

IN THE SUPREME COURT OF NEVADA

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, INDIVIDUALLY, AND  
AS HUSBAND AND WIFE; ROBERT  
DARBY VANNAH, ESQ.; JOHN  
BUCHANAN GREENE, ESQ.; AND  
ROBERT D. VANNAH, CHTD, d/b/a  
VANNAH & VANNAH, and DOES I  
through V and ROE CORPORATIONS VI  
through X, inclusive,

Appellants,

v.

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

Respondents.

Electronically Filed  
Jun 10 2021 12:34 p.m.  
Case No. 82058  
Elizabeth A. Brown  
Clerk of Supreme Court

Dist. Ct. Case No. A-19-807433-C

**JOINT APPELLANTS' APPENDIX  
IN SUPPORT OF ALL  
APPELLANTS' OPENING BRIEFS<sup>1</sup>**

**VOLUME I**

**BATES NO. AA000001-226**

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<sup>1</sup> This includes Robert D. Vannah, John B. Greene and their respective firm.

***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S.  
SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
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2021-04-13	Nevada Supreme Court Clerk Judgment in <i>Simon I</i>	XXI	AA004255 – 4271

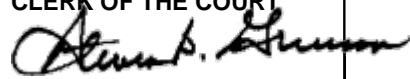
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2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XIII	AA002550 – 2572
2020-09-10	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XVIII	AA003585 – 3611

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2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to the Vannah Defs.' Mot. to Dismiss Pls.' Complaint	XIV	AA002800 – 2872
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIV	AA002723 – 2799
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2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175



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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN  
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING  
CORPORATION, a Michigan corporation;  
15 SUPPLY NETWORK, INC., dba VIKING  
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.

CASE NO.: A-18-767242-C

DEPT. NO.: XXIX

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:

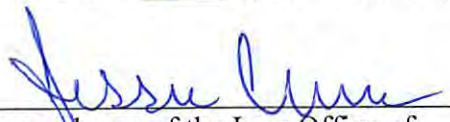
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810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

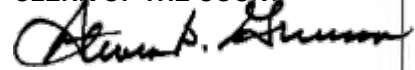
Traditional Manner:  
*None*

DATED this 27 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

# Exhibit 1

# Exhibit 1



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.

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.

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

Consolidated with

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

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

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

24 (Def. Exhibit 27).

25 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first  
26 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.  
27 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.  
28 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.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

18 Id.

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

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



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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

### 9 10 *Implied Contract*

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

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

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCPP  
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were  
26 paid in full and there was never any indication given that anything less than all the fees had been  
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees  
28

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

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 6 *Costs Owed*

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

### 15 *Quantum Meruit*

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

1 In determining the amount of fees to be awarded under quantum meruit, the Court has wide  
2 discretion on the method of calculation of attorney fee, to be “tempered only by reason and  
3 fairness”. Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires  
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530  
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee  
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the  
7 reasonableness of the fee under the Brunzell factors. 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;

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

11 NRCP 1.5.

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

## 23 CONCLUSION

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

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

9  
10 **ORDER**

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

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

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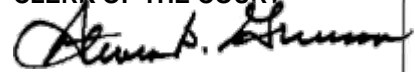
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Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.

  
Tess Driver  
Judicial Executive Assistant  
Department 10

# Exhibit 2

# Exhibit 2



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

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

14 Defendants.

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

23  
24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on  
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable  
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon  
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in  
28 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

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

### **FINDINGS OF FACT**

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

2. The case involved a complex products liability issue.

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

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

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



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

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

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

10 I am more that happy to keep paying hourly but if we are going for punitive  
11 we should probably explore a hybrid of hourly on the claim and then some  
12 other structure that incents both of us to win an go after the appeal that these  
13 scumbags will file etc.

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 14 15 **CONCLUSION OF LAW**

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

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

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

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

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

### 5 *Conversion*

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

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

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

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

22 The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and  
23 Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no  
24 express contract existed for compensation and there was not a breach of a contract for compensation,  
25 the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter  
26 of law and must be dismissed.  
27  
28

1 ***Breach of Fiduciary Duty***

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

10  
11 ***Punitive Damages***

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

19  
20 **CONCLUSION**

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

26 //

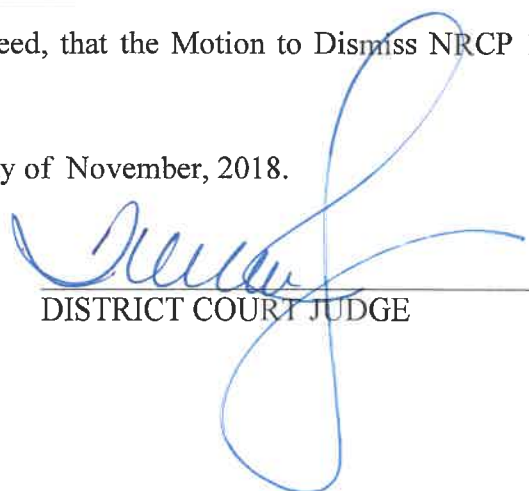
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**ORDER**

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.

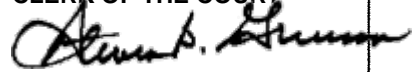
  
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DISTRICT COURT JUDGE

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

  
Tess Driver  
Judicial Executive Assistant  
Department 10





**COMP**  
**PETER S. CHRISTIANSEN, ESQ.**  
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Telephone: (702) 240-7979  
Attorneys for Plaintiff

CASE NO: A-19-807433-C  
Department 2

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs, )

vs. )

CASE NO.:  
DEPT. NO.:

EDGEWORTH FAMILY TRUST; )  
AMERICAN GRATING, LLC; )  
BRIAN EDGEWORTH AND ANGELA )  
EDGEWORTH, INDIVIDUALLY, AND )  
AS HUSBAND AND WIFE, )  
ROBERT DARBY VANNAH, ESQ.; )  
JOHN BUCHANAN GREENE, ESQ.; and )  
ROBERT D. VANNAH, CHTD. d/b/a )  
VANNAH & VANNAH, )  
and DOES I through V and ROE )  
CORPORATIONS VI through X, inclusive, )

**COMPLAINT**

**(Jury Trial Requested)**

Defendants. )

COMES NOW the Plaintiffs, by and through undersigned counsel, hereby alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation, was at all times relevant hereto a professional corporation duly licensed and authorized to

**CHRISTIANSEN LAW OFFICES**  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
702-240-7979 • Fax 866-412-6992

**AA000038**

conduct business in the County of Clark, state of Nevada and will hereinafter be referred to as (“plaintiff” or “Mr. Simon,” or “Simon” or “Law Office.”)

2. Plaintiff, DANIEL S. SIMON, was at all times relevant hereto, a resident of the County of Clark, state of Nevada and will hereinafter be referred to as (“plaintiff” or “Mr. Simon,” or “Simon” or “Law Office.”)

3. Defendant, EDGEWORTH FAMILY TRUST, was and is a revocable trust created and operated in Clark County, Nevada with Brian Edgeworth and Angela Edgeworth, acting as Trustees for the benefit of the trust, and at all times relevant hereto, is a recognized entity authorized to do business in the County of Clark, state of Nevada.

4. AMERICAN GRATING, LLC, a Nevada Limited Liability Company, was and is, duly licensed and authorized to conduct business in Clark County, Nevada and all acts and omissions were all performed, at all times relevant hereto, in the County of Clark, state of Nevada. This entity and Brian Edgeworth and Angela Edgeworth and the Edgeworth Family Trust will be referred to collectively as (“The Edgeworth’s” or “Edgeworth” or “Edgeworth entities”)

5. Defendant, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, were at all times relevant hereto, husband and wife, and residents of the state of Nevada, acted in their individual capacity and corporate/trustee capacity on behalf of the Edgeworth entities for its benefit and their own personal benefit and for the benefit of the marital community in Clark County, Nevada. Brian Edgeworth and Angela Edgeworth, at all times relevant hereto, were the principles of the Edgeworth entities and fully authorized, approved and/or ratified the conduct of each other and the acts of the entities and each other personally and the Defendant attorneys.

6. Defendant, ROBERT DARBY VANNAH was and is an attorney duly licensed pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts and omissions, individually and in the course and scope of his employment, in his master, servant and/or agency relationship with each and every other Defendant, including, Robert D. Vannah Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized, approved and/or ratified the conduct of each other Defendant, including the conduct of the

1 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of  
2 Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

3 7. Defendant, JOHN BUCHANAN GREENE was and is an attorney duly licensed  
4 pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts  
5 and omissions, individually and in the course and scope of his employment, in his master,  
6 servant and/or agency relationship with each and every other Defendant, including, Robert D.  
7 Vannah Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized,  
8 approved and/or ratified the conduct of each other Defendant, including the conduct of the  
9 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of  
10 Robert D. Vannah, individually and Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

11 8. Defendant, ROBERT D. VANNAH, CHTD. D/B/A VANNAH & VANNAH,  
12 was at all times relevant hereto, a Nevada Corporation duly licensed and doing business in  
13 Clark County, Nevada. The individual attorneys, ROBERT DARBY VANNAH AND JOHN  
14 BUCHANAN GREENE and Robert D. Vannah, Chtd. d/b/a Vannah and Vannah will be  
15 collectively referred to as "Defendant attorneys."

16 9. Venue and jurisdiction are proper in this Court because the actions taken  
17 between the parties giving rise to this action and the conduct complained of occurred in Clark  
18 County, Nevada.

19 10. The true names and capacities, whether individual, corporate, partnership,  
20 associate or otherwise of Defendants named herein as DOES 1 through 10 inclusive, and ROE  
21 CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20, inclusive, and  
22 each of them are unknown to Plaintiff's at this time, and Plaintiff therefore sues said  
23 Defendants and each of them by such fictitious name. Plaintiff will advise this Court and seek  
24 leave to amend this Complaint when the names and capacities of each such Defendant have  
25 been ascertained. Plaintiff alleges that each Defendant herein designated as DOE, ROE  
26 CORPORATION is responsible in some manner for the events and happenings herein referred  
27 to as hereinafter alleged, including but not limited to advising, supporting, assisting in causing  
28

1 and maintaining the institution of the proceedings, abusing the process and/or republishing the  
2 defamatory statements at issue.

3 11. Plaintiff is informed and believes and thereupon alleges that DOES 1 through 10,  
4 inclusive, ROE CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20,  
5 inclusive, or some of them are either residents of the State of Nevada and/or were or are doing  
6 business in the State of Nevada and/or have targeted their actions against Plaintiff in the State of  
7 Nevada.

8 **I. GENERAL ALLEGATIONS**

9 12. Mr. Simon represented the Edgeworth entities in a complex and hotly contested  
10 products liability and contractual dispute stemming from a premature fire sprinkler activation in  
11 April of 2016 which flooded Plaintiffs speculation home during its construction causing  
12 \$500,000.00 in property damage.

13 13. In May/June of 2016, Simon helped the Edgeworth's on the flood claim as a  
14 favor, with the goal of ending the dispute by triggering insurance to adjust the property damage  
15 loss. Mr. Simon and Edgeworth never had an express written or oral attorney fee agreement.  
16 They were close family friends at the time and Mr. Simon decided to help them.

17 14. In June of 2016, a complaint was filed. In August/September of 2017, Mr. Simon  
18 and Brian Edgeworth both agree that the flood case dramatically changed. The case had become  
19 extremely demanding and was dominating the time of the law office precluding work on other  
20 cases. Determined to help his friend at the time, Mr. Simon and Brian Edgeworth made efforts  
21 to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon  
22 and Brian Edgeworth agreed that the nature of the case had changed and had discussions about  
23 an express fee agreement based on a hybrid of hourly and contingency fees. However, an  
24 express agreement could not be reached due to the unique nature of the property damage claim  
25 and the amount of work and costs necessary to achieve a great result.

26 15. Although efforts to reach an express fee agreement failed, Mr. Simon continued  
27 to forcefully litigate the Edgeworth claims. Simon also again raised the desire for an express  
28

1 attorney fee agreement with the clients, at which time, the Clients refused to speak to Simon  
2 about a fair fee and instead stopped talking to him and hired other counsel.

3 16. On November 29, 2017, the Edgeworth's fired Simon by retaining new counsel,  
4 Robert D. Vannah, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah and John Green  
5 (hereinafter the "Defendant Lawyers"), and ceased all direct communications with Mr. Simon.  
6 On November 30, 2017, the Defendant Lawyers provided Simon notice of retention.

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

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

14 19. On January 4, 2018, Edgeworth's, through Defendant Lawyers, sued Simon,  
15 alleging Conversion (stealing) and various other causes of actions based on the assertion of  
16 false allegations. At the time of this lawsuit, the Defendant Lawyers and Edgeworth entities  
17 actually knew that the settlement funds were not taken by Simon and were not deposited in any  
18 other account as arrangements were being made at the request of Edgeworth and Defendant  
19 Lawyers to set up a special account so that Robert D. Vannah on behalf of Edgeworth would  
20 control the funds equally pending the lien dispute. When Edgeworth and the Defendant lawyers  
21 sued Simon, they knew Mr. Simon was owed more than \$68,000 for outstanding costs advanced  
22 by Mr. Simon, as well as substantial sums for outstanding attorney's fees yet to be determined  
23 by Nevada law.

24 20. On January 8, 2018, Robert D. Vannah, Brian Edgeworth and Angela Edgeworth  
25 met Mr. Simon at Bank of Nevada and deposited the Viking settlement checks into a special  
26 trust account opened by mutual agreement for this case only. Mr. Simon signed the checks for  
27 the first time at the bank, provided the checks to the banker who took custody of the checks.  
28 The banker then provided the checks to Brian and Angela Edgeworth for signature in the

1 presence of Robert D. Vannah. Mr. Vannah signed bank documents to open the special account.  
2 The checks were deposited into the agreed upon account. In addition to the normal safeguards  
3 for a trust account, this account required signatures of both Robert D. Vannah and Mr. Simon  
4 for a withdrawal. Thus, Mr. Simon stealing money from the trust account was an impossibility  
5 that was known to the Defendants, and each of them. After the checks were deposited, the  
6 Edgeworths and Defendant attorneys proceeded with their plan to falsely attack Simon.

7 21. On January 9, 2018, Plaintiffs served their complaint which alleged that Simon  
8 stole their money-money which was safe kept in a Bank of Nevada account, earning them  
9 interest. Edgeworth and Robert D. Vannah and Defendant attorneys all knew Simon did not and  
10 could not steal the money, yet they pursued their serious theft allegations knowing the falsity  
11 thereof. The Defendants, and each of them, knew and had reason to know, the conversion  
12 complaint was objectively baseless and the Defendants, and each of them, did not have probable  
13 cause to begin or maintain the action.

14 22. Simon responded with two motions to dismiss, which detailed the facts and  
15 explained the law on why the complaint was frivolous. Rather than conceding the lack of merit  
16 as to even a portion of the complaint, Plaintiffs maintained the actions. On March 15, 2018,  
17 Defendants filed an Amended Complaint to include new causes of action and reaffirmed all the  
18 false facts in support of the conversion claims. The false facts asserted stealing by Simon, and  
19 sought punitive damages. When these allegations were initially made and the causes of actions  
20 were maintained on an ongoing basis, all Defendant Lawyers and Brian and Angela Edgeworth,  
21 individually and on behalf of the Edgeworth entities, all actually knew the allegations were false  
22 and had no legal basis whatsoever because their allegations were a legal impossibility. When  
23 questioning the Defendant lawyers for the legal or factual support for their conversion claims,  
24 they could not articulate a basis.

25 23. During the course of the litigation, Defendants, and each of them, filed false  
26 documents asserting blackmail, extortion and converting the Edgeworth's portion of the  
27 settlement proceeds.

28 24. The facts elicited at the five-day evidentiary hearing concerning the substantial

1 Attorney's fees still owed and not paid by the Edgeworth's further confirmed that the  
2 allegations in both Edgeworth complaints were false and that the complaints were filed for an  
3 improper purpose as a collateral attack on the lien adjudication proceeding; which forced Simon  
4 to retain counsel and experts to defend the suit at substantial expense. The initial complaint and  
5 subsequent filings were done primarily because of hostility or ill will, to cause unnecessary and  
6 substantial expense to Simon, damage and harm the reputation and business of Mr. Simon and  
7 to avoid lien adjudication (for a carved out exception for legal malpractice or theft), all of  
8 which, are independent improper purposes. Edgeworth's and the Defendant attorneys never  
9 alleged malpractice and have no criticism of the work performed by Mr. Simon for the  
10 Edgeworth's.

11 25. All filings for conversion were done without probable cause or a good faith  
12 belief that there was an evidentiary basis. The Defendants, and each of them, were aware that  
13 the conversion claim and allegations of extortion, blackmail or other crimes were not  
14 meritorious. The Defendants, and each of them, did not reasonably believe they had a good  
15 chance of establishing a conversion claim to the satisfaction of the Court. The complaint was  
16 filed for the purpose other than securing the proper adjudication of the Attorney-Client fee  
17 dispute pursuant to the statutory lien adjudication process.

18 26. When the complaint filed by Defendants and subsequent filings were made and  
19 arguments presented, the Defendants, and each of them, did not honestly believe in its possible  
20 merits and did not reasonably believe that they had a good chance of establishing the case to the  
21 satisfaction of the court. Defendants, and each of them, consistently argued that Mr. Simon  
22 extorted and blackmailed them and stole their money. Defendants, and each of them, took an  
23 active part in the initiation, continuation and/or procurement of the civil proceedings against  
24 Mr. Simon and his Law Office. The primary ulterior purpose was to subject Mr. Simon to  
25 excessive expenses, to avoid lien adjudication and to harm his reputation to their friends,  
26 colleagues and general public and cause damage and loss of his business. The claims were so  
27 obviously lacking in merit that they could not logically be explained without reference to the  
28 Defendants improper motive and ill will. The proceedings terminated in favor of Simon.

27. The District Court found that the attorney lien of the Law Office of Daniel S. Simon dba Simon Law (hereafter "Mr. Simon") was proper and that the lawsuit brought by the Edgeworth entities through the Defendant lawyers against Mr. Simon and his Law Office had no merit. Accordingly, on October 11, 2018, the District Court dismissed Defendants complaint in its entirety against Mr. Simon. The court found, Edgeworth and the Defendant lawyers brought claims that were not well grounded in fact or law confirming that it is clear that the conversion claim was frivolous and filed for an improper purpose, when the Court examined the facts known to Edgeworth and Defendant lawyers when they filed the complaint on January 4, 2018; which were, Mr. Simon did not have the money and had not stolen any money. In fact, he did not even have the ability to steal the money as Mr. Vannah equally controlled the account.

Additionally, there was no merit to Plaintiffs' claims that:

- a. Simon "intentionally" converted and was going to steal the settlement proceeds;
- b. Simon's conduct warranted punitive damages;
- c. Daniel S. Simon individually should be named as a party;
- d. Simon had been paid in full;
- e. Simon refused to release the full settlement proceeds to Plaintiffs;
- f. Simon breached his fiduciary duty to Plaintiffs;
- g. Simon breached the covenant of good faith and fair dealing; and,
- h. Plaintiffs were entitled to Declaratory Relief because they had paid Simon in full.

28. On October 11, 2018, the Court dismissed Plaintiffs amended complaint. Of specific importance, the Court found that:

- a. On November 29, Mr. Simon was discharged by Edgeworth.
- b. On December 1, Mr. Simon appropriately served and perfected a charging lien on the settlement monies.
- c. Mr. Simon was due fees and costs from the settlement monies subject to the proper attorney lien.
- d. Found no evidence to support the conversion claim.



1 e. The Court did not find that Simon converted the clients' money.

2 29. On February 6, 2019, the Court found that:

3 a. The Edgeworth's and Defendant attorneys did not maintain the conversion claim  
4 on reasonable grounds since it was an impossibility for Mr. Simon to have converted the  
5 Edgeworth's property at the time the lawsuit was filed.

6 **COUNT I**

7 **WRONGFUL USE OF CIVIL PROCEEDINGS - ALL DEFENDANTS**

8 30. Plaintiff incorporates all prior paragraphs and incorporates by reference the  
9 preceding allegations as though fully set forth herein.

10 31. The Edgeworth entities, through the Defendant attorneys, initiated a complaint  
11 on January 4, 2018 alleging that Mr. Simon and his Law Office converted settlement proceeds  
12 in the amount of 6 million dollars.

13 32. The Edgeworth entities, through the Defendant attorneys, maintained the  
14 conversion of the settlement when filing an amended complaint re-asserting the same  
15 conversion allegations on March 15, 2018.

16 33. The Edgeworth entities, through the Defendant attorneys, maintained the  
17 conversion and stealing of the settlement when filing multiple public documents and presenting  
18 oral argument at hearings containing a public record when re-asserting the conversion and theft  
19 by Mr. Simon and his Law Office.

20 34. The Edgeworth's and the Defendant attorneys acted without probable cause and  
21 with no evidentiary basis.

22 35. The Edgeworth's and the Defendant attorneys acted with malice, express and/or  
23 implied and their actions were malicious, oppressive, fraudulent and done with a conscious and  
24 deliberate disregard of Plaintiffs rights and Plaintiffs are entitled to punitive damages in a sum  
25 to be determined at the time of trial. The Defendants, and each of them, knew of the probable  
26 and harmful consequences of their false claims and intentionally and deliberately failed to act to  
27 avoid the probable and harmful consequences.

28

1           36.     The Edgeworth's and the Defendant attorneys conduct proximately caused  
2 injury, damage, loss, and/or harm to Mr. Simon and his Law Office in a sum to be determined at  
3 the time of trial. Asserting what amounts to theft of millions of dollars against Mr. Simon and  
4 his Law Office harmed his image in his profession and among the community, and the  
5 allegations damaged his reputation.

6           37.     The Edgeworth's and the Defendant attorneys advanced arguments in public  
7 documents that Mr. Simon committed crimes of stealing, extortion and blackmail knowing  
8 these filings and arguments were false and defamatory.

9           38.     Plaintiffs were forced to retain attorneys to defend the wrongful use of civil  
10 proceedings and incurred substantial attorney's fees and costs, which are specially plead  
11 pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

12           39.     Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
13 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

14                               **COUNT II**

15                               **MALICIOUS PROSECUTION - ALL DEFENDANTS**

16           40.     Plaintiff incorporates the preceding paragraphs and allegations as though fully  
17 set forth herein.

18           41.     The Edgeworth's and the Defendant attorneys initiated a complaint on  
19 January 4, 2018 alleging that Mr. Simon and his Law Office, converted the settlement proceeds  
20 in the amount of 6 million dollars.

21           42.     The Edgeworth's and the Defendant attorneys maintained the conversion of the  
22 settlement when filing an amended complaint re-asserting the same conversion allegations on  
23 March 15, 2018. Despite knowing the funds remained in a trust account controlled in part by  
24 Defendant Robert D. Vannah with all interest accruing to Edgeworth, the amended complaint  
25 again alleged conversion - that Mr. Simon stole the settlement money.

26           43.     The Edgeworth's and Defendant attorneys acted without probable cause and with  
27 no evidentiary basis.

28

45. The Edgeworth's and the Defendant attorneys conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office in a sum to be determined at the time of trial. Asserting what amounts to theft of millions of dollars against Mr. Simon and his Law Office harmed his image in his profession and among the community, and the allegations damaged his reputation.

47. Plaintiffs have been forced to retain attorneys to prosecute this matter and are entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

**ABUSE OF PROCESS - ALL DEFENDANTS**

49. The Edgeworth's and the Defendant attorneys abused the judicial process when initiating a proceeding and maintained the proceeding alleging conversion, theft, malice, misrepresentations, breach of fiduciary duties with no evidence to support those claims.

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1 purpose of asserting claims supported by evidence.

2 51. The Edgeworth's and Defendant attorneys committed a wilful act in using the  
3 judicial process for an ulterior purpose not proper in the regular conduct of the proceedings and  
4 misapplied the process for an end other than which it was designed to accomplish, and acted  
5 and used the process for an improper purpose or ulterior motive.

6 52. The Edgeworth's and the Defendant attorneys abused the process at hearings to  
7 avoid lien adjudication, to cause unnecessary and substantial expense and to damage the  
8 reputation of Mr. Simon and financial loss to his Law Office. The Defendants, and each of  
9 them, knew of the probable and harmful consequences of their false claims and intentionally  
10 and deliberately failed to act to avoid the probable and harmful consequences.

11 53. The Edgeworth's and Defendant attorneys abuse of the process proximately  
12 caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what  
13 amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his  
14 profession and among his personal friends and the community. The false allegations damaged  
15 his reputation.

16 54. Plaintiffs were already forced to retain attorneys to defend the complaint  
17 constituting an abuse of process and incurred substantial attorney's fees and costs, which are  
18 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
19 \$15,000.

20 55. The actions of Defendants, and each of them, were sufficiently fraudulent,  
21 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
22 Defendants, and each of them, knew of the probable and harmful consequences of their false  
23 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
24 consequences.

25 56. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
26 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

27 //

28 //

**COUNT IV**

**NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

57. Plaintiff incorporates the preceding paragraphs and allegations as if set forth herein.

58. Robert D. Vannah, Chtd. had a duty to hire, supervise, and retain competent employees including, Lawyers to act diligently and competently to represent valid claims to the court and to file pleadings before the court that have the legal evidentiary basis to support the claims.

59. The lawyers acting on behalf of Robert D. Vannah, Chtd. fell below the standard of care when drafting, signing, and filing complaints with allegations, known to them, to be false, a legal impossibility and without any possible evidentiary basis.

60. Robert D. Vannah, Chtd breached that duty proximately causing damage to Mr. Simon and his Law Office.

61. The Defendant attorneys abuse of the process proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office, the Law Office of Daniel Simon when asserting what amounts to illegal and fraudulent activity, including false allegations of theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. The false allegations damaged his reputation.

62. Robert D. Vannah, Chtd. acts were malicious, oppressive, fraudulent and done with a conscious and deliberate reckless disregard for the rights of the Plaintiffs. The Defendants, and each of them, knew of the probable and harmful consequences of their false claims and intentionally and deliberately failed to act to avoid the probable and harmful consequences. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. All of the acts were fully authorized, approved and ratified by Robert D. Vannah, Chtd.

63. Plaintiffs were forced to retain attorneys to defend the complaints constituting abuse of process, malicious prosecution, wrongful institution of civil proceedings, conversion claims and related proceedings and incurred substantial attorney's fees and costs, which are

1 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
2 \$15,000.

3 64. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
4 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

5 **COUNT V**

6 **DEFAMATION PER SE**

7 65. Plaintiff incorporates the preceding allegations as though fully set forth herein.

8 66. On information and belief, Brian Edgeworth and Angela Edgeworth  
9 misrepresented to the public that Mr. Simon and his Law Office committed illegal and  
10 fraudulent acts. Defendants, and each of them, also made intentional misrepresentations to the  
11 general public that Mr. Simon and his Law Office lacked integrity and good moral character  
12 including, but not limited to, its publicly filed complaint on January 4, 2018, the amended  
13 complaint filed March 15, 2018, the multiple publicly filed briefs and affidavits asserting the  
14 same false statements. The Edgeworth's repeated these statements to individuals independent of  
15 the litigation.

16 67. Brian and Angela Edgeworth's statements were false and defamatory and Brian  
17 and Angela Edgeworth knew them to be false and defamatory at the time the statements were  
18 made.

19 68. Brian and Angela Edgeworth's publication of these statements to third parties  
20 was not privileged.

21 69. The conduct by Brian and Angela Edgeworth, as described herein, was  
22 fraudulent, malicious and oppressive under NRS 42.005. The Defendants, and each of them,  
23 knew of the probable and harmful consequences of their false claims and intentionally and  
24 deliberately failed to act to avoid the probable and harmful consequences. Therefore, Plaintiff's  
25 are entitled to an award of punitive damages.

26 70. Brian and Angela Edgeworth, individually and on behalf of the Edgeworth  
27 entities made false and defamatory statements attacking the integrity and moral character of Mr.  
28 Simon and his law practice tending to cause serious injury to his reputation and ability to secure

1 new clients. Under Nevada law, the statements were defamatory per se and damages are  
2 presumed. The foregoing notwithstanding, as a direct and proximate result of the false and  
3 defamatory statements, Mr. Simon and his Law Office, the Law Office of Daniel Simon have  
4 sustained actual, special and consequential damages, loss and harm in a sum to be determined at  
5 the time of trial.

6 71. The actions of Defendants, and each of them, were sufficiently fraudulent,  
7 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
8 Defendants, and each of them, knew of the probable and harmful consequences of their false  
9 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
10 consequences. All Defendants ratified each others actions in attacking the integrity and moral  
11 character of Mr. Simon and his law office.

12 72. Plaintiffs were forced to retain attorneys to defend the complaints and  
13 defamatory statements and incurred substantial attorneys fees and costs, which are specially  
14 plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

15 73. It has become necessary for Plaintiffs to retain the services of attorneys to litigate  
16 this action. Therefore, Plaintiffs are entitled to an award of attorneys' fees, costs and interest  
17 separately pursuant to Nevada law.

18 **COUNT VI**

19 **BUSINESS DISPARAGEMENT**

20 74. Plaintiff repeats and realleges each and every paragraph and allegation in the  
21 foregoing paragraphs as though fully set forth herein.

22 75. The statements of Brian and Angela Edgeworth, as alleged more fully herein,  
23 attacked the reputation for honesty and integrity of their lawyer at the time and alleged lack of  
24 truthfulness by stating that the Mr. Simon and his Law Office, the Law Office of Daniel S.  
25 Simon, converted and extorted millions of dollars from them. These statements were false and  
26 done with the intent to disparage and harm Mr. Simon and his Law Office and actually  
27 disparaged the Law Office of Daniel Simon.

28





1 public that were later to be determined false and defamatory to Plaintiffs. Defendants, and each  
2 of them, knew or should have known that the allegations were not supported by the law and  
3 lacked any evidentiary basis and were negligent in the communication of the statements.

4 85. Defendants, and each of them breached their duty to exercise reasonable care to  
5 Mr. Simon and his Law Office. As a direct and proximate consequence of the Defendants  
6 negligence, the statements that were defamatory resulted in the publication and broad  
7 dissemination of false and defamatory statements attacking the integrity and good moral  
8 character of Mr. Simon and his Law Office tending to cause serious injury to his reputation and  
9 ability to practice law with the same regard as he did prior to the false and defamatory  
10 statements. Under Nevada law, the statements were defamatory per se and Law Office of  
11 Daniel Simon and Mr. Simon's damages are presumed. The foregoing notwithstanding, as a  
12 direct and proximate result of the negligence of Defendants, and each of them, Mr. Simon and  
13 his Law Office has sustained actual, special and consequential damages in a sum to be  
14 determined at trial.

15 86. Plaintiffs were forced to retain attorneys to defend the frivolous lawsuit initiated  
16 by Defendants, and each of them, and incurred substantial attorney's fees and costs, which are  
17 specially plead pursuant to NRCP 9(g) in a sum in excess of \$15,000.

18 87. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
19 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

20 **COUNT VIII**

21 **CIVIL CONSPIRACY**

22 88. Plaintiff's repeat and reallege each and every allegation in the foregoing  
23 paragraphs and allegations as though fully set forth herein.

24 89. Defendants, and each of them, through concerted action among themselves and  
25 others, intended to accomplish the unlawful objectives of (i) filing false claims for an improper  
26 purpose. Defendant attorneys and the Edgeworth's all knew that the Plaintiffs did not steal the  
27 money. They devised a plan to knowingly commit wrongful acts to file the frivolous claims for  
28 an improper purpose to damage the reputation of Plaintiff's, cause harm to his law practice,

1 cause him unnecessary and substantial expense to expend valuable resources to defend  
2 wrongful institution of civil proceedings and they abused the process in attempt to manipulate  
3 the proceedings. The wrongful acts were committed several times when filing the complaint,  
4 amended complaint, all briefs, 3 affidavits, oral arguments and supreme court filings, and  
5 Defendants, and each of them, took no action to correct the falsity of the statements repeatedly  
6 made.

7 90. Defendants, and each of them, through concerted action among themselves and  
8 others, intended to accomplish the foregoing unlawful objectives through unlawful means and  
9 to cause damage to Plaintiffs as herein alleged, including abusing the process, wrongfully  
10 instituting legal proceedings, defaming and disparaging Mr. Simon, his Law Office, harming his  
11 business, causing unnecessary substantial expense, among others objectives to be determined at  
12 the time of trial.

13 91. In taking the actions alleged herein, Defendants, and each of them, were acting for  
14 their own individual advantage.

15 92. As the direct and proximate result of the concerted action of Defendants, and each  
16 of them, as described herein, Plaintiff's have suffered general, special and consequential  
17 damages, loss and harm, in a sum to be determined at trial.

18 93. The actions of Defendants, and each of them, were sufficiently fraudulent,  
19 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
20 Defendants, and each of them, knew of the probable and harmful consequences of their false  
21 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
22 consequences and repeated the wrongful acts to achieve the objectives of their devised plan.

23 94. Plaintiffs were forced to retain attorneys to defend the wrongful acts to carry out  
24 their devised plan and incurred substantial attorneys fees and costs, which are specially plead  
25 pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

26 95. It has become necessary for Plaintiffs to retain the services of an attorney in this  
27 matter and he is entitled to be reimbursed for his attorneys' fees and costs incurred as a result  
28 separately pursuant to Nevada law.

GENERAL PRAYER FOR RELIEF

Plaintiff's pray judgment against Defendants, and each of them, as follows:

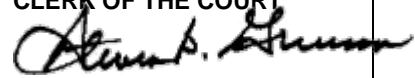
1. For a sum to be determined at trial for actual, special, compensatory, consequential and general damages in excess of \$15,000.
2. For a sum to be determined at trial for punitive damages.
3. For a sum to be determined for attorneys fees and costs as special damages.
4. For attorneys' fees, costs and interest separately in prosecuting this action.
5. For such other relief as this court deems just and proper.

Dated this \_\_20th\_\_ day of December , 2019.

RESPECTFULLY SUBMITTED

By: 

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**OPP**

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*Counsel for Defendants Edgeworth Family Trust;  
American Grating, LLC; Brian Edgeworth;  
and Angela Edgeworth*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DANIEL SIMON; LAW OFFICE OF  
DANIEL S. SIMON, a professional  
corporation,

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, individually, husband and  
wife; ROBERT DARBY VANNAH, ESQ.;  
JOHN BUCHANAN GREEN, ESQ.; and  
ROBERT D. VANNAH, CHTD, d/b/a  
VANNAH & VANNAH, and DOES I  
through V and ROE CORPORATIONS VI  
through X, inclusive,

Defendants.

Case No.: A-19-807433-C  
Dept. No.: 24

**OPPOSITION OF EDGEWORTH  
FAMILY TRUST, AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH  
AND ANGELA EDGEWORTH TO  
PLAINTIFFS' "EMERGENCY"  
MOTION TO PRESERVE  
ELECTRONICALLY STORED  
INFORMATION**

**Date of Hearing: April 9, 2020**  
**Time of Hearing: 9:00 a.m.**

COMES NOW, Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH, and ANGELA EDGEWORTH (collectively, the "Edgeworths"), by and through their above counsel and hereby file this Opposition to Plaintiffs' "Emergency Motion for Order Requiring All Defendants to Preserve Relevant Electronically Stored Information From Servers, Stand-Alone Computers, Cell Phones, and All Other Material Evidence Concerning Communications to Third Party Regarding Plaintiffs on Order Shortening Time" (the "Emergency Motion").

This Opposition is based upon the attached Memorandum of Points and Authorities, the

1 pleadings and papers on file herein, and the Points and Authorities raised in the underlying action,  
2 *Edgeworth Family Trust, American Grating, LLC v. Daniel S. Simon, et. al.*, Case No. A-18-  
3 767242-C consolidated with Case No. A-16-738444-C, which is now on appeal before the Nevada  
4 Supreme Court (No. 77678 consolidated with No. 78176), and cited in the Opposition of Robert  
5 Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D. Vannah, CHTD, d/b/a Vannah  
6 & Vannah to Plaintiffs' Erroneously Labeled 'Emergency' Motion to Preserve Evidence ("Vannah  
7 Opposition"), all of which the Edgeworths adopt and incorporate by reference, and the arguments  
8 of counsel at any hearing hereof.

9 DATED April 6, 2020.

10 MCNUTT LAW FIRM, P.C.

11 /s/ Dan McNutt

12 Daniel R. McNutt, Esq., Bar No. 7815

13 Matthew C. Wolf, Esq., Bar No. 10801

14 625 South Eighth Street

15 Las Vegas, Nevada 89101

16 *Counsel for Defendants Edgeworth Family Trust;*  
17 *American Grating, LLC; Brian Edgeworth;*  
18 *and Angela Edgeworth*

19 **I. PREFATORY STATEMENT**

20 The dramatic irony of Plaintiffs' Emergency Motion is best illustrated through the following  
21 points and timeline:

- 22 • Following Governor Sisolak's Declaration of Emergency Directive 009, dated March  
23 13, 2020, Plaintiffs filed their "Emergency" Motion to shorten time and preserve  
24 evidence relating to Plaintiffs' Complaint for the Edgeworths' alleged defamation and  
25 abuse of process;
- 26 • Plaintiffs waited nearly three months (86 days) to serve the Edgeworths with the  
27 Complaint they filed on December 23, 2019;
- 28 • Plaintiffs' Complaint accuses the Edgeworths of filing their Complaint against Simon  
for the "ulterior purpose" of subjecting Defendant Simon to "excessive expenses, to  
avoid lien adjudication and to harm [Defendant Simon's] reputation to their friends."  
[Plaintiffs' Complaint, p. 7, ¶ 26.]

- Counsel for Plaintiffs filed December 23, 2019 the “Emergency” Motion for the stated reasons: (1) material evidence exists to support the Complaint; and (2) some of the evidence “is on readily disposable electronic instruments” [See Declaration of Peter Christiansen in Support of Emergency Motion, p.3, ¶¶ 2 and 4]; and
- Plaintiffs’ Emergency Motion is devoid of any legal authority or factual evidence to support the Emergency Motion. Rather, it primarily relies upon an unsupported hypothetical that the Edgeworths might “pull a Tom Brady” and destroy evidence as Brady allegedly did in connection with the Deflategate controversy concerning Brady’s alleged deliberate deflation of footballs used in the Patriot’s victory in the 2014 AFC Championship Game.

This matter has nothing to do with Deflategate, and it is certainly not authority for Plaintiffs’ unwarranted request for “an order that requires all cell phones, computers, servers and emails be presented for inspection and copying and that all information be preserved.” [Pls.’ Mtn., p.15, lines 10-11.] Plaintiffs’ request is draconian, and unwarranted at this stage of the Action when the Edgeworths’ initial response to the Complaint is not due until May 1, 2020 and no discovery has been conducted.

The Edgeworths have already received and implemented the litigation hold letter they received from defense counsel, thereby rendering Plaintiffs’ Emergency Motion moot. The Edgeworths are mindful of the strain on judicial resources during this pandemic crises and for purposes of brevity adopt and incorporate in this Opposition by reference the procedural and factual history set out in the Vannah Opposition.

## **II. LEGAL ARGUMENT**

### **A. Plaintiffs’ Emergency Motion Should Be Denied And Discovery Should Be Conducted In Its Ordinary Course**

The underlying basis for Plaintiffs’ Action appears to be statements that were made by Defendants in the course of litigation in the underlying litigation entitled *Edgeworth Family Trust, American Grating, LLC v. Daniel S. Simon, et. al.*, Case No. A-18-767242-C consolidated with Case No. A-16-738444-C (the “Edgeworth Lawsuit”), which is now on appeal before the Nevada

1 Supreme Court (No. 77678 consolidated with No. 78176). By requesting that all Defendants turn  
2 over their cell phones and computers for inspection and copying, Plaintiffs' overreaching  
3 Emergency Motion seeks to invade the Edgeworths' Constitutional rights and the attorney-client  
4 privilege, and should be denied. Plaintiffs are asking this Court to forego the Nevada rules of Civil  
5 Procedure and the Nevada Rules of Practice for the Eighth Judicial District Court ("Local Rules")  
6 and allow Plaintiffs to go on a fishing expedition of the Edgeworths' private property in an effort  
7 to find evidence to support Plaintiffs' claims in the Action.

8 To be clear, the Edgeworths are already under an obligation to preserve all relevant and/or  
9 potentially discoverable paper documents and/or electronically stored information relating to the  
10 claims and/or defenses in this Action. The Edgeworths expect Plaintiffs understand their obligation  
11 to do the same. After all, the Parties have been involved in litigation together since 2016 when the  
12 Edgeworths hired Plaintiff Simon to assist them with a products liability lawsuit, and three of the  
13 parties in this Action are officers of this Court.

14 As detailed below, there is nothing in the facts of this Action or the law to justify deeming  
15 anything here as an emergency, particularly in light of the global pandemic crisis. And more  
16 importantly, there is no basis in the facts or under Nevada law that would allow the relief Plaintiffs  
17 are seeking with their Emergency Motion, namely turning over any evidence to Plaintiffs at this  
18 time, let alone cell phones, computers, and the like. *See Bass-Davis v. Davis*, 122 Nev. 442, 134  
19 P.3d 103 (2006).

20 If this matter gets beyond dispositive motion practice, discovery matters can be addressed  
21 at the appropriate time and on regularly noticed motions. Here, among other things, the majority  
22 of the information Plaintiffs seek is in direct conflict with the attorney-client privilege – a privilege  
23 that the Edgeworths hold and that their prior counsel, Defendants Robert Vannah and John Greene,  
24 cannot waive. However, now is not the time and these are not the kind of facts that would warrant  
25 the extraordinary relief Plaintiffs' seek. Accordingly, the Edgeworths respectfully request that the  
26 Emergency Motion be denied, with the understanding that all Parties will preserve all relevant  
27 evidence.

1           **B.       Plaintiffs’ Emergency Motion Should Be Denied, As It Fails To Comply With**  
2           **Local Rule 2.2**

3           Motion practice in this Court is governed by Local Rule 2.2, which provides in pertinent  
4           part:

5                       “A party filing a motion must also serve and file with it a  
6                       memorandum of points and authorities in support of each ground  
7                       thereof. **The absence of such memorandum may be construed as**  
8                       **an admission that the motion is not meritorious, as cause for its**  
9                       **denial** or as a waiver of all grounds not so supported.” (Emphasis  
10                      added)

11           A review of Plaintiffs’ Emergency Motion, coupled with its timing, demonstrate why  
12           Plaintiffs did not seek this relief via a temporary restraining order: they cannot meet the standard  
13           for such extraordinary relief. Instead, Plaintiffs’ rely on the Tom Brady Deflategate hypothetical  
14           and their characterization of what constitutes an “emergency,” without any facts or law to support  
15           their requested relief. Plaintiffs’ own words demonstrate that there is nothing urgent to justify their  
16           requested relief, and that there was no basis for bringing it on an order shortening time.

17           In section III.B. of Plaintiffs’ Emergency Motion, entitled “Preservation order against all  
18           Defendants is necessary in this case,” Plaintiffs state the following:

19                       “In this case there are serious concerns about the preservation of  
20                       evidence. First, these **Defendants have a pattern of disregarding**  
21                       **the law and destruction of evidence** to protect their interests will be  
22                       first on their mind. These Defendants have already exemplified their  
23                       willingness to say and do anything to win. Second, some types of the  
24                       evidence have mysteriously disappeared in like cases, e.g., Tom  
25                       Brady deleted cell phone messages in the NFL deflate-gate  
26                       investigation. Unfortunately, losing evidence is all too common in  
27                       our society and is of utmost concern in the instant case.” (Emphasis  
28                       added)

29           Rather than back up Plaintiffs’ defamatory statement that the Edgeworths have a “pattern  
30           of disregarding the law and destruction of evidence,” with facts, Plaintiffs rely on an unrelated  
31           matter where Tom Brady allegedly tampered with relevant evidence. This Court should not grant  
32           the extraordinary relief Plaintiffs seek of seizing the Edgeworths’ cell phones and computers based  
33           on Plaintiffs’ conjecture that the Edgeworths might – hypothetically speaking – follow in Tom



1 Brady's footsteps, or because "losing evidence is all too common in our society."

2 If Plaintiffs were genuinely concerned about "losing evidence" relevant to this Action, then  
3 Plaintiffs should have served their Complaint soon after they filed it in December 2019, which  
4 would have triggered Defendants' duty to preserve evidence then, as opposed to three months later  
5 when Plaintiffs served the Defendants with their complaint.

6 The Edgeworths do not dispute the premise of the case law cited in Plaintiffs' Emergency  
7 Motion, but again, the fact that the "NFL deflategate investigation of Tom Brady highlights how  
8 critical cell phone data can disappear," offers no support for Plaintiffs' request that this Court order  
9 Defendants to present their "cell phones, computers, servers and emails . . . for inspection and  
10 copying." The Edgeworths understand and respect the Parties' duty to preserve evidence in their  
11 custody, possession, and control, which may be relevant to the claims and defenses in this matter,  
12 and they intend to preserve such ESI and documents.

### 13 **III. CONCLUSION**

14 The Edgeworths and their counsel have implemented a litigation hold and nothing further  
15 is required at this time. As detailed above, there is nothing in the facts or the law to justify the  
16 "emergency" Draconian relief Plaintiffs seek. The Edgeworths have not even appeared in this  
17 matter, as they were only recently served with the Complaint and obtained counsel. Indeed, in the  
18 event this Action proceeds beyond dispositive motion practice, discovery can proceed in its  
19 ordinary course. Based on the foregoing, the Edgeworths respectfully request that Plaintiffs'  
20 Emergency Motion be denied, with the understanding that all Parties will preserve all relevant  
21 evidence.  
22

23 DATED April 6, 2020.

24 MCNUTT LAW FIRM, P.C.

25 /s/ Dan McNutt

26 Daniel R. McNutt, Esq., Bar No. 7815

27 Matthew C. Wolf, Esq., Bar No. 10801

28 625 South Eighth Street

Las Vegas, Nevada 89101

*Counsel for Defendants Edgeworth Family Trust;  
American Grating, LLC; Brian Edgeworth;*

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*and Angela Edgeworth*

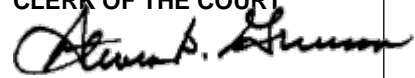
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**CERTIFICATE OF SERVICE**

The undersigned is an employee of McNutt Law Firm, P.C. and certifies that under Nev. R. Civ. P. 5 and EDCR 8.05, on April 6, 2020, I served a true and correct copy of **OPPOSITION OF EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC; BRIAN EDGWORTH AND ANGELA EDGEWORTH TO PLAINTIFFS' "EMERGENCY" MOTION TO PRESERVE ELECTRONICALLY STORED INFORMATION** by mailing a copy by United States Postal Service, postage prepaid, via email, or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at their last known address or e-mail:

Peter S. Christiansen, Esq. (SBN 5254)  
CHRISTIANSEN LAW OFFICES  
810 South Casino Center Blvd.  
Las Vegas, Nevada 89101  
[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)  
*Counsel for Plaintiffs*

/s/ Lisa Heller  
An Employee of McNutt Law Firm, P.C.



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*Counsel for Defendants*  
*Robert Darby Vannah, Esq.,*  
*John B. Greene, Esq. and*  
*Robert D. Vannah, Chtd., dba Vannah & Vannah*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION EDGEWORTH FAMILY  
TRUST; AMERICAN GRATING, LLC,

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and, ROBERT D. VANNAH,  
CHTD., d/b/a VANNAH & VANNAH; and  
DOES I through V, and ROE CORPORATIONS  
VI through X, inclusive,

Defendants.

CASE NO.: A-19-807433-C  
DEPT NO.: 24

**OPPOSITION OF ROBERT DARBY**  
**VANNAH, ESQ., JOHN BUCHANAN**  
**GREENE, ESQ., and, ROBERT D.**  
**VANNAH, CHTD., d/b/a VANNAH &**  
**VANNAH, TO PLAINTIFFS'**  
**ERRONEOUSLY LABELED**  
**"EMERGENCY" MOTION TO**  
**PRESERVE EVIDENCE**

Date of Hearing: April 9, 2020  
Time of Hearing: Chambers

COMES NOW, Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN  
GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred  
to collectively as VANNAH), by and through their above counsel and hereby file this Opposition  
to the erroneously labeled Emergency Motion of DANIEL S. SIMON and THE LAW OFFICE  
OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (SIMON) to Preserve Evidence  
(the Motion).

This Opposition is based upon the attached Memorandum of Points and Authorities, the

1 pleadings and papers on file herein, the Points and Authorities raised in the underlying action  
2 which are now on appeal before the Nevada Supreme Court, Appellants' Appendix (attached to  
3 this Opposition as Exhibit A), all of which VANNAH adopts and incorporates by this reference,  
4 and any oral argument this Court may wish to entertain.

5 DATED this 5<sup>th</sup> day of April, 2020.

6  
7 **PATRICIA A. MARR, LTD.**

8 /s/Patricia A. Marr, Esq.

9 PATRICIA A. MARR, ESQ.

10 **I. PREFATORY STATEMENT**

11 SIMON'S eleventh hour (perhaps more like 11:58 p.m.) lawsuit (filed on  
12 December 23, 2019, and served on March 19, 2020) and even later filed Motion is the  
13 byproduct of a matter that began in May of 2016 and is now on appeal before the  
14 Nevada Supreme Court. (Id.) The underlying basis for SIMON'S suit seems to be  
15 statements that were made by the EDGEWORTH FAMILY TRUST, AMERICAN  
16 GRATING, LLC, Angela and Brian Edgeworth (the "Edgeworths") and their counsel,  
17 VANNAH, **in the course of that litigation.** (Id.) (Later motion practice will seek to  
18 dismiss SIMON'S claims due to, among other things, the time-honored litigation  
19 privilege and SIMON'S lack of standing to make a legal malpractice claim.)  
20  
21

22 But let this be clear: As officers of the court, and with well-earned respect in this  
23 legal community, VANNAH agrees to preserve all evidence in any format in this  
24 matter. Since the facts and the law are solidly on VANNAH'S side, Defendants desire  
25 that everything be brought into the light, on both sides. All that was necessary to trigger  
26 this (preservation of evidence) was the letter sent to VANNAH by SIMON on March  
27  
28

1 30, 2020. The subsequent disparaging statements in SIMON’S Motion (most notably at  
2 p.16, lines 5.5 through 9) filed on April 1, 2020, are, at best, untrue and completely  
3 unnecessary. Yet, they’re much worse and wrong on every level.  
4

5 As for SIMON’S Motion, the best way to oppose it is to provide a detailed  
6 background of the terrain that has been traversed—a history—since May of 2016.  
7 VANNAH will accomplish this by incorporating the arguments raised on appeal,  
8 namely in the Edgeworths’ Opening Brief to the Nevada Supreme Court. These  
9 arguments clearly show that SIMON’S suit and Motion are baseless on several grounds.  
10

11 First, all of the claims made in the Edgeworths’ Amended Complaint were and  
12 are supported by substantial evidence (Id.). More bluntly, the allegations raised in the  
13 Amended Complaint represented the reality that the Edgeworths lived and endured.  
14 (Id.) This factual reality alone destroys the basis for SIMON’S suit and Motion.  
15 Second, the dismissal of the Edgeworths’ Amended Complaint (before an answer was  
16 filed and without any discovery allowed) was improper, as the district court failed to  
17 follow the law or apply the proper heightened standard before dismissal (Id.). Should  
18 the Nevada Supreme Court agree that the dismissal of the Amended Complaint was  
19 improper, and thereafter remand the matter back to Judge Tierra Jones for discovery and  
20 trial, the basis for SIMON’S suit and all relief sought is further undermined, and made  
21 moot. Additionally, since these issues are on appeal, this matter and Motion arguably  
22 should be stayed.  
23  
24  
25

26 Third, on October 31, 2018, and again on November 19, 2018, the Edgeworths  
27 sent letters to SIMON, clearly stating that they agreed to be bound by the Decision and  
28

1 Order on Motion to Adjudicate Lien of Judge Jones (attached to SIMON’S Motion as  
2 Exhibit 3) and to refrain from all appeals, including the dismissal of the Amended  
3 Complaint. (A copy of these letters is attached to this Opposition as Exhibit B.) This  
4 means that the Edgeworths agreed to pay all the fees and costs that Judge Jones awarded  
5 to SIMON in that Order. Yet SIMON flatly refused, thus subjecting himself to the  
6 appeal and the (baseless) damages and alleged ongoing harm that he claims in his suit  
7 and references in his Motion. On that topic, SIMON also alleges malpractice on the  
8 part of VANNAH, despite having no attorney client relationship whatsoever.  
9  
10

11 Last, through a review of the filings and the facts, coupled with simple math (via  
12 a calendar and a calculator), SIMON’S own words, deeds, and knowledge clearly  
13 demonstrate that there is nothing emergent to justify his Motion, nothing in existence to  
14 name his Motion “emergency” this or that, and no basis to bring it on an order  
15 shortening time.  
16

17 At the end of this Opposition, and any hearing held (though the caption of the  
18 Motion states that this is a Chambers matter), VANNAH will ask that this Motion be  
19 denied, as VANNAH agrees to preserve any and all evidence of any means in this  
20 matter, and agreed to do so when SIMON’S letter was sent and received on March 30,  
21 2020. However, VANNAH strenuously and vehemently opposes the baseless request  
22 that ANYTHING be turned over to SIMON at this time, let alone cell phones,  
23 computers, and the like. Not only is there no basis in the facts or the law to support  
24 such a specious and Draconian request or remedy, it violates the attorney client  
25 privilege of the Edgeworths, as well as thousands of additional clients.  
26  
27  
28

1 As indicated, the following portion of this Opposition sets forth many of the  
2 arguments made by the Edgeworths in their Opening Brief before the Nevada Supreme  
3 Court. It contains a pertinent history, arguments, and evidentiary support to deny this  
4 Motion. It also contains a firm foundation for future arguments in favor of disposing of  
5 SIMON’S suit and all its claims in the future. [This begins the inclusion of Appellant’s  
6 Opening Brief. The inclusion ends after Section VII, and further, current arguments  
7 begins in Section VIII.]  
8

## 9 **II. STATEMENT OF THE CASE**

### 10 **A. PROCEDURAL POSTURE**

11  
12 This is an appeal from a final judgment entered before the Eighth Judicial District Court  
13 (hereinafter “District Court”) and Order Adjudicating Simon’s Attorney’s Lien entered  
14 November 19, 2018; Order Dismissing the Appellants’ Amended Complaint entered November  
15 19, 2018; and, Order awarding Simon \$50,000 in attorney’s fees and \$5,000 in costs entered  
16 February 8, 2019.

17  
18 Appellants filed their Notice of Appeal of the District Court’s Order Adjudicating  
19 Simon’s Attorney’s Lien and Amended Decision and Order on Motion to Dismiss NRC  
20 12(b)(5) on December 7, 2018, and filed their Notice of Appeal of the District Court’s Decision  
21 and Order Granting in Part and Denying in Part Simon’s Motion for Attorney’s Fees and Costs  
22 on February 15, 2019.

### 23 **B. PUBLIC POLICY IMPLICATIONS OF THE SO-CALLED “SIMON RULE”**

24  
25 This appeal concerns issues involving great public importance: specifically, attorney’s  
26 liens and fees, but more generally, when greed and coercion can cripple client trust and soil  
27 society’s expectations of attorney transparency. Unfortunately, throughout the years, the legal  
28 profession has amassed a public perception of dishonesty, untowardness, and avarice. Sissela



1 Bok, "Can Lawyers Be Trusted," Univ. of Penn. L. Rev. Vol. 138:913-933 (1990). When the  
2 behavior of attorneys becomes marred by opportunism, dishonesty, and abuse, there is a real risk  
3 that society's distrust of lawyers will continue to worsen.

4 This appeal is about Simon, a Nevada attorney, and the conduct he foisted on Appellants  
5 as their attorney. Simon's conduct is called "The Simon Rule." Here it is: 1.) Agreed to represent  
6 Appellants for an hourly fee of \$550, but then, in contravention of NRPC 1.5(b), failed to ever  
7 reduce the fee agreement to writing. *Appellants' Appendix (AA), Vol. 2 000278-000304; 000354-*  
8 *000374.* 2.) Billed and collected over \$367,000 in fees for eighteen months by sending periodic  
9 invoices to Appellants at that agreed upon rate of \$550/hour. *Id.*, 000278-000304. 3.) When it  
10 was certain that the value of the case increased (from a property damage case worth \$500,000 to  
11 a products liability matter valued over \$6,000,000), demanded more money from Appellants. *Id.*  
12 4.) Couple the demand with threats that caused Appellants to believe that if they didn't  
13 acquiesce, he would stop working on their case. *Id.* 5.) When Appellants would not acquiesce  
14 and modify the hourly fee agreement to a contingency fee/bonus, used his failure to reduce the  
15 fee agreement to writing as a basis to get more money from Appellants via the equitable remedy  
16 of quantum meruit and its plus one, a "charging lien. *Id.*

17  
18  
19 This Court needs to stop The Simon Rule dead in its tracks and prevent all lawyers from  
20 behaving this way then, now, and in the future. The Simon Rule incentivizes lawyers to act in a  
21 manner that lacks transparency and encourages practices in direct violation of NRPC 1.5(b) &  
22 (c). It also leaves clients with two awful options: acquiesce or litigate. Neither the facts, nor the  
23 law, nor practical nor common sense, support The Simon Rule, or the rulings of the District  
24 Court that would allow it to either exist or flourish.

25  
26 ///

27  
28 ///

1 **III. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR**  
2 **REVIEW:**

3 **A. THE SIMON INVOICES:**

4 Appellants retained Simon to represent their interests following a flood at a residence  
5 they owned. *AA, Vol. 2 page 000296, lines 10 through 14; 000298:10-12; 000354-000355.* The  
6 representation began on May 27, 2016. *AA, Vol. 2 000278:18-20; 000298:10-12; 000354.* Simon  
7 billed Appellants \$550 per hour for his work from that first date to his last entry on January 8,  
8 2018. *AA, Vols 1 and 2 000053-000267; 000296-000297; 000365-000369.* Damage from the  
9 flood caused in excess of \$500,000 of property damage, and litigation was filed in the 8<sup>th</sup> Judicial  
10 District Court as Case Number A-16-738444-C. *AA, Vol. 2 000296.* Appellants brought suit  
11 against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The  
12 Viking Corporation, and Supply Network, Inc. (Lange and Viking). *AA, Vol. 2 000278:24-27;*  
13 *000354.*

14  
15 The District Court held an evidentiary hearing to adjudicate Simon's attorney's lien over  
16 five days from August 27, 2018, through August 30, 2018, and concluded on September 18,  
17 2018. *AA, Vol. 2 000353-000375.* The Court found that Simon and Appellants had an implied  
18 agreement for attorney's fees. *Id., at, 000365-000366;000374.* However, Appellants asserted that  
19 an oral fee agreement existed between Simon and Appellants for \$550/hour for work performed  
20 by Simon. *AA, Vols. 2 & 3 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25,*  
21 *512:1-20.*

22  
23 Simon admitted that he never reduced the hourly fee agreement to writing. *AA, Vol. 3*  
24 *000515-1:8-25.* Regardless, Simon and Appellants performed the understood terms of the fee  
25 agreement with exactness. *AA, Vol. 2 000297:3-9; AA, Vol. 3 000499:13-19; 000502:18-23;*  
26 *506:1-17; 511:25, 512:1-20.* How so? Simon sent four invoices to Appellants over time with  
27 very detailed invoicing, billing \$486,453.09 in fees and costs, from May 27, 2016, through  
28

1 September 19, 2017. *AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19;*  
2 *000502:18-23; 506:1-17; 511:25, 512:1-20.*

3 Simon always billed for his time at the hourly rate of \$550 per hour (\$275 per hour for  
4 associates). *AA, Vols. 1 & 2 000053-000267; 000374.* It is undisputed Appellants paid the  
5 invoices in full, and Simon deposited the checks without returning any money. *AA, Vol. 2*  
6 *000356:14-16.* And Simon did not express any interest in taking the property damage claim on a  
7 contingency basis with a value of \$500,000. *AA, Vol. 2 000297:1-5.*

9 Simon believed that his attorney's fees would be recoverable as damages in the  
10 underlying flood litigation. *AA, Vol. 2 000365-000366.* To that end, he provided computations of  
11 damages pursuant to NRCP 16.1, listing how much in fees he'd charged. *Id., 000365:24-26.* At  
12 the deposition of Brian Edgeworth on September 29, 2017, Simon voluntarily admitted that "[the  
13 fees have] all been disclosed to you" and "have been disclosed to you long ago." *AA, Vol. 2*  
14 *000300:3-16; 000302-000304; 000365:27, 000366:1.* Those were hourly fees spoken of and  
15 produced by Simon. *Id., 000365:24-27, 000366:1.* Thus we see that through Simon's words and  
16 deeds he clearly knew and understood that his fee agreement with Appellants was for \$550 per  
17 hour...until he wanted more. *Id.*

19 **B. SIMON'S INFLATED ATTORNEY'S ("CHARGING") LIEN:**

20 Despite having and benefiting from an hourly fee agreement, Simon wanted more and  
21 devised a plan to get it. *Id., 000271-000304.* In late Fall of 2017, and only after the value of the  
22 flood case skyrocketed past \$500,000 to over \$6,000,000, Simon demanded that Appellants  
23 modify the hourly fee contract so that he could recover a contingency fee dressed poorly as a  
24 bonus. *AA, Vol. 2 000298:3-17.*

26 Simon scheduled a meeting with Appellants in mid-November of 2107. At that meeting,  
27 Simon told Appellants he wanted to be paid far more than \$550.00 per hour and the \$367,606.25  
28

1 in fees he'd already received from Appellants. *Id.* Simon said he was losing money and that  
2 Appellants should agree to pay him more, like 40% of the \$6 million settlement with Viking. *AA*,  
3 *Vols. 2 & 3 000299:13-22; 000270; 000275; 000515-1*. Simon then invited Appellants to contact  
4 another attorney and verify that "this was the way things work." *AA, Vol. 3 000000515-1,*  
5 *000515-2, 000516:1-7, 000517:13-25.*

6  
7 Appellants refused to bow to Simon's pressure or demands. *AA, Vol. 2 000300:16-23.*  
8 Simon then refused to release the full amount of the settlement proceeds to Appellants. *Id.*  
9 Instead, Simon served two attorney's liens on the case: one on November 30, 2017, and an  
10 Amended Lien on January 2, 2018. *Id; AA, Vol. 1 000001; 000006.* Simon's Amended Lien was  
11 for a net sum of \$1,977,843.80. *Id.* This amount was on top of the \$486,453.09 in fees and costs  
12 Appellants already paid in full to Simon for all his services and time from May 27, 2016, through  
13 September 19, 2017. *AA, Vol. 2 000301:12-13.*

14  
15 **C. SIMON'S TRANSPARENT ATTEMPT TO CIRCUMVENT NRPC**  
16 **1.5(B) AND NRPC 1.5(C):**

17 Appellants accepted Simon's invitation to consult other attorneys and contacted Robert  
18 D. Vannah, Esq. *AA, Vol. 3 000515-2:22-25, 516:1-7.* Thereafter, Mr. Vannah contacted Simon  
19 and explained that since the settlement with Viking was essentially completed, it would not be  
20 expeditious for Mr. Vannah to substitute into the case or to associate with Simon. *AA, Vol. 3*  
21 *000490-000491.*

22 Mr. Vannah told Simon that he was to continue on the case until the settlement details  
23 were all ironed out. *Id.* And those details were clearly minimal, as the lion's share of rigorous  
24 and time-consuming work had already been completed: a successful mediation with Floyd Hale,  
25 Esq.; an offer from Viking of \$6 million to resolve those claims (*Id*); and, an offer from Lange to  
26 settle for \$25,000, to which Appellants had consented to accept both no later than November 30,  
27 2017. *AA, Vol. 2 000357:22-23.* The only tasks remaining on the case were ministerial, i.e.,  
28

1 signing releases and obtaining dismissals of claims. *Id.*, 000517:13-25, 000518.

2 At the evidentiary hearing, Simon finally admitted that he could not charge a 40%  
3 contingency fee because he had not obtained a written contingency fee agreement. *AA*, Vol. 3  
4 000515-1. Regardless, Simon pushed the District Court to adopt The Simon Rule, arguing that  
5 since he, the lawyer, didn't reduce the fee agreement to writing, let alone a written contingency  
6 fee agreement as required by NRPC 1.5(c), he could get a 40% fee via the equitable remedy of  
7 quantum meruit because 40% is the normal charge if a contingent fee agreement existed. *AA*,  
8 Vol. 1 000045.

10 Rather than own up to his mistakes and invited errors in failing to comply with NRPC  
11 1.5(b) by not reducing the fee agreement with Appellants to writing, Simon turned on the spin  
12 cycle and blamed Appellants. *Carstarphen v. Milsner*, 270 P.3d 1251, 128 Nev. 55 (2012). This  
13 Court should not reward Simon's invited errors with an equitable windfall of a \$200,000  
14 fee/bonus. *Id.*

16 **D. THE PURPORTED CONSTRUCTIVE DISCHARGE:**

17 The District Court held that Appellants constructively discharged Simon on November  
18 29, 2017. *AA*, Vol. 2 000369:22-25. The basis was a purported "breakdown in attorney-client  
19 relationship," and the lack of communication with regard to the pending legal issues, i.e., the  
20 Lange and Viking Settlements. *Id.*, 000361-000364.

22 Yet, it was Simon who: 1.) demanded that Appellants change the terms of the fee  
23 agreement from hourly to contingent when the case value increased; 2.) told Appellants he  
24 couldn't afford to continue working on their case at \$550 per hour; 3.) threatened to stop  
25 working on Appellants' case if they didn't agree to modify the fee agreement; 4.) encouraged  
26 Appellants to seek independent legal counsel; 5.) sought legal counsel, as well; 6.) continued to  
27 work on Appellants' case through its conclusion with Viking and Lange; and, 7.) billed  
28

1 Appellants for all of his time from November 30, 2017 (the date after the alleged constructive  
2 discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3*  
3 *000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

4 The District Court determined the appropriate method to award attorney fees after  
5 November 30, 2017, would be via quantum meruit. *AA, Vol. 2 000369:16-27.* The District Court  
6 further decided Simon was “entitled to a reasonable fee in the amount of \$200,000.” *AA, Vol. 2,*  
7 *000370-000373.* Appellants contest the District Court’s constructive discharge determination and  
8 appeal the its determination of the \$200,000 amount. Why?

10 Neither the facts nor the law supports a finding of any sort of discharge of Simon by  
11 Appellants, constructive or otherwise. Appellants needed him to complete his work on their  
12 settlements, and he continued to work and to bill. *AA, Vols. 1 & 2 000301:4-11; 000159-163,*  
13 *000263-000265.* Plus, the amount of the awarded fees doesn’t have a nexus to reality or the facts.  
14 Could there be a better barometer of truth of the reasonable value of Simon’s work in wrapping  
15 up the ministerial tasks of the Viking and Lange cases for those five weeks than the work he  
16 actually performed? No.

18 Simon then created a “super bill” that he spent weeks preparing that contains every entry  
19 for every item of work that he allegedly performed from May 27, 2016 (plus do-overs; add-ons;  
20 mistakes; etc.), through January 8, 2018. *AA, Vols 1 & 2 000053-000267.* It also contains some  
21 doozies, like a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-*  
22 *000265* All of the itemized tasks billed by Simon and Ms. Ferrel (at \$550/\$275 per hour,  
23 respectively) for that slim slot of time total **\$33,811.25.** *Id.*

25 How is it less than an abuse of discretion to morph \$33,811.25 into \$200,000 for five  
26 weeks of nothing more than mop up work on these facts?

27 ///

1                   **E. THE DISTRICT COURT'S DISMISSAL OF APPELLANTS'**  
2                   **AMENDED COMPLAINT:**

3                   Settlements in favor of Appellants for substantial amounts of money were reached with  
4                   the two flood defendants on November 30 and December 7, 2017. *AA, Vol 3 000518-3:22-25,*  
5                   *000518-4:1-6.* But Simon wrongfully continued to lay claim to nearly \$1,977,843 of Appellants'  
6                   property, and he refused to release the full amount of the settlement proceeds to Appellants. *AA,*  
7                   *Vols. 1 & 2 000006; 000300.* When Simon refused to release the full amount of the settlement  
8                   proceeds to Appellants, litigation was filed and served. *AA, Vols. 1 & 2 000014; 000358:10-12.*

9                   Appellants filed an Amended Complaint on March 15, 2018, asserting Breach of  
10                  Contract, Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith  
11                  and Fair Dealing. *AA, Vol. 2 000305.* Eight months later, the District Court dismissed  
12                  Appellants' Amended Complaint. *Id., 000384:1-4.* In doing so, the District Court ignored the  
13                  standard of reviewing such motions by disbelieving Appellants and adopting the arguments of  
14                  Simon. Therefore, Appellants appeal the District Court's decision to dismiss their Amended  
15                  Complaint. *AA, Vol. 2 000425-000426.*

16                   **F. THE DISTRICT COURT'S AWARD OF \$50,000 IN ATTORNEY'S**  
17                   **FEES AND \$5,000 IN COSTS:**

18                  After Simon filed a Motion for Attorney's Fees and Costs, the District Court awarded  
19                  Simon \$50,000 in attorney's fees and \$5,000 in costs. *AA, Vol. 2 000484:1-2.* The District Court  
20                  again ignored the standard of review, believed Simon over Appellants, and held that the  
21                  conversion claims brought against Simon were maintained in bad faith. *AA, Vol 2 000482:16-23.*  
22                  The District Court awarded these fees and costs without providing any justification or rationale  
23                  as to the amounts awarded. *Id., at 000484.* Appellants appealed the District Court's decision to  
24                  award \$50,000 attorney's fees and \$5,000 costs. *AA, Vol 2 000485-000486.*

25                  ///  
26  
27  
28

1                                   **G.    THE AMOUNTS IN CONTROVERSY:**

2           Appellants have no disagreement with the District Court’s review of all of Simon’s  
3 invoices from May 27, 2016, through January 8, 2018. Specifically, it reviewed Simon’s bills  
4 and determined that the reasonable value of his services from May 27, 2016, through September  
5 19, 2017, was \$367,606.25. *AA, Vol 2000353-000374*. Appellants paid this sum in full. *Id.*,  
6 000356. It also determined that the reasonable value of Simon’s services from September 20,  
7 2017, through November 29, 2017, was \$284,982.50. *Id.*, 000366-000369. Appellants do not  
8 dispute this award, either. In reaching that conclusion and award, the District Court reviewed all,  
9 and rejected many, of Simon’s billing entries on his “super bill” for a variety of excellent  
10 reasons. *Id.*, 000366-000369; 000374.

11  
12           Appellants do, however, dispute the award of a bonus in the guise of fees of \$200,000 to  
13 Simon from November 30, 2017, through January 8, 2018. In using the same fee analysis the  
14 District Court applied above, Simon would be entitled to an additional **\$33,811.25**, which  
15 reflects the work he actually admits he performed, for a difference of \$166,188.75. *AA Vols. 1 &*  
16 *2 000373-000374; 000159-163; 000263-000265*. Appellants also dispute the \$50,000 in fees and  
17 \$5,000 in costs awarded to Simon when the District Court wrongfully dismissed Appellants’  
18 Amended Complaint, etc.

19  
20           Finally, Appellants assert that once Simon’s lien was adjudicated in the amount of  
21 \$484,982.50, with Simon still holding claim to \$1,492,861.30, he is wrongfully retaining an  
22 interest in \$1,007,878.80 of Appellants funds. *AA, Vol. 2 000415-000424*. That’s an  
23 unconstitutional pre-judgment writ of attachment. *Sniadach v. Family Finance Corp. of Bay*  
24 *View*, 395 U.S. 337 (1969).

25  
26                                   **IV.    PROCEDURAL OVERVIEW:**

27           Simon filed a Motion to Adjudicate his \$1,977,843.80 lien on January 24, 2018. *AA*,  
28



1 Vols. 1 & 2 000025-000276. Appellants opposed that Motion. AA, Vol. 2 000277-000304. The  
2 District Court set an evidentiary hearing over five days on this lien adjudication issue. AA, Vol. 3  
3 000488. Appellants argued there was no basis in fact or law for Simon's fugitive attorney's liens,  
4 or his Motion to Adjudicate Attorney's Lien, and that the amount of Simon's lien was unjustified  
5 under NRS 18.015(2). AA, Vol. 2 000284: 21-27. Appellants further argued that there was in fact  
6 an oral contract for fees between Simon and Appellants consisting of \$550/hr for Simon's  
7 services that was proved through the testimony of Brian Edgeworth and through the course of  
8 consistent performance between the parties from the first billing entry to the last. Id., 000284-  
9 000292.

11 The District Court found that Simon asserted a valid charging lien under NRS 18.015.  
12 AA, Vol. 2 000358: 18-28. The District Court also determined that November 29, 2017, was the  
13 date Appellants constructively discharged Simon. Id. As a result, the District Court found that  
14 Simon was entitled to quantum meruit compensation from November 30, 2017, to January 8,  
15 2018, in the amount of \$200,000. Id., 000373-000374.

17 A. **SIMON'S MOTION TO DISMISS AMENDED COMPLAINT**  
18 **UNDER NRS 12(B)(5):**

19 Simon filed a Motion to Dismiss Appellants' Amended Complaint pursuant to NRC  
20 12(b)(5). Appellants opposed Simon's Motion and argued that the claims against Simon were  
21 soundly based in fact and law. AA, Vol. 2 000344-000351. Appellants also stressed that Nevada  
22 is a notice-pleading jurisdiction, which the Amended Complaint had clearly met the procedural  
23 requirement of asserting "a short and plain statement of the claim showing that the pleader is  
24 entitled to relief..." NRC 8(a)(1). AA, Vol. 2 000343.

26 However, the District Court chose to believe Simon and dismissed Appellants' Amended  
27 Complaint in its entirety. AA, Vol. 2 000384. The District Court noted that after the Evidentiary  
28 Hearing and in its Order Adjudicating Attorney's Lien, no express contract was formed, only an

1 implied contract existed, and Appellants were not entitled to the full amount of their settlement  
2 proceeds. *Id.* Yet, whose responsibility was it to prepare and present the fee agreement to the  
3 clients—Appellants—for signature? Simon’s. Whose fault—invited error—was it that it wasn’t?  
4 Simon’s, of course, as he was the lawyer in the relationship. *NRPC 1.5(b)*. Regardless, the  
5 District Court dismissed Appellants’ Amended Complaint. *AA, Vol. 2 000384*. It did so without  
6 allowing any discovery and barely eight months after it was filed. *AA, Vol. 2 000381, 000384*.

8 **B. SIMON’S MOTION FOR ATTORNEY’S FEES AND**  
9 **COSTS:**

10 Simon filed a Motion for Attorney’s Fees and Costs on December 7, 2018. Appellants  
11 opposed Simon’s Motion, arguing their claims against Simon were maintained in good faith. *AA,*  
12 *Vol. 2 000437-000438*. They further argued it would be an abuse of discretion for the District  
13 Court to award Simon attorney’s fees when such fees were substantially incurred as a result of  
14 the evidentiary hearing to adjudicate Simon’s own lien and conduct, namely his exorbitant  
15 \$1,977,843.80 attorney’s lien. *AA, Vol. 2 000432-000435*. The District Court awarded Simon  
16 \$50,000 in fees under NRS 18.010 (2)(b), and \$5,000 in costs, but providing no explanation in its  
17 Order as to the amount of the award. *Id.*

18  
19 **V. STANDARD OF REVIEW:**

20 **A. Adjudicating Attorney’s Liens - Abuse of Discretion:**

21 A district court’s decision on attorney’s lien adjudications is reviewed for abuse of  
22 discretion standard. *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206,  
23 1215 (2008). An abuse of discretion occurs when the court bases its decision on a clearly  
24 erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*,  
25 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that  
26 are “clearly erroneous or not supported by substantial evidence” can be an abuse of discretion  
27 (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).  
28

1                   **C.     MOTIONS TO DISMISS – DE NOVO REVIEW:**

2                   An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las*  
3 *Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). De novo review requires a matter be  
4 considered anew, as if it had not been heard before and as if no decision had been rendered  
5 previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir.1988).

6                   **D.     MOTIONS FOR ATTORNEY’S FEES AND COSTS – ABUSE OF**  
7 **DISCRETION:**

8                   A district court’s decision on an award of fees and costs is reviewed for an abuse  
9 of discretion. *Gunderson v. D.R. Norton, Inc.*, 130 Nev. 67, 319 P.3d 606, 615 (2014);  
10 *LVMPD v. Yeghiazarian*, 129 Nev 760, 766, 312 P.3d 503, 508 (2013). An abuse of  
11 discretion occurs when the district court bases its decision on a clearly erroneous factual  
12 determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev.  
13 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are  
14 “clearly erroneous or not supported by substantial evidence” can be an abuse of  
15 discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d  
16 1286, 1292 (2016).

17  
18  
19  
20 **VI.     ARGUMENT:**

21                   **A.   THE DISTRICT COURT ERRED WHEN IT DISMISSED APPELLANTS’**  
22 **AMENDED COMPLAINT.**

23                   A district court’s order granting a motion to dismiss for failure to state a claim upon which  
24 relief can be granted faces a rigorous standard of review on appeal because the Appellate Court  
25 must construe the pleadings liberally, accept all factual allegations in the complaint as true, and  
26 draw all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28,  
27 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213,  
28

1 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). Further, the complaint should  
2 be dismissed “only if it appears beyond a doubt that it could prove no set of facts, which, if true,  
3 would entitle it to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181  
4 P.3d 670, 672 (2008); *Pankopf v. Peterson*, 124 Nev. 43, 175 P.3d 910 (2008). As set forth in  
5 NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires “a short and plain  
6 statement of the claim showing that the pleader is entitled to relief.”  
7

8       Upon reviewing the District Court’s decision to dismiss *de novo*, this Court should  
9 reverse the District Court’s ruling, as the District Court clearly applied the wrong standard when  
10 analyzing Appellants’ Amended Complaint. In their Amended Complaint, Appellants included  
11 twenty (20) detailed paragraphs outlining Simon’s words and deeds supporting each of their  
12 claims for relief. *AA, Vol. 2 000305-000316*. Appellants left no doubt as to the basis for their  
13 claims, who and what they’re against, and why they are making them. Certainly, there could  
14 have been no reasonable dispute that Appellants met that minimum standard.  
15

16       The Amended Complaint alleged that a fee agreement was reached between the parties at  
17 the beginning of the attorney/client relationship; that the agreement provided for Simon to be  
18 paid \$550 per hour for his services; that Simon billed \$550 per hour in four invoices for his  
19 services; that the Edgeworths paid Simon’s four invoices in full; that Simon demanded far more  
20 from the Edgeworths than the \$550 per hour that the contract provided for; and, that Simon  
21 breached the contract when he demanded a bonus from the Edgeworths that totaled close to 40%  
22 of a financial settlement, then placed a lien on the file when the Edgeworths wouldn’t agree to  
23 modify the contract. *Id.*  
24

25       The District Court erred when it failed to take the Amended Complaint on its face, failed  
26 to take the allegations therein as true, and instead relied on external evidence in adopting  
27 Simon’s version of the facts. *AA, Vol. 2 000376-000384*. The District Court’s misuse of the  
28

1 proper standard and this external proof and evidence contravened Nevada law. *Buzz Stew, LLC*  
2 *v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v.*  
3 *City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc.  
4 Rule 12(b)(5). As such, Appellants respectfully ask this Court to reverse the District Court's  
5 dismissal of the Amended Complaint.

6  
7 **B. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT**  
8 **AWARDED \$50,000 IN ATTORNEY'S FEES AND \$5,000 IN COSTS.**

9 Pursuant to NRS 18.010, district courts are to interpret the provisions of the statute to  
10 award fees "in all appropriate situations,"—that is, *appropriate* situations. NRS 18.010(2)(b).  
11 Fees under this section are limited to where a district court finds "that the claim, counterclaim,  
12 cross-claim or third-party complaint or defense of the opposing party was brought or maintained  
13 without reasonable ground or to harass..." NRS 18.010(2)(b). And the district court's award of  
14 fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.*, 122 Nev.  
15 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,  
16 864-865 (2005); *University of Nevada v. Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180,  
17 1188, 1186 (1994). District courts are further limited: when determining the reasonable value of  
18 an attorney's services, the court is to consider the factors under *Brunzell v. Golden Gate National*  
19 *Bank*, 455 P.2d 31, 33-34 (1969). *Hornwood v. Smith's Food King No. 1*, 807 P.2d 209 (1991);  
20 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 834 (1985).

21  
22 In fact, this Court has held that it is an abuse of discretion when district courts fail to  
23 consider the *Brunzell* factors when awarding fees. *Albios v. Horizon Communities, Inc.*, 122 Nev.  
24 409, 427-28, (2006) (Finding that a district court's mere observation of certain *Brunzell* elements  
25 and mention of the factors is insufficient: the district court must actually consider the *Brunzell*  
26 factors when determining the amount of fees to award under NRS 40.655). Further, a district  
27 court's award of costs *must* be reasonable. NRS 18.005; *U.S. Design & Const. Corp. v.*  
28

1 *International Broth. of Elec. Workers*, 118 Nev. 458, 463(2002).

2 Here, the District Court's \$50,000 award of fees was an abuse of discretion as it was  
3 predicated on a clearly errant finding that the Appellants' conversion claim was not maintained  
4 on reasonable grounds, was unreasonable, and was made without consideration of the *Brunzell*  
5 factors. Further, the District Court's award of \$5,000 in Costs was unreasonable, as it was made  
6 with absolutely no explanation or justification for the amount awarded. As such, this Court  
7 should reverse the District Court's \$50,000 fee award and \$5,000 in costs.  
8

9 **C. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT**  
10 **AWARDED \$200,000 IN ATTORNEY'S FEES UNDER QUANTUM**  
11 **MERUIT.**

12 A district court's determination of the amount of attorney's fees is to be tempered by  
13 "reason and fairness." *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 427, 132 P.3d 1022,  
14 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-865 (2005);  
15 *University of Nevada v. Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994).  
16 Here, the District Court's award of \$200,000 in attorney's fee based on quantum meruit was  
17 predicated on the clearly erroneous determination that Appellants constructively discharged  
18 Simon. *AA, Vol. 2 000360:23-28, 361-364:1-2*. That finding was improper and an abuse of  
19 discretion, as the District Court based its determination on a clearly erroneous factual  
20 determination which was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac.*  
21 *Leasing*, 367 P.3d 1286, 1292 (2016).  
22

23 For example, Simon conceded that: 1.) he never withdrew from representing Appellants;  
24 2.) Simon *himself* encouraged Appellants to speak with other attorneys; 3.) Simon spoke with an  
25 attorney either before or after he met with Appellants on November 17, 2017; 4.) Mr. Vannah  
26 instructed Simon that Appellants needed Simon to continue working on the case through its  
27 conclusion; and, 5.) Simon continued to work on behalf of Appellants and billed them an  
28

1 additional \$33,811.25 in fees from November 30, 2017, through January 8, 2018. *AA Vols 1 & 2*  
2 *000159-000163; 000263-000265*.

3 Under no logic or reason whatsoever could Simon's and Appellants' relationship be  
4 viewed as having "broken down" to the point where Simon was "prevented from effectively  
5 representing" them. *See Rosenberg v. Calderon Automation, Inc.*, 1986 WL 1290 (Court of  
6 Appeals, Ohio 6<sup>th</sup> Dist. 1986). He DID continue to represent Appellants effectively and billed  
7 them accordingly and handsomely...at \$550 per hour. *AA Vols. 1 & 2 000373-000374; 000159-*  
8 *163; 000263-000265*. The District Court's quantum meruit analysis, which stemmed from an  
9 erroneous finding of constructive discharge, was unwarranted, an abuse of discretion, and should  
10 be reversed.  
11

12 An award of fees must also be tempered by "reason and fairness." *University of Nevada*  
13 *v. Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). This \$200,000 award  
14 is not fair or reasonable under any circumstances. The District Court had already twice looked to  
15 Simon's invoices and utilized \$550 per hour to determine Simon's reasonable fee (the four  
16 original invoices and from September 20 to November 29, 2017). *AA Vol. 2 000353-000374*. For  
17 the adjudication for any fee from November 30, 2017, through January 8, 2018, the only fair and  
18 proper analysis would consistently focus on the *actual work performed and billed* by Simon (and  
19 Ms. Ferrel). Yet, as one can clearly see, the District Court didn't even glance in that direction.  
20 *Id.*, *000353-000374*.  
21

22 The District Court was also silent on the *timing* of Simon's labor. *AA Vol. 2 000370-*  
23 *000372*. The District Court must describe the work Simon performed following the alleged  
24 discharge, and that didn't happen. *AA Vol. 2 000371*. Rather, the "ultimate result" referenced (the  
25 litigation and settlements) had already been completed, or either agreed to in principle, before  
26 any alleged constructive discharge, or merely required ministerial tasks to complete. *Id.*,  
27  
28

1 000356:22-24, 000357:12-24.

2 In the section of the Order labelled “Quantum Meruit,” there is also no evidence offered  
3 or reasonable basis given that Simon did anything of value for the case after November 29, 2017,  
4 to justify an additional \$200,000 “fee” for five weeks of work. Clearly, the District Court’s  
5 award of fees was not tempered by “reason and fairness.” Instead, it was a gift to one with  
6 unclean hands.  
7

8 The fair, reasonable, and appropriate amount of Simon’s attorney’s lien in this case from  
9 November 30, 2017, through January 8, 2018, should be calculated in a consistent manner (\$550  
10 per hour worked/billed) as previously found from May 27, 2016, through November 29, 2017.  
11 *Id.*, 000353-000374. Instead, the District Court came up with the \$200,000 number seemingly  
12 out of nowhere, rather than awarding the \$33,811.25 in fees for the actual work performed  
13 during that time frame. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.*  
14 Therefore, this Court should reverse the \$200,000 fee/bonus award.  
15

16 **VII. CONCLUSION/ RELIEF SOUGHT:**

17 The District Court committed clear and reversible error when it applied the wrong  
18 standard in considering Simon’s Motion to Dismiss. When it should have considered all of  
19 Appellants’ allegations and inferences as true, the District Court did just the opposite and  
20 believed Simon.

21 The District Court also committed clear and reversible error and abused its discretion in  
22 awarding Simon an additional \$50,000 in fees and \$5,000 in costs while dismissing Appellants’  
23 Amended Complaint, a pleading that never should have been dismissed to begin with. Even so,  
24 these fees were awarded without the requisite analysis that Nevada law requires.  
25

26 The District Court also committed clear and reversible error and abused its discretion in  
27 awarding Simon an additional \$200,000 in fees under the guise of the equitable remedy of  
28



1 quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon  
2 was never discharged and never acted as such, at least through the conclusion of the flood  
3 litigation. Instead, he continued to work the case through January 8, 2018, continued to represent  
4 Appellants, completed the ministerial work to close out the flood case, and billed for all his  
5 efforts.

6  
7 Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De*  
8 *Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992); *Truck Ins. Exchange v. Palmer*,  
9 124 Nev. 59 (2008). As argued throughout, Simon's hands are unclean, as The Simon Rule (and  
10 conduct) clearly demonstrates.

11 Appellants respectfully request this Court to: 1.) REVERSE the District Court's  
12 decisions to Dismiss Appellants' Amended Complaint issued on November 19, 2018,  
13 and allow Appellants to move on with discovery and jury trial; 2.) REVERSE the  
14 District Court's award of \$50,000 in fees and \$5,000 in costs in its Decision and Order  
15 Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs  
16 from February 8, 2019; and, 3.) REVERSE the District Court's award of fees of  
17 \$200,000 in its Decision and Order on Motion to Adjudicate Attorney's Lien on  
18 November 19, 2018.

