Attachments	.40