19  
20  
21 [This ends the inclusion of Appellants' Opening Brief. Other arguments will  
22 now follow.]

23  
24 **VIII. SIMON CONTINUES TO EXERCISE DOMINION AND CONTROL**  
25 **OVER THE EDGEWORTHS' MONEY:**

26 On page 8 of his Motion, SIMON, speaks of an "arrangement" that purportedly  
27 undermines a claim for conversion. He's wrong, both factually and legally. When the  
28 underlying settlements were reached with the Viking and Lange entities, the

1 Edgeworths wanted, and were/are entitled to, the full measure of these/their funds. (Id.)  
2 From May of 2016 through the submission of and payment of the fourth and final pre-  
3 litigation invoice, SIMON had provided, and the Edgeworths had always paid, invoices  
4 for work performed by SIMON at the rate of \$550 per hour. (Id.) That was their  
5 contract. (Id.)  
6

7 The Edgeworths expected that their contract with SIMON would be honored by  
8 him. (Id.) Yet, as alleged in the Amended Complaint, and contained in the appellate  
9 record (Id.), rather than abide by the contract and provide the Edgeworths with a fifth  
10 invoice for his work, SIMON served an attorney's lien in an unspecified amount,  
11 demanded what amounted to a contingency fee of nearly 40% of the amount of the  
12 underlying settlements, and refused to release the settlement funds to the Edgeworth's.  
13 (Id.)  
14  
15

16 SIMON'S proposal was to deposit the settlement funds in his trust account. That  
17 was unacceptable to the Edgeworths. VANNAH'S proposal was to deposit the  
18 Edgeworths' funds into VANNAH'S trust account. That was unacceptable to SIMON.  
19 Since these funds needed to be deposited, in a special trust account, a compromise was  
20 reached that caused the funds to be deposited at Bank of Nevada. In order for the  
21 Edgeworths' funds to be disbursed, both SIMON and VANNAH must consent and co-  
22 sign on a check. This was not, and is not, what the Edgeworths wanted or want—they  
23 want their money. (Id.)  
24  
25

26 Even now, SIMON continues to exercise dominion and control of over \$1M of  
27 the Edgeworths' funds in excess of Judge Jones' determination of Simon's interest in  
28

1 those funds, with no factual or legal basis to do so. (Id.) *Kasdan, Simonds, McIntyre,*  
2 *Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir.  
3 Cal. 2003). SIMON'S lien has been adjudicated, he's been awarded \$484,982.50 in  
4 fees that the Edgeworths have agreed to pay to him (See Exhibit B.), yet he won't  
5 release the balance of the Edgeworths' money to them. (See Exhibit A.) These facts  
6 provide more than enough good faith basis to seek and maintain a claim for conversion  
7 against SIMON.  
8

9  
10 **IX. THERE IS NOTHING EMERGENT TO SUPPORT THE "EMERGENCY"**  
11 **MOTION:**

12 An affidavit must mean something. Counsel for SIMON spent time on that topic at the  
13 evidentiary hearing back in 2018 when he examined Brian Edgeworth. A declaration under the  
14 penalty of perjury must mean something, too. In the second paragraph 2, as well as paragraphs 3  
15 and 4, in support of SIMON'S Motion and its alleged emergent nature, words like "immediately  
16 preserve," "avoid prejudice," "cannot be heard in the ordinary course," and "miscarriage of  
17 justice" are used with pointed purpose. When they are measured against, and compared with, the  
18 history of this case, together with the apparent "when and how" SIMON'S alleged claims arose,  
19 a very different story emerges.  
20

21 It is beyond dispute that the origin of SIMON'S alleged claims in A-19-807433-C began  
22 when the Edgeworths filed their complaint on January 4, 2018. (Id.) It is also beyond dispute  
23 that the first moment in time that SIMON either asked for or demanded that evidence be  
24 preserved was on March 30, 2020 (SIMON'S letter). How many days came and went before  
25 SIMON made his demand? A total of **815**. The Edgeworths filed their Amended Complaint on  
26 March 15, 2018. (Id.) How many days then came and went before SIMON'S letter? **746** in  
27 total. Angela Edgeworth gave the sworn testimony on September 18, 2018, that SIMON  
28

1 referenced in his Motion on page 11. It was **559** days from that testimony to SIMON'S letter.

2 On October 31, 2018, SIMON received the first of two letters from VANNAH agreeing  
3 not to seek any appeal and to pay the fees to SIMON that were awarded in the Decision and  
4 Order Adjudicating Lien in exchange for SIMON agreeing to release the balance of the  
5 Edgeworths' funds. (See Exhibit B.) **516** then days passed before SIMON'S letter. Amended  
6 Orders regarding SIMON'S lien were entered on November 19, 2018. **496** days went by before  
7 SIMON sent his letter. A Notice of Appeal was filed on December 7, 2018. **479** days went by  
8 before SIMON'S letter.  
9

10 On December 23, 2019, SIMON filed his suit. That's **717** days since the filing of the  
11 original complaint that undisputedly contained a claim for conversion and gave rise to SIMON'S  
12 alleged claims. SIMON'S suit was served on VANNAH on March 19, 2020, which was the first  
13 time ever that SIMON communicated any indication to VANNAH that SIMON was making any  
14 claim in this matter for any reason. That amounts to **804** days since the original complaint was  
15 filed, **87** days between the filing of the complaint and its service on VANNAH, and another **11**  
16 days from the service of the complaint to the receipt of SIMON'S letter.  
17

18 How can these purposeful and numerous delays be worthy of the statements made under  
19 oath in the declaration, and in the Motion, that an emergency exists to do anything pertaining to  
20 evidence that SIMON, though his own inaction, hadn't cared enough about for **815** days to make  
21 any prior mention of or demand for to VANNAH? Similarly, how can such relief be credibly  
22 asked for or received? It should not be rewarded by any measure.  
23

## 24 **X. CONCLUSION.**

25 VANNAH agrees to preserve evidence in all formats, and expects that SIMON will do  
26 the same. SIMON'S letter was sufficient and all that was necessary to trigger that obligation.  
27 However, as detailed above, there is nothing in the facts or the law to justify deeming anything  
28

1 here as emergent or an emergency. Furthermore, and most importantly, there is no basis in the  
2 facts of this matter or in the law of Nevada that would allow the relief that SIMON has  
3 suggested, namely turning any evidence over to SIMON at this time, let alone phones,  
4 computers, or the like. *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006).

5  
6 If this matter gets beyond dispositive motion practice, discovery matters can be brought  
7 at the appropriate time and before the appropriate forum. Here, among other things, SIMON'S  
8 requests pertain to thousands of clients and is in direct conflict with the attorney client privilege.  
9 However, now is not the time and these are not the facts for such extraordinary and Draconian  
10 relief. As a result, VANNAH respectfully requests that SIMON'S Motion be denied, with the  
11 understanding that all parties will preserve all relevant evidence.

12 DATED this 5<sup>th</sup> day of April, 2020.

13  
14 **PATRICIA A. MARR, LTD.**

15 /s/Patricia A. Marr, Esq.

16 

---

PATRICIA A. MARR, ESQ.

17  
18 **CERTIFICATE OF SERVICE**

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

20 Electronically:

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

25 Traditional Manner:

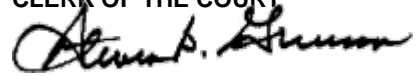
26 *None*

27 DATED this 6<sup>th</sup> day of April, 2020.

28 /s/Patricia A. Marr

---

An employee of Patricia A. Marr, Ltd.



# EXHIBIT A

# EXHIBIT A

**AA000091**

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

Electronically Filed  
Aug 08 2019 12:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case**

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

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

**APPELLANTS' APPENDIX**

VOL. 1 PART 1 of 12

**AA000092**

Docket 77678 Document 2019-33421

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

\*\*\*\*\*

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

**Appellants/Cross Respondents.**

**vs.**

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

**Respondents/Cross-Appellants.**

**Supreme Court Case**

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

---

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

**Appellants,**

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

**Respondents.**

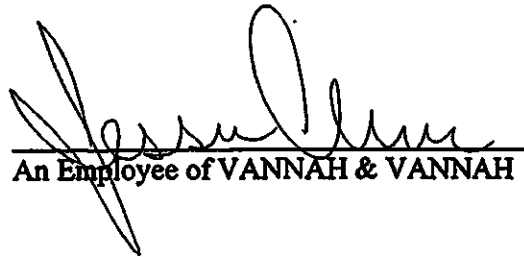
**CERTIFICATE OF SERVICE OF APPENDIX**



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on the 1<sup>st</sup> day of August, 2019, I served **VOLUMES 1, 2, AND 3 OF APPELLANTS' APPENDIX**, together with a CD ROM, on all parties to this action by U.S. Mail, addressed as follows:

James R. Christensen, Esq.  
**JAMES R. CHRISTENSEN, P.C.**  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101



An Employee of VANNAH & VANNAH

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

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

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

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

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

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

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

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



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

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST; and  
AMERICAN GRATING, LLC;

Plaintiffs,

vs.

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

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

Defendants.

**NOTICE OF ATTORNEY'S LIEN**

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

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

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

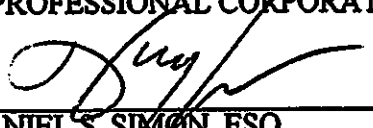
1 determined.

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

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

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

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

14   
15 DANIEL S. SIMON, ESQ.  
16 Nevada Bar No. 4750  
17 ASHLEY M. FERREL, ESQ.  
18 Nevada Bar No. 12207  
19 SIMON LAW  
20 810 South Casino Center Blvd.  
21 Las Vegas, Nevada 89101  
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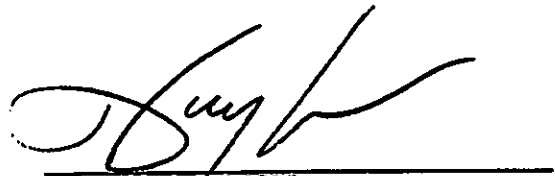
SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

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

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

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

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

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28  
  
DANIEL S. SIMON

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

26  
27  
28  
  
Notary Public

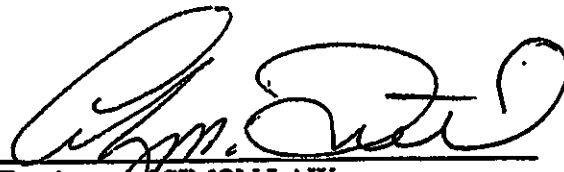




**CERTIFICATE OF MAIL**

I hereby certify that on this 30<sup>th</sup> day of November, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

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

  
An Employee of SIMON LAW

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

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

**CERTIFICATE OF E-SERVICE & U.S. MAIL**

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

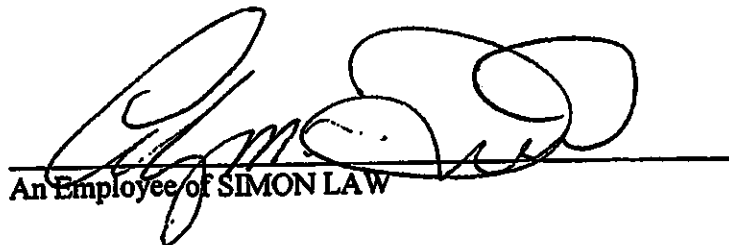
Theodore Parker, III, Esq.  
PARKER NELSON & ASSOCIATES  
2460 Professional Court, Ste. 200  
Las Vegas, NV 89128  
*Attorney for Defendant*  
*Lange Plumbing, LLC*

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

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

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

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

  
An Employee of SIMON LAW

*Daniel S. Simon*

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

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 EDGEWORTH FAMILY TRUST; and  
10 AMERICAN GRATING, LLC;

11 Plaintiffs,

12 vs.

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

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

20 Defendants.

21 NOTICE OF AMENDED ATTORNEY'S LIEN

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

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

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

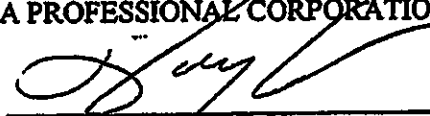
1 rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office  
2 of Daniel S. Simon in the sum of \$76,535.93, which remains outstanding.

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

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

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

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

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

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

**CERTIFICATE OF E-SERVICE & U.S. MAIL**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 2<sup>nd</sup> day of January, 2018, I served the foregoing NOTICE OF AMENDED ATTORNEY'S LIEN on the following parties by electronic transmission through the Wiznet system and also via Certified Mail- Return

**Receipt Requested:**

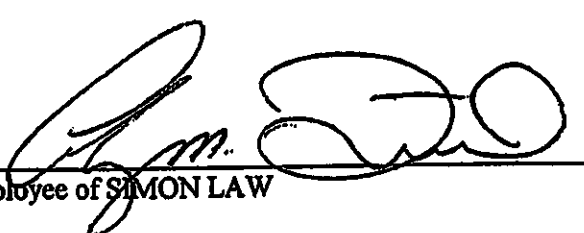
Theodore Parker, III, Esq.  
PARKER NELSON & ASSOCIATES  
2460 Professional Court, Ste. 200  
Las Vegas, NV 89128  
*Attorney for Defendant*  
*Lange Plumbing, LLC*

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

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

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

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

  
An Employee of SIMON LAW

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

CERTIFICATE OF U.S. MAIL

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

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

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

Edgeworth Family Trust  
645 Saint Croix Street  
Henderson, Nevada 89012

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

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

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

  
An Employee of SIMON LAW

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY		SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete Items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>4. Article Addressed to:</p> <p style="font-size: 1.2em;">American Grating 1191 Center Point Dr. Ste. A Henderson, NV 89074</p>		<p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>		<p>1. Complete Items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>4. Article Addressed to:</p> <p style="font-size: 1.2em;">Brian &amp; Angela Edgeworth 645 Saint Croix St. Henderson, NV 89012</p>		<p>A. Signature </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>	
 9590 9402 2854 7069 0807 57		<p>3. Service Type <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		 9590 9402 2854 7069 0807 33		<p>3. Service Type <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>	
<p>Article Number (Transfer from service label)</p> <p style="font-size: 1.2em;">7017 1450 0001 0575 6328</p>		<p>Article Number (Transfer from service label)</p> <p style="font-size: 1.2em;">7017 1450 0001 0575 6328</p>		<p>Article Number (Transfer from service label)</p> <p style="font-size: 1.2em;">7017 1450 0001 0575 6342</p>		<p>Article Number (Transfer from service label)</p> <p style="font-size: 1.2em;">7017 1450 0001 0575 6342</p>	
S Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt		PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY		SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>4. Article Addressed to:</p> <p>Robert Vanniah, Esq. Vanniah &amp; Vanniah 400 S. Seventh St., Ste 400 Las Vegas, NV. 89101</p>  <p>9590 9402 2854 7069 0807 02</p> <p>5. Article Number (Transfer from service label)</p> <p>017 1450 0001 0575 6366</p>		<p>A. Signature</p> <p>X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>Perliya S. Gaud 1-4-18</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery  <input type="checkbox"/> Insured Mail  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p>1. Complete items 1, 2, and 3.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Edgeworth Family Trust 645 Saint Croix St. Henderson, NV. 89012</p>  <p>9590 9402 2854 7069 0807 40</p> <p>2. Article Number (Transfer from service label)</p> <p>7017 1450 0001 0575 6335</p>		<p>A. Signature</p> <p>X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>M. HO 1-4-18</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery  <input type="checkbox"/> Insured Mail  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt		PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

AA000108

**SENDER: COMPLETE THIS SECTION**

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

Article Addressed to:  
Michael Nunez, Esq.  
Murchison & Cunningham  
50 S. Rampart, Ste. 320  
Las Vegas, NV. 89145



590 9402 2854 7069 0892 86

Article Number (Transfer from service label)

17 1450 0001 0575 6267

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) *DAVE LINN* C. Date of Delivery *1-4-18*

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

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

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

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

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



9590 9402 2854 7069 0807 64

2. Article Number (Transfer from service label)

7017 1450 0001 0575 6311

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) *TILOS IN* C. Date of Delivery *1-4-18*

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

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

Domestic Return Receipt

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Article Addressed to:  
Randolph Sinnott, Esq.  
Sinnott, Puebla, Campagne  
Curet, APLC  
50 S. Hope St., Ste. 2350  
Los Angeles, CA. 90071



590 9402 1294 5285 5765 01

Article Number (Transfer from service label)

7 1450 0001 0575 6250

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

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X *[Signature]* ☐ Agent ☐ Addressee

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D. Is delivery address different from item 1? ☐ Yes  
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☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise  
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☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery  
☐ Insured Mail ☐ Signature Confirmation Restricted Delivery (over \$500)  
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1. Article Addressed to:  
Theodore Parker, Esq.  
Parker Nelson & Associates  
2460 Professional Court  
Ste. 200  
Las Vegas, NV. 89128



9590 9402 2854 7069 0807 88

2. Article Number (Transfer from service label)

7017 1450 0001 0575 6261

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

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

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

Domestic Return Receipt

AA000109



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Janet Boncast, Esq. Cisneros &amp; Marias 1160 N. Town Center Dr. Ste. 130 Las Vegas, NV 89144</p>  <p>9590 9402 2854 7069 0807 95</p>		<p>B. Received by (Printed Name) J. Rogers</p>	<p>C. Date of Delivery</p>
<p>2. Article Number (Transfer from service label) 7017 1450 0001 0575 6298</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Angela Bullock Kinsale Insurance Co. 2221 Edward Holland Dr. Ste. 600 Richmond, VA. 23230</p>  <p>9590 9402 2854 7069 0892 79</p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p>
<p>2. Article Number (Transfer from service label) 7017 1450 0001 0575 6274</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

SIMONEH0000035  
AA000012

AA000110

## DISTRICT COURT CIVIL COVER SHEET

Department 14

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <b>EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC</b>	Defendant(s) (name/address/phone): <b>DANIEL S. SIMON, d/b/a SIMON LAW</b>
Attorney (name/address/phone): <b>ROBERT D. VANNAH, ESQ.</b> <b>400 S. Seventh Street, 4th Floor Las Vegas, Nevada 89101</b>	Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <input type="checkbox"/> Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <input type="checkbox"/> Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

January 3, 2018  
Date

Signature of initiating party or representative

See other side for family-related case filings.

*Steven D. Grierson*

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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 **Plaintiffs,**

18 **vs.**

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

22 **Defendants.**

23 **CASE NO.:**  
24 **DEPT NO.:**

**A-18-767242-C**

**Department 14**

25 **COMPLAINT**

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.

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

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

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

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

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

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

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

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

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

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

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

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

22  
23 18. Despite SIMON'S requests and demands for the payment of more in fees,  
24 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

25  
26 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,  
27 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement  
28 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide

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

4 20. PLAINTIFFS have made several demands to SIMON to comply with the  
5 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the  
6 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To  
7 date, SIMON has refused.  
8

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

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

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

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

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

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



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

4 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the  
5 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a  
6 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their  
7 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.  
8

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

11 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS  
12 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.  
13

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

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

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

24 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour  
25 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.  
26

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

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

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

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

18  
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

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

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

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

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

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

9  
10 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a  
11 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

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

17  
18 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
19 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
20 PLAINTIFFS are entitled to recover attorneys' fees and costs.

21  
22 **PRAYER FOR RELIEF**

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

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

1 5. Costs of suit; and,

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

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

5  
6   
7 ROBERT D. VANNAH, ESQ. (4272)  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

VOL. 1 PART 2 of 12

**AA000122**

Docket 77678 Document 2019-33421

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

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

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

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

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

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



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

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

*Steven D. Grier*

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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 **Plaintiffs,**

18 **vs.**

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

22 **Defendants.**

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

**ACCEPTANCE OF SERVICE OF THE**  
**SUMMONS AND COMPLAINT**

23 I, James R. Christensen, Esq., am authorized to and hereby accept service of the Summons  
24 and Complaint on behalf of Defendant DANIEL S. SIMON, d/b/a SIMON LAW.

25 DATED this 9<sup>th</sup> day of January, 2018.

26   
27 **JAMES R. CHRISTENSEN, ESQ.**

**ORIGINAL**

Electronically Filed  
1/24/2018 10:39 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

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

**Eighth Judicial District Court  
District of Nevada**

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

**Plaintiffs,**

**vs.**

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

**Defendants.**

Case No.: A738444  
Dept. No.: 10

**MOTION TO ADJUDICATE  
ATTORNEY LIEN OF THE LAW  
OFFICE DANIEL SIMON PC;  
ORDER SHORTENING TIME**

Date of Hearing:  
Time of Hearing:

DEPARTMENT X  
NOTICE OF HEARING  
DATE 1/30/18 TIME 9:30  
APPROVED BY [Signature]

1 The LAW OFFICE OF DANIEL S. SIMON, P.C. moves the Court for an  
2 Order adjudicating its attorney lien on shortened time.

3 DATED this 23<sup>rd</sup> day of January, 2018.

4  
5   
6 James R. Christensen Esq.  
7 Nevada Bar No. 3861  
8 James R. Christensen PC  
9 601 S. Sixth Street  
10 Las Vegas NV 89101  
11 (702) 272-0406  
12 (702) 272-0415 fax  
13 jim@jchristensenlaw.com  
14 Attorney for LAW OFFICE OF  
15 DANIEL S. SIMON, P.C.  
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**ORDER SHORTENING TIME/NOTICE OF MOTION**


Good cause appearing, it is hereby

ORDERED the Motion to Adjudicate Attorney Lien of the LAW OFFICE  
OF DANIEL S. SIMON, P.C. may be heard on shortened time on the 30 day of  
January, 2018, at the hour of 9:30, or as soon thereafter as counsel  
may be heard, before Department 10 of the Eighth Judicial District Court.

DATED this 23 day of January, 2018.

  
DISTRICT COURT JUDGE  
sw

Submitted by:

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

**DECLARATION OF COUNSEL IN SUPPORT OF  
ORDER SHORTENING TIME**

1  
2  
3 1. I, JAMES R. CHRISTENSEN, make this Declaration of my own  
4 personal knowledge and under the penalty of perjury pursuant to NRS 53.045.

5  
6 2. I represent the LAW OFFICE OF DANIEL S. SIMON, P.C. on the  
7 motion to adjudicate the attorney charging lien in this case.

8 3. The attorney lien statute provides for hearing a motion to adjudicate a  
9 charging lien on five days of notice. NRS 18.015(6).

10  
11 4. The clients have alleged that they have suffered, and will suffer,  
12 damages from delay in settling the attorney fee. Accordingly, shortened time is  
13 requested to alleviate any potential resulting prejudice that the clients may claim  
14 caused by an alleged delay in settling the fee.

15  
16 This motion is filed in good faith and not for any purpose of undue delay or  
17 harassment.

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

19  
20 Dated this 18<sup>th</sup> day of January, 2018.

21  
22   
James R. Christensen

## **POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

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

The plumber's work caused the flood, however, the plumber blamed a fire sprinkler and refused to repair or to pay for repairs. On June 16, 2016, a complaint was filed against the plumber and fire sprinkler manufacturer. The original cost of construction of the house was about \$3M. The case settled for \$6.1M<sup>1</sup>.

There is a dispute over the reasonable fee due The Law Office of Daniel S. Simon, A Professional Corporation. This Court is respectfully requested to adjudicate the attorney's charging lien pursuant to NRS 18.015.

---

<sup>1</sup> Brian Edgeworth refused to pay a \$24,117.50 remediation contractor bill because the contractor did not have a signed contract. The settlement totals \$6,075,882.50; \$6.1M less the remediation bill.

1 **II. THE CHARGING LIEN STATUE**

2 A charging lien is a "creature of statute". *Argentina Consolidated Mining*  
3 *Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009).

4 The charging lien statute is NRS 18.015. NRS 18.015 was amended in  
5  
6 2013. The current version of the statute applies. The 2013 statute states in full:

7 **NRS 18.015 Lien for attorney's fees: Amount; perfection;**  
8 **enforcement.**

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

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

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

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

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

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

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

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

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

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

20           (Added to NRS by 1977, 773; A 2013, 271)

21           **III. PRINCIPLES OF LAW**

22           The law office moves for adjudication of its charging lien. The following  
23           principles of law apply:

- 24           • The Court has personal jurisdiction "to adjudicate a fee dispute based on a  
25           charging lien". *Argentina*, 216 P.3d at 782-83.
- The Court has subject matter jurisdiction to adjudicate a fee dispute based on  
          a charging lien. *Argentina*, 216 P.3d at 783.

- 1 • An attorney “shall have a lien” on a case they worked on for a client. NRS  
2 18.015(1)(a).
- 3 • If there is no express contract, the charging lien is for a “reasonable fee”.  
4 NRS 18.015(2); *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958); and, *see*,  
5 *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009).
- 6 • A reasonable fee is determined by the factors in *Brunzell v. Golden Gate*  
7 *Nat’l Bank*, 455 P.2d 31, 33-34 (Nev. 1969). *Argentina*, 216 P.3d at fn.2.
- 8 • A charging lien does not have to state an exact amount. *Golightly &*  
9 *Vannah, PLLC v TJ Allen LLC*, 373 P.3d 103, at 106 (Nev. 2016).
- 10 • A charging lien is perfected by service on the client by certified mail, return  
11 receipt requested. NRS 18.015(3).
- 12 • A charging lien attaches to money received after service of the lien. NRS  
13 18.015(4)(a); *Golightly & Vannah*, 373 P.3d at 105 (a charging lien must be  
14 perfected “before the attorney receives the funds”).
- 15 • An attorney does not violate a professional duty owed to a client by filing a  
16 charging lien. NRS 18.015(5).
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- A charging lien may be adjudicated by the Court upon five days' notice. NRS 18.015(6); and, *Leventhal*, 305 P.3d at 911 (timely adjudication allows the court to determine the fee while "the attorney's performance is fresh in its mind", and before "proceeds are distributed").
- A charging lien is not precluded, nor does it preclude, other remedies in a fee dispute. NRS 18.015(7).

#### IV. FACTS

The Simon family met the Edgeworth family when their children went to the same school. Over the years, the families became close. The children played sports together, the families went on trips abroad together, and they helped each other during difficult times.

The families knew the others background from their close relationship. Danny Simon knew that Brian Edgeworth went to Harvard Business School; that the Edgeworths founded Pediped Footwear, a successful shoe company with production sites in Nevada and China and a worldwide retail presence; that the Edgeworths' company, American Grating LLC, was a global manufacturer of "fiberglass reinforced plastic" products used in settings from offshore oil to

1 pedestrian walkways; and, that Brian Edgeworth was involved in construction,  
2 including speculation houses.<sup>2</sup>

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

9 **A. The Flood**

10 The house is in McDonald Ranch at 645 St. Croix. Brian Edgeworth built  
11 the house as an investment.<sup>3</sup> The general contractor on the build was Giberti  
12 Construction LLC, who had built other speculation houses for Mr. Edgeworth.  
13 Brian Edgeworth funded the build through his plastics company, American  
14 Grating. The total cost of the build was about \$3.3M.<sup>4</sup> The house was listed for  
15 sale at \$5.5M.<sup>5</sup> The house is not currently on the market.  
16

17 Viking fire sprinklers were installed in the house by sub-contractor Lange  
18 Plumbing & Fire Control. On April 10, 2016, during the build, a Viking fire  
19 sprinkler(s) malfunctioned, which caused a destructive flood.  
20  
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23  
24 <sup>2</sup> The flooded house started as a speculation project.

25 <sup>3</sup> The Edgeworths currently live in the house.

<sup>4</sup> Exhibit 1; cost basis of speculation build.

<sup>5</sup> Exhibit 2; MLS listing for 645 St. Croix.

1 Before the build began, Mr. Edgeworth decided to go without builder's  
2 risk/course of construction insurance. Without insurance, Mr. Edgeworth looked  
3 to Lange for repairs. Lange did not agree to repair, so Mr. Edgeworth asked his  
4 friend for help.

5  
6 Brian Edgeworth spoke with other attorneys, but wanted Danny Simon to  
7 help him. In May of 2016, Mr. Simon agreed to lend a hand, and "send a few  
8 letters".<sup>6</sup>

9  
10 Danny Simon did not have a structured discussion with Brian Edgeworth  
11 about the fee for the case.<sup>7</sup> Mr. Simon worked without a written fee agreement.

12 Lange and Viking were intransigent. Brian Edgeworth paid the cost of  
13 repair for the house, around \$500k; and, in December of 2016, a certificate of  
14 occupancy was issued for the house.

15  
16 On June 14, 2016, a complaint was filed against Lange and Viking.  
17  
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23 <sup>6</sup> See, e.g., Exhibit 3; 5.27.2016 email string.

24 <sup>7</sup> See, e.g., Exhibit 4; 8.22.2017 email from Brian Edgeworth, "Subject:  
25 Contingency"- "We never really had a structured discussion about how this might  
be done." Mr. Edgeworth mentioned a hybrid or greater hourly payments as fee  
options.

1           **B.     The Case**

2           In sum, Viking was sued for a product defect in their fire sprinkler and  
3 Lange was sued on the construction contract. There was a clear route to recover  
4 attorney fees against Lange based on the construction contract. There was no easy  
5 road to fees against the manufacturer, Viking.  
6

7           The case became complex with multiple parties, cross and counter claims.  
8 In short order, the case went from a friends and family matter to a major litigation,  
9 which soon dominated time at the law office; and, involved the advancement of  
10 about \$200,000.00 in total costs.  
11

12           In December of 2016, the law office started sending bills on the file. The  
13 bills enabled the clients to demonstrate damages, while allowing the law office to  
14 recover some costs advanced, and to defray some of the business loss caused by  
15 being unable to devote time to other contingency cases.  
16

17           The bills submitted to Brian Edgeworth do not cover all the time spent on  
18 the case. The law office does not take hourly cases. The firm does not have hourly  
19 billing software, nor experienced time keepers. Also, Mr. Simon understood that  
20 Brian Edgeworth had decided to finance his share of the litigation through high  
21 interest loans<sup>8</sup> (presumably, based on a solid business rationale). Mr. Simon knew  
22  
23  
24

25           <sup>8</sup> The high interest loans were contested by defendants. The loans were from the  
          mother in law of Brian Edgeworth and a close friend of Mr. Edgeworth. The

1 the case might not generate a return beyond the cost of repair, and he did not fully  
2 bill the case. Mr. Simon was willing to wait until the end of the case to final the  
3 bill in light of the money obtained; that was his normal practice anyway.

#### 4 C. The Fee Dispute

5 The case was aggressively pursued. In the summer of 2017, well over  
6 100,000 pages of documents were obtained. It was learned that the fire sprinkler  
7 defect was known to Viking and had caused other floods; and, that Viking had  
8 done nothing to fix, or warn of, the defect.  
9

10 In the late summer of 2017<sup>9</sup>, and into the fall, there were talks about how to  
11 calculate a fee; but, no agreement was reached. Danny Simon was occupied with  
12 the case and Brian Edgeworth was content to leave the issue alone.  
13

14 By the fall of 2017, the case was positioned for an excellent trial result with  
15 a strong chance of a finding against Viking for punitive damages; with motions  
16 pending to strike the main defense expert, and to strike the defendants' answers.  
17

18 In November of 2017, Viking offered \$6M to settle. To place the offer in  
19 context, the cost basis for the entire house was \$3.3M. The high offer was a direct  
20 result of the extraordinary effort and skill of Mr. Simon in preparing the case for a  
21 great trial outcome.  
22

23  
24  
25 interest rate was 33%, well above market rate.

<sup>9</sup> See, fn. 7.

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

5 On November 27, 2017, Mr. Simon wrote to the clients about the fee.<sup>10</sup>

6 On November 30, 2017, the clients sent Mr. Simon a fax stating that the  
7 Vannah firm had been retained.<sup>11</sup>

8 On December 1, 2017, the Law Office of Daniel S. Simon, A Professional  
9 Corporation issued a charging lien pursuant to NRS 18.015.<sup>12</sup> On December 4,  
10 2017, the clients were served by certified mail return receipt requested.<sup>13</sup>

11 In December of 2017, Lange made a settlement offer, \$100,000.00 less the  
12 remediation bill Brian Edgeworth had refused to pay.

13 On December 7, 2017, Mr. Simon, his counsel, and Mr. Vannah held a  
14 conference call. Mr. Vannah told Mr. Simon not to contact the clients. Mr.  
15 Vannah was told the clients could seek attorney fees from Lange based on contract,  
16 and that the law office was working on a bill that would include all previously  
17 unbilled events. Mr. Vannah was told that the fee and cost claim against Lange

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24 <sup>10</sup> Exhibit 5.

25 <sup>11</sup> Exhibit 6.

<sup>12</sup> Exhibit 7.

<sup>13</sup> Exhibit 8.



1 might be in the \$1.5M range. Mr. Vannah did not tell Mr. Simon to cease work or  
2 to transfer the file. Mr. Simon documented the call.<sup>14</sup>

3 On December 7, 2017, the clients signed a "Consent to Settle" prepared by  
4 the Vannah office. In the Consent, the clients knowingly abandoned the attorney  
5 fee claim against Lange and directed Mr. Simon to settle the Lange claim for  
6 \$100,000 minus the unpaid bill. Mr. Simon was not told to cease work or to  
7 transfer the file.<sup>15</sup>

8  
9 In December of 2017, Mr. Simon finalized the details of the Viking  
10 settlement, which were approved by the clients via the Vannah office.

11  
12 On Monday, December 18, 2017, two checks with an aggregate value of  
13 \$6M for the Viking settlement were picked up.<sup>16</sup>

14  
15 On Monday, December 18, 2017, immediately following check pick-up, Mr.  
16 Simon called the Vannah office to arrange check endorsement. Mr. Simon left a  
17 message.<sup>17</sup>

18 On Monday, December 18, 2017, Mr. Greene of the Vannah office called and  
19 spoke to Mr. Simon. Mr. Simon said he was leaving on a holiday trip starting  
20 Friday, December 22, 2017, until after the new year. Mr. Simon asked that the  
21

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24 <sup>14</sup> Exhibit 9.

25 <sup>15</sup> Exhibit 10.

<sup>16</sup> Exhibit 11.

<sup>17</sup> Exhibit 12.

1 clients endorse the checks prior to December 22<sup>nd</sup>. Mr. Greene told Mr. Simon that  
2 the clients were not available to endorse until after the New Year. Mr. Greene  
3 stated that he would contact LAW OFFICE OF DANIEL S. SIMON, P.C. about  
4 scheduling endorsement.<sup>18</sup>

5  
6 On Friday, December 22, 2017, the Simon family went on their holiday trip.

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

9 Are you agreeable to putting this into an escrow account? The client does  
10 not want this money placed into Danny Simon's account. How much money  
11 could be immediately released? \$4,500,000? Waiting for any longer is not  
12 acceptable. I need to know right after Christmas.<sup>19</sup>

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

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25 <sup>18</sup> Exhibit 12.

<sup>19</sup> Exhibit 12.

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

2 The clients are available until Saturday.<sup>20</sup> However, they have lost all faith  
3 and trust in Mr. Simon. Therefore, they will not sign the checks to be  
4 deposited into his trust account. Quite frankly, they are fearful that he will  
steal the money.<sup>21</sup>

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

6 On December 27, 2017, a response was sent to Mr. Vannah. In sum, Mr.  
7 Vannah was asked to act collaboratively and to avoid hyperbole.<sup>22</sup>

8 On December 28, 2017, Mr. Vannah wrote he did not believe Mr. Simon  
9 would steal money, he was simply "relaying his clients' statements to me". Mr.  
10 Vannah proposed opening a single client trust account.<sup>23</sup>

11 The same day, Mr. Simon agreed to open a single client non-IOLTA trust  
12 account at Bank of Nevada, with all interest going to the clients.<sup>24</sup>

13 On January 2, 2018, an amended lien was filed. The lien contained an  
14 amount certain for the reasonable value of services claimed.<sup>25</sup> On January 4, 2018,  
15 the lien was served.<sup>26</sup>

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21 <sup>20</sup> On December 18, 2017, Mr. Greene indicated the clients were out of town until  
22 after the new year. (Exhibit 12.) It appears the clients became available to  
23 endorse checks the day after Mr. Simon left town.

24 <sup>21</sup> Exhibit 12.

25 <sup>22</sup> Exhibit 13.

<sup>23</sup> Exhibit 14.

<sup>24</sup> Exhibit 14.

<sup>25</sup> Exhibit 15.

<sup>26</sup> Exhibit 16.

1 On January 4, 2017, collaborative efforts continued to set up the trust  
2 account, and the clients sued their friend for "conversion".<sup>27</sup>

3 On January 8, 2017, a meeting was held at Bank of Nevada. The clients  
4 arrived separately to endorse checks. Account forms were signed, the checks were  
5 endorsed and deposited, and placed on a large item hold.  
6

7 The morning of January 9, 2018, the complaint was served upon counsel for  
8 Mr. Simon (who had agreed to accept service). At the same moment as the  
9 acceptance of service was being signed, Mr. Greene sent an email asking for an  
10 update on the Lange settlement.<sup>28</sup>  
11

12 Later in the day, Mr. Vannah confirmed that LAW OFFICE OF DANIEL S.  
13 SIMON, P.C. had not been fired, despite being sued by the clients for conversion.<sup>29</sup>  
14 Mr. Vannah stated if Mr. Simon withdrew, the damages sought from him would go  
15 up.<sup>30</sup>  
16  
17  
18

19 <sup>27</sup> Exhibit 17; the complaint.

20 <sup>28</sup> Exhibit 18.

21 <sup>29</sup> The clients are walking a tightrope. Mr. Simon was sued for conversion to  
22 create an argument against lien adjudication, but firing Mr. Simon would moot  
23 the alleged contract claim. The clients are left in the odd, contrary position of  
24 keeping an attorney they have accused of converting millions of dollars.

25 <sup>30</sup> On January 9, 2018 at 10:24 a.m. Mr. Greene from the Vannah office wrote,  
"He settled the case, but we're just waiting on a release and the check." The  
same day at 3:32 p.m., Mr. Vannah wrote, "I'm pretty sure that you see what  
would happen if our client has to spend lots more money to bring someone else  
up to speed." Exhibit 18.

1       **V.     ARGUMENT**

2           A charging lien provides “a unique method of protecting attorneys.”  
3       *Leventhal v. Black & Lobello*, 305 P.3d 907, 909 (Nev. 2013); *superseded by statute*  
4       *on other grounds as stated in, Fredianelli v. Pine Carman Price*, 402 P.3d 1254  
5       (Nev. 2017).  
6

7           The statute protects clients. Under the statute the Judge who knows the case  
8       best, and who has seen the attorney at work, settles the fee dispute. The Judge is  
9       empowered to reduce or reject a lien claim from an undeserving attorney. *See, e.g.*,  
10       *Golightly*, 281 P.3d 1176.  
11

12           The statute also promotes judicial economy. Prompt adjudication of a lien  
13       allows a court to determine the fee when “the attorney’s performance is fresh in its  
14       mind”. *Leventhal*, 305 P.3d at 911. Prompt adjudication prevents time consuming  
15       and costly work months or years later in the same or a different court.  
16

17           The Law Office of Daniel S. Simon, A Professional Corporation  
18       perfected it’s charging lien. This Court has jurisdiction to promptly adjudicate the  
19       lien; and, in the absence of an express contract, settle the amount of the reasonable  
20       fee due the law firm pursuant to NRS 18.015(2).  
21

22           There is no set manner of calculation for a reasonable fee. *Albios v. Horizon*  
23       *Communities, Inc.*, 132 P.3d 1022, 1034 (Nev. 2006). A court has wide discretion on  
24       the method of calculation of the reasonable fee. A court can calculate the fee on a  
25

1 market basis, an hourly basis, or any other basis, as long as, the fee is reasonable  
2 under the under the *Brunzell* factors. *Ibid.* A court need only explain its decision in  
3 written findings. *Argentina*, 216 P.3d at fn.2.

4 The court may hold an evidentiary hearing to aide in the determination of the  
5 reasonable fee.<sup>31</sup> Because of the size and complexity of the underlying case, and the  
6 size of the reasonable fee sought, an evidentiary hearing is respectfully requested.  
7

8 The Law Office of Daniel S. Simon, A Professional Corporation seeks a  
9 reasonable fee in the amount of \$1,977,843.80 as stated in the Amended Lien of  
10 January 2, 2018.<sup>32</sup> The amount is based upon the market approach. Mr. Simon  
11 considered the type and nature of the case, and the limited number of attorneys in  
12 the greater Las Vegas area with the ability to obtain the result obtained. Mr. Simon  
13 also relied upon discussion with local attorneys including extended discussion with  
14 attorney Will Kemp.<sup>33</sup>  
15  
16

17 It is acknowledged that a contingency fee is only appropriate when there is an  
18 express contingency fee agreement. However, the fact is that most Plaintiff product  
19

20 <sup>31</sup> In, *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev. 2012)  
21 (unpublished)the Supreme Court remanded a case to District Court and Ordered  
22 the court to hold an evidentiary hearing for a lien adjudication.

23 <sup>32</sup> Exhibit 15.

24 <sup>33</sup> Mr. Kemp is one of the best product liability attorneys in the United States. Mr.  
25 Kemp has obtained two trial verdicts over \$500M, one in a product case. Mr.  
Kemp was lead trial counsel in the MGM Fire Litigation, and has been appointed  
on numerous steering committees for multi-district tort litigations, including  
tobacco, breast implant, orthopedic screw, and pharmaceutical claims.

1 liability attorneys work on a contingency, sometimes as high as 45%. Mr. Simon  
2 arrived at a reasonable fee number of \$1,977,843.80 because it is in the low range of  
3 what a Plaintiff's product liability attorney would charge. It is a fair market price for  
4 the work performed. The fair market value, or market price, is an accepted method to  
5 calculate A fee. Restatement Third, The Law Governing Lawyers, §39.

7 Time sheets can be valuable to a determination, even when the court reaches a  
8 reasonable fee based on a market approach. The time sheets document work  
9 performed. The previously unbilled hours of the law office are attached at Exhibit  
10 19. At the prior rates paid, the total outstanding is \$692,120.00. The previous time  
11 sheets are attached at Exhibit 20. These billings do not contain hundreds of hours  
12 that could not be recovered.

14 Costs advanced need to be reimbursed. Outstanding costs are \$71,794.93.<sup>34</sup>  
15 The amount is slightly less than the amount in the lien. A billing was received on  
16 January 12, that demonstrated a refund of \$4,937.50 was due. The \$71,794.93 cost  
17 number reflects the expected refund.

19 Adjudication of an attorney lien may not be appropriate when a client claims  
20 malpractice occurred. *Argentina*, 216 P.3d at 788. Obviously, Mr. Simon did not  
21 commit malpractice, his efforts created a \$6.1M settlement for his clients. Instead,  
22 the clients may assert that the law office committed conversion by using a charging  
23

24  
25 <sup>34</sup> Exhibit 21; Memorandum of Costs.

1 lien.<sup>35</sup> The argument runs contrary to law. NRS 18.015(5) explicitly states an  
2 attorney does not breach a duty by pursuing a lien. Further, the declaration of David  
3 Clark Esq.,<sup>36</sup> is attached.<sup>37</sup> Mr. Clark explains that an attorney does not breach a  
4 contract or commit conversion by deposit of a settlement check into a trust account  
5 while asserting a lien for fees, because that is the process an attorney is supposed to  
6 follow when there is a fee dispute.  
7

8 **A. The charging lien is ripe for adjudication.**

9 The court has jurisdiction over the clients, the charging lien and the fee  
10 dispute. NRS 18.015; and, *Argentina*, 216 P.3d at 782-83.  
11

12 The charging lien has been perfected by proper service upon the clients.  
13 NRS 18.015 (3). The case is resolved<sup>38</sup>, money is held in a trust account, and the lien  
14 is ripe for adjudication.  
15  
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19 <sup>35</sup> Even if true, which it is not, the conversion claim might not be enough to stop  
20 adjudication. *Hallmark v. Christensen Law Office LLC*, 381 P.3d 618 (Nev.  
21 2012) (unpublished). In *Hallmark*, the Supreme Court remanded an adjudication  
22 claim and ordered the District Court to conduct an evidentiary hearing on a  
reasonable fee and "the allegations of billing fraud". If fraud can be addressed in  
an adjudication, then conversion probably can as well.

23 <sup>36</sup> Mr. Clark was Nevada State Bar Counsel and is intimately familiar with all the  
Rules of Professional Conduct and related issues.

24 <sup>37</sup> Exhibit 22.

25 <sup>38</sup> Pending completion of the Lange settlement. The closing documents are in the  
hands of the Lange attorney.



1       The law office requests an evidentiary hearing. If the court finds there is no  
2 express contract, then a reasonable fee, based on the market or some other approach,  
3 may be set by court under the *Brunzell* factors pursuant to NRS 18.015(2). If an  
4 express contract is found, then fees and costs are still due under the charging lien as  
5 demonstrated by the time sheets and the memorandum of costs.  
6

7       The complaint for conversion does not divest this court of jurisdiction over the  
8 parties, the lien or the fee. A charging lien is a creature of statute, and there is no  
9 exception to jurisdiction stated in the statute for a claim of conversion. To the extent  
10 an exception is noted in the case law, it is when there is a malpractice claim, which  
11 has not been brought, nor could be brought, for the amazing work in this case.  
12

13       A claim for conversion is contrary to law in any event. The law directs an  
14 attorney to place money in a trust account to adjudicate a lien if there is a fee dispute.  
15 That is exactly what occurred in this case.  
16

17       A breach of contract claim does not divest the court of jurisdiction. In fact, the  
18 statute contemplates that a lien adjudication can be freely used with other remedies,  
19 including a separate suit. NRS 18.015(7); and, *Argentina*, 216 P.3d 779.  
20

21       It is apparent that the complaint was filed to further the ulterior purpose of  
22 forum shopping the fee dispute and to stop adjudication of the charging lien by the  
23 Judge who knows the case best. For example, the complaint alleges Mr. Simon  
24 failed to provide a number certain for the amount in dispute (it is termed undisputed  
25

1 amount by the clients), however, the complaint was filed two days after Mr. Simon  
2 did just that via the amended lien. The complaint alleges conversion, yet it was filed  
3 before checks had been endorsed or deposited. And, the funds were placed in a  
4 special trust account that requires the signature of Mr. Vannah on any withdrawals,  
5 with all interest going to the client.  
6

7 Perhaps nothing exposes the nature of the complaint better than the clients'  
8 refusal to fire Mr. Simon, even though he stands accused of converting millions of  
9 dollars. The situation is absurd. Mr. Vannah is one of the top attorneys in this State.  
10 Mr. Vannah could review and approve the closing documents for Lange in well  
11 under an hour. After all, he has already provided advice to the client on settlement  
12 with Lange and on the abandonment of a contract based claim for attorney fees  
13 against Lange potentially worth over \$1M.<sup>39</sup> However, if Mr. Simon is fired, then he  
14 would no longer be limited to an hourly contract as the clients claim. *Gordon*, 324  
15 P.2d 234. Thus, to stop adjudication, the clients must claim something terrible, but  
16 still not fire Mr. Simon.  
17  
18

19 Lien adjudication is appropriate.  
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21  
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25 <sup>39</sup> Exhibit 10.

1           **B.     The *Brunzell* Factors**

2           A reasonable fee must be determined by use of the *Brunzell* factors. *Brunzell*  
3 *v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969). The *Brunzell* factors are:

- 4           1.     The qualities of the advocate;  
5  
6           2.     The character of the work to be done;  
7  
8           3.     The work actually performed; and,  
9  
10          4.     The result obtained.

11          The factors support a finding that a large reasonable fee is due Mr. Simon for  
12 his great work on the clients' case.

13          1.     Qualities of the advocate.

14          *Brunzell* expands on the "qualities of the advocate" factor and mentions such  
15 items as training, skill and education of the advocate. The C.V. of Mr. Simon is  
16 attached. (Exhibit 23.) Mr. Simon has been an active Nevada trial attorney for over  
17 two decades. He has several 7-figure trial verdicts to his credit, and an 8-figure  
18 settlement. Mr. Simon is a highly qualified advocate, deserving of a high fee.

19          2.     The character of the work to be done.

20          The character of the work to be done in the case was difficult and complex.  
21  
22          There were multiple parties and multiple claims. Affirmative claims by the clients  
23 covered the gamut from product liability to negligence, to recovery under a  
24 construction contract.  
25

1 Understanding and establishing proof of the product defect required technical  
2 knowledge. Establish economic loss from the flood required knowledge of real  
3 estate and finance.

4 This case demanded quality work of the highest order.

5  
6 3. The work actually performed.

7 The work actually performed was amazing. Mr. Simon was aggressive and  
8 successful in discovery, which lead to the disclosure of prior floods. Mr. Simon kept  
9 a tight hold on deadlines and the Court's trial order, which allowed the clients an  
10 opportunity to fully present their case, while placing the defense at risk of losing their  
11 main expert and having their answers struck.

12  
13 Mr. Simon found, retained and prepared experts on the product defect, and on  
14 the difficult and rare damage claim of real estate stigma. Most lawyers would not be  
15 able to even address a claim of damages from real estate stigma, let alone present an  
16 expert opinion sufficient to survive a *Hallmark* challenge.

17  
18 The time records submitted establish that Mr. Simon went the extra mile for  
19 his clients, responding to countless phone calls and emails, and going to great extent  
20 to prepare the case. For example, Mr. Simon flew to San Diego to meet with experts  
21 face to face in the airport for 8 hours. The phone, Go to Meeting or Skype, was not  
22 good enough for Mr. Simon. He knew the case required in depth and in person  
23 discussion, so that is what he did.  
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**CERTIFICATE OF SERVICE**

I CERTIFY SERVICE of the foregoing MOTION TO ADJUDICATE  
ATTORNEY LIEN OF THE LAW OFFICE OF DANIEL S. SIMON, P.C.;  
ORDER SHORTENING TIME was made by electronic service (via Odyssey) this  
~~23rd~~ <sup>24th</sup> day of January, 2018, to all parties currently shown on the Court's E-Service  
List.

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

**INVOICE****EDGEWORTH V. LANGE, ET AL.**

<b>Description</b>	<b>Time</b>
Initial Meeting with Client	1.75
Review file, Several discussions with Client	4.75
Demand letter to Defendant Lange	1.5
Representation Letters to Viking, Kinsale, Harris, Lange, Discussions with Client	4.25
Additional Letters to Defendants	1.5
Draft, Review, Revise, File and Serve Complaint and Amended Complaint, Affidavit of Service, Summons	6.75
Receive and Review Answers to Complaint	1.50
Prepare Early Case Conference, Stipulation to Amend Complaint, order from court and filing of same	2.25
Letter to Viking with Exhibits	3.25
Witness and Exhibit List, Redact and Prepare Privilege Log	7.50
8-9-16 prepare and file Request for Exemption from Arbitration, receive decision from court	.75
8/23/16 Inspection of Property, Meeting with Clients, Discussions with Client, Prepare and Serve Notice of Early Case Conference	3.75
9-27-16 ECC Conference with Lange Only	1.0
10-06-16 Conference Call with Expert Hasting	.25

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 3 of 12**

**AA000157**

Docket 77678 Document 2019-33421



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

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

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

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

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

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

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

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

10-07-16 Multiple Calls with Client, Ltrs and Emails with Def. Counsel, Fed ex Failed Head to Ivey Engineering, Prepare Affidavit of Chain of Custody	2.25
10-11-16 Receive, Review and Respond to Emails from Dalacas and Prepare and Send Letter to Dalacas, Phone Conference with Dalacas, Send Letters to Client and Dalacas Speak with Client	1.5
10-12-16 Receive and Review Dalacas Letter, Emails to Expert, Send Info to Client, Discussions with Client	1.0
10-13-16 Receive and Review Viking Emails, Response and Letter to Lange, Phone Call with Client, Rec New Emails from Dalacas Re: Inspection, Draft and Send Response to E-mails, Phone Call with Client	3.75
10-14-16 Rec/rev Dalacas Response, Forward to Client Rec /Review Emails and Attachments from Giberti, Print for File, Email Expert Re: Inspection, Email Viking, Review E-mails from Client	2.75
10-15-16 Discussions with Client, Ltr to Dalacas, Emails to Expert Re: Scheduling and Inspection	1.25
10-17-16 Review E-mails: Viking, Lange, Client: Prepare Responses, Discussions with Client	1.50
10-18-16 E-mail Exchanges Re: Inspection, Discussions with Client Meeting with Defense Counsel 2 <sup>nd</sup> Eec with Lange and Viking	1.25
10-19-16 Site Inspection, Discussions with Client	3.5

10-21-16 Receive and Review Letters from Lange/dalacas Re: Replacement of Heads, Draft and Send Letter to Dalacas Re: Inspection and Separate Ltr Re: Coverage Issues Receive Emails from Dalacas, Phone Conference with Client, Receive and Review Viking Installation Guide	2.25
10-23-16 Email exchanges from Dalacas and prepare and send response re: Replacement of Heads	.15
10-24-16 Phone Call with Dalacas re Replacement of Heads, Discussions with Client Re: Replacement Email exchanges from Dalacas Confirming Agreements of Replacement Involving Lange, Rimkus and Procedures	1.25
11-1-16 Emails from Viking Re: Extension for Ecc Materials, Response	.25
11-4-16 Email Exchanges from Client, Dalacas	.50
11-10-16 Receive and Review Viking Ecc Witness and Exhibit Lists and Documents, Lange's First Supplement to Ecc Disclosures, Review and Finalize Plaintiffs New Ecc Witness and Exhibits and Serve Same on All Parties	2.25
11-13-16 Receive and Review Kinsale Ins. Letter. Denial of Additional Coverage, Forward to Client	.50
11-17-16 Email Exchanges	.50
11-18-16 Draft and Circulate Joint Case Conference Report	1.5
11-22-16 Review Emails from Viking Re: Exhibits, Receive and Review Third Party Complaint & Cross-claim, Forward to Client	.50
12-1-16/12-2-16 Email Exchanges with Client and Lange Re: Final Plans/Inspection	.50
12-2-16 Receive and Review Lange Answer to Crossclaims	.50
Costs	\$3,982.45
Total Hours x's \$550 per hour (reduced)	70.15 hours

<b>Total Fees</b>	<b>\$38,582.50</b>
<b>Total attorneys fees and costs thru 11-11-16</b>	<b>\$42,564.95</b>

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

TELEPHONE (702) 364-1650

FACSIMILE (702) 364-1655

April 7, 2017

Brian Edgeworth  
1191 Center Point Drive  
Henderson, NV 89074

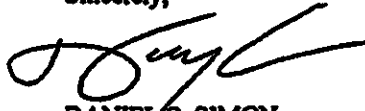
Re: Edgeworth Family Trust v. Lange Plumbing LLC et al.

Dear Mr. Edgeworth:

Enclosed please find the Invoice totaling \$46,620.69 for the period of 12-5-16 thru 4-4-17 with a copy of the Case Expense Summary showing costs.

If you have any questions or concerns regarding the foregoing please do not hesitate to contact my office.

Sincerely,



DANIEL S. SIMON

DSS/jan  
enclosures

AA000165

AA000057



**INVOICE**

**EDGEWORTH V. LANGE, ET AL.**  
**(12-5-16 thru 4-04-17)**

<b>Description</b>	<b>Time</b>
12-5-16 Email exchanges re: plans/final inspection, discussions with Dugan, emails	.50
12-13-16 - 12-16-16 Lange Billing, email exchanges, revise JCCR with Viking and send to all attorneys, client emails, discussion with expert Hastings re: billing & scope of work	1.75
1-4-17 - 1-9-17 draft, revise MSJ with exhibits, send to client for review, file & serve on Defendants	8.75
1-14-17 Revise JCCR - re-circulate, email, exchanges with lawyers, request mediation, advise client. Spoke to K. Hastings re: expert inspections, proposed plan, possible metallurgy engagement etc.	1.25
Review Opposition of Viking and Opposition of Lange to MSJ, meeting with Ashley Ferrel re: strategy and Reply and Discovery, Emails with Client, prepare Reply to MSJ, file and serve	6.25
1-20-17 draft Notices of Depositions & Subpoenas & serve Bernie Lange, Vince Dioro, Dustin Hamer, Tracy Garvey and Shelli Lange	2.5
1-23-17 Phone Call, Emails, Client Approval, Forward materials to Expert Zamiski	.75
1-24-17 Draft and Revise 30b6 deposition Notice and Subpoena and Serve	1.25
1-25-17 Research and analyze transferring case to business Court	.75

1-26-17 Review letter and Communication with Dalacas, reset depositions, prepare re-notice and Subpoenas, prepare objection to Viking Subpoenas to American Grating and Giberti and serve	1.25
2-9-17 Phone call with Pancoast re: MSJ, depositions and Subpoenas to American Grating & Giberti	.35
2-13-17 File review, prepare for depositions	2.25
2-13-17 Prepare & File Motion to Amend Complaint, Review Opposition, Prepare & File Reply	2.5
2-14-17 Deposition pre-conference with client, review file	3.25
2-15-17 Vince Dioro deposition 9:30am - 12:30pm	3.0
2-15-17 Notice of Deposition & Subpoena for Virginia Brooks, Jim Kreason, Re-Notice Deposition Bernie Lange, Shelli Lange, Vince Dioro (continuation), Dustin hamer	.75
2-22-17 Prepare and take Dustin Hamer's deposition	4.0
2-22-17 Re-notice Depositions for Vince Dioro, Shelli lange, Virginia Brooks, Jim Kreason and Serve	.50
2-28-17 - 3-1-17 meet client in Henderson, pick up file with Ms. Ferrel, review file, attend COR Depositions at Pancoast/Viking office in Summerlin. Meet with Pancoast at Simon Law downtown to review file for copying & production to Viking	2.25
3-7-17 Prepare and attend Motion for Summary Judgment and Motion to Amend Complaint: Dept 10	3.25
3-7-17 Prepare and File Motion for Summary Judgment as to Lange only	2.5

3-7-17 Prepare and Serve Offer of Judgment and Cover letter to Counsel	.75
3-8-17 Prepare and File Orders re: Motion for Summary Judgment and Motion to Amend Complaint, Prepare and File Amended Complaint, Notice of Entry of Orders	1.25
3-13-17 thru 3-15-17 Prepare and Take Depositions of Bernie Lange and Shelly Lange	6.5
3-20-17 Representation Letter to National Union Fire Ins. Co.	.75
3-21-17 Review Correspondence from Lange Requesting Motion for Summary Judgment (MSJ) be withdrawn; Review Kinsale Ins. File; Review Lange 4 <sup>th</sup> Supp to Ecc	1.25
3-23-17 Communication/emails with Defense Counsel Re: Stipulation to Continue MSJ Hearing, File and Serve	.50
3-24-17 Review Lange/kinsale Correspondence in Response to Offer of Judgment and Discovery with Client	.50
3-28-17 Notice of 30b6 Deposition and Subpoena and Serve	1.25
3-28-17 Review Written Discovery with Clients to Answer and Produce	1.25
4-4-17 Prepare and Serve 3 Day Notice of Intent to Take Default	.50
<b>Costs</b>	<b>\$11,365.69</b>
<b>Total Hours x's \$550 per hour (reduced)</b>	<b>64.10 hours</b>
<b>Total Fees</b>	<b>\$35,255.00</b>
<b>Total attorneys fees and costs thru 4-4-17</b>	<b>\$46,620.69</b>

Date: 04/07/2017

# Case Expense Summary

Law Office of Daniel S. Simon

Page: 1

Case Range: 2016024.00 to 2016024.00  
 Date Range: 01/01/80 to 12/31/20  
 Employee Range: 0 to 999

Case No.: 2016024.00 Edgeworth Trust

Date	Emp	Amount	Description
08/15/16	DS	40.00	Reno/carson Messenger Services - service fee - ck# 21730
nm/dd/yy	DS	281.60	wiznet filing fee complaint
		Amount:	
		\$ 3.50	
		Court Fee:	
		\$ 270.00	
		Card Fee:	
		\$ 8.10	
07/05/16	DS	70.00	KC Investigations - service - ck# 21892
08/24/16	DS	3.50	wiznet filing fee Amended Complaint
09/02/16	DS	3.50	wiznet filing fee Acceptance of Service for viking
09/08/16	DS	3.50	wiznet filing fee Acceptance of Service
09/15/16	DS	2500.00	Ivey Engineering - retainer fee - ck# 22110
10/07/16	DS	47.39	fed-ex to kevin hastings at Ivey engineering
11/17/16	DS	1032.96	Ivey Engineering, Inc. - inspection fee - ck# 22268
12/15/16	DS	1500.00	Ivey Engineering - retainer fee - ck # 22327
12/16/16	DS	3982.45	Costs paid from Edgeworth ck # 3571
01/11/17	DS	203.50	wiznet filing fee Plaintiffs Motion for Summary Judgment
01/30/17	DS	2500.00	Vollmer-Gray Engineering Laboratories - retainer fee - ck # 22420
02/13/17	DS	3.50	wiznet filing fee Plaintiffs Motion to Amend the Complaint on Order Shortening Time
nm/dd/yy	DS	3.50	wiznet filing fee Plaintiffs Motion to Amend the Complaint on Order Shortening Time
02/27/17	DS	3.50	wiznet filing fee Reply to Defendant Lange Plumbing, LLC's Limited Opposition to Plaintiffs' Motion to Amend the Complaint on Order Shortening Time
02/28/17	DS	3.50	wiznet filing fee Reply to All Defendants Opposition to Plaintiffs Motion for Summary Judgment
03/01/17	DS	307.75	copy charges for ecc production
		1231 x's .25 = 307.75	
03/02/17	DS	1379.50	Oasis Reporting - Vincent Diorio Volume I transcript - ck # 22503
nm/dd/yy	DS	1107.85	Oasis Reporting - Dustin Hamer transcript - ck # 22504
03/07/17	DS	3.50	wiznet filing fee for Affidavit of Service for Jim Kreason
nm/dd/yy	DS	209.50	wiznet filing fee for Plaintiffs' Motion for Summary Judgment Against Lange Plumbing, LLC, Only

Amount:

04/07/2017 09:20 AM  
 AA000169 AA000061

Date: 04/07/2017

# Case Expense Summary

Law Office of Daniel S. Simon

Page: 2

Date	Emp	Amount	Description
			\$ 3.50
			Court Fee:
			\$ 200.00
			Card Fee:
			\$ 6.00
mm/dd/yy	DS	3.50	wiznet filing fee Second Amended Complaint
03/10/17	DS	146.00	KC Investigations - service - ck # 22529
mm/dd/yy	DS	445.00	Beck Video Prod - Dustin Hamer video depo - ck # 22527
mm/dd/yy	DS	537.50	Beck Video Prod - Vince Diorio Vol 1 - video depo - ck # 22528
mm/dd/yy	DS	131.00	KC Investigations - service - ck # 22533
03/16/17	DS	3.50	wiznet filing fee order denying msj
03/20/17	DS	3.50	wiznet filing fee NEOJ msj
03/21/17	DS	3.50	wiznet filing fee Order Granting Plaintiffs Motion to Amend the Complaint
03/22/17	DS	3.50	wiznet filing fee for NEOJ order granting mot to amd complaint
03/23/17	DS	215.00	Beck Video Prod - Shelli Lange Vol 1 video depo - ck # 22558
mm/dd/yy	DS	354.00	Beck Video Prod - Bernie Lange video depo - ck # 22555
mm/dd/yy	DS	258.99	Ivey Engineering - Coordination and prepare evidence - ck # 22552
04/03/17	DS	923.65	Oasis Reporting - Shelli Lange transcript - ck # 22584
mm/dd/yy	DS	1113.45	Oasis Reporting - Bernard Lange depo transcript - ck # 22575
Case Total:		11365.69	
Totals:		11365.69	

Printed 04/07/2017 2:30 pm

AA000170

AA000062

**INVOICE SUMMARY**

**Edgeworth v. Lange and Viking**

Attorneys Fees for Daniel Simon for period 4-5-17 thru 7-28-17	\$72,077.50
Attorneys Fees for Ashley Ferrel, Esq. for period 4-5-17 thru 7-25-17	\$38,060.00
Costs Outstanding thru 7-28-17	<u>\$31,943.70</u>
Total Due to Law Office of Daniel Simon	\$142,080.20

**INVOICE**

**EDGEWORTH V. LANGE, ET AL.**  
**(4-5-17 thru 7-28-17)**

<b>Description</b>	<b>Time</b>
4/7/17 Reviewed Viking First ECC Supplement	1.5
4/7/17 Reviewed Plaintiffs 5 <sup>th</sup> ECC Supplement	.5
4-18-17 Reply to opposition of Lange and Reply to Joinder by Viking to Plaintiffs MSJ against Lange only	3.75
4-21-17 thru 4-25-17 T/C to expert Zamiski, T/C with client, emails to Dalacas, Kinsale and Pancoast	.50
4-21-17 thur 4-24-17 Finalize Answers to written Discovery, Meet with Client: Responses to Lange Interrogatories, Request to Produce.	3.25
4-23-17 Prepare Viking Deposition Notices and serve	1.25
4-25-17 Review Viking Answer to Second Amended Complaint and Third Party Complaint against Giberti, discussions with client, forward to Kinsale Lawyers	.75
4-25-17 Prepare and attend hearing on MSJ against Lange only	3.5
4-27-17 Prepare and serve Interrogs and request for admissions to Viking	2.35
4-27-17 Review client emails, prepare and serve notices of deposition and Subpoena for Don Cadden	.50
4-28-17- 5-1-17 Prepare and file motion to compel NRCP 30b6 witness of Lange and sanctions	5.25
4-28-17 – 5-1-17 Prepare and file motion for order to show cause to hold Kreason in contempt	2.75

5-1-17 EOCR 2.34 conference with Dalacas re: Testing of Sprinkler Heads	.35
5-1-17 – 5-3-17 Review file and prepare for Viking 30 b 6 corporate designee depositions.	3.25
5-1-17 Prepare and serve Notice of Deposition of Dan Cadden	.75
5-1-17 Reviewed Viking's 2 <sup>nd</sup> ECC Supplement	.5
5-2-17 prepare and serve 30b6 notice of deposition and subpoena for Viking Supply Net	1.75
5-3-17 Take deposition of Viking NRCP 30b6 designee on 13 topics	5.0
5-4-17 Prepare and Serve ECC of American Grating to all Parties and Supplement Of Edgeworth to all parties	2.75
5-5-17 Reviewed and served Plaintiffs 6 <sup>th</sup> Supplement	1.5
5-5-17 Prepare and serve Request for Admissions, Interrogs and Request for Production of Documents on Lange	5.25
5-5-15 Prepare and serve Request to Produce to Viking	1.35
5-5-17 Review Kinsale determination letter re: Giberti, Review contract, Insurance Declaration Page and Prepare and serve response	.75
5-8-17 Prepare, circulate and file with court: Stipulation and order to continue Kreason hearing to same date as Motion to Compel Lange	.50
5-8-17 Receive and Review Langes Motion to compel testing	.50
5-10-17 Review Privilege Log and Proposed Protective Order	.75
5-11-17 Prepare and serve Notice of Deposition of Eric Johnson and James Mason	.75



5-1-17 Review and sign order and return to Dalacas	.35
5-11-17 Discussion with client re: coverages for Giberti	.50
5-12-17 Review Affidavit of Service Giberti Construction	.15
5-15-17 prepare and file opposition to motion to compel testing	2.75
5-17-17 Reviewed Vikings 4 <sup>th</sup> Supplement (Rimkus Docs)	4.5
5-18-17 Receive and Review Viking 4 <sup>th</sup> Supp, discovery T/C with J. Pancoast re: Protective Order, New Dates for 30(b)(6) witness dates and testing	.75
5-23-17 Review Rimkus File; Receive and Review Lange Opposition to Motion for Order to Show Cause	2.25
5-25-17 Review Viking Answer to Lange Amended Cross Claim; E-mails coordinate testing	.75
5-30-17 Receive and Review Stipulated Protective Order And Serve; Review Viking Responses to RFA	1.25
6-01-17 Review Lange Opposition to Motion to Compel and Sanctions and Discuss Plaintiff's Reply w/Atty Ferrel; Review and Finalize Reply to Lange's Limited Opposition to Motion for Order to Show Cause to Hold Kreason in Contempt; Reviewed Viking Supplynet objection to Notice of 30b6 Subpoena	1.75
6-03-17 Review Protective Order final revisions; review Viking responses to written discovery	1.25
6-04-17 to 6-06-17 Prepare and take Deposition of Dan Cadden	3.75
6-05-17 to 6-07-17 Review File, Prepare and Attend Hearing On Motion to Compel Lange	3.5

6-06-17 Prepare and Serve Notice of Inspection upon Land Viking Supplynet	.50
6-08-17 Review and revise Subpoena on City of Henderson Re; Inspection Reports	.75
6-13-17 Conf with Expert Hastings re: Travel/Inspection Discussions with Client; Review Giberti Answer and Cross-Claims against Viking	1.25
6-14-17 Review Lange's responses to written discovery ; discuss with Ashley Ferrel	2.0
6-15-17 Review Lange's 6 <sup>th</sup> Supp./Privilege Log; Review Commissioners Report and Recommendations, Revise; Review final protocol for testing/forward to experts	1.75
6-15-17 Review Stipulation and Order to extend Discovery Deadlines, prepare and send e-mail Response objecting to extension	.50
6-19-17 Discussion with Kreason re: Deposition dates and Motion for Contempt; prepare and serve new Amended notice of deposition for Kreason; Emails to counsel for Kreason deposition	.50
6-19-17-6-21-17 Prepare and Attend Deposition of Vince Diorio (2 <sup>nd</sup> deposition) on 6-21-17	5.25
6-22-17 Attend Testing (converse consultants); inspection Viking Supply Net	6.0
6-28-17 to 6-29-17 Prepare and take Deposition of Kyle Mao	2.5
6-28-17 to 6-29-17 Prepare and take deposition of Bernie Lange (as Lange 30(b)(6))	5.75
6-30-17 E-mails to Viking Counsel re: production of Documents EDCR 2.34 and Review file with AF	.75

6-30-17 Prepare and Attend Deposition of Vince Diorio (2nd deposition)	3.5
7-09-17 Review Viking production – Emails re: claims of other failures	2.50
7-09-17 to 7-10-17 Prepare and take deposition of Erik Johnson	4.5
7-10-17 Review and Revise opp to motion to continue trial and extend discovery and supplement to motion for sanctions	1.75
7-11-17 to 7-12-17 Prepare for Plaintiffs Motion For Sanctions and Attend Hearing	1.75
7-11-17 Review appraisal report from Acore consultants	.75
7-18-17 to 7-19-17 Review Protective Order and Viking Supplement; Revise Objection to Confidentiality and Serve	.50
7-19-17 to 7-21-17 Review Viking prior discovery responses and review and serve Notice of 2.34 conference; confirm with parties	1.50
7-21-19 2.34 conference with Pancoast re: 1. Plaintiff's objection to Confidentiality under the protective order. 2. Notice of Deposition of your Expert, Robert Carlehan. we could not agree. 3. Vikings supplemental answers specifically and the need for a verification.	.75
7-21-19 Review and revise DCCR re: sanctions, review letters and emails from Pancoast	.25
7-24-17 Spoke to Client; Reviewed case with Ashley Ferrel; Review emails from client; Discussions with client; review file	4.25
7/25/17 prepare and attend hearing on Motion to Extend Discovery	1.75

<b>7/25/17 Discussions with Ashley Ferrel: Review and revise notice of Depositions: Rimkus, Zuric &amp; Viking; Discussion with Client; review Vikings Supplemental Answers to Interrogatories, Letter from Pancoast</b>	<b>2.50</b>
<b>7-26-17 Discussions with client; Review files, emails; prepare and serve Request for Production and Interrogatories to Viking</b>	<b>1.75</b>
<b>7/28/17 Review Supplemental Joint Case Conference Report</b>	<b>.5</b>
<b>Costs</b>	<b>\$31,943.70</b>
<b>Total Hours x's \$550 per hour (reduced)</b>	<b>131.05</b>
<b>Total Fees</b>	<b>\$72,077.50</b>
<b>Total attorneys fees and costs thru 7-28-17</b>	<b>\$104,021.20</b>

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(4-5-17 thru 7-25-17)**

DATE	DESCRIPTION	TIME
4/7/17	Review Viking's First ECC Supplement	1.5
4/7/17	Prepared Plaintiffs 5 <sup>th</sup> ECC Supplement	0.5
4/8/17	Review Lange's Opposition to MSJ and make notes for Reply	0.5
4/11/17	Drafted & Filed Notice of Intent to Take Default on Lange Plumbing, LLC	0.5
4/13/17	Drafted and served 2 <sup>nd</sup> Amended Notice of Viking 30b6 Notice & SDT	0.5
4/17/17	Reviewed Viking Joinder to Lange's Opposition to Plaintiff's MSJ	0.5
4/17/17	Pulled cites and exhibits for Reply to MSJ	2.0
4/22/17	Drafted Written Discovery to Viking Corporation and SupplyNet for DSS review	5.75
4/27/17	Served Written Discovery on Viking entities	0.5
5/1/17	Review of Viking's 2 <sup>nd</sup> ECC Supplement	0.5
5/1/17	Drafted and Serve Plaintiffs' Motion for order to show cause and Compel James Kreason to Appear for Deposition	3.0
5/3/17	Attended Viking NRCP 30(b)(6) Deposition	5.0
5/5/17	Prepared and served Plaintiffs' 6 <sup>th</sup> ECC	1.5
5/5/17	Email to Sia re employees of Lange that Brandon refers to in deposition; Review deposition and cite transcript for Delucas	0.75
5/15/17	Drafted Opposition to Lange's Motion to Compel Sprinkler heads in Las Vegas for testing	3.5
5/17/17	Prepare and attend Hearing regarding Lange's Motion to Compel Sprinkler Heads and Testing with DC Bulla	3.5
5/17/17	Reviewed Viking's 4 <sup>th</sup> ECC Supplement (Rinkus Docs)	4.5
5/17/17	Drafted Letter to DC Bulla re: moving hearings	0.35
5/18/17	Reviewed Lange Plumbing's Limited Opposition to Motion to Compel Kreason	0.5
5/23/17	TC Erik Johnson re: scheudling depo	0.35
5/24/17	Collected and sent documents to expert (Hastings)	1.35
5/30/17	TC & email correspondence with Don Koch to discuss being climate expert in case	1.5
6/1/17	Reviewed SupplyNet's Objection to Subpoena for 30(b)(6) deposition	0.5
6/1/17	Drafted Reply to Lang's Limited Opposition to Motion to Compel Kreason for DSS to review	2.75
6/1/17	Amended and served SupplyNet 30(b)(6) Deposition notice	0.35

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(4-5-17 thru 7-25-17)**

6/2/17	Inspection at Edgeworth house with Viking weather expert	2.0
6/2/17	Reviewed Lange Opposition to Motion to Compel Deposition of Lange 30(b)(6) & for Sanctions	0.75
6/3/17	Reviewed Viking's responses to Plaintiffs' written discovery	1.5
6/5/17	Finalized and Served Reply to Lange's Opposition to Plaintiffs' Motion to Compel Depo of Lange 30(b)(6)	2.0
6/5/17	Reviewed and submitted changes to protective order for DSS to review	0.75
6/6/17	Discussion with all counsel re deposition dates for Johnson	0.5
6/7/17	Prepare and attend hearing- Motion to Compel the Deposition of Lange 30(b)(6) & Sanctions in front of Bulla	2.5
6/7/17	Attended Dan Cadden Deposition	1.75
6/8/17	Pulled information from assessors page for houses provided by client (used in COR to Henderson Building department	2.35
6/8/17	Reviewed and discussed testing protocol with DSS	0.5
6/9/17	TC Erik Johnson re: re-scheduling depo	0.35
6/9/17	Amended and served depo notice of Erik Johnson	0.35
6/9/17	Drafted and served deposition notice for Kyle Mao	0.5
6/9/17	Drafted and served Notice of Lange 2 <sup>nd</sup> NRCP 30(b)(6)	1.0
6/9/17	Drafted and served notice of COR for City of Henderson Building Department	1.0
6/10/17	Drafted DCCR for 6/7/17 hearing for DSS review	1.5
6/12/17	Drafted and served Amended notice of SupplyNet Warehouse Inspection	0.50
6/12/17	Reviewed Lange Plumbing's responses to written discovery; Discuss with DSS	2.5
6/13/17	Prepared for Vince Diorio continued deposition for DSS	2.5
6/13/17	Compiled and sent depositions to experts	0.75
6/14/17	Compiled all prior pleadings and depositions and drafted Letter to Nunez re: prior pleadings	2.5
6/14/17	Review Lange Plumbing's 6 <sup>th</sup> ECC Supplement	2.5
6/19/17	TC with Don Koch re: inspection	0.5
6/19/17	Reviewed documents provided by Pancoast prior to formal supplement and sent to our experts prior to inspection (material specifications and drawings)	1.25
6/20/17	Served Plaintiffs' response to Giberti's Request for Prior pleadings	0.35

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(4-5-17 thru 7-25-17)**

6/20/17	Letter to DC Bulla to move hearings	0.35
6/20/17	Reviewed Viking's 5 <sup>th</sup> ECC Supplement	2.75
6/20/17	Reviewed Lange's 7 <sup>th</sup> ECC Supplement	0.75
6/20/17	Email correspondence with client re location of heads for destructive testing	0.5
6/22/17	Drafted and Served Amended NRCP 30(b)(6) Deposition Notice for Viking Supplynet	0.35
6/22/17	Destructive Testing	7.0
6/22/17	Site Inspection of Viking SupplyNet Warehouse	1.0
6/23/17	Reviewed and forwarded NestEnergy History to experts	0.5
6/26/17	Prepared documents for Kreason deposition	1.25
6/27/17	Attended Kreason Deposition	1.5
6/28/17	Reviewed depositions and documents in preparation for Kyle Mao deposition	2.0
6/28/17	TC with Diana from City of Henderson re COR deposition and document request	0.4
6/28/17	Reviewed Giberti's Motion to Extend Discovery	0.5
6/28/17	Reviewed Viking's Joinder to Giberti's Motion to Extend discovery	0.35
6/29/17	Attended Kyle Mao Deposition	2.5
6/29/17	Attended Bernie Lange NRCP 30(b)(6) deposition	3.0
6/30/17	Drafted and served notice of deposition for James Cameron	0.5
6/30/17	Drafted and served notice of deposition for Raul De La Rosa	0.5
6/30/17	Drafted and served notice of deposition for Robert Carnahan	0.5
7/6/17	Reviewed Viking's 6 <sup>th</sup> ECC Supplement (Emails, Analyses, Design Schematics)	4.0
7/7/17	Reviewed Vikings 6 <sup>th</sup> ECC Supplement (Emails, returns/complaints and created a summary)	4.5
7/7/17	Reviewed documents from the City of Henderson Building department and create summary chart for Viking production	3.0
7/10/17	Drafted Opposition to Giberti's Motion to Extend Discovery on OST	3.5
7/10/17	Attended part of Deposition of Erik Johnson	2.0
7/11/17	Drafted Opposition to Giberti's Motion to extend discovery for DSS review	2.5
7/11/17	Drafted and finalized supplement to Motion to compel and request for sanctions	2.35
7/11/17	Amended and served amended notice deposition of Robert Carnahan	0.35

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(4-5-17 thru 7-25-17)**

7/12/17	Attended Status Check w/ Bulla re: attorney's fees	1.5
7/12/17	Compiled and served Plaintiffs 7 <sup>th</sup> ECC Supplement	1.35
7/13/17	Picked up sprinklers at Converse Consulting, took to Fed-Ex and Shipped to Vollmer Gray Labs	1.75
7/13/17	Drafted Affidavit for Chain of Custody of Sprinklers	0.5
7/13/17	Drafted Objection to Confidentiality of Viking Document Production for DSS to review	1.5
7/14/17	Drafted and filed 2 <sup>nd</sup> Supplement to Plaintiffs' Motion to Compel (fees for 2 <sup>nd</sup> 30b6 Lange depo)	1.0
7/14/17	TC with Sia re: sanctions	0.35
7/17/17	Letter to Sia re: sanctions and Rule 11 motion; emails resolving amount of sanctions	0.5
7/17/17	Review Giberti's Motion to Continue Discovery deadlines in front of District Court Judge -	0.5
7/17/17	Drafted and served Opposition to Giberti's 2 <sup>nd</sup> Motion to Extend discovery deadlines	0.5
7/17/17	Reviewed Viking's Supplemental Responses to Plaintiffs' Interrogatories	0.75
7/18/17	Drafted 2.34 Notice of 2.34 conference with Viking Defendants for deficient discovery responses for DSS to review	0.5
7/25/17	Discussions with DSS and client; draft Notice of Depositions for DSS to review; Rimkus; Zuric and Amended Notice of Viking deposition	3.25
7/25/17	Attend hearing on Motion to Extend Discovery in Dept 10	1.25
<b>TOTAL HOURS x \$275 per hour (reduced)</b>		<b>138.4</b>
<b>TOTAL FEES</b>		<b>\$38,060.00</b>



**INVOICE SUMMARY**

**Edgeworth v. Lange and Viking**

Attorneys Fees for Daniel Simon for period 7-31-17 thru 9-19-17	\$119,762.50
Attorneys Fees for Ashley Ferrel, Esq. for period 7-31-17 thru 9-19-17	\$60,981.25
Attorneys Fees for Benjamin J. Miller, Esq. for period 8-16-17 thru 9-15-17	\$2,887.50
Costs Outstanding thru 9-19-17	<u>\$71,555.00</u>
Total Due to Law Office of Daniel Simon	\$255,186.25

**INVOICE FOR DANIEL S. SIMON**

**EDGEWORTH V. LANGE, ET AL.  
(7-31-17 thru 9-19-17)**

Date	Description	Time
8-2-17	Telephone Conference with Pancoast 2.34 Viking Production, Review Viking 7 <sup>th</sup> Supp ECC, Review File and Draft Motion to Compel, Discussions with Client, Review Letter from Pancoast Dated 8-1-17 Re: Subpoenas	5.75
8-3-17	Draft Opposition to Motion for Protective Order	4.25
8-4-17	Revise Motion to Compel and Opposition to Motion for Protective Order; Review 6 <sup>th</sup> & 7 <sup>th</sup> Viking Supp	6.25
8/7/17	Review File with Client and AF, Revise Motion to Compel. Disc. with Fred Knez; Review 6 <sup>th</sup> & 7 <sup>th</sup> Viking Supp	6.75
8-8-17	Review File, Multiple Discussions with Client and AF, Expert Zamiski Revise Motion to Compel	6.25
8-9-17	Travel to San Diego and Back to LV; Discuss Case with Ivey Engineering.	8.0
8-10-17	Revise Motion to Compel and Opposition to Viking Motion for Protective Order, Review File, Discussions with Client and AF; Review 6 <sup>th</sup> & 7 <sup>th</sup> Viking Supp	6.25
8-11-17	Review and Revise Designation of Experts and Reports, Discussions with Hastings and Client, Review E-mails Draft Discovery Requests	5.25
8-12-17	Revise Opp to Motion for Protective Order and Motion to Compel	3.50
8-13-17	Review and Revise Notice of Depositions and Inspection for Lansing, Mi; Review 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> & 9 <sup>th</sup> Viking Supp	3.75
8-14-17	Review File, Revise Mot to Compel	4.5
8-14-17	Review and Revise Designation of Experts	1.75
8-14-17	Telephone Conference with Peter Poland, Esq. Re: 2.34 Conference/Rinkus Subpoena	.5
8-14-17	Review and Revise Motion to Amend Complaint	1.25
8-14-17	Review File, Emails, Review Revise Written Discovery	1.75
8-15-17	Review and Revise Notice of Depositions; Review 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> & 9 <sup>th</sup> Viking Supp	2.25

8-15-17	Review Defendants Expert Designations/reports; Review 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> & 9 <sup>th</sup> Viking Supp	3.75
8-15-17	Review File, Revise and Finalize Motion to Compel and Opposition to Motion for Protective Order	2.75
8-15-17	Review Letter from Viking Re: Violation of Protective Order, Discuss with AF	.5
8-15-17	Discussion with Client Re: Expert Reports	.5
8-15-17	Discussion with AF Re: Experts - Witnesses	.5
8-15-17	Discussion with Don Koch; Review 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> & 9 <sup>th</sup> , Viking Supp	3.25
8-15-17	Discussion with Client and AF	1.75
8-15-17	Draft Motion to Compel Rinkus	2.25
8-16-17	Discussions with Client and AF	2.25
8-21-17	Finalize Reply to Opp to Motion to Compel; Client Emails, Pancoast Emails; Discussions with Client and AF; Review File	6.75
8-22-17	Review File with AF; Call Several Witnesses/lawyers; Review Req for Production No. 4; Prepare for Hearing on 8-23-17	2.75
8-23-17	Attend Hearing on All Discovery Matters	4.0
8-24-17	Meet with Expert Pomerantz; Review 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> , 11 <sup>th</sup> & 12 <sup>th</sup> Viking Supp	4.25
8-25-17	Review and Revise Deposition Notices and Subpoenas for Tyco and Reliable; Review 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> , 11 <sup>th</sup> & 12 <sup>th</sup> Viking Supp	3.25
8-28-17	Mortorano Deposition Prep	4.0
8-29-17	Meet with Giberti and Nunez; Discussion with Client	1.5
8-29-17	Discussion with AF; Review Expert Binder; Disc. FSS Court Docket	.75
8-30-17	Depo Prep for Mortorano (9:30-4:00); Discussion with Hastings, Zamiski and Client	7.5
8-30-17	Depo Prep Continued for Mortorano	1.5
8-31-17	Depo Prep Continued for Mortorano	2.0
8-31-17	Take Depo of Mortorano	8.0
9-1-17	Discussions with Zamiski / AF strategy; pull hot docs for experts	1.75
9-4-17	Review and Revise UL 30b6 Notice; Review File	3.25

9-5-17	Discussions with Michael Bartlett, atty for Zurich re: 2.34 got Notice of Depo/Subpoena	.50
9-5-17	Review File with AF; Gather Carnahan exhibits; Review File	2.25
9-6-17	Depo Prep	5.0
9-6-17	Depo Prep and travel time for carnahan depo	6.0
9-7-17	depo prep and carnahan depo	10.00
9-8-17	File Review, Discussion with Client, Review and Revise NRCP 30b6 Depo Notice of UL, Review and Revise Motion to Exclude Rosenthal	5.25
9-9-17	Review and Revise NRCP 30b6 Depo Notice of Viking Group, Draft Request for Admissions to Viking (4 <sup>th</sup> Set); Review and Revise Interrogatories and Request for Production to Viking (4 <sup>th</sup> Set); Revise MIL to Exclude Rosenthal	5.25
9-10-17	Revise MIL to Exclude Rosenthal	3.75
9-11-17	Conference Call with Zamiski; Discussion with Client; AF; Pre-depo with Angela Edgeworth; Call with K. Hastings; File Review	4.75
9-12-17	Finalized All Discovery to Defendants Viking; Opposition to Vikings Emergency Motion to Compel; Reply to Defendants Opposition to Plaintiffs Motion to Amend to Add Viking Group	5.25
9-13-17	Prepare and Attend Hearing on Defendants Motion to Compel; Discuss with Client and Expert Koch; Review Pancoast Letter Re: Viking Never Tested; Revise MIL to Exclude Rosenthal; Discuss with AF	6.25
9-14-17	Meeting with Brian Gorelli and Crane Panerantz and Travel Time; Review and Revise Reply to Non-party Rimkus Opposition to Plaintiffs Motion to Compel	4.75
9-15-17	File Review	4.25
9-15-17 thru 9-17-17	Discussion with Hastings, Client and AF; Revise Motion to Compel Carnahan; Emails	3.5
9-18-17	Review and Revise Rebuttal Expert Designation; Revise MIL to Exclude Rosenthal and Motion to Compel Carnahan; Attend Angela Edgeworths Deposition	7.25
9-19-17	Prepare and Attend Motion to Amend to Add Viking Group	2.0
9-19-17	Revise and Finalize Motion to Compel Carnahan and Rosenthal	2.25



**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(7-31-17 thru 9-19-17)**

DATE	DESCRIPTION	TIME
8/7/17	Review file with DSS and met with client	6.25
8/7/17	Review Notice from Discovery Commissioner re: DCRR from 7/12/17	1.5
8/8/17	Review file and discussions with DSS and client	6.0
8/8/17	Review Viking's Motion for Protective Order No. 2	0.5
8/8/17	Review Viking's 7 <sup>th</sup> Supp	2.0
8/9/17	Draft Motion to Amend Complaint and Draft proposed amended complaint	5.0
8/9/17	Review Viking's 7 <sup>th</sup> Supp	4.5
8/10/17	Discussions with DSS and client	2.5
8/10/17	Review Viking's 7 <sup>th</sup> and 8 <sup>th</sup> Supp	5.5
8/11/17	Draft Designation of Experts and Reports	0.5
8/11/17	Review Viking's 9 <sup>th</sup> Supplemental Disclosure	2.75
8/11/17	Review of file and draft notices of deposition for Viking employees and Notice of Inspection	2.0
8/12/17	Revise Opposition to Motion for Protective Order	2.25
8/12/17	Drafted Plaintiffs' 8 <sup>th</sup> ECC Supplement	1.0
8/14/17	Draft and serve re-notice of COR for Rimkus Consulting; drafted email and sent via email and fax to Peter Polland	0.5
8/14/17	Review 7 <sup>th</sup> and 8 <sup>th</sup> Viking ECC Supplements	3.25
8/14/17	Drafted Written Discovery to Viking Corporation and SupplyNet for DSS review	2.0
8/14/17	Finalized and served Plaintiffs' 3 <sup>rd</sup> Set for Rogs, 3 <sup>rd</sup> Set of RFPs, and 2 <sup>nd</sup> set of RFAs	0.75
8/14/17	Finalized and serve Plaintiffs' Expert Disclosure	0.5
8/15/17	Review letter from Viking re: violation of protective order and discuss with DSS	0.5
8/15/17	Review Viking, Lange and Giberti's designation of expert witnesses and reports	2.5
8/15/17	Discuss expert witnesses with DSS	2.25
8/15/17	Finalized and served Plaintiffs Opposition to Motion for Protective Order	1.5
8/15/17	Served Notice of Deposition and SDT on Viking employees in Michigan and Notice of Inspection	1.5
8/16/17	Review Lange's 9 <sup>th</sup> Supplemental ECC Disclosure	0.5
8/16/17	Revise Motion to compel Rimkus	2.0
8/16/17	Discussions with DSS and client	2.25
8/16/17	Review Viking's 10 <sup>th</sup> ECC Supplement	1.5
8/16/17	Served Plaintiffs' 8 <sup>th</sup> ECC Supplement	0.25
8/17/17	Finalized and served Plaintiffs' Motion to Compel Viking	6.25
8/18/17	Review Viking's 11 <sup>th</sup> and 12 <sup>th</sup> ECC Supplement	3.25

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(7-31-17 thru 9-19-17)**

8/18/17	Review Viking's Reply to Motion for Protective Order No.1 & No. 2	1.0
8/18/17	Finalize and Serve Plaintiffs' Motion to Compel Rinkus Consulting	1.25
8/19/17	Review Viking's Opposition to Plaintiffs' Motion to Compel	0.25
8/19/17	Draft reply to Motion to Compel	5.5
8/21/17	Finalize and serve Plaintiffs' Reply to Viking's Opposition for the Motion to Compel Viking	1.5
8/21/17	Review file, discussions with DSS and client	3.0
8/21/17	Revise and finalize the 7-12-17 DCCR; send follow up emails to all counsel for review and signature	2.25
8/22/17	Review of file with DSS; called several witnesses/lawyers from emails produced by Viking; Prepare for hearing with Bulla	4.0
8/22/17	Finalize and serve Plaintiffs 4 <sup>th</sup> set of RFPs to Viking	0.5
8/23/17	Attend Hearing on Motion to Compel and Viking's 2 Motions for Protective Orders	4.0
8/24/17	Review file and compile information for expert Pomerantz	1.5
8/24/17	Draft and serve Plaintiffs' 3 <sup>rd</sup> set of RFAs to Viking	0.5
8/25/17	Draft deposition notices and SDT for NRCP 30(b)(6) of Reliable and Tyco	2.0
8/25/17	Review Fraud Binder, scan and create table of contents	1.5
8/27/17	Review file for computation of damages	3.5
8/28/17	Martorano Deposition Prep	4.0
8/28/17	Reviewed Viking's Responses to 2 <sup>nd</sup> RFP and 2 <sup>nd</sup> Rogs	0.5
8/29/17	Discussions with DSS re Martorano Depo and prep	0.75
8/29/17	Draft Harold Rodgers Depo Notice and SDT	0.5
8/29/17	Research FSS & Thorpe dockets and pull documents	5.0
8/30/17	Depo Prep for Martorano	5.0
8/30/17	Review file for UL documents produced by Viking and draft Notice of NRCP 30(b)(6) of UL	3.0
8/30/17	Review Vikings' Second Supplemental Responses to plaintiffs' Second Set of Rogs and RFPs; Review Viking's NRCP 45 objection to the SupplyNet SDT	1.0
8/31/17	Attend Martorano Deposition	8.0
9/1/17	Discussions with DSS re strategy and pull hot docs for experts	5.0
9/1/17	Phone Conference with Michael Bartlett re: Zurich Subpoena	0.75
9/1/17	Review Viking's Motion to Associate Counsel re: Kenton Robinson and Jay McConnell	0.50

**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(7-31-17 thru 9-19-17)**

9/1/17	Finalize and Serve Deposition Notice, SDT, Application and Comm to Take Out of State Depo	0.5
9/3/17	Draft and Finalize Limited Opposition to Viking's Motion to Associate Counsel	0.5
9/3/17	Phone Conference with Michael Bartlett re: subpoena and notice for Zurich Insurance Company	0.5
9/3/17	Finalize and serve amended notice of Depo for Zurich American Insurance Company, SDT, send via email and also send out to process server	0.5
9/5/17	Review Viking's Opposition to Plaintiffs' Motion to Amend	1.0
9/5/17	Draft and serve Plaintiffs' 9 <sup>th</sup> ECC Supplement	1.5
9/5/17	Prepare for Carnahan Depo	3.0
9/6/17	Review DCRR from the 8/23/17 Hearing; Listen to audio of 8/23/17 hearing; send revisions of DCRR to Pancoast	3.5
9/6/17	Prepare for Carnahan Depo	2.75
9/6/17	Review Non-Party Rimkus' Opposition to Plaintiffs' Motion to Compel	0.5
9/6/17	TC with Janet re: 2.34 of inspection of home and ECC production organization	0.5
9/7/17	Review Carnahan documents produced on morning of his deposition from Viking	1.5
9/7/17	Attended Carnahan Deposition telephonically	4.5
9/8/17	Revise Notices for Viking employees and Notice of Inspection of Viking	1.0
9/8/17	Draft 4 <sup>th</sup> set of RFPs and Rgs to Viking	1.75
9/8/17	Review revised DCRR from 8/23/17 hearing and discussion with Janet re: additional changes	0.5
9/8/17	Revise UL Notice and SDT	0.5
9/8/17	Draft Motion to Strike Viking's Answer	3.5
9/9/17	Researched cases cited by Defendants and Drafted Reply to Motion to Amend Complaint	3.5
9/11/17	Revised and finalized Reply to Motion to Amend Complaint to Add Viking Group	3.0
9/11/17	Met with DSS and client regarding file	1.5
9/11/17	Review revised DCRR from 8/23/17 hearing and send email to Janet regarding additional revisions	1.5
9/11/17	Review ECC Supplements by all parties to identify Gilberti job file	1.0
9/12/17	Drafted and served Plaintiffs' Opposition to Viking's Emergency Motion to Compel Home Inspection	5.0
9/12/17	Drafted Reply to Non-Party Rimkus' Motion for Protective Order	3.25



**INVOICE FOR ASHLEY M. FERREL**  
**EDGEWORTH v. LANGE PLUMBING, ET AL.**  
**(7-31-17 thru 9-19-17)**

9/13/17	Prepare and Attend Hearing on Defendants' Motion to Compel Home Inspection; Review Panocast letter re: UL and discuss with DSS	6.25
9/13/17	Finalized and served NRCP 30(b)(6) Notice of Reliable, Tyco, Viking Group, UL, Amended Notice of Harold Rodgers, Amended Notices and SDT of Viking employees in Michigan and amended notice of inspection	2.5
9/14/17	Discussions with DSS and experts	2.0
9/14/17	Finalize and serve Plaintiffs' Reply to Non-Party Rimkus' Opposition to Plaintiffs' motion to Compel	2.75
9/15/17	Review Viking's Responses to Plaintiffs' 2 <sup>nd</sup> Set of RFAs, 3 <sup>rd</sup> set of RFPs, and 3 <sup>rd</sup> set of Rogs	1.0
9/15/17	Draft Rebuttal Expert Disclosure and get disclosure documents from experts	1.0
9/15/17	Serve Notice of Telephonic 2.34 Conference with Viking re written discovery deficiencies	0.25
9/15/17	Review 2 <sup>nd</sup> half of Carnahan deposition (in rough)	2.0
9/15/17	Met with Tyler Ure to go over Giberti/American Grating file at Simon Las	0.5
9/15/17	Draft Notice of Deposition and SDT for Nate Wittasek	0.5
9/17/17	Reviewed and revised Motion to Compel Carnahan; responded to client and DSS emails	4.0
9/18/17	Reviewed and revised Motion to Compel Carnahan	3.25
9/18/17	Reviewed and revised MIL to Exclude Rosenthal	1.5
9/18/17	Revised and served Rebuttal Expert Disclosure	1.25
9/18/17	Reviewed DC Transcript from 8/23/17	0.5
9/19/17	Prepared and attended hearing for Motion to Amend Complaint to Add Viking Group, Inc.	1.5
9/19/17	Draft and serve notice to vacate deposition of James Cameron	0.25
9/19/17	TC with Fred Kenez re: protective order in FSS and Thorpe litigation; TC with Robinson re: 2.34 of insufficient discovery responses; TC with Michael Bartlett and Sinnott re: Motion to Compel Zurich; Discussion re: Motion to Compel with DSS	1.5
9/19/17	Finalized and sent Motion to Compel Carnahan over to for OST signature	1.5
9/19/17	Finalized and sent MIL to Exclude Rosenthal over to Judge Jones for OST signature	1.25
<b>TOTAL HOURS x \$275 per hour (reduced)</b>		<b>221.75</b>
<b>TOTAL FEES</b>		<b>\$60,981.25</b>

**EDGEWORTH V. LANGE, ET AL.**  
**(8-16-17 thru 9-15-17)**

Date	Description	Time
8/16/17	Legal Research of Damages Recoverable under Breach of Contract and Products Liability, Including Economic Loss, Doctrine and Consequential Damages	1.5
8/16/17	Draft Jury Instructions on Product Liability Claims	1.5
8/16/17	Draft Jury Instructions on Breach of Contract Claims	2.0
8-16-17	Draft Jury Instructions on Property Damage Claims	.5
8-16-17	Draft Jury Instructions on Punitive Damage Claims	1.5
8-16-17	Draft General Jury Instructions	.5
9-14-17	MIL draft to Exclude Expert Rosenthal	3.0
	Total Hours x's \$275 per hour (reduced)	10.5
	Total Fees	\$2,887.50
	Total attorneys fees and costs thru 9-15-17	\$2,887.50

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

**Supreme Court Case**

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

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 4 of 12**

**AA000192**

Docket 77678 Document 2019-33421

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

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

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

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

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

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

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

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

## FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

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

From: Brian Edgeworth [mailto:brian@pediped.com]

Sent: Tuesday, August 22, 2017 5:44 PM

To: Daniel Simon <dan@simonlawlv.com>

Subject: Contingency

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

I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.

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

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

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



**INVOICE FOR DANIEL S. SIMON**  
**EDGEWORTH v. LANGE, ET AL.**

<b>Date</b>	<b>Description</b>	<b>Time</b>
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 depos	.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 depos 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 depos 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 depo	.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 Depos 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 <sup>th</sup> 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 <sup>rd</sup> 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 <sup>rd</sup> 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 <sup>nd</sup> Supp	.50
5/2/17	Email chain with AF requesting Viking 30(b)(6) notice, 3 <sup>rd</sup> 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 <sup>rd</sup> 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 <sup>th</sup> 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



5/5/17	Receive, Review and Analyze Email from Client with Attachments; Email to AF	.50
5/5/17	Receive, Review and Analyze Email from Kinsale	.40
5/5/17	Draft and Send Email to M. Giberti with Attachment	.40
5/5/17	Email Chain with JP, AD, AF	.25
5/5/17	Draft and send email to AF re Bullock re 3 <sup>rd</sup> party complaint	.20
5/5/17	Draft and send email to AF with attachments that were forwarded from client re gate entries	.25
5/8/17	Receive, Review and Analyze Email from Client	.25
5/8/17	Email Chain with Client	.50
5/8/17	Draft and Send Email to JO with Attachment; Re: Lost Basis Summary and Attachments	.25
5/8/17	Email Chain with AD, AF, JP; Re: Order Denying MSJ	.35
5/8/17	Email Chain with AD, JP, JW; Re: SAO to Continue Hearing on Plaintiff's Motion for Order to Show Cause	.15
5/8/17	Email Chain with Client	.75
5/9/17	Draft and send email to AF re reference to Edgeworth house	.15
5/10/17	Email Chain with JP, AF, AD, JR; Re: Site Inspection	.50
5/11/17	Email chain with AF re Mason depo scheduling	.15
5/11/17	Email chain with AF re weather expert	.15
5/11/17	T/C with Expert Hastings	.25
5/11/17	Receive, Review and Analyze Email from Client	.50
5/11/17	Receive, Review and Analyze Email from Client with Attachments; Receive, Review and Analyze Email from M. Giberti	1.25
5/11/17	Draft and Send Email to Client Re: Attorney Referral	.25
5/11/17	Draft and Send Email to Client	.50
5/11/17	Draft and Send Email to Client with Attachment	.20

5/11/17	Email Chain with GZ; Re: Testing Dates and Travel to Las Vegas	.50
5/12/17	Email Chain with JP, AD, AF; Re: Protective Order	.15
5/12/17	Receive, Review and Analyze Email from Client	.25
5/12/17	Draft and Send Email to Client	.15
5/12/17	Draft and Send Email to Client with Attachment	.25
5/12/17	Email Chain with Client	.20
5/12/17	Receive, Review and Analyze Email from M. Giberti with Attachment	.40
5/12/17	Receive, Review and Analyze Email from M. Giberti with Attachment	.40
5/12/17	Draft and Send Email to M. Giberti	.25
5/15/17	Email Chain JP; Re: PMK Conflict	.15
5/15/17	Email chain with AF re Opp to Lange's motion to compel sprinkler heads	.15
5/16/17	Receive, Review and Analyze Email from Client	.25
5/16/17	Draft and Send Email to Client	.15
5/16/17	Receive, Review and Analyze Email from M. Giberti	.50
5/17/17	Email Chain with JP, AD, AF, JR, TJ; Re: Expert Availability and Extensions for Briefing	.25
5/18/17	Email Chain with AD, JP, AF; Re: Site Inspection	.25
5/18/17	Draft and Send Email to Client with Attachments	.25
5/18/17	Email Chain with KH; Re: Testing in Las Vegas	.35
5/18/17	Email Chain with Client	.40
5/18/17	Email Chain with M. Giberti	.65
5/18/17	Draft and Send Email to Client with Attachments	.15
5/18/17	Draft and Send Email to Client with Attachments	.15
5/18/17	Receive, Review and Analyze Email from Client	.15

5/19/17	Email Chain with M. Giberti	.25
5/19/17	Email Chain with AD, JP; Re: Testing	.25
5/22/17	Email Chain with AD, AF, JP; Re: DCRR	.25
5/22/17	Draft and send email to AF re returning Amanda Kern call from City of Henderson	.15
5/22/17	Email chain with AF re changes to DCRR	.15
5/23/17	Email Chain with AF, AD, JP; Re: DCRR	.25
5/24/17	Draft and send email to AF re professors for weather expert	.15
5/24/17	Email Chain with AF, KH with Link; Re: Rimkus Documents	.15
5/23/17 - 5/24/17	Email Chain with Client	.25
5/25/17	Email Chain with Client	.40
5/25/17	Email Chain with AD, AF; Re: 2.34	.25
5/26/17	Email chain with AF re Sia's email to withdraw MSJ	.15
5/26/17	Draft and Send Email to Client with Attachments	.15
5/28/17	Email Chain with JP, AF, AD; Re: Extension for Discovery Responses	.25
5/30/17	Email Chain with AF, AD, JP; Re: Testing	.15
5/30/17	Email Chain with JP, AF, AD; Re: Stipulated Protective Order	.15
5/30/17	Email Chain with AF, JP, AD; Re: Inspection	.25
5/30/17	Draft and Send Email to Client with Link	.40
5/30/17	Email chain with AF re start time of 6/22/17 testing	.25
5/30/17	Email chain with AF re weather expert Mike Schwob	.15
5/30/17	Draft and send email to AF re preparation of expert designation	.15
5/30/17	Email chain with AF re Stipulated Protective Order	.25
5/31/17	Email chain with AF re draft of Reply to limited Opp to Motion to Compel Kreason	.15

5/31/17	Receive, Review and Analyze Email from M. Giberti	.25
5/31/17	Email Chain with JP, AF; Re: Deposition of Supply Net	.25
5/31/17	Receive, Review and Analyze Email from Client	.25
5/31/17	Email Chain with JP, AF, AD; Re: State Inflammation Deposition	.25
6/1/17	Email Chain with AD, AF, JP; Re: Plaintiff's Motion to Compel	.15
6/1/17	Email Chain with AD, AF, JP; Re: Inspection	.25
6/1/17	Email Chain with JP, AD, AF; Re: Stipulated Protective Order	.15
6/1/17	Email Chain with AF, JP; Re: Inspection of Wharehouse	.15
6/1/17	Email Chain with AD, AF; Re: Attendance for Inspection	.15
6/1/17	Draft and send email to AF re book (Real Estate Damages) to be ordered	.15
6/1/17	Draft and Send Email to Client; Receive, Review and Analyze Email from AF; Receive, Review and Analyze Email from Client (7:15 am); Receive, Review and Analyze Email from Client (8:19 am); Receive, Review and Analyze Email from AF	.35
6/6/17	Receive, Review and Analyze Email from Client with Link	.50
6/2/17	Email Chain with JP, AD, M. Nunez; Re: Giberti Appearance	.15
6/2/17	Email Chain with JP, AD, AF, MN; Re: Prior Pleadings	.15
6/2/17	Call with AMF	.15
6/2/17	Email chain with AF re producing prior pleadings to Nunez	.15
6/5/17	Email Chain with AF, JP; Re: Supply Tech Wharehouse Inspection	.15
6/5/17	Email Chain with AD, AF, JP; Re: Protective Order	.50
6/5/17	Email Chain with JP, AF, AD; Re: Wharehouse Inspection	.15
6/5/17	Email Chain with JP, AF, AD, MN; Re: Protective Order	.25
6/5/17	Email Chain with JP, AD, AF, MN; Re: Johnson Deposition	.25
6/5/17	Email chain with AF re Reply to Compel Lange 30(b)(6)	.15
6/5/17	Email chain with AF and Pancoast re inspection email sent to Pancoast and follow up	.25

6/6/17	Draft and send email with link to AF re UPS petition and notice of 30(b)(6)	.40
6/6/17	Call with Client	.40
6/6/17	Call with Client	.10
6/6/17	Call with Client	.25
6/6/17	Email Chain with AD, AF, JP;; Re: Cadden Deposition, Johnson Deposition and COR Deposition	.50
6/6/17	Email Chain with JP, AD, MN; Re; Protective Order	.25
6/6/17	Draft and Send Email to Client	.25
6/6/17	Receive, Review and Analyze Email from Client	.15
6/6/17	Draft and Send Email to AF	.25
6/6/17	Receive, Review and Analyze Email from AF	.15
6/6/17	Receive, Review and Analyze Email from Client (7:25 pm); Receive, Review and Analyze Email from AF(9:25 pm)	.35
6/7/17	Draft and send email to AF re Johnson depo exhibits and response	.15
6/7/17	Email Chain with KH; Re: Expert Reports	.15
6/7/17	Email Chain with AD, AF; Re: Lange Employees	.15
6/7/17	Receive, Review and Analyze Email from Client with Attachment; Draft and Send Email to Client	.25
6/7/17	Draft and Send Email to Client	.25
6/7/17	Draft and Send Email to Client	.15
6/7/17	Receive, Review and Analyze Email from Client with Attachment	.25
6/8/17	Email Chain with Client	.25
6/8/17	Call with Client	.15
6/8/17	Call with Client	.15
6/8/17	Receive, Review and Analyze Email from Client with Attachment	.25
6/8/17	Receive, Review and Analyze Email from Client	.15

6/8/17	Receive, Review and Analyze Email from Client	.15
6/8/17	Email Chain with AF	.15
6/8/17	Receive, Review and Analyze Email from Client	.15
6/8/17	Receive, Review and Analyze Email from Client	.15
6/8/17	Email Chain with AD, JP, AF; Re: Testing Protocol	.45
6/8/17	Email chain with AF re COR Depo of City of Henderson	.15
6/9/17	Receive, Review and Analyze Email from Client with Attachment	.35
6/9/17	Receive, Review and Analyze Email from Client with Attachment	.25
6/9/17	Email Chain with KH with Attachments; Re: Testing Protocol	.25
6/9/17	Email Chain with GZ: Re: Testing Protocol and Sprinkler Heads	.25
6/9/17	Email chain with AF re name of Viking SupplyNet worker	.15
6/10/17	Email Chain with GZ, AF; Re: Testing Protocol	.25
6/10/17	Email Chain with GV, KH and File Manager; re: Picking Up Heads in Long Beach	.50
6/10/17	Draft and Send Email to KH; Re: Picking Up Heads and Inspection	.15
6/12/17	Email Chain with AD, JW, AF, JP; Re: Deposition of Diorio	.75
6/12/17	Email Chain with JP, MN, AD, AF; Re: Protective Order	.15
6/12/17	Email Chain with Client	.50
6/12/17	Receive, Review and Analyze Email from Client; Receive, Review and Analyze Email from AF to Client	.15
6/12/17	Receive, Review and Analyze Email from Client	.15
6/12/17	Receive, Review and Analyze Email from Client	.15
6/12/17	Draft and Send Email to Client with Attachments	.15
6/12/17	Email Chain with JO; Re: Real Estate Damages	.50
6/12/17	Call with Client	.25
6/13/17	Call with Client	.40

6/13/17	Call with Client	.40
6/13/17	Draft and Send Email to JO with Attachments; Re: Nonphysical Defects	.15
6/13/17	Email chain with AF and Hastings re documents	.15
6/13/17	Draft and Send Email to Client with Attachments	.15
6/13/17	Receive, Review and Analyze Email from Client with Attachment	.25
6/13/17	Email Chain with AF, KH with Link; Re: Depositions and Exhibits	.15
6/14/17	Email Chain JP, AF, AD; Re: Protocol	.50
6/14/17	Email Chain with KH; Re: Temperature Readers	.25
6/15/17	Email Chain with KH, AF with Attachments; Re: Testing Protocol	.25
6/15/17	Email Chain with AD, JP, AF; Re: Sixth Supp	.25
6/15/17	Email Chain with AD, JP; Re: DCRR 6/7/17	.15
6/15/17	Email Chain with JP, AD, MN, AF; Re: Protective Order	.15
6/15/17	Call with Client	.25
6/16/17	Call with Client	.15
6/16/17	Call with Client	.15
6/16/17	Email chain with AF re Zamiski's signature page for written protocol for testing	.15
6/16/17	Email Chain with NG, JP, AD, AF; Re: Giberti Extension	.50
6/16/17	Email Chain with JP, MN, AD; Re: Design Documents	.50
6/16/17	Draft and send email to AF re locating document for client	.15
6/16/17	Email Chain with GZ with Design Document	.15
6/16/17	Email chain with AF re Giberti's Stip and Order to Extend Discovery	.15
6/16/17	Email Chain with Client; Review UL Docs	1.50
6/16/17	Draft and Send Email to Client with Attachments	.15
6/16/17	Receive, Review and Analyze Email from Client with Attachment	.25

6/16/17	Email Chain with Client	.15
6/16/17	Receive, Review and Analyze Email from Client with Attachment	.25
6/17/17	Receive, Review and Analyze Email from Client with Attachment	.25
6/19/17	Email Chain with Client	.15
6/19/17	Receive, Review and Analyze Email from JP; Forward to Client with Attachments	.50
6/19/17	Draft and Send Email to KH with Attachments; Re: Design Documents	.15
6/19/17	Receive, Review and Analyze Email from Client with Attachment	.35
6/19/17	Email Chain with JP, MN, AD, AF; Re: Design Documents	.50
6/19/17	Email chain with AF re demand for prior pleadings by Giberti	.15
6/19/17	Call with Client	.40
6/19/17	Call with Client	.25
6/19/17	Call with Client	.15
6/20/17	Call with Client	.15
6/20/17	Call with AMF	.15
6/20/17	Call with Client	.50
6/20/17	Email Chain with JP, AF, AD, MN; re: Kreason Deposition, Hearing, UPS Deposition and Diorio Deposition	.75
6/20/17	Email to Dalacas; Re: Supps	.15
6/20/17	Email chain with AF re phone call with Don Koch	.15
6/20/17	Receive, Review and Analyze Email from AF to Client with Attachment	.15
6/20/17	Receive, Review and Analyze Email from Client with Attachments	.35
6/22/17	Email Chain with AF, AP, TM; re: Supply Net Deposition	.75
6/20/17	Email chain with AF and Janelle re hearing date for Kreason motion to compel	.15
6/20/17	Email chain with AF re list of exhibits from depos with attachment	.15



6/21/17	Call with Client	.10
6/21/17	Call with Client	.25
6/22/17	Call with Client	.10
6/22/17	Call with AMF	.10
6/22/17	Call with Client	.15
6/22/17	Call with Client	.15
6/22/17	Call with AMF	.15
6/23/17	Email chain with AF re downloading and sending screenshots of nest energy history	.15
6/23/17	Receive, Review and Analyze Email from Client with Attachment; Forward to AF; Discussion with AF	.65
6/23/17	Call with AMF	.10
6/23/17	Call with AMF	.15
6/23/17	Receive, Review and Analyze Email from AF	.25
6/26/17	Email chain with AF re documents for Kreason depo (specifically Rimkus documents)	.20
6/27/17	Email Chain with GZ; Re: Viking Deposition and Confidentiality	.15
6/27/17	Receive, Review and Analyze Letter from Nunez re prior pleadings	.15
6/28/17	Email chain with AF re vacating Kreason Motion to compel	.20
6/28/17	Call with AMF	.15
6/28/17	Email chain with AF re Kyle Mao depo (AF thoughts, exhibits pulled)	1.0
6/30/17	Call with Client	.40
6/30/17	Text Message with AMF	.10
6/30/17	Text Message with AMF	.10
6/30/17	Email Chain with JP, AF; Re: VKG 0036-0039	.75
7/3/17	Email Chain with KH; Re: Expert Reports	.25

7/3/17	Receive, Review and Analyze Email from Client with Attachments	.25
7/4/17	Email Chain with JP, AD, AF, MN; Re: Carnahan Deposition	.15
7/5/17	Email Chain with GZ; Re: Expert Reports	.25
7/6/17	Email Chain with JP, AF, AD, MN; Re: Sixth Supp	.15
7/6/17	Email Chain with AD, AF; Re: Expert Testing Results	.15
7/6/17	Email chain with AF re Lange expert raw data from testing	.25
7/6/17	Email chain with AF re sending documents to Hastings	.15
7/6/17	Email chain with AF re moving Carnahan depo	.15
7/7/17	Call with AMF	.10
7/7/17	Call with AMF	.25
7/10/17	Email chain with AF re documents Zamiski requested	.15
7/10/17	Email chain with AF re documents Viking produced and what experts need what	.20
7/10/17	Received, reviewed and responded to email from AF with important Viking emails from recent production	.25
7/10/17	Email chain with AF re Johnson depo exhibits	.20
7/10/17	Email chain with AF with attachments re ACORE report and invoice	.25
7/10/17	Email chain with AF re Opposition	.15
7/10/17	Email chain with AF re Opp to Motion to extend discovery deadlines	.25
7/10/17	Email Chain with GZ; Re: Exhibits for Martorano Deposition	.15
7/10/17	Email Chain with GZ; Re: Report and Return of Sprinklers	.40
7/10/17	Email Chain with AF, GZ; Re: Shipment of Sprinklers and Chain of Custody	.25
7/10/17	Receive, Review and Analyze Email from Client and AF	.25
7/10/17	Review Appraisal and Forward to Client	.75
7/10/17	Receive, Review and Analyze Email From JO with Appraisal and Invoice	.25

7/10/17	Draft and Send Email to JO Requesting CV and Testimony History	.15
7/10/17	Email Chain with JP, AF, AD, MN, TU; Re: JCCR	.15
7/11/17	Email Chain with AF, AD, TU, JP; Re: 7/12/17 Hearing	.40
7/11/17	Email Chain with AD, JP, MN, TU; Re: Discovery Motions	.25
7/11/17	Email Chain with AD, AF; Re: Lange Motions	.50
7/11/17	Draft and send email with attachments to AF re Olivas CV	.15
7/11/17	Email Chain with JO; Re: CV and Testimony History	.25
7/11/17	TC with Hastings. Email Chain with AF, KH; Re: Nest History	.50
7/11/17	Email Chain with Client Re: Appraisal	.25
7/11/17	Receive, Review and Analyze Email from Hastings with Attachments; Forward to client; Email Chain with Client	.50
7/12/17	Email Chain with JP, TU, AD, AF; Re: Discovery Deadlines	.25
7/12/17	Email chain with AF re revised supplemental JCCR	.25
7/12/17	Email Chain with NG, JP, AD, AF; Re: SAO to Extend Discovery	.35
7/12/17	Email chain with AF and Zamiski re sprinklers being sent to Vollmer Grey	.50
7/13/17	Email Chain with JP, MN, TU, AD, AF; Re: Supp, JCCR	.25
7/13/17	Email Chain with MN, JP; Re: Mediation	.25
7/13/17	Email chain with AF re Rimkus subpoena for documents	.15
7/13/17	Receive, Review and Analyze Email from E. Johnson	.25
7/13/17	Draft and send email to AF re objection to confidentiality of Viking documents and response	.15
7/14/17	Draft and send email to AF re Zamiski preparing chain of custody documents and response	.15
7/14/17	Email chain with AF re 2 <sup>nd</sup> Supplement to Lange Motion for sanctions	.25
7/14/17	Draft and send email to AF re letter to Sia to be drafted re sanctions	.50

7/17/17	Email chain with AF re Giberti motion to extend discovery	.15
7/17/17	Draft and Send Email to Client	.15
7/17/17	Draft and send Letter to Dalacas re costs for second deposition of Lange 30(b)(6)	.50
7/18/17	Email chain with AF re notice of 2.34 with Viking re deficient discovery responses	.15
7/18/17	Receive, Review and Analyze Email from Client and Responses	.20
7/18/17	Draft and Send Email to Client with Attachments	.15
7/18/17	Receive, Review and Analyze Email from Client	.15
7/18/17	Receive, Review and Analyze Email from Client	.20
7/18/17	Draft and Send Email to Client with Attachments	.25
7/18/17	Draft and Send Email to Client	.15
7/18/17	Draft and Send Email to Client	.15
7/18/17	Draft and Send Email to AF	.15
7/18/17	Email Chain with Client	.15
7/18/17	Receive, Review and Analyze Email from Client	.15
7/18/17	Draft and Send Email to Client	.15
7/18/17	Receive, Review and Analyze Email from AF Re: Objections	.50
7/18/17	Draft and Send Email to Client	.25
7/18/17	Email Chain with G. Zamiski; Forward to client	.15
7/18/17	Receive, Review and Analyze Email from KH; Re: Report	.15
7/18/17	Email Chain with GZ; Re: Report	.25
7/18/17	Email chain with AF re objection to confidentiality and response	.25
7/18/17	Draft and send email to AF re printing all discovery responses	.15
7/18/17	Draft and send email and attachment to AF re Caranahan depo and SDT and response	.25

7/18/17	Receive, Review and Analyze Letter from Pancoast re Robert Carnahan deposition and SDT	.75
7/19/17	Email chain with AF re Lange's 8 <sup>th</sup> supplement and raw data from destructive testing	.20
7/19/17	Email chain with AF re Sia's changes to the DCRR re Lange's sanctions	.50
7/19/17	Draft and send email to AF re checking production to make sure we have produced proper documentation for all damages	.15
7/19/17	Email Chain with GZ with Report; Re: Review and Analyze Report	.50
7/19/17	Draft and Send Email to GZ with Raw Data	.15
7/19/17	Email Chain with AD, AF; Re: Testing	.15
7/19/17	Draft and Send Email to KH with Attachments; Re: Raw Data	.15
7/19/17	Draft and Send Email to KH; Re: Test Results	.25
7/19/17	Draft and Send Email to Client with Letter from JP	.15
7/19/17	Email Chain with Client	.25
7/19/17	Receive, Review and Analyze Email from Client	.25
7/19/17	Email Chain with Client	.25
7/19/17	Receive, Review and Analyze Email from Client and AF with Attachments	.20
7/19/17	Receive, Review and Analyze Email from AF to Client with Attachments	.25
7/19/17	Receive, Review and Analyze Email from Dalascas with Attachments; Forward to Client	.50
7/19/17	Email Chain from AF to Client with Attachments	.25
7/19/17	Receive, Review and Analyze Email from Client	.20
7/19/17	Receive, Review and Analyze Email from Client	.20
7/19/17	Email Chain with AD, AF, JP, MN; Re: Raw Data	.35
7/19/17	Call with Client	.90

IN THE SUPREME COURT OF NEVADA

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, INDIVIDUALLY, AND  
AS HUSBAND AND WIFE; ROBERT  
DARBY VANNAH, ESQ.; JOHN  
BUCHANAN GREENE, ESQ.; AND  
ROBERT D. VANNAH, CHTD, d/b/a  
VANNAH & VANNAH, and DOES I  
through V and ROE CORPORATIONS VI  
through X, inclusive,

Appellants,

V.

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

Respondents.

Supreme Court Case No. 82058

Dist. Ct. Case No. A-19-807433-C

**JOINT APPELLANTS' APPENDIX  
IN SUPPORT OF ALL  
APPELLANTS' OPENING BRIEFS**

## VOLUME II

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Edgeworth*

***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

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4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425



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

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

7/20/17	7	Call with Client	.15
7/20/17	7	Email Chain with JP, AF; Re: DCRR 2.34	.75
7/20/17	7	Draft and Send Email to KH with Attachments; Re: Answers to Interrogatories	.15
7/20/17	7	Draft and Send Email to GZ with Answers to Interrogatories	.15
7/21/17	7	Draft and send email to AF with attachments re documents being sent to expert	.25
7/21/17	7	Receive, Review and Analyze Email from Client	.25
7/21/17	7	Email Chain with AD, JP, MN, AF; Re: DCRR 7/12/17	.25
7/22/17	7	Email Chain with JP, AF; Re: Carnahan Deposition and Viking Sales Rep	.40
7/23/17	7	Receive, Review and Analyze Email from Client	.25
7/23/17	7	Receive, Review and Analyze Email from Client	.50
7/23/17	7	Receive, Review and Analyze Email from Client	.50
7/23/17	7	Receive, Review and Analyze Email from Client with Attachments	.50
7/24/17	7	Draft and send email to AF re Kreason depo	.15
7/24/17	7	Draft and send email to AF re re-noticing Carnahan depo and response	.15
7/24/17	7	Email chain with AF re contacting Harold Rodgers	.15
7/24/17	7	Draft and send email to AF re drafting Rimkus subpoena for other sprinklers and response	.15
7/25/17	7	Email chain with AF re vacating status check on Lange sanctions	.25
7/25/17	7	Receive, Review and Analyze Email from Client with Link	.50
7/25/17	7	Receive, Review and Analyze Email from Client	.25
7/25/17	7	Receive, Review and Analyze Email from Client	.25
7/25/17	7	Receive, Review and Analyze Email from Client	.15
7/25/17	7	Receive, Review and Analyze Email from Client	.25

7/25/17	Receive, Review and Analyze Email from Client with Attachments	.25
7/25/17	Draft and Send Email to KH; Re: Request to Speak	.15
7/25/17	Draft and Send Email to KH with Attachments; Re: Letter and Second Supp Answers	.25
7/25/17	Email Chain with GZ; Re: Status of Report and Request for Phone Call	.15
7/25/17	Review and analyze Viking's supplemental responses to written discovery	1.25
7/25/17	Email Chain with AF, JP; Re: 6 <sup>th</sup> Supp	.25
7/26/17	Email Chain with JP, AF; Re: Request 30(b)(6)	.25
7/26/17	Receive, Review and Analyze Email from KH; Re: Scheduling and Email Chain with KH, WI and File Manager; Re: Meeting	.25
7/26/17	Email Chain with D. Holloman; Re: FH Dates	.50
7/26/17	Phon conference with expert Zamiski	.25
7/27/17	Receive, Review and Analyze Email from D. Koch	.25
7/28/17	Call with Client	.40
7/28/17	Draft and Send Email to Client with Attachments	.25
7/28/17	Receive, Review and Analyze Email from Ivey Engineering; Forward to Client; T/C with Expert	.75
7/28/17	Receive, Review and Analyze Email from Client	.15
7/28/17	Receive, Review and Analyze Email from Client	.15
7/28/17	Receive, Review and Analyze Email from Client	.15
7/28/17	Draft and Send Email to Client	.15
7/28/17	Receive, Review and Analyze Email from Hastings	.25
7/28/17	Draft and Send Email to Client	.15
7/28/17	Receive, Review and Analyze Email from Client	.15
7/28/17	Receive, Review and Analyze Email from Client	.20

7/28/17	Receive, Review and Analyze Email from with Attachment	.40
7/28/17	Email Chain with KH; Re: Temp Devices	.50
7/31/17	Receive, Review and Analyze Email from Client	.15
7/31/17	Receive, Review and Analyze Email from Client with Attachment	.15
7/31/17	Call with Client	.15
7/31/17	Call with Client	.15
7/31/17	Call with Client	.10
7/31/17	Call with Client	.15
7/31/17	Receive, Review and Analyze Email from Client with Attachment; Draft Outline	.75
8/1/17	Draft and Send Email to Client with Attachment	.25
8/1/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/2/17	Email Chain with JP, AF; Re: Missing Documents Mixed Up	.15
8/2/17	Email Chain with TU, JP, AD, AF, MN; Re: Order to Extend Discovery	.35
8/2/17	Email Chain with JP, AF; Re: Service of Documents	.25
8/3/17	Call with Client	.20
8/3/17	Call with Client	.15
8/3/17	Email Chain with Client with Attachment	.50
8/3/17	Receive, Review and Analyze Email From GZ; Re: Report and Meeting	.15
8/3/17	Receive, Review and Analyze Email from Client with Attachment	.50
8/3/17	Receive, Review and Analyze Email from Client with Attachment	.50
8/4/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/4/17	Call with Client	.10
8/4/17	Call with Client	.15
8/4/17	Call with Client	.25

8/4/17	Call with Client	.25
8/4/17	Receive, Review and Analyze Email from Client with Attachment	.40
8/4/17	Email Chain with AD; Re: Costs with Attachments	.35
8/4/17	T/C with expert Zamiski	.25
8/6/17	Call with Client	1.0
8/7/17	Call with Client	.10
8/7/17	Email chain with AF re Colin Kendrick and Margaret Ho	.15
8/7/17	Receive, Review and Analyze Email from Client	.25
8/7/17	Receive, Review and Analyze Email from Client with Attachment	.50
8/7/17	Receive, Review and Analyze Email from Client with Attachment	.50
8/7/17	Email Chain with GZ; Re: Report and Review of Reports	.50
8/7/17	Receive, Review and Analyze Email From JP; Re: Email Documents	.15
8/7/17	Email Chain with JP, AD, AF; Re: Martorano Deposition	.25
8/7/17	Draft and send email to AF re call from Fred Knez	.15
8/7/17	Draft and send email to AF re drafting motion to amend to add Viking Corp and response	.15
8/8/17	Email chain with AF re Viking's position of Martorano depo confidential	.15
8/8/17	Email chain with AF re documents still needed from Zamiski for expert disclosure	.15
8/8/17	Draft and send email to AF re requesting hearing transcripts from Court and response	.15
8/8/17	Draft and send email to AF re Viking's missing UL documents from their ECC production	.50
8/8/17	Email Chain with AF, TU, JP, AD, MN; Re: Order to Extend Discovery	.15
8/8/17	Email Chain with JP, AF; Re: Missing Documents	.25
8/8/17	Email Chain with AF, GZ with Attachments	.15

8/8/17	Receive, Review and Analyze Email From GZ with Report and Review of Report	.40
8/8/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/8/17	Draft and Send Email to Client with Attachment; Review Report	.75
8/8/17	Email Chain with Client with Attachment	.25
8/8/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/8/17	Receive, Review and Analyze Email from Client	.25
8/8/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/8/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/8/17	Email Chain with KH; Re: Meetings	.15
8/8/17	Call with AMF	.25
8/8/17	Call with AMF	.15
8/9/17	Draft and send email with attachment to AF re supplement fireplace pic	.15
8/10/17	Email Chain with AF	.25
8/10/17	Receive, Review and Analyze Email from Client	.25
8/10/17	Receive, Review and Analyze Email from Client	.25
8/10/17	Draft and Send Email to Client	.15
8/10/17	Receive, Review and Analyze Email from Client; Discussion with AF	.50
8/10/17	Receive, Review and Analyze Email from AF	.15
8/10/17	Receive, Review and Analyze Email from Client to AF; Receive, Review and Analyze Email from AF; Draft and Send Email to AF with Attachments; Discussion with AF	.40
8/10/17	Receive, Review and Analyze Email from Client	.25
8/10/17	Email Chain with Af with Attachments; Discussion with AF	.25
8/10/17	Receive, Review and Analyze Email from Client	.25

8/10/17	Receive, Review and Analyze Email from Client	.25
8/10/17	Draft and Send Email to Client	.15
8/10/17	Receive, Review and Analyze Email from Client	.15
8/10/17	Receive, Review and Analyze Email from Client	.15
8/10/17	Email Chain with KH, AF; Re: Oversized Plans, UL 1626	.15
8/10/17	Email Chain with D. Holloman; Re: Mediation Dates	.25
8/10/17	Email chain with AF re Plaintiff's ECC Supp	.15
8/10/17	Email chain with AF re sending documents to Hastings	.15
8/10/17	Email chain with AF re UL documents being sent to experts	.15
8/10/17	Draft and send email to AF re printing specific document	.15
8/10/17	Email chain with AF re Rimkus objection and drafting motion to compel	.25
8/11/17	Email chain with AF re prepare motion to amend to add Viking group and discussion with AF	.50
8/12/17	Receive, Review and Analyze Email from Client	.25
8/12/17	Call with Client	.25
8/12/17	Call with AMF	.15
8/12/17	Call with Client	.15
8/12/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/13/17	Receive, Review and Analyze Email from Client	.75
8/14/17	Call with Client	.15
8/14/17	Call with Client	.50
8/15/17	Email Chain with AD; Re: Expert Reports	.50
8/15/17	Receive, Review and Analyze Email from Client with Attachments	.50
8/15/17	Receive, Review and Analyze Email from AF	.15
8/15/17	Receive, Review and Analyze Email from Client	.20
8/15/17	Receive, Review and Analyze Email from A. Dalascas; Forward to Client	.15

8/15/17	Receive, Review and Analyze Email from Client	.15
8/15/17	Receive, Review and Analyze Email from Client;	.25
8/16/17	Receive, Review and Analyze Email from Client	.25
8/16/17	Email Chain with Af	.15
8/16/17	Receive, Review and Analyze Email from Client	.25
8/16/17	Draft and Send Email to Client with Attachments	.15
8/16/17	Receive, Review and Analyze Email from AF with Attachment to Client	.25
8/16/17	Receive, Review and Analyze Email from AF	.15
8/16/17	Email Chain with Client	.25
8/16/17	Draft and Send Email to Client	.15
8/16/17	Draft and Send Email to Client	.15
8/16/17	Receive, Review and Analyze Email from Client	.15
8/16/17	Draft and Send Email to Client	.15
8/16/17	Draft and Send Email to F. Knez	.25
8/16/17	Draft and Send Email to Client	.15
8/16/17	Receive, Review and Analyze Email from Client	.65
8/16/17	Receive, Review and Analyze Email from AF to Client	.15
8/16/17	Receive, Review and Analyze Email from Client with Link	.40
8/16/17	Email Chain with KH, AF with Hourly Weather Data; Re: Henderson Temps	.25
8/16/17	Email Chain with JP, JW, AF; Re: Depositions	.25
8/16/17	Email Chain with JP, JW, AF, AD, AU; Re: Inspections, Depositions	.25
8/16/17	Draft and send email to AF re Don Koch availability and review AF response	.15
8/16/17	Email chain with AF re expert reports	.25
8/16/17	Draft and send email and attachments to AF re Lange expert reports	.25



8/16/17	Email chain with AF re Viking's 12 <sup>th</sup> ECC Supplement and uploading docs to Dropbox	.15
8/16/17	Email chain with AF re deposition scheduling of Michigan Viking employees	.25
8/16/17	Received, reviewed and responded to email from AF re summary of Viking document dumps	1.75
8/17/17	Call with Client	.35
8/17/17	Email chain with AF re motion to compel	.15
8/17/17	Email chain with AF re reports being sent to Zamiski	.15
8/17/17	Email chain with AF re sending Mark Giberti City of Henderson documents	.15
8/17/17	Email Chain JP, AF, TH; Re: Motion to Compel	.25
8/17/17	Email Chain with JP, AF; Re: Data Dump	1.25
8/17/17	Email Chain with JP, AF, TH; Re: Motion to Compel	.15
8/17/17	Email Chain with JP, AF, AD, TU; Re: EDCR 2.34	.25
8/17/17	Email Chain with KH, AF; Re: Expert Reports	.15
8/17/17	Email Chain with JO with a Link; Re: Expert Report	.15
8/17/17	Draft and Send Email to GZ; Re: Meeting and Expert Reports	.50
8/17/17	Receive, Review and Analyze Email from Client	.50
8/17/17	Receive, Review and Analyze Email from Client	.15
8/17/17	Draft and Send Email to Client	.15
8/17/17	Draft and Send Email to Pancoast; Forward to Client	.15
8/17/17	Email Chain with Client	.25
8/17/17	Receive, Review and Analyze Email from Client	.25
8/17/17	Receive, Review and Analyze Email from Client; Discussion with AF	.25
8/17/17	Receive, Review and Analyze Email from AF	.25
8/18/17	Call with Client	.50

8/18/17	Draft and Send Email to Client	.15
8/18/17	Receive, Review and Analyze Email from Client	.75
8/18/17	Receive, Review and Analyze Email from Client	.25
8/18/17	Receive, Review and Analyze Email from Client	.25
8/18/17	Receive, Review and Analyze Email from Client	.25
8/18/17	Email Chain with JP, AF; Re: Motion to Compel	.40
8/18/17	Email Chain with JP, AF; Re: Verifications	.50
8/19/17	Receive, Review and Analyze Email from Client with Attachment	.75
8/19/17	Receive, Review and Analyze Email from Client	.25
8/19/17	Receive, Review and Analyze Email from Client	.25
8/19/17	Receive, Review and Analyze Email from Client	.25
8/20/17	Receive, Review and Analyze Email from Client	.25
8/20/17	Receive, Review and Analyze Email from AF/Client	.25
8/20/17	Receive, Review and Analyze Email from Client	.75
8/20/17	Receive, Review and Analyze Email from Client	.50
8/20/17	Draft and Send Email to Client	.15
8/20/17	Receive, Review and Analyze Email from Client	.25
8/20/17	Receive, Review and Analyze Email from Client with Attachment	.25
8/20/17	Receive, Review and Analyze Email from Client	.25
8/20/17	Receive, Review and Analyze Email from Client	.15
8/20/17	Draft and Send Email to Client	.15
8/20/17	Receive, Review and Analyze Email from Client	.75
8/20/17	Draft and send email to AF re printing email of missing Viking documents and response	.25
8/20/17	Call with Client	.35
8/20/17	Call with AMF	.10

8/20/17	Call with Client	.50
8/20/17	Call with Client	.75
8/21/17	Email chain with AF re Motion to Compel Rimkus	.15
8/21/17	Draft and send email to AF re preparing commission to take out of state depo of Harold Rodgers and review AF response	.25
8/21/17	Text Message with Client	.10
8/21/17	Email chain with AF re new requests for production	.15
8/21/17	Email chain with AF re notice and SDT to 30(b)(6) or Reliable and 30(b)(6) of Tyco	.25
8/22/17	Call with Client	.10
8/22/17	Call with Client	.40
8/22/17	Draft and send email to AF re Viking emails	.15
8/22/17	Receive, Review and Analyze Email from Client	.25
8/22/17	Receive, Review and Analyze Email from Client	.25
8/22/17	Draft and Send Email to Client	.15
8/22/17	Receive, Review and Analyze Email from Pancoast; Forward to Client	.15
8/22/17	Receive, Review and Analyze Email from Client	.25
8/22/17	Email Chain with GZ; Re: Exemplar Heads	.15
8/23/17	Email Chain with GZ; Re: Rebuttal Reports	.15
8/23/17	Email chain with AF re interior temps of Edgeworth house and what experts to send to	.15
8/23/17	Receive, Review and Analyze Email from Client with Attachments	.25
8/23/17	Email Chain with KH; Re: Binder - Lever Not Square	.15
8/23/17	Email Chain with CP	.25
8/23/17	Receive, Review and Analyze Email from Client	.25

8/24/17	Call with Client	.15
8/24/17	Call with Client	.15
8/24/17	Call with Client	.10
8/24/17	Draft and Send Email to GZ; Re: Req Exemplar Heads	.15
8/25/17	Draft and Send Email to Client with Attachment	.15
8/25/17	Receive, Review and Analyze Email from Client	.25
8/27/17	Email Chain with Client	.25
8/27/17	Receive, Review and Analyze Email from Client with Attachments	.25
8/27/17	Draft and Send Email to Client	.15
8/27/17	Draft and Send Email to GZ; Re: Lever Not Square	.15
8/27/17	Draft and send email to AF re printing several copies of bent lever bars	.15
8/28/17	Email Chain with Client	.25
8/29/17	Receive, Review and Analyze Email from Client	.25
8/29/17	Receive, Review and Analyze Email from Client	.15
8/29/17	Receive, Review and Analyze Email from Client	.15
8/29/17	Receive, Review and Analyze Email from Client/AF	.25
8/29/17	Draft and Send Email to Client	.15
8/29/17	Draft and Send Email to Client	.15
8/29/17	Draft and Send Email to Client with Attachments	.15
8/29/17	Draft and Send Email to Client	.15
8/29/17	Receive, Review and Analyze Email from Client	.15
8/29/17	Receive, Review and Analyze Email from Client	.25
8/29/17	Receive, Review and Analyze Email from Client with Link	.50
8/29/17	Email Chain with JP, AF, AD, MN; Re: Heat Invitation	.50
8/29/17	Email Chain with JP, AF; Re: Answers to Second Set of Interrogatories	.50

8/29/17	T/C with expert Hastings	.25
8/29/17	Draft and send email to AF re delivery of Koch binder and review AF response	.15
8/29/17	Draft and send email to AF re Jay McConnell phone call	.15
8/30/17	Receive, Review and Analyze Email from Client	1.25
8/30/17	Email chain with AF re Viking's responses to Lange	.50
8/30/17	Receive, Review and Analyze Email from Client	.40
8/30/17 - 9/1/17	Email Chain with KH, AF with Attachments on Non-Conforming Holds and Drop Box Link	.30
8/31/17	Email Chain with JP, AF, AD, JR, KR, SK; Re: DCRR 8/23/17	.35
9/1/17	Email to CP with Attachments Re: Heat Sources	.35
9/1/17	Review and analyze Viking's responses to written discovery	1.25
9/1/17	Email Chain with GZ; Re: Phone Call and Report	.15
9/1/17	Email Chain with AF, GZ with Attachments and Links; Re: UL Document	.25
9/1/17	Email Chain with JP, MN, AD, TU, AM, KR, SK; Re: Mediation	.25
9/1/17	Email Chain with JP AF, AD, SK, TU; Re: Depositions of Colin Kendrick	.25
9/1/17	Receive, Review and Analyze Email From D. Holloman	.50
9/1/17	Email Chain with JP, AF, AD, TU, KR, SK; Re: New Inspection	.40
9/1/17	Email Chain with AF, JP; Re: Carnahan Deposition	.15
9/1/17	Receive, Review and Analyze Email from Client	.50
9/1/17	Receive, Review and Analyze Email from Client	.35
9/1/17	Draft and Send Email to Client	.15
9/1/17	Draft and Send Email to Client	.15
9/1/17	Call with AMF	.10
9/1/17	Call with AMF	.15

9/1/17	Call with AMF	.25
9/1/17	Call with Client	.75
9/1/17	Call with Client	.25
9/1/17	Receive, Review and Analyze Email from Client	.15
9/2/17	Draft and send email and attachments to AF re UL's public definition of 1626 and review AF response	.50
9/2/17	Receive, Review and Analyze Email from Client with Attachment	.65
9/2/17	Draft and Send Email to AF/Client	.50
9/2/17	Receive, Review and Analyze Email from Client	.25
9/2/17	Receive, Review and Analyze Email from Client	.15
9/2/17	Receive, Review and Analyze Email from Client with Attachment	.75
9/2/17	Call with Client	.50
9/2/17	Call with Client	.15
9/2/17	Call with Client	.65
9/3/17	Call with Client	.40
9/3/17	Call with Client	.10
9/3/17	Call with Client	.25
9/3/17	Call with Client	.15
9/3/17	Call with Client	.25
9/3/17	Draft and Send Email to Client with Attachment	.25
9/3/17	Receive, Review and Analyze Email from Client; Revise Notice	.50
9/3/17	Receive, Review and Analyze Email from Client	.50
9/3/17	Draft and Send Email to Client	.25
9/3/17	Receive, Review and Analyze Email from Client	.15
9/4/17	Receive, Review and Analyze Email from Client	.15
9/4/17	Receive, Review and Analyze Email from Client with Attachment	.50

9/4/17	Receive, Review and Analyze Email from Client with Attachment	.75
9/4/17	Receive, Review and Analyze Email from Client	.50
9/5/17	Receive, Review and Analyze Email from Client	.50
9/5/17	Draft and Send Email to AF/Client	.50
9/5/17	Receive, Review and Analyze Email from Client	.25
9/5/17	Receive, Review and Analyze Email from Client	.25
9/5/17	Email Chain with Client	.15
9/5/17	Draft and Send Email to Client with Attachment	.25
9/5/17	Receive, Review and Analyze Email from Client with Attachments	.75
9/5/17	Email Chain with KH; Re: Deposition Dates	.15
9/5/17	Email Chain with D. Holloman; Re: Mediation Payment and Meeting with Floyd	.50
9/5/17	Email Chain with JO; Re: Deposition Dates	.15
9/5/17	Draft and Send Email to GZ; Re: Deposition Dates and Carnahan and Viking Depositions	.50
9/5/17	Draft and send email to AF re re-serving depo notice for ZAIC and review AF response	.25
9/5/17	Email chain with AF re re-scheduling depo of Harold Rodgers and PMK of EFT and AG	.20
9/5/17	Email chain with AF re discussing various issues re Edgeworth	.50
9/5/17	Email Chain with MN, JP, AD; Re: Mediation	.40
9/5/17	Email Chain with JP, AM, Re: Edgeworth Depositions	.25
9/5/17	Email Chain with JP, AF, TU, AD, KR, SK; Re: DCRR 8/23/17	.25
9/5/17	Email Chain with MN, JP, AD; Re: Carnahan Deposition	.15
9/5/17	Call with AMF	.15
9/8/17	Email Chain with AD, JP, MN, AF; Re: Inspection	.25
9/8/17	Email chain with AF re 8/23/17 DCRR and Viking's proposed changes	.25

9/8/17	Receive, Review and Analyze Email from Client	.15
9/8/17	Receive, Review and Analyze Email from Client	.50
9/8/17	Receive, Review and Analyze Email from Client	.25
9/8/17	Draft and Send Email to Client	.25
9/8/17	Draft and Send Email to Client	.15
9/8/17	Receive, Review and Analyze Email from Client	.50
9/8/17	Receive, Review and Analyze Email from Client	.25
9/8/17	Receive, Review and Analyze Email from Client	.50
9/8/17	Draft and send email to AF re motions that need to be drafted	.75
9/8/17	Email chain with AF re inspection of Mark Giberti job file by his lawyer	.15
9/8/17	Email chain with AF re subpoena and responses to ZAIC attorney	.75
9/9/17	Receive, Review and Analyze Email from Client	.25
9/9/17	Receive, Review and Analyze Email from Client	.25
9/9/17	Draft and Send Email to Client	.25
9/9/17	Receive, Review and Analyze Email from Client	.25
9/10/17	Receive, Review and Analyze Email from Client	.25
9/10/17	Receive, Review and Analyze Email from Client	.25
9/10/17	Receive, Review and Analyze Email from Client with Attachment	1.25
9/10/17	Call with Client	.10
9/10/17	Call with Client	.25
9/10/17	Draft and Send Email to Client	.15
9/10/17	Email Chain with GZ; Re: Conversion Chart	.25
9/11/17	Email Chain with AF, GZ; Re: Load On Link Attachments and Martorano Deposition	.15
9/11/17	Receive, Review and Analyze Email From AD; Re: Mr. Fehr	.15



9/11/17	Email chain with AF re 8/23/17 DCRR	.25
9/11/17	Email chain with AF re Edgeworth case schedule	1.0
9/11/17	Receive, Review and Analyze Email from Client	.50
9/11/17	Receive, Review and Analyze Email from Client	.15
9/11/17	Receive, Review and Analyze Email from Client	.25
9/11/17	Draft and Send Email to Client	.15
9/11/17	Receive, Review and Analyze Email from Client	.15
9/11/17	Draft and Send Email to Client	.15
9/11/17	Draft and Send Email to Client	.15
9/11/17	Receive, Review and Analyze Email from Client	.15
9/11/17	Draft and Send Email to Client	.15
9/11/17	Receive, Review and Analyze Email from Client	.25
9/11/17	Email Chain with KH, AF with Attachments; Re: Martorano Deposition	.15
9/11/17	Draft and Send Email to KH; Re: Deposition Data	.35
9/11/17	Email Chain with CP	.25
9/11/17	Email Chain with JP, AF, TU, AD, KR, SK; Re: DCRR 8/23/17 Changes	.40
9/11/17	Email Chain with JP, AF; Re: Martorano Information	.40
9/11/17	Receive, Review and Analyze Letter from Ward Law re Rimkus Subpoena and deposition	.25
9/12/17	Email Chain with JP, AD, MN, AF, JW; Re: Edgeworth Deposition	.75
9/12/17	Email chain with AF re motion to compel re heat powerpoint documents	.15
9/12/17	Receive, Review and Analyze Email from Client	.15
9/12/17	Receive, Review and Analyze Email from Client	.15
9/12/17	Receive, Review and Analyze Email from Client	.15

9/12/17	Draft and Send Email to Client	.25
9/12/17	Receive, Review and Analyze Email from Client	.15
9/12/17	Draft and Send Email to Client	.15
9/12/17	Receive, Review and Analyze Email from Client	.15
9/12/17	Draft and Send Email to Client	.25
9/12/17	Call with Client	.15
9/12/17	Call with Client	.15
9/12/17	Call with AMF	.15
9/12/17	Call with Client	.15
9/13/17	Email to CP with Exhibits	.25
9/13/17	Email Chain with CP Re: Scheduling PC	.25
9/13/17	Email Chain with D. Holloman; Re: FH Meeting	.15
9/13/17	Receive, Review and Analyze Email From GZ; Re: UL Drawings	.15
9/13/17	Receive, Review and Analyze Email From D. Holloman; Re: Mediation	.15
9/13/17	Email Chain with JP, AF, KR, SK; Re: UL Documents	.25
9/13/17	Email Chain with KR, SK, JP, AF; Re: Expert Depositions	.25
9/13/17	Receive, Review and Analyze Email From AD; Re: Fees Costs	.15
9/13/17	Email chain with AF re documents being sent to Zamiski	.15
9/13/17	Draft and send email and attachments to AF re documents to include in next ECC Supp and review AF response	.15
9/13/17	Draft and send email to AF re documents he needs for hearing and review AF response	.15
9/13/17	Draft and send email to AF re Michigan Viking employees amended depositions	.15
9/14/17	Email chain with AF re Ure coming to inspect Giberti file	.15
9/14/17	Email Chain with KR, AF, JP; Re: Deposition for Simmons	.50

9/14/17	Draft and send email and attachments to AF re PMK depo pages from client for motion to strike	.25
9/14/17	Email Chain with GZ; re: Completion of Rebuttal Report and Request for Information	.35
9/14/17	Draft and send email to AF re new dates to send to Robinson re expert depositions	.15
9/14/17	Email Chain with AF/CP with Attachments Re: Martorano Depo	.15
9/14/17	Draft and Send Email to Client	.25
9/14/17	Receive, Review and Analyze Email from Client	.25
9/14/17	Receive, Review and Analyze Email from Client with Attachments	.50
9/14/17	Receive, Review and Analyze Email from Client	.15
9/14/17	Receive, Review and Analyze Email from Client	.50
9/14/17	Receive, Review and Analyze Email from Client	.50
9/14/17	Receive, Review and Analyze Email from Client	.25
9/14/17	Receive, Review and Analyze Email from Client	.50
9/14/17	Receive, Review and Analyze Email from Client	.75
9/14/17	Draft and Send Email to Client	.25
9/14/17	Draft and Send Email to KH; Re: Request for Report	.15
9/14/17	Call with Client	.40
9/14/17	Call with Client	.50
9/18/17	Email chain with AF re documents being sent to Hastings	.15
9/18/17	Draft and send email to AF re stuff to add to Carnahan motion to compel	.20
9/18/17	Draft and Send Email to Client with Attachment	.15
9/18/17	Receive, Review and Analyze Email from Client	.35
9/18/17	Email from CP Re: opinion letter	.50
9/18/17	Receive, Review and Analyze Email From C. Kendrick	.15

9/18/17	Email Chain with JP, AF, AD, TU; Re: C. Kendrick	.25
9/18/17	Email Chain with JP, AF, KR, SK; Re: Meet and Confer for Written Discovery	.15
9/18/17	Draft and Send Email to KH with Attachments; Re: Torn Link	.15
9/18/17	Email Chain with KH, GV; Re: Carnahan Test Data	.15
9/18/17	Receive, Review and Analyze Email From KH with Rebuttal Report Attached	.25
9/18/17	Call with Client	.15
9/18/17	Call with Client	.15
9/19/17	Call with Client	.15
9/19/17	Call with Client	.15
9/19/17	Call with Client	.50
9/19/17	Call with Client	.50
9/19/17	Receive, Review and Analyze Email from Client	.25
9/19/17	Email Chain with KH; Re: Amic Attempts and Old Threads	.25
9/19/17	Email Chain with KR, AF, JP, EC; Re: 2.34	.15
9/19/17	Email Chain with AF, JP; Re: Deposition Rosa	.25
9/20/17	Draft and send email to AF re Pomerantz report be sent to Hasting	.15
9/20/17	Draft and send email to AF re lawyers in Riverside to represent us for Harold Rodgers depo and review AF response/ Discussion with AF	.15
9/20/17	Email Chain with KH, AF; Re: CP Report	.15
9/20/17	Email Chain with KH, AF with Attachments - Carnahan Data Graph	.25
9/20/17	Email Chain with KR, AF, JP; Re: Viking Employee Depositions	.50
9/20/17	Attend Hearing: Rimkus Motion to Compel; Telephone Conference with Max; Revise MSJ	5.25
9/20/17	Draft and Send Email to Client with Attachment	.15
9/20/17	Receive, Review and Analyze Email from Client	.15

9/20/17	Receive, Review and Analyze Email from Client	.15
9/20/17	Receive, Review and Analyze Email from Client with Attachment	1.25
9/20/17	Receive, Review and Analyze Email from Client	1.0
9/20/17	Call with Client	.50
9/21/17	Call with Client	.40
9/21/17	Call with AMF	.25
9/21/17	Receive, Review and Analyze Email from Client	.25
9/21/17	Receive, Review and Analyze Email from Client	.25
9/21/17	Receive, Review and Analyze Email from Client	.15
9/21/17	Receive, Review and Analyze Email from K. Rader	.15
9/21/17	Receive, Review and Analyze Email from Client	.15
9/21/17	Email chain with AF re drafting MSJ against Lange only	.15
9/21/17	Draft and Send Email to KH with Attachments; Re: Motley	.15
9/21/17	Email chain with AF re email from Kreason about cabinets and fireplace	.25
9/21/17	Email chain with AF re call with Hastings re Pomerantz report	.15
9/21/17	Meet with Client; Attend M. Giberti Deposition	7.0
9/21/17	Email Chain with JO; Re: Rigdon Report	.15
9/22/17	Email to CP with Attachments	.50
9/22/17	Receive, Review and Analyze Email From D. Holloman; Re: Mediation	.15
9/22/17	Call with Client	.25
9/22/17	Call with Client	.25
9/22/17	Email Chain with AF, JP, W. Laborde; Re: Rosa Emails	.15
9/22/17	Email chain with AF re additional points for motion to strike	.50
9/22/17	Review Lange's 10 <sup>th</sup> ECC Supplement	.25
9/22/17	Review Plaintiffs' 10 <sup>th</sup> ECC Supplement	.50

9/22/17	Discussion with AF; Email to Pomerantz	1.25
9/22/17	Review Viking's 13 <sup>th</sup> ECC Supplement	.50
9/22/17	Receive, Review and Analyze Email from Client	.50
9/22/17	Draft and Send Email to Client	.25
9/22/17	Draft and Send Email to Client	.25
9/22/17	Receive, Review and Analyze Email from Client	.15
9/22/17	Draft and Send Email to AF	.15
9/22/17	Draft and Send Email to AF	.15
9/22/17	Receive, Review and Analyze Email from Client with Attachment	.25
9/22/17	Email chain with AF and client re actual fireplace repair costs	.15
9/23/17	Receive, Review and Analyze Email from Client	.75
9/23/17	Receive, Review and Analyze Email from Client	.75
9/22/17	Review and analyze Viking's responses to written discovery	.75
9/24/17	Receive, Review and Analyze Email from Client	.50
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Receive, Review and Analyze Email from Client	.25
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Receive, Review and Analyze Email from K. Rader	.15
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Receive, Review and Analyze Email from Client	.35
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Draft and Send Email to Client	.25
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Receive, Review and Analyze Email from Client	.15

9/25/17	Draft and Send Email to Client	.15
9/25/17	Receive, Review and Analyze Email from Client	.15
9/25/17	Review Giberti's 4 <sup>th</sup> ECC Supplement	.75
9/25/17	Revise Motion to Strike Viking Answer	3.5
9/25/17	Review Viking's 14 <sup>th</sup> ECC Supplement	1.25
9/25/17	Call with Client	.15
9/25/17	Call with Client	.15
9/25/17	Call with Client	.15
9/26/17	Call with Client	.15
9/26/17	Call with AMF	.10
9/26/17	Call with Client	.15
9/26/17	Call with AMF	.10
9/26/17	Call with Client	.25
9/26/17	Call with AMF	.10
9/26/17	Call with Client	.35
9/26/17	Call with Client	.15
9/26/17	Call with Client	.15
9/26/17	Prepare and Take Raul De La Rosa Deposition	3.25
9/26/17	Receive, Review and Analyze Email From JO with Attachments; Re: Deposition Documents	.50
9/26/17	Email Chain with AF, KR, JP; Re: Reactivations	.15
9/26/17	Receive, Review and Analyze Email from K. Rader	.25
9/26/17	Receive, Review and Analyze Email from K. Rader	.15
9/26/17	Draft and Send Email to Client	.15
9/26/17	Draft and Send Email to Client	.15
9/26/17	Draft and Send Email to Client	.15
9/26/17	Receive, Review and Analyze Email from Client	.15

9/27/17	Receive, Review and Analyze Email from Client	.65
9/27/17	Draft and Send Email to Client	.15
9/27/17	Draft and Send Email to Client	.15
9/27/17	Receive, Review and Analyze Email from Client	.25
9/27/17	Receive, Review and Analyze Email from Client with Attachment	.35
9/27/17	Receive, Review and Analyze Email from Client	.25
9/27/17	Draft and send email to AF re printing email from Robinson for motion and review AF response	.15
9/27/17	Email Chain with JP, AF, W. Laborde; Re: Rosa Emails	.25
9/27/17	Revise Motion to Strike; Review Emails; Meet with Client: Pre-Depo	3.5
9/27/17	Call with Client	.15
9/27/17	Call with Client	.35
9/27/17	Call with Client	.15
9/28/17	Call with Client	.15
9/28/17	Call with Client	.25
9/28/17	Call with Client	.10
9/28/17	Call with Client	.25
9/28/17	Revise Motion to Strike Viking Answer	3.75
9/28/17	Revise Motion to De-Designate Confidentiality	1.5
9/28/17	Attend Collin Kendrick Deposition	1.5
9/28/17	Review Plaintiffs' 11 <sup>th</sup> ECC Supplement	.50
9/28/17	Receive, Review and Analyze Email from Client	.15
9/28/17	Receive, Review and Analyze Email from Client	.20
9/28/17	Draft and Send Email to Client	.50
9/28/17	Receive, Review and Analyze Email from Client	.25
9/28/17	Receive, Review and Analyze Email from Client	.25



9/28/17	Draft and send email to AF re points for our reply to the motion to strike and review AF response	.20
9/28/17	Email chain with AF re filing motion to strike and affidavit	.25
9/28/17	Draft and send email and attachment to AF re technical data sheet	.15
9/29/17	Attend Brian Edgeworth Deposition	7.5
9/29/17	Email Chain with NG, AD, JP, AF, MN; Re: Lawrence Deposition	.15
9/29/17	Receive, Review and Analyze Email From D. Holloman; Re: Mediation	.15
9/29/17	Email Chain with AF, AD, JP, MN, TU; Re: DCRR 9/13/17	.15
9/29/17	Email Chain with AF, MN, JP; Re: DCRR 9/20/17	.15
9/29/17	Email Chain with AF, AD, JP, MN, TU; Re: Order to Amend Viking	.15
9/29/17	Email chain with AF re scheduling Carnahan depo	.25
9/29/17	Draft and send email to AF re date mediation briefs due	.15
9/29/17	Email chain with AF re draft DCRRs (9.13.17 and 9.20.17)	.50
9/29/17	Draft and send email to AF re digital photos of damage and review AF response	.15
9/29/17	Email chain with AF re drafting Lange written discovery for punitive damages and draft requests	.20
9/29/17	Call with AMF	.15
9/29/17	Review and Revise written discovery to Lange	.25
9/30/17	Call with Client	.25
9/30/17	Receive, Review and Analyze Email from Client with Link	.50
9/30/17	Receive, Review and Analyze Email from Client with Link	.50
9/30/17	Draft and Send Email to Client	.15
9/30/17	Receive, Review and Analyze Email from Client	.15
9/30/17	Draft and Send Email to Client	.15
10/1/17	Receive, Review and Analyze Email from Client with Attachment	.40

10/1/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/2/17	Draft and send email and attachment to AF re Glen Rigdon and a motion to exclude him as an expert	.25
10/2/17	Review and Revise Motion to Reconsider Pro Hac of LA Counsel	1.50
10/2/17	Email Chain with MC, AF, JP; Re: Rimkus DCRR	.25
10/2/17	Receive, Review and Analyze Email from Client	.50
10/2/17	Receive, Review and Analyze Email from Client	.25
10/2/17	Receive, Review and Analyze Email from Client	.50
10/2/17	Draft and Send Email to Client	.15
10/2/17	Receive, Review and Analyze Email from Client	.25
10/2/17	Call with Client	.25
10/2/17	Call with Client	.10
10/2/17	Call with Client	.25
10/3/17	Call with Client	.15
10/3/17	Call with Client	.15
10/3/17	Call with Client	.15
10/3/17	Call with Client	.15
10/3/17	Call with Client	.25
10/3/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/3/17	Receive, Review and Analyze Email from Client	.15
10/3/17	Receive, Review and Analyze Email from Client with Attachment	1.25
10/3/17	Receive, Review and Analyze Email from Client with Attachment	.35
10/3/17	Draft and send email to AF re written discovery to Lange that we need to draft and serve	.25
10/3/17	Email Chain with AF, MC, JP; Re: Rimkus DCRR	.50
10/3/17	Email Chain with DC, JP, MN, KR, SK; Re: OPP to MOT to Compel Carnahan	.15

10/3/17	Email chain with AF re Schedule A of EFT and supplementing in ECC	.15
10/3/17	Prepare and Attend Motion to Exclude Rosenthal	3.25
10/3/17	Draft Interrogatories and Request for Production to Lange Plumbing	.75
10/3/17	Review Plaintiffs' 12 <sup>th</sup> ECC Supplement	.50
10/3/17	Discussion with Nunez	.25
10/3/17	Email chain with AF re Max Couvillier changes to DCRR	.25
10/3/17	Draft and send email to AF re forwarding Viking's Opp to Motion to Compel Carnahan	.25
10/4/17	Prepare and Attend Motion to Compel Carnahan and Motion to De-Designate; Review Oppositions	3.5
10/4/17	Text Message with AMF	.10
10/4/17	Email Chain with D. Holloman; Re: Brief	.15
10/4/17	Review and Revise Mediation Brief	2.25
10/4/17	Review and Revise Motion to Reconsider	1.75
10/4/17	Email Chain with JP, AF; Re: DCRR for Inspections	.15
10/4/17	Receive, Review and Analyze Email from Client with Link	.65
10/4/17	Receive, Review and Analyze Email from Client	.50
10/4/17	Call with Client	.50
10/5/17	Call with AMF	.10
10/5/17	Receive, Review and Analyze Email from Client	.25
10/5/17	Receive, Review and Analyze Email from Client	.40
10/5/17	Receive, Review and Analyze Email From Whitfield	.15
10/6/17	Receive, Review and Analyze Email from Rimkus with Attachment; Forward to Client	.50
10/6/17	Receive, Review and Analyze Email from Client	.15

10/6/17	Email chain with AF re Amended ZAIC Notice and SDT	.15
10/7/17	Call with AMF	.25
10/9/17	Meet with Mediator - Discuss Case	1.5
10/9/17	Email Chain with AD, AF; Re: Extension	.25
10/9/17	Draft and Send Email to Client with Attachment	.15
10/9/17	Draft and Send Email to Client with Attachment	.15
10/9/17	Draft and Send Email to Client with Attachment; Prepare Demand Sheets	.75
10/9/17	Receive, Review and Analyze Email from Client with Links	.50
10/10/17	Receive, Review and Analyze Email from Client	.35
10/10/17	Call with AMF	.10
10/10/17	Call with AMF	.15
10/10/17	Call with Client	.10
10/10/17	Call with Mike Nunez	.10
10/10/17	Call with Client	.10
10/10/17	Draft and Send Email to Client with Attachment	.25
10/10/17	Draft and Send Email to Client and Response	.15
10/10/17	Receive, Review and Analyze Email from Client	.15
10/10/17	Draft and Send Email to Client with Attachment	.15
10/10/17	Receive, Review and Analyze Email from Client with Attachment	.40
10/10/17	Email Chain with AD, AF; Re: Payment of Past Invoices	.50
10/10/17	Email Chain with KR, AF; Re: Michigan Depositions	.25
10/10/17	Attend Mediation at JAMS with Floyd Hale	4.0
10/11/17	Receive, Review and Analyze Email from Client	.25
10/11/17	Receive, Review and Analyze Email from Client	.25
10/11/17	Receive, Review and Analyze Email from Client	.25

10/11/17	Receive, Review and Analyze Email from Client	.50
10/11/17	Receive, Review and Analyze Email from Client	.15
10/11/17	Receive, Review and Analyze Email from Client	.15
10/11/17	Receive, Review and Analyze Email from Client	.35
10/11/17	Email chain with AF re response to Robinson re deposition scheduling	.30
10/11/17	Email chain with AF re UL Depo re-scheduling	.15
10/11/17	Email chain with AF re phone message from Pancoast	.15
10/12/17	Call with Client	.15
10/12/17	Forwarded emails from Wiznet from to AF re filed transcripts	.15
10/12/17	Receive, Review and Analyze Email from Client with Attachment	.25
10/12/17	Draft and Send Email to Client	.15
10/12/17	Receive, Review and Analyze Email from Client	.50
10/12/17	Receive, Review and Analyze Email from Client	.40
10/12/17	Receive, Review and Analyze Email from L. Pomerantz	.25
10/12/17	Receive, Review and Analyze Email from Client	.25
10/12/17	Receive, Review and Analyze Email from Client with Attachment	.35
10/13/17	Email Chain with JP, AF; Re: Interpreter	.25
10/13/17	Email Chain with AF, AD, JP, TU, KR, SK; Re; Privilege Log	.25
10/13/17	Email Chain with AF, SK, AD, MN, JP, TU; Re: Revised Order MOT to Amend	.40
10/14/17	Receive, Review and Analyze Email from Client	.25
10/14/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/15/17	Review Viking Opposition to Plaintiff Motion to Strike & Revise Reply	4.50
10/15/17	Draft and Send Email to Client with Attachment	.15

10/15/17	Receive, Review and Analyze Email from Client	.25
10/15/17	Receive, Review and Analyze Email from Client	.15
10/15/17	Verified with Court Reporter	.25
10/15/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/15/17	Receive, Review and Analyze Email from Client	.25
10/15/17	Receive, Review and Analyze Email from Client	.50
10/15/17	Receive, Review and Analyze Email from Client with Attachment	.25
10/15/17	Receive, Review and Analyze Email from Client with Attachment	.25
10/15/17	Receive, Review and Analyze Email from Client with Attachment	.25
10/15/17	Receive, Review and Analyze Email from Client	.15
10/15/17	Draft and Send Email to Client	.25
10/15/17	Receive, Review and Analyze Email from Client	.15
10/15/17	Draft and Send Email to Client	.15
10/15/17	Draft and Send Email to Client	.15
10/15/17	Receive, Review and Analyze Email from Client	.25
10/15/17	Receive, Review and Analyze Email from Client	.15
10/15/17	Email Chain with Client	.25
10/15/17	Receive, Review and Analyze Email from Client	.25
10/15/17	Email chain with AF re Franson's last known address	.15
10/15/17	Finalize Reply to opposition to Motion to Strike & Attend Margaret Ho Deposition	4.75
10/15/17	Draft and Send Email to GZ; Re: Requesting TC and Deposition Dates	.25
10/15/17	Email Chain with JP, AD, TU, JR; Re: Privilege Log	.15
10/15/17	Draft and send email to AF re Viking's production of Carnahan's depo and review AF response	.15

10/15/17	Draft and send email to AF re production of Rapid Cash ad and review AF response	.15
10/16/17	Email chain with AF re Viking's 15 <sup>th</sup> ECC Supp	.15
10/16/17	Email chain with AF and client re supplementing motion to strike	.15
10/16/17	Call with Client	.25
10/16/17	Call with Client	.50
10/16/17	Call with Client	.15
10/16/17	Call with AMF	.10
10/16/17	Call with AMF	.15
10/16/17	Call with Client	.10
10/17/17	Call with AMF	.15
10/17/17	Call with AMF	.15
10/17/17	Call with Client	.50
10/17/17	Call with Client	.15
10/17/17	Email chain with AF re 2.34 re Pomerantz as expert	.15
10/17/17	Email chain with AF re research for Reply to Lange MSJ	.50
10/17/17	Email chain with AF re depo cites for Reply to Lange MSJ	.75
10/17/17	Review Lange's 11 <sup>th</sup> ECC Supplement	1.25
10/17/17	Draft Motion to Strike Expert Carnahan; Revise Supplement to Motion to Strike Defendants Answer	6.75
10/17/17	Receive, Review and Analyze Email from Client	.40
10/17/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/17/17	Receive, Review and Analyze Email from Client with Attachment and Response	.50
10/17/17	Draft and Send Email to Client	.15
10/17/17	Draft and Send Email to Client with Attachment	.15
10/18/17	Receive, Review and Analyze Email from Client	.40

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

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

**Appellants/Cross Respondents.**

**vs.**

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

**Respondents/Cross-Appellants.**

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

**Appellants,**

**vs.**

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

**Respondents.**

Electronically Filed  
Aug 08 2019 12:02 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case**

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

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 6 of 12**



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

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

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

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

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

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

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

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

10/18/17	Draft and Send Email to Client	.15
10/18/17	Receive, Review and Analyze Emails from Client	.35
10/18/17	Receive, Review and Analyze Email from Client	.15
10/18/17	Receive, Review and Analyze Email from Client	.15
10/18/17	Draft and Send Email to Client	.15
10/18/17	Receive, Review and Analyze Email from Client	.15
10/18/17	Receive, Review and Analyze Email from Client	.25
10/18/17	Email Chain with Client	.15
10/18/17	Receive, Review and Analyze Email from Client with Attachment	.25
10/18/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/18/17	Receive, Review and Analyze Email from Client	.25
10/18/17	Receive, Review and Analyze Email from Client	.15
10/18/17	Receive, Review and Analyze Email from Client	.15
10/18/17	Draft and send email to AF re supplement to Motion to strike and review AF response	.75
10/18/17	Prepare and Attend Hearing on Plaintiffs Motion to Strike Defendants Answer	5.25
10/18/17	Review Lange Opposition to Motion for MSJ and draft Reply	2.25
10/18/17	Review Viking Written Discovery Responses and Analyze; Discussion with AF	1.25
10/18/17	Call with Client	.50
10/18/17	Call with Client	.10
10/18/17	Call with Client	.75
10/19/17	Call with Client	.35
10/19/17	Call with Mike Nunez	.15
10/19/17	Call with Mike Nunez	.10

10/19/17	Call with Mike Nunez	.10
10/19/17	Call with Mike Nunez	.15
10/19/17	Call with Client	.50
10/19/17	Revise Reply to Lange Opposition to MSJ	4.0
10/19/17	Draft Supplement to Motion to Strike	2.50
10/19/17	Review Viking's 15 <sup>th</sup> ECC Supplement	1.25
10/19/17	Email Chain with F. Hale, MN, AD, JP, SK, D. Holloman; Re: Mediation	.50
10/19/17	Draft and Send Email to Client	.25
10/19/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/19/17	Receive, Review and Analyze Email from Client	.40
10/19/17	Email Chain with Client	.50
10/19/17	Receive, Review and Analyze Email from Client	.25
10/19/17	Receive, Review and Analyze Email from Client	.15
10/19/17	Draft and Send Email to Client	.15
10/19/17	Draft and send email to AF re supplementing documents including El Segundo letter and review AF response	.20
10/19/17	Email chain with AF re Giberti Motion for Good Faith Settlement and whether we will oppose	.15
10/19/17	Email chain with AF re Olivas depo and Pancoast email	.15
10/20/17	Draft and send email to AF re inserting hidden activation information into supplement and review AF response	.15
10/20/17	Draft and Send Email to Client with Attachment	.15
10/20/17	Call with Client	.15
10/20/17	Receive, Review and Analyze Email from Client with Attachment	.35
10/20/17	Receive, Review and Analyze Email from Client	.25
10/20/17	Receive, Review and Analyze Email from Client	.40

10/20/17	Draft and Send Email to Client	.15
10/20/17	Draft and Send Email to Client with Link	.15
10/20/17	Revise Reply to MSJ	3.25
10/20/17	Revise Supplement to Motion to Strike	3.75
10/20/17	Conference Call with UL Lawyers Susan McNicholas from Chicago & Discussion with AF; Review Subpoena and Notice	1.25
10/21/17	Email Chain with D. Holloman; Re: Mediation	.25
10/21/17	Draft and Send Email to Client with Attachment	.15
10/21/17	Receive, Review and Analyze Email from Client with Attachment	.40
10/21/17	Email Chain with Client with Attachment	.25
10/21/17	Email chain with AF re pre-lien notice form Lange	0.15
10/22/17	Draft and Send Email to Client	.15
10/22/17	Email Chain with Client with Attachment	.25
10/22/17	Revise Supplement to Motion to Strike	1.25
10/23/17	Draft and send email to AF re Opp to Zurich Motion and review AF response	1.0
10/23/17	Revise Supplement to Motion to Strike	1.50
10/23/17	Revise Reply to Lange MSJ	1.75
10/23/17	Review Plaintiff 13 <sup>th</sup> Supplement to ECC; Viking Compliance Documents; Emails; Discussion with AF	1.5
10/23/17	Draft Letter to Lange Dalacas re Lien	.25
10/23/17	Review ZAIC Motion for Protective Order; Draft opposition	1.5
10/23/17	Conversation with Client	.25
10/23/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/23/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/23/17	Email Chain with Client with Attachment	.25

10/23/17	Receive, Review and Analyze Email from Client and Response	.15
10/23/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/23/17	Receive, Review and Analyze Email from Client	.25
10/23/17	Draft and Send Email to Client	.15
10/23/17	Email chain with AF re supplement to motion to strike	.20
10/23/17	Call with Client	.15
10/24/17	Call with Client	.10
10/24/17	Call with Client	.25
10/24/17	Call with Mike Nunez	.15
10/24/17	Call with Client	.25
10/24/17	Call with Mike Nunez	.25
10/24/17	Call with Client	.25
10/24/17	Call with Client	.50
10/24/17	Review Email from ZAIC; Review attachment; Draft Reply Email	.75
10/24/17	Attend DC Hearing; Status Check	2.25
10/24/17	Draft Supplemental Reply - MSJ Lange	2.5
10/24/17	Review Viking Correspondence re competing DCRR's	1.0
10/25/17	Revise Written Discovery to Viking ; Discussion with AF	1.5
10/25/17	Email Chain with AF, AD, SK, TU, MN, JP; Re: DCRR 10/4/17	.25
10/25/17	Email Chain with EC, JP, MN, AD, TP; Re: 16 <sup>th</sup> Supp	.50
10/25/17	Email Chain with Client with Attachments	.25
10/25/17	Receive, Review and Analyze Email from Client	.25
10/25/17	Receive, Review and Analyze Email from Client	.40
10/25/17	Draft and Send Email to Client	.15
10/25/17	Receive, Review and Analyze Email from Client with Attachment	.25



10/25/17	Receive, Review and Analyze Email from Client with Attachment	.50
10/25/17	Receive, Review and Analyze Email from Client with Attachment	.40
10/25/17	Draft and send email to AF re new topic for 30(b)(6) notice and written discovery to Viking and review AF response	.25
10/25/17	Call with Client	.10
10/25/17	Call with Client	.25
10/26/17	Call with Client	.15
10/26/17	Call with Client	.25
10/26/17	Call with Client	.25
10/26/17	Call with AMF	.20
10/26/17	Receive, Review and Analyze Email from Client with Attachment	.35
10/26/17	Receive, Review and Analyze Email from Client	.25
10/26/17	Receive, Review and Analyze Email from Client with Attachment	.40
10/26/17	Receive, Review and Analyze Email from Client with Attachment	.75
10/26/17	Receive, Review and Analyze Email from Client	.40
10/26/17	Email Chain with Client; Settlement Offer	.15
10/26/17	Draft and Send Email to Client with Link	.15
10/26/17	Draft and Send Email to Client	.25
10/26/17	Receive, Review and Analyze Email from Client	.50
10/26/17	Review Viking's 16 <sup>th</sup> ECC Supplement	0.75
10/26/17	Revise Written Discovery to Viking ; Discussion with AF	1.25
10/26/17	Discussion with Lange Counsel: Mr. Parker	.50
10/26/17	Email Chain with AF, AD, TU, SK, IB, MN, JP; Re: Order Rosenthal	.15
10/27/17	Call with Client	.40
10/27/17	Call with AMF	.10
10/27/17	Call with Client	.10

10/27/17	Call with AMF	.15
10/27/17	Email Chain with D. Holloman, AD, JP, MN, SK, NG; Re: Mediation	.25
10/27/17	Email Chain with JP, KR, SK, AF, AD, TP, TU; Re: MIL Stips	.75
10/27/17	Email Chain with EC, JP, MN, AD, TP, KR; Re: Expert Depositions	.40
10/27/17	Draft and Send Email to Client	.15
10/27/17	Draft and Send Emails to Client with Links	.25
10/27/17	Receive, Review and Analyze Email from Client	.25
10/30/17	Receive, Review and Analyze Email from Client	.25
10/30/17	Draft and Send Email to Client with Link	.15
10/30/17	Draft and Send Email to Client with Link	.15
10/30/17	Draft and Send Email to Client with Link	.15
10/30/17	Receive, Review and Analyze Email from Client	.15
10/30/17	Draft and Send Email to Client	.40
10/30/17	Receive, Review and Analyze Email from Client	.25
10/30/17	Receive, Review and Analyze Email from Client	.40
10/30/17	Receive, Review and Analyze Email from Client	.25
10/30/17	Receive, Review and Analyze Emails from Client with Attachment	.25
10/30/17	Receive, Review and Analyze Email from Client	.25
10/30/17	Receive, Review and Analyze Emails from Client	.65
10/30/17	Draft and send email to AF re new written discovery to Viking and review AF response	.20
10/30/17	Review Viking Opposition to Motion to Exclude Carnahan & Prepare for hearing	3.25
10/30/17	Email Chain with JP, AF; Re: Olivas deposition	.40
10/30/17	Email Chain with JP, AF; Re: Carnahan Production	.35
10/30/17	Email Chain with SK, AF, AD, TU, MN, JP; Re: DCRR 10/4/17	.15

10/30/17	Call with AMF	.25
10/30/17	Call with Client	.50
10/31/17	Call with Client	.10
10/31/17	Email Chain with KR, AF, JP, SK; Re: Carnahan Deposition	.50
10/31/17	Email Chain with AF, KR, TP, JP; Re: DCRR 10/24/17	.15
10/31/17	Draft and send email to AF re email to Pancoast re English version of the insurance policy and review AF response	.15
10/31/17	Email chain with AF re UL notice and UL production of documents	.15
10/31/17	Prepare and Attend Hearing on MSJ	3.0
10/31/17	Draft Reply to Viking Opposition to Exclude Carnahan	2.75
10/31/17	Revise DCCR Re: 10-24-17 Hearing	.50
10/31/17	Review and revise written discovery to Viking	.75
11/1/17	Email Chain with GZ; Re: Additional Deposition Dates	.25
11/1/17	Call with Mike Nunez	.25
11/1/17	Call with Client	.50
11/1/17	Call with Client	.50
11/1/17	Email chain with AF re Viking document production (Martorano's depo in FSS and Thorpe)	.50
11/1/17	Draft and send email to AF re calendar and deposition re-scheduling	.15
11/1/17	Draft and send email and attachment to AF re picture for reply	.15
11/1/17	Discussion with Zamiski Re: Depo/Billing	.50
11/1/17	Revise Opposition to Zurich Motion for Protective Order	2.75
11/1/17	Email Chain with AF, JP; Re: Excess Policy	.15
11/1/17	Email Chain with KR, AF, JP, SK; Re: Depositions	.25
11/1/17	Email Chain with AF, KR, JP, SK; Re: Written Discovery	.25
11/1/17	Draft and Send Email to E. Chun with Link; Forward to Client	.25

11/1/17	Draft and Send Email to Client	.15
11/1/17	Receive, Review and Analyze Email from Client with Attachment	.15
11/1/17	Receive, Review and Analyze Email from Client with Attachment	.15
11/1/17	Receive, Review and Analyze Email from Client	.15
11/1/17	Receive, Review and Analyze Email from Client with Attachment	.25
11/1/17	Draft and Send Email to Client	.15
11/1/17	Draft and Send Email to Client and Response	.15
11/1/17	Receive, Review and Analyze Email from Client	.15
11/1/17	Receive, Review and Analyze Email from Client	.15
11/1/17	Receive, Review and Analyze Email from Client with Attachment	.25
11/1/17	Draft and Send Email to Client and Response	.15
11/1/17	Receive, Review and Analyze Email from Client	.15
11/2/17	Call with AMF	.35
11/2/17	Receive, Review and Analyze Email from Client	.50
11/2/17	Receive, Review and Analyze Email from Client	.15
11/2/17	Email Chain with D. Holloman; Re: Mediation	.50
11/2/17	Email Chain with KR, AF, JP, SK; Re: Depositions	.30
11/2/17	Revise Motion to Compel Financials	2.25
11/2/17	Revise Motion to Compel Depos and Reports	2.75
11/2/17	Email Chain with D. Holloman; Re: Payment of Fees	.25
11/3/17	Call with Mike Nunez	.25
11/3/17	Call with Client	.10
11/3/17	Call with Client	.10
11/3/17	Email Chain with KR, AF, JP, TP, SK; Re: DCRR 10/24/17	.25
11/3/17	Email Chain with KR, JP, SK; Re: Discovery Production	.75
11/3/17	Email Chain with KR, JP, TP, SK, AF; Re: DCRR 10/24/17	.50

11/3/17	Draft and Send Emails to Client	.15
11/3/17	Revise plaintiffs reply to Motion to Reconsider	1.75
11/4/17	Text Message with Teddy Parker	.10
11/4/17	Text Message with Teddy Parker	.10
11/6/17	Email Chain with D. Holloman, JP, TP, ES; Re: Mediation	.25
11/6/17	Email Chain with JP, AF; Re: Excess Policy	.15
11/6/17	Draft and Send Email to Client and Response	.15
11/6/17	Draft and Send Email to Client with Attachment	.15
11/6/17	Receive, Review and Analyze Email from Client	.25
11/6/17	Draft and Send Email to Client	.15
11/6/17	Draft and Send Email to Client with Attachment and Response	.25
11/6/17	Email Chain with Client	.25
11/6/17	Draft and send email to AF re calling UL attorney and review AF response	.15
11/6/17	Draft and send email to AF re mediation and review AF response	.15
11/6/17	Revise Edgeworth Responses to Request to Produce cancelled checks; and Request for Evidence of Activations and Witness for Activations	.75
11/6/17	Revise Plaintiffs Reply to Exclude Carnahan	3.75
11/6/17	Call with Client	.25
11/6/17	Call with Client	.25
11/6/17	Call with Client	.25
11/6/17	Email Chain with D. Holloman; Re: Response to OJ and Lange Attendance	.50
11/6/17	Review Viking Correspondence re competing DCRR's	1.0
11/7/17	Call with AMF	.25
11/7/17	Call with Client	.40

11/7/17	Email to CP with Attachments Re: Viking Opp to Mot to Strike	.20
11/7/17	Draft and send email to AF re drafting motion to compel financial information from Lange and review AF response	.15
11/7/17	Review letter from Lange; Disc. with Parker; Respond to Emails from Mediator; Discussion with AF	1.25
11/7/17	Review Viking's 17 <sup>th</sup> ECC Supplement	.50
11/7/17	Forward email to AF with attached letter from Parker	.25
11/7/17	Draft and send email to AF re sending information to Pomerantz and review AF response	.20
11/8/17	Discussion with Pomerantz	.50
11/9/17	Discussion with Lange Attorney Parker	.50
11/9/17	Review research re: cost of repairs and diminution in value damages; discussion with BJM	.75
11/9/17	Call with Client	.25
11/9/17	Discussion with Attorney AF; UL Attorney Conference Call; Notice of Deposition of Dalacus; Notice of Deposition of Court Reporter of Rene Stone; Telephone Conference to Robinson setting Carnahan Deposition; Conference Call with DC Bulla re: confidentiality	.75
11/9/17	Revise letter and DCRR to send to Court; Discussion with AF	.75
11/9/17	Review Viking's 18 <sup>th</sup> ECC Supplement	.50
11/9/17	Email Chain with AF/CP with Attachments	.15
11/9/17	Draft and Send Email to Client	.15
11/9/17	Receive, Review and Analyze Email from Client with Attachment	.50
11/9/17	Draft and send email to AF re resending information to Pomerantz and review AF response	.15
11/9/17	Forward email to AF from Olivas with job file for deposition	.50
11/10/17	Email Chain with F. Hale, JP, MC, KR; Re: Mediator Proposal	.25
11/10/17	Attended Mediation	4.0

11/13/17	Email Chain with Client with Attachment; Review and Analyze Mediator Proposal	.50
11/13/17	Draft and send email with attachments to AF	.15
11/13/17	Review Viking Motion for MSC and Stay all Rulings; Discussion with AF; Review Letter to DC Bulla; Telephone Conference with Floyd Hale; Telephone Conference with J. Olivas Re: Deposition	2.25
11/13/17	Email chain with AF re complaint filed against Harold Rodgers	.25
11/13/17	Draft and send email to AF re research re privilege log and confidentiality issues and review AF response	.75
11/13/17	Draft and send email to AF re supplementing Pomerantz opinion letter	.15
11/13/17	Email chain with AF re expert depositions noticed by Viking	.15
11/13/17	Prepare for 11/14/17 Hearings	2.25
11/13/17	Review Pomerantz Report and Produce; Discussion with Pomerantz; Discussion with Charles Rego from UL and Client	2.75
11/13/17	Receive, Review and Analyze Email From JO; Re: Additional Emails	.25
11/13/17	Email Chain with AF/CP with Attachments Re: Henderson	.15
11/13/17	Email from CP with Opinion letter	.75
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Receive, Review and Analyze Email from Client; Discussion with Client	.25
11/13/17	Email Chain with Client with Attachment	.50
11/13/17	Draft and Send Email to Client	.15
11/13/17	Email Chain with Client	.15
11/13/17	Email Chain with Client	.50
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Draft and Send Email to Client with Attachment	.15

11/13/17	Receive, Review and Analyze Email from Client	.25
11/13/17	Call with Client	.50
11/13/17	Call with Client	.25
11/14/17	Call with AMF	.10
11/14/17	Call with Client	.15
11/14/17	Call with Client	.10
11/14/17	Call with Client	.10
11/13/17	Email Chain with Client	.40
11/14/17	Email Chain with JP, AF, TP; Re: Inspection of Documents	.25
11/14/17	Email Chain with D. Holloman, JP, KR, JM; Re: Hale Settlement Matters	.25
11/14/17	Attend Hearings on MSJ; Review File with Client; Review Research; Prepare Emails to Pancoast Re: Depositions and Discovery Responses; Discussion with Attorney Olgvie Re: Retention; Email to Parker; Discussion with AF; Review Plaintiffs' 14 <sup>th</sup> ECC Supplement; Review files	7.5
11/14/17	Draft and Send Email to Ogilvie with Attachments	.75
11/14/17	Telephone Call with Ogilvie Regarding Retention	.50
11/15/17	Review cases re: validity of contract under NRS 624; discussion with AF and BM	2.75
11/15/17	Review research re: admissibility of litigation conduct; discussion with BJM	.75
11/15/17	Discussion with BJM re: recoverable damages w/ breach of contract vs. product liability	.75
11/15/17	Receive, Review and Analyze Email from Client	.15
11/15/17	Receive, Review and Analyze Email from Client	.25
11/15/17	Receive, Review and Analyze Email from Client with Link	.40
11/15/17	Call with Client	.25
11/15/17	Call with Client	.50



11/15/17	Call with Client	.25
11/15/17	Call with Client	.10
11/15/17	Call with Client	.10
11/15/17	Call with Client	.75
11/16/17	Call with Client	.25
11/16/17	Call with Client	.25
11/16/17	Call with AMF	.15
11/16/17	Call with Client	.15
11/16/17	Call with Client	.10
11/17/17	Call with Client	.15
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Client	.50
11/17/17	Call with Client	.25
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Client	.65
11/17/17	Call with Client	.15
11/17/17	Email Chain with EC, JP, AF, MN, TP, KR; Re: Olivas Deposition	.15
11/17/17	Draft and Send Email to Ogilvie with Links	.25
11/17/17	Prepare and Attend Hearings	4.5
11/17/17	Several discussions with clients from office	.50
11/17/17	Receive, Review and Analyze Email from Client with Link	.40
11/17/17	Receive, Review and Analyze Email from L. Rotert; Pomerantz Bill	.15
11/18/17	Draft and Send Email to Client with Links	.15

11/18/17	Email Chain with JP, AF, TP, BP, JH, KR; Re: MIL Meeting. Discovery with AF.	.50
11/20/17	Email chain with AF re outstanding expert bills	.25
11/20/17	Email chain with AF re meet and confer for MILS and hearing for Giberti's MGFS	.25
11/20/17	Email chain with AF re Knez letter and threat of motion to file protective order in CA for Rodgers and Rene Stone depositions	.25
11/20/17	Email Chain with Ogilvie and AF; Re: Permit App	.25
11/20/17	Receive, Review and Analyze Email from Client; Forward to AF	.15
11/21/17	Receive, Review and Analyze Email from Client	.25
11/21/17	Call with Client	.10
11/22/17	Draft and send email to AF re recent list of damages and review AF response	.15
11/22/17	Email Chain with Ogilvie, AF with Attachments; Re: Lange Supp Brief	.15
11/22/17	Draft and send email to AF re sending Lange responses brief to Ogilvie and review AF response	.15
11/22/17	Review notices of vacating deposition of Rene Stone and Harold Rodgers	.50
11/22/17	Review Lange's 12 <sup>th</sup> ECC Supplement	.25
11/24/17	Review correspondence from Dalacas	.25
11/24/17	Review email filings and depo emails	1.50
11/25/17	Call with Client	.10
11/25/17	Call with Client	.10
11/25/17	Call with Client	.15
11/26/17	Review Lange Discovery responses and attachments	1.50
11/27/17	T/C with J. Olivas re deposition	.35
11/27/17	Review hearing transcript from 11/14/17 hearing	1.50

11/27/17	T/C with T. Parker and Henriod (x3)	.75
11/27/17	Conference call with T. Parker, J. Pancoast and JEA to continue hearings; Emails	1.0
11/27/17	Receive, Review and Analyze Email From JO; Re: Final Invoice	.25
11/27/17	T/C's with Teddy Parker	.65
11/27/17	Email Chain with JP, TP, AF, KR, DP, JH; Re: MIL / Expert Depositions	.50
11/27/17	Email Chain with Bess White, TP, JP; Re: Edgeworth MOT for Summary Judgement	.35
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.15
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.25
11/27/17	Receive, Review and Analyze Email from Client	.25
11/27/17	Draft and send email to AF re Carnahan depo and review AF response	.15
11/28/17	Email Chain with JP, AF, KR, JH; Re: Outstanding Discovery	.15
11/28/17	Email Chain with EN, JP, KR, DP; Re: Letter from Parker	.50
11/28/17	Review Lange letter (11/28/17), analyze; discussion with AF	1.25
11/28/17	Review Amended Notice of Carnahan Depo	.25
11/28/17	Conference call with Judge Bulla chambers w/ Pancoast to reset December 1 <sup>st</sup> hearings to December 20 <sup>th</sup> and call with Pancoast separately	.50
11/28/17	Review notices of vacating depositions	.50
11/28/17	Email Chain with Ogilvie to Discuss Case	.15
11/29/17	Receive and analyze email from Ogilvie	1.50
11/29/17	Email Chain with EN, JP, TP; Re: Letter from Parker	.50
11/29/17	Email Chain with JP, AF; Re: Discovery Motions	.15

11/29/17	Draft and send email to AF re drafting reply to Lange's supplemental Opposition	1.50
11/29/17	Draft and send email to AF re drafting notice of attorney lien	.15
11/29/17	Draft and send email to AF re letter from Pancoast to Simon	.15
11/29/17	Review and analyze Lange's supplemental brief	2.50
11/29/17	Email from client Angela Edgeworth	.15
11/29/17	Email response to client Angela Edgeworth	.25
11/29/17	Review and analyze email from Oligilvie re: contractors license legal arguments and response email to Oligilvie; Discussion with AF	1.50
11/29/17	Draft reply to Lange's Supplemental Opposition to Plaintiffs' MSJ	2.75
11/29/17	Discussions w/ J. Henriod re moving hearings and settlement	.65
11/29/17	T/C with T. Parker	.50
11/29/17	Draft letter to Parker	.50
11/30/17	Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.10
11/30/17	Call with AMF	.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.20
11/30/17	Call with AMF	.10
11/30/17	Review file for Lange bills, T/C to Parker re: settlement	.75
11/30/17	Negotiate release w/ Henriod (his office)	3.50
11/30/17	Conversation w/ Green; draft email, send release	.75
11/30/17	Receive and review letter dated 11-30-17	.25

11/30/17	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	.75
11/30/17 & 12/2/17	Email chain with AF re attorney lien	.15
12/1/17	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	.15
12/1/17	Receive and review release email to Defendant	.75
12/1/17	Receive and review release email from Pancoast & discussion with AF	.50
12/1/17	Review Viking's 19 <sup>th</sup> ECC Supplement	.25
12/4/17	Received and reviewed DCCR; L/M for Green/Vannah	.75
12/4/17	Review notice vacating UL Depos	.25
12/4/17	Discussion with AF	.40
12/5/17	T/c with John Green; Email from John Green; Discussion with staff	.40
12/5/17	Review subpoena to Dalacas	.25
12/5/17	Emails to client and John Greene messages	.50
12/5/17	Draft and Send Email to Client and Response	.15
12/6/17	Draft and send email to AF re notice to vacate Caranahan depo	.15
12/6/17	Review file and gather materials requested by Vannah; email from John Greene	2.25
12/6/17	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	.50
12/6/17	Review notice of vacating depo of Carnahan	.35
12/6/17	Receive and review email from Janet Pancoast; discussion with AF; response; forward to Vannah	.35
12/6/17	Received and reviewed Lange's 13 <sup>th</sup> ECC Supplement	.50
12/6/17	Email Chain with JP, AF; Re: Carnahan Deposition	.15
12/7/17	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	.35
12/7/17	T/C with Vannah	.50

12/7/17	Draft and revise letter; Review of file to Vannah w/ attachment	1.75
12/8/17	Received and reviewed Lange 14 <sup>th</sup> ECC Supplement	1.25
12/8/17	Review Motion for Good faith settlement; discussion with AF	.75
12/8/17	Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	.50
12/8/17	Email chain with AF re Order Granting Giberti MGFS	.15
12/11/17	Email from Zamiski; Response email	.15
12/11/17	Review/ Analyze Lange 15 <sup>th</sup> ECC Supplement	.50
12/11/17	T/C Parker & Pancoast; Email from T. Parker; Email from Crt	.75
12/11/17	Review client's release of claims; emails to J. Greene; Discussions with AF	.50
12/11/17	Draft and send email to AF re Lange's 15 <sup>th</sup> ECC Supplement and review AF response	.25
12/12/17	Draft and send email to AF re Stip to Dismiss and review AF response	.15
12/12/17	Attend hearing on Viking Motion for Good Faith Settlement	1.75
12/6/17-12/12/17	Messages; Returned messages; discussions with Floyd Hale	.50
12/12/17	Email from J. Pancoast; Received/Reviewed/Analyze stip to dismiss; order on Good faith settlement; discussion with AF	1.25
12/12/17	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	.50
12/14/17	Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review email from J. Pancoast	.50
12/15/17	Review email from T.Ure; T/C to J. Pancoast re 2 <sup>nd</sup> stip to dismiss and arrange pick up of settlement checks	.50
12/18/17	Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
12/18/17	T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.0

12/18/17	Received, reviewed and analyze email from B. Vannah	.50
12/19/17	Emails to B. Vannah and J. Greene re checks	.25
12/19/17	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and response from B. Vannah	.25
12/20/17	Request return of sprinklers from Volmer Grey	.25
12/20/17	Receive and review draft Motion for Good Faith Settlement; Lange release for \$100k and release for \$22k	1.50
12/21/17	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	.75
12/21/17	Receive, review and analyze email from B. Vannah (3:21pm)	.50
12/23/17	Received, reviewed and analyzed email from B. Vannah (10:45pm)	.50
12/26/17	Receive, review and analyze email from J. Christensen to B. Vannah (10:46am)	.25
12/26/17	Receive, review and analyze email from B. Vannah (12:18pm)	.75
12/26/17	Receive, review and analyze email from J. Christensen	.25
12/27/17	Receive, review and analyze email from JC w/e letter attached	.75
12/28/17	Receive, review and analyze email from B. Vannah (3:07pm)	.75
12/28/17	Receive, review and analyze email from B. Vannah (2:03pm)	.25
12/28/17	Receive, review and analyze email from B. Vannah (4:17am)	.75
12/29/17	Received and reviewed email re joint motion and revised joint motion	.40
1/2/18	Revise Lange release and send back to T. Parker	.75
1/2/18	Received/reviewed Viking stip to dismiss	.35
1/2/18	Received/reviewed email from J. Pancoast and T. Parker	.35
1/2/18	Received/reviewed and analyzed letters from Zurich re settlement checks	.25
1/2/18	Received, reviewed and analyzed email from J. Greene (3:45pm)	.25
1/2/18	T/C with S. Guidy at Bank of Nevada	.50

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	<b>Total Hours</b>	<b>866.20</b>
	<b>Total Fees at \$550 per hour</b>	<b>\$476,410.00</b>



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

DATE	DESCRIPTION	TIME
12.20.16	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc.'s Substitution of Counsel	0.30
1.4.17	Review, Download & Save Joint Case Conference Report	0.30
1.6.17	Email to DSS re Lange K inserts added to MSJ	0.15
1.9.17	Review email from DSS re phone call to Pancoast	0.15
1.9.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.10.17	Review, Download & Save Plaintiffs Response to Defendants The Viking Corporation and Supply Network Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.11.17	Review email from DSS re making small changes to MSJ	0.15
1.13.17	Review, Download & Save Plaintiffs Motion for Summary Judgment	0.30
1.17.17	Review email from DSS re preparing written discovery and depo notices	0.15
1.17.17	Review email from DSS to Pancoast re moving MSJ hearing and Opp date	0.15
1.18.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment	0.30
1.19.17	Email chain with DSS re Viking's Opposition to MSJ	0.50
1.20.17	Email chain with DSS re Stackiewicz case	0.15
1.20.17	Review, Download & Save Notice of Video Deposition of Shelli Lange	0.30
1.20.17	Review, Download & Save Subpoena for Shelli Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition Bernie Lange	0.30
1.20.17	Review, Download & Save Subpoena for Bernie Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition of Tracey Garvey	0.30
1.20.17	Review, Download & Save Subpoena for Tracy Garvey	0.30

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

1.20.17	Review, Download & Save Notice of Video Deposition of Dustin Hamer	0.30
1.20.17	Review, Download & Save Subpoena for Dustin Hamer	0.30
1.20.17	Review, Download & Save Notice of Video Deposition of Vince Diorio	0.30
1.20.17	Review, Download & Save Subpoena for Vince Diorio	0.30
1.23.17	Email to DSS re business court judge	0.15
1.23.17	Email to DSS re draft notices and SDT for review	0.15
1.24.17	Email chain with DSS re business court jurisdiction	0.15
1.24.17	Email chain with DSS re breach of contract COAs	0.25
1.24.17	Review, Download & Save Notice of Deposition of Custodian of Records for American Grating, LLC	0.30
1.24.17	Review, Download & Save Notice of Deposition of Custodian of Records for Giberti Construction, LLC	0.30
1.25.17	Review email chain with client and Janelle from DSS re objections to depositions of COR for American Grating and Giberti Construction	0.15
1.26.17	Email chain with DSS re Lange 30(b)(6) depo	0.25
1.26.17	Review, Download & Save Subpoena for Vince Diorio	0.30
1.26.17	Review, Download & Save Re-Notice of Video Deposition of Vince Diorio	0.30
1.26.17	Review, Download & Save Re-Notice of Video Deposition of Dustin Hamer	0.30
1.26.17	Review, Download & Save Subpoena for Dustin Hamer	0.30
1.26.17	Review, Download & Save Subpoena Duces Tecum 30b6 Lange Plumbing LLC	0.30
1.26.17	Review, Download & Save Notice of Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Defendant Lange Plumbing, LLC	0.30
1.27.17	Review email from DSS re preparing Viking 30(b)(6) depo notice	0.15
1.30.17	Review, Download & Save Subpoena Duces Tecum for American Grating, LLC	0.30

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

1.30.17	Review, Download & Save Plaintiffs NRCP 45 Objections to Defendant The Viking Corp Subpoena Duces Tecum Directed to the Custodian of Records for American Grating	0.30
2.1.17	Review, Download & Save SUBP Subpoena Duces Tecum for Giberti Construction, LLC	0.30
2.1.17	Review, Download & Save Lange Plumbing's Response to The Viking Corp Demand for Prior Pleadings and Discovery	0.30
2.2.17	Review, Download & Save Defendant Lange Plumbing's Opposition to Plaintiff Motion for Summary Judgment	0.30
2.2.17	Review, Download & Save Subpoena for Bernie Lange	0.30
2.2.17	Review, Download & Save Re-Notice of Video Deposition of Bernie Lange	0.30
2.2.17	Review, Download & Save Subpoena for Shelli Lange	0.30
2.2.17	Review, Download & Save Re-Notice of Video Deposition of Shelli Lange	0.30
2.2.17	Review, Download & Save Subpoena for Dustin Hamer	0.30
2.6.17	Review email from DSS re email client sent re trailer temperatures and link	0.50
2.6.17	Email chain with DSS re Motion to Amend Complain	0.15
2.7.17	Review email from DSS re Viking 30(b)(6) notice	0.15
2.9.17	Review, Download & Save Correspondence	0.30
2.10.17	Review, Download & Save Correspondence to Daniel Simon Esq.	0.30
2.10.17	Email chain with DSS re response to Pancoast re Dustin Hamer	0.15
2.10.17	Review email chain from DSS re correspondence from Sia about moving depositions	0.15
2.10.17	Review email from DSS to Sia re moving depositions	0.15
2.10.17	Review email chain with Sia, Pancoast and DSS re Lange employee Depo dates	0.15
2.12.17	Email chain with DSS re re-noticing depositions of Hamer and Diorio	0.25

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

2.13.17	Email chain with DSS re court's availability for MSJ hearing	0.15
2.13.17	Review, Download & Save Plaintiffs Motion to Amend the Complaint on OST	0.30
2.13.17	Review, Download & Save Subpoena for Dustin Hamer	0.30
2.13.17	Review, Download & Save Re-Notice of Video Deposition of Dustin Hamer	0.30
2.13.17	Review, Download & Save Subpoena for Vince Diorio	0.30
2.13.17	Review, Download & Save Re-Notice of Video Deposition of Vince Diorio	0.30
2.15.17	Review, Download & Save Subpoena for Vince Diorio	0.30
2.15.17	Review, Download & Save Notice of Video Deposition of Virginia Brooks Duces Tecum	0.30
2.15.17	Review, Download & Save Subpoena for Virginia Brooks	0.30
2.15.17	Review, Download & Save Notice of Video Deposition of Jim Kreason Duces Tecum	0.30
2.15.17	Review, Download & Save Subpoena Duces Tecum for Jim Kreason	0.30
2.15.17	Review, Download & Save Notice of Continuation Video Deposition of Vince Diorio	0.30
2.15.17	Review, Download & Save Notice of Video Deposition of Brandon Lange	0.30
2.15.17	Review, Download & Save Subpoena for Brandon Lange	0.30
2.15.17	Review, Download & Save Re-Notice of Video Deposition of Bernie Lange	0.30
2.15.17	Review, Download & Save Subpoena for Bernie Lange	0.30
2.15.17	Review, Download & Save Re-Notice of Video Deposition of Shelli Lange	0.30
2.15.17	Review, Download & Save Subpoena for Shelli Lange	0.30
2.15.17	Review, Download & Save Plaintiffs First Supplement to Early Case Conference Witness and Exhibit List	0.30
2.15.17	Review email and attachment from DSS re document needing to be supplemented	0.25
2.15.17	Review email from DSS re noticing depositions of Lange employees	0.15

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

2.21.17	Email chain with DSS re exhibits for Dustin Hamer depo	0.15
2.21.17	Review Email and download deposition exhibits 1-8 from Oasis	0.25
2.21.17	Review, Download & Save Defendant Lange Plumbing, LLC's Limited Opposition to Plaintiff's Motion to Amend Complaint on Order Shortening	0.30
2.21.17	Review, Download & Save Scheduling Order	0.30
2.22.17	Review, Download & Save Defendant Lange Plumbing, LLC's Third Supplement to NRCP 16.1 Early Case Conference List of Witnesses and Documents	0.30
2.23.17	Review, Download & Save Subpoena for Virginia Brooks	0.30
2.23.17	Review, Download & Save Re-Notice of Video Deposition of Virginia Brooks Duces Tecum	0.30
2.23.17	Review, Download & Save Re-Notice of Video Deposition of Jim Kreason Duces Tecum	0.30
2.23.17	Review, Download & Save Subpoena for Jim Kreason	0.30
2.23.17	Review, Download & Save Re-Notice of Video Deposition of Shelli Lange	0.30
2.23.17	Review, Download & Save Subpoena for Shelli Lange	0.30
2.23.17	Review, Download & Save Notice of Vacating Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Defendant Lange Plumbing, LLC	0.30
2.23.17	Review, Download & Save Notice of Vacating Video Deposition of Tracey Garvey	0.30
2.23.17	Review, Download & Save Subpoena for Vince Diorio	0.30
2.23.17	Review, Download & Save Re - Notice of Continuation Video Deposition of Vince Diorio	0.30
2.26.17	Email to DSS re draft reply to motion to amend	0.15
2.27.17	Email chain with DSS re COR Depos for Giberti and American Grating	0.15

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

2.27.17	Review Email and download deposition from Oasis Reporting (Diorio)	0.25
2.27.17	Review Email and download deposition from Oasis Reporting (Hamer)	0.25
2.27.17	Review, Download & Save Reply to Defendant Lange Plumbing, LLC 's Limited Opposition to Plaintiffs' Motion to Amend the Complaint on OST	0.30
2.28.17	Review, Download & Save Reply to all Defendants Opposition to Plaintiffs Motion for Summary Judgment	0.30
2.28.17	Review email from DSS to Pancoast re documents for COR depositions of Giberti and American Grating	0.15
2.28.17	Call with DSS	0.10
2.28.17	Call with DSS	0.15
2.28.17	Call with DSS	0.15
3.1.17	Email to DSS re Pancoast coming to office to review documents	0.15
3.1.17	Call with DSS	0.15
3.1.17	Review, Download & Save Order Setting Civil Jury Trial	0.30
3.1.17	Email to DSS re Edgeworth trial order	0.15
3.6.17	Review, Download & Save Plaintiffs Second Supplement to Early Case Conference Witness and Exhibit List	0.30
3.7.17	Review, Download & Save Plaintiffs' Motion for Summary Judgment Against Lange Plumbing, LLC, Only	0.30
3.7.17	Review, Download & Save Offer of Judgment to Lange Plumbing, LLC	0.30
3.7.17	Review, Download & Save AOS	0.30
3.7.17	Review, Download & Save Initial Appearance Fee Disclosure of American Grating	0.30
3.7.17	Review, Download & Save Correspondence to Daniel Simon Esq.	0.30
3.7.17	Review, Download & Save Second Amended Complaint	0.30
3.7.17	Email to Pancoast and Sia re draft order to amend complaint and draft order for MSJ	0.15
3.7.17	Email chain with Sia re calculation of damages and depo of Brandon Lange	0.15
3.10.17	Email chain with Sia re signature pages for order to amend and Order on MSJ	0.25

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

3.10.17	Email chain with DSS re letter from Sia on withdrawing MSJ and her signature on proposed orders	0.25
3.10.17	Review, Download & Save Correspondence to Daniel Simon Esq.	0.30
3.13.17	Review, Download & Save Notice of Vacating Continuation Video Deposition of Vince Dioro	0.30
3.13.17	Review, Download & Save Re-Notice of Video Deposition of Brandon Lange	0.30
3.13.17	Review, Download & Save Subpoena for Brandon Lange	0.30
3.13.17	Review, Download & Save Re-Notice of Video Deposition of Brandon Lange	0.30
3.13.17	Review, Download & Save Subpoena for Brandon Lange	0.30
3.15.17	Review, Download & Save Correspondence to Daniel Simon, Esq.	0.30
3.15.17	Review, Download & Save Defendant Lange Plumbing's 4 <sup>th</sup> Supplemental Disclosure	0.30
3.16.17	Review, Download & Save Order Denying Plaintiffs Motion for Summary Judgment	0.30
3.17.17	Email chain with DSS re extension for Lange's response to OOJ	0.25
3.17.17	Email chain with Sia re OOJ and extension of time to respond	0.15
3.20.17	Review, Download & Save Notice of Entry of Order Denying Plaintiffs Motion for Summary Judgment	0.30
3.20.17	Review email from DSS to Sia re bate-stamping our exhibits in ECC Supplements	0.15
3.21.17	Email chain with Sia re bate-stamping ECC productions	0.15
3.21.17	Email chain with DSS re documents attached to supplement and review of the Kinsale file	0.15
3.21.17	Review, Download & Save Order Granting Plaintiffs Motion to Amend the Complaint	0.30
3.21.17	Review, Download & Save Requests for Production of Documents to Edgeworth Family Trust	0.30
3.21.17	Review, Download & Save Interrogatories to Edgeworth Family Trust	0.30

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

3.21.17	Review, Download & Save Plaintiffs Third Supplement to Early Case Conference Witness and Exhibit List	0.30
3.22.17	Review, Download & Save Lange Plumbing's 5 <sup>th</sup> Supplemental Disclosures	0.30
3.22.17	Review, Download & Save Notice of Entry of Order Granting Plaintiff's Motion to Amend the Complaint	0.30
3.22.17	Review, Download & Save Lange's First Requests for Production of Documents to The Viking Corp.	0.30
3.22.17	Review, Download & Save Lange's First Interrogatories to The Viking Corp.	0.30
3.23.17	Review email and download deposition from Oasis Reporting (Bernie Lange)	0.25
3.24.17	Review email from DSS to Sia re service of Amended Complaint on Lange	0.20
3.24.17	Review, Download & Save Correspondence to Daniel Simon, Esq.	0.30
3.27.17	Review, Download & Save Notice of Vacating Video Deposition of Virginia Brooks Duces Tecum Outside the State of Nevada	0.30
3.27.17	Review, Download & Save Plaintiffs 4 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30
3.29.17	Review, Download & Save Stipulation and Order to Continue Plaintiffs Motion for Summary Judgment Against Lange Plumbing, LLC Only	0.30
3.29.17	Call with DSS	0.15
3.29.17	Call with DSS	0.10
3.31.17	Call with DSS	0.15
3.31.17	Review, Download & Save Subpoena for PMK of The Viking Corporation	0.30
3.31.17	Review, Download & Save Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Viking Corporation	0.30
4.4.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Answer to Plaintiffs' Second Amended Complaint & Third Party Complaint Against Giberti Construction LLC	0.30



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

4.5.17	Review, Download & Save Defendant / Third – Party Plaintiffs The Viking Corp and Supply Network, Inc.'s Initial Appearance Fee Disclosure [Third Party Complaint ]	0.30
4.5.17	Email chain with DSS re exhibits he needs for Kreason and Brandon Lange depo	0.15
4.6.17	Review email from DSS re preparing 3 day notice of intent to default Lange	0.15
4.6.17	Review, Download & Save Correspondence	0.30
4.6.17	Review email from DSS to Sia re testing heads	0.15
4.7.17	Review, Download & Save Plaintiffs 5 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30
4.7.17	Review, Download & Save Defendant Lange Plumbing, LLC's Opposition to Plaintiff's Motion for Summary Judgment	0.30
4.11.17	Review, Download & Save Notice of Intent to Enter Default Against Lange Plumbing, LLC	0.30
4.11.17	Review, Download & Save Notice of Deposition of Custodian of Records for Rimkus Consulting, Group , Inc.	0.30
4.12.17	Review, Download & Save Defendant Lange Plumbing's Answer to Plaintiff's Second Amended Complaint and Cross Claim	0.30
4.13.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Requests for production to Lange Plumbing, LLC	0.30
4.13.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Requests for Admission to Lange Plumbing Inc.	0.30
4.13.17	Review, Download & Save Defendants The Viking Corporation Supply Network, Inc.'s Requests for production to Plaintiffs	0.30
4.13.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Requests for Admission to Plaintiffs	0.30
4.13.17	Review, Download & Save Subpoena Duces Tecum of Designees of Viking Automatic Sprinkler Co.	0.30

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

4.13.17	Review, Download & Save Second Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Viking Corporation	0.30
4.13.17	Review email chain from DSS requesting I re-notice depo of Viking 30(b)(6)	0.20
4.14.17	Review, Download & Save The Viking Corporation and Supply Network, Inc.'s Joinder with Additional Points and Authorities to Lange's Opposition to Plaintiff's Second Motion for Summary Judgment	0.30
4.17.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Interrogatories to Plaintiffs	0.30
4.17.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Interrogatories to Lange Plumbing, LLC	0.30
4.18.17	Review, Download & Save Plaintiffs' Reply to Motion for Summary Judgment Against Lange Plumbing Only	0.30
4.18.17	Review email from DSS to Sia re Kreason no show at depo	0.15
4.18.17	Review email from DSS re dropping off cc to Judge of Motion to compel Kreason	0.15
4.18.17	Review email and download deposition from Oasis Reporting (Brandon Lange and Non-Appearance of Kreason)	0.25
4.18.17	Review email and respond to email from Bill LaBorde with Oasis re rough transcript	0.15
4.20.17	Review email from Sia re testing of heads	0.20
4.21.17	Review email from DSS to Sia and Janet re testing protocol in writing	0.15
4.23.17	Review email from DSS requesting I do research on the contract prior to the MSJ hearing	0.15
4.24.17	Review email from DSS requesting I pull 3 <sup>rd</sup> party complaint Lange filed against Viking	0.15
4.24.17	Review, Download & Save Plaintiff Edgeworth Family Trust's Responses to Defendant's Interrogatories	0.30
4.24.17	Review, Download & Save Plaintiff Edgeworth Family Trust's Responses to Defendant's Request for production	0.30

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 7 of 12**

AA000297

Docket 77678 Document 2019-33422

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

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

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

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

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

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

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

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

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

4.25.17	Review email from DSS requesting I email 3 <sup>rd</sup> party complaint Lange filed against Viking	0.15
4.26.17	Review, Download & Save Notice of The Continued Deposition of Vincent Diorio	0.30
4.27.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Responses to Defendant Lange Plumbing, LLC's Request for Production of Documents	0.30
4.27.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Answers to Defendant Lange Plumbing LLC's Interrogatories	0.30
4.27.17	Review, Download & Save The Viking Corp and Supply Network, Inc.'s Objection to Subpoena	0.30
4.27.17	Review, Download & Save Correspondence	0.30
4.27.17	Review, Download & Save Plaintiffs 1 <sup>st</sup> Set of Interrogatories to Defendants The Viking Corporation	0.30
4.27.17	Review, Download & Save Plaintiffs' 1 <sup>st</sup> Set of Request for Admission to Defendants The Viking Corporation	0.30
4.27.17	Review email from DSS requesting draft notice of depo and SDT for Dan Cadden	0.15
4.27.17	Review email from DSS re what motions we need to file in Edgeworth and begin drafting	0.20
4.27.17	Email chain with DSS and JW re written discovery for Viking	0.15
4.27.17	Review email from DSS re pulling invoices from Viking to Lange showing heads purchased	0.15
4.27.17	Email chain between DSS, client and AF re drafting Viking SupplyNet notice	0.15
4.27.17	Review email from DSS re forward from client	0.40
4.28.17	Email chain with DSS re American Grating ECC and EFT Supp	0.15
4.28.17	Review email from DSS to Sia re lack of written protocol for testing	0.15
5.1.17	Review email and attachment from DSS re Viking's 2 <sup>nd</sup> Supp	0.50



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

5.1.17		Review, Download & Save Plaintiffs' Motion for an Order to Show Cause and Compel James Kreason to Appear for Deposition	0.30
5.1.17		Review, Download & Save The Viking Corp and Supply Network, Inc.'s Request to Observe all Inspections and / or Testing Performed by any Party	0.30
5.1.17		Review, Download & Save SDT for Dan Cadden	0.30
5.1.17		Review, Download & Save Notice of Video Deposition of Dan Cadden	0.30
5.1.17		Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Second Supplemental Disclosures Pursuant to NRCP 16(a)(1)	0.30
5.2.17		Review, Download & Save Defendant The Viking Corp and Supply Network, Inc 3 <sup>rd</sup> Supplemental Disclosure Pursuant to NRCP 16 (a)(1)	0.30
5.2.17		Email chain with DSS requesting Viking 30(b)(6) notice, 3 <sup>rd</sup> party complaint and amended complaint emailed and printed	0.20
5.3.17		Review email and attachment from client re ISTA Temperature Report	0.15
5.3.17		Email chain with attachments from DSS forwarded from Hastings and Viking supply invoices and print for DSS	0.25
5.4.17		Review, Download & Save Plaintiffs' Motion to Compel the Deposition to Defendant Lange Plumbing, LLC 's 30b6 Designee and for Sanctions	0.30
5.4.17		Review, Download & Save SDT	0.30
5.4.17		Review, Download & Save Plaintiff American Grating, LLC's Early Case Conference Witness and Exhibit List	0.30
5.5.17		Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC 's 6 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List ( Doc provided by CD )	0.30
5.5.17		Email to Pancoast and Sia re hearing dates	0.15

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

5.5.17	Email chain with Sia re names of other Lange employees who were at Edgeworth home	0.25
5.5.17	Email chain with DSS and Janelle re June 7 <sup>th</sup> hearing	0.15
5.5.17	Review email and attachment from DSS to Bullock re 3 <sup>rd</sup> party complaint	0.20
5.5.17	Review email and attachments from DSS that were forwarded from client re gate entries	0.25
5.8.17	Review email from Sia re draft order for denial of MSJ	0.15
5.8.17	Email to Sia and Pancoast re draft SAO to continue hearing and motion to compel Kreason	0.15
5.8.17	Review, Download & Save SDT of Supply Network Inc. dba Viking Supplynet	0.30
5.8.17	Review, Download & Save -Notice of Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Supply Network, Inc. dba Viking Supplynet	0.30
5.8.17	Review, Download & Save Summons with Affidavit of Service - Giberti	0.30
5.8.17	Review, Download & Save Plaintiffs 1 <sup>st</sup> Set of Request for Production to Defendant Lange Plumbing LLC	0.30
5.8.17	Review, Download & Save Plaintiffs 1st set of Request for Admission to Defendant Lange Plumbing, LLC	0.30
5.8.17	Review, Download & Save Plaintiffs 1 <sup>st</sup> Set of Interrogatories to Defendants Lange Plumbing, LLC	0.30
5.8.17	Review, Download & Save Plaintiff Edgeworth Family Trust's Responses to Defendant's Request for Admissions	0.30
5.8.17	Review, Download & Save Plaintiff Edgeworth Family Trust's Answers to Defendant's Interrogatories	0.30
5.8.17	Review, Download & Save SPlaintiff Edgeworth Family Trust's Responses to Defendant's Request for Production	0.30
5.8.17	Review, Download & Save ROC for Lange Plumbing's Motion to Compel	0.30
5.9.17	Review email from DSS re reference to Edgeworth house	0.15

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

5.10.17	Review, Download & Save Notice of Deposition of PMK for State Insulation, LLC	0.30
5.11.17	Review, Download & Save Notice Vacating Deposition of Custodian of Records for Rimkus Consulting Group, Inc.	0.30
5.11.17	Email chain with DSS re Mason depo scheduling	0.15
5.11.17	Email chain with DSS re weather expert	0.15
5.11.17	Email to Sia re missing pages from Lange's Motion to Compel release of sprinklers	0.15
5.11.17	Email chain with Janet re Edgeworth home inspection and discussion with DSS	0.25
5.12.17	Email to Janet re proposed stipulated protective order	0.15
5.12.17	Email to Olivas with additional documents for his review	0.15
5.15.17	Email chain with DSS re Opp to Lange's motion to compel sprinkler heads	0.15
5.15.17	Review, Download & Save Defendant /Third Party Plaintiffs The Viking Corp and Supply Network, Inc.'s Requests for Inspection	0.30
5.15.17	Review, Download & Save Plaintiffs' Opposition to Defendant Lange Plumbing, LLC's Motion to Compel Plaintiffs to Release Sprinkler Heads for Testing by Lange Plumbing, LLC on OST	0.30
5.17.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla	0.30
5.17.17	Review, Download & Save Defendant The Viking Corp and Supply Network, Inc.'s 4 <sup>th</sup> Supplemental Disclosures Pursuant to NRCp 16(a)(1)	0.30
5.17.17&5.18.17	Email chain with DSS, Sia and AF re extension of Lange's Opp to MSJ	0.25
5.18.17	Email chain with Sia re SAO regarding briefing schedule	0.25
5.19.17	Review, Download & Save Defendants / Third Party Plaintiffs The Viking Corporation and Supply Network, Inc.'s Notice of Inspection	0.30
5.19.17	Review email from Tashia Garry re Viking notice of inspection	0.15

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

5.19.17	Review email and download deposition from Oasis Reporting (Martorano)	0.25
5.19.17	Review email from DSS to Sia and Pancoast re testing on June 22 <sup>nd</sup>	0.15
5.22.17	Review email from DSS re returning Amanda Kern call from City of Henderson	0.15
5.22.17	Email chain with DSS re changes to DCRR	0.15
5.23.17	Email chain with Sia re proposed DCRR from May hearing	0.25
5.23.17	Review, Download & Save Subpoena for Erik C. Johnson	0.30
5.23.17	Review, Download & Save Notice of Deposition of Erik C. Johnson	0.30
5.24.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Answer to Lange Plumbing, LLC's Amended Cross - Claim and Amended Counter- Claim	0.30
5.24.17	Email to client re Rimkus Consulting documents	0.15
5.24.17	Email to Hastings with additional documents for his review	0.15
5.24.17	Review email from client re Rimkus documents and response	0.25
5.24.17	Review email from DSS re professors for weather expert	0.15
5.25.17	Review email from Sia requesting Plaintiff's motion to compel Lange 30(b)(6) depo	0.20
5.25.17	Review, Download & Save Defendant the Viking Corp and Supply Network. Inc's Answers to Plaintiff's Request for Admissions	0.30
5.26.17	Email chain with DSS re Sia's email to withdraw MSJ; and subsequent review of DSS response to Sia	0.15
5.29.17	Review email chain between DSS and Pancoast re extension on Viking rog responses	0.15
5.30.17	Email chain with DSS re start time of 6/22/17 testing; subsequent email chain with Sia re timing	0.25
5.30.17	Email chain with Sia and Pancoast re start time of destructive testing	0.15

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

5.30.17	Email chain with Pancoast and Sia re names of people attending inspection at Edgeworth residence	0.15
5.30.17	Email chain re retaining Don Koch as expert and retainer agreement	0.25
5.30.17	Email chain with DSS re weather expert mike Schwob	0.15
5.30.17	Review email from DSS re preparation of expert designation	0.15
5.30.17	Email chain with DSS re Stipulated Protective Order	0.25
5.31.17	Email chain with DSS re draft of Reply to limited Opp to Motion to Compel Kreason	0.15
5.31.17	Review email chain from DSS to Pancoast re State Insulation depo	0.15
5.31.17	Review, Download & Save Proof of Service	0.30
5.31.17	Review, Download & Save Notice of Vacating Deposition of PMK of State Insulation, LLC	0.30
6.1.17	Review email from DSS re book (Real Estate Damages) to be ordered	0.15
6.1.17	Review email from DSS to Pancoast re inspection of Viking SupplyNet warehouse	0.15
6.1.17	Email chain with Sia, Pancoast re changes to the protective order	0.75
6.1.17	Review email from Sia re Lange's Opp to Plaintiff's Motion to Compel	0.15
6.1.17	Review, Download & Save Defendant Lange Plumbing, LLC's Opposition to Plaintiff's Motion to Compel the Deposition of Defendant Lange Plumbing, LLC's 30b6 Designee and for Sanctions and Countermotion for Sanctions	0.30
6.1.17	Review, Download & Save SDT - of Supply Network, Inc. dba Viking Supplynet	0.30
6.1.17	Review, Download & Save Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Supply Network, Inc. dba Viking Supplynet (Date Change Only)	0.30
6.1.17	Review, Download & Save Supply Network, Inc.'s Objection to Subpoena	0.30

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

6.2.17		Review, Download & Save Defendant Lange Plumbing, LLC 's Limited, LLC's Limited Opposition to Plaintiffs' Motion for an Order to Show Cause and Compel James Kreason to Appear for Deposition	0.30
6.2.17		Review, Download & Save Defendant The Viking Corp and Supply Network, Inc.'s Answers to Plaintiffs Interrogatories	0.30
6.2.17		Review, Download & Save Lange's Responses to Viking's Requests for Production	0.30
6.2.17		Review, Download & Save Lange's Responses to Viking's Requests for Admission	0.30
6.2.17		Review, Download & Save Lange's Plumbing's Answers to Viking's Interrogatories	0.30
6.2.17		Review and respond to email from Jason Reeve re Don Koch agreement	0.25
6.2.17		Review email from client re preparing for Viking inspection	0.15
6.2.17		Email chain with DSS re producing prior pleadings to Nunez	0.15
6.2.17		Call with Client	0.15
6.2.17		Call with Client	0.15
6.2.17		Call with Pancoast	0.15
6.2.17		Call with Client	0.10
6.2.17		Call with DSS	0.15
6.5.17		Email chain with DSS re Reply to Compel Lange 30(b)(6)	0.15
6.5.17		Email chain with DSS and Pancoast re inspection email sent to Pancoast and follow up	0.25
6.5.17		Email chain with Pancoast re Inspection of Viking Supplynet	0.15
6.5.17		Review, Download & Save to Defendant Lange's Opposition to Plaintiffs' Motion to Compel the Deposition of Defendant Lange Plumbing, LLC's 30b6 Designee and for Sanctions	0.30
6.6.17		Review and respond to email from Sia re Dan Cadden Depo	0.15
6.6.17		Review, Download & Save CERT of Mailing of Notice of Hearing for Motion to Compel Kreason	0.30

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

6.6.17	Review, Download & Save Notice of Hearing for Motion to Compel Kreason	0.30
6.6.17	Review, Download & Save CERT of Mailing of Notice of Hearing for Motion to Compel Lange Plumbing 30b6	0.30
6.6.17	Review, Download & Save Notice of Hearing for Motion to Compel Lange Plumbing 30b6	0.30
6.6.17	Review, Download & Save Plaintiff's Notice of Entry Upon Land/Site Inspection	0.30
6.6.17	Email chain with Janet, Sia, Nunez re Johnson depo dates	0.15
6.6.17	Review email from client re deposition questions client would like asked	0.50
6.6.17	Review email and attachment from client re Viking's inconsistent labeling	0.25
6.6.17	Review email and attachment from client re Viking box with production date on it	0.15
6.6.17	Email chain with client and Doug Purvis re meeting with Koch	0.15
6.6.17	Review email and link from DSS re UPS petition and notice of 30(b)(6)	0.40
6.7.17	Review, Download & Save DCRR	0.30
6.7.17	Review email from DSS re Johnson depo exhibits and response	0.15
6.8.17	Email chain with DSS re COR Depo of City of Henderson	0.15
6.8.17	Review email from client re skylights in the Supplynet building	0.15
6.8.17	Review email from client re other residences that took a long time from rough to final and then research of houses to get square footage	1.50
6.8.17	Review email and attachment from client re client's summary of Viking's false testimony based off of depo from Martorano	2.0
6.9.17	Review, Download & Save Subpoena Duces Tecum Lange Plumbing, LLC	0.30
6.9.17	Review, Download & Save Notice of Second Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Lange Plumbing, LLC	0.30

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

6.9.17	Review, Download & Save Subpoena Duces Tecum of Custodian of Records for City of Henderson, Building Department	0.30
6.9.17	Review, Download & Save Notice of Taking the Deposition of Custodian of Records for the City of Henderson Building Department	0.30
6.9.17	Review, Download & Save Subpoena for Kyle Mao	0.30
6.9.17	Review, Download & Save Notice of Video Deposition of Kyle Mao	0.30
6.9.17	Review, Download & Save Subpoena for Erik C. Johnson	0.30
6.9.17	Review, Download & Save Amended Notice of Video Deposition of Erik C. Johnson (Date Change Only )	0.30
6.9.17	Email chain with DSS re name of Viking SupplyNet worker	0.15
6.12.17	Review email from DSS to client re direct sunlight on sprinklers	0.15
6.12.17	Email to Pancoast re confirmation of Diorio depo	0.15
6.12.17	Review email from client requesting Vince Diorio depo and response	0.15
6.12.17	Email chain with client and DSS re direct sunlight in the house	0.25
6.12.17	Review, Download & Save Third Party Defendant Giberti Construction LLC's Demand for Jury Trial	0.30
6.12.17	Review, Download & Save Defendant Giberti Construction LLC's Initial Appearance Fee Disclosure	0.30
6.12.17	Review, Download & Save Third - Party Defendant Giberti Construction LLC's Answer to Defendant/Third - Party Plaintiffs' Third Party Complaint; Counterclaim Against Viking Corp and Supply Network, Inc. dba Viking Supplynet; and Cross - Complaint Against Lange Plumbing, LLC	0.30
6.12.17	Review, Download & Save Lange Plumbing's Responses to Plaintiff's Requests for Admissions	0.30



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

6.12.17	Review, Download & Save Lange Plumbing's Responses to Plaintiff's Requests for Production	0.30
6.12.17	Review, Download & Save Lange Plumbing's Answers to Plaintiff's First Set of Interrogatories	0.30
6.12.17	Review, Download & Save Plaintiffs' Amended Notice Entry Upon Land/Site Inspection (Time Change Only)	0.30
6.13.17	Email chain with Hastings re depositions taken in the case and response	0.25
6.13.17	Email chain with Sia and Pancoast re Diorio deposition	0.15
6.13.17	Review email and attachments from client re non visible possible defects	0.50
6.13.17	Email chain with DSS and Hastings re documents	0.15
6.14.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's Request for Prior Pleadings, Discovery, Records and Deposition Transcripts	0.30
6.14.17	Review, Download & Save Lange Plumbing's 6 <sup>th</sup> Supplemental Disclosure	0.30
6.14.17	Review, Download & Save Amended Notice of Taking the Deposition of Vincent Diorio [TimeOnly]	0.30
6.14.17	Email to client re continuation of Diorio depo	0.15
6.14.17	Review email from Sia re 6.7.17 DCRR	0.15
6.15.17	Review email from Sia re Lange's 6 <sup>th</sup> ECC Disclosure	0.15
6.15.17	Email chain with Pancoast and Sia re changes to the Protective Order	0.50
6.15.17	Review email from DSS to Pancoast re document production	0.15
6.15.17	Review email from DSS to Hastings re written protocol for testing	0.15
6.15.17	Email to Pancoast and Sia re draft DCRR from 6.7.17 hearing	0.15
6.16.17	Review email from Nicole Garcia re Ure signature pages ready for pick up	0.15
6.16.17	Email to Sia re signature page for 6.7.17 DCRR	0.15
6.16.17	Review email from Zamiski re testing protocol signature page	0.15

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

6.16.17	Email chain with DSS re Zamiski's signature page for written protocol for testing	0.15
6.16.17	Review email from DSS re locating document for client	0.15
6.16.17	Email chain with DSS re Giberti's Stip and Order to Extend Discovery	0.15
6.16.17	Review email from DSS to Nunez and Ure re Stip and Order to extend discovery	0.15
6.17.17	Call with DSS	0.10
6.19.17	Email chain with DSS re demand for prior pleadings by Giberti	0.15
6.19.17	Review email chain between DSS, Pancoast, Sia and Nunez re Kreason motion to compel and Kreason depo	0.20
6.19.17	Review email and download deposition from Oasis Reporting (Cadden)	0.25
6.19.17	Email chain with Pancoast re signature page for 6.7.17 DCCR	0.15
6.19.17	Email chain with Don Koch re his visit to the residence and his opinions	0.25
6.20.17	Email chain with Sia re protocol for destructive testing	0.15
6.20.17	Call with DSS	0.15
6.20.17	Email to Bill LaBorder requesting a complete set of depo exhibits	0.15
6.20.17	Email to Sia re who will be attending destructive testing	0.15
6.20.17	Review email and attachment from client re Vince Diorio depo	0.50
6.20.17	Email to Zamiksi re signature for testing protocol	0.15
6.20.17	Email chain with client re destructive testing protocol and response	0.75
6.20.17	Email to Don Koch with additional documents for his review	0.15
6.20.17	Email chain with DSS re phone call with Don Koch	0.15
6.20.17	Email chain with DSS and Janelle re hearing date for Kreason motion to compel	0.15
6.20.17	Email chain between DSS, Pancoast, Sia and Nunez re deposition scheduling of Diorio	0.15
6.20.17	Email chain with DSS re list of exhibits from depositions with attachment	0.15

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

6.20.17	Review, Download & Save Lange's 7 <sup>th</sup> Supplemental Disclosures	0.30
6.20.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s 5 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16(b)(1)	0.30
6.20.17	Review, Download & Save Plaintiffs Response to Third Party Defendant Giberti Construction LLC's Request for Prior Pleadings, Discovery, Records and Deposition Transcripts	0.30
6.20.17	Review, Download & Save Correspondence to DC Bulla regarding the June 21, 2017 Hearing	0.30
6.20.17	Review, Download & Save Subpoena Duces Tecum for Jim Kreason	0.30
6.20.17	Review, Download & Save Re- Notice of Video Deposition of Jim Kreason Duces Tecum	0.30
6.22.17	Review, Download & Save SDT of Supply Network, Inc., dba Viking Supplynet	0.30
6.22.17	Review, Download & Save Second Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30ba of Designees of Supply Network, Inc., dba Viking Supplynet Date Change Only)	0.30
6.22.17	Email to Zamiski and Hatsing re locations of sprinklers from Edgeworth house that will be used during destructive testing	0.15
6.22.17	Email to Zamiski with additional documents for his review	0.15
6.22.17	Call with DSS	0.10
6.22.17	Call with DSS	0.10
6.22.17	Call with DSS	0.15
6.23.17	Call with DSS	0.10
6.23.17	Call with DSS	0.25
6.23.17	Email to Hastings with additional documents for his review	0.15
6.23.17	Review email and attachments from client re nest energy history	0.25
6.23.17	Email chain with DSS and client re downloading and sending screenshots of nest energy history	0.15

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

6.26.17	Email chain with DSS re documents for Kreason depo (specifically Rimkus documents)	0.20
6.26.17	Review, Download & Save Giberti Construction, LLC's Motion to Extend Discovery Deadlines on an OST	0.30
6.27.17	Review, Download & Save The Viking Corp and Supply Network, Inc.'s Joinder to Giberti Construction, LLC 's Motion to Continue Discovery Deadlines	0.30
6.27.17	Email chain with Pancoast, Sia and Nunez re scheduling of Supplynet PMK Depo	0.25
6.28.17	Email chain with DSS re vacating Kreason Motion to compel	0.20
6.28.17	Email chain with DSS re Kyle Mao depo (my thoughts, exhibits pulled)	1.0
6.28.17	Review, Download & Save SDT of Supply Network, Inc. dba Viking Supplynet	0.30
6.28.17	Review, Download & Save Third Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30b6 of Designees of Supply Network, Inc, Viking Supplynet (Date Change Only)	0.30
6.28.17	Call with DSS	0.10
6.29.17	Review, Download & Save Notice of Change of Address	0.30
6.29.17	Review, Download & Save DCRR	0.30
6.29.17	Review, Download & Save Stipulated protective Order	0.30
6.29.17	Email to Amanda Kern with City of Henderson and attachment re Dan Cadden depo	0.25
6.30.17	Review email from DSS to Pancoast re missing Viking documents	0.20
6.30.17	Review, Download & Save SDT - for Robert Carnahan, P.E.	0.30
6.30.17	Review, Download & Save Notice of Taking Deposition of Robert Carnahan, P.E. Duces Tecum	0.30
6.30.17	Review, Download & Save Subpoena for Raul De La Rosa	0.30
6.30.17	Review, Download & Save Notice of Video Deposition of Raul De La Rosa	0.30

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

6.30.17	Review, Download & Save Subpoena – James Cameron	0.30
6.30.17	Review, Download & Save Notice of Video Deposition of James Cameron	0.30
7.3.17	Review email and attachment from client re HVAC shut down at Edgeworth residence	0.25
7.5.17	Review, Download & Save Defendant/Cross Claimant Lange Plumbing, LLC's Response to Third Party Defendant Giberti Construction, LLC's Demand for All Prior Pleadings and Discovery	0.30
7.6.17	Review, Download & Save Defendant The Viking Corp and Supply Network, Inc.'s 6 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16 (a)(1)	0.30
7.6.17	Email chain with Jessica Rogers re Viking disclosure	0.20
7.6.17	Email to Sia re Lange's expert's raw data	0.15
7.6.17	Email chain with DSS re Lange expert raw data from testing	0.25
7.6.17	Email chain with DSS re sending documents to Hastings	0.15
7.6.17	Email chain with DSS re moving Carnahan depo	0.15
7.7.17	Call with DSS	0.10
7.7.17	Call with DSS	0.25
7.7.17	Email to Sia, Pancoast and Nunez re depo of the COR of Henderson	0.15
7.10.17	Review, Download & Save Correspondence to Commissioner Bulla	0.30
7.10.17	Email chain with Sia re objection to Giberti motion to continue trial	0.15
7.10.17	Email to Hastings with additional documents for his review	0.15
7.10.17	Email to Zamiski with additional documents for his review	0.15
7.10.17	Email chain with client re Viking's production of documents and effect of the protective order	0.25
7.10.17	Email chain with DSS re documents Zamiski requested	0.15
7.10.17	Email chain with DSS re documents Viking produced and what experts need	0.20

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

7.10.17	Email and attachment to DSS with important Viking emails from recent production	0.25
7.10.17	Email chain with DSS re Johnson depo exhibits	0.20
7.10.17	Email chain with DSS with attachments re ACORE report and invoice	0.25
7.10.17	Email chain with DSS re Opposition	0.15
7.10.17	Email chain with DSS re Opp to Motion to extend discovery deadlines	0.25
7.11.17	Review, Download & Save Plaintiffs' Opposition to Defendant Giberti Construction, LLC's Motion to Extend Discovery Deadlines on an OST	0.30
7.11.17	Review, Download & Save Supplement to Plaintiffs' Motion to Compel the Deposition Defendant Lange Plumbing, LLC 's 30(b)(6) Designees and for Sanctions	0.30
7.11.17	Review, Download & Save Defendant / Cross Claimant / Cross Defendant Lange Plumbing, LLC's Answer to The Viking Corp and Supply Network's Amended Cross Claim	0.30
7.11.17	Review, Download & Save Defendant / Cross Claimant / Cross Defendant Lange Plumbing, LLC 's Answer to Giberti Construction, LLC's Cross Claim	0.30
7.11.17	Review, Download & Save SDT for Robert Carnahan, P.E.	0.30
7.11.17	Review, Download & Save Amended Notice of Video Deposition of Robert Carnahan, P.E. Duces Tecum	0.30
7.11.17	Review email and attachment from Jessica Rogers re correspondence from Pancoast to DC Bulla	0.25
7.11.17	Email to Hastings with additional documents for his review	0.15
7.11.17	Review email and attachment from DSS re Olivas CV	0.15
7.12.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's 7 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 8 of 12**

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

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



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

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

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

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

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

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

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

7.12.17	Email chain with DSS re revised supplemental JCCR	0.25
7.12.17	Review email from DSS to Nicole Garcia re DCRR re motion to extend discovery	0.15
7.12.17	Email chain with DSS and Zamiski re sprinklers being sent to Vollmer Grey	0.50
7.12.17	Review email from Nicole Garcia re Ure signature pages ready for pick up	0.15
7.12.17	Email to Victoria Boyd (Court reporter) for hearing transcript	0.15
7.13.17	Review, Download & Save Defendant The Viking Corp and Supply Network, Inc.'s Answer too Giberti Construction, LLC's Counterclaim	0.30
7.13.17	Email chain with Sia re picking up sprinkler heads from Converse Consulting	0.50
7.13.17	Email chain with DSS re Rimkus subpoena for documents	0.15
7.13.17	Review email from DSS re objection to confidentiality of Viking documents and response	0.15
7.14.17	Review email from DSS re Zamiski preparing chain of custody documents and response	0.15
7.14.17	Email chain with DSS re 2 <sup>nd</sup> Supplement to Lange Motion for sanctions	0.25
7.14.17	Review email from DSS re letter to Sia to be drafted re sanctions	0.75
7.14.17	Email chain with Zamiski re chain of custody documents for sprinkler	0.15
7.14.17	Review, Download & Save Giberti Construction, LLC's Mtn. to Extend Discovery Deadlines on OST	0.30
7.14.17	Review, Download & Save Second Supplement to Plaintiffs' Motion to Compel the Deposition of Defendant Lange Plumbing, LLC's 30(b)(6) Designee and for Sanctions	0.30
7.17.17	Review, Download & Save Plaintiffs' Opposition to Defendant Giberti Construction, LLC's Motion to Extend Discovery Deadlines on an OST	0.30

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

7.17.17	Review, Download & Save Defendant The Viking Corp and Supply Network, Inc.'s First Supplemental Answers to Plaintiffs' Interrogatories	0.30
7.17.17	Review email from Sia re DC ruling on Lange sanctions	0.15
7.17.17	Email chain with DSS re Giberti motion to extend discovery	0.15
7.18.17	Email chain with DSS re notice of 2.34 with Viking re deficient discovery responses	0.15
7.18.17	Email to Sia re Simon Law W9	0.15
7.18.17	Email chain with Pancoast re signature page for amended JCCR	0.15
7.18.17	Email chain with DSS re objection to confidentiality and response	0.25
7.18.17	Review email from DSS re printing all discovery responses	0.15
7.18.17	Review email and attachment from DSS re Caranahan depo and SDT and response	0.25
7.18.17	Review, Download & Save Letter to D. Simon from J. Pancoast	0.30
7.18.17	Review, Download & Save Notice of Telephonic 2.34 Conference with Viking Defendants	0.30
7.19.17	Review, Download & Save Plaintiffs' Objection to Confidentiality Designation Pursuant to the Protective Order	0.30
7.19.17	Review, Download & Save Issued Commission to Take Out of State Deposition of Robert Carnahan, P.E.	0.30
7.19.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition of Robert Carnahan	0.30
7.19.17	Review, Download & Save Subpoena Duces Tecum for Robert Carnahan, P.E.	0.30
7.19.17	Review, Download & Save Second Amended Notice of Video Deposition of Robert Carnahan, P.E. Duces Tecum	0.30
7.19.17	Email chain with DSS re Lange's 8 <sup>th</sup> supplement and raw data from destructive testing	0.20
7.19.17	Email to client with summary chart of all emails from Viking	0.15
7.19.17	Review email from Sia re Lange's 8 <sup>th</sup> ECC Supp and attachments	0.25

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

7.19.17	Email to Hastings with additional documents for his review	0.15
7.19.17	Email to Zamiski with additional documents for his review	0.15
7.19.17	Review email from client re depo testimony about test results at 190 degrees	0.15
7.19.17	Review email from client requesting Martorano depo and response	0.15
7.19.17	Review email from DSS to client re Viking rep depo	0.15
7.19.17	Email chain with DSS re Sia's changes to the DCRR re Lange's sanctions	0.50
7.19.17	Review email from DSS re checking production to make sure we have produced proper documentation for all damages	0.15
7.20.17	Review email chain between DSS and Pancoast re EDCR 2.34 re deficient discovery responses	0.20
7.20.17	Review, Download & Save Letter to Attorney Simon re EDCR 2.34 Notice	0.30
7.20.17	Review, Download & Save Lange Plumbing's 8 <sup>th</sup> Supplemental Disclosures	0.30
7.21.17	Review, Download & Save The Viking Corporation and Supply Network, Inc.'s Joinder to Giberti Construction, LLC's Motion to Continue Discovery Deadlines	0.30
7.21.17	Review email from DSS to Pancoast re meet and confer	0.20
7.21.17	Email chain with attachment with DSS re documents being sent to expert	0.25
7.21.17	Email to Hastings requesting the readings for the Edgeworth home	0.15
7.21.17	Email to Don Koch re status of report	0.15
7.21.17	Review email from client re Viking giving us info on all sprinkler heads	0.15
7.21.17	Review email and link from client re Viking v. Harold Rodgers case in CA and response	0.50
7.22.17	Email to Don Koch with additional documents for his review	0.15
7.23.17	Review email and attachments from client re Viking tests	0.50
7.23.17	Review email from client re his opinion on the Vollmer gray report	0.25
7.23.17	Review email from client re UL 1626 bath test	0.25

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

7.24.17	Review, Download & Save J. Pancoast Letter to D. Simon	0.30
7.24.17	Review and respond to Rush Porter re Kevin Hasting's CV and testimony list	0.15
7.24.17	Email to Hastings requesting his CV for his report	0.15
7.24.17	Email chain to Don Koch re model from Purvis	0.25
7.24.17	Email chain with client re Harold Rogers contact	0.25
7.24.17	Review email and dropbox link from client re another VK457 failure	0.50
7.24.17	Review email from client re facts about attic we should know and analysis	0.25
7.24.17	Review email from client re number of days it was 100 degrees	0.15
7.24.17	Email chain with client re Purvis model being sent to Koch	0.25
7.24.17	Email chain with client re Viking supplemented any emails re the Edgeworth case	0.20
7.24.17	Review summary email from client re his theory on Viking's temperature position	0.50
7.24.17	Review email from DSS to client re kreason depo	0.15
7.24.17	Review email from DSS re Kreason depo	0.15
7.24.17	Review email from DSS re re-noticing Carnahan depo and response	0.15
7.24.17	Email chain with DSS re contacting Harold Rodgers	0.15
7.24.17	Review email from DSS to Pancoast re Rog Response No. 4	0.15
7.24.17	Review email from DSS re drafting Rimkus subpoena for other sprinklers and response	0.15
7.25.17	Email chain with DSS re vacating status check on Lange sanctions	0.25
7.25.17	Email to Sia re signature page for 7.12.17 DCRR	0.15
7.25.17	Email to Pancoast re missing documents from Viking's 6 <sup>th</sup> ECC Supplement	0.25
7.25.17	Review email and attachments from client re important documents of the VK457 that we need to understand	0.25

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

7.25.17	Review email from client and deposition cite from Martorano deposition re number of activations	0.15
7.25.17	Review email from client and inquiries into the case re Viking's disclosure of number of activations	0.15
7.25.17	Review email from client re UL 1626 requesting us to locate document in Viking's disclosure	0.50
7.25.17	Review email from client re summary of issues about Viking client would like us to explore	0.50
7.25.17	Review, Download & Save Defendant The Viking Corp and Supply Network, Inc.'s Second Supplemental Answers to Plaintiffs' Interrogatories	0.30
7.25.17	Call with DSS	0.15
7.25.17	Review, Download & Save Subpoena Duces Tecum for the NRCP 30(b)(6) Designee of the Viking Corporation	0.30
7.25.17	Review, Download & Save Third Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30(b)(6) of Designees of the Viking Corp	0.30
7.25.17	Review, Download & Save SDT - for Robert Carnahan, P.E.	0.30
7.25.17	Review, Download & Save Third Amended Notice of Video Deposition of Robert Carnahan, P.E. Duces Tecum	0.30
7.25.17	Review, Download & Save SDT - for the Custodian of Records for Rimkus Consulting Group, Inc.	0.30
7.25.17	Review, Download & Save Notice of Deposition Duces Tecum of The Custodian of Records Rimkus Consulting Group, Inc	0.30
7.25.17	Review, Download & Save Subpoena Duces Tecum for The NRCP 30(b)(6) PMK for Zurich Insurance Company	0.30
7.25.17	Review, Download & Save Notice of Deposition of the NRCP 30 (b)(6) PMK Zurich Insurance Company	0.30
7.26.17	Review, Download & Save DCRR	0.30
7.26.17	Review, Download & Save DCRR	0.30
7.26.17	Review, Download & Save DCCR	0.30



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

7.26.17	Review, Download & Save Plaintiffs 2 <sup>nd</sup> Set of Interrogatories to Defendants The Viking Corp	0.30
7.26.17	Review, Download & Save Plaintiffs 2 <sup>nd</sup> Set of Requests for Production to Defendants The Viking Corporation	0.30
7.26.17	Review, Download & Save DCRR	0.30
7.26.17	Review email from DSS to Pancoast re Nationwide case	0.15
7.26.17	Review email and attachment from client re drawings and what client's staff can re-draw	0.25
7.26.17	Review email and attachment from client re mechanical engineering points client wants to talk to experts about and analysis	0.50
7.26.17	Review email from client re King County case	0.15
7.26.17	Review email from client re inquires why Viking was not disclosing premature activations	0.15
7.27.17	Review, Download & Save The Viking Corporation and Supply Network, Inc.'s Motion for Protective Order and Request for OST	0.30
7.27.17	Review, Download & Save Defendant Lange Plumbing, LLC's Joinder to Plaintiffs' Objection to Confidentiality Designation Pursuant to the Protective order	0.30
7.27.17	Review, Download & Save SDT COR Rinkus Consulting Group, Inc.	0.30
7.27.17	Review, Download & Save Plaintiffs 1 <sup>st</sup> Set of Requests for Production to Defendants The Viking Corporation	0.30
7.28.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's Initial Early Case Conference Disclosure of Documents and Witnesses	0.30
7.28.17	Review email from client re important photo evidence and review document cited in email	0.25
7.31.17	Review email and deposition testimony cite from client re Viking not aware of documentation	0.25

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

8.1.17	Review email from DSS to Janelle re service of Zurich directly	0.15
8.1.17	Review, Download & Save Letter from J. Pancoast to D. Simon re. Amended Subpoena	0.30
8.1.17	Review, Download & Save The Viking Corp Verification Page to Second Supplemental Answer to Plaintiffs' Interrogatories	0.30
8.1.17	Review, Download & Save Letter for J. Pancoast to D. Simon	0.30
8.2.17	Review, Download & Save SDT for Zurich	0.30
8.2.17	Review, Download & Save Defendant The Viking Corp and Supply Network, Inc. 17 <sup>th</sup> Supplemental Disclosure	0.30
8.2.17	Review email from DSS to Pancoast re service of documents from recent production	0.15
8.3.17	Review email and attachment from client re an email that Viking "expects their findings to be shared"	0.25
8.3.17	Review email and attachment from client re UK threat by Viking	0.25
8.4.17	Email Chain with attachments with Sia re sanctions check	0.20
8.4.17	Review email and attachment from client re non-conforming hold	0.25
8.4.17	Review email and pictures from client re cut open VK457	0.25
8.4.17	Review, Download & Save SDT Angela Edgeworth	0.30
8.4.17	Review, Download & Save SDT Margaret Ho	0.30
8.4.17	Review, Download & Save SDT Colin Kendrick	0.30
8.7.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Motion for Protective Order No. 2 and Request for OST	0.30
8.7.17	Review, Download & Save SDT Mark Giberti	0.30
8.7.17	Review, Download & Save SDT PMK of Edgeworth Family Trust	0.30
8.7.17	Review, Download & Save SDT PMK of American Grating	0.30

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

8.7.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Request for Production to Giberti Construction, LLC	0.30
8.7.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Interrogatories to Giberti Construction, Inc.	0.30
8.7.17	Review, Download & Save Notice of Taking the Deposition of Mark Giberti	0.30
8.7.17	Review, Download & Save SDT for Mark Giberti	0.30
8.7.17	Review, Download & Save Notice of Taking the Deposition of NRCP 30(b)(6) Person Most Knowledgeable for American Grating, LLC	0.30
8.7.17	Review, Download & Save Notice of Taking the Deposition of NRCP 30(b)(6) Person Most Knowledgeable for Edgeworth Family Trust	0.30
8.7.17	Review, Download & Save Notice of Taking the Deposition of Angela Edgeworth	0.30
8.7.17	Review, Download & Save Notice of Taking Deposition for Kendrick Colin	0.30
8.7.17	Review, Download & Save SDT for Kendrick Colin	0.30
8.7.17	Review, Download & Save Notice of Deposition of Margaret Ho	0.30
8.7.17	Review, Download & Save SDT for Margaret Ho	0.30
8.7.17	Review email and attachment from client re defective head activations and comparison to Martorano testimony of 46	0.75
8.7.17	Review email and attachments from client re documents client would like to talk to expert about, including denial letters, material hold, exponent letter	0.75
8.7.17	Review email from client re his theory that people were being promoted despite cover-up	0.15
8.7.17	Email chain with DSS re Colin Kendrick and Margaret Ho	0.15
8.7.17	Review email from DSS re missed call from Fred Knez	0.15

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

8.7.17	Review email from DSS re drafting motion to amend to add Viking Corp and response	0.15
8.8.17	Email to Jessica Rogers re mandarin interpreter for Margaret Ho	0.15
8.8.17	Email chain with Ure re order to extend discovery	0.25
8.8.17	Email to Zamiski with additional documents for his review	0.15
8.8.17	Email to Zamiski requesting CV for expert disclosure	0.15
8.8.17	Review email and attachment from client re the cut open VK457 pic	0.25
8.8.17	Review email from client re labeling pictures	0.15
8.8.17	Review email and attachment from client re VK457 pic	0.25
8.8.17	Review email and attachments from client re Viking's pictures in reports and in powerpoints and analysis	0.50
8.8.17	Email chain with DSS re Viing's position of Martorano depo confidential	0.15
8.8.17	Email chain with DSS re documents still needed from Zamiski for expert disclosure	0.15
8.8.17	Review email from DSS re requesting hearing transcripts from Court and response	0.15
8.8.17	Call with DSS	0.10
8.8.17	Call with DSS	0.25
8.8.17	Call with DSS	0.25
8.9.17	Call with DSS	0.25
8.9.17	Call with DSS	0.10
8.9.17	Call with DSS	0.10
8.9.17	Review email from DSS re draft of motion to compel discovery from Viking and response	0.25
8.9.17	Email chain with DSS re draft notices for Viking employees in Michigan and notice of site inspection	0.40
8.9.17	Email chain with DSS re expert disclosure and addition of non-retained experts	0.30
8.9.17	Email chain with DSS re documents to send to Hastings from recent Viking productions	0.15
8.9.17	Review email chain with expert re what testing has to be done by UL	0.15

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

8.9.17		Review email and attachment from DSS and request to supplement fireplace pic and response	0.15
8.9.17		Email to Olivas requesting CV and hourly rate for expert disclosure	0.15
8.9.17		Email to Hastings with additional documents for his review	0.15
8.9.17		Review and respond to email from Beth Bernal with Vollmer Grey wit Zamiski CV and testimony list	0.15
8.9.17		Email chain with client re all of the Viking productions and my summary response after review of all 7 supplements	2.5
8.9.17		Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s 8 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16.1	0.30
8.10.17		Review and respond to email from Julie Lord (Dept.10 clerk) re spelling an final version of the hearing transcripts	0.30
8.10.17		Email to Hastings with additional documents for his review	0.15
8.10.17		Email chain with client re UL documents in Viking's 8 <sup>th</sup> ECC Supplement	0.25
8.10.17		Email chain with client re clarification in Scott's deposition	0.15
8.10.17		Review email from client re load on link and which of our experts can test	0.15
8.10.17		Review email from client re constraints on what he can and cannot say	0.15
8.10.17		Review email from client re Viking v. FSS and Thorpe case and review document referenced in email	0.25
8.10.17		Review email from client re former CEO Kevin Ortyl and review documents referenced in email	0.25
8.10.17		Email chain with client re a Viking email without an attachment and review of all documents referenced by client	0.75
8.10.17		Review email from client re requesting me to upload documents and response	0.25
8.10.17		Review and respond to Shari Adair re Don Koch invoice	0.15

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

8.10.17	Review email from client re written discovery questions he wants to send to Viking	0.25
8.10.17	Email chain with DSS re Plaintiff's ECC Supp	0.15
8.10.17	Email chain with DSS re sending documents to Hastings	0.15
8.10.17	Review email chain with client re dates and times for Margaret Ho's deposition	0.15
8.10.17	Email chain with DSS re UL documents being sent to experts	0.15
8.10.17	Review email from DSS re printing specific document and response	0.15
8.10.17	Review email from DSS to client re load on link opinion	0.15
8.10.17	Email chain with DSS re Rimkus objection and drafting motion to compel	0.25
8.11.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s 9 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16.1	0.30
8.11.17	Review email from DSS re prepare motion to amend to add Viking group and response	0.15
8.11.17	Review email from DSS re drafting written discovery based off of questions drafted by client and response	0.50
8.11.17	Review email from DSS re documents to be printed from Hastings and response	0.15
8.11.17	Review email from DSS re drafting written discovery based off of questions drafted by client and response	0.50
8.11.17	Review email and 13page attachment from client regarding Scott Martorano depo testimony and analysis of client's summary	2.75
8.11.17	Review email from client re client's questions for Viking and analyze	0.75
8.11.17	Review email from client re his summary of information he wanted to share with experts, review documents referenced in client's summary and analyze	1.25
8.11.17	Email chain from client re Margaret Ho availability	0.25
8.12.17	Review email and attachment from client re written discovery client would like sent to Viking and analysis of questions	0.50

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

8.12.17	Call with DSS	0.15
8.13.17	Review email from client re written discovery client would like sent to Viking and analysis of questions and discussion with DSS	1.25
8.14.17	Email to client with all Viking expert reports	0.15
8.14.17	Review, Download & Save Plaintiffs Edgeworth Family Trust and American Grating, LLC's Initial Designation of Expert Witnesses and Reports (E-file, no reports attached)	0.30
8.14.17	Review, Download & Save Plaintiffs' Edgeworth Family Trust and American Grating, LLC's Initial Designation of Expert Witnesses and Reports (E-served, reports attached)	0.30
8.14.17	Review, Download & Save Plaintiffs' 2 <sup>nd</sup> Set of Requests for Admission to Defendants the Viking Corp	0.30
8.14.17	Review, Download & Save Plaintiffs 3 <sup>rd</sup> Set of Requests for Production to Defendants	0.30
8.14.17	Review, Download & Save Plaintiffs' 3 <sup>rd</sup> Set of Interrogatories to Defendants the Viking Corp	0.30
8.14.17	Review, Download & Save Defendants The Viking Corp and Supply Network Inc 10 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16 a 1	0.30
8.14.17	Review, Download & Save Plaintiffs' Motion to Amend the Complaint to Add Viking Group, Inc.	0.30
8.14.17	Review, Download & Save Lange's 9 <sup>th</sup> Supplemental Disclosures	0.30
8.14.17	Review, Download & Save Lange's Designation of Expert Witnesses	0.30
8.14.17	Review, Download & Save Defendant Giberti Construction, LLC's Initial Expert Disclosures	0.30
8.14.17	Review, Download & Save Subpoena Duces Tecum of the Custodian of Records for Rimkus Consulting Group, Inc.	0.30

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

8.14.17	Review, Download & Save Re – Notice of Deposition Duces Tecum of the Custodian of Records for Rimkus Consulting Group, Inc.	0.30
8.14.17	Review, Download & Save The Viking Corp and Supply Network, Inc.'s Designation of Expert Witnesses	0.30
8.14.17	Review, Download & Save Transcript of Proceedings All Pending Motions Tuesday, March 7, 2017	0.30
8.14.17	Review, Download & Save Transcript of Proceedings All Pending Motions Tuesday April 25, 2017	0.30
8.14.17	Email to client re Defendant's Expert Reports uploaded to dropbox	0.15
8.14.17	Review email and link from client re guy in Florida who experienced flood	0.25
8.14.17	Email chain re load on link tests and corresponding documents produced in our case	1.25
8.14.17	Review email from client re dropbox; creation of central Edgeworth dropbox and uploading all documents into dropbox	0.50
8.14.17	Review email from client re difference if changed to greater or equal	0.15
8.14.17	Review email and attachments from client re National hourly weather data from Henderson	1.0
8.14.17	Email chain with DSS re Jennifer Brock with Zurich re SDT	0.25
8.14.17	Review email from DSS to Pancoast re expert reports not attached to disclosure	0.15
8.14.17	Review email and attachment from DSS re txt searchable version of UL	0.25
8.15.17	Email to Hastings with additional documents for his review	0.15
8.15.17	Email chain with client re missing documents; review of file for documents and response	0.75
8.15.17	Review email from client re Hasting's attic temperatures	0.15
8.15.17	Review email from client re 561 Fox Hill	0.15
8.15.17	Review email and attachments from client re Henderson weather	0.75



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

8.15.17	Review, Download & Save Subpoena Duces Tecum for Devin O'Dell	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of Devin O'Dell Duces Tecum	0.30
8.15.17	Review, Download & Save Subpoena Duces Tecum for Scott Franson	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of Scott Franson Duces Tecum	0.30
8.15.17	Review, Download & Save Subpoena Duces Tecum for James Golinveaux	0.30
8.15.17	Review, Download & Save Subpoena Duces Tecum for Jeff Norton	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of James Golinveaux Duces Tecum	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of Jeff Norton Duces Tecum	0.30
8.15.17	Review, Download & Save Subpoena Duces Tecum for Tom O'Connow	0.30
8.15.17	Review, Download & Save Subpoena Duces Tecum for Sherri Simmons	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of Tom O Connor Duces Tecum	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of Sherri Simmons Duces Tecum	0.30
8.15.17	Review, Download & Save Subpoena Duces Tecum for Mike Bosma	0.30
8.15.17	Review, Download & Save Notice of Video Deposition of Mike Bosma Duces Tecum	0.30
8.15.17	Review, Download & Save Plaintiffs' Opposition to Defendant the Viking Corp and Supply Network, Inc.'s Motions for Protective Orders and Requests for OST	0.30
8.15.17	Review, Download & Save Viking's Letter re Violation of Protective Order	0.30
8.16.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 12 <sup>th</sup> Supplemental Disclosures	0.30
8.16.17	Review, Download & Save Plaintiffs' Notice of Entry Upon Land/Site Inspection	0.30
8.16.17	Review, Download & Save- Subpoena Duces Tecum for Kevin Ortyl	0.30
8.16.17	Review, Download & Save Notice of Video Deposition of Kevin Ortyl Duces Tecum	0.30

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

8.16.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's 8 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30
8.16.17	Review, Download & Save Proof of Service	0.30
8.16.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s 11 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16(a)(1)	0.30
8.16.17	Email to Zamiski with additional documents for his review	0.15
8.16.17	Review email from client re number of activations and client's analysis	0.75
8.16.17	Email to client re all disclosures (ECC and expert) uploaded into dropbox	0.15
8.16.17	Email to client with Viking's 12 <sup>th</sup> ECC Supp	0.15
8.16.17	Email chain with client regarding missing documents; review of file for documents and response	1.50
8.16.17	Email chain with DSS and client re number of hours heat exceeded 100 degrees	0.15
8.16.17	Review email from DSS re Don Koch availability and response	0.15
8.16.17	Email chain with DSS re expert reports	0.25
8.16.17	Review email and attachments from DSS re Lange expert reports	0.25
8.16.17	Review email from DSS to Pancoast re depositions set for 9/8/17	0.15
8.16.17	Email chain with DSS re Viking's 12 <sup>th</sup> ECC Supplement and uploading docs to Dropbox	0.15
8.16.17	Review email from DSS to Fred Knez e deposition dates for Harold Rodgers	0.15
8.16.17	Email chain re deposition scheduling of Michigan Viking employees	0.25
8.16.17	Email to DSS re summary of Viking document dumps	1.75
8.17.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Reply Re: Motions for Protective Order [Nos. 1&2]	0.30
8.17.17	Review, Download & Save Plaintiffs' Motion to Compel Viking Documents and for Sanctions on OST	0.30

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 9 of 12**

AA000337

Docket 77678 Document 2019-33422

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

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

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

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

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

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

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

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

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

8.17.17	Email chain with DSS re sending Mark Giberti City of Henderson documents	0.15
8.17.17	Review email from DSS to Pancoast re document dumps	0.25
8.17.17	Email chain with DSS re motion to compel	0.15
8.17.17	Email chain with DSS re reports being sent to Zamiski	0.15
8.17.17	Email chain with Ure re receipt of Plaintiff's Motion to Compel Viking on OST	0.25
8.17.17	Email to Hastings with additional documents for his review	0.15
8.17.17	Email to Olivas with additional documents for his review	0.15
8.17.17	Email to Zamiski with additional documents for his review	0.15
8.17.17	Review email from client and response re location of the VIK documents in dropbox	0.25
8.17.17	Email chain with client re location and review of documents in Viking's 6 <sup>th</sup> Supplement; review of Viking entire 6 <sup>th</sup> supplement for client's requested docs	2.75
8.17.17	Email chain with client re city of Henderson documents	0.25
8.17.17	Review email from client re MSJ against Lange	0.15
8.18.17	Email to Hastings re request for him to Fed-Ex binder back	0.15
8.18.17	Review email from client re "just one family or house etc."	0.15
8.18.17	Email chain with client re Viking motion for protective order	0.20
8.18.17	Email chain with client re claim from Portland Winnelson	0.20
8.18.17	Review email from client re Viking's Motion and assertion re loan payment and client's opinion	0.25
8.18.17	Review email from DSS to Pancoast re Martorano verifications	0.15
8.18.17	Review, Download & Save Plaintiffs' Motion to Compel Rimkus Consulting to Respond to the Notice of Deposition and Subpoena Duces Tecum	0.30
8.18.17	Review, Download & Save Notice of Association of Counsel	0.30



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

8.18.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s Opposition to Plaintiffs' Motion to Compel	0.30
8.18.17	Review, Download & Save ROC – Motion to Compel Viking Documents on OST	0.30
8.19.17	Review email from client re exponent report rationale	0.25
8.19.17	Review email and attachment of Viking powerpoint of residential sprinklers installation heat source from client re exponent report from 2015 and the	0.50
8.20.17	Email chain with Brian Garelli re documents to review for expert report	0.25
8.20.17	Call with DSS	0.10
8.20.17	Review email and attachments from client re Scott reference to database for number of activations	0.25
8.20.17	Review email from client re FSS discovery docs produced in Viking supplement	0.15
8.20.17	Email chain with client re Viking document dump	0.25
8.20.17	Review email from client re example that VK457 is extraordinary	0.25
8.20.17	Review email and attachment from client re Motion to compel	0.50
8.20.17	Review email from DSS re printing email of missing Viking documents and response	0.25
8.21.17	Review, Download & Save Reply to Viking's Opposition to Plaintiffs' Motion to Compel Viking Documents and for Order to Respond to Discovery and for Sanctions on OST	0.30
8.21.17	Email chain with DSS re Motion to Compel Rimkus	0.15
8.21.17	Review email and attachment from DSS re preparing commission to take out of state depo of Harold Rodgers and response	0.25
8.21.17	Email chain with DSS re new requests for production	0.15
8.21.17	Email chain with DSS re notice and SDT to 30(b)(6) or Reliable and 30(b)(6) of Tyco	0.25
8.21.17	Review email from Tashia Garry re Viking's 11 <sup>th</sup> ECC Supp	0.15
8.21.17	Email to Sia, Pancoast, Nunez re revised 7.12.17 DCRR	0.15

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

8.21.17	Review email from client re Reliable and Tyco depositions	0.15
8.21.17	Email chain with client re motion to compel and Viking motion for protective order	0.50
8.21.17	Review email from client re "rules of thumb" re screw/bolt and attachments	0.75
8.21.17	Email to Mr. Poland re Plaintiff's Motion to compel Rimkus	0.15
8.21.17	Email to client re Reply to Motion to Compel Viking	0.15
8.21.17	Review email from client re adding Angela to dropbox	0.25
8.22.17	Review email and attachment from client re Viking residential sprinkler installation publication	0.75
8.22.17	Review, Download & Save Plaintiffs' 4 <sup>th</sup> Set of Requests for Production to Defendants the Viking Corp	0.30
8.22.17	Review email from DSS re Viking emails	0.15
8.23.17	Email chain with client re nest information	0.25
8.23.17	Email chain with DSS re interior temps of Edgeworth house and what experts to send to	0.15
8.24.17	Review, Download & Save Plaintiffs' 3 <sup>rd</sup> Set of Requests for Admission to Defendants the Viking Corp	0.30
8.24.17	Email chain with Zamiski re sending more sprinklers to Vollmer Gray and the Fed-Ex tracking number	0.25
8.24.17	Review and respond to email from Susan Carbone re Sia signature page for DCRR	0.15
8.24.17	Review email from client re request for photos of bent lever bars and over screwed load screws; review of file and response with requested documents	1.25
8.25.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's First Supplement to its Initial Early Case Conference Disclosure of Documents and Witnesses	0.30
8.25.17	Email to Crane Pomerantz re additional documents for review	0.25
8.25.17	Email chain with client re PDF of Margaret's promissory note and response	0.50

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

8.27.17	Review email from DSS re printing several copies of bent lever bars	0.15
8.28.17	Review, Download & Save Defendant The Viking Corporation's Responses to Plaintiffs Second Interrogatories	0.30
8.28.17	Email to client with summary and attachments for Thorpe and FSS case dockets	1.5
8.28.17	Email to Pancoast re DCRR template	0.15
8.28.17	Email to Crane Pomerantz with additional documents for his review	0.15
8.29.17	Email chain with Pancoast re calendar and hearings	0.25
8.29.17	Email chain with Ure re pick up of signature page for the 7.12.17 DCRR	0.15
8.29.17	Email to Don Koch with additional documents for his review	0.15
8.29.17	Review email from client re Thorpe and UL	0.25
8.29.17	Review email from client requesting Viking answers and response email with answers to client	0.50
8.29.17	Review email from client re Colin Kendrick's contact information	0.15
8.29.17	Call with DSS	0.25
8.29.17	Review email from client re depositions of Colin, Angela and Brian	0.15
8.29.17	Review email from DSS re delivery of Koch binder and response	0.15
8.29.17	Review email from DSS to Pancoast re heat invitation	0.15
8.29.17	Review email from DSS to Pancoast re deficient 2 <sup>nd</sup> set of Rgs	0.15
8.29.17	Review email from DSS re Jay McConnell phone call	0.15
8.29.17	Review, Download & Save Order granting Giberti Construction, LLC's Motion to Extend Discovery Deadlines ( 1 <sup>st</sup> Request)	0.30
8.29.17	Review, Download & Save Defendant The Viking Corp Responses to Plaintiffs' Second Request for Production of Documents	0.30
8.29.17	Review, Download & Save Defendant The Viking Corp Responses to Plaintiffs' First Request for Production of Documents	0.30

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

8.29.17	Review, Download & Save Letter to D. Simon from J. Pancoast re. PMK Deposition Documents	0.30
8.30.17	Email chain with DSS re Viking's responses to Lange	0.50
8.30.17	Email to Hastings with additional documents for his review	0.15
8.30.17	Review email from client re questions client would like to ask Viking PMK Scott Martorano	0.50
8.30.17	Email chain with client re Thorpe and FSS case dockets	1.25
8.30.17	Review, Download & Save Notice of Entry of Order Granting Giberti Construction LLC's Motion Extend Discovery Deadlines	0.30
8.30.17	Review, Download & Save Defendant Supply Network, Inc.'s Objection to Subpoenas	0.30
8.30.17	Review, Download & Save Defendant The Viking Corporation's Supplemental Responses to Plaintiff's Second Set of Interrogatories	0.30
8.31.17	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc. dba Viking SupplyNet Opposition to Plaintiffs Motion to Amend Complaint to Add Viking Group, Inc.	0.30
9.1.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition of Harold Rodgers	0.30
9.1.17	Call with DSS	0.25
9.1.17	Call with DSS	0.25
9.1.17	Review, Download & Save Commission To Take Deposition Outside the State of Nevada of Harold Rodgers	0.30
9.1.17	Review, Download & Save Subpoena Duces Tecum for Harold Rodgers	0.30
9.1.17	Review, Download & Save Notice of Video Deposition of Harold Rodgers Duces Tecum	0.30
9.1.17	Review, Download & Save Motion to Associate Counsel ( Kenton L. Robinson )	0.30
9.1.17	Review, Download & Save Motion to Associate Counsel (John McConnell)	0.30

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

9.1.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's Second Supplement to Its Initial Early Case Conference Disclosure of Documents and Witnesses	0.30
9.1.17	Email to Pancoast, Nunez, Sia, Robinson re mediation date	0.15
9.1.17	Review email from Bartlett re ZAIC deposition notice and subpoena	0.15
9.1.17	Email to Hastings with additional documents for his review	0.15
9.1.17	Email to Zamiski with additional documents for his review	0.15
9.1.17	Review email from client re VIKZ documents with addresses and request for list to cross reference; review of the VIKZ documents as relating to this email	1.75
9.2.17	Review email from client re missing documents and his creation of master index; review documents referenced in email	2.0
9.2.17	Email chain with client and DSS re UL definition of 1626	0.50
9.4.17	Review email from client re Carnahan report and questions client has for Zamisky and Hastings and review attachments	1.25
9.4.17	Review email from client re VKPC documents and respond	0.15
9.4.17	Review email and attachments from client re deception and lies to the public by Viking	2.75
9.4.17	Review email from client re RSS v. Viking case	0.15
9.2.17	Review email and attachments from DSS re UL's public definition of 1626 and response	0.50
9.5.17	Review email from DSS to Jen re amount of money owed to Carnahan for depo and response	0.15
9.5.17	Review email from DSS re re-serving depo notice for ZAIC and response	0.25
9.5.17	Email chain with DSS re re-scheduling depo of Harold Rodgers and PMK of EFT and AG	0.20
9.5.17	Email chain with DSS re discussing various issues re Edgeworth	0.50

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

9.5.17	Review, Download & Save Non - Party Rimkus Consulting Group, Inc. 's Opposition to Plaintiffs' Motion to Compel Rimkus Consulting Group [Group, Inc.] to Respond to the Notice of Deposition and Subpoena Duces Tecum and Counter-Motion to Quash, and Motion to Protective Order	0.30
9.5.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's Ninth Supplement to Early Case Conference Witness and Exhibit List	0.30
9.5.17	Review, Download & Save Plaintiffs' Limited Opposition to Viking's Motions to Associate Counsel on an OST	0.30
9.5.17	Review, Download & Save SO - Subpoena Duces Tecum for the NRCP 30(b)(6) Person Most Knowledgeable for Zurich American Insurance Company	0.30
9.5.17	Review, Download & Save Amended Notice of Deposition of the NRCP 30(b)(6) Person Most Knowledgeable for Zurich American Insurance Company Duces Tecum	0.30
9.5.17	Email chain with Nunez, Pancoast, Sia re mediation	0.15
9.5.17	Email to Bartlett re Amended Notice of 30(b)(6) deposition of Zurich	0.15
9.5.17	Email to Hastings with additional documents for his review	0.15
9.5.17	Email to Zamiski with additional documents for his review	0.15
9.5.17	Email to Don Koch with additional documents for his review and review of his response	0.25
9.5.17	Email to Crane Pomerantz with additional documents for his review	0.15
9.5.17	Review email from client re load on link QA records and attachments	1.0
9.5.17	Email chain with client re Viking design documents and response to client	0.25
9.5.17	Review email from client re Vk457 production numbers from from 11/2013 to 11/2014	0.25

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

9.5.17	Review email from client re documents that the client would like emailed to him; review of file for documents and response	1.25
9.5.17	Review email from client re spring compression fraud	0.25
9.5.17	Call with DSS	0.15
9.6.17	Call with DSS	0.25
9.6.17	Call with Pancoast	0.25
9.6.17	Call with DSS	0.15
9.6.17	Review email from DSS re adding additional topic to UL 30(b)(6) notice and response	0.15
9.6.17	Review email from DSS to Bartlett re ZAIC subpoena and ZAIC position	0.40
9.6.17	Review email and download deposition from Oasis Reporting (Martorano Vol.2)	0.25
9.6.17	Review email from client re exhibits contained in Viking production and attachments and analyze	1.5
9.6.17	Review email from client re 12lb load on link info and testing	0.25
9.6.17	Email chain with Pancoast, Sia, Ure re 8.23.17 DCRR and proposed changes	0.50
9.6.17	Review email from client re weather expert's deception in his report and attachments	1.25
9.7.17	Review email and download link from Jessica Rogers with Carnahan job file	0.25
9.7.17	Review email from Sia re carrier at mediation	0.15
9.7.17	Call with DSS	0.15
9.7.17	Email to client link to Carnahan job file	0.15
9.7.17	Email to Janet re not able to agree to home inspection after discussion with DSS	0.25
9.7.17	Review email from client re UL follow up program and review of documents referenced in email	1.20
9.7.17	Review email from client re review of Pancoast disclosure and attachment	0.25
9.7.17	Review email from client re Exponent billing	0.15
9.7.17	Review email from client re emails contained in Rob Carnahan file and review of documents referenced in email	0.75

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

9.7.17	Email chain to DSS re Carnahan job file produced by Viking morning of deposition	0.25
9.7.17	Review email and attachment from DSS document to include in Motion to Strike and response	0.25
9.7.17	Email chain with DSS re mediation agreement	0.15
9.8.17	Review email from DSS to Sia re Kinsale carrier present at mediation	0.15
9.8.17	Review email from DSS re UL expert and request to finalize UL depo notice	0.15
9.8.17	Email chain with DSS re 8/23/17 DCRR and Viking's proposed changes	0.25
9.8.17	Review email from DSS re motions that need to be drafted	0.75
9.8.17	Review email from DSS re new topics for UL depo notice and response	0.50
9.8.17	Email chain with DSS re inspection of Mark Giberti job file by his lawyer	0.15
9.8.17	Email chain with DSS re Motion to Strike Carnahan and Motion to Strike Rosenthal	0.50
9.8.17	Email chain with DSS re ZAIC subpoena and response to ZAIC attorney	0.75
9.8.17	Email chain with DSS re topics in UL depo notice that may violate protective order	1.5
9.8.17	Review, Download & Save Subpoena Duces Tecum for Person Most Knowledgeable for Edgeworth Family Trust	0.30
9.8.17	Review, Download & Save Amended Notice of Taking Deposition of NRCP 30(b)(6) Person Most Knowledgeable Family Trust	0.30
9.8.17	Review, Download & Save Subpoena Duces Tecum for Person Most Knowledgeable for American Grating, LLC	0.30
9.8.17	Review, Download & Save Amended Notice of Taking the Deposition of NRCP 30(b)(6) Person Most Knowledgeable for American Grating, LLC	0.30
9.8.17	Review, Download & Save Subpoena Duces Tecum for the NRCP 30(b)(6) Person Most Knowledgeable for Zurich American Insurance Company	0.30



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

9.8.17	Review, Download & Save Amended Notice of Deposition of the NRCP 30(b)(6) Person Most Knowledgeable for Zurich American Insurance Company Duces	0.30
9.8.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
9.8.17	Review, Download & Save Amended Notice of Deposition for Kendrick Colin	0.30
9.8.17	Review, Download & Save Subpoena Duces Tecum for Colin Kendrick	0.30
9.8.17	Review, Download & Save Amended Notice of Deposition for Margaret Ho	0.30
9.8.17	Review, Download & Save Subpoena Duces Tecum for Margaret Ho	0.30
9.8.17	Email to Bartlett re Amended Notice of Zurich 30(b)(6) Notice	0.15
9.8.17	Review email and attachments from client re the weight the link tears and analyze and discussion with DSS	1.5
9.8.17	Email chain with client re PMK Depo	0.15
9.8.17	Review email from client re impossible to calculate force to sheer link and analyze	0.50
9.8.17	Email chain with client and DSS re Viking's UL expert and review attachments	0.50
9.8.17	Review email from client re points he would like Hastings and Zamiski to address in their reports	0.25
9.8.17	Review email from client re photo fraud and analysis of photo fraud document drafted by client	2.5
9.9.17	Review email from client re requests from Viking before mediation and review of documents referenced in email	1.5
9.9.17	Review email from client re admissions client would like from Viking and draft written discovery	1.5
9.9.17	Email chain with client re history of VC, VIK and VIKZ	0.25
9.9.17	Review email from DSS re additional topics for UL notice and response	0.25
9.10.17	Email chain with client re all deposition dates scheduled and pending and response email after review of calendar and notices	1.25

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

9.10.17	Review email from client re objection chart client created during Carnahan depo	0.50
9.10.17	Review email and attachment from client re conversation with expert Zamisky re testing and overtightening of screw and analyze	0.50
9.11.17	Email to Jessica Rogers re Olivas expert report with color photos	0.15
9.11.17	Email to Debbie Holloman at JAMS re mediation agreement	0.15
9.11.17	Email chain with Bartlett re amended deposition notice	0.25
9.11.17	Email to Zamiski with additional documents for his review	0.15
9.11.17	Email to Hastings with additional documents for his review	0.15
9.11.17	Review email from client re mediation scheduling	0.15
9.11.17	Review email from DSS to Pancoast re information Martorano promised in depo	0.15
9.11.17	Email chain with DSS re 8/23/17 DCRR	0.25
9.11.17	Email chain with DSS re Edgeworth case schedule	1.0
9.11.17	Review, Download & Save Defendant Giberti Construction LLC 's Responses to The Viking Corporation's First Set of Interrogatories	0.30
9.11.17	Review, Download & Save Third Party Defendant Giberti Construction LLC's Responses to Viking Corp's First Set of Request for Production	0.30
9.11.17	Review, Download & Save Defendants the Viking Corp and Siupply Network, Inc.'s Motion to Compel Home Inspection and or in the Alternative Motion to Strike Portions of Expert Testimony and OST	0.30
9.12.17	Review, Download & Save Non Party Rimkus Consulting Group, Inc.'s Supplement to Its Opposition to Plaintiffs Motion to Compel Rimkus Consulting [Group, Inc. ] to Respond to the Notice of Deposition and Subpoena Duces Tecum; and Counter- Motion to Quash, and Motion for Protective Order	0.30
9.12.17	Call with Client	0.15
9.12.17	Call with Client	0.15

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

9.12.17	Call with DSS	0.15
9.12.17	Review, Download & Save Plaintiffs' Opposition to Defendants the Viking Corporation and Supply Network, Inc.'s Motion to Compel Home Inspection and Or in the Alternative Motion to Strike Portions of Expert Testimony on OST	0.30
9.12.17	Review, Download & Save RPLY- to Defendants the Viking Corp and Supply Network, Inc. dba Viking Supply Net's Opposition to Plaintiff's Motion to Amend the Complaint to Add Viking Group, Inc.	0.30
9.12.17	Review, Download & Save Plaintiffs' Reply to Defendants the Viking Corp and Supply Network, Inc. dba Viking SupplyNet's Opposition to Plaintiffs Motion to Amend the Complaint to Add Viking Group, Inc.	0.30
9.12.17	Review, Download & Save Amended Notice of Taking Deposition of Angela Edgeworth	0.30
9.12.17	Email chain with Zamiski re exhibits for Carnahan depo	0.15
9.12.17	Review email from client re Suggs Report and his discussions with Giberti	0.15
9.12.17	Email chain with client re Viking's motion to strike expert and motion to compel home inspection	0.25
9.12.17	Review email from DSS re Opp to motion to compel inspection	0.15
9.12.17	Review email from DSS re revised reply to motion to amend and response	0.15
9.12.17	Email chain with DSS re motion to compel re heat powerpoint documents	0.15
9.12.17	Review email from DSS to client re rebuttal to Suggs report	0.15
9.13.17	Email chain with DSS re documents being sent to Zamiski	0.15
9.13.17	Review email and attachment from DSS re documents to include in next ECC Supp and response	0.15
9.13.17	Review email from DSS re documents he needs for hearing and response	0.15
9.13.17	Review email from DSS re Michigan Viking employees amended depositions	0.15

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

9.13.17	Review, Download & Save COMM to take out of State Deposition Harold Rodgers	0.30
9.13.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition of Harold Rodgers	0.30
9.13.17	Review, Download & Save COMM to Take out of State Deposition UL Laboratories	0.30
9.13.17	Review, Download & Save APCOM-Application for Issuance of Commission to Take Out of State Deposition UL Laboratories	0.30
9.13.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition Tyco	0.30
9.13.17	Review, Download & Save COMM to Take Out of State Deposition Tyco	0.30
9.13.17	Review, Download & Save Application of issuance of Commission to Take Out of State Deposition of Reliable	0.30
9.13.17	Review, Download & Save to Take Out of State Deposition of Reliable	0.30
9.13.17	Review, Download & Save COMM to Take Out of State Deposition Viking Group	0.30
9.13.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition of Viking Group	0.30
9.13.17	Review, Download & Save Amended Order Setting Civil Jury Trial	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Scott Franson	0.30
9.13.17	Review, Download & Save Amended Notice of Video Deposition of Scott Franson Duces Tecum	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Jeff Norton	0.30
9.13.17	Review, Download & Save Amended Notice of Video Deposition of Jeff Norton Duces Tecum	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for James Golinveaux	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Sherri Simmons	0.30

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

9.13.17	Review, Download & Save Amended Notice of Video Deposition of James Golinveaux Duces Tecum	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Tom O'Connor	0.30
9.13.17	Review, Download & Save Amended Notice of Video Deposition to Tom O'Connor	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Mike Bosma	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Devine ODell	0.30
9.13.17	Review, Download & Save Amended Notice of Video Deposition of Mike Bosma Duces Tecum	0.30
9.13.17	Review, Download & Save Amended Notice of Video Deposition of Devin ODell	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Kevin Ortyl	0.30
9.13.17	Review, Download & Save Amended Notice of video Deposition of Kevin Ortyl Duces Tecum	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Doug Bensinger	0.30
9.13.17	Review, Download & Save Notice of Video Deposition of Doug Bensinger Duces Tecum	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for Harold Rogers	0.30
9.13.17	Review, Download & Save Amended Notice of Video Deposition of Harold Rogers Duces Tecum	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for 30(b)(6) of the Designees of Underwriters Laboratories	0.30
9.13.17	Review, Download & Save Plaintiffs' Amended Notice of Entry Upon Land / Site Inspection	0.30
9.13.17	Review, Download & Save Plaintiffs' 5 <sup>th</sup> Set of Requests for Production to Defendants the Viking Corporation	0.30
9.13.17	Review, Download & Save Notice of Video Deposition Duces Tecum Pursuant to NRCP 30(b)(6) of Designees of Underwriters Laboratories, Inc.	0.30

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

9.13.17	Review, Download & Save Plaintiffs' 4 <sup>th</sup> Set of Interrogatories to Defendants the Viking Corporation	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for NRCP 30(b)(6) of Designees of Viking Group, Inc.	0.30
9.13.17	Review, Download & Save Notice of Video Deposition Duces Tecum Pursuant to NRCP 30(b)(6) of Designees of Viking Group, Inc.	0.30
9.13.17	Review, Download & Save Plaintiffs' 4 <sup>th</sup> Set of Requests for Admission to Defendants the Viking Corp	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for NRCP 30(b)(6) of Designees of Tyco Fire Protection Products	0.30
9.13.17	Review, Download & Save Subpoena Duces Tecum for NRCP 30(b)(6) of Designees of Reliable Automatic Sprinkler Company, Inc	0.30
9.13.17	Review, Download & Save Notice of video Deposition Duces Tecum Pursuant to NRCP 30(b)(6) Of Designees of Tyco Fire Protection Products	0.30
9.13.17	Review, Download & Save Notice of Video Deposition Duces Tecum Pursuant to NRCP 30(b)(6) of Designees of Reliable Automatic Sprinkler Company, Inc.	0.30
9.13.17	Review, Download & Save Order Admitting to Practice (Kenton L. Robinson)	0.30
9.13.17	Review, Download & Save Order Admitting to Practice ( John W. McConnell III)	0.30
9.13.17	Review email from Sia re current fees and costs	0.15
9.13.17	Review email from Robinson re deposition dates for Zamiski, Hastings, Olivas	0.15
9.14.17	Email chain with Robinson re Simmons deposition notice	0.25
9.14.17	Email chain with Ure re Giberti inspection of documents at office	0.25
9.14.17	Email to Zamiski with additional documents for his review	0.15
9.14.17	Review email from Don Koch re documents and his position	0.25

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 10 of 12**

AA000357

Docket 77678 Document 2019-33422

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

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



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

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

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

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

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

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

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

9.14.17	Review email and attachment from client re Bert Howe report	1.0
9.14.17	Email chain with client re documents Zamiski needs	1.0
9.14.17	Review email and attachments re investor emails	0.25
9.14.17	Review email from client re Howe report	0.15
9.14.17	Call with Client	0.15
9.14.17	Call with Client	0.40
9.14.17	Email chain with client re discussion about hearing	0.15
9.14.17	Email to Crane Pomerantz with additional documents for his review	0.25
9.14.17	Review, Download & Save Non - Party Rimkus Consulting Group, Inc.'s Opposition to Plaintiffs' Motion to Compel Rimkus Consulting [Group, Inc. ] to Respond to the Notice of Deposition and Subpoena Duces Tecum and Opposition to Counter-Motion to Quash and Motion Protective Order	0.30
9.14.17	Review, Download & Save Defendant the Viking Corporation's Responses to Plaintiffs Third Interrogatories	0.30
9.14.17	Review, Download & Save Defendant the Viking Corporation's Responses to Plaintiffs' Third Requests for Production of Documents	0.30
9.14.17	Review, Download & Save Defendant The Viking Corporation's Responses to Plaintiffs' Second Requests for Admissions	0.30
9.14.17	Review, Download & Save Amended Notice of Taking the Deposition of Angela Edgeworth	0.30
9.14.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's Third Supplement to its Initial Early Case Conference Disclosure of Documents and Witnesses	0.30
9.14.17	Email chain with DSS re Ure coming to inspect Giberti file	0.15
9.14.17	Review email and attachment from DSS re PMK depo pages from client for motion to strike	0.25

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

9.14.17	Review email from DSS re new dates to send to Robinson re expert depositions	0.15
9.15.17	Review email and attachment from DSS re Viking BlazeMaster piping ratings attachment and request to send to Koch	0.25
9.15.17	Review email and attachment from DSS re allowable attic temps and request to send to Koch	0.25
9.15.17	Review email from DSS to Bartless re ZAIC subpoena	0.15
9.15.17	Email chain with DSS re exhibits for Angela's depo	0.15
9.15.17	Email chain with DSS re depo notice of Nate Wittasek	0.25
9.15.17	Email chain with DSS re sending Pancoast UL letter to all experts	0.20
9.15.17	Email chain with DSS re 2.34 for Viking re deficient written discovery responses	0.15
9.15.17	Email chain with DSS re Viking's "searchable index"	0.25
9.15.17	Email chain with DSS re subjects for Viking 30(b)(6) about minimax	0.30
9.15.17	Review, Download & Save Amended Notice of Telephonic 2.34 Conference with Viking Defendants	0.30
9.15.17	Review, Download & Save Notice of Telephonic 2.34 Conference with Viking Defendants	0.30
9.15.17	Review, Download & Save Amended Notice of Taking Deposition of Sherri Simmons Duces Tecum	0.30
9.15.17	Email to Hastings with additional documents for his review	0.15
9.15.17	Email chain with client re hourly temps and info sent to Koch	0.25
9.15.17	Review email and link from Don Koch for DSS	0.25
9.15.17	Email to Zamiski with additional documents for his review	0.15
9.15.17	Email to Don Koch with additional documents for his review	0.15
9.15.17	Review email and attachment from client re UL Testing descriptions	1.25
9.15.17	Email to Crane Pomerantz with additional documents for his review	0.15

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

9.16.17	Call with DSS	0.15
9.17.17	Email chain and attachments with client and DSS re what documents experts need	1.0
9.17.17	Email to Don Koch requesting CV for expert disclosure	0.15
9.17.17	Review email from client re David Suggs report and response	0.25
9.17.17	Review email and attachment from DSS re Brian Garelli CV	0.15
9.17.17	Email chain with DSS re adding depo testimony in Carnahan motion to compel	0.15
9.18.17	Email chain with DSS re documents being sent to Hastings	0.15
9.18.17	Review email from DSS re stuff to add to Carnahan motion to compel	0.20
9.18.17	Review email from DSS re changing Rosenthal motion to OST and response	0.15
9.18.17	Review email from DSS re providing expert depo dates for Olivas to Robinson and response	0.15
9.18.17	Email chain with DSS re Brian Garelli documents for expert disclosure	0.20
9.18.17	Review email from DSS re Colin Kendrick depo	0.15
9.18.17	Review email from DSS re documents sent by client and request to forward to Koch	0.15
9.18.17	Call with Client	0.15
9.18.17	Call with Client	0.15
9.18.17	Email chain with DSS re meet and confer with Pancoast on motion to compel	0.20
9.18.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's Rebuttal Designation of Expert Witnesses and Reports (E-file- no reports attached)	0.30
9.18.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's Rebuttal Designation of Expert Witnesses and Reports (Service only- reports attached)	0.30
9.18.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc's 13 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16(a)(1)	0.30

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

9.18.17	Review, Download & Save The Viking Corporation and Supply Network, Inc's Supplemental Designation of Expert Witness	0.30
9.18.17	Review, Download & Save Lange Plumbing's 10 <sup>th</sup> Supplemental 16.1 Disclosures	0.30
9.18.17	Review, Download & Save Lange Plumbing's Designation of Rebuttal Expert Witnesses	0.30
9.18.17	Review, Download & Save Notice of Deposition of Gerald Zamiski	0.30
9.18.17	Review, Download & Save Notice of Deposition of Kevin Hastings	0.30
9.18.17	Review, Download & Save Notice of Taking Deposition – John Olivas	0.30
9.18.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's 4 <sup>th</sup> Supplement to its Initial Early Case Conference Disclosure of Documents and Witnesses	0.30
9.18.17	Review, Download & Save Third Party Defendant Giberti Construction, LLC's Designation of Rebuttal Expert Witnesses	0.30
9.18.17	Review email and download rough deposition from Oasis Reporting (Angela Edgeworth)	0.25
9.18.17	Review email from Colin Kendrick re deposition	0.15
9.18.17	Review email and respond to email from Bill LaBorde with Oasis re rough transcript	0.15
9.18.17	Email chain with Bartlett re meet and confer	0.25
9.18.17	Review email from client re American Grating hourly billing rate	0.15
9.18.17	Review email from client re disagreement with Zamiski report and calculations why it was more than 1 turn and analysis	0.20
9.18.17	Email to Hastings with additional documents for his review	0.15
9.18.17	Review email and attachment from client re NFPA13D	0.25
9.18.17	Email to client re pics Hastings is using in his report	0.15

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

9.18.17	Review email and attachment from client re torn link	0.25
9.18.17	Review and respond to email from Evelyn Chun re expert depo dates	0.15
9.18.17	Email to Don Koch with additional documents for his review	0.25
9.19.17	Review and respond to email from Jason Reese re receipt fo Don Koch report	0.15
9.19.17	Email to Pancoast re confirmation of DeLARosa depo	0.15
9.19.17	Review email from Robinson re calling him for all future 2.34 conferences	0.15
9.19.17	Email to Hastings re deposition notice	0.15
9.19.17	Email to Olivas re deposition notice	0.15
9.19.17	Email to Zamiski re deposition notice	0.15
9.19.17	Email chain with client re Rosenthal and heat article cited	0.75
9.19.17	Email to client re rebuttal reports uploaded to dropbox	0.15
9.19.17	Email to Sia re vacating depo of Mr. Cameron	0.15
9.19.17	Review email and attachment from client re the number of hours temp was over 100	0.50
9.20.17	Email to Hastings with additional documents for his review	0.15
9.20.17	Review email from client re questions for Mark Giberti depo	0.25
9.20.17	Review email from client re Howe Report and analysis of email, Howe report and discussion with DSS	2.5
9.20.17	Email chain with client re city of Henderson inspection report	0.15
9.20.17	Review, Download & Save Plaintiffs' Motion to Compel Testimony and Evidence of Defendants, the Viking Corporation and Supply Network, Inc. dba Viking Supplynet 's Expert, Robert Carnahan, or in the Alternative, Strike Robert Carnahan as an Expert on OST	0.30
9.20.17	Review, Download & Save Notice of Vacating Video Deposition of Custodian of Records for Rimkus Consulting Group, Inc.	0.30
9.20.17	Review, Download & Save Notice of Vacating Video Deposition of James Cameron	0.30



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

9/20/17	Attend Hearing re: Motion to Compel Rimkus Depo and	5.25
9/20/17	Draft and serve notice to vacate COR depo of Rimkus	0.5
9.20.17	Review email from DSS requesting Pomerantz report be sent to Hastings	0.15
9.20.17	Review email from DSS re lawyers in Riverside to represent us for Harold Rodgers depo	0.15
9.21.17	Email chain with DSS re drafting MSJ against Lange only	0.15
9.21.17	Email chain with DSS re email from Kreason about cabinets and fireplace	0.25
9.21.17	Call with DSS	0.25
9.21.17	Email chain with DSS re call with Hastings re Pomerantz report	0.15
9.21.17	Review, Download & Save Plaintiffs Motion in Limine to Exclude Defendants The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Expert Jay Rosenthal on OST	0.30
9.21.17	Review, Download & Save Plaintiffs' Motion for Summary Judgment Against Lange Plumbing, LLC . Only	0.30
9/21/17	Draft Motion to Strike	2.5
9/21/17	Draft order granting motion to amend complaint	1.25
9/21/17	Revise, pull exhibits and serve MSJ against Lange Plumbing	2.25
9.21.17	Email chain with client re dba of Giberti construction	0.15
9/22/17	Discuss case and strategy with DSS	1.0
9/22/17	Draft Motion to Strike	3.0
9/22/17	Review Viking's Third Supplemental Answers to Plaintiffs' 1 <sup>st</sup> set of Rogs	0.5
9/22/17	Review Viking's Responses to Plaintiffs' 3 <sup>rd</sup> Set of RFAs	0.25
9/22/17	Review Viking's Responses to Plaintiffs' 3 <sup>rd</sup> Set of RFPs	0.25
9/22/17	Draft and Serve Plaintiffs' 10 <sup>th</sup> ECC Supplement	1.0
9.22.17	Review email from Bill LaBorde re Giberti rough transcript	0.15
9.22.17	Review email from Bartlett re ZAIC subpoena	0.15

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

9.22.17	Review email and attachment from client re UL test for load on link and client's analysis	0.75
9.22.17	Email chain with DSS re additional points for motion to strike	0.50
9.22.17	Email chain with DSS and client re actual fireplace repair costs	0.15
9.22.17	Review, Download & Save Defendants The Viking Corp and Supply Network, Inc.'s 14 <sup>th</sup> Supplemental Disclosure Pursuant to NRCP 16.1	0.30
9.22.17	Review, Download & Save Defendant The Viking Corporation's Second Supplemental Responses to Plaintiffs' Second Set of Interrogatories	0.30
9.22.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC 10 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30
9.22.17	Review, Download & Save Defendant The Viking Corporation's Response to Plaintiffs' Requests for Production of Documents, Set Four	0.30
9.22.17	Review, Download & Save Defendant The Viking Corporation's Responses to Plaintiffs' Requests for Admission, Set Three	0.30
9.22.17	Review, Download & Save Amended Notice of Taking the Deposition of Brian Edgeworth and NRCP 30(b)(6) Person Most Knowledgeable for Edgeworth Family Trust and American Grating, LLC	0.30
9.22.17	Review, Download & Save Notice of Vacating the Deposition of Person Most Knowledgeable for American Grating, LLC 10.5.17	0.30
9.22.17	Review, Download & Save Defendants The Viking Corporation's Second Supplemental Answers to Plaintiffs' First Set of Interrogatories	0.30
9.22.17	Review, Download & Save ROC of Plaintiffs' motion to exclude Rosenthal on OST	0.30

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

9.22.17	Review, Download & Save ROC of Plaintiff's motion for Summary Judgement on OST	0.30
9.22.17	Email chain with client re written discovery responses and request for documents	0.25
9.22.17	Review email from client re UL testing and load on link analysis	0.50
9.23.17	Review email from client re amended list of activations and review documents identified in email	1.0
9.23.17	Review email and attachments from client re load on link argument and analyze	1.5
9.24.17	Review email from client re activation list and review documents identified in email	1.25
9.25.17	Email chain from client re Glen Rigdon entering property and respond	0.50
9/25/17	Revise and pull exhibits Motion to Strike on OST	3.5
9/25/17	Review Viking's Second Supplemental Answers to Plaintiffs' 2 <sup>nd</sup> set of Rogs	0.5
9/25/17	Draft DCCR for 9/20/17 Hearing	1.25
9/25/17	Draft DCCR for 9/13/17 Hearing	1.25
9/26/17	Prepare and attend Raul DeLa Rosa Deposition	3.25
9.26.17	Call with Client	0.15
9.26.17	Call with DSS	0.10
9.26.17	Call with DSS	0.10
9/26/17	Review Giberti's Joinder to Motion to Compel Carnahan	0.25
9/26/17	Draft and serve Amended Notice to COR of Zurch	0.25
9/26/17	Review Viking's 14th ECC Supplement	2.0
9.26.17	Review email and download deposition from Oasis Reporting (Angela Edgeworth)	0.25
9.26.17	Email chain with Robinson re deposition scheduling of Viking employees for October 25 <sup>th</sup> and 26 <sup>th</sup> and review of calendar	0.25
9.26.17	Email to Pancoast requesting production of documents referenced in De La Rosa Depo	0.15
9.26.17	Email to Robinson re confirmation all known activations	0.15
9.26.17	Review email from Bartlett re extension to produce list of activations and deposition date	0.15

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

9.26.17	Review, Download & Save Subpoena Duces Tecum for the NRCP 30(b)(6) Person Most Knowledgeable for Zurich American Insurance Company	0.30
9.26.17	Review, Download & Save Amended Notice of Taking Deposition of the NRCP (B)(6) Person Most Knowledgeable for Zurich American Insurance Company Duces Tecum	0.30
9.26.17	Review, Download & Save Third Party Defendant Gilberti Construction LLC Joinder to Plaintiffs Motion to Compel Testimony and Evidence of Defendants, The Viking Corp and Supply Net Inc. dba Viking Supply Net Expert, Robert Carnahan, or in the Alternative, Strike Robert Carnahan as an Expert on OST	0.30
9.27.17	Review, Download & Save DCRR	0.30
9.27.17	Review, Download & Save DCRR	0.30
9.27.17	Review, Download & Save DCRR	0.30
9.27.17	Email to Janet re missing VIKZ documents from supplemental production	0.15
9.27.17	Email to Bartlett re Amended Deposition Notice of 30(b)(6) of Zurich	0.15
9.27.17	Review email from client re VIKZ docs that contain credit applications. Review documents. Respond	0.50
9.27.17	Review and respond to email from Jessica Rogers re Viking's 14 <sup>th</sup> ECC Supp	0.15
9.27.17	Review email from client re Viking's PMK written statements re number of activations. Review of VIKZ documents	0.75
9.27.17	Review email and excel attachment of water damage claim. Respond.	0.50
9.27.17	Review email from client re documents he dropped off at office	0.50
9/27/17	Review Viking's 14th ECC Supplement	2.25
9/27/17	Finalize and pull exhibits for Motion to Strike Viking's Answer	4.0
9.27.17	Review email from DSS re printing email from Robinson for motion and response	0.15
9.28.17	Review email from DSS re points for our reply to the motion to strike and response	0.20
9.28.17	Email chain with DSS re filing motion to strike and affidavit	0.25

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

9.28.17	Review email and attachment from DSS re technical data sheet	0.15
9.28.17	Review, Download & Save Third Party Defendant Gilberti Corp LLC Joinder to Exclude Defendants, The Viking Corp and Supply Network, Inc. dba Viking Supplynet's Expert, Jay Rosenthal on OST	0.30
9.28.17	Review, Download & Save Amended Notice of Taking Deposition of Brian Edgeworth [Time Only]	0.30
9.28.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's 11 <sup>th</sup> Supplement to Early Case Conference Witnesses and Exhibit List	0.30
9/28/17	Draft and serve Plaintiffs' 11 <sup>th</sup> ECC Supplement	1.5
9.28.17	Review email from client re ISO certification process	0.25
9.28.17	Email chain with client re order from court re Glen Rigdon and response	0.15
9.28.17	Email chain with client re: all supporting documents for calculations of damages	0.25
9/28/17	Draft and send over Motion to De-Designate Confidentiality on OST	4.25
9.28.17	Call with Client	0.15
9.28.17	Call with Client	0.15
9.28.17	Call with Client	0.25
9.29.17	Call with DSS	0.25
9/29/17	Draft written discovery to Lange Plumbing (punitive)	1.0
9.29.17	Review email from Sia re Lange expert depo dates	0.15
9.29.17	Email chain with Robinson re October 26 deposition dates and alternative dates for Viking employees and review of calendar	0.25
9.29.17	Email to Sia, Pancoast, Nunez re draft 9.13.17 DCRR	0.15
9.29.17	Email chain with Max Couvillier and Janet Pancoast re the draft DCRR for 9.20.17 hearing and analysis and Max's proposed changes	0.75
9.29.17	Email chain with DSS re scheduling Carnahan depo	0.25

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

9.29.17	Review email from DSS re date mediation briefs due	0.15
9.29.17	Email chain with DSS re draft DCRRs (9.13.17 and 9.20.17)	0.50
9.29.17	Review email from DSS requesting digital photos of damage and response	0.15
9.29.17	Email chain with DSS re drafting Lange written discovery for punitive damages and draft requests	0.20
9.29.17	Review, Download & Save Plaintiffs' 2 <sup>nd</sup> Set of Requests for Production to Lange Plumbing, LLC	0.30
9.29.17	Review, Download & Save Plaintiffs' 2 <sup>nd</sup> Set of Interrogatories to Defendant Lange Plumbing, LLC	0.30
9.29.17	Review, Download & Save Plaintiffs' Motion to Strike the Viking Defendants' Answer on Order Shortening Time	0.30
9.29.17	Review, Download & Save OST – Plaintiffs' Motion to De-Designate Viking Confidentiality of Their Documents on an OST	0.30
9/29/17	Review Viking's 14th ECC Supplement	1.5
9/29/17	Review Giberti's Joinder for MIL to Exclude Rosenthal	0.25
9/29/17	Review proposed changes and revise DCRR for 9/20/17 Hearing	0.5
9/29/17	Review proposed changes and revise DCRR for 9/13/17 Hearing	0.5
9/29/17	Draft mediation brief	2.25
9.30.17	Review email from client re VK494	0.25
10.1.17	Review email and attachment created by client of the number VK457 activations	0.50
10/2/17	Draft motion to de-designate	2.5
10/2/17	Research and draft motion to reconsider pro hac	3.0
10.2.17	Review email and attachment with DSS re Glen Rigdon and a motion to exclude him as an expert	0.25
10.2.17	Review, Download & Save The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiffs' Motion in Limine to Exclude Expert, Jay Roenthal	0.30

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

10.2.17	Review, Download & Save Third party Defendant Gilberti Corporation LLC's Joinder to Plaintiffs' Motion to De-Designate Viking's Confidentiality of their Documents on an Order Shortening Time	0.30
10.2.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
10.2.17	Review, Download & Save ROC – Plaintiff's Motion to De-designate confidentiality	0.30
10.2.17	Review, Download & Save ROC-Plaintiffs' Motion to Strike Viking's Answer	0.30
10.2.17	Review email and download deposition from Oasis Reporting (Rough of Brian Edgeworth)	0.25
10.2.17	Review email from client re the BR Stewart article and the incorrect heat analysis. Review all documents listed in email and discuss with DSS	2.0
10.2.17	Review email from client re photos of claims of other VK457s. Then review file in dropbox	1.25
10.2.17	Review email from client and attachment re Viking's letter to fire marshall about "very limited number of activations."	0.50
10.3.17	Email to Sia, Pancoast, Nunez re no objections to 9.13.17 DCRR and advise when signature page ready for pick up	0.15
10.3.17	Review email from Ure re hearing	0.15
10.3.17	Review email from Ure re signature page pick up for Order to Amend	0.15
10.3.17	Review email from client and schedule A of EFT for ECC disclosure	0.25
10.3.17	Review email from client re Rosenthal hearing	0.15
10.3.17	Review and respond to email from Nicole Garcia re signature pages for Ure ready to pick up	0.15
10.3.17	Review email and attachment from client re client's list of activations	0.25

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

10.3.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiff's Motion to De- Designate Viking's Confidentiality of their Documents on OST	0.30
10.3.17	Review, Download & Save Plaintiffs' 3 <sup>rd</sup> Set of Requests for Production to Lange Plumbing, LLC	0.30
10.3.17	Review, Download & Save Plaintiffs' 3 <sup>rd</sup> Set of Interrogatories to Defendant Lange Plumbing, LLC.	0.30
10.3.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Opposition to Plaintiffs' Motion to Compel Testimony and Evidence of Expert Robert Carnahan or Alternatively Strike Expert	0.30
10.3.17	Review email from DSS re written discovery to Lange that we need to draft and serve	0.25
10.3.17	Email chain with DSS re Schedule A of EFT and supplementing in ECC	0.15
10.3.17	Email chain with DSS re Max Couvillier changes to DCRR	0.25
10.3.17	Review email and attachment from DSS forwarding Viking's Opp to Motion to Compel Carnahan	0.25
10/3/17	Review Viking's Opposition to MIL to exclude Rosenthal	0.5
10/3/17	Prepare and Attend Hearing re: MIL to exclude Rosenthal	2.0
10/3/17	Prepare and serve written discovery to Lange Plumbing	0.5
10/3/17	Draft mediation brief	2.0
10/3/17	Review Giberti's Joinder to Motion to De-Designate Confidentiality	0.25
10/3/17	Review Viking's Opposition to Motion to Compel Carnahan and Email DSS my reply points	1.0
10/3/17	Review and revise 9/20/17 DCRR with Max's comments	0.5
10/4/17	Draft and Serve Plaintiffs' 12 <sup>th</sup> ECC Supplement	1.0



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

10/4/17	Prepare and attend hearing on Motion to Compel Carnahan and Motion to De-designate	3.5
10/4/17	Finalize and pull exhibits for mediation brief	2.5
10/4/17	Finalize and serve Motion to Reconsider Order Granting Motion for Pro Hac Vice	1.5
10.4.17	Email to Pancoast, Sia, Nunez re revised 9.13.17 DCRR	0.15
10.4.17	Review email from Max Couvillier re 9.20.17 DCRR signature page	0.15
10.4.17	Review email from client re phone call with fire marshal James Carver and link to Omega case. Analysis	0.50
10.4.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Granting, LLC.'s 12 <sup>th</sup> Supplement to Early Case Conference Witnesses and Exhibit List	0.30
10.4.17	Review, Download & Save Plaintiffs' Motion to Reconsider Order Granting The Viking Defendants Motion to Associate Counsel	0.30
10.5.17	Review, Download & Save Transcripts of All Pending Motions – Heard on August 23, 2017	0.30
10.5.17	Review email and download deposition from Oasis Reporting (Giberi)	0.25
10.5.17	Call with DSS	0.10
10.5.17	Review email from client re defendant's purchasing 645 Saint Croix	0.15
10.6.17	Review, Download & Save Third Party Defendant Gilberti Construction LLC's Joinder to Plaintiff's Motion to Strike Viking's Answer on OST	0.30
10.6.17	Review, Download & Save Subpoena Duces Tecum for the Person Most Knowledgeable for Zurich American Insurance Company	0.30
10.6.17	Review, Download & Save Final Amended Notice of Taking Deposition for The Person Most Knowledgeable for Zurich American Insurance Company	0.30

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

10.6.17	Email chain from Bartlett re extension to produce list of activations and deposition date	0.25
10.6.17	Email chain with DSS re Amended ZAIC Notice and SDT	0.15
10.9.17	Review email from DSS to Sia re Lange's extension to respond to MSJ against Lange only	0.15
10.9.17	Review email and attachments from DSS to client re demand sheets for mediation	0.25
10/9/17	Review file and pull documents for meeting with mediator	1.5
10/9/17	Meet with Mediator to Discuss Case	1.5
10/9/17	Review Giberti's Joinder to Motion to Strike Viking's Answer	0.25
10.9.17	Review email and download deposition from Oasis Reporting (DeLaRosa)	0.25
10.9.17	Review email and download deposition from Oasis Reporting (Kendrick)	0.25
10.9.17	Email chain from Sia re extension for Opp to MSJ	0.15
10.9.17	Review email from client re Edgeworth lawsuit history	0.15
10.9.17	Review email from client re minimax and shareholders with links	0.25
10.9.17	Email chain with client re: history of activation perjury and response	0.25
10.10.17	Review email from client and attachments re VK457 activation list	0.25
10.10.17	Review email from client re upcoming hearing dates and response after review of calendar	0.25
10.10.17	Review email from client re demand sheet for 1 <sup>st</sup> mediation	0.20
10.10.17	Call with DSS	0.15
10/10/17	Attend Mediation at JAMS with Floyd Hale	4.0
10.10.17	Review, Download & Save Notice of Vacating Video Deposition of NRCP 30(B)(6) of Designees of Tyco Fire Protection Products	0.30
10.10.17	Review, Download & Save Notice of Taking Video Deposition of NRCP 30(B)(6) of Designees of Reliable Automatic Sprinkler Company, Inc.	0.30

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 11 of 12**

AA000377

Docket 77678 Document 2019-33422

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

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

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

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

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

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

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

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

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

10.11.17	Review, Download & Save Service of Zurich American Insurance Company's Objections and Statements in Response to Amended NRCP 30(B)(6) Person Most Knowledgeable	0.30
10.11.17	Review, Download & Save Zurich American Insurance Company's Objections and Statements in Response to Amended Subpoena Duces Tecum	0.30
10.11.17	Review, Download & Save COMM to Take Out of State Deposition of Person Most Knowledgeable for Underwriters Laboratories, Inc.	0.30
10.11.17	Review, Download & Save Application to Take Out of State Deposition of Person Most Knowledgeable for Underwriters Laboratories, Inc.	0.30
10.11.17	Review, Download & Save Declaration of Janet C. Pancoast in Support of Opposition to Plaintiffs' Motion to Strike the Viking Defendants' Answer on Order Shortening Time	0.30
10.11.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Opposition to Plaintiffs' Motion to Strike The Viking Defendants' Answer on Order Shortening Time	0.30
10.11.17	Review, Download & Save Subpoena Duces Tecum for 30(B)(6) of the Designees of Underwriters Laboratories	0.30
10.11.17	Review, Download & Save Amended Notice of Taking Deposition Duces Tecum Pursuant to NRCP 30(B)(6) of Designees of Underwriters Laboratories, Inc.	0.30
10.11.17	Review, Download & Save Exhibits to Lange Plumbing's Opposition to Plaintiffs' Motion for Summary Judgment and Bifurcate Trial	0.30
10.11.17	Review, Download & Save Defendant Lange Plumbing's Opposition to Plaintiffs' Motion for Summary Judgment and Motion to Bifurcate Trial and Countermotion to Strike	0.30



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

10.11.17	Review email and attachment from Rose Hernandez Zurich's objections to SDT	0.15
10.11.17	Review email from Robinson re Ortyl's last known address	0.15
10.11.17	Review email from Bartlett re extension to produce list of activations and deposition date	0.15
10.11.17	Review email from client re portion of Viking's brief and response to client	0.25
10.11.17	Review email from client re his thoughts on Viking's Opp to Motion to Strike and analyze thoughts	0.50
10.11.17	Email chain with client re depositions on calendar and response	0.50
10.11.17	Review email from client re Glen Rigdon entrance into neighborhood and order from judge and response	0.15
10.11.17	Email chain with client and DSS re Lange's Opposition to MSJ	0.50
10.11.17	Review email from client re Margaret Ho's depo and response	0.15
10.11.17	Review email from client re opps to MSJ and response	0.15
10.11.17	Email chain with client, DSS, Sia and Mark re Lange's payment	0.15
10.11.17	Email from client re how payment between AG and EFT is recorded and analyzed for argument in MSJ	0.50
10.11.17	Email to Bartlett re denial of any further extensions to produce list of activations	0.15
10.11.17	Review email from client re MiniMax/Viking Credit Status	0.15
10.11.17	Email chain with DSS re phone message from Pancoast	0.15
10/11/17	Draft and serve amended notice, SDT, application to take depo out of state and commission to take depo out of state for UL Labs	1.5
10/11/17	Phone call with service company in Chicago Illinois for UL Lab Subpoena	0.25
10/11/17	Review and analyze Lange's Opposition to Motion for Summary Judgment	1.25
10/12/17	Review Zurich's Objections and Responses to PMK Depo and SDT	1.0

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

10/12/17	Take Notice of Non-Appearance for Zurich PMK	0.5
10/12/17	Review and analyze Viking's Opposition to the Motion to Strike Answer	1.25
10/12/17	Draft and re-serve all Viking employee depositions, Harold Rogers and Viking Group; email discussions with Robinson re: depo times	3.0
10.12.17	Review forwarded emails from Wiznet from DSS re filed transcripts	0.15
10.12.17	Call with Client	0.25
10.12.17	Review, Download & Save COMM to Take out of State Deposition for Harold Rodgers	0.30
10.12.17	Review, Download & Save COMM to Take Out of State Deposition of Person Most Knowledgeable for Viking Group Inc.	0.30
10.12.17	Review, Download & Save Application for Issuance of Commission to Take out of State Deposition of Harold Rodgers	0.30
10.12.17	Review, Download & Save Application for Issuance of Commission to Take Out of State Deposition of Person Most Knowledgeable for Viking Group, Inc.	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for NRCP 30(B)(6) of Designees of Viking Group, Inc.	0.30
10.12.17	Review, Download & Save Amended Notice of Video Deposition Duces Tecum Pursuant to NRCP 30(B)(6) of Designees of Viking Group, Inc.	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Harold Rodgers	0.30
10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Taking Deposition of Harold Rodgers Duces Tecum	0.30
10.12.17	Review, Download & Save Plaintiffs' 2 <sup>nd</sup> Amended Notice of Entry Upon Land / Site Inspection	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for James Golinveaux	0.30
10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Video Deposition of James Golinveaux Duces Tecum	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Kevin Ortyl	0.30

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

10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Taking Deposition of Kevin Ortyl Duces Tecum	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Tom O'Connor	0.30
10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Video Deposition of Tom O'Connor	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Jeff Norton	0.30
10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Video Deposition of Jeff Norton Duces Tecum	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Sherry Simmons( Sherry Bailey )	0.30
10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Video Deposition of Sherry Simmons ( Sherry Bailey ) Duces Tecum	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Doug Bensinger	0.30
10.12.17	Review, Download & Save Amended Notice of Video Deposition of Doug Bensinger Duces Tecum	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Mike Bosma	0.30
10.12.17	Review, Download & Save 2 <sup>nd</sup> Amended Notice of Taking Deposition of Mike Bosma Duces Tecum	0.30
10.12.17	Review, Download & Save Subpoena Duces Tecum for Devin Odell	0.30
10.12.17	Review, Download & Save 2nd Amended Notice of Video Deposition Devin Odell	0.30
10.12.17	Review, Download & Save Transcript of All Pending motions – heard on October 4, 2017	0.30
10.12.17	Email chain with Robinson re deposition scheduling of Viking employees for week of 11/13/17 and review of calendar and confirmation of who they will accept service	0.75
10.12.17	Email chain with client re searchable indexes and response	0.25
10.12.17	Review email from client re Sklar Williams invoice	0.15

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

10.12.17	Review email from client re depositions of UL people	0.15
10.12.17	Review email from client re his opinion of the best documents to use for Motion to Strike. Review documents and analyze	1.0
10.12.17	Review email from client with attachment with summary of points for Viking's argument	0.50
10.12.17	Review email from client with attachment re Henderson activation	0.25
10.12.17	Email chain with Sia re Zurich PMK depo	0.15
10.13.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Supplement to Opposition to Plaintiffs' Motion to Strike The Viking Defendants' Answer on Order Shortening Time	0.30
10.13.17	Review, Download & Save Amended Notice of Deposition of Kevin Hastings	0.30
10.13.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Privilege Log	0.30
10.13.17	Email to Kershaw, Pancoast, Sia and Nunez re Revised Order granting motion to Amend	0.25
10.13.17	Review email and download deposition from Oasis Reporting (Brian Edgeworth)	0.25
10.13.17	Review email from Bartlett re production of ZAIC activations	0.15
10.13.17	Email to Hastings re amended deposition notice	0.15
10.13.17	Review email from client re Harold Rogers missing attachment	0.15
10.13.17	Review email and links from client re Kevin Ortyl and Scott Franson's employment at Viking corp vs. group	0.50
10.13.17	Review email and attachment from client re UL document with Franson watermark	0.25
10.13.17	Email chain with client re Viking's searchable indexes and response	0.25
10.13.17	Email to Pancoast re dialect Margaret Ho speaks	0.15
10.13.17	Email to client with VKG documents	0.15
10.13.17	Email to client re Notice of Privilege Log Production and attachment	0.15

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

10.13.17	Email with client reemployment status and link of Kevin Ortyl	0.15
10.13.17	Email chain with client re Margaret Ho dialect and depo	0.15
10.13.17	Revise Reply on Motion to Strike	2.25
10.13.17	Review Viking's Privilege Log	0.75
10.13.17	Draft 10-4-17 DCRR and Draft Order re Rosenthal	4.0
10.14.17	Review email and attachment from client re actual max load calculation	0.25
10.14.17	Review email from client re his chart of activations	0.15
10.15.17	Review email from Nunez re using his previous signature for Order granting Motion to Amend	0.15
10.15.17	Review email from client re missing pages in PowerPoint disclosed. Locate document and respond	0.50
10.15.17	Email chain with Kershaw re Revised Order Granting Motion to Amend	0.15
10.15.17	Review email from client re his opinion of the activations and "clearest lies" and analyze	1.0
10.16.17	Review email and attachment from Rose Hernandez Zurich's motion to quash	0.25
10.16.17	Review email from Robinson re re-scheduling Hasting and Zamiski's depositions	0.15
10.16.17	Review email from Robinson re Franson's last known address	0.15
10.16.17	Review email from client re KPS activations in newly produced documents and analyze	0.25
10.16.17	Email chain with client re Rigdon order from Court	0.20
10.16.17	Review email and VIKZ attachment from client and determine which documents we need to request	0.75
10.16.17	Review email from client re VIKZ document cited in email. Locate document. Review document. Analyze and respond	1.0
10.16.17	Review email from client with attachment re Cal Atlantic activations, which were not disclosed	0.25

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

10.16.17	Review email from client and attachment re Dews Fire protection Email, KPS Emails and Bates Proof attachment	0.25
10.16.17	Review email from client re Pancoast declaration and the UL test record document attachments	0.25
10.16.17	Review email and attachment from client re UL	0.25
10.16.17	Pull documents for Margaret Ho Deposition	0.25
10.16.17	Review Zurich's Motion for Protective Order and begin drafting Opposition	4.25
10.16.17	Finalize and serve Reply to Motion to Strike Viking's Answer	1.25
10.16.17	Email chain with DSS re Franson's last known address	0.15
10.16.17	Review email from DSS re Viking's production of Carnahan's depo and response	0.15
10.16.17	Review email and attachment from DSS re production of Rapid Cash ad and response	0.15
10.16.17	Email chain with DSS re Viking's 15 <sup>th</sup> ECC Supp	0.15
10.16.17	Email chain with DSS and client re supplementing motion to strike	0.15
10.16.17	Review, Download & Save RPLY to Viking's Opposition to Plaintiffs Motion to Strike the Viking Defendants' Answer on Order Shortening Time	0.30
10.16.17	Review, Download & Save Lange Plumbing's 11 <sup>th</sup> Supplemental 16.1 Disclosures	0.30
10.16.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 15 <sup>th</sup> Supplemental Disclosures Pursuant to NRCP 16(a)(1)	0.30
10.16.17	Review, Download & Save Non - Party Zurich American Insurance Company's Motion for a Protective Order, or in The Alternative to Quash Subpoenas	0.30
10.16.17	Call with Client	0.15
10.16.17	Call with DSS	0.15
10.16.17	Call with Client	0.25
10.16.17	Call with Client	0.15
10.16.17	Call with Client	0.15
10.17.17	Call with DSS	0.15

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

10.17.17	17	Call with DSS	0.15
10.17.17	17	Review, Download & Save Supp Reply to Viking's Opposition to Plaintiffs' Motion to Strike the Viking Defendants' Answer on Order Shortening Time	0.30
10.17.17	17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Request for Production to Plaintiff [2 <sup>nd</sup> Set]	0.30
10.17.17	17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Notice of Compliance with Order on Plaintiff's Motion to Compel -- Pleading Only	0.30
10.17.17	17	Review, Download & Save PLT 171016 Edgeworth ES Ltr Simon re EDCR 2.34 re Pomerantz	0.30
10.17.17	17	Review email from Robinson re Koch depo availability	0.15
10.17.17	17	Email chain with Sheri Kern with Direct Legal Support in CA ( process server) re domestication of subpoena and payment	0.25
10.17.17	17	Review email from client re new Lange disclosure and response	0.25
10.17.17	17	Review email from client re Lange's threat to lien his house and research of whether lien valid	1.0
10.17.17	17	Review email and attachment from client re Margaret's 2 <sup>nd</sup> promissory note for ECC disclosure	0.20
10.17.17	17	Review email from client re his opinion of Viking's responses to written discovery	0.25
10.17.17	17	Email chain with DSS re 2.34 re Pomerantz as expert	0.15
10.17.17	17	Email chain with DSS re research for Reply to Lange MSJ	0.50
10.17.17	17	Email chain with DSS re depo cites for Reply to Lange MSJ	0.75
10/17/17	17	Review Viking's 15 <sup>th</sup> ECC Supplement and Lange' 11 <sup>th</sup> ECC Supp	2.0
10/17/17	17	Review Viking's Notice of Compliance with Motion to Compel	0.5
10/17/17	17	Draft and serve Supplement to Reply to Motion to Strike	3.75
10/17/17	17	Prepare for Hearing on Motion to Strike	1.5

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

10/18/17	Prepare and Attend Hearing on Plaintiffs' motion to Strike Viking's Answer	5.25
10.18.17	Review email from DSS re supplement to Motion to strike and response	0.75
10/18/17	Review Viking's Written Discovery Responses and Discussion with DSS	1.25
10/18/17	Revise Reply to Lange Opposition to MSJ	1.0
10.18.17	Review, Download & Save Defendant The Viking Corporation's Responses to Plaintiffs' Requests for production of Documents, Set Five	0.30
10.18.17	Review, Download & Save Defendant The Viking Corporation's Responses to Plaintiffs' Interrogatories, Set Four	0.30
10.18.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Responses to Plaintiffs' Fourth Request for Admissions	0.30
10.18.17	Review, Download & Save ROC for Defendants The Viking Corporation and Supply Network, Inc.'s Privilage Log	0.30
10.18.17	Review, Download & Save ROC for Defendants The Viking Corporation and Supply Network, Inc.'s 15 <sup>th</sup> Supplemental Disclosures	0.30
10.18.17	Review email from Judicial Attorney Services in Chicago IL re UL Depo service	0.25
10.18.17	Review email from client re max load hang test and attachments	0.50
10.18.17	Review email from client re download of RFAs	0.15
10.18.17	Review email from client re his responses to written discovery	0.25
10.18.17	Email chain with client and DSS re Henderson activation and attachment	0.50
10.19.17	Review email from client re analysis of Viking PMK depo re bending and review of depo	0.50
10.19.17	Review email and attachment from client re activations list	0.50
10.19.17	Email chain with client re locating documents. Located documents in system and responded	1.0
10/19/17	Review Giberti's Motion for Good Faith Settlement	0.25



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

10.30.17	Email chain with client re Sia's filing	0.15
10.30.17	Review email from client re Robinson Opp and argument why Viking is wrong with attachment	0.25
10.30.17	Review email and respond to client re Glen Rigdon order	0.25
10.30.17	Review email from client re questions for UL lawyers	0.50
10.30.17	Email chain with client re Robinson Opp and Bernie's depo. Revise and analyze Viking Opp, pull Bernie depo and respond to client	1.0
10.30.17	Review email from client re Viking's Opp to Exclude Carnhan	0.50
10.30.17	Review and respond to email from client re notice of withdrawal of counsel	0.15
10.30.17	Review email from client re regulators Viking has informed no testing on VK457	0.25
10.30.17	Call with DSS	0.15
10.30.17	Prepare for Hearing for MIL to Exclude Carnahan & MSJ Against Lange	2.0
10.30.17	Draft Reply to Motion to Reconsider Pro Hac	4.0
10.30.17	Review email from DSS re new written discovery to Viking and response	0.20
10.30.17	Review email from DSS to client re Edgeworth discovery responses	0.15
10.31.17	Review email from DSS re email to Pancoast re English version of the insurance policy and response	0.15
10.31.17	Email chain with DSS re UL notice and UL production of documents	0.15
10.31.17	Review, Download & Save Second Amended Notice of Deposition of John Olivas	0.30
10.31.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. 's Objection to Discovery Commissioners' Report and Recommendation on Defendants' Motion to Compel Home Inspection	0.30
10/31/17	Prepare and Attend Hearing for MIL to Exclude Carnahan & MSJ Against Lange Plumbing	3.0

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 1 PART 12 of 12**

AA000392

Docket 77678 Document 2019-33422

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

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

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

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

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

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

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

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

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

10.19.17	Review email from DSS to Floyd Hale re mediation	0.15
10.19.17	Review email and attachment from DSS re supplementing documents including El Segundo letter and response	0.20
10.19.17	Email chain with DSS re Giberti Motion for Good Faith Settlement and whether we will oppose	0.15
10.19.17	Email chain with DSS re Olivas depo and Pancoast email	0.15
10.19.17	Review, Download & Save Third Party Defendant Giberti Construction LLC's Motion for Good Faith Settlement	0.30
10.19.17	Review, Download & Save DCRR- Hearing 8.23.17	0.30
10.19.17	Review, Download & Save CES of UL Depo Notice	0.30
10.19.17	Review, Download & Save AOS of UL Depo	0.30
10.19.17	Review, Download & Save SUBP UL Depo	0.30
10.19.17	Review, Download & Save CES of Harold Rodger Depo Notice	0.30
10.19.17	Review, Download & Save AOS of Harold Rodgers	0.30
10.19.17	Review, Download & Save SUBP of Harold Rodgers	0.30
10.19.17	Review, Download & Save ROC for Defendants the Viking Corporation and Supply Network, Inc.'s Exhibits to Notice of Compliance with order on Plaintiffs' Motion to Compel	0.30
10.19.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
10/19/17	Draft 2 <sup>nd</sup> Supplement to Reply to Motion to Strike Viking's Answer	4.5
10/20/17	Conference Call with UL Lawyers & Discussion with DSS	0.5
10.20.17	Email chain from client re chart with corrections to KPS example	0.25
10.20.17	Review email from client re another sprinkler head activation in UK	0.15
10/20/17	Revise and serve MIL to Exclude Carnahan	3.75
10/20/17	Revise and submit order with letter to Judge Jones re Motion to Amend Complaint	1.0

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

10.20.17	Review, Download & Save OST – Plaintiffs Motion in Limine to Exclude Defendants The Viking Corporation and Supply Network, Inc., dba Viking Supplynet's Expert Robert Carnahan on Order Shortening Time	0.30
10.20.17	Review, Download & Save Transcripts of Proceedings Tuesday, October 3, 2017	0.30
10.20.17	Review email from DSS re inserting hidden activation information into supplement and response	0.15
10.21.17	Review email from client with attachment re response to why 287 not all duplicates	1.0
10.21.17	Review email and attachment from client re activations	0.50
10.21.17	Email chain with DSS re pre-lien notice form Lange	0.15
10.23.17	Review email from DSS re Opp to Zurich Motion and response	1.0
10.23.17	Email chain with DSS re supplement to motion to strike	0.20
10.23.17	Review, Download & Save Plaintiffs' Reply to Motion for Summary Judgment Against Lange Plumbing, LLC, Only and Reply to Opposition to Motion to Bifurcate Trial and opposition to Strike Matters from the Record	0.30
10.23.17	Review, Download & Save Plaintiff Edgeworth Family Trust and American Grating, LLC's 13 <sup>th</sup> Supplement to Early Case Conference Witness and Exhibit List	0.30
10.23.17	Review, Download & Save Second Supplement to Reply to Viking's Opposition to Plaintiffs' Motion to Strike the Viking Defendants' Answer on Order Shortening Time	0.30
10.23.17	Review, Download & Save Notice of Association of Counsel	0.30
10.23.17	Review, Download & Save ROC – Motion to Exclude Viking's Expert Carnahan	0.30
10.23.17	Review email from Bartlett (Zurich) re ZAIC's production	0.25
10.23.17	Review email from client re VIKZ019271 and analysis of document	0.50
10.23.17	Review email from client re UL	0.15



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

10.23.17	Review email from client re his comments on our draft of the supplement to motion to strike Viking's answer	0.25
10.23.17	Review email and attachment from client re counter to Viking argument in brief re 170	1.0
10.23.17	Review email from client re Viking and Jeff Norton and James Carver (fire marshal letter) with attachment	0.50
10.23.17	Review email and attachment from client re VK456 strength on heat responsive element testing	0.50
10.23.17	Email to client with Reply to MSJ Against Lange	0.15
10.23.17	Email to client with 2 <sup>nd</sup> Supplement to Motion to Strike Viking's Answer	0.15
10.23.17	Review email and attachments from client re clarifications and respond	0.75
10/23/17	Review Viking's Joinder to Lange's Opposition to the MSJ	0.25
10/23/17	Draft and serve Plaintiffs 13th ECC Supplement; Discussion with DSS	1.5
10/23/17	Revise Opposition to Zurich Motion for Protective Order	1.5
10/23/17	Revise and serve 2 <sup>nd</sup> Supplement to Reply to Motion to Strike Viking's Answer	2.5
10/23/17	Finalize and serve Reply to MSJ against Lange	1.25
10.23.17	Call with Client	0.10
10.24.17	Call with Client	0.25
10/24/17	Draft and Serve supplement to Reply to MSJ Against Lange	4.5
10.24.17	Review, Download & Save Notice of Deposition of Kevin Hastings Off Calendar	0.30
10.24.17	Review, Download & Save RTRAN-Recorders Transcript of Hearing - Re: All Pending Motions - heard on October 18, 2017	0.30
10.24.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Joinder to Lange Plumbing, LLC's Opposition to Plaintiffs' Motion for Summary Judgment with Additional Points and Authorities	0.30

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

10.24.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Opposition to Plaintiffs' Motion to Reconsider Order granting the Viking Defendants' Motions to Associate Counsel	0.30
10.24.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Notice of Non - Opposition to Third - Party Defendant Giberti Construction, LLC's Motion for Determination for Good faith Settlement	0.30
10.24.17	Email to Pancoast re missing documents from Viking's 15 <sup>th</sup> ECC Supplement	0.25
10.24.17	Review email from client re Burgoyne's Report disclosed by Viking and comparison to the one from UK	1.0
10.24.17	Review email from client re his comments on ZAIC's incomplete disclosure, analysis, and response	1.0
10.24.17	Review email from client re his audit of newly disclosed documents and analysis	0.75
10.24.17	Email chain with DSS re Burgoyne report and Sherry Simmons email	0.25
10.25.17	Review email from DSS re new topic for 30(b)(6) notice and written discovery to Viking and response	0.25
10.25.17	Review email from DSS to Bartlett re ZAIC's position of list of activations	0.15
10.25.17	Review, Download & Save Supplement to Plaintiffs' Reply to Motion for Summary Judgment Against Lange Plumbing, LLC, Only and Reply to Viking's Joinder	0.30
10.25.17	Draft Written Discovery to Viking; Discussion with DSS	2.25
10.25.17	Finalize and send out DCRR for 10.4.17 and the Order Granting Motion to Exclude Rosenthal	1.5
10.25.17	Email to Jessica Rogers re missing Viking documents	0.15
10.25.17	Email to Sia, Kershaw, Pancoast, Ure re 10.4.17 DCRR	0.15
10.25.17	Email chain with DSS and Bartlett (Zurich) re ZAIC's production	0.25

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

10.25.17	Review email and attachment from client re Viking's misrepresentations	0.50
10.25.17	Review email from client and analyze re activations	0.75
10.25.17	Email chain with client re draft written discovery to Viking and corrections to written discovery	1.0
10.25.17	Review email from client and attachment re best docs for perjury by counsel proof	1.0
10.25.17	Email chain with client re: Zurich lawyers response to ZAIC's list of activations	0.50
10.25.17	Review email from client re comparing ZAIC activations to Viking's disclosed activations	0.50
10.25.17	Review email from client re economic interest in MiniMax	0.15
10.25.17	Email chain with client re documents from Viking disclosure and review of attachments and response	1.0
10.25.17	Call with Client	0.40
10.26.17	Call with DSS	0.25
10.26.17	Review email from DSS to client re explanation of OOI	0.15
10.26.17	Review email from DSS re Nunez request of what happened at Motion to strike hearing	0.15
10.26.17	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Opposition to Plaintiffs' Motion in Limine to Exclude Defendants the Viking Corporation and Supply Network, Inc. dba Viking Supplynet's Expert, Robert Carnahan	0.30
10.26.17	Review, Download & Save Plaintiffs' 5 <sup>th</sup> Set of Interrogatories to Defendants The Viking Corporation	0.30
10.26.17	Review, Download & Save Plaintiffs' 6 <sup>th</sup> Set of Requests for Production to Defendants The Viking Corporation	0.30
10.26.17	Review, Download & Save Plaintiffs' 5 <sup>th</sup> Set of Requests for Admission to Defendants The Viking Corporation	0.30
10.26.17	Review email from client and attachment of activations	1.0

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

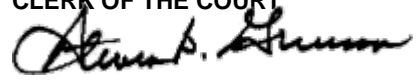
10.26.17	Review email from Nunez re Motion to Strike	0.15
10.26.17	Review email from client re responses to Viking's written discovery	0.25
10.26.17	Review email from client re OOJ	0.15
10.26.17	Review email from client re UL testing website	0.25
10.26.17	Review email from client and attachment of Viking presentation- Residential Sprinklers Best Practices	1.0
10.26.17	Email to Sia, Pancoast, Ure and Kershaw re Order Granting MIL to exclude Rosenthal	0.15
10.26.17	Review email and attachment from client re example of incomplete disclosure based off Viking's own documents	0.50
10/26/17	Draft Written Discovery to Viking; Discussion with DSS	1.25
10/26/17	Draft DCRR from 10-24-17 Hearing	3.5
10/26/17	Review Viking's Opposition to MIL to Exclude Carnahan and analyze what we need for oral reply	2.5
10.27.17	Review email from DSS to Pancoast re Stipulation on MILS	0.15
10.27.17	Call with DSS	0.25
10.30.17	Review, Download & Save Notice of Withdrawal of Counsel	0.30
10.30.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s Request for Production to Plaintiffs	0.30
10.30.17	Review, Download & Save-- Defendants The Vikings Corporation and Supply Network, Inc.'s Interrogatories to Plaintiffs	0.30
10.30.17	Review email from client re depo of Cadden of temps	0.50
10.30.17	Review email from Kershaw re the 10.4.17 DCRR	0.50
10.30.17	Review email from client re Robinson's Motion and the supporting depositions we have for temps 100 exposure and pull excerpts from depositions of Cadden, Giberti, Edgeworth to rebut argument	1.0
10.30.17	Review email and download deposition from Oasis Reporting (Ho)	0.25
10.30.17	Review email from client re his analysis of Robinson's heat argument	0.25

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

10.30.17	Email chain with client re Sia's filing	0.15
10.30.17	Review email from client re Robinson Opp and argument why Viking is wrong with attachment	0.25
10.30.17	Review email and respond to client re Glen Rigdon order	0.25
10.30.17	Review email from client re questions for UL lawyers	0.50
10.30.17	Email chain with client re Robinson Opp and Bernie's depo. Revise and analyze Viking Opp, pull Bernie depo and respond to client	1.0
10.30.17	Review email from client re Viking's Opp to Exclude Carnhan	0.50
10.30.17	Review and respond to email from client re notice of withdrawal of counsel	0.15
10.30.17	Review email from client re regulators Viking has informed no testing on VK457	0.25
10.30.17	Call with DSS	0.15
10/30/17	Prepare for Hearing for MIL to Exclude Carnahan & MSJ Against Lange	2.0
10/30/17	Draft Reply to Motion to Reconsider Pro Hac	4.0
10.30.17	Review email from DSS re new written discovery to Viking and response	0.20
10.30.17	Review email from DSS to client re Edgeworth discovery responses	0.15
10.31.17	Review email from DSS re email to Pancoast re English version of the insurance policy and response	0.15
10.31.17	Email chain with DSS re UL notice and UL production of documents	0.15
10.31.17	Review, Download & Save Second Amended Notice of Deposition of John Olivas	0.30
10.31.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc. 's Objection to Discovery Commissioners' Report and Recommendation on Defendants' Motion to Compel Home Inspection	0.30
10/31/17	Prepare and Attend Hearing for MIL to Exclude Carnahan & MSJ Against Lange Plumbing	3.0

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

10/31/17	Revise DCRR from 10-24-17 hearing and send to counsel and DC Bulla	1.25
10/31/17	Draft Motion to Compel Viking Financials	3.25
10.31.17	Email to Robinson and Parker re 10.24.17 DCRR	0.15
10.31.17	Email to Susan McNicolas re UL Depo and documents	0.15
10.31.17	Review email from Robinson re Carnahan availability and discussion with DSS	0.15
10.31.17	Review email from Kershaw re Viking's changes to Order granting MIL to exclude Rosenthal	0.75
10.31.17	Review email from client re activations and response	0.20
11.1.17	Email chain with DSS re Viking document production (Martorano's depo in FSS and Thorpe)	0.50
11.1.17	Review email from DSS re calendar and deposition re-scheduling	0.15
11.1.17	Review email and attachment from DSS re picture for reply	0.15
11.1.17	Review and respond to email from Francesca Haak with DC Bulla re hearing transcript	0.15
11.1.17	Email to Pancoast requesting Viking's excess policy in English	0.15
11.1.17	Email to Bartlett re Plaintiff's Opp to Zurich's Motion for Protective Order	0.15
11.1.17	Review email from client and attachments re Viking baking their links	1.0
11.1.17	Review email chain with client, DSS, AMF re activations and analyze	1.0
11.1.17	Review email from client re UL people	0.15
11.1.17	Review email and attachment from client re Letter from UL re bent lever bars	0.25
11.1.17	Review, Download & Save Plaintiffs 6 <sup>th</sup> Set of Requests for Admission to Defendants The Viking Corporation	0.30
11.1.17	Review, Download & Save Plaintiffs 6 <sup>th</sup> Set of Interrogatories to Defendants the Viking Corporation	0.30
11.1.17	Review, Download & Save Plaintiffs 7 <sup>th</sup> Set of Requests for Production to Defendants the Viking Corporation	0.30



# EXHIBIT A-1

# EXHIBIT A-1

AA000405

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**Supreme Court Case**

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

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

**APPELLANTS' APPENDIX**

**VOL. 2 PART 1 of 9**

AA000406

Docket 77678 Document 2019-33423



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

TELEPHONE (702) 364-1659

FACSIMILE (702) 364-1655

December 7, 2017

Robert Vannah, Esq.  
John Greene, Esq.  
400 South 7<sup>th</sup> Street, Suite 400  
Las Vegas, Nevada 89101  
**RE: Edgeworth v. Viking, et al.**

Dear Mr. Vannah,

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

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

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

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

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

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

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

Sincerely,



Daniel S. Simon

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

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

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

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

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

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

EXHIBIT 04-000003

AA000430

AA000270



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

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

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

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### **Value of my Services**

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

### **Billing Statements**

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

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

#### **How I handle cases**

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

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

#### **Finalizing the settlement**

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

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

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

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

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

### **Conclusion**

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

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

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

Sincerely,



Daniel S. Simon

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

## **RETAINER AGREEMENT**

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

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

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

IN THE SUPREME COURT OF NEVADA

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, INDIVIDUALLY, AND  
AS HUSBAND AND WIFE; ROBERT  
DARBY VANNAH, ESQ.; JOHN  
BUCHANAN GREENE, ESQ.; AND  
ROBERT D. VANNAH, CHTD, d/b/a  
VANNAH & VANNAH, and DOES I  
through V and ROE CORPORATIONS VI  
through X, inclusive,

Appellants,

V.

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

Respondents.

Supreme Court Case No. 82058

Dist. Ct. Case No. A-19-807433-C

**JOINT APPELLANTS' APPENDIX  
IN SUPPORT OF ALL  
APPELLANTS' OPENING BRIEFS**

## VOLUME III

**BATES NO. AA000436 - 673**

Steve Morris, Bar No. 1530  
Rosa Solis-Rainey, Bar No. 7921  
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801 South Rancho Dr., Ste B4  
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Lisa I. Carteen (*Pro Hac Vice*)  
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515 South Flower, 42<sup>nd</sup> Fl.  
Los Angeles, CA 90071  
Phone: 213-430-3624  
Fax: 213-430-3409  
[lcarteen@tuckerellis.com](mailto:lcarteen@tuckerellis.com)

*Attorneys for Appellants Edgeworth  
Family Trust, American Grating,  
LLC, Brian Edgeworth and Angela  
Edgeworth*

***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
**CHRONOLOGICAL INDEX**

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-12-27	Notice of Entry of Orders and Orders re Mot. to Adjudicate Lien and MTD NRC 12(b)(5) in <i>Simon I</i>	I	AA000001 – 37
2019-12-23	Complaint	I	AA000038 – 56
2020-04-06	Edgeworth Defs. Opp'n to Pls.' "Emergency" Mot. to Preserve ESI	I	AA000057 – 64
2020-04-06	Vannah Defs. Opp'n to Pls.' Erroneously Labeled Emergency Mot. to Preserve Evidence	I – IV	AA000065 – 764
2020-04-30	Vannah Defs. Mot. to Dismiss Pls.' Complaint and Mot. in the Alternative for a More Definite Statement	IV	AA000765 – 818
2020-05-14	Edgeworth Defs. Mot. to Dismiss Pls.' Complaint	IV	AA000819 – 827
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-05-18	Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Mot. by to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP	V	AA000924 – 937
2020-05-18	American Grating, LLC's Special Mot. to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP and for Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	V	AA000938 – 983
2020-05-20	American Grating, LLC's Joinder to Defs. Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	V	AA000984 – 986

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
	American Grating, LLC's Joinder to Special Mot. of Vannah Defs. to Dismiss Pls.' Complaint: Anti-SLAPP	V	AA000987 – 989
2020-05-20	Edgeworth Family Trust, and Brian and Angela Edgeworth's Joinder to American Grating, LLC's. and Vannah Defs.' Special Mot. s. to Dismiss Pls.' Complaint	V	AA000990 – 992
2020-05-20	Vannah Defs.' Joinder to Edgeworth Defs.' Special Mot. to Dismiss Pls.' Complaint; Anti-SLAPP		AA000993 – 994
2020-05-21	Amended Complaint	V	AA000995 – 1022
2020-05-26	Pls.' Opp'n to Vannah Defs.' Mot. To Dismiss Pls.' Complaint, And Mot. in the Alternative for a More Definite Statement and Leave to File Mot. in Excess Of 30 Pages Pursuant to EDCR 2.20(A)	VI-VII	AA001023 – 1421
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***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

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AA000436

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2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
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The Law Office of Daniel S. Simon  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

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

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

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

8  
9 Angela Edgeworth on behalf of Edgeworth Family  
Trust and American Grating

*Steven D. Grierson*

1 ROBERT D. VANNAH, ESQ.  
2 Nevada Bar No. 002503  
3 JOHN B. GREENE, ESQ.  
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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 --000--

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

17 **Plaintiffs,**

18 **vs.**

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

25 **Defendants.**

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

28 **Plaintiffs,**

**vs.**

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

**Defendant.**

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

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

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

**Date of Hearing: February 6, 2018**  
**Time of Hearing: 9:30 a.m.**

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# VANNAH & VANNAH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

24 SIMON'S Motions are without merit. The Motion to Adjudicate Attorney Lien must fail  
25 pursuant to NRS 18.015(2), as the parties did agree upon a fee of \$550 per hour for SIMON'S  
26

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

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

19 **II.**

20 **ARGUMENTS**

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

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

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

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

11  
12 Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the  
13 LITIGATION are for an hourly rate of \$550 per hour for SIMON'S services. (See Exhibit 20 to  
14 SIMON'S Motion.) There are hundreds of entries for hundreds of thousands of dollars, all billed  
15 by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.)  
16 Even SIMON'S new invoices, which contain thousands of entries and many more hundreds of  
17 thousands of dollars in billings, are billed by SIMON at \$550 per hour. (Please see Exhibit 19 to  
18 SIMON'S Motion.)  
19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 There is simply no factual or legal basis for SIMON'S attorneys' lien or his Motion.  
4 There are no practical reasons, either. To the contrary—to entertain SIMON'S Motion or the  
5 foundation for his liens sends a very troubling message to the community who looks to lawyers  
6 for help. For the purposes of this Opposition, SIMON'S conduct here will be referred to as The  
7 SIMON Rule. If The SIMON Rule is adopted, attorneys will be emboldened by the following in  
8 the handing of their client's interests: 1.) Agree to represent a client for an hourly fee of \$550, but  
9 fail to represent their best interests by reducing the fee agreement to writing; 2.) Bill the client  
10 \$550 per hour for an extended period of time and collect thousands or hundreds of thousands of  
11 dollars from the client, who pays on time when the invoices are presented; 3.) Express a desire to  
12 change the terms of the fee agreement when it becomes clear that a much higher fee, or bonus,  
13 can be had if the client will agree to do so; 4.) When the client won't agree to pay more than the  
14 agreed to fee of \$550 per hour, lien the file for the additional proceeds, or bonus, that you had you  
15 eyes on late in the game; and, 5.) Use your failure to reduce your fee agreement in writing as a  
16 basis to get more money on the back of a "charging lien."  
17

18  
19 How would The SIMON Rule sell if it were widely known that this is the way that we  
20 attorneys can operate? Not well. Thankfully, neither the facts, nor the law, nor practical or  
21 common sense supports The SIMON Rule. Instead, PLAINTIFFS respectfully request that this  
22 court deny SIMON'S Motion to Adjudicate Attorneys Lien and refuse to acknowledge the  
23 validity of SIMON'S liens. Instead, allow PLAINTIFFS claims against SIMON to proceed  
24 before a jury, as provided for in Nevada law. See *Cheung v. Eighth Judicial District Court*, 124  
25 P.3d 550 (Nev. 2005); Nev. Const. art. 1, section 3.  
26

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



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

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

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

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

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

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

16  
17 PLAINTIFFS have a right to a jury trial (and all the usual tools) of their dispute to recover  
18 their property from SIMON, just as "Nevada attorneys have all of the usual tools available to  
19 creditors to recover the payment of their fees." *Leventhal v. Black & Lobello*, 305 P.3d 907, 909  
20 (Nev. 2013). Is SIMON to suggest that attorneys are afforded more options, and entitled to better  
21 treatment, than their clients?

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

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

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

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

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

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

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

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

12 III.

13 CONCLUSION

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

18 DATED this 2 day of February, 2018.

19 VANNAH & VANNAH

20   
21 ROBERT D. VANNAH, ESQ.  
22  
23  
24  
25  
26  
27  
28

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

**CERTIFICATE OF SERVICE**


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

Electronically:

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

Traditional Manner:  
*None*

DATED this 2 day of February, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

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

**STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )**

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

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

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

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

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

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

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

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

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

8 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

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

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  
26 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted  
27  
28

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

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

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

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



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

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

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

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

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

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

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

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

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

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?

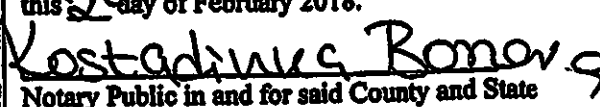
11           22.    Please understand that we've paid SIMON in full every penny of every invoice  
12 that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall.  
13 I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no 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

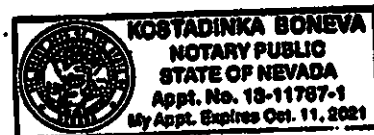
18           23.    I ask this Court to deny SIMON'S Motions and give us the right to present our  
19 claims against SIMON before a jury.  
20

21           FURTHER AFFIANT SAYETH NAUGHT.

22   
23 BRIAN EDGEWORTH

24           Subscribed and Sworn to before me  
25 this 2<sup>nd</sup> day of February 2018.

26   
27 Notary Public in and for said County and State  
28



Brian J. Edgworth  
Edgworth Family Trust, et al. v. Lange Plumbing, L.L.C., et al.

1	DISTRICT COURT
2	CLARK COUNTY, NEVADA
3	EDGWORTH FAMILY TRUST, and
4	AMERICAN GRATING, LLC,
5	Plaintiffs,
6	vs.
7	LANGE PLUMBING, L.L.C.; THE
8	VIKING CORPORATION, a
9	Nichigan corporation; SUPPLY
10	NETWORK, INC., dba VIKING
11	SUPPLYNET, a Michigan
12	corporation; and BOSS I
13	through V and ROX CORPORATIONS
14	VI through X, inclusive,
15	Defendants.
16	AND ALL RELATED CLAIMS.
17	DEPOSITION OF BRIAN J. EDGWORTH
18	INDIVIDUALLY AND AS NRCF 30(b)(6) DESIGNER OF
19	EDGWORTH FAMILY TRUST AND AMERICAN GRATING LLC
20	Taken on Friday, September 29, 2017
21	By a certified court reporter
22	At 9:35 a.m.
23	At 1160 North Town Center Drive, Suite 130
24	Las Vegas, Nevada
25	Reported by: William C. Laborde, CCR 673, RFR, CRR
	Job No. 23999

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

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

6           A.     No.

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

9           A.     No.

10          Q.     Okay. So there's no place that you could  
11     look for that information and tell me a number of  
12     attorneys' fees that American Grating LLC has  
13     actually incurred prior to May of 2017?

14          A.     Yes, I could.

15          Q.     You could?

16          A.     Yes.

17          Q.     Okay.

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

20                 MS. DALACAS: The reconciliations?

21                 MR. SIMON: No.

22                 MS. DALACAS: The attorney --

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

1 MS. DALACAS: I'm --

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

4 MS. DALACAS: I understand that.

5 BY MS. DALACAS:

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

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

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

15 A. Correct.

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

19 A. Yes, they would owe that.

20 Q. Okay. And why is that?

21 A. Because obviously it's their case.

22 Q. American Grating's case?

23 A. Yes.

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

*Steven D. Grierson*

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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 **Plaintiffs,**

18 **vs.**

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

24 **Defendants.**

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

Consolidated with

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

**AMENDED COMPLAINT**

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

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

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

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

Respondents/Cross-Appellants.

**Supreme Court Case**

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

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

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

Respondents.

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

**APPELLANTS' APPENDIX**

**VOL. 2 PART 3 of 9**

AA000471

Docket 77678 Document 2019-33423



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

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

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

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

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

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

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

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

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

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

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

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

1 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person  
2 shall suffer personal injury by wrongful act, neglect or default of another,  
3 the person causing the injury is liable to the person injured for damages;  
4 and where the person causing the injury is employed by another person or  
5 corporation responsible for his conduct, that person or corporation so  
6 responsible is liable to the person injured for damages.

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

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

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

12 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests  
13 following a flood that occurred on April 10, 2016, in a home under construction that was owned by  
14 PLAINTIFFS. That dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as Case  
15 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in  
16 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the  
17 trial date.  
18

19 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally  
20 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs  
21 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were  
22 never reduced to writing.  
23

24 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December  
25 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs  
26 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to  
27 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of  
28

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

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

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

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

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

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

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

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

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



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

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

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

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

### **SECOND CLAIM FOR RELIEF**

#### **(Declaratory Relief)**

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

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

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

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

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

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

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

24 **THIRD CLAIM FOR RELIEF**

25 (Conversion)

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

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

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

6 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable  
7 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.  
8

9 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his  
10 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay  
11 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd  
12 produced all of his billings through September of 2017, SIMON has refused to agree to either  
13 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed  
14 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.  
15

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

18 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises  
19 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to  
20 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount  
21 in excess of \$15,000.00.  
22

23 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
24 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
25 PLAINTIFFS are entitled to recover attorneys' fees and costs.  
26

27 ///

28 ///

**FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

3  
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.

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

**PRAYER FOR RELIEF**

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

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ. (4279)

*Steven D. Grierson*

MTD

James R. Christensen Esq.  
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Attorney for SIMON

Eighth Judicial District Court  
District of Nevada

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

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

Consolidated with

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

Plaintiffs,

vs.

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

Defendants.

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

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

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



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

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

6  
7  
8        /s/ James R. Christensen  
9        **JAMES CHRISTENSEN, ESQ.**  
10       Nevada Bar No. 003861  
11       601 S. 6<sup>th</sup> Street  
12       Las Vegas, NV 89101  
13       Phone: (702) 272-0406  
14       Facsimile: (702) 272-0415  
15       Email: jim@christensenlaw.com  
16       *Attorney for Daniel S. Simon*  
17  
18  
19  
20  
21  
22  
23  
24  
25

**NOTICE OF MOTION**

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

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

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

/s/ James R. Christensen  
**JAMES CHRISTENSEN, ESQ.**  
Nevada Bar No. 003861  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
Phone: (702) 272-0406  
Facsimile: (702) 272-0415  
Email: jim@christensenlaw.com  
*Attorney for Daniel S. Simon*

1       **I.     INTRODUCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 In November/December of 2017, Viking offered \$6M to settle.

19 In late November, the reasonable fee due the Law Office was again raised.  
20 Although the clients promised to discuss the issue, they soon refused to speak to  
21 their lawyers. On November 30, 2017, Plaintiffs retained the Vannah law firm.  
22 The Vannah firm instructed the Law Office to stop communication with its clients.  
23  
24  
25

1 On December 1, 2017, the Law Office served a charging lien pursuant to  
2 NRS 18.015.

3 On December 18, 2017, settlement checks from Viking, totaling \$6M, were  
4 picked up by the Law Office. The Law Office immediately contacted the Vannah  
5 firm to arrange endorsement. The Vannah firm declined. Eventually, the Vannah  
6 firm relayed an allegation that the checks would not be endorsed because Mr.  
7 Simon would steal the money. The baseless accusation was made to support the  
8 false narrative that the current dispute is something more than a fee dispute - which  
9 can be easily and timely resolved by lien adjudication.  
10  
11

12 On January 2, 2018, the Law Office served an amended lien.

13 On January 4, 2018, Plaintiffs sued their lawyers. (Who they have not  
14 fired.)  
15

16 In early January, an interest-bearing account, with interest going to Mr.  
17 Edgeworth, was opened at Bank of Nevada. Disbursal requires the signatures of  
18 both Mr. Vannah and Mr. Simon.  
19

20 On January 8, 2018, the Viking settlement checks were endorsed and  
21 deposited.

22 On January 9, 2018, the complaint was served.

23 On January 18, 2018, the bank hold lifted and Brian Edgeworth got a check  
24 for the undisputed amount of \$3,950,561.27.  
25

1           **B.     The Law Office of Daniel S. Simon, A Professional Corporation.**

2           Plaintiffs named Defendant "Daniel S. Simon dba Simon Law", alleging  
3 Breach of Contract, Declaratory Relief and Conversion. *See* Complaint, attached  
4 hereto as Exhibit "B." All allegations against Daniel Simon individually are  
5 without basis as a matter of law and should be dismissed. Plaintiffs contend that  
6 Daniel S. Simon was doing business as Simon Law. *See id.*, ¶ 2. This contention  
7 is incorrect as Daniel S. Simon did not do business with the Edgeworth's and did  
8 not provide any services in his individual capacity. Any legal services provided to  
9 Plaintiffs were done by The Law Office of Daniel S. Simon, P.C., a domestic  
10 professional corporation. *See* Nevada Secretary of State Business License Record  
11 for Law Office of Daniel S. Simon, P.C., attached hereto as Exhibit "C."

12           Simon Law is not an entity that can be sued. At most it is a fictitious name  
13 owned by The Law Office of Daniel S. Simon, P.C. *See* Clark County Fictitious  
14 Firm Name Record for Simon Law, attached hereto as Exhibit "D." This is not a  
15 surprise to Plaintiffs, they directed partial payments for legal services to The Law  
16 Office of Daniel S. Simon, P.C. *See* check payment by Angela and Brian  
17 Edgeworth to The Law Office of Daniel S. Simon, P.C., attached hereto as Exhibit  
18 "E." Consequently, Plaintiffs have no viable claims against Daniel S. Simon as an  
19 individual and Defendant is entitled to dismissal of the entire complaint as a matter  
20 of law.  
21  
22  
23  
24  
25

1 **III. ARGUMENT**

2 **A. Defendant Daniel S. Simon Is Not a Proper Party and Should Be**  
3 **Dismissed from the First, Second and Fourth Causes of Action.**

4 Nevada Rule of Civil Procedure 12(b)(5) allows dismissal of causes of  
5 action when a pleading fails to state a claim upon which relief can be granted.

6 "This court's task is to determine whether ... the challenged pleading sets forth  
7 allegations sufficient to make out the elements of a right to relief." *Vacation Vill.*,  
8 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (quoting *Edgar v. Wagner*, 101 Nev.  
9 226, 228, 699 P.2d 110, 112 (1988) (emphasis added). Dismissal is proper where  
10 the allegations are insufficient to establish the elements of a claim for relief.  
11

12 *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316,  
13 183 P.3d 133, 135 (2008). This Court should not assume the truth of legal  
14 conclusions, merely because they are cast in the form of factual allegations.  
15 *Crockett & Myers, Ltd. V. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184,  
16 1190 (D. Nev. 2006).  
17  
18

19 Plaintiffs allege that there is a contract between them and Defendant Daniel  
20 S. Simon. However, this assertion is incorrect and improper. Taking the allegation  
21 as true, the agreement was not between Plaintiffs and Daniel S. Simon. Mr. Simon  
22 does not contract in an individual capacity; and, Mr. Simon does not do business  
23 individually. *See* Exhibits "C" and "D."  
24  
25



1 The Law Office is a licensed domestic professional corporation in the State  
2 of Nevada. See Exhibit "C." Simon Law is a fictitious firm name owned by the  
3 Law Office. See Exhibit "D." Any alleged agreement for legal services provided  
4 for Plaintiffs would be through the professional corporation.

5  
6 As a matter of law, contract claims against a law firm or a lawyer are  
7 governed by contract law, which necessarily includes corporate law:

8 "A lawyer is subject to liability to a client for injury caused by breach of  
9 contract in the circumstances and to the extent provided by contract law."

10 Restatement Third, The Law Governing Lawyers §55(1).

11 The first, second and fourth causes of action all seek relief under the alleged  
12 contract. Under contract law and Nevada corporate law, Mr. Simon is not a proper  
13 defendant. Mr. Simon is an officer and stockholder of the corporation, Mr. Simon  
14 may not be named individually in a contract action. Plaintiffs' Complaint fails to  
15 state a claim pursuant to NRCP 12(b)(5); and, Defendant Daniel S. Simon should  
16 be dismissed.  
17  
18

19 **B. Plaintiffs' Conversion Action Should Be Dismissed.**

20 Plaintiffs' Conversion Cause of Action fails to state a claim and should be  
21 dismissed.  
22  
23  
24  
25

1 For a conversion claim, Plaintiffs must prove that a Defendant:

2 1) committed a distinct act of dominion wrongfully exerted over  
3 Plaintiffs' personal property; and,

4 2) the act was in denial of, or inconsistent with, Plaintiffs' title or rights  
5 therein; or,

6 3) the act was in derogation, exclusion, or defiance of Plaintiffs' title or  
7 rights in the personal property.

8 *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000); *Ferriera*  
9 *v. P.C.H. Inc.*, 105 Nev. 305, 774 P.2d 1041 (1989); *Wantz v. Redfield*, 74 Nev.  
10 196, 326 P.2d 413 (1958). Plaintiffs cannot establish conversion as a matter of  
11 law.

12  
13 1. Plaintiffs did not plead a right to possession sufficient to allege  
14 conversion.

15 In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*,  
16 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court  
17 recognized the need to establish the right to "exclusivity" of the chattel or property  
18 alleged to be converted (*M.C. Multi-Family* addressed alleged conversion of  
19 intangible property). Plaintiffs claim they are due money via a settlement contract,  
20 and that they have compensated Defendant in full for legal services provided  
21 pursuant to a contract. See Exhibit "B," ¶ 19. Thus, Plaintiffs have pled a right to  
22 payment based upon contract.  
23  
24  
25

1 An alleged contract right to possession is not exclusive enough, without  
2 more, to support a conversion claim:

3 "A mere contractual right of payment, without more, will not suffice" to  
4 bring a conversion claim.

5 *Plummer v. Day/Eisenberg*, 184 Cal.App.4<sup>th</sup> 38, 45 (Cal. CA, 4<sup>th</sup> Dist. 2010). *See*,  
6 Restatement (Second) of Torts §237 (1965), comment d.

7 Nevada law expressly allows an attorney to recover fees via a charging lien,  
8 and expressly states such an effort is not a breach of duty. NRS 18.015(5). Thus,  
9 as a matter of law, asserting a charging lien, or expressing a desire to be paid,  
10 cannot serve to change a lien claim into conversion.  
11

12  
13 2. A charging lien is allowed by statute.

14 NRS 18.015 allows an attorney to file a charging lien. The Law Office  
15 followed the law. Following the law is not *wrongful*. Thus, as a matter of law,  
16 Plaintiffs cannot satisfy the *wrongful* dominion element.  
17

18 3. The money was placed into a trust account, per agreement of the  
19 parties.

20 The Law Office acted properly pursuant to Nevada Rule of Professional  
21 Conduct 1.15 "Safekeeping Property". The Rule states in relevant part:

22 (e) When in the course of representation, a lawyer is in possession of funds  
23 or other property in which two or more persons (one of whom may be the  
24 lawyer) claim interests, the property shall be kept separate by the lawyer  
25 until the dispute is resolved. The lawyer shall promptly distribute all  
portions of the funds or other property as to which the interests are not in  
dispute.

1 The Law Office followed the exact course mandated by the Rules of  
2 Professional Conduct. The Law Office followed the law and placed the settlement  
3 money into a separate account-which requires the signature of Mr. Vannah to  
4 disburse funds. See Bank of Nevada letter establishing joint trust account for  
5 settlement proceeds, attached as Exhibit "F." Plaintiffs' have control over the  
6 funds and interest goes to Brian Edgeworth. No funds were taken, nor can any  
7 funds be taken.  
8  
9

10 Plaintiffs' conversion Cause of Action fails as a matter of law. No money  
11 has been taken. Plaintiffs have joint control over the money. Even more telling is  
12 the letter drafted by Plaintiffs and presented to the Bank consenting to the handling  
13 of the funds. See, Letter from Vannah and Vannah to the Bank of Nevada attached  
14 as Exhibit "F." How can you wrongfully convert funds when the complaining  
15 party agrees to where the funds should be placed and when Mr. Simon fully  
16 complied with the Plaintiffs' direction and placed the funds in a protected account?  
17  
18

19 4. The complaint is not ripe.

20 It is axiomatic that a person not in possession cannot convert. Restatement  
21 (Second) of Torts §237 (1965), comment f. Plaintiffs sued Defendant for  
22 conversion before checks were endorsed or deposited. Likewise, the demands of  
23 Plaintiffs preceded the date funds were deposited and available and cannot serve as  
24 a predicate for a conversion claim.  
25

1       Deposit of funds into a trust account is not an act of dominion contrary to  
2 any stakeholder interest. In fact, it is the opposite. The Nevada Supreme Court  
3 has ruled that holding disputed funds in an attorney trust account is the same as the  
4 Court holding the funds in an interpleader action. *Golightly & Vannah, PLLC v TJ*  
5 *Allen LLC*, 373 P.3d 103 (Nev. 2016). A conversion claim cannot be ripe as a  
6 matter of law, until funds are removed from trust without legal basis. Which is  
7 impossible in this case, because Mr. Vannah is a signer on the account.  
8

9       An attorney is allowed by statute and the rules of ethics to resolve a fee  
10 dispute via a charging lien. Assertion of a lien right provided by statute is not  
11 conversion. *See*, Restatement (Second) of Torts §240 (1965). The undisputed  
12 money was provided to the client promptly upon funds becoming available. Thus,  
13 no conversion.  
14

15  
16       **C.    The Fourth Cause of Action should be dismissed.**

17       The Fourth Cause of Action seeks damages for breach of an implied  
18 covenant in the alleged fee contract. The cause of action fails to state a claim as a  
19 matter of law. The covenant prohibits arbitrary or unfair acts. *Nelson v. Herr*, 163  
20 P.3d 420 (Nev. 2007). The Nevada Supreme Court has held that acting in accord  
21 with statutory law is not arbitrary or unfair. *Ibid*.  
22

23       The covenant provides recovery in “rare and exceptional cases” for  
24 “grievous and perfidious misconduct”. *Great American Insurance v. General*  
25

1 *Builders*, 924 P.2d 257, 263 (Nev. 1997) (internal citations omitted). Plaintiffs  
2 admit this is a fee dispute. Use of the statute specifically created by the Legislature  
3 to resolve a fee dispute is not perfidious, or rare.

4 **D. Plaintiffs' Punitive Damages Claims Should Be Dismissed.**

5  
6 The allegations of fraud or malice to support a punitive damages claim is  
7 equally false without any basis in law or fact. Plaintiffs have not alleged facts  
8 sufficient to establish that Defendant committed any type of fraudulent conduct.  
9 Fraud must be pled with particularity, and Plaintiffs must meet the higher clear and  
10 convincing burden of proof. Plaintiffs' complaint is not pled with particularity,  
11 and the conversion claim cannot be brought on the conduct described as a matter of  
12 law.  
13

14 Plaintiffs try to further their claims for fraud and punitive damages by  
15 manufacturing causes of action that have no basis in the law based upon the facts.  
16

17 Plaintiffs' allegations against Defendant do not rise to the level of a plausible  
18 or cognizable claim for relief for conversion and equally, the claims for punitive  
19 damages are so lacking that they should be dismissed. In fact, the Law Office did  
20 everything required by the rules of ethics and the Nevada Revised Statutes. *See*,  
21 Declaration of David Clark, Esq. attached as Exhibit "G" outlining the duties, the  
22 law and proper procedure for an attorney lien.  
23  
24  
25

1 Nevada has long recognized that "a plaintiff is never entitled to punitive  
2 damages as a matter of right." *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev.  
3 372, 380, 989 P.2d 882, 887 (1999) (quoting *Ramada Inns v. Sharp*, 101 Nev. 824,  
4 826, 711 P.2d 1, 2 (1985)). Tort liability alone is insufficient to support an award  
5 of punitive damages. *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727 (1993).  
6 The punitive damage statutes in Nevada require conduct exceeding recklessness or  
7 gross negligence. *Wyeth v. Rowatt*, 244 P.3d 765, 126 Nev. Adv. Rep. 44 (2010);  
8 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243,  
9 255 (2008). Plaintiffs' Complaint is interspersed with terms such as "willful,  
10 malicious and oppressive and in a conscious disregard" in their accusations against  
11 Defendants. However, the causes of action and the facts alleged therein do not rise  
12 to an action of fraud, intentional misrepresentation, deceit, concealment, willful or  
13 malicious conduct; because, there is not a scintilla of evidence, and the allegations  
14 contained in the complaint are false and contrary to the facts of the settlement. All  
15 information suggests that Defendants did everything possible to protect the clients,  
16 there cannot be a basis for punitive damages in the complaint.  
17  
18  
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25

1 **IV. CONCLUSION**

2 Defendants respectfully request the motion to dismiss the second amended  
3 complaint be GRANTED.

4 Dated this 9<sup>th</sup> day of April, 2018.

6 /s/ James R. Christensen  
7 **JAMES R. CHRISTENSEN, ESQ.**  
8 Nevada Bar No. 003861  
9 601 S. 6<sup>th</sup> Street  
10 Las Vegas, NV 89101  
11 Phone: (702) 272-0406  
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13 Email: jim@christensenlaw.com  
14 *Attorney for Daniel Simon*  
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/s/ Dawn Christensen  
an employee of  
**JAMES R. CHRISTENSEN, ESQ.**

*Steven D. Grierson*

1 **OPPS**  
2 **ROBERT D. VANNAH, ESQ.**  
3 Nevada Bar. No. 002503  
4 **JOHN B. GREENE, ESQ.**  
5 Nevada Bar No. 004279  
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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; THE LAW OFFICE OF**  
20 **DANIEL S. SIMON, A PROFESSIONAL**  
21 **CORPORATION; DOES I through X, inclusive,**  
22 **and ROE CORPORATIONS I through X,**  
23 **inclusive,**

24 **Defendants.**

CASE NO.: A-18-767242-C  
DEPT NO.: XIV

Consolidated with

CASE NO.: A-16-738444-C  
DEPT. NO.: X

**PLAINTIFFS OPPOSITION TO  
DEFENDANT'S (THIRD) MOTION TO  
DISMISS**

Date of Hearing: May 15, 2018  
Time of Hearing: 9:30 a.m.

25 **Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC**  
26 **(PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN**  
27 **B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby files this Opposition to the**  
28 **(Third) Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A**  
29 **PROFESSIONAL CORPORATION (SIMON) to Dismiss (the Motion).**

30 **///**

31 **///**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 2 PART 4 of 9**

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176  
*Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 This Opposition is based upon the attached Memorandum of Points and Authorities, NRCP  
2 8(a), the Nevada Rules of Professional Conduct (NRPC), the pleadings and papers on file herein,  
3 PLAINTIFFS Points and Authorities raised in Opposition to SIMON'S Motions to Adjudicate and  
4 Consolidate, PLAINTIFFS Points and Authorities raised in Opposition to SIMON'S (First) Motion  
5 to Dismiss and to SIMON'S Special (Second) Motion to Dismiss, the Affidavits of Brian Edgeworth  
6 attached to his Oppositions to SIMON'S numerous Motions filed thus far, all of which  
7 PLAINTIFFS adopt and incorporate by this reference, and any oral argument this Court may wish to  
8 entertain.  
9

10 DATED this 24 day of April, 2018.  
11

12 VANNAH & VANNAH

13   
14 ROBERT D. VANNAH, ESQ.  
15

16 I.

17 MEMORANDUM OF POINTS AND AUTHORITIES  
18

19 On or about May 27, 2016, PLAINTIFFS retained SIMON to represent their interests  
20 following a flood that occurred on April 10, 2016, in a home under construction that was owned by  
21 PLAINTIFFS. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to  
22 SIMON'S numerous Motions filed thus far.) The damage from the flood caused in excess of  
23 \$500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters  
24 to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that  
25 dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as Case Number A-16-738444-C  
26 (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for  
27 a substantial amount of money was reached with defendants not long before the trial date.  
28



1 At the outset of the attorney-client relationship, PLAINTIFFS and SIMON the person  
2 orally agreed that SIMON the person and the lawyer would be paid for his services by the hour and  
3 at an hourly rate of \$550. (Id.). No other form or method of compensation such as a contingency  
4 fee was ever brought up at that time, let alone agreed to. (Id.) Despite SIMON serving as the  
5 attorney in this business relationship, and the one with the requisite legal expertise, SIMON never  
6 reduced the terms of the CONTRACT to writing in the form of a Fee Agreement. However, that  
7 formality didn't matter to the parties as they each recognized what the terms of the CONTRACT  
8 were and performed them accordingly with exactness. (Id.)

10 For example, SIMON sent invoices to PLAINTIFFS that were dated December 16, 2016,  
11 May 3, 2017, August 16, 2017, and September 25, 2017. (SIMON'S invoices that were actually  
12 sent to PLAINTIFFS are attached to SIMON'S Motion to Adjudicate as Exhibit 20.) The amount  
13 of fees and costs SIMON billed PLAINTIFFS in those invoices totaled \$486,453.09. Simple  
14 reading and math shows that SIMON billed for his time at the hourly rate of \$550 per hour.  
15 PLAINTIFFS paid the invoices in full to SIMON. (Id.)

17 SIMON also submitted an invoice to PLAINTIFFS on November 10, 2017, in the amount  
18 of approximately \$72,000. (Please see the Affidavits of Brian Edgeworth attached to his  
19 Oppositions to SIMON'S numerous Motions filed thus far.) However, SIMON withdrew the  
20 invoice and failed to resubmit the invoice to PLAINTIFFS, despite an email request from Brian  
21 Edgeworth to do so. (Id.) It is unknown to PLAINTIFFS whether SIMON ever disclosed that  
22 "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to  
23 the mandated computation of damages.

25 From the beginning of his representation of PLAINTIFFS, SIMON was aware that  
26 PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION.  
27 SIMON was also aware that the loans secured by PLAINTIFFS accrued interest. Rather, SIMON  
28

1 knew that PLAINTIFFS could not get traditional loans to pay SIMON'S fees and costs. (Id.) Plus,  
2 SIMON didn't express an interest in taking what amounted to a property damage claim with a  
3 value of \$500,000 on a contingency basis. Easy math shows that 40% of \$500,000 is \$200,000;  
4 SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. In  
5 reality, SIMON only wanted what amounts to a bonus after he'd received \$500,000 in fees and  
6 costs and after the risk of loss was gone.  
7

8 As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017,  
9 after the value of the case blossomed from one of property damage of approximately \$500,000 to  
10 one of significant and additional value due to the conduct of one of the defendants, and after a  
11 significant sum of money was offered to PLAINTIFFS from defendants, SIMON became  
12 determined to get more, so he started asking PLAINTIFFS to modify the CONTRACT. (Id.)  
13 Thereafter, Mr. Edgeworth sent an email labeled "Contingency." (See Exhibit 4 to the Motion to  
14 Adjudicate.) (Remarkably, SIMON misleads the Court in his Motion at page 11 by using this email  
15 from August of 2017 that discusses modifying the original terms of fee agreement) to support his  
16 unsupportable and untenable position that the parties didn't have a "structured discussion" in 2016  
17 on fees.) The sole purpose of that email was to make it clear to SIMON that PLAINTIFFS never  
18 had a structured conversation about modifying the existing fee agreement from an hourly agreement  
19 to a contingency agreement. (Please see the Affidavits of Brian Edgeworth attached to his  
20 Oppositions to SIMON'S numerous Motions filed thus far.)  
21

22 SIMON scheduled an appointment for PLAINTIFFS to come to his office to discuss the  
23 LITIGATION. (Id.) Instead, his only agenda item was to pressure PLAINTIFFS into modifying  
24 the terms of the CONTRACT. (Id.) SIMON told PLAINTIFFS that he wanted to be paid far more  
25 than \$550.00 per hour and the \$486,453.09 he'd received from PLAINTIFFS for the preceding  
26 eighteen (18) months. (Id.)  
27  
28

1 The timing of SIMON'S request for the CONTRACT to be modified was deeply troubling  
2 to PLAINTIFFS, for it came at the time when the risk of loss in the LITIGATION had been nearly  
3 extinguished and the appearance of a large gain from a settlement offer had suddenly been  
4 recognized. SIMON put on a full court press for PLAINTIFFS to agree to his proposed  
5 modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being blackmailed  
6 by SIMON, who was basically saying "agree to this or else." (Id.)  
7

8 On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees  
9 in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be  
10 paid in light of a favorable settlement that was reached with the defendants in the LITIGATION.  
11 (Id.) At that time, these additional "fees" were not based upon invoices submitted to PLAINTIFFS  
12 or detailed work performed by SIMON. The proposed fees and costs were in addition to the  
13 \$486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the  
14 invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the  
15 LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in  
16 the LITIGATION.  
17

18 One reason given by SIMON to modify the CONTACT was he claimed he was losing  
19 money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was  
20 that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and  
21 that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.)  
22 According to SIMON, he under billed in the LITIGATION in an amount in excess of  
23 \$1,000,000.00. SIMON doubled down on that position of under billing in a letter to co-counsel for  
24 PLAINTIFFS dated December 7, 2017, where SIMON claimed that the worked performed by him  
25 from the outset that has not been billed "may well exceed \$1.5M." (Please see Exhibit 9 to  
26 SIMON'S Motion to Adjudicate.)  
27  
28

1           We've now learned through SIMON'S latest invoices (attached to his Motion to Adjudicate  
2 as Exhibit 19) that he actually allegedly under-billed by \$692,120, not the \$1.5M set forth in the  
3 letter of December 7, 2017. On the one hand, it's odd for SIMON to assert that he's losing money  
4 then, on the other hand, have SIMON admit that he under-billed PLAINTIFFS to the tune of  
5 \$692,120 to \$1.5M. But, that's the essence of the oddity to SIMON'S conduct with PLAINTIFFS  
6 since the settlement offers in the LITIGATION began to roll in.  
7

8           Yet an additional reason given then by SIMON was that he felt his work now had greater  
9 value than the \$550.00 per hour that was agreed to and paid for pursuant to the CONTRACT.  
10 SIMON prepared a proposed settlement breakdown with his new numbers and presented it to  
11 PLAINTIFFS for their signatures. They refused to bow to SIMON'S pressure or demands.  
12 (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous  
13 Motions filed thus far.)  
14

15           Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and  
16 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees  
17 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following  
18 the flooding event. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to  
19 NRCP 16.1, SIMON was required to present prior to trial a computation of damages that  
20 PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that  
21 PLAINTIFFS paid.  
22

23           There is nothing in the computation of damages signed by and served by SIMON to reflect  
24 fees and costs other than those contained in his invoices that were presented to and paid in full by  
25 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
26 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let  
27 alone those in excess of \$692,120 of his invoices from January of 2018, or \$1.5M set forth in his  
28

1 letter of December 7, 2017, or the exorbitant figure set forth in SIMON'S amended lien of  
2 \$1,977,843.80, dated January 2, 2018.

3 Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a  
4 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.  
5 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the  
6 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a  
7 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had  
8 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:  
9 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees  
10 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."  
11 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And  
12 they've been updated as of last week." (Excerpts of the Deposition are attached as Exhibit 2 to  
13 PLAINTIFFS Opposition to SIMON'S Motion to Adjudicate.)  
14

15 Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS  
16 refused to alter or amend the terms of the CONTRACT. (Please see the Affidavits of Brian  
17 Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.) When  
18 PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree to  
19 release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served two  
20 attorneys liens and reformulated his billings to add entries and time that never saw the light of day  
21 in the LITIGATION. (Id.) Even when he finally submitted his new billings on January 24, 2018,  
22 the invoice totaled \$692,120 for his "additional" services, and billed them at the agreed to rate of  
23 \$550 (for SIMON'S time). Yet, SIMON wrongfully continued to lay claim to nearly \$1,977,843  
24 of PLAINTIFFS property (Please see Amended Lien attached as Exhibit 15 to SIMON'S Motion  
25 to Adjudicate.) and he refused to release PLAINTIFFS' funds.  
26  
27  
28

1 When SIMON refused to release the full amount of the settlement proceeds to PLAINTIFFS,  
2 litigation was filed and served. (A copy of PLAINTIFFS' original Complaint is attached as Exhibit  
3 A to SIMON'S First Motion to Dismiss.) Thereafter, the "undisputed funds" were deposited in a  
4 bank account and can only be released on agreement by SIMON the person and counsel for  
5 PLAINTIFFS. The present claims of PLAINTIFFS against SIMON are for Breach of Contract,  
6 Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair  
7 Dealing, and they are set forth in an AMENDED COMPLAINT that has been filed and served.  
8

9 As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a  
10 short and plain statement of the claim showing that the pleader is entitled to relief." PLAINTIFFS  
11 have easily met that requirement with each of their claims. PLAINTIFFS' claims against SIMON  
12 personally are properly raised, too. NRPC 1(c) defines the work of a law firm as the work of a  
13 lawyer. In fact, nearly every Rule speaks to that effect. It's undisputed that SIMON the person did  
14 the work. Therefore, the claims against him personally are proper in fact and by Rule.  
15

16 PLAINTIFFS' claims for conversion, for breach of the implied covenant of good faith and  
17 fair dealing, and for punitive damages, are also perfectly proper and timely. These claims are based  
18 on a very simple premise that is accentuated by SIMON'S words and deeds. SIMON has converted  
19 (misappropriated; taken; etc.) PLAINTIFFS' property by intentionally and wrongfully formulating a  
20 plan that's visible through agreements, letters, and the like to take PLAINTIFFS property. It's also a  
21 plan that flies in the face of the CONTRACT of the parties and the Rules governing lawyers.  
22

23 That plan was perfected by asserting a lien and by refusing to release PLAINTIFFS property  
24 to them upon demand. While the balance of PLAINTIFFS property (settlement proceeds) is  
25 presently parked in a bank account, they don't want it to be there. PLAINTIFFS wanted and want  
26 their property then and now. Demands to SIMON went unheeded. (Please see the Affidavits of  
27 Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.)  
28

1 Pursuant to NRCP 8(a)(1), a plain reading of PLAINTIFFS complaint clearly sets forth  
2 simple facts sufficient to maintain all of their claims, including the intentional tort of conversion,  
3 and its remedy of punitive damages, against SIMON.

4 **II.**

5 **ARGUMENTS**

6  
7 **A. PLAINTIFFS HAVE CLEARLY MET THE TWO-PART STANDARD OF**  
8 **PLEADING SUFFICIENT FACTS TO MAINTAIN CLAIMS AGAINST SIMON FOR**  
9 **BREACH OF CONTRACT, DECLARATORY RELIEF, CONVERSION, AND BREACH OF**  
10 **THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AS WELL AS THE**  
11 **REMEDIES RELATED TO THESE CLAIMS.**

12 Nevada is a notice-pleading jurisdiction with two simple steps for PLAINTIFFS to take to  
13 assert and maintain their claims for relief against SIMON. First, NRCP 8(a)(1) merely requires  
14 PLAINTIFFS to include in their pleading "a short and plain statement of the claim showing that the  
15 pleader is entitled to relief...." PLAINTIFFS have included twenty (20) detailed paragraphs in their  
16 AMENDED COMPLAINT outlining SIMON'S words and deeds that support their claims for relief.  
17 They leave no doubt as to the basis for their claims, who and what they're against, and why they are  
18 making them. Certainly, there can be no reasonable dispute that PLAINTIFFS have met that  
19 minimum standard. If this Court or a jury accepts PLAINTIFFS assertions, and there are facts to  
20 back them up, relief against SIMON will likely be granted. See NRCP 12.

21 Likewise, NRCP 8(a)(2) merely requires PLAINTIFFS to include "a demand for judgment  
22 for the relief the pleader seeks." The jurisdictional amount, per the Rule, is \$15,000 "without further  
23 specification of amount." The amount in the Prayer for Relief portion of PLAINTIFFS AMENDED  
24 COMPLAINT, six (6) demands are made for judgment against SIMON. They leave no doubt that  
25 PLAINTIFFS are seeking judgment and they meet the jurisdictional minimum. Since PLAINTIFFS  
26 have met each of the minimum standards of NRCP 8 to maintain their claims against SIMON,  
27 SIMON'S Motion to Dismiss must be denied.  
28

**B. PLAINTIFFS' CLAIMS AGAINST SIMON, BOTH PERSONALLY AND PROFESSIONALLY, ARE SOUNDLY BASED IN FACT AND LAW.**

SIMON'S words and deeds from day one through the present date, paints a clear picture that a CONTRACT existed between the parties. Here's some of the evidence. First, there are the affidavits of Brian Edgeworth that he's presented in support of PLAINTIFFS Oppositions to SIMON'S numerous Motions that he's filed thus far, where he states time and again that he and SIMON agreed that SIMON'S fee would be \$550 per hour for his services. The discussion between SIMON and PLAINTIFFS was structured enough for the parties to agree that SIMON would be retained as PLAINTIFFS attorney and be paid \$550 per hour for his services, and reimbursed for his costs. That's the essence of a fee agreement. It's not a complicated business relationship that requires anything more for the contracting parties to know and to understand where they stand with the agreement. That's what happened here. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to SIMON'S numerous Motions filed thus far.)

Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the LITIGATION are for an hourly rate of \$550 per hour for SIMON'S services. (See Exhibit 20 to SIMON'S Motion to Adjudicate.) There are hundreds of entries for hundreds of thousands of dollars, all billed by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of \$275 per hour.) SIMON'S new invoices that he produced on January 24 of this year—invoices that contain thousands of entries and \$692,120 in new billings—are billed by SIMON at \$550 per hour, too. (Please see Exhibit 19 to SIMON'S Motion to Adjudicate.) See the pattern?

Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been



1 disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his  
2 fees and costs: "And they've been updated as of last week." (Please see Exhibit 2 to PLAINTIFFS  
3 Opposition to SIMON'S Motion to Adjudicate.)

4 These are the same invoices that contain the agreed to hourly rate of \$550 per hour, which  
5 were all paid in full by PLAINTIFFS. The \$550 question is: how much more consistent  
6 performance by the parties to the terms of an agreement does it take to convince even the most  
7 intransigent litigant that there is a CONTRACT that he has to abide by? It's been the same since the  
8 beginning. A jury may agree. Fourth, there are the calculations of damages in the LITIGATION  
9 that SIMON was obligated to submit and serve on PLAINTIFFS behalf and in accordance with  
10 NRCP 11(b) and NRCP 16.1. The calculations of damages submitted by and signed by SIMON set  
11 forth damages, including attorneys' fees, based on his hourly rate of \$550 and paid in full by  
12 PLAINTIFFS.  
13

14 Last, in a letter to co-counsel for PLAINTIFFS dated December 7, 2017 (attached to  
15 SIMON'S Motion to Adjudicate as Exhibit 9), SIMON states "Simon Law is reviewing the case file  
16 and work performed from the outset that has not been billed (including such things as obtaining the  
17 forensic copy of case related e-mails and phone records) to provide a comprehensive hourly bill."  
18 (Emphasis added.) This letter from SIMON goes on to state "It is reasonably expected at this time  
19 that the hourly bill may well exceed a total of \$1.5M...." (Emphasis added.) His hourly bill  
20 produced on January 24, 2018, was actually for an additional \$692,120 in fees.  
21

22 Thus we see that all of the conduct by SIMON in the LITIGATION from the beginning to  
23 the end refutes his newfound position that there was no agreement to pay an hourly fee. To the  
24 contrary, it instead supports a finding that the terms of the CONTRACT contain the agreement of  
25 the parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of  
26 \$550.  
27  
28

1 As PLAINTIFFS have argued throughout this surreal journey, the only pathway for SIMON  
2 to prevail on his Motion is to convince a trier of fact that the CONTRACT isn't a contract and that it  
3 didn't contain the agreement of the parties on the amount of SIMON'S fee that everyone abided by  
4 with exactness for over eighteen (18) months. The CONTRACT contains every element of a valid  
5 and enforceable contract. PLAINTIFFS asked SIMON the person to represent them in the  
6 LITIGATION in exchange for an hourly fee of \$550, plus the reimbursement of costs incurred (the  
7 offer). SIMON the person agreed to serve as PLAINTIFFS attorney and to be paid the hourly rate of  
8 \$550 for his services (the acceptance). PLAINTIFFS agreed to pay, and SIMON the person agreed  
9 to receive, \$550 per hour for SIMON'S time, plus the reimbursement of costs (the consideration).

11 Thereafter, SIMON billed PLAINTIFFS for his time at a rate of \$550 per hour, plus incurred  
12 costs, and PLAINTIFFS paid each invoice presented by SIMON in full (the performance), but for  
13 the latest "invoice", which they will review and pay what is fair and reasonable. There isn't a  
14 question of capacity or intent. Therefore, that's a contract, which is the CONTRACT. For SIMON  
15 to argue or assert otherwise in this litigation is belied by every reasonable measure of his words and  
16 deeds, including his letter of December 2, 2017, and his latest billings produced on January 24,  
17 2018.

19 SIMON now wants the equivalent of a contingency fee from PLAINTIFFS without a written  
20 contingency fee agreement, ironically one that he never wanted or would have agreed to in the first  
21 place. SIMON also seems to want a bonus for his efforts, though the parties never agreed to one.  
22 When SIMON didn't get what he wanted, he placed a fugitive lien in a baseless amount on  
23 PLAINTIFFS property for \$1,977,843.80. (Please see Exhibit 15 to SIMON'S Motion to  
24 Adjudicate.) He did so despite the prior knowledge and admission that "...it is reasonably expected  
25 at this time that the hourly bill may well exceed a total of \$1.5M...." (Please see Exhibit 9 to  
26 SIMON'S Motion to Adjudicate.)  
27  
28

1 Even today, SIMON the person maintains dominion and control over the balance of  
2 PLAINTIFFS settlement proceeds despite the foregoing facts AND the despite the fact that his  
3 actual hourly bill for his services after his "comprehensive" review are "only" \$692,120. (Please  
4 see SIMON'S billings attached as Exhibit 19 to the Motion to Adjudicate.) Simple math again  
5 reveals that SIMON the person has willfully converted at least \$1,285,723.80 of PLAINTIFFS  
6 property. Those are sufficient facts under any standard for PLAINTIFFS to maintain a claim for  
7 breach of the CONTRACT, conversion, breach of the implied covenant of good faith and fair  
8 dealing, and the remedy of punitive damages against SIMON the person.

9  
10 SIMON also continues to seek refuge in his wrongfully asserted charging lien in its  
11 unsupportable amount. As argued in other pleadings, SIMON had no basis to assert that lien in its  
12 stated amount. Each invoice he's presented to PLAINTIFFS in the LITIGATION had been paid in  
13 full. Also, there is nothing in fact or at law to support any argument that SIMON'S fee was  
14 dependant in any way on the existence of, or the amount of, the settlement reached with the  
15 defendants in the LITIGATION. Rather, this Court or a jury could find that SIMON asserted one  
16 because he wanted to and because his law licensed cloaked him with the ability to do so. That  
17 finding could trigger a valid remedy of punitive damages.

18  
19 As for the amount of, and the ongoing existence of, the charging lien, there's no basis for  
20 either. As discussed above, SIMON'S amended lien is far more than provided for under the  
21 CONTRACT and his "comprehensive" billings. Again, at least \$1,285,723.80 of SIMON'S  
22 charging lien (in the amount of \$1,977,843.80) has no basis in fact or in law. (PLAINTIFFS have  
23 also seen glaring issues with SIMON'S new billing invoice, including duplicate entries and a huge  
24 block billing entry for over 135 hours for reviewing emails.) And SIMON won't release  
25 PLAINTIFFS property, despite knowing that his consent is required to do so. That's not consent for  
26 PLAINTIFFS, but it is conversion at the hands of SIMON.  
27  
28

1        PLAINTIFFS' claims against SIMON personally are properly raised, too. SIMON seeks to  
2 shield himself behind the façade of his firm to avoid personal responsibility for PLAINTIFFS'  
3 claims. Not so fast. The things that lawyers do and don't do, including their interactions with  
4 clients, are governed by the NRPC. PLAINTIFFS assert, and have claimed, that SIMON'S actions  
5 are in fact SIMON'S actions, personally and professionally. NRPC 1(c) is on point and on all fours  
6 with PLAINTIFFS' claims. This Rule states that a "Firm or law firm denotes a lawyer or  
7 lawyers...." As a result, when SIMON argues that any agreement with PLAINTIFFS was reached  
8 with his firm, the Rules instead determine that the CONTRACT was made with the lawyer, who is  
9 SIMON the person. See NRPC 1(c) and NRPC 1.5.  
10

11        In fact, nearly every Rule in the NRPC uses similar language and speaks directly to lawyers.  
12 For example, the Rules dealing with competence (1.1), scope of representation (1.2), diligence (1.3),  
13 communication (1.4), fees (1.5), confidentiality (1.6), conflicts (1.7 & 1.8), duties to former clients  
14 (1.9), advisor (2.1), and candor to the tribunal (3.3), all begin with, or have in prominent display, "A  
15 lawyer shall...." (Emphasis added.) By definition and via common sense, these Rules in general,  
16 and Rule 1.5 in particular, preclude SIMON from making any successful argument as to who the  
17 CONTRACT is with and who PLAINTIFFS claims can gain traction against. In short, his argument  
18 to shield himself is belied by the Rule and the law. But there's more.  
19

20        Here, it is undisputed that SIMON the person spoke with PLAINTIFFS about the terms of  
21 the CONTRACT. (Please see the Affidavits of Brian Edgeworth attached to his Oppositions to  
22 SIMON'S numerous Motions filed thus far.) It's undisputed that SIMON the person did the work  
23 that resulted in the lions share of the \$486,453.09 in invoices that were billed and paid to date in the  
24 LITIGATION. (See Exhibits 19 and 20 to SIMON'S Motion to Adjudicate). It's undisputed that  
25 SIMON the person performed the "comprehensive" review that resulted in \$692,120 in additional  
26 hourly billings. (See Exhibit 9 to SIMON'S Motion to Adjudicate.) It's not reasonably disputed  
27 that SIMON the person formulated the plan to get paid more in fees than he agreed to under the  
28

1 CONTRACT. It's undisputed that SIMON the person prepared and sent the charging lien that  
2 perfected his plan to get a bonus for his work. Finally, it's undisputed that SIMON the person  
3 controls whether PLAINTIFFS personal property gets released and paid to them, as the account  
4 requires his signature and consent.

5 Of utmost importance here, SIMON the person doesn't really dispute that SIMON the  
6 person is the real-party-in-interest here. We know this by simply reading what he wrote in his  
7 Motion to Adjudicate Attorney Lien, which was his first Motion to this Court, when all of this was  
8 most fresh in his mind and before he had time to contemplate other conflicting legal theories. At  
9 page 5, lines 3-8, SIMON the person began the story by letting us know that "Danny and Eleyna  
10 Simon were close family friends with Brian and Angela Edgeworth for many years." SIMON the  
11 person continues by telling us, "In May of 2016, Mr. Simon agreed to help his friend with the flood  
12 claim. Because they were friends, Mr. Simon worked without an express fee agreement."  
13 (Emphasis added.)  
14

15 At pages 9 of his Motion to Adjudicate, SIMON the person continues the human interest  
16 aspect of the facts by reiterating that, "the families (Simons and Edgeworths) became close," and  
17 that "they helped each other during difficult times." At page 10, SIMON the person stated, "Mr.  
18 Simon was comfortable waiting until the end of the case to be paid in full." Finally, at page 11,  
19 SIMON the person admitted, "Mr. Edgeworth asked his friend (Danny Simon) for help" and that,  
20 "Mr. Simon agreed to lend a helping hand, and send a few letters." Several other references are  
21 made in that Motion of Danny Simon the person saying this and Mr. Simon the person doing that.  
22 SIMON'S subsequent iterations of these facts in later Motions shift to the law firm doing this and  
23 saying that, but the story had already been written and embraced by SIMON the person, as common  
24 sense and the law say it should be.  
25

26 PLAINTIFFS' claims against SIMON the person as the lawyer are proper in fact, by Rule,  
27 and at law. SIMON the person is the one who was practicing law for PLAINTIFFS, not his  
28

1 corporation. It provides no refuge for him here on these facts and with his admissions. Thus, there  
2 are sufficient facts plead under the Rules for PLAINTIFFS claims against SIMON the person as the  
3 lawyer to go forward. Therefore, there's no basis in fact or at law for SIMON to be allowed to  
4 shield himself from personal liability or to request that PLAINTIFFS AMENDED COMPLAINT be  
5 dismissed.  
6

7 **C. PLAINTIFFS HAVE PROPERLY SET FORTH THEIR CLAIMS FOR RELIEF FOR**  
8 **CONVERSION AND FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**  
9 **AND FAIR DEALING. AS INTENTIONAL TORTS, AND WITH THESE FACTS,**  
10 **PLAINTIFFS ARE ENTITLED TO THE REMEDY THEY SEEK, WHICH ARE PUNITIVE**  
11 **DAMAGES.**

12 In bringing a claim against SIMON for conversion and for breach of the implied covenant of  
13 good faith and fair dealing—intentional torts—PLAINTIFFS have properly asserted claims against  
14 SIMON where the remedies are punitive damages. In his Motion, SIMON improperly argues that  
15 PLAINTIFFS can't prove their claims. That's a bold and a false assertion in light of the facts and  
16 that no discovery has taken place. PLAINTIFFS assert that their AMENDED COMPLAINT  
17 contains far more than "a short and plain statement of the claim" for conversion, and that SIMON  
18 did so with the clear knowledge and the intent to harm, in that he was not entitled to any portion of  
19 PLAINTIFFS property.

20 A jury may very well find that the CONTRACT governed how much SIMON the lawyer  
21 could charge in fees. That same jury may also find that SIMON the person wanted more than what  
22 he'd agreed to receive, and that he formulated a plan to get it done. The jury could also find that  
23 SIMON'S clear knowledge and intent to wrongfully convert PLAINTIFFS property was crystallized  
24 when he: 1.) Sent his letter of December 7, 2017, prophesying an additional \$1.5M in billings; 2.)  
25 Asserted two liens, namely an amended lien on January 2, 2018, for \$1,977,843.80 in fees; and, 3.)  
26 Submitted additional billings on January 24, 2018, for \$692,120 in billings that followed his  
27 "comprehensive" review of all the work he'd performed to date.  
28

1 They may also find that while the amount of SIMON'S conversion has been a moving target  
2 (thus far it's been "in excess of a million dollars," \$1.5M, \$1,977,843.80, and/or \$692,120!), it was  
3 still done with the knowledge that it's wrong, that it was done with intent to harm and oppress, that  
4 it's in direct violation of the property rights of PLAINTIFFS, and that it was done with the intent to  
5 benefit himself and the expense of and harm to PLAINTIFFS.  
6

7 Finally, a trier-of-fact may also find sufficient evidence exists to show that SIMON'S  
8 conduct of: failing to reduce the CONTRACT to writing; later claiming ambiguities in the  
9 CONTRACT; demanding a bonus from PLAINTIFFS; creating a super bill after the LITIGATION  
10 had settled, including a block bill of over 135 hours; harboring a plan to merely submit partial  
11 invoices without consulting PLAINTIFFS of this plan so they could evaluate whether SIMON  
12 should continue as counsel; executing his secret plan by going back and adding substantial time to  
13 his invoices that had already been billed and paid in full; and, but not limited to, asserting a lien on  
14 PLAINTIFFS' property, knowingly doing so in an amount that was far in excess of any amount of  
15 fees that he had billed from the date of the previously paid invoice to the date of the service of the  
16 lien, that he could bill for the work performed, that he actually billed, or that he could possible claim  
17 under the CONTRACT, that SIMON failed to deal fairly and in good faith with PLAINTIFFS and  
18 thus breached the implied covenant of good faith and fair dealing.  
19

20 In summary, PLAINTIFFS have met their burden under NRCP 8 and NRCP 12 to allege  
21 sufficient facts to support their claims for Breach of Contract, for Declaratory Relief, for Conversion  
22 and its remedy of punitive damages, and for Breach of the Implied Covenant of Good Faith and Fair  
23 Dealing, with all of its remedies. If this Court needs a more definite statement in PLAINTIFFS  
24 AMENDED COMPLAINT, they can provide that. However, PLAINTIFFS believe that SIMON'S  
25 conduct has been sufficiently set forth in their AMENDED COMPLAINT. As a result, they  
26 respectfully request that SIMON'S (Third) Motion to Dismiss be denied.  
27  
28

III.

CONCLUSION

Based on the foregoing, PLAINTIFFS respectfully request the Court deny SIMON'S (Third) Motion to Dismiss and instead allow PLAINTIFFS to present their claims for damages against SIMON before a jury, as provided by Nevada Constitutional, statutory, and case law.

DATED this 24 day of April, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that the following parties are to be served as follows:

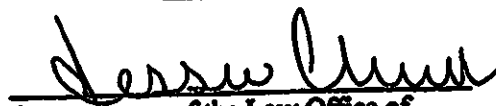
Electronically:

James Christensen, Esq.  
JAMES R. CHRISTENSEN, PC  
601 S. Third Street  
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.  
CHRISTIENSEN LAW OFFICES  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

Traditional Manner:  
None

DATED this 24<sup>th</sup> day of April, 2018.

  
An employee of the Law Office of  
Vannah & Vannah



*Steven D. Grierson*

1 **ORD**

2  
3  
4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6 **EDGEWORTH FAMILY TRUST; and**  
7 **AMERICAN GRATING, LLC,**

8 **Plaintiffs,**

9 **vs.**

**CASE NO.: A-18-767242-C**  
**DEPT NO.: XXVI**

10 **LANGE PLUMBING, LLC; THE VIKING**  
11 **CORPORATION, a Michigan Corporation;**  
12 **SUPPLY NETWORK, INC., dba VIKING**  
13 **SUPPLYNET, a Michigan Corporation; and**  
14 **DOES 1 through 5; and, ROE entities 6 through**  
15 **10;**

16 **Defendants.**

**Consolidated with**

**CASE NO.: A-16-738444-C**  
**DEPT NO.: X**

17 **EDGEWORTH FAMILY TRUST; and**  
18 **AMERICAN GRATING, LLC,**

19 **Plaintiffs,**

20 **vs.**

**DECISION AND ORDER ON MOTION**  
**TO ADJUDICATE LIEN**

21 **DANIEL S. SIMON; THE LAW OFFICE OF**  
22 **DANIEL S. SIMON, a Professional Corporation**  
23 **d/b/a SIMON LAW; DOES 1 through 10; and,**  
24 **ROE entities 1 through 10;**

25 **Defendants.**

26 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

27 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on  
28 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable  
Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon  
d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James  
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or  
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their  
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John  
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully  
6 advised of the matters herein, the COURT FINDS:

### 7 8 FINDINGS OF FACT

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,  
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and  
11 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on  
12 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation  
13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.  
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

15 2. The case involved a complex products liability issue.

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home  
17 suffered a flood. The house was still under construction and the flood caused a delay. The  
18 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and  
19 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and  
20 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire  
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,  
22 Viking, et al., also denied any wrongdoing.

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send  
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties  
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not  
26 resolve. Since the matter was not resolved, a lawsuit had to be filed.

27 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and  
28

1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,  
2 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately  
3 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")  
4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

5 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet  
6 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and  
7 had some discussion about payments and financials. No express fee agreement was reached during  
8 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."  
9 It reads as follows:

10 We never really had a structured discussion about how this might be done.  
11 I am more that happy to keep paying hourly but if we are going for punitive  
12 we should probably explore a hybrid of hourly on the claim and then some  
13 other structure that incents both of us to win an go after the appeal that these  
14 scumbags will file etc.  
15 Obviously that could not have been doen earlier snce who would have though  
16 this case would meet the hurdle of punitives at the start.  
17 I could also swing hourly for the whole case (unless I am off what this is  
18 going to cost). I would likely borrow another \$450K from Margaret in 250  
19 and 200 increments and then either I could use one of the house sales for cash  
20 or if things get really bad, I still have a couple million in bitcoin I could sell.  
21 I doubt we will get Kinsale to settle for enough to really finance this since I  
22 would have to pay the first \$750,000 or so back to Colin and Margaret and  
23 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

24 (Def. Exhibit 27).

25 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first  
26 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.  
27 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.  
28 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.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work  
20 done in the litigation of this case. There were several motions and oppositions filed, several  
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement  
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not  
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the  
26

---

27 <sup>1</sup> \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and  
28 \$2,887.50 for the services of Benjamin Miller.

1 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a  
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send  
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

4 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to  
5 come to his office to discuss the litigation.

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,  
7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's  
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &  
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all  
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the  
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,  
14 et.al. The letter read as follows:

15 "Please let this letter serve to advise you that I've retained Robert D. Vannah,  
16 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation  
17 with the Viking entities, et.al. I'm instructing you to cooperate with them in  
18 every regard concerning the litigation and any settlement. I'm also instructing  
19 you to give them complete access to the file and allow them to review  
20 whatever documents they request to review. Finally, I direct you to allow  
them to participate without limitation in any proceeding concerning our case,  
whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the  
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the  
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the  
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the  
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and  
28

1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly  
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset  
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the  
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee  
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against  
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in  
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.  
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate  
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was  
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

### 16 17 **CONCLUSION OF LAW**

#### 18 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The** 19 **Court**

20 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the  
21 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-  
22 738444-C under NRS 18.015.

23 NRS 18.015(1)(a) states:

24 1. An attorney at law shall have a lien:

25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated  
26 damages, which has been placed in the attorney's hands by a client for suit or  
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

1 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,  
2 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS  
3 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was  
4 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,  
5 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &  
6 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien  
7 is enforceable in form.

8 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.  
9 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at  
10 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's  
11 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication  
12 under NRS 18.015, thus the Court must adjudicate the lien.

#### 13 14 *Fee Agreement*

15 It is undisputed that no express written fee agreement was formed. The Court finds that there  
16 was no express oral fee agreement formed between the parties. An express oral agreement is  
17 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469  
18 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*  
19 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the  
20 payment terms are essential to the formation of an express oral contract to provide legal services on  
21 an hourly basis.

22 Here, the testimony from the evidentiary hearing does not indicate, with any degree of  
23 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite  
24 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,  
25 regarding punitive damages and a possible contingency fee, indicate that no express oral fee  
26 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August  
27 22, 2017 email, titled "Contingency," he writes:

1 "We never really had a structured discussion about how this might be done. I  
2 am more than happy to keep paying hourly but if we are going for punitive we  
3 should probably explore a hybrid of hourly on the claim and then some other  
4 structure that incents both of us to win and go after the appeal that these  
5 scumbags will file etc. Obviously that could not have been done earlier since  
6 who would have thought this case would meet the hurdle of punitives at the  
7 start. I could also swing hourly for the whole case (unless I am off what this  
8 is going to cost). I would likely borrow another \$450K from Margaret in 250  
9 and 200 increments and then either I could use one of the house sales for cash  
10 or if things get really bad, I still have a couple million in bitcoin I could sell. I  
11 doubt we will get Kinsale to settle for enough to really finance this since I  
12 would have to pay the first \$750,000 or so back to Colin and Margaret and  
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

14 (Def. Exhibit 27).

15 It is undisputed that when the flood issue arose, all parties were under the impression that Simon  
16 would be helping out the Edgeworths, as a favor.

17 The Court finds that an implied fee agreement was formed between the parties on December  
18 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,  
19 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was  
20 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the  
21 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger  
22 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and  
23 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied  
24 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour  
25 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

### 26 *Constructive Discharge*

27 Constructive discharge of an attorney may occur under several circumstances, such as:

- 28 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- Refusal to pay an attorney creates constructive discharge. See e.g., Christian v. All Persons Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).



- 1       • Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast  
2       Dist. #26, 2015 Conn. Super. LEXIS 3146, \*13-14, (Dec. 14, 2015). See also Maples v.  
3       Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,  
4       2017 Nev. Unpubl. LEXIS 472.
- 5       • Taking actions that preventing effective representation creates constructive discharge.  
6       McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

7       Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on  
8       November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated,  
9       has not withdrawn, and is still technically their attorney of record; there cannot be a termination.  
10       The Court disagrees.

11       On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and  
12       signed a retainer agreement. The retainer agreement was for representation on the Viking settlement  
13       agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was  
14       representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all  
15       things without a compromise. Id. The retainer agreement specifically states:

16               Client retains Attorneys to represent him as his Attorneys regarding  
17               Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING  
18               ENTITIES and all damages including, but not limited to, all claims in this  
19               matter and empowers them to do all things to effect a compromise in said  
20               matter, or to institute such legal action as may be advisable in their judgment,  
21               and agrees to pay them for their services, on the following conditions:

- 22       a) ...
- 23       b) ...
- 24       c) Client agrees that his attorneys will work to consummate a settlement of  
25       \$6,000,000 from the Viking entities and any settlement amount agreed to be  
26       paid by the Lange entity. Client also agrees that attorneys will work to reach  
27       an agreement amongst the parties to resolve all claims in the Lange and  
28       Viking litigation.

29       Id.

30       This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.  
31       Simon had already begun negotiating the terms of the settlement agreement with Viking during the  
32       week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put

1 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.  
2 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly  
3 identified as the firm that solely advised the clients about the settlement. The actual language in the  
4 settlement agreement, for the Viking claims, states:

5  
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.  
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the  
8 effect of this AGREEMENT and their release of any and all claims, known or  
9 unknown and, based upon that explanation and their independent judgment by  
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the  
11 legal significance and the consequences of the claims being released by this  
12 Agreement. PLAINTIFFS further represent that they understand and  
13 acknowledge the legal significance and consequences of a release of unknown  
14 claims against the SETTLING PARTIES set forth in, or arising from, the  
15 INCIDENT and hereby assume full responsibility for any injuries, damages,  
16 losses or liabilities that hereafter may occur with respect to the matters  
17 released by this Agreement.

18 Id.

19 Also, Simon was not present for the signing of these settlement documents and never explained any  
20 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and  
21 Vannah and received them back with the signatures of the Edgeworths.

22 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.  
23 Though there were email communications between the Edgeworths and Simon, they did not verbally  
24 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,  
25 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth  
26 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need  
27 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim  
28 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively  
working on this claim, but he had no communication with the Edgeworths and was not advising  
them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert  
Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law  
Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon

1 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the  
2 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.  
3 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange  
4 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.  
5 Simon never signed off on any of the releases for the Lange settlement.

6 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah  
7 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and  
8 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.  
9 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,  
10 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,  
11 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a  
12 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an  
13 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that  
14 doesn't seem in his best interests." (Def. Exhibit 53).

15 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-  
16 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the  
17 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018  
18 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that  
19 was attached to the letter), and that Simon continued to work on the case after the November 29,  
20 2017 date. The court further recognizes that it is always a client's decision of whether or not to  
21 accept a settlement offer. However the issue is constructive discharge and nothing about the fact  
22 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively  
23 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys  
24 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating  
25 with him, making it impossible to advise them on pending legal issues, such as the settlements with  
26 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

27 //

1 Simon from effectively representing the clients. The Court finds that Danny Simon was  
2 constructively discharged by the Edgeworths on November 29, 2017.

3  
4 **Adjudication of the Lien and Determination of the Law Office Fee**

5 NRS 18.015 states:

6 1. An attorney at law shall have a lien:

7 (a) Upon any claim, demand or cause of action, including any claim for  
8 unliquidated damages, which has been placed in the attorney's hands by a  
9 client for suit or collection, or upon which a suit or other action has been  
10 instituted.

11 (b) In any civil action, upon any file or other property properly left in the  
12 possession of the attorney by a client.

13 2. A lien pursuant to subsection 1 is for the amount of any fee which has  
14 been agreed upon by the attorney and client. In the absence of an agreement,  
15 the lien is for a reasonable fee for the services which the attorney has rendered  
16 for the client.

17 3. An attorney perfects a lien described in subsection 1 by serving notice  
18 in writing, in person or by certified mail, return receipt requested, upon his or  
19 her client and, if applicable, upon the party against whom the client has a  
20 cause of action, claiming the lien and stating the amount of the lien.

21 4. A lien pursuant to:

22 (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or  
23 decree entered and to any money or property which is recovered on account of  
24 the suit or other action; and

25 (b) Paragraph (b) of subsection 1 attaches to any file or other property  
26 properly left in the possession of the attorney by his or her client, including,  
27 without limitation, copies of the attorney's file if the original documents  
28 received from the client have been returned to the client, and authorizes the  
attorney to retain any such file or property until such time as an adjudication  
is made pursuant to subsection 6, from the time of service of the notices  
required by this section.

5. A lien pursuant to paragraph (b) of subsection 1 must not be  
construed as inconsistent with the attorney's professional responsibilities to  
the client.

6. On motion filed by an attorney having a lien under this section, the  
attorney's client or any party who has been served with notice of the lien, the  
court shall, after 5 days' notice to all interested parties, adjudicate the rights of  
the attorney, client or other parties and enforce the lien.

7. Collection of attorney's fees by a lien under this section may be  
utilized with, after or independently of any other method of collection.

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms  
3 are applied. Here, there was no express contract for the fee amount, however there was an implied  
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his  
5 services, and \$275 per hour for the services of his associates. This contract was in effect until  
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.  
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is  
8 due a reasonable fee- that is, quantum meruit.

9  
10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550  
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was  
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was  
14 created when invoices were sent to the Edgeworths, and they paid the invoices.

15 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's  
16 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were  
17 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as  
18 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is  
19 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that  
20 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the  
21 bills to give credibility to his actual damages, above his property damage loss. However, as the  
22 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund  
23 the money, or memorialize this or any understanding in writing.

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP  
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were  
26 paid in full and there was never any indication given that anything less than all the fees had been  
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees  
28

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 2 PART 5 of 9**

AA000541

Docket 77678 Document 2019-33423

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001



**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
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11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of  
2 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the  
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must  
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the  
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law  
6 Office retained the payments, indicating an implied contract was formed between the parties. The  
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the  
8 date they were constructively discharged, November 29, 2017.

9  
10 *Amount of Fees Owed Under Implied Contract*

11 The Edgeworths were billed, and paid for services through September 19, 2017. There is  
12 some testimony that an invoice was requested for services after that date, but there is no evidence  
13 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for  
14 fees was formed, the Court must now determine what amount of fees and costs are owed from  
15 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the  
16 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted  
17 billings, the attached lien, and all other evidence provided regarding the services provided during  
18 this time.

19 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing  
20 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back  
21 and attempted to create a bill for work that had been done over a year before. She testified that they  
22 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every  
23 email that was read and responded to. She testified that the dates were not exact, they just used the  
24 dates for which the documents were filed, and not necessarily the dates in which the work was  
25 performed. Further, there are billed items included in the "super bill" that was not previously billed  
26 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice  
27 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing  
28

1 indicated that there were no phone calls included in the billings that were submitted to the  
2 Edgeworths.

3 This attempt to recreate billing and supplement/increase previously billed work makes it  
4 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed  
5 between the actual work and the billing. The court reviewed the billings of the "super bill" in  
6 comparison to the previous bills and determined that it was necessary to discount the items that had  
7 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,  
8 downloading, and saving documents because the Court is uncertain of the accuracy of the "super  
9 bill."

10 Simon argues that he has no billing software in his office and that he has never billed a client  
11 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,  
12 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;  
13 however, as the Court previously found, when the Edgeworths paid the invoices it was not made  
14 clear to them that the billings were only for the Lange contract and that they did not need to be paid.  
15 Also, there was no indication on the invoices that the work was only for the Lange claims, and not  
16 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without  
17 emails or calls, understanding that those items may be billed separately; but again the evidence does  
18 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.  
19 This argument does not persuade the court of the accuracy of the "super bill".

20 The amount of attorney's fees and costs for the period beginning in June of 2016 to  
21 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016  
22 which appears to indicate that it began with the initial meeting with the client, leading the court to  
23 determine that this is the beginning of the relationship. This invoice also states it is for attorney's  
24 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This  
25 amount has already been paid by the Edgeworths on December 16, 2016.<sup>2</sup>

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26  
27 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.  
28

1 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to  
2 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This  
3 amount has already been paid by the Edgeworths on May 3, 2017.

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
8 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

9 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the  
10 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for  
11 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller  
12 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount  
13 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been  
14 paid by the Edgeworths on September 25, 2017.

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
16 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
21 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

24 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

25  
26 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

27 <sup>4</sup> There are no billings for October 8<sup>th</sup>, October 28-29, and November 5<sup>th</sup>.

28 <sup>5</sup> There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,  
November 21, and November 23-26.

<sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.

1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid  
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period  
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

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;

- 1 (3) Whether the client is liable for expenses regardless of outcome;  
2 (4) That, in the event of a loss, the client may be liable for the  
3 opposing party's attorney fees, and will be liable for the opposing party's  
4 costs as required by law; and  
5 (5) That a suit brought solely to harass or to coerce a settlement may  
6 result in liability for malicious prosecution or abuse of process.  
7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client  
8 with a written statement stating the outcome of the matter and, if there is a  
9 recovery, showing the remittance to the client and the method of its  
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for  
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely  
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell  
15 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact  
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be  
17 responsible were never communicated to the client, within a reasonable time after commencing the  
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a  
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has  
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court  
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,  
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the  
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further  
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the  
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The  
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.  
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied  
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until  
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,  
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and  
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November  
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is  
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being  
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9  
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien  
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law  
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.


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18 DISTRICT COURT JUDGE  
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**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

*Steven D. Grierson*

1 **ORD**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6 **EDGEWORTH FAMILY TRUST; and**  
7 **AMERICAN GRATING, LLC,**

8 **Plaintiffs,**

9 **vs.**

**CASE NO.: A-18-767242-C**  
**DEPT NO.: XXVI**

10 **LANGE PLUMBING, LLC; THE VIKING**  
11 **CORPORATION, a Michigan Corporation;**  
12 **SUPPLY NETWORK, INC., dba VIKING**  
13 **SUPPLYNET, a Michigan Corporation; and**  
14 **DOES 1 through 5; and, ROE entities 6 through**  
15 **10;**

16 **Defendants.**

**Consolidated with**

**CASE NO.: A-16-738444-C**  
**DEPT NO.: X**

17 **EDGEWORTH FAMILY TRUST; and**  
18 **AMERICAN GRATING, LLC,**

19 **Plaintiffs,**

20 **vs.**

**DECISION AND ORDER ON MOTION**  
**TO DISMISS NRCP 12(B)(5)**

21 **DANIEL S. SIMON; THE LAW OFFICE OF**  
22 **DANIEL S. SIMON, a Professional Corporation**  
23 **d/b/a SIMON LAW; DOES 1 through 10; and,**  
24 **ROE entities 1 through 10;**

25 **Defendants.**

26 **AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

27 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on  
28 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable  
Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon  
d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in  
person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

1 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or  
2 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their  
3 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John  
4 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully  
5 advised of the matters herein, the **COURT FINDS:**

6  
7 **FINDINGS OF FACT**

8 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,  
9 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and  
10 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on  
11 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation  
12 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.  
13 Simon and his wife were close family friends with Brian and Angela Edgeworth.

14 2. The case involved a complex products liability issue.

15 3. On April 10, 2016, a house the Edgeworths were building as a speculation home  
16 suffered a flood. The house was still under construction and the flood caused a delay. The  
17 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and  
18 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and  
19 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire  
20 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,  
21 Viking, et al., also denied any wrongdoing.

22 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send  
23 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties  
24 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not  
25 resolve. Since the matter was not resolved, a lawsuit had to be filed.

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and  
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,  
28

1 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately  
2 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")  
3 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

4 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet  
5 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and  
6 had some discussion about payments and financials. No express fee agreement was reached during  
7 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."  
8 It reads as follows:

9 We never really had a structured discussion about how this might be done.  
10 I am more that happy to keep paying hourly but if we are going for punitive  
11 we should probably explore a hybrid of hourly on the claim and then some  
12 other structure that incents both of us to win an go after the appeal that these  
13 scumbags will file etc.  
14 Obviously that could not have been doen earlier snce who would have thought  
15 this case would meet the hurdle of punitives at the start.  
16 I could also swing hourly for the whole case (unless I am off what this is  
17 going to cost). I would likely borrow another \$450K from Margaret in 250  
18 and 200 increments and then either I could use one of the house sales for cash  
19 or if things get really bad, I still have a couple million in bitcoin I could sell.  
20 I doubt we will get Kinsale to settle for enough to really finance this since I  
21 would have to pay the first \$750,000 or so back to Colin and Margaret and  
22 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

23 (Def. Exhibit 27).

24 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first  
25 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.  
26 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.  
27 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per  
28 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and  
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per  
hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

1 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the  
2 bills indicated an hourly rate of \$550.00 per hour.

3 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and  
4 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services  
5 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of  
6 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was  
7 paid by the Edgeworths on August 16, 2017.

8 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount  
9 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate  
10 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per  
11 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for  
12 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September  
13 25, 2017.

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
15 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
16 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
17 costs to Simon. They made Simon aware of this fact.

18 12. Between June 2016 and December 2017, there was a tremendous amount of work  
19 done in the litigation of this case. There were several motions and oppositions filed, several  
20 depositions taken, and several hearings held in the case.

21 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against  
22 the Viking Corporation ("Viking").

23 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the  
24 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a  
25 mediation a couple weeks ago and then did not leave with me. Could someone in your office send  
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27 <sup>1</sup> \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and  
28 \$2,887.50 for the services of Benjamin Miller.



1 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

2 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to  
3 come to his office to discuss the litigation.

4 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,  
5 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's  
6 Exhibit 4).

7 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &  
8 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all  
9 communications with Mr. Simon.

10 18. On the morning of November 30, 2017, Simon received a letter advising him that the  
11 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,  
12 et.al. The letter read as follows:

13 "Please let this letter serve to advise you that I've retained Robert D. Vannah,  
14 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation  
15 with the Viking entities, et.al. I'm instructing you to cooperate with them in  
16 every regard concerning the litigation and any settlement. I'm also instructing  
17 you to give them complete access to the file and allow them to review  
18 whatever documents they request to review. Finally, I direct you to allow  
19 them to participate without limitation in any proceeding concerning our case,  
20 whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the  
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the  
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the  
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the  
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and  
28 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly

1 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset  
2 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the  
3 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee  
4 due to the Law Office of Danny Simon.

5 22. The parties agree that an express written contract was never formed.

6 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against  
7 Lange Plumbing LLC for \$100,000.

8 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in  
9 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.  
10 Simon, a Professional Corporation, case number A-18-767242-C.

11 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate  
12 Lien with an attached invoice for legal services rendered. The amount of the invoice was  
13 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

## 14 15 CONCLUSION OF LAW

### 16 *Breach of Contract*

17 The First Claim for Relief of the Amended Complaint alleges breach of an express oral  
18 contract to pay the law office \$550 an hour for the work of Mr. Simon. The Amended Complaint  
19 alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the  
20 Court finds that there was no express contract formed, and only an implied contract. As such, a  
21 claim for breach of contract does not exist and must be dismissed as a matter of law.

### 22 23 *Declaratory Relief*

24 The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract  
25 existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of  
26 the settlement proceeds. The Court finds that there was no express agreement for compensation, so  
27 there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the  
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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***

12 The allegations in the Complaint assert a breach of fiduciary duty for not releasing all the  
13 funds to the Edgeworths. The Court finds that Mr. Simon followed the law when filing the attorney's  
14 lien. Mr. Simon also fulfilled all his obligations and placed the clients' interests above his when  
15 completing the settlement and securing better terms for the clients even after his discharge. Mr.  
16 Simon timely released the undisputed portion of the settlement proceeds as soon as they cleared the  
17 account. The Court finds that the Law Office of Daniel Simon is owed a sum of money based on the  
18 adjudication of the lien, and therefore, there is no basis in law or fact for the cause of action for  
19 breach of fiduciary duty and this claim must be dismissed.  
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***Punitive Damages***

29 Plaintiffs' Amended Complaint alleges that Mr. Simon acted with oppression, fraud, or  
30 malice for denying Plaintiffs of their property. The Court finds that the disputed proceeds are not  
31 solely those of the Edgeworths and the Complaint fails to state any legal basis upon which claims  
32 may give rise to punitive damages. The evidence indicates that Mr. Simon, along with Mr. Vannah  
33 deposited the disputed settlement proceeds into an interest bearing trust account, where they remain.  
34 Therefore, Plaintiffs' prayer for punitive damages in their Complaint fails as a matter of a law and  
35 must be dismissed.  
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**CONCLUSION**

46 The Court finds that the Law Office of Daniel Simon properly filed and perfected the  
47 charging lien pursuant to NRS 18.015(3) and the Court adjudicated the lien. The Court further finds  
48 that the claims for Breach of Contract, Declaratory Relief, Conversion, Breach of the Implied  
49 Covenant of Good Faith and Fair Dealing, Breach of the Fiduciary Duty, and Punitive Damages  
50 must be dismissed as a matter of law.  
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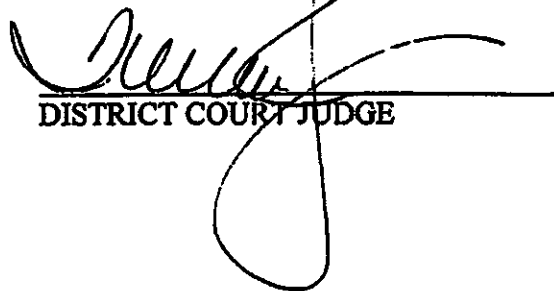
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**ORDER**

It is hereby ordered, adjudged, and decreed, that the Motion to Dismiss NRCP 12(b)(5) is GRANTED.

IT IS SO ORDERED this 19 day of November, 2018.


  
DISTRICT COURT JUDGE

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**CERTIFICATE OF SERVICE**

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\_\_\_\_\_  
Tess Driver  
Judicial Executive Assistant  
Department 10

*Steven D. Grierson*

MATF  
JAMES R. CHRISTENSEN, ESQ.  
Nevada Bar No. 003861  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 272-0406  
(702) 272-0415 fax  
jim@jchristensenlaw.com  
*Attorney for Daniel S. Simon*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE  
VIKING CORPORATION, a Michigan  
corporation; SUPPLY NETWORK,  
INC., dba VIKING SUPPLYNET, a  
Michigan Corporation; and DOES 1  
through 5 and ROE entities 6 through 10;

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON  
LAW; DOES 1 through 10; and, ROE  
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**MOTION FOR ATTORNEY FEES  
AND COSTS**

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 The Law Office of Daniel Simon, Daniel Simon, individually and Simon  
2 Law, by and through their attorneys, Peter Christiansen, Esq. and James R.  
3 Christensen, Esq. move for Attorney's Fees and Costs pursuant to NRS 7.085,  
4 NRS 18.010(2)(b), NRS 41.670 and NRCP 11.  
5

6 This motion is made and based upon the papers and pleadings on file  
7  
8 herein, exhibits attached, the points and authorities set forth herein, and all other  
9 evidence that the Court deems just and proper, as well as the arguments of  
10 counsel at the time of the hearing hereon.  
11

12 Dated this 7<sup>th</sup> day of December, 2018.

13 /s/ James R. Christensen  
14 JAMES CHRISTENSEN, ESQ.  
15 Nevada Bar No. 003861  
16 601 S. 6<sup>th</sup> Street  
17 Las Vegas, NV 89101  
18 (702) 272-0406  
19 (702) 272-0415  
20 jim@jchristensenlaw.com  
21 Attorney for Daniel S. Simon  
22  
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**NOTICE OF MOTION**

**TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD**

You, and each of you, will please take notice that the undersigned will bring on for hearing the Motion for Attorney's Fees and Costs before the above- entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the January 15, 2019 day of January 15, 2019, 2018, at 9:30 a.m./~~p.m.~~ in Department 10, Courtroom 14B.

Dated this 7<sup>th</sup> day of December, 2018.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6<sup>th</sup> Street

Las Vegas, NV 89101

Phone: (702) 272-0406

Facsimile: (702) 272-0415

Email: jim@jchristensenlaw.com

*Attorney for Daniel S. Simon*

## MEMORANDUM OF POINTS & AUTHORITIES

### I. Introduction

This Court found that the attorney lien of Defendant Daniel S. Simon dba Simon Law ("Simon") was proper and that the lawsuit brought by Plaintiffs Edgeworth Family Trust and American Grating, LLC's (hereafter "Plaintiffs") against Simon had no merit. Accordingly, on October 11, this Court dismissed Plaintiffs' Complaint in its entirety and issued three decisions: Decision and Order on Motion to Dismiss NRCP 12(b)(5); Decision and Order on Motion to Adjudicate Lien and Decision; and Decision and Order on Special Motion to Dismiss Anti-SLAPP. On November 19, 2018, this Court filed an Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) ("MTDO"), attached hereto as **Exhibit 1** and an Amended Decision and Order on Motion to Adjudicate Lien ("Lien D&O"), attached hereto as **Exhibit 2**. The Decision and Order on Special Motion to Dismiss Anti-SLAPP ("ASO") is attached hereto as **Exhibit 3**

Plaintiffs' complaint brought claims that were not well grounded in fact or law. For example, it is clear that the conversion claim was frivolous and filed for an improper purpose, when the Court examines the facts known to Plaintiffs when they filed the complaint on January 4, 2018; which were, Simon did not have the money and had not stolen any money. In fact, he did not even have the ability to

1 steal the money as Mr. Vannah equally controlled the account. Additionally, there  
2 was no merit to Plaintiffs' claims that:

- 3 • Simon "intentionally" converted and was going to steal the settlement  
4 proceeds;
- 5 • Simon's conduct warranted punitive damages;
- 6 • Daniel S. Simon individually should be named as a party;
- 7 • Simon had been paid in full;
- 8 • Simon refused to release the full settlement proceeds to Plaintiffs;
- 9 • Simon breached his fiduciary duty to Plaintiffs;
- 10 • Simon breached the covenant of good faith and fair dealing; and,
- 11 • Plaintiffs were entitled to Declaratory Relief because they had paid Simon in  
12 full.

13 There are several provisions within Nevada law that favor awarding attorney  
14 fees and costs when the claims asserted and maintained by a party are not well-  
15 grounded in fact or warranted by existing law to deter vexatious and frivolous  
16 claims. Consequently, Simon is entitled to attorney fees and costs pursuant to three  
17 separate and distinct grounds under NRS 7.085, NRS 18.010(2)(b), NRS 41.670  
18 and NRCP 11 as described below.  
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## **II. Statement Of Relevant Facts**

Simon represented Plaintiffs in a complex and hotly contested products liability and contractual dispute stemming from a premature fire sprinkler activation in April of 2016 which flooded Plaintiffs speculation home during its construction causing \$500,000.00 in property damage. Exhibit 2, Lien D&O, pp. 2-7.

In May/June of 2016, Simon helped Plaintiffs on the flood claim as a favor, with the goal of ending the dispute by triggering insurance to adjust the property damage loss. Simon and Plaintiffs never had an express written or oral attorney fee agreement.

In June of 2016, a complaint was filed. In November of 2016, a joint case conference was held.

In August/September of 2017, Simon and clients agree that the flood case dramatically changed. The case had become extremely demanding and was dominating the time of the law office precluding work on other cases. Determined to help his friend at the time, Simon and the clients made efforts to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon and Brian Edgeworth agreed that the nature of the case had changed and had discussions about an express fee agreement based on a hybrid of hourly and contingency fees. However, an express agreement could not be reached due to the

1 unique nature of the property damage claim and the amount of work and costs  
2 necessary to achieve a great result. Simon and the clients agree that the attorney  
3 fee was in flux during this period.  
4

5 Although efforts to reach an express fee agreement failed, Simon continued  
6 to forcefully litigate Plaintiffs' claims by serving and assertively pursuing  
7 discovery and dynamic motion practice, including the filing of a motion to strike  
8 Vikings' answer and exclude crucial defense experts.  
9

10 In mid-November of 2017, an offer was made by Viking. The first  
11 meaningful Viking offer was made in the context of mediation, as a counter offer  
12 to a mediator's proposal. The first Viking offer was made as several dispositive  
13 motions and an evidentiary hearing on the request to strike Vikings answer were  
14 pending. The first Viking offer contained contingencies and provisions which had  
15 not been previously agreed to.  
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19 Following the Viking offer in mid-November, Simon continued to  
20 vigorously pursue the litigation against Viking pending resolution of the details of  
21 settlement, and against the co-defendant, Lange Plumbing. Simon also again raised  
22 the desire for an express attorney fee agreement with the clients.  
23  
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25 On November 29, 2017, the Edgeworths constructively fired Simon by  
26 retaining new counsel, Vannah and Vannah, and ceased all direct communications  
27 with Simon.  
28

1 On November 30, 2017, Vannah and Vannah provided Simon notice of  
2 retention.

3 On November 30, 2017, Simon served an attorney lien pursuant to NRS  
4 18.015. However, Simon continued to protect his former clients' interests in the  
5 complex flood litigation, to the extent possible under the unusual circumstances.  
6

7 On December 1, 2017, the Edgeworths entered into an agreement to settle  
8 with Viking and release Viking from all claims in exchange for a promise by  
9 Viking to pay six million dollars (\$6,000,000.00 USD).  
10

11 On January 2, 2018, Simon served an amended attorney lien.  
12

13 On January 4, 2018, Edgeworth's, through Vannah, sued Simon, alleging  
14 Conversion (stealing) and various other causes of actions based on the assertion of  
15 false allegations. At the time of this lawsuit, Vannah and Edgeworth actually knew  
16 that the settlement funds were not deposited in any other account and arrangements  
17 were being made at the request of Edgeworth and Vannah to set up a special  
18 account so that Vannah on behalf of Edgeworth would control the funds equally  
19 pending the lien dispute.  
20

21 On January 8, 2018, Vannah met Simon at Bank of Nevada and deposited  
22 the Viking settlement check into a special trust account opened by mutual  
23 agreement for this case only. In addition to the normal safeguards for a trust  
24 account, this account required signatures of both Vannah and Simon for a  
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1 withdrawal. Thus, Simon stealing money from the trust account was an  
2 impossibility.

3       On January 9, 2018, Plaintiffs served their complaint which alleged that  
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5 Simon stole their money-money which was safe kept in a Bank of Nevada account,  
6 earning them interest. Edgeworth and Vannah both knew Simon did not and could  
7 not steal the money, yet they pursued their serious theft allegations knowing the  
8 falsity thereof.

9  
10       Simon responded with two motions to dismiss, which detailed the facts and  
11 explained the law on why the complaint was frivolous. Rather than conceding the  
12 lack of merit as to even a portion of the complaint, Plaintiffs maintained the actions  
13 and filed an Amended Complaint to include new causes of action for the Breach of  
14 the Implied Covenant of Good Faith and Fair Dealing and Breach of Fiduciary  
15 Duty and reaffirmed all the false facts in support of the conversion claims. The  
16 false facts asserted alleged, among other things, extortion, blackmail, and stealing  
17 by Simon, and sought punitive damages. When these allegations were made and  
18 causes of actions maintained on an ongoing basis, Vannah and Edgeworth both  
19 actually knew they were false and had no legal basis whatsoever because their  
20 allegations were a legal impossibility.  
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1 The facts elicited at the five-day evidentiary hearing further confirmed that  
2 the allegations in both complaints were false and that the complaints were filed for  
3 an improper purpose as a collateral attack on the lien adjudication proceeding;  
4 which forced Simon to retain counsel and experts to defend the suit.  
5

6 On October 11, the Court dismissed Plaintiffs amended complaint. Of  
7 specific importance, the Court found that:  
8

- 9 • On November 29, Simon was constructively discharged.
- 10 • On December 1, Simon appropriately served and perfected a charging  
11 lien on the settlement monies.
- 12 • Simon was due fees and costs from the settlement monies subject to  
13 the proper attorney lien.
- 14 • Found no evidence to support the conversion claim.
- 15
- 16
- 17

18 The Court *did not find* that Simon converted the clients' money.

19 Based on the ruling of the Court, as a matter of law, Simon is entitled to  
20 attorney fees and costs under Nevada law pursuant to NRS 7.085, NRS  
21 18.010(2)(b), NRS 41.670 and NRCP 11. Because the Court found Simon properly  
22 asserted a charging lien pursuant to Nevada law, Plaintiffs' claims against Simon  
23 had no merit and there was no basis in law or fact for the conversion claim.  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Electronically Filed  
Aug 08 2019 12:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 2 PART 6 of 9**

AA000576

Docket 77678 Document 2019-33424

**Appellants' Appendix – Consolidated Cases 77678 and 78176  
Edgeworth, et al. v. Daniel Simon, et al.**

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCF 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
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11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
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6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 The Court can grant attorney fees based solely on the most egregious cause  
2 of action for conversion (and punitive damages) which was a legal impossibility  
3 based on the uncontroverted facts known to Plaintiffs at the time they filed the  
4 complaint. In addition, the Court may grant attorney fees based on the frivolous  
5 and vexatious nature of the lawsuit which is shown by the totality of the  
6 circumstances, including the wild accusations contained in the Complaints and  
7 three separate affidavits of Brian Edgeworth that were confirmed as false at the  
8 evidentiary hearing. The mere fact that Vannah and Edgeworth attempted to name  
9 Mr. Simon personally underscores their willfulness and transparent motives.  
10  
11

### 12 **III. Argument**

#### 13 **A. Applicable Law.**

14  
15 There are several provisions within Nevada law that favor awarding attorney  
16 fees and costs when the claims maintained by a party are not well-grounded in fact  
17 or warranted by existing law to deter vexatious and frivolous claims. Nevada  
18 Revised Statute 18.010(2)(b) and (3) state:  
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22 2. In addition to the cases where an allowance is authorized by specific  
23 statute, the court may make an allowance of attorney's fees to a prevailing  
24 party:

25 (b) Without regard to the recovery sought, when the court finds that  
26 the claim, counterclaim, cross-claim or third-party complaint or  
27 defense of the opposing party was brought or maintained without  
28 reasonable ground or to harass the prevailing party. *The court shall  
liberally construe the provisions of this paragraph in favor of  
awarding attorney's fees in all appropriate situations.* It is the intent

1 of the Legislature that the court award attorney's fees pursuant to this  
2 paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
3 Rules of Civil Procedure in all appropriate situations to punish for and  
4 deter frivolous or vexatious claims and defenses because such claims  
5 and defenses overburden limited judicial resources, hinder the timely  
6 resolution of meritorious claims and increase the costs of engaging in  
7 business and providing professional services to the public.

8 3. In awarding attorney's fees, the court may pronounce its decision on the  
9 fees at the conclusion of the trial or special proceeding without written  
10 motion and with or without presentation of additional evidence.

11 (Emphasis added.)

12 Further, Nevada Revised Statute 7.085 states:

13 1. If a court finds that an attorney has:

14 (a) Filed, maintained or defended a civil action or proceeding in any  
15 court in this State and such action or defense is not well-grounded in  
16 fact or is not warranted by existing law or by an argument for  
17 changing the existing law that is made in good faith; or

18 (b) Unreasonably and vexatiously extended a civil action or  
19 proceeding before any court in this State,

20 ~ the court shall require the attorney personally to pay the additional  
21 costs, expenses and attorney's fees reasonably incurred because of  
22 such conduct.

23 2. The court shall liberally construe the provisions of this section in favor  
24 of awarding costs, expenses and attorney's fees in all appropriate situations.  
25 It is the intent of the Legislature that the court award costs, expenses and  
26 attorney's fees pursuant to this section and impose sanctions pursuant to  
27 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations  
28 to punish for and deter frivolous or vexatious claims and defenses because  
such claims and defenses overburden limited judicial resources, hinder the  
timely resolution of meritorious claims and increase the costs of engaging in  
business and providing professional services to the public.

1           Additionally, under Nevada's Anti-SLAPP statutes that protect  
2 communications made to courts -- such as requesting adjudication of an attorney  
3 lien -- attorney fees and costs are also provided to deter frivolous and vexatious  
4 claims:  
5

6           1. If the court grants a special motion to dismiss filed pursuant to NRS  
7 41.660:

8                   (a) The court shall award reasonable costs and attorney's fees to the  
9 person against whom the action was brought, except that the court  
10 shall award reasonable costs and attorney's fees to this State or to the  
11 appropriate political subdivision of this State if the Attorney General,  
12 the chief legal officer or attorney of the political subdivision or special  
counsel provided the defense for the person pursuant to NRS 41.660.

13                   (b) The court may award, in addition to reasonable costs and  
14 attorney's fees awarded pursuant to paragraph (a), an amount of up to  
15 \$10,000 to the person against whom the action was brought.

16                   (c) The person against whom the action is brought may bring a  
17 separate action to recover:

18                           (1) Compensatory damages;

19                           (2) Punitive damages; and  
20

21                           (3) Attorney's fees and costs of bringing the  
22 separate action.

23           2. If the court denies a special motion to dismiss filed pursuant to NRS  
24 41.660 and finds that the motion was frivolous or vexatious, the court shall  
25 award to the prevailing party reasonable costs and attorney's fees incurred in  
26 responding to the motion.  
27  
28



1 3. In addition to reasonable costs and attorney's fees awarded pursuant to  
2 subsection 2, the court may award:

3 (a) An amount of up to \$10,000; and

4 (b) Any such additional relief as the court deems proper to punish and  
5 deter the filing of frivolous or vexatious motions.

6 4. If the court denies the special motion to dismiss filed pursuant to NRS  
7 41.660, an interlocutory appeal lies to the Supreme Court.

8 NRS 41.670.  
9

10 Finally, NRCP 11 provides sanctions as follows:

11 (b) Representations to Court. By presenting to the court (whether by  
12 signing, filing, submitting, or later advocating) a pleading, written  
13 motion, or other paper, an attorney or unrepresented party is certifying  
14 that to the best of the person's knowledge, information, and belief,  
15 formed after an inquiry reasonable under the circumstances, —

16 (1) it is not being presented for any improper purpose, such as  
17 to harass or to cause unnecessary delay or needless increase in the cost  
18 of litigation;

19 (2) the claims, defenses, and other legal contentions therein are  
20 warranted by existing law or by a nonfrivolous argument for the  
21 extension, modification, or reversal of existing law or the  
22 establishment of new law;

23 (3) the allegations and other factual contentions have  
24 evidentiary support or, if specifically so identified, are likely to have  
25 evidentiary support after a reasonable opportunity for further  
26 investigation or discovery; and

27 (4) the denials of factual contentions are warranted on the  
28 evidence or, if specifically so identified, are reasonably based on a  
lack of information or belief.

1 c) Sanctions. If, after notice and a reasonable opportunity to respond,  
2 the court determines that subdivision (b) has been violated, the court  
3 may, subject to the conditions stated below, impose an appropriate  
4 sanction upon the attorneys, law firms, or parties that have violated  
5 subdivision (b) or are responsible for the violation.

6 (1) How initiated.

7 (A) By Motion. A motion for sanctions under this rule  
8 shall be made separately from other motions or requests and  
9 shall describe the specific conduct alleged to violate  
10 subdivision (b). It shall be served as provided in Rule 5, but  
11 shall not be filed with or presented to the court unless, within  
12 21 days after service of the motion (or such other period as the  
13 court may prescribe), the challenged paper, claim, defense,  
14 contention, allegation, or denial is not withdrawn or  
15 appropriately corrected. If warranted, the court may award to  
16 the party prevailing on the motion the reasonable expenses and  
17 attorney's fees incurred in presenting or opposing the motion.  
18 Absent exceptional circumstances, a law firm shall be held  
19 jointly responsible for violations committed by its partners,  
20 associates, and employees.

21 (B) On Court's Initiative. On its own initiative, the court  
22 may enter an order describing the specific conduct that appears  
23 to violate subdivision (b) and directing an attorney, law firm, or  
24 party to show cause why it has not violated subdivision (b) with  
25 respect thereto.

26 (2) Nature of Sanction; Limitations. A sanction imposed for  
27 violation of this rule shall be limited to what is sufficient to deter  
28 repetition of such conduct or comparable conduct by others similarly  
situated. Subject to the limitations in subparagraphs (A) and (B), the  
sanction may consist of, or include, directives of a nonmonetary  
nature, an order to pay a penalty into court, or, if imposed on motion  
and warranted for effective deterrence, an order directing payment to  
the movant of some or all of the reasonable attorney's fees and other  
expenses incurred as a direct result of the violation.

1 (A) Monetary sanctions may not be awarded against a  
2 represented party for a violation of subdivision (b)(2).

3 (B) Monetary sanctions may not be awarded on the  
4 court's initiative unless the court issues its order to show cause  
5 before a voluntary dismissal or settlement of the claims made  
6 by or against the party which is, or whose attorneys are, to be  
7 sanctioned.

8 (3) Order. When imposing sanctions, the court shall describe  
9 the conduct determined to constitute a violation of this rule and  
10 explain the basis for the sanction imposed.

11 NRCP 11(b) and (c).

12 **B. Attorney Fees and Costs Is Proper and Necessary.**

13 Simon properly asserted a charging lien pursuant to Nevada law. *See*  
14 **Exhibit 1**, p. 8. Plaintiffs' claims *were not* maintained upon reasonable grounds.  
15 *See* NRS 18.010(2)(b). The claims were not "well-grounded" in fact, "warranted  
16 by existing law" or warranted "by an argument for changing the existing law that  
17 [was] made in good faith." *See* NRS 7.085(1)(a). In fact, Plaintiffs and their  
18 counsel openly admitted the falsity of the allegations and that conversion was a  
19 legal impossibility. This is disturbing since the conversion claim is an accusation  
20 of stealing and severely tarnishes the reputation of the lawyer accused.  
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1 Plaintiffs did not present any “well-grounded” facts as alleged in their  
2 Complaint (and also their Amended Complaint) to prove that:

- 3 • Simon “intentionally” converted and was going to steal the settlement  
4 proceeds;
- 5 • Simon’s conduct warranted punitive damages;
- 6 • Daniel S. Simon individually should be named as a party;
- 7 • Simon had been paid in full;
- 8 • Simon refused to release the full settlement proceeds to Plaintiffs;
- 9 • Simon breached his fiduciary duty to Plaintiffs;
- 10 • Simon breached the covenant of good faith and fair dealing;
- 11 • Plaintiffs were entitled to Declaratory Relief because they had paid Simon in  
12 full; and,
- 13 • Simon extorted, blackmailed or did anything remotely similar.

14 Plaintiffs’ claims were maintained via the Complaint, Amended Complaint,  
15 and three affidavits provided by Brian Edgeworth that Simon had been paid in full  
16 already; that Simon tried to steal the settlement proceeds; and that Simon tried to  
17 “blackmail” the Edgeworths. *See Exhibit 4, ¶¶ 36-37 and 40-44; and Affidavit of*  
18 *Brian Edgeworth, dated February 2, 2018, pp. 3, ¶ 12, ll. 23-24, attached hereto as*  
19 **Exhibit 5.** These were false facts that were asserted to smear the reputation of  
20 Simon, to harass Simon and were brought for an improper purpose to prevent  
21 adjudication of the attorney lien.

1           Plaintiffs and their counsel knew the facts were false when the complaint  
2 was filed and when the complaint was served. Plaintiffs and their counsel knew  
3 Simon did not have possession of the settlement funds and knew that an allegation  
4 that Simon had stolen the money was an impossibility. Plaintiffs and counsel knew  
5 that a conversion action brought on a contractual claim was a legal impossibility  
6 and knew that a conversion action against Simon when Simon did not have  
7 possession of the funds was an impossibility. Yet, counsel signed the complaint  
8 under NRCP 11 without any regard for the falsity of the allegations. In fact, Mr.  
9 Vannah conceded in an email that he personally did not believe Simon would steal  
10 the money, yet his office prepared and filed a public lawsuit on January 4, 2018  
11 alleging the theft via the conversion claim.  
12

13           Following the first Simon motion to dismiss, Mr. Edgeworth reaffirmed the  
14 false and impossible allegations in his three affidavits. Rather than acknowledging  
15 that Simon did not and could not steal or convert the settlement money as a matter  
16 of law, Plaintiffs and counsel continued to assert these facts in pleading after  
17 pleading. Even at the most recent reconsideration motion, Mr. Vannah told this  
18 court that the money in the trust account was all of the Edgeworth's. This is  
19 baffling in light of the representations by Mr. Vannah and Edgeworth during the  
20 evidentiary hearing when they both admitted "we always knew we owed Mr.  
21 Simon money for his work" and at the time the complaint for conversion was filed  
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1 he was owed in excess of \$68,000 for costs alone. By maintaining the frivolous  
2 and serious claim of theft, this conduct compelled Simon to vigorously defend  
3 these false accusations incurring substantial fees and costs.  
4

5 Simon followed the law for asserting an attorney lien. There was no  
6 blackmail, stealing or conversion. Yet, Plaintiffs and their counsel asserted those  
7 false claims beginning with the filing of the Complaint on January 4, 2018, through  
8 the Amended Complaint on March 15, 2018; and, in three affidavits by Brian  
9 Edgeworth -- all the way up to the Evidentiary Hearing. See **Exhibits 4 and 6** and  
10 Affidavits of Brian Edgeworth, dated February 12, 2018 and March 15, 2018,  
11 attached respectively hereto as **Exhibits 7 and 8**.  
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15 In addition to being false, the claims were made for an improper purpose.  
16 The Court should recall that at every opportunity, Plaintiffs and their counsel  
17 argued against this Court adjudicating the lien, a remedy provided by statute, based  
18 solely on the nature of their fallacious conversion claim.  
19

20 It was only at the evidentiary hearing, and upon thorough cross examination,  
21 that Plaintiffs conceded that Plaintiffs owe Simon money and that was never in  
22 dispute. Mr. Vannah also conceded this crucial fact only at the time of the  
23 evidentiary hearing when the plaintiffs and their counsel all stated "We never  
24 disputed that we have always owed Simon money." This confirms the frivolous  
25 nature of the complaints at the time of the filing in January and again in March,  
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1 2018. Further, there were no contentions, much less actual evidence, of Simon's  
2 "reckless disregard" of Plaintiffs' rights that rose to the level of fraud, malice and  
3 oppression to support Plaintiffs' claims for punitive damages.  
4

5 Plaintiffs and their attorneys' conduct is clear evidence of maintaining  
6 claims that had no grounding in fact or law. Their actions warped a lien  
7 adjudication matter into vexatious false claims of blackmail and oppressive  
8 conduct that were directed both personally and professionally against Daniel  
9 Simon which necessitated hiring counsel and experts to vigorously defend against  
10 those claims.  
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13 Simon can certainly adjudicate his lien without counsel as he had done on  
14 other occasions, but in light of the serious nature of the false claims filed by  
15 Plaintiffs, Simon had to hire his own legal team at great expense. Plaintiffs should  
16 be held accountable for the consequences of their decision to pursue frivolous  
17 claims against Simon.  
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20 **3. Nevada law favors the award of attorney's fees and costs.**  
21

22 The Nevada Supreme Court addressed awarding attorney fees for frivolous  
23 claims directly in *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993)  
24 (*superseded* by statute on other grounds). In *Bergmann*, Fred and Harriet Boyce  
25 consulted their former attorney, Roger Bergmann, for advice regarding investment  
26 strategies. *Id.* at 673. Bergmann mentioned an investment brokerage firm named  
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1 Lemons & Associates during the consultation, and the Boyces invested a  
2 significant amount of money with Lemons & Associates. *Id.* Subsequently,  
3 Lemons & Associates became insolvent and Steve Lemons was incarcerated. *Id.*  
4 The Boyces then sued Bergmann, alleging six causes of action, including fraud and  
5 misrepresentation; breach of the implied covenant of good faith and fair dealing;  
6 intentional and negligent infliction of emotional distress; attorney malpractice;  
7 negligent misrepresentation; and a claim for the Boyce's daughter's losses. *Id.* The  
8 Boyces also sought punitive damages against Bergmann. *Id.*

12 Bergmann filed a motion for attorney's fees pursuant to NRS 18.010(2)(b),  
13 NRCP 11 and NRCP 68. The district court denied Bergmann's motion for fees,  
14 finding that the Boyce's claims had survived the NRCP 12(b)(5) motion and that  
15 only some of the claims had been dismissed pursuant to NRCP 41(b) during the  
16 trial. *Id.*

19 The Nevada Supreme Court concluded that the district court abused its  
20 discretion and remanded the case back to the district court to conduct the proper  
21 analysis for awarding attorney's fees. The *Bergmann* Court stated that "[i]n  
22 assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must  
23 determine whether the plaintiff had reasonable grounds for its claims. Such an  
24 analysis depends upon the actual circumstances of the case rather than a  
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1 hypothetical set of facts favoring plaintiff's averments." *Id.* at 675 (emphasis  
2 added). Further, the Court specifically noted:

3 [T]he fact that the Boyce's complaint survived a 12(b)(5) motion to dismiss  
4 was irrelevant to the trial court's inquiry as to whether the claims of the  
5 complaint were groundless. The trial court could not base its refusal to  
6 award attorney's fees upon the 12(b)(5) ruling. The trial court also based its  
7 refusal to award fees upon the fact that it dismissed only a few of the  
8 Boyce's claims for failure to present sufficient evidence. In fact, only one of  
9 the Boyce's claims survived at trial. **The prosecution of one colorable  
claim does not excuse the prosecution of five groundless claims.**

10 *Id.* (Emphasis added) (citing *Trus Joist Corp. v. Safeco Ins. Co. of Am.*, 153 Ariz.  
11 95, 735 P.2d 125, 140 (Ariz. Ct. App. 1986) (case remanded for trial court to  
12 apportion attorney's fees between grounded and groundless claims); *Department of*  
13 *Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98, 101 (Ariz. Ct. App. 1986) ("The fact  
14 that not all claims are frivolous does not prevent an award of attorneys' fees.");  
15 *Fountain v. Mojo*, 687 P.2d at 501 ("[A] prevailing party must be afforded an  
16 opportunity to establish a reasonable proration of attorney fees incurred relative to  
17 the defense of a frivolous or groundless claim.")).  
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1 The *Bergmann* Court also found that the lower court abused its discretion in  
2 denying attorney's fees under NRCP 11: "NRCP 11 sanctions *should* be imposed  
3 for frivolous actions." *Id.* at 676 (emphasis added). The Court stated as follows:  
4

5 A frivolous claim is one that is 'both baseless and made without a reasonable  
6 and competent inquiry.' Thus, a determination of whether a claim is  
7 frivolous involves a two-pronged analysis: (1) the court must determine  
8 whether the pleading is 'well-grounded in fact and is warranted by existing  
9 law or a good faith argument for the extension, modification, or reversal of  
10 existing law'; and (2) whether the attorney made a reasonable and competent  
11 inquiry.

12 The first prong of the test has a component which is similar to the analysis  
13 required under NRS 18.010(2)(b): The trial court must examine the actual  
14 circumstances surrounding the case to determine whether the suspect claims  
15 were brought without reasonable grounds. As we noted previously, the trial  
16 court did not base its decision upon such an examination, but instead upon  
17 the fact that the complaint survived a Rule 12(b)(5) motion to dismiss. The  
18 legal standard applied to a rule 12(b)(5) motion to dismiss differs from the  
19 legal standard applied to a Rule 11 motion for sanctions. Thus, the trial court  
20 abused its discretion by applying an incorrect legal standard to the question  
21 whether Bergmann could recover fees as a sanction under NRCP 11.

22 *Id.* at 676-77 (citations omitted).

23 When applying the foregoing analysis, the *Bergmann* Court noted that the  
24 record contained "ample evidence" for which the trial court could have concluded  
25 that the Boyce's attorney failed to make a reasonable and competent inquiry, and,  
26 therefore, the trial court's error "may well have affected Bergmann's substantial  
27 rights." *Id.* at 677.  
28

1 The facts in the present case are much stronger than in *Bergmann*, and the  
2 evidence is more than substantial. Plaintiffs filed their lawsuit and included claims  
3 for Conversion and punitive damages. This Court found that Simon had not even  
4 received the settlement proceeds until after Plaintiffs had filed their lawsuit:  
5 “When the Complaint was filed on January 4, 2018, Mr. Simon was not in  
6 possession of the settlement proceeds as the checks were not endorsed or deposited  
7 in the trust account.” *See, Exhibit 1*, pp. 7:15-16. In fact, this was conceded and  
8 known to Plaintiffs when filing the complaint. Plaintiffs had actual knowledge of  
9 the when and how the settlement money was deposited into a special trust account  
10 controlled by Vannah. Thus, Plaintiffs and their counsel had actual knowledge that  
11 no money was stolen or converted. Rather than correcting the wild accusations,  
12 Vannah maintained the frivolous theft claims in pleading after pleading.  
13 Additionally, there was no breach of contract; no breach of fiduciary duty; no  
14 breach of the covenant of good faith and fair dealing; and Plaintiffs were not  
15 entitled to Declaratory Relief, much less punitive damages. *Id.*, pp.6-8. Instead,  
16 Simon followed the law in asserting an attorney lien and aggressively represented  
17 his former clients throughout the entire process.

18 Plaintiffs and their counsel knew the facts of this case and that this was a fee  
19 dispute and nothing more. Nevertheless, they chose to pursue their claims through  
20 a separate action asserting wild accusations in multiple pleadings, oppositions and  
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1 affidavits, despite admitting at the start of the evidentiary hearing that Simon was  
2 always owed money. It is undisputed that there were not any reasonable grounds to  
3 file a lawsuit.  
4

5 Nevada law on this matter is clear. Courts must "*liberally construe*" the  
6 provisions "*in favor*" of awarding attorney fees against parties who maintain  
7 claims without reasonable grounds for doing so. See NRS 18.010(2)(b) and NRS  
8 7.085(2) (emphasis added). Here, the Court must determine if Plaintiffs' claims  
9 were well-grounded in fact or existing law or they had made a good faith argument  
10 for a change in the existing law. See *Bergmann*, 109 Nev. at 675-77; see also *Iorio*  
11 *v. Check City P'ship, LLC*, 2015 Nev. Unpub. LEXIS 658, \*9-10 (affirming the  
12 lower court's *Bergmann* analysis and upholding the court's award of attorney fees  
13 and sanctions pursuant to NRCP 11 and NRS 18.010(2)(b)); and *Ginena v. Alaska*  
14 *Airlines, Inc.*, 2013 U.S. Dist. LEXIS, \*13-14 (holding that plaintiffs' voluntarily  
15 dismissed claims right before trial were groundless and weighed in favor of  
16 awarding fees). In *Bennett v. Baxter Group*, 224 p.3d 230 (Ariz 2010), a lawyer  
17 was sanctioned for holding onto a claim long after he should have dropped it and  
18 then the lawyer dropped it on the eve of trial.  
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25 In Edgeworth, they should not have pursued the impossible claim of theft  
26 initially and certainly should have dropped the theft claim from the amended  
27 complaint.  
28

1           This Court has found that Plaintiffs and their counsel did not show that their  
2 claims were well-grounded in fact or existing law, as was established in the  
3 evidentiary hearing and concluded in the Court's ruling on Simon's Motion to  
4 Dismiss pursuant to NRCP 12(b)(5). *See Exhibit 1.*

6           Consequently, NRCP 11 and NRS 7.085 sanctions are appropriate, and  
7 attorney fees and costs for Simon are proper pursuant to NRS 18.010(2)(b), NRS  
8 7.085, NRCP 11, and NRS 41.670.

10           While Simon recognizes that the Court determined the Anti-SLAPP Motion  
11 to Dismiss to be moot as the NRCP 12(b)(5) motion was granted, the same facts  
12 can still apply within NRS 41.670 to provide attorney's fees and costs to Simon.  
13 The attorney lien was a communication to the court and was protected via  
14 Nevada's Anti-SLAPP statutes; therefore, Plaintiffs' claims were – once again –  
15 not grounded in fact or law to allow prosecution against Simon. This was made  
16 clear to Plaintiffs in the initial special motion to dismiss –Anti-SLAPP, yet they  
17 continued to maintain the frivolous action, which is the exact conduct the  
18 legislature intended to deter. Therefore, Simon respectfully requests that its Motion  
19 be granted and that the Court award attorney's fees and costs as detailed below.  
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**C. Simon's Attorney's Fees and Costs**

As discussed above, Simon has adjudicated liens in the past without retaining counsel. This usually involves a simple motion hearing and the Court decides based on the pleadings and argument. Instead, Plaintiffs' lawsuit asserting false and wild accusations necessitated retaining counsel to defend himself and his firm against their frivolous claims. Simon retained James Christensen, Esq. and Peter Christiansen, Esq. to defend the wild accusations and litigate all of the issues and claims within the Evidentiary Hearing. Thus, Simon has incurred the following attorney's fees and costs:

1.	James Christensen, Esq. Legal Fees	\$ 62,604.48 <sup>1</sup>
2.	Peter Christiansen, Esq. Legal Fees	\$199,495.00 <sup>2</sup>
3.	Total Costs	\$ 18,434.73 <sup>3</sup>
a.	Will Kemp, Esq. Expert Fees	\$ 11,498.15
b.	David Clark, Esq.	\$ 5,000.00
c.	Miscellaneous Costs	\$ 1,936.58
<b>TOTAL ATTORNEY'S FEES AND COSTS</b>		<b>\$280,534.21</b>

<sup>1</sup> James Christensen's Invoices, attached hereto as Exhibit 9

<sup>2</sup> Peter Christiansen's Invoices, attached hereto as Exhibit 10

<sup>3</sup> Costs Summary and supporting documentation attached hereto as Exhibit 11

1 Please note that these fees and costs do not include substantial time  
2 expended by Simon and his firm in defending the frivolous claims that were filed  
3 solely to harass Simon in a vexatious manner to destroy his reputation. The effects  
4 of the theft claim of conversion still remain unknown on his practice and  
5 reputation, but are clearly substantial. The fees and costs are the reasonable  
6 expenses Simon incurred in defending Plaintiffs' claims that went far beyond an  
7 attorney lien adjudication.  
8  
9

10 Our Supreme Court has also adopted the view in stating that the trial court  
11 should "either ... award attorney's fees or ... state the reasons for refusing to do  
12 so." *Pandelis Const. v. Jones-Viking Assoc.*, 103 Nev. 129, 734 P.2d 1239  
13 (1987). Accordingly, if attorney's fees and costs are not allowed there should be  
14  
15 very compelling reasons supporting such a decision.  
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1 **IV. Conclusion**

2 Simon respectfully requests that the Motion for Attorney Fees and Costs be  
3 GRANTED, in the sum of **\$280,534.21** (\$262,099.48 in attorney's fees and  
4  
5 \$18,434.73 in costs).

6 Dated this 7<sup>th</sup> day of December, 2018.

7  
8 /s/ James R. Christensen

9 JAMES R. CHRISTENSEN, ESQ.

10 Nevada Bar No. 003861

11 601 S. 6<sup>th</sup> Street

12 Las Vegas, NV 89101

13 Phone: (702) 272-0406

14 Facsimile: (702) 272-0415

15 Email: jim@jchristensenlaw.com

16 Attorney for Daniel S. Simon

17 **CERTIFICATE OF SERVICE**

18 I CERTIFY SERVICE of the foregoing **MOTION FOR ATTORNEY**  
19 **FEES AND COSTS** was made by electronic service (via Odyssey) this 7<sup>th</sup> day  
20 of December, 2018, to all parties currently shown on the Court's E-Service List.  
21  
22

23  
24 /s/ Dawn Christensen

25 an employee of  
26 JAMES R. CHRISTENSEN, ESQ.  
27  
28



*Steven D. Grierson*

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, 4<sup>th</sup> Floor  
4 Las Vegas, Nevada 89101  
jgreene@vannahlaw.com  
5 Telephone: (702) 369-4161  
6 Facsimile: (702) 369-0104  
Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 --ooo--

10 **EDGEWORTH FAMILY TRUST; AMERICAN**  
11 **GRATING, LLC,**

12 **Plaintiffs,**

13 **vs.**

14 **LANGE PLUMBING, LLC; THE VIKING**  
15 **CORPORATION, a Michigan corporation;**  
16 **SUPPLY NETWORK, INC., dba VIKING**  
17 **SUPPLYNET, a Michigan corporation; and**  
18 **DOES I through V and ROE CORPORATIONS**  
19 **VI through X, inclusive,**

20 **Defendants.**

**CASE NO.: A-16-738444-C**  
**DEPT. NO.: X**

**PLAINTIFFS' MOTION FOR AN**  
**ORDER DIRECTING SIMON TO**  
**RELEASE PLAINTIFFS' FUNDS**

21 **EDGEWORTH FAMILY TRUST; AMERICAN**  
22 **GRATING, LLC,**

23 **Plaintiffs,**

24 **vs.**

25 **DANIEL S. SIMON; THE LAW OFFICE OF**  
26 **DANIEL S. SIMON, A PROFESSIONAL**  
27 **CORPORATION; DOES I through X, inclusive,**  
28 **and ROE CORPORATIONS I through X,**  
**inclusive,**

**Defendants.**

**CASE NO.: A-18-767242-C**  
**DEPT. NO.: XXIX**

**VANNAH & VANNAH**  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone: (702) 369-4161 Facsimile: (702) 369-0104

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC  
2 (Plaintiffs), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN  
3 B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an  
4 Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S.  
5 SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

6 This Motion is based upon the attached Memorandum of Points and Authorities; the  
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,  
8 any oral argument this Court may wish to entertain.

9 DATED this 13<sup>th</sup> day of December, 2018.

11 VANNAH & VANNAH

12  
13 *Signature*  
For

ROBERT D. VANNAH, ESQ.

Per  
No: 14130

14  
15 I.

16 SUMMARY

17 The facts of this matter are well known to this Court. The path to this intricate knowledge  
18 was gained by, but not limited to, having listened to five days of comprehensive testimony; by  
19 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre  
20 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual  
21 findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of  
22 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an  
23 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, SIMON  
24 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.

25  
26 This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney  
27 Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a  
28

1 fee of \$550 per hour between SIMON and the Edgeworths, and once SIMON started billing the  
2 Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths  
3 constructively discharged SIMON as their attorney on November 29, 2017, when they ceased  
4 following his advice and refused to communicate with him. The Court then found SIMON was  
5 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour  
6 for his associates, up and until the last billing of September 19, 2017.

7  
8 For the period between September 19, 2017 and November 29, 2017, the Court held  
9 SIMON was entitled to his implied agreement fee of \$550 an hour, and \$275 an hour for his  
10 associates, for a total amount of \$284,982.50. Further, the Court decided that for the period after  
11 November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the  
12 services his office rendered in quantum meruit: an amount the Court determined to be \$200,000.  
13 Accordingly, SIMON is owed a total amount of \$484,982.50 in fees—taken from the net lien in  
14 the sum of \$1,977,843.80—pursuant to this Court's Order adjudicating the attorneys lien.

15  
16 The Edgeworths have expressed a willingness, in writing, to accept the Court's rulings on  
17 all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the  
18 trust account. The same cannot be said for SIMON: even after this Court's Order was issued,  
19 SIMON has refused to release the balance of the funds held in trust: a sum of \$1,492,861.30. The  
20 Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their  
21 \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their  
22 money—money to which they are legally entitled. Simon's unreasonable, inappropriate  
23 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,  
24 which is untoward—not to mention unconstitutional.

25  
26 PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to  
27 release to Plaintiff the remainder of the funds SIMON is withholding in trust.

28  
II.

## ARGUMENTS

### A. SIMON'S WITHHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14<sup>th</sup> Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Phipus*, 435 US 247, 259 (1978). Due process requires notice: interested parties must be apprised of any action aimed at depriving them of property and must be afforded the opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Additionally, due process requires individuals be given an adequate hearing before they are deprived of their property interests; this requirement is designed to prevent arbitrary encroachment on an individual's property interests. *Carey v. Phipus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14<sup>th</sup> Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for a creditor's lawyer to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that this prejudgment garnishment violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*

1 Further, Nevada law mandates certain procedures must be followed before a garnishment  
2 takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the  
3 14<sup>th</sup> Amendment and Supreme Court precedent, Nevada law includes multiple due process  
4 protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS  
5 31.260; See also *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57  
6 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must  
7 obtain a writ of garnishment from the court—which may only issue at the same time or after the  
8 order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be  
9 served in the same manner as a summons in a civil action. *Frank Settelmeyer & Sons, Inc.*, 197  
10 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to  
11 answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the  
12 garnishee be given a fair hearing: "if the garnishment is contested, the matter must be tried and  
13 judgment rendered, in a manner similar to civil cases." *Id.* at 1056. Providing further protection  
14 still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP  
15 3A(a) and (b)(1). *Id.*

17 Here, SIMON is holding in trust a huge sum of money: \$1,977,843.80 despite this Court's  
18 Order stating that he is entitled *only* to \$484,982.50. He has effectively seized, garnished,  
19 Plaintiff's money—the remainder of the funds held in trust—by refusing to release the funds to  
20 Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of  
21 Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He  
22 did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did  
23 not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS  
24 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS  
25 Chapter 31 whatsoever.  
26  
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1 Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not  
2 get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that  
3 the money be withheld. Au contraire, after listening to five days of comprehensive testimony,  
4 reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is  
5 entitled to the \$1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018  
6 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this  
7 Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—  
8 withheld Plaintiffs' money and still continues to do so.

9  
10 SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs  
11 anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far  
12 back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg.  
13 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien  
14 attached hereto as "Exhibit 1") (See also, Email dated December 26, 2018, 12:18 p.m., attached  
15 hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have  
16 lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into  
17 his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's  
18 words were not only just a description of client's feelings at the time, but a foreshadowing of S  
19 SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two  
20 weeks now.

21  
22 Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is  
23 wholly unconstitutional under United States Supreme Court precedent. His actions are  
24 tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach*  
25 court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—  
26 which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds  
27  
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1 without any opportunity to be heard and without the opportunity to tender any defense—is an  
2 unconstitutional violation of Due Process.

3 SIMON'S behavior in this case is similar to—but more abusive than—the procedures  
4 permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon's  
5 purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court  
6 to retain the funds, yet he has flatly refused to release Plaintiffs' money. And in terms of its overt  
7 deprivation of due process rights, SIMON'S behavior goes much, much further than the statute in  
8 *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee  
9 before garnishment procedures were to be initiated.  
10

11 Here, SIMON has shown nothing but disdain for Plaintiffs' due process rights: SIMON  
12 did not follow any of Nevada's garnishment requirements or comply with Nevada statutory  
13 garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment.  
14 Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object  
15 to the withholding of money, and has not been given a hearing to address his objections to  
16 SIMON'S behavior. His outright refusal to release the remaining funds held in trust is wholly  
17 inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs*  
18 *favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust  
19 minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he  
20 answers to no one. But he does need to answer to this Court—and as such, it is the aim of this  
21 Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is  
22 legally entitled.  
23

24 ///

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26 ///

1           **B.     THIS COURT HAS JURISDICTION TO ADJUDICATE THIS**  
2           **ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN**  
3           **EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S**  
4           **MONEY PENDING APPEAL**

5           A Nevada court that presided over a client's underlying action has jurisdiction to  
6           adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a  
7           retaining lien has been asserted by the attorney and the client asks the court to determine the value  
8           of the attorney's services in order to post adequate or substitute security in order to recover the  
9           file; or if the client otherwise consents. See *Argentina Consol. Min. Co. v. Jolley Urga*, 216 P. 3d  
10          779 (2009).

11          Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate  
12          SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate  
13          Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018  
14          Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid  
15          out findings with respect to the entitlements of all parties. SIMON'S lien rights have been  
16          exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his  
17          lien adjudication rights are *finished*.

18          For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while  
19          he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this  
20          Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should  
21          not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court  
22          allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an  
23          unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the  
24          *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the*  
25          *interim*—between service of the action and a trial on the suit—this Court should strike down  
26          SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance  
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1 of the Court's November 19, 2018 Order and the final resolution of this matter on appeal.  
2 Plaintiffs should not be deprived of his money for months and months—perhaps even years—  
3 especially where SIMON'S withholding of these funds is inapposite in light of the Court's  
4 substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S  
5 ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully  
6 request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.

7 **C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018**  
8 **ORDER, WHICH IS CLEAR AND UNAMBIGUOUS.**

9 The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon  
10 is \$484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate  
11 Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the  
12 full \$1,977,843.80 in trust. SIMON'S withholding of \$1,492,861.30 from Plaintiffs is in direct  
13 contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's  
14 Order, the Court must take remedial action and issue an Order for the release of the remainder of  
15 the funds to Plaintiffs that SIMON is withholding in trust.

16  
17 It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue  
18 without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See  
19 Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached  
20 hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the  
21 matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his  
22 attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs  
23 respectfully request that this Court issue an Order for the release of Plaintiffs' funds.

24  
25 ///

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27 ///

III.

**CONCLUSION**

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13<sup>th</sup> day of December, 2018.

VANNAH & VANNAH

  
Bar No: 19530  
STONY FOR → ROBERT D. VANNAH, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that the following parties are to be served as follows:


Electronically:

James R. Christensen, Esq.  
**JAMES R. CHRISTENSEN, PC**  
601 S. Third Street  
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.  
**CHRISTIANSEN LAW OFFICES**  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

Traditional Manner:  
*None*

DATED this 13 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

Electronically Filed  
12/7/2018 2:53 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

Electronically Filed  
Dec 17 2018 11:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 JOHN B. GREENE, ESQ.  
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11 Attorneys for Plaintiffs/Appellants

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 --000--

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 LANGE PLUMBING, LLC; THE VIKING  
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23 DOES I through V and ROE CORPORATIONS  
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DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X, inclusive,  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

CASE NO.: A-16-738444-C  
DEPT. NO.: X

NOTICE OF APPEAL

CASE NO.: A-18-767242-C  
DEPT. NO.: XXIX

VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone: (702) 369-4161 Facsimile: (702) 369-0104

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 2 PART 7 of 9**

AA000611

Docket 77678 Document 2019-33424

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCF 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488



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1 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY  
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from  
3 the Decision and Order on Motion to Adjudicate Lien and from the Amended Decision and Order  
4 on Motion to Dismiss NRCP 12(B)(5), both of which were entered on November 19, 2018.  
5

6 DATED this 7 day of December, 2018.

7 VANNAH & VANNAH

8  
9   
10 ROBERT D. VANNAH, ESQ.  
11 Nevada Bar No. 002503  
12 JOHN B. GREENE, ESQ.  
13 Nevada Bar No. 004279  
14 400 S. Seventh Street, 4<sup>th</sup> Floor  
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19 Attorneys for Plaintiffs/Appellants  
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**CERTIFICATE OF SERVICE**

I hereby certify that the following parties are to be served as follows:

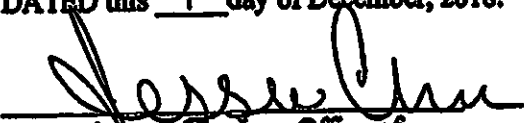
Electronically:

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**JAMES R. CHRISTENSEN, PC**  
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Peter S. Christiansen, Esq.  
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810 S. Casino Center Blvd., Ste. 104  
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Traditional Manner:  
*None*

DATED this 7<sup>th</sup> day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

*Steven D. Grierson*

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11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 --o0o--

15 **EDGEWORTH FAMILY TRUST; AMERICAN**  
16 **GRATING, LLC,**

17 **Plaintiffs,**

18 **vs.**

19 **LANGE PLUMBING, LLC; THE VIKING**  
20 **CORPORATION, a Michigan corporation;**  
21 **SUPPLY NETWORK, INC., dba VIKING**  
22 **SUPPLYNET, a Michigan corporation; and**  
23 **DOES I through V and ROE CORPORATIONS**  
24 **VI through X, inclusive,**

25 **Defendants.**

26 **CASE NO.: A-16-738444-C**  
27 **DEPT. NO.: X**

28 **PLAINTIFFS' OPPOSITION TO**  
**SIMON'S MOTION FOR FEES AND**  
**COSTS**

1 **EDGEWORTH FAMILY TRUST; AMERICAN**  
2 **GRATING, LLC,**

3 **Plaintiffs,**

4 **vs.**

5 **DANIEL S. SIMON; THE LAW OFFICE OF**  
6 **DANIEL S. SIMON, A PROFESSIONAL**  
7 **CORPORATION; DOES I through X, inclusive,**  
8 **and ROE CORPORATIONS I through X,**  
9 **inclusive,**

10 **Defendants.**

11 **CASE NO.: A-18-767242-C**  
12 **DEPT. NO.: XXIX**

**VANNAH & VANNAH**  
400 S. Seventh Street, 4<sup>th</sup> Floor • Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

1 Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC  
2 (PLAINTIFFS), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and  
3 JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Opposition  
4 to the Motion of DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A  
5 PROFESSIONAL CORPORATION (SIMON) for Attorney's Fees and Costs (the Motion).

6 This Opposition is based upon the attached Memorandum of Points and Authorities; the  
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; NRCP  
8 11 & 12(b)(5); NRS 18.010 & 18.015; and, any oral argument this Court may wish to entertain.  
9 PLAINTIFFS also incorporate by this reference all of their factual and legal assertions, arguments  
10 made, exhibits presented, and Motions and Oppositions made to and filed before this Court from  
11 the inception through the filing of this Opposition.

12  
13 DATED this 17 day of December, 2018.

14  
15 VANNAH & VANNAH

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

1 see that simple math shows that 40% of the Viking settlement of \$6 million is \$2.4 million, an  
2 amount that is eerily similar to what PLAINTIFFS had already paid SIMON in fees, plus the  
3 amount of his Amended Lien.

4 If that desire weren't so, why would SIMON not have just sent PLAINTIFFS another  
5 invoice for fees and costs as PLAINTIFFS undisputedly requested via email on November 15,  
6 2018, as opposed to demanding a percentage of the Viking settlement two days later? And why  
7 would SIMON then demand \$1,100,000 ten days after that? And then demand \$1,500,000  
8 several days after that? And why would SIMON then serve the Amended Lien for \$1,977,843.80  
9 the following month? If SIMON thought keeping concurrent time sheets was a miserable chore,  
10 try keeping track of the moving target that has been his demands for more in fees.

11  
12 Now that he lost his bid for a contingency fee in his Motions to Adjudicate Lien and to  
13 Reconsider/Clarify, SIMON impermissibly seeks to shake down PLAINTIFFS for more in fees  
14 and costs when: 1.) The fees and costs SIMON is now seeking were incurred litigating the  
15 Motion to Adjudicate Lien, not SIMON'S collateral Motion to Dismiss on NRCP 12(b)(5)  
16 grounds; 2.) An award of additional attorney's fees and costs to seek and obtain an award of  
17 attorneys fees under NRS 18.015 isn't contemplated under that statute; 3.) SIMON was not and is  
18 not a prevailing party; and, 4.) PLAINTIFFS' complaints were filed and maintained in good faith.

19  
20 For all of the reasons that this Court has entertained thus far in properly managing and  
21 containing this matter, PLAINTIFFS respectfully request that SIMON'S latest Motion for Fees  
22 and Costs be denied in its entirety.

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II.

ARGUMENTS

A. SIMON'S FEES AND COSTS IN HIS MOTION WERE ALL INCURRED IN THE EVIDENTIARY HEARING TO ADJUDICATE HIS LIEN IN THE GROSSLY INFLATED AMOUNT OF \$1,977,843.80.

It's difficult to choose an appropriate word to describe SIMON'S latest Motion. Remarkable is a tame selection; sanctionable is yet another (though PLAINTIFFS don't seek sanctions at this time—just closure). Why? SIMON has caused to be filed under NRCP 11(b)(1) & (3) a Motion that asks for fees under the pretense of being incurred arguing a Motion to Dismiss when the overwhelming evidence supports a finding that they were actually incurred litigating his Motion to Adjudicate Lien. SIMON knows this to be true, though he still caused this Motion to be filed. Under NRCP 11(b)(1), that's an improper purpose designed to increase PLAINTIFFS fees and costs. Under NRCP 11(b)(3), it's a Motion that lacks factual and evidentiary support.

How do we know this for sure? First, this is all about SIMON'S Motion to Adjudicate. At the hearing on February 20, 2018, James R. Christensen, Esq., told this Court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit 1, at p. 13:5-6.) He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute...the Court can take evidence...or set an evidentiary hearing...This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing...Let's get this done...But there's nothing to stop that lien adjudication at this time." (Id., at 14:8-12.) This Court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018.

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



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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**B. AN AWARD OF ADDITIONAL ATTORNEYS FEES AND COSTS TO SEEK OR OBTAIN AN AWARD OF FEES AND COSTS UNDER NRS 18.015 ISN'T CONTEMPLATED IN THE STATUTE.**

If there were a basis or authority for SIMON to request or obtain fees and costs in order to obtain fees and costs pursuant to NRS 18.015, SIMON would have cited it over and over. But, there isn't so he didn't. Rather, to quote SIMON'S counsel, who was addressing the issue of discovery in general in lien adjudication proceedings: "It's not contemplated in the statute. If you have a problem with the statute, appear in front of the legislature and argue against it." (See Exhibit 1, at p. 20:21-22.) Getting fees for pursuing fees under NRS 18.015 isn't contemplated in the statute, either. It's not there. If SIMON has a problem with the fact that he can't get fees and costs to obtain fees and costs per NRS 18.015, he can take it up with the folks in Carson City. However, it's inappropriate to ask for or receive them in these proceedings. As a result, SIMON'S Motion must be denied.

**C. SIMON WAS NOT AND IS NOT THE PREVAILING PARTY OF ANYTHING OF MERIT.**

As argued above, NRS 18.015 does not contemplate an award of fees and costs in a lien adjudication proceeding filed to obtain fees and costs. Thus, awarding fees and cost under that statute would be improper. Furthermore, NRS 18.010 states that a prevailing party cannot recover fees if that party has recovered more than \$20,000. Even if one could assume that SIMON is a prevailing party, which he is not, SIMON has sought additional fees from PLAINTIFFS ranging from a low of \$692,120 to a high of \$1,977,843.80, amounts that are all well north of \$20,000.

In several instances, SIMON presented letters containing different amounts demanded from PLAINTIFFS in fees. In another, he presented a fee proposal. In yet another instance, he served attorneys liens, one without an amount for fees, another with \$1,977,843.80 affixed. In a final instance, SIMON served an improper Offer of Judgment on August 31, 2018, for

1 \$1,500,000, even though SIMON wasn't a party in the (A-16-738444-C) matter (and the only  
2 matter) in which the attorney's liens were (or could have been) served. Yet, at the end of the  
3 proverbial five days, SIMON was awarded \$484,982.50.

4 As also argued above, the lien adjudication proceedings were the creation of SIMON'S  
5 desire for far more in fees than either the facts or the law allowed. He then refused and continues  
6 to refuse to release PLAINTIFFS settlement proceeds to them, despite knowing that the best he  
7 could hope to achieve in extra fees is the amount contained in his super bill = \$692,120. For  
8 SIMON to assert or maintain that PLAINTIFFS were doing anything but following their rights in  
9 these proceedings under these facts is, again, remarkable for shortsightedness, together with just  
10 plain wrong.

11  
12 PLAINTIFFS asked SIMON for a bill for his outstanding fees and costs on November 15,  
13 2018, that they knew they owed. SIMON ignored that request and instead held firm at demanding  
14 between \$1,500,000 (the defective Offer of Judgment) and \$1,977,843.80 (the Amended  
15 Attorney's Lien) in extra fees. Receiving \$484,982.50, while a win in most circles, cannot be  
16 deemed as such in the manner in which SIMON played this game and kept the score.

17  
18 Again, PLAINTIFFS wanted none of this. They are the only victims here and they are the  
19 ones who want all of this to end. Through the present date, SIMON has refused and continues to  
20 refuse to do so. For these reasons, PLAINTIFFS request that SIMON'S Motion be denied.

21 **D. PLAINTIFFS' COMPLAINTS AGAINST SIMON WERE FILED AND**  
22 **MAINTAINED IN GOOD FAITH.**

23  
24 It's one thing for this Court to agree with SIMON'S iteration of the story that comprises  
25 PLAINTIFFS' Amended Complaint and enter an order of dismissal on NRCP 12(b)(5) grounds.  
26 (Of note, this Court previously denied SIMON'S Special Motion to Dismiss on Anti-SLAPP  
27 grounds.) While PLAINTIFFS respectfully disagree that dismissal of their Amended Complaint  
28 was justified on these facts and according to the governing law, considering that the law provides

1 a very steep hurdle to overcome to reach the harsh and final decision of dismissal without  
2 discovery, etc., and that a jury could have just as easily agreed with PLAINTIFFS' version of the  
3 facts as set forth in their Amended Complaint, as opposed to those of their attorney, PLAINTIFFS  
4 are still willing to put an end to all of this and abide by the Court's Decision and Order on Motion  
5 to Adjudicate Lien.

6 Yet, it's another thing entirely for SIMON to misrepresent the content of the Decision and  
7 Order of Dismissal on NRCP 12(b)(5) grounds as one based on a frivolous, vexatious, or a  
8 pleading that was not filed or maintained in good faith. Or that fees and costs are somehow  
9 justified on based on NRS 18.010, NRS 7.085, or any other legal ground. PLAINTIFFS  
10 strenuously object to any such characterization or representation, as it is unfounded in fact and  
11 law. More importantly, there isn't any language in the Decisions and Orders of this Court  
12 concerning the dismissal on 12(b)(5) or Anti-SLAPP grounds that supports any of SIMON'S  
13 assertions in his Motion. Why would he continue to take positions that he knows are unsupported  
14 and false?  
15

16 For what they hope is the last time they have to state this in court filings, PLAINTIFFS  
17 want this to end. They are ready, willing, and able to accept this Court's Decision and Order  
18 Adjudicating Lien, pay \$484,982.50 to SIMON, and move on. Please continue to encourage  
19 SIMON to do so as well by denying his baseless Motion for Fees and Costs.  
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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:

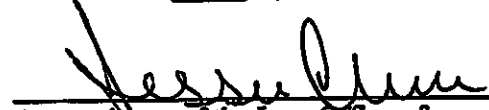
Electronically:

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



JAMES R. CHRISTENSEN, ESQ.  
Nevada Bar No. 003861  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 272-0406  
(702) 272-0415 fax  
jim@jchristensenlaw.com  
*Attorney for Daniel S. Simon*

Electronically Filed  
Dec 26 2018 10:53 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC  
Plaintiffs,

Case No.: A-16-738444-C  
Dept. No.: 10

vs.

**NOTICE OF CROSS APPEAL**

LANGE PLUMBING, LLC; THE  
VIKING CORPORATION, a Michigan  
corporation; SUPPLY NETWORK,  
INC., dba VIKING SUPPLYNET, a  
Michigan Corporation; and DOES 1  
through 5 and ROE entities 6 through 10;

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

CONSOLIDATED WITH

Case No.: A-18-767242-C  
Dept. No.: 10

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW  
OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION;  
DOES 1 through 10; and, ROE entities 1  
through 10;

Defendants.

1 NOTICE IS HEREBY GIVEN that Defendants/Appellants DANIEL S.  
2 SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL  
3 CORPORATION, hereby appeal to the Supreme Court of Nevada from the  
4 Decision and Order on Special Motion to Dismiss Anti-Slapp, which was entered  
5 on October 11, 2018; and, appeals to the Supreme Court of Nevada from the  
6 Decision and Order on Motion to Adjudicate Lien, which was entered on  
7 November 19, 2018.  
8  
9

10 DATED this 17<sup>th</sup> day of December 2018.  
11

12 /s/ James R. Christensen  
13 JAMES CHRISTENSEN, ESQ.  
14 Nevada Bar No. 003861  
15 601 S. 6<sup>th</sup> Street  
16 Las Vegas, NV 89101  
17 (702) 272-0406  
18 (702) 272-0415  
19 jim@jchristensenlaw.com  
20 Attorney for Daniel S. Simon  
21

22 **CERTIFICATE OF SERVICE**

23 I CERTIFY SERVICE of the foregoing NOTICE OF CROSS APPEAL  
24 was made by electronic service (via Odyssey) this 17<sup>th</sup> day of December, 2018, to  
25 all parties currently shown on the Court's E-Service List.  
26

27 /s/ Dawn Christensen  
28 an employee of  
JAMES R. CHRISTENSEN





1 JOHN B. GREENE, ESQ.  
Nevada Bar No. 004279  
2 ROBERT D. VANNAH, ESQ.  
Nevada Bar No. 002503  
3 VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor  
4 Las Vegas, Nevada 89101  
jgreene@vannahlaw.com  
5 Telephone: (702) 369-4161  
6 Facsimile: (702) 369-0104  
Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 --o0o--

10 **EDGEWORTH FAMILY TRUST; AMERICAN**  
11 **GRATING, LLC,**

12 **Plaintiffs,**

13 **vs.**

14 **LANGE PLUMBING, LLC; THE VIKING**  
15 **CORPORATION, a Michigan corporation;**  
16 **SUPPLY NETWORK, INC., dba VIKING**  
17 **SUPPLYNET, a Michigan corporation; and**  
18 **DOES I through V and ROE CORPORATIONS**  
19 **VI through X, inclusive,**

20 **Defendants.**

21 **EDGEWORTH FAMILY TRUST; AMERICAN**  
22 **GRATING, LLC,**

23 **Plaintiffs,**

24 **vs.**

25 **DANIEL S. SIMON; THE LAW OFFICE OF**  
26 **DANIEL S. SIMON, A PROFESSIONAL**  
27 **CORPORATION; DOES I through X, inclusive,**  
28 **and ROE CORPORATIONS I through X,**  
**inclusive,**

**Defendants.**

**CASE NO.: A-16-738444-C**  
**DEPT. NO.: X**

**NOTICE OF ENTRY OF ORDERS**

**CASE NO.: A-18-767242-C**  
**DEPT. NO.: XXIX**

**VANNAH & VANNAH**  
400 S. Seventh Street, 4<sup>th</sup> Floor - Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104

PLEASE TAKE NOTICE that the following orders were entered on the dates listed below and attached as indicated:

1. November 19, 2018 Decision and Order Regarding Motion to Adjudicate Lien attached hereto (Exhibit 1)
2. November 19, 2018 Decision and Order Regarding Motion to Dismiss NRCP 12(B)(5) attached hereto as (Exhibit 2)

DATED this 27 day of December, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that the following parties are to be served as follows:

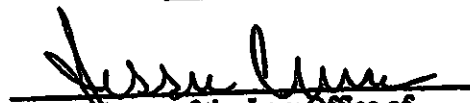
**Electronically:**

James R. Christensen, Esq.  
**JAMES R. CHRISTENSEN, PC**  
601 S. Third Street  
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.  
**CHRISTIANSSEN LAW OFFICES**  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

**Traditional Manner:**  
*None*

DATED this 27 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

# **Exhibit 1**

# **Exhibit 1**

1 **ORD**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**  
5

6 **EDGEWORTH FAMILY TRUST; and**  
7 **AMERICAN GRATING, LLC,**

8 **Plaintiffs,**

9 **vs.**

**CASE NO.: A-18-767242-C**  
**DEPT NO.: XXVI**

10 **LANGE PLUMBING, LLC; THE VIKING**  
11 **CORPORATION, a Michigan Corporation;**  
12 **SUPPLY NETWORK, INC., dba VIKING**  
13 **SUPPLYNET, a Michigan Corporation; and**  
14 **DOES 1 through 5; and, ROE entities 6 through**  
15 **10;**

16 **Defendants.**

**Consolidated with**

**CASE NO.: A-16-738444-C**  
**DEPT NO.: X**

17 **EDGEWORTH FAMILY TRUST; and**  
18 **AMERICAN GRATING, LLC,**

19 **Plaintiffs,**

20 **vs.**

21 **DECISION AND ORDER ON MOTION**  
22 **TO ADJUDICATE LIEN**

23 **DANIEL S. SIMON; THE LAW OFFICE OF**  
24 **DANIEL S. SIMON, a Professional Corporation**  
25 **d/b/a SIMON LAW; DOES 1 through 10; and,**  
26 **ROE entities 1 through 10;**

27 **Defendants.**

28 **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 We never really had a structured discussion about how this might be done.  
11 I am more that happy to keep paying hourly but if we are going for punitive  
12 we should probably explore a hybrid of hourly on the claim and then some  
13 other structure that incents both of us to win an go after the appeal that these  
14 scumbags will file etc.  
15 Obviously that could not have been doen earlier snce who would have thought  
16 this case would meet the hurdle of punitives at the start.  
17 I could also swing hourly for the whole case (unless I am off what this is  
18 going to cost). I would likely borrow another \$450K from Margaret in 250  
19 and 200 increments and then either I could use one of the house sales for cash  
20 or if things get really bad, I still have a couple million in bitcoin I could sell.  
21 I doubt we will get Kinsale to settle for enough to really finance this since I  
22 would have to pay the first \$750,000 or so back to Colin and Margaret and  
23 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

24 (Def. Exhibit 27).

25 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first  
26 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.  
27 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.  
28 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.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

19 12. Between June 2016 and December 2017, there was a tremendous amount of work  
20 done in the litigation of this case. There were several motions and oppositions filed, several  
21 depositions taken, and several hearings held in the case.

22 13. On the evening of November 15, 2017, the Edgeworth's received the first settlement  
23 offer for their claims against the Viking Corporation ("Viking"). However, the claims were not  
24 settled until on or about December 1, 2017.

25 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the  
26

27 <sup>1</sup> \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and  
28 \$2,887.50 for the services of Benjamin Miller.

1 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a  
2 mediation a couple weeks ago and then did not leave with me. Could someone in your office send  
3 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

4 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to  
5 come to his office to discuss the litigation.

6 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,  
7 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's  
8 Exhibit 4).

9 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &  
10 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all  
11 communications with Mr. Simon.

12 18. On the morning of November 30, 2017, Simon received a letter advising him that the  
13 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,  
14 et.al. The letter read as follows:

15 "Please let this letter serve to advise you that I've retained Robert D. Vannah,  
16 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation  
17 with the Viking entities, et.al. I'm instructing you to cooperate with them in  
18 every regard concerning the litigation and any settlement. I'm also instructing  
19 you to give them complete access to the file and allow them to review  
20 whatever documents they request to review. Finally, I direct you to allow  
them to participate without limitation in any proceeding concerning our case,  
whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the  
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the  
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the  
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the  
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and  
28



1 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

2 21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly  
3 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset  
4 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the  
5 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee  
6 due to the Law Office of Danny Simon.

7 22. The parties agree that an express written contract was never formed.

8 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against  
9 Lange Plumbing LLC for \$100,000.

10 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in  
11 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.  
12 Simon, a Professional Corporation, case number A-18-767242-C.

13 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate  
14 Lien with an attached invoice for legal services rendered. The amount of the invoice was  
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

### 16 17 **CONCLUSION OF LAW**

#### 18 **The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The** 19 **Court**

20 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the  
21 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-  
22 738444-C under NRS 18.015.

23 NRS 18.015(1)(a) states:

- 24 1. An attorney at law shall have a lien:  
25 (a) Upon any claim, demand or cause of action, including any claim for unliquidated  
26 damages, which has been placed in the attorney's hands by a client for suit or  
collection, or upon which a suit or other action has been instituted.

27 Nev. Rev. Stat. 18.015.

1 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,  
2 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS  
3 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was  
4 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,  
5 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &  
6 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien  
7 is enforceable in form.

8 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.  
9 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at  
10 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's  
11 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication  
12 under NRS 18.015, thus the Court must adjudicate the lien.

#### 13 *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. Eckenweiller, 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 an go after the appeal that these  
5 scumbags will file etc. Obviously that could not have been done earlier since  
6 who would have thought this case would meet the hurdle of punitives at the  
7 start. I could also swing hourly for the whole case (unless I am off what this  
8 is going to cost). I would likely borrow another \$450K from Margaret in 250  
9 and 200 increments and then either I could use one of the house sales for cash  
10 or if things get really bad, I still have a couple million in bitcoin I could sell. I  
11 doubt we will get Kinsale to settle for enough to really finance this since I  
12 would have to pay the first \$750,000 or so back to Colin and Margaret and  
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

14 (Def. Exhibit 27).

15 It is undisputed that when the flood issue arose, all parties were under the impression that Simon  
16 would be helping out the Edgeworths, as a favor.

17 The Court finds that an implied fee agreement was formed between the parties on December  
18 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,  
19 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was  
20 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the  
21 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger  
22 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and  
23 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied  
24 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour  
25 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

### 26 *Constructive Discharge*

27 Constructive discharge of an attorney may occur under several circumstances, such as:

- 28 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- Refusal to pay an attorney creates constructive discharge. See e.g., Christian v. All Persons Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).

- Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast Dist. #26, 2015 Conn. Super. LEXIS 3146, \*13-14, (Dec. 14, 2015). See also Maples v. Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge. McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated, has not withdrawn, and is still technically their attorney of record; there cannot be a termination. The Court disagrees.

On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and signed a retainer agreement. The retainer agreement was for representation on the Viking settlement agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all things without a compromise. Id. The retainer agreement specifically states:

Client retains Attorneys to represent him as his Attorneys regarding Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING ENTITIES and all damages including, but not limited to, all claims in this matter and empowers them to do all things to effect a compromise in said matter, or to institute such legal action as may be advisable in their judgment, and agrees to pay them for their services, on the following conditions:

- a) ...
- b) ...
- c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000 from the Viking entities and any settlement amount agreed to be paid by the Lange entity. Client also agrees that attorneys will work to reach an agreement amongst the parties to resolve all claims in the Lange and Viking litigation.

Id.

This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr. Simon had already begun negotiating the terms of the settlement agreement with Viking during the week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put

1 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.  
2 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly  
3 identified as the firm that solely advised the clients about the settlement. The actual language in the  
4 settlement agreement, for the Viking claims, states:

5  
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.  
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the  
8 effect of this AGREEMENT and their release of any and all claims, known or  
9 unknown and, based upon that explanation and their independent judgment by  
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the  
11 legal significance and the consequences of the claims being released by this  
12 Agreement. PLAINTIFFS further represent that they understand and  
13 acknowledge the legal significance and consequences of a release of unknown  
14 claims against the SETTLING PARTIES set forth in, or arising from, the  
15 INCIDENT and hereby assume full responsibility for any injuries, damages,  
16 losses or liabilities that hereafter may occur with respect to the matters  
17 released by this Agreement.

18 Id.

19 Also, Simon was not present for the signing of these settlement documents and never explained any  
20 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and  
21 Vannah and received them back with the signatures of the Edgeworths.

22 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.  
23 Though there were email communications between the Edgeworths and Simon, they did not verbally  
24 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,  
25 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth  
26 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need  
27 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim  
28 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively  
working on this claim, but he had no communication with the Edgeworths and was not advising  
them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert  
Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law  
Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon

1 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the  
2 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.  
3 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange  
4 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.  
5 Simon never signed off on any of the releases for the Lange settlement.

6 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah  
7 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and  
8 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.  
9 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,  
10 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,  
11 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a  
12 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an  
13 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that  
14 doesn't seem in his best interests." (Def. Exhibit 53).

15 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-  
16 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the  
17 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018  
18 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that  
19 was attached to the letter), and that Simon continued to work on the case after the November 29,  
20 2017 date. The court further recognizes that it is always a client's decision of whether or not to  
21 accept a settlement offer. However the issue is constructive discharge and nothing about the fact  
22 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively  
23 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys  
24 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating  
25 with him, making it impossible to advise them on pending legal issues, such as the settlements with  
26 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

27 //

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 2 PART 8 of 9**

AA000646

Docket 77678 Document 2019-33424

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479



**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCp 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 Simon from effectively representing the clients. The Court finds that Danny Simon was  
2 constructively discharged by the Edgeworths on November 29, 2017.

3  
4 **Adjudication of the Lien and Determination of the Law Office Fee**

5 NRS 18.015 states:

6 1. An attorney at law shall have a lien:

7 (a) Upon any claim, demand or cause of action, including any claim for  
8 unliquidated damages, which has been placed in the attorney's hands by a  
9 client for suit or collection, or upon which a suit or other action has been  
10 instituted.

11 (b) In any civil action, upon any file or other property properly left in the  
12 possession of the attorney by a client.

13 2. A lien pursuant to subsection 1 is for the amount of any fee which has  
14 been agreed upon by the attorney and client. In the absence of an agreement,  
15 the lien is for a reasonable fee for the services which the attorney has rendered  
16 for the client.

17 3. An attorney perfects a lien described in subsection 1 by serving notice  
18 in writing, in person or by certified mail, return receipt requested, upon his or  
19 her client and, if applicable, upon the party against whom the client has a  
20 cause of action, claiming the lien and stating the amount of the lien.

21 4. A lien pursuant to:

22 (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or  
23 decree entered and to any money or property which is recovered on account of  
24 the suit or other action; and

25 (b) Paragraph (b) of subsection 1 attaches to any file or other property  
26 properly left in the possession of the attorney by his or her client, including,  
27 without limitation, copies of the attorney's file if the original documents  
28 received from the client have been returned to the client, and authorizes the  
attorney to retain any such file or property until such time as an adjudication  
is made pursuant to subsection 6, from the time of service of the notices  
required by this section.

5. A lien pursuant to paragraph (b) of subsection 1 must not be  
construed as inconsistent with the attorney's professional responsibilities to  
the client.

6. On motion filed by an attorney having a lien under this section, the  
attorney's client or any party who has been served with notice of the lien, the  
court shall, after 5 days' notice to all interested parties, adjudicate the rights of  
the attorney, client or other parties and enforce the lien.

7. Collection of attorney's fees by a lien under this section may be  
utilized with, after or independently of any other method of collection.

1 Nev. Rev. Stat. 18.015.

2 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms  
3 are applied. Here, there was no express contract for the fee amount, however there was an implied  
4 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his  
5 services, and \$275 per hour for the services of his associates. This contract was in effect until  
6 November 29, 2017, when he was constructively discharged from representing the Edgeworths.  
7 After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is  
8 due a reasonable fee- that is, quantum meruit.

9  
10 *Implied Contract*

11 On December 2, 2016, an implied contract for fees was created. The implied fee was \$550  
12 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was  
13 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was  
14 created when invoices were sent to the Edgeworths, and they paid the invoices.

15 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's  
16 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were  
17 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as  
18 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is  
19 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that  
20 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the  
21 bills to give credibility to his actual damages, above his property damage loss. However, as the  
22 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund  
23 the money, or memorialize this or any understanding in writing.

24 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP  
25 16.1 disclosures and computation of damages; and these amounts include the four invoices that were  
26 paid in full and there was never any indication given that anything less than all the fees had been  
27 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees

1 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of  
2 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the  
3 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must  
4 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the  
5 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law  
6 Office retained the payments, indicating an implied contract was formed between the parties. The  
7 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the  
8 date they were constructively discharged, November 29, 2017.

9  
10 *Amount of Fees Owed Under Implied Contract*

11 The Edgeworths were billed, and paid for services through September 19, 2017. There is  
12 some testimony that an invoice was requested for services after that date, but there is no evidence  
13 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for  
14 fees was formed, the Court must now determine what amount of fees and costs are owed from  
15 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the  
16 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted  
17 billings, the attached lien, and all other evidence provided regarding the services provided during  
18 this time.

19 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing  
20 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back  
21 and attempted to create a bill for work that had been done over a year before. She testified that they  
22 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every  
23 email that was read and responded to. She testified that the dates were not exact, they just used the  
24 dates for which the documents were filed, and not necessarily the dates in which the work was  
25 performed. Further, there are billed items included in the "super bill" that was not previously billed  
26 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice  
27 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing

1 indicated that there were no phone calls included in the billings that were submitted to the  
2 Edgeworths.

3 This attempt to recreate billing and supplement/increase previously billed work makes it  
4 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed  
5 between the actual work and the billing. The court reviewed the billings of the "super bill" in  
6 comparison to the previous bills and determined that it was necessary to discount the items that had  
7 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,  
8 downloading, and saving documents because the Court is uncertain of the accuracy of the "super  
9 bill."

10 Simon argues that he has no billing software in his office and that he has never billed a client  
11 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,  
12 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;  
13 however, as the Court previously found, when the Edgeworths paid the invoices it was not made  
14 clear to them that the billings were only for the Lange contract and that they did not need to be paid.  
15 Also, there was no indication on the invoices that the work was only for the Lange claims, and not  
16 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without  
17 emails or calls, understanding that those items may be billed separately; but again the evidence does  
18 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.  
19 This argument does not persuade the court of the accuracy of the "super bill".

20 The amount of attorney's fees and costs for the period beginning in June of 2016 to  
21 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016  
22 which appears to indicate that it began with the initial meeting with the client, leading the court to  
23 determine that this is the beginning of the relationship. This invoice also states it is for attorney's  
24 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This  
25 amount has already been paid by the Edgeworths on December 16, 2016.<sup>2</sup>

---

26  
27 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.

The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This amount has already been paid by the Edgeworths on May 3, 2017.

The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70. This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been paid by the Edgeworths on September 25, 2017.

From September 19, 2017 to November 29, 2017, the Court must determine the amount of attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

**The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.**

<sup>3</sup> There are no billings from July 28 to July 30, 2017.

<sup>4</sup> There are no billings for October 8<sup>th</sup>, October 28-29, and November 5<sup>th</sup>.

<sup>4</sup> There are no billings for October 8<sup>th</sup>, October 28-29, and November 5<sup>th</sup>.  
<sup>5</sup> There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.

<sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.



1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid  
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period  
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

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. Gollightly 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*); *cltting, 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". Albion v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires  
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530  
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee  
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the  
7 reasonableness of the fee under the Brunzell factors. Argentina Consolidated Mining Co., v. Jolley  
8 Urza, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that  
9 "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors  
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

11 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be  
12 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the  
13 Court notes that the majority of the work in this case was complete before the date of the  
14 constructive discharge, and the Court is applying the Brunzell factors for the period commencing  
15 after the constructive discharge.

16 In considering the Brunzell factors, the Court looks at all of the evidence presented in the  
17 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

18 *1. Quality of the Advocate*

19 Brunzell expands on the "qualities of the advocate" factor and mentions such items as  
20 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for  
21 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig  
22 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.  
23 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.  
24 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's  
25 work product and results are exceptional.

26 *2. The Character of the Work to be Done*

27 The character of the work done in this case is complex. There were multiple parties,  
28

1 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the  
2 gamut from product liability to negligence. The many issues involved manufacturing, engineering,  
3 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp  
4 testified that the quality and quantity of the work was exceptional for a products liability case against  
5 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the  
6 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the  
7 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a  
8 substantial factor in achieving the exceptional results.

9 **3. The Work Actually Performed**

10 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,  
11 numerous court appearances, and deposition; his office uncovered several other activations, that  
12 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved  
13 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the  
14 other activations being uncovered and the result that was achieved in this case. Since Mr.  
15 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions  
16 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by  
17 the Law Office of Daniel Simon led to the ultimate result in this case.

18 **4. The Result Obtained**

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling  
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange  
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle  
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the  
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is  
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from  
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.  
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage  
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they

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;

- 1 (3) Whether the client is liable for expenses regardless of outcome;  
2 (4) That, in the event of a loss, the client may be liable for the  
3 opposing party's attorney fees, and will be liable for the opposing party's  
4 costs as required by law; and  
5 (5) That a suit brought solely to harass or to coerce a settlement may  
6 result in liability for malicious prosecution or abuse of process.  
7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client  
8 with a written statement stating the outcome of the matter and, if there is a  
9 recovery, showing the remittance to the client and the method of its  
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for  
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely  
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell  
15 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact  
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be  
17 responsible were never communicated to the client, within a reasonable time after commencing the  
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a  
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has  
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court  
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,  
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

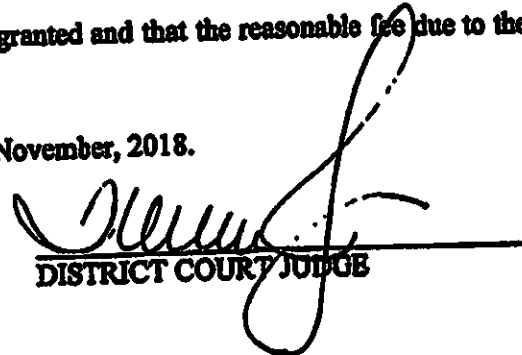
24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the  
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further  
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the  
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The  
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.  
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied  
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until  
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,  
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and  
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November  
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is  
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being  
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9  
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien  
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law  
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.


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16 DISTRICT COURT JUDGE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.

  
\_\_\_\_\_  
Tess Driver  
Judicial Executive Assistant  
Department 10

# **Exhibit 2**

# **Exhibit 2**



1 **ORD**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**  
5

6 **EDGEWORTH FAMILY TRUST; and**  
7 **AMERICAN GRATING, LLC,**

8 **Plaintiffs,**

9 **vs.**

10 **LANGE PLUMBING, LLC; THE VIKING**  
11 **CORPORATION, a Michigan Corporation;**  
12 **SUPPLY NETWORK, INC., dba VIKING**  
13 **SUPPLYNET, a Michigan Corporation; and**  
14 **DOES 1 through 5; and, ROE entities 6 through**  
15 **10;**

16 **Defendants.**

17 **EDGEWORTH FAMILY TRUST; and**  
18 **AMERICAN GRATING, LLC,**

19 **Plaintiffs,**

20 **vs.**

21 **DANIEL S. SIMON; THE LAW OFFICE OF**  
22 **DANIEL S. SIMON, a Professional Corporation**  
23 **d/b/a SIMON LAW; DOES 1 through 10; and,**  
24 **ROE entities 1 through 10;**

25 **Defendants.**

**CASE NO.: A-18-767242-C**  
**DEPT NO.: XXVI**

**Consolidated with**

**CASE NO.: A-16-738444-C**  
**DEPT NO.: X**

**DECISION AND ORDER ON MOTION**  
**TO DISMISS NRCP 12(B)(5)**

26 **AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

27 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on  
28 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable  
Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon  
d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in  
person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

1 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or  
2 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their  
3 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John  
4 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully  
5 advised of the matters herein, the **COURT FINDS:**

6  
7 **FINDINGS OF FACT**

8 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,  
9 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and  
10 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on  
11 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation  
12 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.  
13 Simon and his wife were close family friends with Brian and Angela Edgeworth.

14 2. The case involved a complex products liability issue.

15 3. On April 10, 2016, a house the Edgeworths were building as a speculation home  
16 suffered a flood. The house was still under construction and the flood caused a delay. The  
17 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and  
18 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and  
19 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire  
20 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,  
21 Viking, et al., also denied any wrongdoing.

22 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send  
23 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties  
24 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not  
25 resolve. Since the matter was not resolved, a lawsuit had to be filed.

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and  
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,  
28

1 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately  
2 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")  
3 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

4 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet  
5 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and  
6 had some discussion about payments and financials. No express fee agreement was reached during  
7 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."  
8 It reads as follows:

9 We never really had a structured discussion about how this might be done.  
10 I am more that happy to keep paying hourly but if we are going for punitive  
11 we should probably explore a hybrid of hourly on the claim and then some  
12 other structure that incents both of us to win an go after the appeal that these  
13 scumbags will file etc.

14 Obviously that could not have been doen earlier snce who would have though  
15 this case would meet the hurdle of punitives at the start.

16 I could also swing hourly for the whole case (unless I am off what this is  
17 going to cost). I would likely borrow another \$450K from Margaret in 250  
18 and 200 increments and then either I could use one of the house sales for cash  
19 or if things get really bad, I still have a couple million in bitcoin I could sell.  
20 I doubt we will get Kinsale to settle for enough to really finance this since I  
21 would have to pay the first \$750,000 or so back to Colin and Margaret and  
22 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

23 (Def. Exhibit 27).

24 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first  
25 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.  
26 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.  
27 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per  
28 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and  
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per  
hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

1 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the  
2 bills indicated an hourly rate of \$550.00 per hour.

3 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and  
4 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services  
5 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of  
6 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. *Id.* This invoice was  
7 paid by the Edgeworths on August 16, 2017.

8 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount  
9 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate  
10 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per  
11 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for  
12 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September  
13 25, 2017.

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
15 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
16 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
17 costs to Simon. They made Simon aware of this fact.

18 12. Between June 2016 and December 2017, there was a tremendous amount of work  
19 done in the litigation of this case. There were several motions and oppositions filed, several  
20 depositions taken, and several hearings held in the case.

21 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against  
22 the Viking Corporation ("Viking").

23 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the  
24 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a  
25 mediation a couple weeks ago and then did not leave with me. Could someone in your office send  
26

27 <sup>1</sup> \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and  
28 \$2,887.50 for the services of Benjamin Miller.

1 Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

2 15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to  
3 come to his office to discuss the litigation.

4 16. On November 27, 2017, Simon sent a letter with an attached retainer agreement,  
5 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's  
6 Exhibit 4).

7 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &  
8 Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all  
9 communications with Mr. Simon.

10 18. On the morning of November 30, 2017, Simon received a letter advising him that the  
11 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities,  
12 et.al. The letter read as follows:

13 "Please let this letter serve to advise you that I've retained Robert D. Vannah,  
14 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation  
15 with the Viking entities, et.al. I'm instructing you to cooperate with them in  
16 every regard concerning the litigation and any settlement. I'm also instructing  
17 you to give them complete access to the file and allow them to review  
18 whatever documents they request to review. Finally, I direct you to allow  
19 them to participate without limitation in any proceeding concerning our case,  
20 whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

22 19. On the same morning, Simon received, through the Vannah Law Firm, the  
23 Edgeworth's consent to settle their claims against Lange Plumbing LLC for \$25,000.

24 20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the  
25 reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the  
26 Law Office filed an amended attorney's lien for the sum of \$2,345,450, less payments made in the  
27 sum of \$367,606.25, for a net lien in the sum of \$1,977,843.80. This lien includes court costs and  
28 out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of \$76,535.93.

21. Mr. Edgeworth alleges that the fee agreement with Simon was only for an hourly

1 express agreement of \$550 an hour; and that the agreement for \$550 an hour was made at the outset  
2 of the case. Mr. Simon alleges that he worked on the case always believing he would receive the  
3 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee  
4 due to the Law Office of Danny Simon.

5 22. The parties agree that an express written contract was never formed.

6 23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against  
7 Lange Plumbing LLC for \$100,000.

8 24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in  
9 Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S.  
10 Simon, a Professional Corporation, case number A-18-767242-C.

11 25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate  
12 Lien with an attached invoice for legal services rendered. The amount of the invoice was  
13 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

#### 14 CONCLUSION OF LAW

##### 15 *Breach of Contract*

16  
17 The First Claim for Relief of the Amended Complaint alleges breach of an express oral  
18 contract to pay the law office \$550 an hour for the work of Mr. Simon. The Amended Complaint  
19 alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the  
20 Court finds that there was no express contract formed, and only an implied contract. As such, a  
21 claim for breach of contract does not exist and must be dismissed as a matter of law.

##### 22 *Declaratory Relief*

23  
24 The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract  
25 existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of  
26 the settlement proceeds. The Court finds that there was no express agreement for compensation, so  
27 there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the

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

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, INDIVIDUALLY, AND  
AS HUSBAND AND WIFE; ROBERT  
DARBY VANNAH, ESQ.; JOHN  
BUCHANAN GREENE, ESQ.; AND  
ROBERT D. VANNAH, CHTD, d/b/a  
VANNAH & VANNAH, and DOES I  
through V and ROE CORPORATIONS VI  
through X, inclusive,  
Appellants,  
v.  
LAW OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION;  
DANIEL S. SIMON,  
Respondents.

Dist. Ct. Case No. A-19-807433-C

VOLUME IV

**BATES NO. AA000674 - 923**

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Docket 82058 Document 2021-16698

***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
**CHRONOLOGICAL INDEX**

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-12-27	Notice of Entry of Orders and Orders re Mot. to Adjudicate Lien and MTD NRC 12(b)(5) in <i>Simon I</i>	I	AA000001 – 37
2019-12-23	Complaint	I	AA000038 – 56
2020-04-06	Edgeworth Defs. Opp'n to Pls.' "Emergency" Mot. to Preserve ESI	I	AA000057 – 64
2020-04-06	Vannah Defs. Opp'n to Pls.' Erroneously Labeled Emergency Mot. to Preserve Evidence	I – IV	AA000065 – 764
2020-04-30	Vannah Defs. Mot. to Dismiss Pls.' Complaint and Mot. in the Alternative for a More Definite Statement	IV	AA000765 – 818
2020-05-14	Edgeworth Defs. Mot. to Dismiss Pls.' Complaint	IV	AA000819 – 827
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-05-18	Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Mot. by to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP	V	AA000924 – 937
2020-05-18	American Grating, LLC's Special Mot. to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP and for Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	V	AA000938 – 983
2020-05-20	American Grating, LLC's Joinder to Defs. Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	V	AA000984 – 986

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
	American Grating, LLC's Joinder to Special Mot. of Vannah Defs. to Dismiss Pls.' Complaint: Anti-SLAPP	V	AA000987 – 989
2020-05-20	Edgeworth Family Trust, and Brian and Angela Edgeworth's Joinder to American Grating, LLC's. and Vannah Defs.' Special Mot. s. to Dismiss Pls.' Complaint	V	AA000990 – 992
2020-05-20	Vannah Defs.' Joinder to Edgeworth Defs.' Special Mot. to Dismiss Pls.' Complaint; Anti-SLAPP		AA000993 – 994
2020-05-21	Amended Complaint	V	AA000995 – 1022
2020-05-26	Pls.' Opp'n to Vannah Defs.' Mot. To Dismiss Pls.' Complaint, And Mot. in the Alternative for a More Definite Statement and Leave to File Mot. in Excess Of 30 Pages Pursuant to EDCR 2.20(A)	VI-VII	AA001023 – 1421
2020-05-28	Pls.' Opp'n To Defs. Edgeworth Defs.' Mot. To Dismiss Pls.' Complaint and Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	VIII-IX	AA001422 – 1768
2020-05-29	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	IX	AA001769 – 1839
2020-05-29	Pls.' Opp'n to Special Mot. of Vannah Defs.' Dismiss Pls.' Complaint: Anti-SLAPP and Leave to file Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	X - XI	AA001840 – 2197
2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
2020-06-05	Edgeworth Family Trust, and Brian and Angela Edgeworth Joinder to American Grating, LLC's, and Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XII	AA002303 – 2305

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-06-08	Vannah Defs.' Joinder to Edgeworth Defs.' Mot. to Dismiss Pls.' Am. Complaint and Renewed Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002306 – 2307
2020-07-01	American Grating, LLC's Am. Mot. to Dismiss Pls.' Am. Complaint (Am.)	XII	AA0002308 – 2338
2020-07-01	American Grating, LLC's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.)	XII	AA002339 – 2369
2020-07-01	Edgeworth Defs.' Renewed Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.)	XII	AA002370 – 2400
2020-07-02	Order Granting in Part, and Denying in Part Pls.' Mot. for Leave to Supp. Pls.' Opp'n to Mot. to Associate Lisa Carteen, Esq. and to Preclude Her Review of Case Materials on OST	XIII	AA002401 – 2409
2020-07-09	Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Joinder to American Grating LLC's Mot. s. to Dismiss Pls.' Complaint and Am. Complaint	XIII	AA002410 – 2412
2020-07-15	Pls.' Opp'n to American Grating LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XIII	AA002413 – 2435
2020-07-15	Pls.' Opp'n to Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002436 – 2464
2020-07-15	Pls.' Opp'n to Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC's Renewed Special Mot. to Dismiss Pursuant to NRS 41.637 Anti-SLAPP	XIII	AA002465 – 2491

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-15	Pls.' Opp'n to Defs.' Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Initial Complaint	XIII	AA002492 – 2519
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002520 – 2549
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XIII	AA002550 – 2572
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Initial Complaint; Anti-SLAPP	XIII	AA002573 – 2593
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Initial Complaint, and Mot. in the Alternative For a More Definite Statement	XIII	AA002594 – 2624
2020-07-23	Edgworth Family Trust, Brian Edgeworth, Angela Edgeworth, and American Grating, LLC's Reply ISO Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	XIV	AA002625 – 2655
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	XIV	AA002656 – 2709
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIV	AA002723 – 2799
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to the Vannah Defs.' Mot. to Dismiss Pls.' Complaint	XIV	AA002800 – 2872

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Reply to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: anti-SLAPP	XV	AA002873 – 2875
2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XV	AA002876 – 2878
2020-08-13	Minute Order ordering refiling of all MTDs.	XV	AA002878A-B
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-08-26	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XV	AA002983 – 3056
2020-08-27	Appendix to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 1	XVI	AA003057 – 3290
2020-08-27	Appendix to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 2	XVII	AA003291 – 3488
2020-08-27	Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVII	AA003489 – 3522
2020-09-10	Pls.' Opp'n to Edgeworth Defs.' Special Anti-SLAPP Mot. To Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVIII	AA003523 – 3553
2020-09-10	Pls.' Opp'n to Vannah Defs.' 12(b)(5) Mot. to Dismiss Pls.' Am. Complaint	XVIII	AA003554 – 3584



DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-09-10	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XVIII	AA003585 – 3611
2020-09-24	Appendix to Edgeworth Defs.' Reply in Support of Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 1	XVIII XIX	AA003612 – 3796
2020-09-24	Appendix to Edgeworth Defs.' Reply in Support of Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 2	XIX	AA003797 – 3993
2020-09-24	Edgeworth Defs.' Reply iso Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XX	AA003994 – 4024
2020-09-24	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Mot. to Dismiss Pls.' Am. Complaint	XX	AA004025 – 4102
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175
2020-09-25	Vannah Defs.' Joinder to Edgeworth Defs.' Reply re Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004176 – 4177
2020-09-25	Edgeworth Defs.' Joinder to Vannah Defs.' Reply ISO Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XX	AA004178 – 4180
2020-09-25	Edgeworth Defs.' Joinder to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Mot. to Dismiss Pls.' Am. Complaint	XX	AA004181 – 4183
2020-10-01	Transcript of Videotaped Hearing on All Pending Mots. to Dismiss	XX	AA004184 – 4222
2020-10-27	Notice of Entry of Order Denying Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint and Order re same	XXI	AA004223 – 4231

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2020-10-27	Notice of Entry of Order Denying the Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 and Order re same	XXI	AA004232 – 4240
2020-10-27	Notice Of Entry of Order Denying Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP and Order re same	XXI	AA004241 – 4249
2020-11-02	Notice of Appeal (Vannah)	XXI	AA004250 – 4251
2020-11-03	Notice of Appeal (Edgeworths)	XXI	AA004252 – 4254
2021-04-13	Nevada Supreme Court Clerk Judgment in <i>Simon I</i>	XXI	AA004255 – 4271

***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
**ALPHABETICAL INDEX**

<b>DATE</b>	<b>DOCUMENT TITLE</b>	<b>VOL.</b>	<b>BATES NOS.</b>
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2020-05-21	Amended Complaint	V	AA000995 – 1022
2020-07-01	American Grating, LLC's Am. Mot. to Dismiss Pls.' Am. Complaint (Am.)	XII	AA0002308 – 2338
2020-05-20	American Grating, LLC's Joinder to Defs. Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	V	AA000984 – 986
	American Grating, LLC's Joinder to Special Mot. of Vannah Defs. to Dismiss Pls.' Complaint: Anti-SLAPP	V	AA000987 – 989
2020-07-01	American Grating, LLC's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.)	XII	AA002339 – 2369
2020-05-18	American Grating, LLC's Special Mot. to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP and for Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	V	AA000938 – 983
2020-09-24	Appendix to Edgeworth Defs.' Reply in Support of Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 1	XVIII XIX	AA003612 – 3796
2020-09-24	Appendix to Edgeworth Defs.' Reply in Support of Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 2	XIX	AA003797 – 3993

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2020-08-27	Appendix to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 1	XVI	AA003057 – 3290
2020-08-27	Appendix to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 2	XVII	AA003291 – 3488
2019-12-23	Complaint	I	AA000038 – 56
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2020-05-14	Edgeworth Defs. Mot. to Dismiss Pls.' Complaint	IV	AA000819 – 827
2020-04-06	Edgeworth Defs. Opp'n to Pls.' "Emergency" Mot. to Preserve ESI	I	AA000057 – 64
2020-07-01	Edgeworth Defs.' Renewed Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.	XII	AA002370 – 2400
2020-09-24	Edgeworth Defs.' Reply iso Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XX	AA003994 – 4024
2020-08-27	Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVII	AA003489 – 3522
2020-06-05	Edgeworth Family Trust, and Brian and Angela Edgeworth Joinder to American Grating, LLC's, and Vannah Defs.' Mot. s. to Dismiss Pls.' Am. Complaint	XII	AA002303 – 2305

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-05-20	Edgeworth Family Trust, and Brian and Angela Edgeworth's Joinder to American Grating, LLC's. and Vannah Defs.' Special Mot. s. to Dismiss Pls.' Complaint	V	AA000990 – 992
2020-07-09	Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Joinder to American Grating LLC's Mot. s. to Dismiss Pls.' Complaint and Am. Complaint	XIII	AA002410 – 2412
2020-05-18	Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Mot. by to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP	V	AA000924 – 937
2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Reply to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: anti-SLAPP	XV	AA002873 – 2875
2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XV	AA002876 – 2878
2020-07-23	Edgworth Family Trust, Brian Edgeworth, Angela Edgeworth, and American Grating, LLC's Reply ISO Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	XIV	AA002625 – 2655
2020-08-13	Minute Order ordering refiling of all MTDs.	XV	AA002878A-B
2021-04-13	Nevada Supreme Court Clerk Judgment in <i>Simon I</i>	XXI	AA004255 – 4271

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2020-10-27	Notice of Entry of Order Denying the Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 and Order re same	XXI	AA004232 – 4240
2020-10-27	Notice of Entry of Order Denying Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint and Order re same	XXI	AA004223 – 4231
2020-07-02	Order Granting in Part, and Denying in Part Pls.' Mot. for Leave to Supp. Pls.' Opp'n to Mot. to Associate Lisa Carteen, Esq. and to Preclude Her Review of Case Materials on OST	XIII	AA002401 – 2409
2020-07-15	Pls.' Opp'n to American Grating LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XIII	AA002413 – 2435
2020-07-15	Pls.' Opp'n to Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC's Renewed Special Mot. to Dismiss Pursuant to NRS 41.637 Anti-SLAPP	XIII	AA002465 – 2491
2020-05-28	Pls.' Opp'n To Defs. Edgeworth Defs.' Mot. To Dismiss Pls.' Complaint and Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	VIII-IX	AA001422 – 1768

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-15	Pls.' Opp'n to Defs.' Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Initial Complaint	XIII	AA002492 – 2519
2020-09-10	Pls.' Opp'n to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVIII	AA003523 – 3553
2020-07-15	Pls.' Opp'n to Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002436 – 2464
2020-05-29	Pls.' Opp'n to Special Mot. of Vannah Defs.' Dismiss Pls.' Complaint: Anti-SLAPP and Leave to file Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	X - XI	AA001840 – 2197
2020-09-10	Pls.' Opp'n to Vannah Defs.' 12(b)(5) Mot. to Dismiss Pls.' Am. Complaint	XVIII	AA003554 – 3584
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002520 – 2549
2020-05-26	Pls.' Opp'n to Vannah Defs.' Mot. To Dismiss Pls.' Complaint, and Mot. in the Alternative for a More Definite Statement and Leave to File Mot. in Excess Of 30 Pages Pursuant to EDCR 2.20(A)	VI-VII	AA001023 – 1421
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Initial Complaint, and Mot. in the Alternative For a More Definite Statement	XIII	AA002594 – 2624
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XIII	AA002550 – 2572
2020-09-10	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XVIII	AA003585 – 3611

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2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Initial Complaint; Anti-SLAPP	XIII	AA002573 – 2593
2020-10-01	Transcript of Videotaped Hearing on All Pending Mot. to Dismiss	XX	AA004184 – 4222
2020-06-08	Vannah Defs.' Joinder to Edgeworth Defs.' Mot. to Dismiss Pls.' Am. Complaint and Renewed Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002306 – 2307
2020-09-25	Vannah Defs.' Joinder to Edgeworth Defs.' Reply re Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004176 – 4177
2020-05-20	Vannah Defs.' Joinder to Edgeworth Defs.' Special Mot. to Dismiss Pls.' Complaint; Anti-SLAPP		AA000993 – 994
2020-05-29	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	IX	AA001769 – 1839
2020-08-26	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XV	AA002983 – 3056
2020-04-30	Vannah Defs. Mot. to Dismiss Pls.' Complaint and Mot. in the Alternative for a More Definite Statement	IV	AA000765 – 818
2020-04-06	Vannah Defs. Opp'n to Pls.' Erroneously Labeled Emergency Mot. to Preserve Evidence	I – IV	AA000065 – 764
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to the Vannah Defs.' Mot. to Dismiss Pls.' Complaint	XIV	AA002800 – 2872
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIV	AA002723 – 2799
2020-09-24	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Mot. to Dismiss Pls.' Am. Complaint	XX	AA004025 – 4102



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2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	XIV	AA002656 – 2709
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175

*Steven D. Grierson*

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(702) 272-0415 fax  
jim@jchristensenlaw.com  
Attorney for SIMON

Eighth Judicial District Court  
District of Nevada

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE  
VIKING CORPORATION, a Michigan  
corporation; SUPPLY NETWORK,  
INC., dba VIKING SUPPLYNET, a  
Michigan Corporation; and DOES 1  
through 5 and ROE entities 6 through 10;

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON  
LAW; DOES 1 through 10; and, ROE  
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C  
Dept. No.: 10

**NOTICE OF ENTRY OF DECISION  
AND ORDER GRANTING IN PART  
AND DENYING IN PART, SIMON'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

Date of Hearing: N/A  
Time of Hearing: N/A

Case No.: A-18-767242-C  
Dept. No.: 26

Date of Hearing: N/A  
Time of Hearing: N/A

1 PLEASE TAKE NOTICE, a Decision and Order Granting in Part and  
2 Denying in Part, Simon's Motion for Attorney's Fees and Costs was entered on the  
3 docket on the 8<sup>th</sup> day of February, 2019. A true and correct copy of the file-  
4 stamped Decision and Order is attached hereto.

5 DATED this 8<sup>th</sup> day of February, 2019.

6  
7 /s/ James R. Christensen

8 James R. Christensen Esq.  
9 Nevada Bar No. 3861  
10 JAMES R. CHRISTENSEN PC  
11 601 S. 6<sup>th</sup> Street  
12 Las Vegas NV 89101  
13 (702) 272-0406  
14 (702) 272-0415 fax  
15 jim@jchristensenlaw.com  
16 Attorney for SIMON

17 **CERTIFICATE OF SERVICE**

18 I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF  
19 DECISION AND ORDER was made by electronic service (via Odyssey) this 8<sup>th</sup>  
20 day of February, 2019, to all parties currently shown on the Court's E-Service List.

21 /s/ Dawn Christensen

22 an employee of  
23 JAMES R. CHRISTENSEN, ESQ  
24  
25

*Steven D. Grierson*

**ORDR**

**JAMES CHRISTENSEN, ESQ.**

Nevada Bar No. 003861

601 S. 6<sup>th</sup> Street

Las Vegas, NV 89101

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*Attorney for Daniel S. Simon*

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

**EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC**

**Plaintiffs,**

**vs.**

**LANGE PLUMBING, LLC; THE  
VIKING CORPORATION, a Michigan  
corporation; SUPPLY NETWORK,  
INC., dba VIKING SUPPLYNET, a  
Michigan Corporation; and DOES 1  
through 5 and ROE entities 6 through 10;**

**Defendants.**

**EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC**

**Plaintiffs,**

**vs.**

**DANIEL S. SIMON d/b/a SIMON  
LAW; DOES 1 through 10; and, ROE  
entities 1 through 10;**

**Defendants.**

Case No.: A-16-738444-C

Dept. No.: 10

**DECISION AND ORDER  
GRANTING IN PART AND  
DENYING IN PART, SIMON'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

Date of Hearing: 1.15.19

Time of Hearing: 1:30 p.m.

**CONSOLIDATED WITH**

Case No.: A-18-767242-C

Dept. No.: 10

1           This matter came on for hearing on January 15, 2019, in the Eighth Judicial  
2 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.  
3 Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a  
4 Simon Law (jointly the "Defendants" or "Simon") having appeared by and through  
5 their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.;  
6 and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or  
7 "Edgeworths") having appeared through by and through their attorneys of record,  
8 the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having  
9 considered the evidence, arguments of counsel and being fully advised of the  
10 matters herein, the **COURT FINDS** after review:  
11  
12

13           The Motion for Attorney s Fees is **GRANTED** in part, **DENIED** in part.  
14  
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  
27  
28

1 claim as it was not maintained upon reasonable grounds, since it was an  
2 impossibility for Mr. Simon to have converted the Edgeworths' property, at the  
3 time the lawsuit was filed.  
4

5 2. Further, the Court finds that the purpose of the evidentiary hearing was  
6 primarily for the Motion to Adjudicate Lien. The Motion for Attorney s Fees is  
7 DENIED as it relates to the other claims. In considering the amount of attorney's  
8 fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and  
9 Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against  
10 Mr. Simon, on January 4, 2018. However, they were also the attorneys in the  
11 evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found  
12 was primarily for the purpose of adjudicating the lien asserted by Mr. Simon.  
13 The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the  
14 purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr.  
15 David Clark Esq. were solely for the purposes of defending the lawsuit filed  
16 against Mr. Simon by the Edgeworths. As such, the Court has considered all of the  
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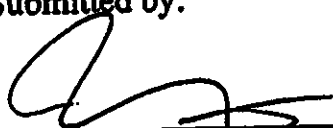
1 factors pertinent to attorney's fees and attorney's fees are GRANTED in the  
2 amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

3 IT IS SO ORDERED.

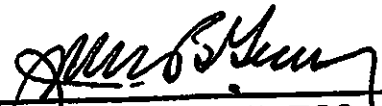
4 Dated this 6 day of February, 2019.

5  
6  
7  
8   
DISTRICT COURT JUDGE SW

9 Submitted by:

10   
11  
12 JAMES CHRISTENSEN, ESQ.  
13 Nevada Bar No. 003861  
14 601 S. 6<sup>th</sup> Street  
15 Las Vegas, NV 89101  
16 Phone: (702) 272-0406  
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18 Email: jim@jchristensenlaw.com  
19 Attorney for Daniel S. Simon

20 Approved as to form and content:

21   
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23 Nevada Bar No. 004279  
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26 Las Vegas, Nevada 89101  
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jgreene@vannahlaw.com  
Attorney for Plaintiffs

*Steven D. Grierson*

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9 Telephone: (702) 369-4161  
10 Facsimile: (702) 369-0104  
11 Attorneys for Plaintiffs/Appellants

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 --000--

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 LANGE PLUMBING, LLC; THE VIKING  
20 CORPORATION, a Michigan corporation;  
21 SUPPLY NETWORK, INC., dba VIKING  
22 SUPPLYNET, a Michigan corporation; and  
23 DOES I through V and ROE CORPORATIONS  
24 VI through X, inclusive,

25 Defendants.

26 EDGEWORTH FAMILY TRUST; AMERICAN  
27 GRATING, LLC,

28 Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X, inclusive,  
and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

CASE NO.: A-16-738444-C  
DEPT. NO.: X

NOTICE OF APPEAL

CASE NO.: A-18-767242-C  
DEPT. NO.: XXIX

VANNAH & VANNAH  
400 S. Seventh Street, 4<sup>th</sup> Floor - Las Vegas, Nevada 89101  
Telephone (702) 369-4161 Facsimile (702) 369-0104



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 2 PART 9 of 9**

AA000681

Docket 77678 Document 2019-33424

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
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11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCF 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
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<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
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**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
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6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY  
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from  
3 the Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees  
4 and Costs, which was entered on February 8, 2019.  
5

6 DATED this 15<sup>th</sup> day of February, 2019.

7 VANNAH & VANNAH

8   
9

10 ROBERT D. VANNAH, ESQ.  
11 Nevada Bar No. 002503  
12 JOHN B. GREENE, ESQ.  
13 Nevada Bar No. 004279  
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18 Facsimile: (702) 369-0104  
19 Attorneys for Plaintiffs/Appellants  
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27  
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VANNAH & VANNAH  
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Telephone (702) 369-4161 Facsimile (702) 369-0104

**CERTIFICATE OF SERVICE**

I hereby certify that the following parties are to be served as follows:

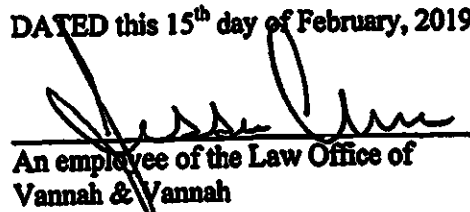
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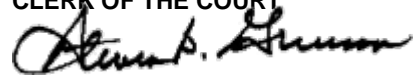
James R. Christensen, Esq.  
**JAMES R. CHRISTENSEN, PC**  
601 S. Third Street  
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.  
**CHRISTIANSEN LAW OFFICES**  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

Traditional Manner:  
*None*

DATED this 15<sup>th</sup> day of February, 2019.

  
An employee of the Law Office of  
Vannah & Vannah



# EXHIBIT A-2

# EXHIBIT A-2

AA000688



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Electronically Filed  
Aug 08 2019 12:08 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 3 PART 1 of 3**

AA000689

Docket 77678 Document 2019-33425

**Appellants' Appendix – Consolidated Cases 77678 and 78176  
*Edgeworth, et al. v. Daniel Simon, et al.***

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*Steven D. Grierson*

1 RTRAN

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DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

8

Plaintiffs,

9

vs.

10

LANGE PLUMBING, LLC, ET AL.,

11

Defendants.

12

13

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

14

Plaintiffs,

15

vs.

16

DANIEL S. SIMON, ET AL.,

17

Defendants.

18

19

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
MONDAY, AUGUST 27, 2018

20

**RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

21

APPEARANCES:

22

For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

23

24

For the Defendant:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

25

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 making sure --

2 MR. VANNAH: You know what? It's hard to spit the big  
3 numbers out.

4 THE COURT: It's all right, but you're talking about the \$6  
5 million settlement?

6 MR. VANNAH: I am, and I --

7 THE COURT: Okay.

8 MR. VANNAH: So, the \$6 million settlement had occurred,  
9 was over with. Mr. Simon had the clients, both Mr. and Mrs. Edgeworth,  
10 come to his office, and he had prepared a fee agreement saying, look, I  
11 want to be fair about this to myself and this is what I want you guys to  
12 sign. I want you to sign this fee agreement that gives me basically a \$2  
13 million bonus. And he showed it to them, and then he said -- they said,  
14 well, you know, we're not prepared to -- for you to bring us in out of the  
15 blue and show us this. And we're not at all happy about it, but having  
16 said that, he said, well, then you need to get independent counsel.  
17 That's me. I'm the independent counsel.

18 So, they obviously retained me, and I did a get written fee  
19 agreement. Of all cases, this is the one I'm going to get a written fee  
20 agreement on. I have a written fee agreement. There's nothing in the  
21 margins, but in the subpoena, it said to bring everything with me, which  
22 would have included my notes that day. Those are attorney-client notes.  
23 He's, obviously -- he's not entitled to even that, but it's his fee agreement  
24 where I got retained.

25 I don't -- there's no constructive discharge. So, the only

1 thing left in the case, at that point, was to do the releases. They looked  
2 at the release and signed them, the case was settled, so I --

3 THE COURT: But this is prior to the Lange settlement, but  
4 this is the settlement with --

5 MR. VANNAH: But there was an offer --

6 THE COURT: -- Viking?

7 MR. VANNAH: -- there was an offer on the table in Lange.

8 THE COURT: Okay. So, the offer was still pending, but  
9 Lange had -- Lange hadn't settled?

10 MR. VANNAH: It hadn't settled.

11 THE COURT: Okay.

12 MR. VANNAH: It was on the table, and there was an offer.

13 The clients asked me to look at it. Mr. Simon gave me the information.  
14 We talked. I looked at it and I concluded that the best interests in the  
15 clients, in my opinion, was -- my advice to them was, you know what, if I  
16 were you, rather than to continue with Danny on this case and bring in  
17 somebody else, just take the settlement; accept it. That was it, that was  
18 my advice, accept the settlement. They wanted me to put that in writing,  
19 I put it in writing, and I explained it to the client and, based on everything  
20 we're looking at, they wanted to accept it; please accept the settlement.

21 The communication had broken down really badly between  
22 the clients, you know, the client and the other lawyer. So, I said, look,  
23 you know, it doesn't seem to me a great idea for you guys to be having  
24 meetings and stuff. My clients don't want to meet with you anymore,  
25 but you are counsel of record, go ahead and finish it up, do the releases,



1 and sign whatever you have to do to get the Lange settlement done.  
2 Just accept it. Accept it and whatever you have to do, that's it. Do what  
3 you have to do with the Judge, and you do that.

4 I'm not -- I'm not substituting in as counsel. I'm not  
5 associating as counsel. I made that very clear. You guys are counsel of  
6 record. If you want to withdraw -- if that's your threat, you're going to  
7 withdraw from the case, you can withdraw, but if you withdraw from the  
8 case at the last minute, and I have to come into the case because you  
9 withdraw and spend 40, 50 hours bringing myself up to speed, you  
10 know, I -- the client is not going to be very happy about that. And I'm not  
11 even sure Your Honor would allow them to withdraw with that going on.  
12 The case was over. I mean, the \$600,000 settlement had been made. It  
13 was over, signed and gone --

14 THE COURT: Six million, Mr. Vannah? Six million?

15 MR. VANNAH: Six million, I'm sorry. And the settlement for  
16 the 100- was on the table, and my sole part in that was to say my clients  
17 want to accept it, do whatever you got to do to accept it, which is his  
18 obligation. And he did, accepted it, and then we came to court because  
19 you wanted me to be in court when this thing went down to just express  
20 our opinions that we're happy with that. We had that settlement  
21 agreement with Teddy Parker who was hearing everybody, and then I  
22 wasn't going to say anything, but I asked to say that -- stand up and say  
23 that's what the client wants to do, and I said, yeah, I'm communicating,  
24 they're here too, but that's what they want to do. They want to settle the  
25 case. Now that's it.

1           So, my fee agreement it's -- there's no relevance to it. It's --  
2 I'm -- it's just a fee agreement with a client, and it's a fee agreement I had  
3 that Mr. Simon suggested that they do, to go out and hire somebody to  
4 be independent counsel and to -- you know, he's trying to get them to  
5 sign some fee agreement they don't want to sign, and they want to know  
6 what their rights are. So, he said get independent counsel. They did,  
7 and here I am, and that's how they got to where they got to. So, I don't  
8 see any relevance whatsoever to this fee agreement between me and the  
9 Edgeworths. That's the bottom line.

10           THE COURT: Okay. Well, I mean, this issue of constructive  
11 discharge, the issue that's hanging there, and I agree with Mr.  
12 Christensen's legal analysis of, if there is constructive discharge, then we  
13 have a whole completely different discussion in regards to the contract.  
14 So, based upon this Court having to make that determination, Mr.  
15 Vannah, I believe that the fee agreement is relevant, but only the fee  
16 agreement itself. No notes, no notes you took that day, no  
17 conversations, just the fee agreement itself. So, I'm going to order you  
18 to provide a copy of that to Mr. Christensen. Can you --

19           MR. VANNAH: I got it right now.

20           THE COURT: Okay. I was going to say; I know you have  
21 people at your office who work there --

22           MR. VANNAH: No, no, we brought it.

23           THE COURT: -- you can -- okay. So --

24           MR. CHRISTENSEN: Have his people do it.

25           THE COURT: Okay. So, can you just make sure he has that

1 by the -- is that going to become relevant to someone's testimony today?

2 MR. VANNAH: I'll have it to him right now. It's just going to  
3 take a second. I have it.

4 THE COURT: Okay.

5 MR. VANNAH: So, we can get that over with and --

6 THE COURT: And then we'll be ready.

7 MR. VANNAH: I think it's one page, right?

8 THE COURT: Because it's just the agreement. It's no notes  
9 or anything --

10 MR. VANNAH: No, no, no, just a one-page agreement. So,  
11 when they hired me, they paid me so much dollars per hour, and that's  
12 it.

13 THE COURT: Okay.

14 MR. VANNAH: Simple as that.

15 THE COURT: Okay. So, this is the motion to -- in regards to  
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are  
17 you ready to call your first witness?

18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not  
19 quite as fast a reader as I used to be.

20 THE COURT: It's okay. Me either.

21 [Pause]

22 MR. CHRISTENSEN: Okay. We do have an opening  
23 PowerPoint --

24 THE COURT: Okay.

25 MR. CHRISTENSEN: -- that we'd like to go through --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- if that's acceptable to the Court?

3 THE COURT: Sure. Any objection, Mr. Vannah?

4 MR. VANNAH: I don't care.

5 THE COURT: Okay. And I was wondering if this was a  
6 PowerPoint or if this was going to be demonstrative to like share photos.

7 MR. CHRISTENSEN: Right.

8 THE COURT: I wasn't sure.

9 MR. CHRISTENSEN: Okay. Okay.

10 DEFENDANT'S OPENING STATEMENT

11 BY MR. CHRISTENSEN:

12 Your Honor, we believe that the theme of this case is no  
13 good deed goes unpunished. What you see is, this is a --

14 MR. VANNAH: I'm not sure whether that's evidence, Your  
15 Honor, so are we going to have evidence like an opening statement or  
16 are we going to have argument? I mean --

17 THE COURT: Counsel?

18 MR. VANNAH: -- this is clearly argument; no good deed goes  
19 unpunished. That's -- is this going to be an opening argument or is this  
20 an opening statement, I guess?

21 THE COURT: Well, it's going to be an opening statement and  
22 we're going to get to what they -- what the evidence is going to show.

23 Mr. Christensen?

24 MR. CHRISTENSEN: Your Honor, we believe the evidence  
25 will show that no good deed goes unpunished. What you see here is a

1 street-side picture of the house where the flood occurred. This is  
2 available on the internet. This is one of those pictures that was made  
3 available when the house was being marketed for sale.

4 THE COURT: And this is 2017, so this is after the flood, right?

5 MR. CHRISTENSEN: Correct, that's a post-flood picture.  
6 That's after the certificate of occupancy has been issued. All original  
7 construction and any repair and remediation after the fire sprinkler flood  
8 has already been taken of.

9 That's a picture of the interior. That's essentially the area  
10 where the flood occurred. Of course, water goes where water goes, so.  
11 There was also damage in the kitchen area. The cabinets in that area are  
12 quite expensive. They're several hundred thousand dollars, and they  
13 sustained some damage in the flood. This is another picture, another  
14 angle of that same general area of the home. The costs to repair, for the  
15 flood, as you can see, it's quite a nice home with very nice finishes, was  
16 approximately in the ballpark of a half a million dollars.

17 So as things developed, Mr. Edgeworth tried to handle the  
18 claim on his own, didn't reach much success. He probably should have  
19 been able to, truth be told, be able to handle it on his own, but he was  
20 dealing with a plumber that was being rather recalcitrant and he -- Viking  
21 wasn't stepping up. He didn't have course of construction coverage. He  
22 didn't have any other route of recovery, so he first asked Mr. Simon to  
23 give him some suggestions as to attorneys who could help him out.  
24 Those attorneys all quoted very high numbers to him. He didn't want to  
25 lay out \$50,000 for a retainer or something of that sort.

1           So, there was a meeting at Starbucks and in connection with  
2 that, Mr. Simon agreed to send a few letters. I think that's actually the  
3 quote from the email. And that was in May of 2016. And from then on,  
4 the case progressed until it was filed in June, and then when it became  
5 active really in late 2016 through 2017 before Your Honor.

6           So, we are here because, of course, there was a very large  
7 settlement. Mr. Simon got a result, and there's a dispute over the fees.  
8 So, the first question we have is whether there was an expressed  
9 contract to the fees or expressed contract regarding the retention. We all  
10 know, and we all agree, there was no expressed written contract. It  
11 started off as a friends and family matter. Mr. Simon probably wasn't  
12 even going to send them a bill if he could have triggered adjusters  
13 coming in and adjusting the loss early on, after sending a letter or two.

14           So, the claim of Mr. Edgeworth is that, in the -- as stated in  
15 the complaint, is that there was an expressed oral contract formed in  
16 May of 2016 to pay Mr. Simon \$550 per hour. So, a meeting of the  
17 minds exist when the parties have agreed upon the contract's essential  
18 terms.

19           MR. VANNAH: I'm sorry, Your Honor, this isn't facts  
20 anymore. Now, we're arguing the law. We're getting beyond what -- I  
21 mean, I thought this was going to be a fact -- opening statement is  
22 supposed to be the factual presentation. This is an argument of the law.  
23 If we're going to do that, that's fine, I guess, but I don't think it's proper.

24           THE COURT: Mr. Christensen?

25           MR. CHRISTENSEN: Your Honor, the evidence is going to

1 show that there was no meeting of the minds in May of 2016, that the  
2 parties agree that Mr. Simon was going to work on this friends and  
3 family matter for 550 an hour.

4 MR. VANNAH: That's not what --

5 MR. CHRISTENSEN: The evidence is going to show  
6 otherwise, that there was no expressed payment term reached in May of  
7 2016, or at any time.

8 MR. VANNAH: Again, here's my problem. I mean, the  
9 evidence isn't going to show citations, and this is a statement of law,  
10 citations. I mean, he wouldn't do this in front of a jury, he wouldn't do  
11 this in a bench trial. This is argument, pure and simple. Now, we're  
12 even arguing what the law is in the case. I thought this was going to be  
13 a factual presentation of what the facts were going to show. We're way  
14 beyond all that.

15 MR. CHRISTENSEN: Your Honor, if I could. First of all, we're  
16 not arguing what the law is. The law is the law, but I mean, we might be  
17 arguing over its application of the case, but that's a whole other issue.

18 Secondly, this is a lien adjudication hearing. This is not  
19 opening statement. We don't have a jury. This is being presented to the  
20 Court in order for the Court to have a full understanding of the facts as  
21 they come in. We believe this is useful and will be helpful to the Court.  
22 There's really no rules governing what you can say or can't say in an  
23 introductory statement to a court in an adjudicatory -- in a adjudication  
24 hearing. I mean, when we submitted our briefs to you, we submitted  
25 law, and we submitted facts, and we argued the application of the law to

1 the outset was May 27th or May 28th, right?

2 A That's incorrect.

3 Q Sir, I didn't write these, and I didn't sign them.

4 A Okay.

5 Q Right? You said you retained Danny May 27th, right?

6 A Correct.

7 Q Then you said at the outset, he told you his fee was 550 an

8 hour and that's what you agreed to, correct?

9 A Correct.

10 Q That's a fantasy. That's not true, correct?

11 A No, it's not. That's ridiculous. The -- it's --

12 Q Mr. Edgeworth --

13 A -- a 24-month case. You're trying to define the outset as one

14 day and not one week later. It's a general term.

15 Q Sort of like when you write all these affidavits saying that he

16 told you his associate was going to bill you at 275 an hour, and then hit

17 the stand and agree in front of Her Honor that you never knew that until

18 14 or 15 months after he was retained?

19 MR. GREENE: Your Honor, these questions have been

20 asked --

21 THE WITNESS: Is that a question, sir?

22 MR. GREENE: -- and answered.

23 MR. CHRISTIANSEN: It is.

24 THE COURT: Hold on --

25 THE WITNESS: No.



1 THE COURT: -- sir.

2 THE WITNESS: Is there a question on the end of it?

3 THE COURT: Hold on, Mr. Edgeworth.

4 THE WITNESS: Sorry.

5 MR. GREENE: Your Honor, this is like the fourth or fifth time

6 this question has been asked and answered. It just keeps getting asked,

7 Your Honor. We'd ask that he be asked to move on.

8 THE COURT: Well, I mean, he said that 275 was never told to

9 him until 14 months later, Mr. Christiansen. He's already acknowledged

10 that, so we can ask another question.

11 MR. CHRISTIANSEN: Okay.

12 BY MR. GREENE:

13 Q Other than yourself, Mr. Edgeworth, did anybody else hear

14 Danny Simon tell you his rate was 550 an hour at the outset?

15 A I don't know if anybody was on the phone at his end.

16 Q Anybody on your end on the phone?

17 A No.

18 Q Did you record it?

19 A No.

20 Q There's -- Mr. Christensen had some estimation for pages of

21 emails over here.

22 A How many pages?

23 Q A lot more than I felt like reading this weekend, I can tell you

24 that much. Did you find a single email from yourself confirming that

25 rate?

1           A     I didn't look through the emails, sir.

2           Q     Can you point me to a single email confirming that rate?

3           A     Yeah, Danny Simon emailed me bills constantly.

4           Q     That's not what I asked you, sir. I asked you can you point

5 me to an email of yours confirming the rate of Danny Simon at 550 an

6 hour from the outset of this litigation that you told the Judge he took as

7 a favor?

8           A     I don't know. I'd have to look.

9           Q     So, is that a different way of saying you've never been able

10 to identify an email confirming that in writing?

11          A     I guess so.

12          Q     Okay. Getting a little out of order, which is making Ms. Ferrel

13 nervous, but let's turn to paragraph 11. As I understand from listening to

14 Mr. Vannah's opening statement this morning and from reading your

15 affidavits, it's your contention that Danny -- or that you really did all the

16 heavy lifting in the case that effectuated or made it worth 6 million bucks

17 against Viking, correct?

18          A     Definitely.

19          Q     Okay. And sir -- and I mean this not in a pejorative sense, but

20 you're not a lawyer, fair?

21          A     No, I'm not a lawyer, sir.

22          Q     You can't walk into a courtroom in the 8th Judicial District

23 Court for the State of Nevada, County of Clark and make an appearance,

24 correct?

25          A     I don't know. Can I? I don't know.

*Steven D. Greferson*

1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
20 TUESDAY, AUGUST 28, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1                   MR. GREENE: Well, it's relevant to show that Brian -- well,  
2 actually, I'll withdraw that, forget that.

3 BY MR. GREENE:

4           Q     At any time in the beginning of your relationship with Danny,  
5 did he ever ask for a contingency fee agreement?

6           A     No.

7           Q     Was it ever discussed?

8           A     No until we started having the discussion in the airport bar.

9           THE COURT: In where?

10          THE WITNESS: The San Diego --

11 BY MR. GREENE:

12          Q     And what date was that?

13          A     August 9th, I believe, 2017.

14          Q     Did Danny have a structure -- a structured discussion with  
15 you on what the -- what the attorney/client relationship' would be?

16          A     No, it was -- you mean in the airport bar --

17          Q     No, back up, I'm sorry. I'm sorry to confuse you. Let's go  
18 back to June of 2016. Did he have a structured relationship with you?  
19 There's discussion with as to what the nature of the fee agreement  
20 would be?

21          A     Yes. I would pay him \$550 an hour, and he would represent  
22 me in this case. He would file the lawsuit, and follow-up and did  
23 everything that lawyers do in cases.

24          Q     I appreciate that.

25          THE COURT: And was this at the bar in San Diego?

1 up to you as the client deciding to settle that claim?

2 A Just there was -- the whole case was overwhelming. The  
3 number was good, it was fair. And I just wanted the whole thing to end,  
4 you know. Right after I said I'd accept, I had remorse. I thought we  
5 could get them to pay fifteen million because they had subrogated the  
6 326 claims that I found and stuffed other insurance companies with the  
7 payments.

8 So that alone to them is worth 25 million that they're covering up  
9 just from the spreadsheet; because they made all the homeowners'  
10 insurance pay for it and then they would pay the fee that you pay with an  
11 insurance company, you know; what's it called? You pay like \$1,000 and  
12 then the insurance company fixes your house, pays for the rest of it.

13 THE COURT: A deductible?

14 MR. GREENE: Is that deductible?

15 THE WITNESS: Deductible. I'm sorry, I couldn't think of the  
16 term. Viking and Zurich would pay the deductibles and then leave the  
17 other insurance companies with all the damage. And I've been told that  
18 that would --

19 MR. CHRISTIANSEN: Objection. Hearsay.

20 THE COURT: Okay. Sir, can we get back to the point?

21 THE WITNESS: Sorry.

22 THE COURT: The question was, how did you settle this case?

23 MR. GREENE: Yeah.

24 BY MR. GREENE:

25 Q What were the primary considerations and what went

1 through your mind as a client to settle this case?

2 A I wanted it over. I just wanted to put it behind me, just get  
3 on, you know, back to construction and do what I wanted to do.

4 Q Because Mr. Simon had given you good counsel to settle for  
5 six million; hadn't he?

6 A Yes, definitely.

7 Q Followed that counsel?

8 A Yes, I did.

9 Q Glad you followed that counsel?

10 A Yes, I am.

11 Q This case was your life; wasn't it?

12 A For that period, yes.

13 Q Closure's good; isn't it?

14 A I don't know. I'll let you know when I have closure, but yes,  
15 closure's good.

16 Q Let's talk about the invoices for a moment now that the  
17 primary case is settled. We'll get into Lange again in a few moments.  
18 What role did you have in paying the invoices in this case, Brian?

19 A I looked them over, I signed off on them, and I gave them to  
20 our accountant, and he would cut the check; everything except the first  
21 invoice I just cut the check myself.

22 Q So, Brian, the Judge has seen evidence who knows how  
23 many times and at this hearing, as well, that there were four invoices for  
24 fees and costs presented to you beginning in December of 2016 going  
25 through September of 2017. Do you have an understanding whether any

1 other -- during that timeframe were there any other invoices sent to you  
2 from Mr. Simon's office for you to pay?

3 A No.

4 Q Did you review those invoices before you paid them?

5 A Yes.

6 Q Did you pay them in full?

7 A Yes, I did.

8 Q How long did it take for you to pay those after you received  
9 them?

10 A Sometimes the same day.

11 Q Did you have an opportunity to review those invoices, Brian,  
12 what the hourly rate was for Danny?

13 A Yes.

14 Q Sorry. Mr. Simon.

15 A Yes.

16 Q And what was that each time?

17 A Five hundred and fifty dollars an hour.

18 Q Did you ever see any of Mr. Simon's entries in which he  
19 billed anything other than \$550 per hour?

20 A No, I did not.

21 Q Did you ever get bored and count the number of billing  
22 entries that Mr. Simon put on those first four invoices?

23 A No, I did not.

24 Q Okay. Did you get an understanding as to what Ms. Ferrel's  
25 hourly rate was in each of those invoices where her time was contained?

1           A     Two hundred and seventy-five dollars an hour.

2           Q     Every entry?

3           A     Every entry.

4           Q     Did you pay that invoice in full, all those invoices in full in  
5 which her time was on?

6           A     Yes.

7           Q     How about Ben Miller, he hasn't been all that involved in the  
8 handling of this case, so he prepared almost \$6,000 worth of time; is that  
9 your understanding, as well?

10          A     Yes.

11          Q     Did you gain an understanding as to what his hourly rate  
12 was?

13          A     Two hundred and seventy-five dollars an hour.

14          Q     Did he ever bill at any other rate?

15          A     No.

16          Q     Did you pay those invoices in full?

17          A     Yes.

18          Q     Brian, we talked about this Exhibit 5. Again, the Judge has  
19 seen this a bazillion times. That's the invoice that was produced towards  
20 late January of 2018. Did you take the opportunity to review that  
21 invoice?

22          A     I'm sorry, I don't know which invoice it was. Can I just see it?

23          Q     Of course you can. It's kind of thick. I'm not sure if we have  
24 the witness binder up there, but.

25          A     Oh, is this --



1 Q To you?

2 A No. Out of -- my guess would be to James Christensen.

3 Q No, no, no.

4 THE COURT: That's what that means, Mr. Greene.

5 MR. GREENE: No. I'm am dumb, not quite that dumb.

6 BY MR. GREENE:

7 Q But is this the label that you had put on this email when you  
8 sent it to Mr. Simon?

9 A Yeah. I wrote Contingency in the subject line.

10 Q Right there?

11 A Correct.

12 Q What did Mr. Simon communicate with you, if anything, at  
13 the bar in San Diego until August 22nd of 2017 following your discussion  
14 in the bar about a contingency fee --

15 A About this --

16 Q -- or anything fee related?

17 A He hadn't -- he hadn't explained anything about this topic.

18 And I was coming up to the point where I needed to think about how to  
19 get more money, what options I was going to -- going to have to take.

20 And so, I thought I'd email him and see if this a dead deal or not.

21 Move on. If I can't do it, that's fine, I don't care. I would just keep paying  
22 the 550. I'd borrow the money. I'd likely have to sell some assets if the  
23 bills kept accumulating, but nothing was responded to.

24 Q First line, We never really had a structured discussion about  
25 how this might be done. Do you read that?

1           A     Three hundred and something with interest.

2           Q     So how was she going to be paid back through this hybrid  
3 agreement that you would have -- that you had at least entertained for  
4 Mr. Simon?

5           A     Well, he would give me some money back, and I would take  
6 whatever I was stealing in the kitty from my working capital, and I would  
7 pay her right off and get rid of one of the loans.

8           Q     The sentence goes on, Probably explore a hybrid of hourly  
9 on the claim and then some other structure that incents both of us to go  
10 after the appeal that these scumbags will file. What did you mean by  
11 that, Brian?

12          A     I was told around this time that most large judgments would  
13 be appealed, which scared the daylights out of me because I had no idea  
14 how long that takes. And this whole thing was timely. I needed cash to  
15 keep building houses. The whole thing with construction is you need  
16 cash; you need to convert stuff into cash.

17          So, this would get me out of the cash flow disaster of the lawsuit,  
18 paying for the lawsuit, and all the way through the appeal, which could  
19 be a year or two years. It could be anything. It would just give me a lot  
20 of financial flexibility.

21          Q     As a consumer and as the client who owns the case and the  
22 settlement, did there come a time in this case where you believed that  
23 the value of the case had increased?

24          A     Yes.

25          Q     When was that?

1           A     Right after talking to Harold Rogers I found it had gone up  
2 substantially.

3                   THE COURT: When is that, sir?

4                   THE WITNESS: July -- July 26, two thousand -- or I spoke  
5 with him on the 24th, July 24th, 2017.

6 BY MR. GREENE:

7           Q     Did that have anything to do with the number of activations,  
8 initial activations, that were revealed?

9           A     Yeah. I didn't have evidence of each of them, but I had his  
10 numbers of how many were out there, and I had a clear path on how I  
11 was going to start tracking them down to make that spreadsheet that I  
12 made.

13          Q     So when you put in here, Obviously that could not have been  
14 done earlier, since who could have thought this case would meet their  
15 hurdle of punitives at the start, what did you mean by that?

16          A     That was -- the hurdle of punitives was the email on August  
17 1st of 2017 that he had forwarded saying do we meet -- and I  
18 misunderstood it. I thought we had to meet all three hurdles; the malice,  
19 the oppression, and the fraud, I believe they were.

20          Q     Are you saying Ben Miller's email?

21          A     Correct. Ben Miller's email of August 1st. And we had it on  
22 -- I had evidence on all three of them, so I felt yeah, this can meet the  
23 hurdle because I didn't know it was an or between each one. I thought it  
24 was an and. Just my mistake.

25          Q     Okay. But things changed value-wise?

1           A     Definitely.

2           Q     As you were evaluating what to do as a consumer in this  
3 case, did those additional activations have any kind of a swaying factor  
4 with you on what to do?

5           A     As we gathered more and more evidence of the wrongdoing,  
6 it made my percentage in my head, the percentage I put on the chance of  
7 me winning, go higher and higher and higher. And then it gave a lot of  
8 credibility to at this point maybe we can get punitive damages, how are  
9 they valued, everything else, or we can force a settlement.

10          Q     Did these increased number of activations and therefore  
11 meeting the burden of punitives, did that have any bearing upon you as  
12 a consumer on what you would have been willing to entertain from Mr.  
13 Simon in this hybrid fee agreement that you asked him to give to you?

14          A     You know, on this date he would have gotten a much better  
15 deal out of me. As the avalanche of evidence against them kept coming,  
16 and then I just wouldn't have given up as much because I -- you know, at  
17 that point you paid more in the kitty, there's -- to Mr. Simon there's less,  
18 you know, fees left until the light at the end of the tunnel, so why would  
19 you give up more; you've taken all the risk.

20          Q     You mean who?

21          A     Me as Brian Edgeworth, why would I give up more of the  
22 settlement? Every day that goes by, this deal would get a little bit worse  
23 for Mr. Simon because a lot of the risk in the deal has been abated.

24          Q     Finishing up with this email, beginning with "I could," do you  
25 see that?

1           A     Yes.

2           Q     I could also swing hourly for the whole case unless I am off  
3 what this is going to cost. What did you mean before the paren, I could  
4 also swing hourly for the whole case?

5           A     Don't worry about it, keep working on my case, I can get the  
6 money and keep paying you as our original agreement.

7           Q     And did you?

8           A     Yes, I did.

9           Q     Did you have to get additional loans from the date of this  
10 email forward to pay Mr. Simon's invoices?

11          A     Yes, I did.

12          Q     About how much?

13          A     After this date I think I took one more for 200 out.

14          Q     Did you use that money to pay his invoice in full?

15          A     Yes, I did. I received an invoice approximately a month after  
16 this email for \$255,000, some of which were costs and the rest of which  
17 were fees. I don't know the breakdown. And I paid it in full.

18          Q     Let's cover that now before we finish up with this email. Did  
19 Mr. Simon ever provide you with the proposal that you asked for, hybrid  
20 or otherwise?

21          A     Never.

22          Q     What did you get instead?

23          A     A bill -- an hourly bill of \$550 an hour and \$275 per hour for  
24 his associate.

25          Q     Looking at the new superbill of January 2018, what was

1 every entry of that billed out? We already talked about that, 550?

2 A Five fifty an hour for Mr. Simon and \$275 an hour for Mr.  
3 Miller and Ms. Ferrel.

4 Q Any hybrid language in the invoice that you paid?

5 A No.

6 Q Any hybrid invoice in the superbill?

7 A No.

8 Q Any hybrid email that was sent to you?

9 A No.

10 Q Any hybrid letter that was sent to you?

11 A No.

12 Q What did you mean by unless I am off what this is going to  
13 cost; what were you concerned about there?

14 A That's my biggest frustration. He didn't answer the one  
15 question that would allow me to plan or even evaluate if he gave me a  
16 proposal how much more is this going to cost at 550 bucks an hour? I  
17 need to know. I need to plan cash flow because I'm running businesses  
18 that have to keep the working capital above a certain level. I need to  
19 plan in advance. I can't be surprised, especially at this point in time  
20 where I was already stretched.

21 Q How many employees were you employing at the time that  
22 this contingency email was sent to Mr. Simon?

23 A Two hundred and ten world-wide.

24 Q Did their wellbeing factor in at all about your concerns for  
25 knowing what this litigation was going to cost?

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 3 PART 2 of 3**

AA000719

Docket 77678 Document 2019-33425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479



**Appellants' Appendix – Consolidated Cases 77678 and 78176  
*Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1           A     Yes.

2           Q     How so?

3           A     Whenever you pull down your working capital to a certain  
4 point, you put your risk of bankruptcy very high. Most companies go  
5 bankrupt not because they had a big loss that year, it's because they ran  
6 out of money. And you can run out of money in a lot of ways. Mostly  
7 it's when you're draining your working capital. That's when you get low  
8 on working capital, you need to do detailed planning to make sure you  
9 don't run out of cash. And that's what I was trying to do. I just needed --  
10 that's why I kept asking him for bills, too, because I couldn't have  
11 surprises. I couldn't just get a huge bill and then not have the money in  
12 the bank.

13                   UNIDENTIFIED SPEAKER: Can I go to the restroom?

14           MR. GREENE: Sure.

15   BY MR. GREENE:

16           Q     You talked about borrowing some more money, the next line  
17 down, you went to borrow another 450 from Margaret. Did you read  
18 that?

19           A     Yes.

20           Q     Is that what happened?

21           A     Yeah, except not in the order I wrote. I borrowed -- I signed a  
22 new contract for 200 and 200 for 400 total and I took the first 200 on it.

23           Q     Okay. How about sell the house to pay these fees?

24           A     I listed both the houses. The house that I was living in -- the  
25 house that I was living in is on the same street as the house that's the

1 spec building. They're two doors apart. So, I listed both houses. The  
2 house with no flood problems overhanging it, I was told would be likely  
3 to sell quicker. We moved out of that house to stage it and get it ready  
4 for sale and moved into the new house.

5 And I had both of them listed. I believe Mr. Simon knew. I'm  
6 basically saying I can get cash from one of these house sales to keep  
7 financing the -- the lawsuit, too. I'm just giving him an open look at my  
8 sources to pay him. And I'm giving him from a negotiation standpoint  
9 where I want to be negotiating another deal, I'm giving him a great look.  
10 I'm laying all my cards on the table. I should be the easiest person to  
11 negotiate whatsoever because you know the other steps I'm going to  
12 take if I don't get a deal with you.

13 Q Finally, well, did you sell any of those two houses?

14 A I sold the 637 St. Croix house in December of 2017 after this.  
15 I sold it for cash because the guy would close in six days and this had  
16 started, and I needed cash.

17 Q This wasn't the flood house you sold, correct?

18 A No. I sold the older house, which is 637. It's two doors down  
19 from the flood house.

20 Q If it had come to that, what would have been involved in  
21 selling the Bit Coin investment to be able to pay Mr. Simon's hourly  
22 fees?

23 A I had already gone to Roger, which was my partner and my  
24 brother and told them that I needed out. I couldn't keep on with them.  
25 And I had already taken my share out, and I sold a bunch to start

*Steven D. Grierson*

1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

7

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

8

Plaintiffs,

9

vs.

10

LANGE PLUMBING, LLC, ET AL.,

11

Defendants.

12

13

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

14

Plaintiffs,

15

vs.

16

DANIEL S. SIMON, ET AL.,

17

Defendants.

18

19

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
WEDNESDAY, AUGUST 29, 2018

20

**RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

21

APPEARANCES:

22

For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

23

24

For the Defendant:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

25

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1           Q     All right. Then you go down to the next item. Finalize and  
2     serve Nevada revised civil procedure 30(b)(6), notice of deposition. That  
3     time took two-and-a-half hours, right?

4           A     Yes, sir.

5           Q     Or two-and-a-half, right? So, if we add those two things  
6     together on 9/13, on the bill that got paid, you -- the firm got paid for 8.75  
7     hours of your time for 9/13/2017, right?

8           A     Yes, sir.

9           Q     Then if I understand correctly, then you went back, and we've  
10    talked about that a little bit, and created among other things -- so this --  
11    you created more time for -- that the firm wanted to be reimbursed, for  
12    example, on this date, the very same day, 9/13/2017, correct? That's  
13    what you entered in timewise, correct?

14          A     Yes.

15          Q     Okay. Now, let's talk about that. So, the time in addition to  
16    the 8.75 hours that you came up with in this task that you undertook was  
17    an additional 14.1 hours to bill for on 9/13/2017, right?

18          A     Yes, sir.

19          Q     Now, when you add that up, I come up with really close to 23  
20    hours. Do you see that?

21          A     Yes, sir.

22          Q     All right. And in all due candor, I think you've said that  
23    earlier, and I know you're an honest person, you didn't work anywhere  
24    near 23 hours that day, correct --

25          A     Likely not that day.

*Steven D. Grierson*

1 RTRAN

2  
3  
4  
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C  
DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
20 THURSDAY, AUGUST 30, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

22 APPEARANCES:

23 For the Plaintiff:

ROBERT D. VANNAH, ESQ.  
JOHN B. GREENE, ESQ.

24 For the Defendant:

JAMES R. CHRISTENSEN, ESQ.  
PETER S. CHRISTIANSEN, ESQ.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER





1 this meeting. He instructs you to go ahead and file the lawsuit, and  
2 there's absolutely no discussion about fees whatsoever, right?

3 A I don't recall talking about fees.

4 Q Okay. And then later, you determined, that it being in the  
5 best interest of the client, on the Lange portion of the indemnity, to  
6 prepare a bill for your time in the case, when you do that first invoice,  
7 and you determined that that would be a good thing to do is prepare a  
8 bill and give that to the Lange people so they can see that you're  
9 spending a lot of time on the case, and ultimately, they're going to have  
10 to pay this, right?

11 A Yes.

12 Q All right. It was -- you presented a bill to Mr. Edgeworth,  
13 right, but you didn't expect him to pay the bill. Is that -- that was your  
14 testimony, you didn't expect him to pay the bill, he wasn't required to,  
15 and you didn't expect him to pay the bill? Is that fair? That's what you  
16 said yesterday.

17 A Yeah, and I said that -- oh, yeah, the initial bill that was sent  
18 was generated for the Lange case, and I sent it to him so he could see  
19 what was going on, and he just turned around and paid it right away.

20 Q But you didn't expect him to pay it?

21 A Not that quickly, and we never had a discussion, and if he  
22 didn't pay it, I didn't expect him to pay it, but he paid it and so, okay.

23 Q All right. Then -- I want to go into a lot of detail, and you  
24 remember how you came up with the 550 because you got -- Judge  
25 Gize [phonetic] said 600 would be reasonable in a mistrial, and you took

1 a few dollars off and said let's just make it 550 and -- right?

2 A Yes, yes.

3 Q All right. I remember that. So, then you generated a second  
4 invoice, right?

5 A Correct.

6 Q That was also, I take it, submitted to Lange, his -- whoever  
7 did the damages, correct?

8 A Yes.

9 Q And you sent a copy of that to Mr. Edgeworth and he paid  
10 that bill, did he not?

11 A He did.

12 Q And before this meeting in August, that you guys had in the  
13 bar, you know, in the airport, did you ever have a conversation, you,  
14 personally, with Mr. Edgeworth or Angela, where you said look, I don't  
15 know why you guys are paying these bills. I didn't really mean for you to  
16 pay them. I'm going to have you pay me my fee at the end of the case.  
17 Did you ever tell them that before this meeting, any time before this  
18 meeting in San Diego, that we're going to go to?

19 A The entire term of our relationship, from day one throughout  
20 the process, was we will just continue to do what is fair. I created the  
21 bills so he could see what was going on as far as his damages and they  
22 would turn around and pay it, and that was part of what he started to  
23 want to do because he wanted -- he was taking out these loans.

24 So, he wanted to pay these bills, for whatever reason. We didn't  
25 have a specific conversation to pay them, but he did want them to see

1     what I was doing so he could increase his damages.

2           Q     So, you know, so you surely recognize that he's borrowing  
3     money at a pretty high interest rate to pay these bills, right?

4           A     Yes.

5           Q     And I assume that you recognized that coming before  
6     Judge Jones, here one day, and having her rule on whether or not  
7     paying 30 percent interest on the loans, the interest, itself, was really a  
8     reasonable element of damages, even if the Court were to determine  
9     that the legal fees were reasonable. Do you see what I'm saying?

10          In other words, Judge Jones, you surely recognize at Lange, if they  
11     were still in the case, would say wait a minute. Yeah, I mean you went  
12     out and borrowed money at 30 percent interest. Maybe the legal fees -  
13     maybe we owe the legal fees, maybe we don't, but, but we certainly --  
14     where you got the money and the fact you paid 30 percent interest, did  
15     you not recognize that certainly would be an issue that would be hotly  
16     contested, that the interest and the -- on those loans, or did you know  
17     that?

18          A     Are you talking about the Lange, because you said you  
19     were --

20          Q     I meant Lange.

21          A     -- digressing into being reimbursed by Lange under the  
22     attorney fee provision.

23          Q     That's --

24          A     Did you mean Viking, also?

25          Q     No, no. Viking doesn't owe you any money.

1 Q He's a smart guy.

2 A He's a smart guy when it comes to finance, and yes.

3 Q All right. So, when he -- when he's telling you in August, I  
4 just am having a hard time, he's telling you in August, look, I can go out  
5 and borrow more money and just keep paying you hourly and I'm willing  
6 to do that. Then you sent him an hourly bill after that, right?

7 A Yeah.

8 Q And he pays it.

9 A He wanted a bill so he could pay it for his depo, so he didn't  
10 have to -- he had to justify his loans, Mr. Vannah. If he goes into a  
11 deposition and he's -- and they say how much have you paid, right, and  
12 he says nothing, but it's owed in the future, then they're going to say  
13 well, what's all this interest on these loans that you took out allegedly for  
14 these bills?

15 Q Can you answer my question?

16 A Oh, I'm sorry. Go ahead.

17 Q My question was simple. When he -- after the meeting in  
18 August, when he's -- since the email, and he's basically saying I can  
19 borrow money to continue paying your bills. He tells you I can borrow  
20 money to pay your bills, you send him another bill, right?

21 A Another bill was sent after that, yes.

22 Q And it's like for \$220,000 or so, right?

23 A I don't know about that.

24 Q Well, I can show you.

25 A There's a lot of costs going on at that time, so, you know,

1 You don't read it that way? You don't see where he's saying there's  
2 ways for me to get money and I can go get it and I'll give it and I'll pay  
3 your hourly bills if that's what you want to do.

4 But then you see in there that he's saying yeah, I can do it, but it's  
5 kind of stressful. I would sure like to work something different out. Did  
6 you not read it that way?

7 A Mr. Vannah, he was whining about the cost of repair from  
8 day one. He was whining about what this is going to take and how  
9 everybody's not stepping up to the plate to satisfy this claim. That was  
10 from day one. He was whining all the way up through August, and that's  
11 why all of those things weren't billed in all my bills either, because he  
12 was always complaining about how much things cost.

13 So, this email was just some more reiteration of what he's been  
14 whining about the entire time. And I know it was stressful for him. I had  
15 to talk him off the ledge many times because he was so stressed out  
16 about what does this mean, what does that mean. And he had -- it was  
17 very stressful this litigation for him. No doubt about it, and I was there  
18 to help him through that process.

19 Q I appreciate that, and you're billing him \$550 an hour to do  
20 so, right?

21 A We created bills for \$550 an hour, correct, that didn't include  
22 a fraction of my time, correct.

23 Q And when you're working for somebody, regardless of how  
24 you're being paid, you're going to do the best job you can do because  
25 that's who you are; isn't that true?

1           MR. VANNAH: You know what, I'll just withdraw the  
2 question. We've covered it before.

3           THE WITNESS: Okay.

4           MR. VANNAH: I think I got my point out before. But I want  
5 to kind of move along, because I do want to get Mr. Kemp on the stand.  
6 All right.

7 BY MR. VANNAH:

8           Q     One of the things I wanted to ask you about, is, you said you  
9 included this fee agreement, the first one you ever drafted, this retainer  
10 agreement. I'm going to show it to you. This is Exhibit 48 and 49. This  
11 is the retainer agreement that you sent with the letter saying that you  
12 want them to sign this, right?

13          A     Yes.

14          Q     And this is the first written agreement you ever asked them  
15 to sign, right?

16          A     Correct.

17          Q     And this is days after you'd reached, in principle, a  
18 settlement for \$6 million, correct?

19          A     It was November 27th.

20          Q     Right.

21          A     And the final agreement wasn't reached until after that.

22          Q     December 1st. That's why I said --

23          A     Right. December 1st, so, yeah.

24          Q     You settled the case, in principle, for \$6 million?

25          A     Yeah. But there was still some things to work out, and

1 whether or not it was going to be a done deal or not, that wasn't, you  
2 know, a 100 percent confirmed. The number was, in principle, but the  
3 remaining terms still had to be worked out.

4 Q It settled three days later, right, in writing?

5 A Yes.

6 Q Okay.

7 A Fair enough.

8 Q All right.

9 A Yeah.

10 Q Now you point out here, the fee for legal services shall be the  
11 sum of \$1,500,000 for services rendered to-date; do you see that?

12 A Yes.

13 Q All right. And then you say I'm going to give you credit for  
14 what you've already paid --

15 A Right.

16 Q -- I see that. But then you say, for the future, for any future  
17 fees with Lange, I thought I read that, any future fees in pursuing the  
18 Lange case, we're going to have to have a different agreement for that.

19 A Correct.

20 Q Now they never signed this agreement, right?

21 A Correct.

22 Q And you tell them, see this, you tell them at this meeting and  
23 in writing, if you think I'm wrong about this, why don't you go talk to  
24 some other attorneys and ask them, people you may trust, and see if I'm  
25 right or wrong. You tell him that, right, go ask someone else?



1           A     I always encourage anybody who has questions who wants  
2 to see other counsel, feel free to see him, and I'm happy to talk to him,  
3 and explain things to him at any point in time.

4           Q     So you can't be offended that they took you up on that, and  
5 came to my office and said, what do you think about this? That doesn't  
6 offend you, does it, that they did that?

7           A     I'm not offended.

8           Q     And, certainly, there was an email I sent you, I don't want to  
9 go back over it, but after -- the Lange case settled on the same day of  
10 December 1st. They hadn't signed a release yet, but you had accepted  
11 the \$100,000 offer, pursuant to our request that you wrap that up; you  
12 accepted it, correct?

13          A     I think that --

14          Q     The one that Teddy Parker offered?

15          A     I think that was all still pending around December 7th.

16          Q     No. Because you wrote a letter on December 1st and said, I  
17 accepted it, I accepted your offer. I can show you to it, do you really  
18 want to see it? I'll show it to you.

19          A     Yeah. I mean, the timing is I guess somewhat important.

20          Q     Yeah. I know, I have no problem with that.

21                               [Counsel confer]

22               MR. GREENE: The Judge has it.

23               MR. VANNAH: Judge, do you have that -- oh, I need to give  
24 you back the one you gave me.

25               THE COURT: Oh, no, Mr. Greene gave it back already, Mr.

1 Vannah. It's one of the ones you admitted today?

2 MR. VANNAH: Yeah. I'm sorry, I guess we gave you our  
3 copy, so --

4 THE COURT: Okay. Let's see, 10 is Mr. Hale's letter, 11 is the  
5 original settlement agreement, and then 12 is the Gmail?

6 MR. VANNAH: That might be, Your Honor.

7 THE COURT: I think that's it; I think it's 12.

8 MR. VANNAH: I think it is.

9 THE COURT: I gather you're referring to the second part of  
10 12.

11 MR. VANNAH: Yes, I am, Your Honor.

12 BY MR. VANNAH:

13 Q So showing you Exhibit 12 again. This is dated November  
14 30th, not even December 1st; this is November 30th. At the very same  
15 day, on the very same day that you filed for the first time that the clients  
16 had taken up your suggestion, and just come over consulted me. That's  
17 the first day you learned that, right, November 30th?

18 A Yes.

19 Q And on November 30th, you're right, we'll just go down to  
20 the last part.

21 Additionally, this morning, you asked me to approach Lange  
22 to accept the 25,000 offer from the mediation. Since this  
23 time, I was able to secure a \$100,000 offer, less all monies  
24 Lange is claiming they are owed. Lange, within this missed  
25 their claims against Viking, allowing the client to avoid the

1 motion for determination of a good faith settlement, as part  
2 of the settlement. Please advise that the clients want to  
3 move forward do finalize a settlement with Lange pursuant  
4 to these terms.

5 And then you say, let's move quickly. And then we communicated  
6 with you that we did want to settle that, wrap it up, right?

7 A All right. The timing of this, so just we're clear, Mr. Vannah,  
8 because I know you want to be clear on this.

9 Q I do.

10 A All right. So, there's the \$25,000 offer, right?

11 Q Right.

12 A On November 30th, Teddy and I talked over the phone, he  
13 offered a 100 grand, but he also wanted his clients, Lange Plumbing paid  
14 back for what was outstanding, were due at the Edgeworth house during  
15 the construction, which was 22,000.

16 Q And that all happened, didn't it, the settlement --

17 A Eventually. But the timing of all this is, that was the offer  
18 that was communicated to you, and then -- right, and then you had to go  
19 talk, take that offer to the clients who wouldn't talk to me, and then that's  
20 what ultimately led to the consent to settle.

21 Q No. I had already authorized you on behalf of the clients to  
22 take 25,000 for -- do you see that right here? It says right here --

23 A Yeah --

24 Q This morning -- let me read it. This morning you asked me to  
25 approach Lange to accept the \$25,000 offer for remediation?

1           A     Agreed, it says that.

2           Q     I said, take it, take the 25,000. So, you went back to him and  
3 talked, and listen, I'm grateful for you, and you used your skills, which  
4 are legendary. You've got good skills. You will use your skills, and not  
5 only did you get 25 you got it up to a 100, and they had to pay back 22,  
6 but they still -- now they're getting 75 instead of 25, which means you've  
7 done better than what all authority you had.

8                 So, basically, on that day, and that turned out to be exactly what  
9 was eventually signed and settled, right?

10          A     Yes.

11          Q     And when we came to Court, I mean, I want to -- because Mr.  
12 Christensen who maybe wasn't here that day, and I don't want to  
13 impugn him, but at Court you point out, oh, I'm not, Mr. Vannah is the  
14 one that's on that settlement document; he's the one that signed it, not  
15 me.

16                 Well, that's because, when we're standing here, and I can pull that  
17 document out, you said, I don't want to sign, I don't want to sign it  
18 because Mr. Vannah has talked to these people, and the judge said, Mr.  
19 Vannah, do you have any trouble signing this? I'm like, I'm not even in  
20 this case. Now, I have that, I could read that transcript, but if you doubt  
21 me, we can --

22          A     I know exactly what the transcript says.

23          Q     Yeah. And I said, I'm not even in that case, but if you want  
24 me to sign it, fine, I'll sign it, because I want this thing to wrap up, and  
25 it's not a big deal to me, and I remember I said, it's trivial, is the words I

1 used, it's trivial, whether I sign it, or you sign it. But if you want me to  
2 sign it, I'll sign it. Even though it wasn't my name on it, it was yours.

3 A What you quoted was, I don't know anything about the  
4 underlying case, but I'm happy to sign it.

5 Q Okay. And that's how I ended up signing that, right?

6 A Right. Because I'm not -- I didn't feel like I was their lawyer  
7 anymore.

8 Q Okay.

9 A But I'm coming to these appearances because --

10 Q Because? When did you withdraw?

11 A I've never --

12 Q When did you -- you've never withdrawn.

13 A I've never withdrawn.

14 Q If you feel like that you can't wrap -- you had this case  
15 wrapped up on December 30th -- by December 1st. By December 1st  
16 you had a signed agreement with Viking, and you had accepted the  
17 \$100,000, you had 40, and you accept 25 and you got a 100, and that  
18 turned out to be the amount. I mean, that all happened on November  
19 30th, frankly, right here.

20 MR. CHRISTENSEN: Objection. Foundation and compound.

21 THE WITNESS: The Viking settlement was --

22 THE COURT: Hold on just one second --

23 THE WITNESS: Sorry.

24 THE COURT: -- Mr. Simon. Mr. Vannah?

25 MR. VANNAH: Yes.

1 THE COURT: What is your response to the objection?

2 MR. VANNAH: Well, it's not compound. And I don't know  
3 what lack of foundation we're talking about. I mean, he's the person that  
4 did it. I'm just asking --

5 MR. CHRISTENSEN: May I respond, Your Honor?

6 MR. VANNAH: -- did this happen that way?

7 THE COURT: Mr. Christensen?

8 MR. CHRISTENSEN: It's compound because of all the  
9 information in there. There's two or three different questions, I actually  
10 lost track. There's a lack of foundation because although Mr. Vannah  
11 keeps on saying you accepted. There's no evidence that backs that up.

12 THE COURT: Okay.

13 BY MR. VANNAH:

14 Q Well, you were told to accept it.

15 THE COURT: Well, hold on --

16 BY MR. VANNAH:

17 Q You were --

18 THE COURT: -- Mr. Vannah, I haven't ruled yet.

19 MR. VANNAH: Oh, I'm sorry.

20 THE COURT: I'm still here.

21 MR. VANNAH: I was just going to try to make it easier.

22 THE COURT: Well, Mr. Vannah, re-ask the question. I mean,  
23 is the question, did Mr. Simon wrap the Lange and the Viking  
24 settlements on November 30th?

25 MR. VANNAH: He wrapped up -- he did.

1 THE COURT: But, I mean, is that the question?

2 MR. VANNAH: Yeah.

3 THE COURT: Okay. Mr. Simon, can you answer that  
4 question?

5 THE WITNESS: Yeah. The Viking settlement was December  
6 1st, and your Lange settlement was December 7th.

7 BY MR. VANNAH:

8 Q That's when you signed, the documents were signed for  
9 Lange.

10 A Right. That's when the settlement was done. I'm  
11 communicating to you this better offer that you're going to go take to the  
12 clients, which led to a discussion for a consent to sell on December 7th.

13 Q I didn't take it to the clients, because it was more than the  
14 authority I had. It said, oh, if we have more authority do it.

15 A Well, the consent to settle that is from -- drafted by your  
16 office has both of their signatures saying that you advised them.

17 Q I did.

18 A About the 100,000?

19 Q I did that too. But I already had authority at 25.

20 A Oh, okay, well, I just heard you say that you --

21 THE COURT: Okay, you guys. I don't really know what's  
22 happening here, but there's not any questions being asked. You two are  
23 having some sort of conversation.

24 THE WITNESS: Fair enough.

25 MR. VANNAH: I know.

1 THE COURT: Can we get back to the question section.

2 BY MR. VANNAH:

3 Q November 30th, I told you. Clients have authorized a  
4 settlement for \$25,000 with Lange.

5 A That's what the email says, yes.

6 Q Go do it. That's what it's --

7 A Yes.

8 Q -- saying, go take it?

9 A Right.

10 Q They had authority at 25, so when he came back and said, I'll  
11 pay you a 100, even though you got to pay 22 back, that's certainly better  
12 than 25, right?

13 A Right.

14 Q I mean, haven't you ever had authority from a client, where  
15 the client says, I'll take a million dollars, and you came back, and you  
16 said, guess what, I got you a million-one, did you think you had to go  
17 back and talk to him about that?

18 A This particular deal, yes.

19 Q All right.

20 A Because Teddy Parker was requiring 22 be paid back to  
21 Lange Fleming, who that man over there despised at the time.

22 Q All right. In any event the Lange Plumbing settlement  
23 documents were all signed by December 7th, with exactly what we  
24 talked about, the 100,000 --

25 A Yes.



1 Q -- minus the 22?  
2 A Agreed.  
3 Q And got paid?  
4 A Agreed.  
5 Q Okay. And the rule is if you -- anyway, you didn't withdraw  
6 from the case, you're still attorney of record. I am not attorney of record,  
7 am I?  
8 A No. You never provided a substitution attorney, correct?  
9 Q I didn't sub --  
10 A And you didn't associate-in either?  
11 Q I didn't substitute-in, I didn't associate-in, and I even -- when I  
12 came to Court I clearly said I can show you that, to the Judge. I don't --  
13 I'm not here representing them on this case as Mr. Simon, he's attorney  
14 of record. Do you want me to sign a document? I'll sign anything you  
15 want to get the case to go down, but at no time did you ever withdraw  
16 from the case or become not the attorney of record, correct?  
17 A Correct.  
18 Q Okay.  
19 MR. VANNAH: Let me see if there's anything else.  
20 [Counsel confer]  
21 MR. VANNAH: One second, Your Honor, if you don't mind?  
22 THE COURT: No problem.  
23 MR. VANNAH: I don't have any further questions. Thank  
24 you.  
25 THE COURT: Okay. Mr. Christensen, do you have any

1 that Lange was supposed to pay, just further evidence of the attorney fee  
2 provision.

3 MR. CHRISTENSEN: Your Honor, I'm going to -- this is from  
4 Office Exhibit 56, Bate 468, the construction agreement between  
5 American Grating and Lange.

6 THE COURT: Okay.

7 BY MR. CHRISTENSEN:

8 Q Is this essentially the clause you're talking about here, Mr.  
9 Simon?

10 A Yes.

11 Q Contractor shall also assume full responsibility for enforcing  
12 manufacturer's warranty on all products provided and/or installed by  
13 contractor?

14 A Correct.

15 Q This provision shall survive the completion of the project and  
16 contractor's work?

17 A Yes.

18 Q And ten in italics, *only for Lange Plumbing scope of work*?

19 A Correct.

20 Q Who installed the defective Viking fire sprinkler?

21 A Lange Plumbing.

22 Q So it was within their scope of work?

23 A Correct.

24 Q So in essence you were doing Lange's work for them?

25 A That's the premise of the entire claim.

1           Q     We have a little bit of a timeline issue, that I'd like to address,  
2 if I could. I believe this is the Edgeworths' new Exhibit 11. This is the  
3 email where you send the release?

4           A     Yes.

5           Q     And the time and date on that is November 30, 2017 at 8:38  
6 a.m.?

7           A     Yes.

8           Q     And then you receive notice, I'm going to show the Court  
9 exhibit -- Office Exhibit 43, Bate 420. This is the, as you can see from  
10 here, this is the fax from Brian Edgeworth, saying he's hired Vannah &  
11 Vannah?

12          A     Yes.

13          Q     And this fax came in at -- boy, it says 11/30/2017, 9:35 a.m.?

14          A     Yes.

15          Q     Do you get all the faxes immediately upon them hitting your  
16 office?

17          A     When I -- they come in immediately, but whether I look at  
18 them immediately is another question.

19          Q     Right. Well, take a look at Exhibit 12. It indicates later on  
20 throughout that day at some point in time you got some better terms for  
21 the Edgeworths?

22          A     Yes.

23          Q     Despite maybe any conversations that you had with Mr.  
24 Greene, or that fax that you received; is that correct?

25          A     Right.

1 Q When you receive that fax and/or when you received the call  
2 did you just drop everything on the file?  
3 A What do you mean?  
4 Q Did you stop work on the file?  
5 A No, of course not.  
6 Q Could stopping work place the clients in jeopardy?  
7 A It depends on the situation.  
8 Q But at any rate you continued to do some work on the file  
9 and actually increased offers for them, correct?  
10 A Yes.  
11 Q Now that work all occurred on November 30th, correct?  
12 A Yes.  
13 Q We were shown, this is Edgeworth Exhibit 3, this is Bate 1,  
14 this is that infamous contingency email of August 22, 2017?  
15 A Yes.  
16 Q And the forward on this indicates that you sent it to me on  
17 December 1, 2017?  
18 A Yes.  
19 Q So you went out and consulted your own lawyer?  
20 A Yes.  
21 Q Why did you do that?  
22 A Because I felt that I was terminated, when he's meeting with  
23 other lawyers, and I'm getting letters that I'm supposed to be talking to  
24 other lawyers about a case that I had been representing on for a  
25 substantial time and did amazing work on and gave amazing advice.

1 And the only reason for that would -- for another law firm to get involved  
2 is if I'm out.

3 Q And you were in an awkward position, weren't you? As I  
4 think Mr. Vannah made abundantly clear you never did move to  
5 withdraw?

6 A Right.

7 Q Why not.

8 A Number one, I'm not going to just blow up any settlements,  
9 number one. I've never done that, never will. I continue to work, and I  
10 always put the client's interest above mine, which I did in this case, even  
11 after I'm getting all of these letters.

12 Number two, even later, Mr. Vannah was making it abundantly  
13 clear that they were coming after me, if I decided to do something that  
14 might even remotely be considered adverse to the client.

15 So, I'm in an awkward position, I'm going to fulfill my duties  
16 regardless, and it was clear they didn't want to pay me. But I'm still  
17 going to do it, and do my job for the client regardless, and payment is  
18 going to be an issue that we deal with later.

19 Q And that's the same day I believe you filed your first  
20 attorney's lien?

21 A Yes.

22 THE COURT: And what was the first day you consulted with  
23 Mr. Christensen to represent you? Do you remember?

24 THE WITNESS: I don't, but it would have been around that  
25 time, or a few days or more, before, when I felt that I wasn't getting

1           A     Yes.

2           Q     I will need to consider all options available to me.

3           A     Okay.

4           Q     So what you're telling him, I mean, as I'm reading the letter,

5 if I were a client, I'm reading the letter and it says, if you're not

6 agreeable to signing this fee agreement, then I cannot continue to lose

7 money to help you, to me that would say, I can't continue to work on

8 this case because I'm losing money; is that what you're telling him?

9           A     Unless we work something out.

10          Q     And then you say, I will need to consider all options available

11 to me?

12          A     Yeah.

13          Q     One of those is to withdraw from the case, right?

14          A     I don't know. I didn't know what my options were at that

15 time.

16          Q     Well, you talked to Mr. Christensen by then, hadn't you?

17          A     Around that time, I guess, yeah.

18          Q     Okay.

19          A     Because I needed to learn my options, because I haven't had

20 any communication with them, verbally, since November 25th, and

21 they're promising to meet with me, and they were being cagey about it,

22 and, you know, so I needed to figure out what my options were.

23          Q     I understand. But when you make the statement, if you were

24 not agreeable, then I cannot continue to lose money to help you, I will

25 need to consider all options available to me. Did that not dawn on you

1 when you wrote that in there, that that probably -- that they're probably  
2 going to take up your suggestion that they might want to confer with  
3 someone else? Because at that point in time you two have a little bit of  
4 disagreement here, right?

5 A Oh, yeah.

6 Q You want him to sign this new fee agreement -- or not a new  
7 one, you want him to sign a fee agreement, first time ever --

8 A Yeah.

9 Q -- and they are obviously balking at doing that, right?

10 A As we're talking about money, right?

11 Q Right.

12 A Yeah.

13 Q So you're --

14 A We're talking about what's fair, and we're having that  
15 discussion back and forth, and they weren't giving me a number that  
16 they even thought was fair.

17 Q No, and I appreciate -- not only that, sir, you actually said,  
18 here's what I want you to sign?

19 A Yeah.

20 Q I mean, you no longer -- nobody is pussyfooting around, you  
21 are saying, I want you to pay me \$1,500,000 right now --

22 A Yeah.

23 Q -- giving you credit for what you've paid, I want \$1,500,000  
24 and then I want to have an agreement with what we're going to do with  
25 Lange in the future; that's what you're telling him?

1           A     Yes.

2           Q     And you say, if you're not going to agree, then I can't  
3 continue losing money on a case, which is a veiled threat, that I'm going  
4 to withdraw, that's a veiled threat, right?

5           A     No. It's not a veiled threat, because if you look at my actions  
6 afterwards I didn't do anything of the sort.

7           Q     But we're not looking at your actions afterwards, we're  
8 looking at your actions on the date that the client is receiving this letter.

9           A     Right.

10          Q     Well, the date the client is receiving the letter they don't  
11 know what you're going to do, because you're telling them that I can't  
12 continue to lose money on this case if you don't sign this agreement.  
13 What does that mean to client when you say, I can't continue? Doesn't  
14 that mean to the client that they should be concerned as to whether or  
15 not you're going to wrap this thing up or not?

16          A     They should have come -- they should have had a  
17 conversation with me, which they were refusing to have.

18          Q     Or follow your advice. Your other advice was, you know  
19 what, you can go out and talk to any other attorney in town and they'll  
20 tell you the same thing I'm telling you, this is fair?

21          A     Absolutely.

22          Q     Well, then they took up your advice and they came and  
23 talked to me.

24          A     And I guess --

25          Q     I guess they got the one guy that didn't think it was fair.



1           A     Well, the one guy who didn't think it was fair, I think if you  
2 were sitting in my seat you'd have a different opinion.

3           Q     Well, I'm not, so.

4           A     I get it.

5           Q     And then when you said, I will need to consider all options  
6 available to me. I guess they should consider all option available, they  
7 don't care; is that fair?

8           A     I guess so.

9           Q     And obviously they shouldn't be coming to you to get advice  
10 as to whether or not this fair or not, because you guys, at this point have  
11 -- you want them to sign the agreement, and they don't want to. So, at  
12 that point they probably should get independent advice, right?

13          A     I don't know that they didn't want to. After this agreement  
14 was sent to them Mr. Edgeworth sent an email to me, saying, hey,  
15 thanks for the agreement. Brian is on his way back; we are going to  
16 meet with our attorney before we sign.

17          Q     Yeah.

18          A     Right?

19          Q     They did.

20          A     So that seemed they were considering signing it --

21          Q     Oh, I --

22          A     -- but then wanted just to double check with an attorney, and  
23 that's when I guess you told them not to and decided to take the path  
24 that we took.

25          Q     I suppose that would be true. I think that's pretty

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No. 78176**

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION; DOES I through X,  
inclusive, and ROE CORPORATIONS I  
through X, inclusive,

Respondents.

Appeal from a Final Judgment entered by the Eighth Judicial District Court, Clark County  
The Honorable Tierra Jones, District Judge

**APPELLANTS' APPENDIX**

**VOL. 3 PART 3 of 3**

AA000754

Docket 77678 Document 2019-33425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
1/9/18	Acceptance of Service of the Summons and Complaint	1	AA000024
3/15/18	Amended Complaint	2	AA000305
1/4/2018	Complaint	1	AA000013
11/19/2018	Decision and Order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCP 12(B)(5)	2	AA000376
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
12/17/2018	Notice of Cross Appeal	2	AA000440
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs <ul style="list-style-type: none"> <li>• Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479

**Appellants' Appendix – Consolidated Cases 77678 and 78176  
*Edgeworth, et al. v. Daniel Simon, et al.***

12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
6/13/19	Recorder's Transcript of Evidentiary Hearing-Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing-Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing-Day 4 August 30, 2018	3	AA000488
11/30/2017	Simon's Notice of Attorney's Lien	2	AA000001

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

<b>Date Filed</b>	<b>Document Title</b>	<b>VOL. No.</b>	<b>Bates Number</b>
11/30/2017	Simon's Notice of Attorney's Lien	1	AA000001
1/2/2018	Notice of Amended Attorney's Lien	1	AA000006
1/4/2018	Complaint	1	AA000013
1/9/2018	Acceptance of Service of the Summons and Complaint	1	AA000024
1/24/2018	Motion to Adjudicate Lien of the Law Office of Daniel Simon On Order Shortening Time <ul style="list-style-type: none"> <li>• Simon's Invoices</li> <li>• Email to Simon labeled "Contingency</li> <li>• Itemization of Costs</li> <li>• Simon's 11/27/18 Letter to Edgeworth's</li> </ul>	1 & 2	AA000025
2/02/18	Plaintiff's Opposition to Defendant's Motions to Consolidate and to Adjudicate Attorney Lien <ul style="list-style-type: none"> <li>• Affidavit of Brian Edgeworth (2/2/18)</li> <li>• Deposition of Brian Edgeworth (9/29/17)</li> </ul>	2	AA000277
3/15/18	Amended Complaint	2	AA000305
4/9/2018	Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to 12(b)(5)	2	AA000317
4/24/2018	Plaintiff's Opposition to Defendant's (Third) Motion to Dismiss	2	AA000335
11/19/2018	Decision and order on Motion to Adjudicate Lien	2	AA000353
11/19/2018	Decision and Order on Motion to Dismiss NRCF 12(B)(5)	2	AA000376
12/7/2018	Motion for Attorneys Fees and Costs	2	AA000386
12/13/2018	Plaintiff's Motion for an Order to Release Funds	2	AA000415
12/17/2018	Notice of Appeal (Adjudicate Lien and Motion to Dismiss)	2	AA000425

**Appellants' Appendix – Consolidated Cases 77678 and 78176**  
***Edgeworth, et al. v. Daniel Simon, et al.***

12/17/2018	Plaintiffs' Opposition to Simon's Motion for Fees and Costs	2	AA000428
12/17/2018	Notice of Cross Appeal	2	AA000440
12/27/2018	Notice of Entry of Orders (Adjudicate Lien and Dismiss NRCP 12(B)(5))	2	AA000442
2/08/2019	Notice of Entry of Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs  <ul style="list-style-type: none"> <li>Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs</li> </ul>	2	AA000479
2/15/19	Notice of Appeal (Attorney's Fees and Costs)	2	AA000485
6/13/19	Recorder's Transcript of Evidentiary Hearing- Day 1 August 27, 2018 Recorder's Transcript of Evidentiary Hearing- Day 2 August 28, 2018 Recorder's Transcript of Evidentiary Hearing- Day 4 August 30, 2018	3	AA000488

1 straightforward. Okay.

2 A All right.

3 Q All right. Thank you.

4 A You're welcome. Thank you.

5 THE COURT: Not so quick, Mr. Simon. Mr. Christensen, did  
6 you have any follow-up?

7 MR. CHRISTENSEN: Yes, Your Honor.

8 THE COURT: I assume you do, you're at the podium.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. CHRISTENSEN:

11 Q Nevada has an option for an attorney to secure a fee in a  
12 case? Do you know --

13 THE COURT: Who has the option, I'm sorry?

14 MR. CHRISTENSEN: To secure a fee in a case.

15 THE COURT: But you said -- who --

16 MR. CHRISTENSEN: An option, Nevada does.

17 THE COURT: Nevada, okay. I was just was, what's the first  
18 name.

19 THE WITNESS: What do you mean by "secure"?

20 BY MR. CHRISTENSEN:

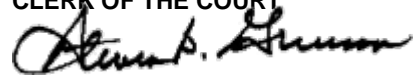
21 Q Protect, perceive?

22 A Oh, yeah.

23 Q What is that?

24 A That is the Attorney Lien Statute 18.015.

25 Q And when did you file an attorney's lien?



# EXHIBIT B

# EXHIBIT B

AA000760



# VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS  
INCLUDING PROFESSIONAL CORPORATIONS

October 31, 2018

**VIA FACSIMILE & EMAIL: (702) 272-0415; jim@jchristensenlaw.com**

James R. Christensen, Esq.  
**JAMES R. CHRISTENSEN, PC**  
601 S. Third Street  
Las Vegas, Nevada 89101

**Re: Edgeworth Family Trust, et.al. v. Daniel S. Simon, et.al.**

  
Dear Mr. Christensen:

The Edgeworth Plaintiffs are willing to accept the rulings of the Court "as is", with the exception of the cost award in the amount of \$71,594.94, as we all agree that Danny Simon has been reimbursed in full for all costs advanced in this matter. If Danny is willing to forego appealing any of the orders of Judge Jones, Bob Vannah is willing to meet Danny at the bank, cut him a check for **\$484,982.50** (\$556,577.43 minus \$71,594.93), cut a check to the Edgeworth's for the balance of funds in the account, and put an end to this. It's also advisable for our clients to sign a mutual release.

Please let us know if Danny is also willing to accept the rulings of Judge Jones, namely the amount awarded in the Decision and Order on Motion to Adjudicate Lien, minus the cost award of \$71,594.93, and put this behind him at this time.

Sincerely,

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

RDV/jg



Jessie Romero &lt;jromero@vannahlaw.com&gt;

---

**Fax Message Transmission Result to +1 (702) 2720415 - Sent**1 message

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**RingCentral** <service@ringcentral.com>

Wed, Oct 31, 2018 at 4:18 PM

To: Jessie Romero &lt;jromero@vannahlaw.com&gt;

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# VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS  
INCLUDING PROFESSIONAL CORPORATIONS

November 19, 2018

**VIA FACSIMILE & EMAIL: (702) 272-0415; jim@jchristensenlaw.com**

James R. Christensen, Esq.  
**JAMES R. CHRISTENSEN, PC**  
601 S. Third Street  
Las Vegas, Nevada 89101

**Re: Edgeworth Family Trust, et.al. v. Daniel S. Simon, et.al.**

Dear Mr. Christensen:

Again, the Edgeworths are willing to accept the amended orders of the Court "as is." If Danny is willing to forego appealing any of the orders of Judge Jones, Bob Vannah is willing to meet Danny at the bank, cut him a check for **\$484,982.50**, cut a check to the Edgeworths for the balance of funds in the account, and put an end to this. It remains advisable for our clients to sign a mutual release.

Please let us know if Danny is also willing to accept the amended orders of Judge Jones, namely the amount awarded in the Decision and Order on Motion to Adjudicate Lien.

Sincerely,

VANNAH & VANNAH



ROBERT D. VANNAH, ESQ.

RDV/jg



Jessie Romero &lt;jromero@vannahlaw.com&gt;

---

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Mon, Nov 19, 2018 at 3:44 PM

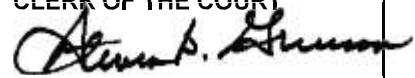
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File Name	Result
18-11-19 Letter to Christensen .pdf	Success



PATRICIA A. MARR, ESQ.  
Nevada Bar No. 008846  
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patricia@marrlawlv.com  
*Counsel for Defendants*  
*Robert Darby Vannah, Esq.,*  
*John B. Greene, Esq. and*  
*Robert D. Vannah, Chtd., dba Vannah & Vannah*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION,

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and, ROBERT D. VANNAH,  
CHTD., d/b/a VANNAH & VANNAH; and  
DOES I through V, and ROE CORPORATIONS  
VI through X, inclusive,

Defendants.

CASE NO.: A-19-807433-C  
DEPT NO.: 24

**MOTION OF ROBERT DARBY**  
**VANNAH, ESQ., JOHN BUCHANAN**  
**GREENE, ESQ., and, ROBERT D.**  
**VANNAH, CHTD., d/b/a VANNAH &**  
**VANNAH, TO DISMISS PLAINTIFFS'**  
**COMPLAINT, AND MOTION IN THE**  
**ALTERNATIVE FOR A MORE**  
**DEFINITE STATEMENT**

(Oral Argument Requested)

Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ.,  
and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred to collectively as  
VANNAH), hereby file this Motion to Dismiss Plaintiffs' Complaint, and Motion in the  
Alternative for a More Definite Statement of certain Counts.

This Motion is based upon the attached Memorandum of Points and Authorities, NRCp  
12(b)(5), NRCp 12(e), NRS sections 41.635-670, the pleadings and papers on file herein, the  
Points and Authorities raised in the underlying action which are now on appeal before the

1 Nevada Supreme Court, Appellants' Appendix (attached to VANNAH'S Opposition to  
2 Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A), the record on  
3 appeal (*Id.*), all of which VANNAH adopts and incorporates by this reference, the Exhibits  
4 attached hereto and any oral argument this Court may wish to entertain.

5 DATED this 30<sup>th</sup> day of April, 2020.

6 PATRICIA A. MARR, LTD.

7 /s/Patricia A. Marr, Esq.

8  
9 PATRICIA A. MARR, ESQ.  
10 Nevada Bar No. 008846  
2470 St. Rose Pkwy., Ste. 110  
Henderson, Nevada 89074  
11 (702) 353-4225 (telephone)  
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patricia@marrlawlv.com  
13 *Counsel for Defendants*  
*Robert Darby Vannah, Esq.,*  
14 *John B. Greene, Esq. and*  
*Robert D. Vannah, Chtd., dba Vannah &*  
15 *Vannah*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. PREFATORY STATEMENT**

18 As previously indicated by VANNAH in the Opposition to SIMON'S  
19 Emergency Motion, since denied, the Complaint of Plaintiffs DANIEL S. SIMON and  
20 THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION  
21 (collectively referred to as SIMON) is the direct byproduct of a judicial matter that  
22 began in May of 2016, and that is now on appeal before the Nevada Supreme Court.  
23 (*Id.*) All briefing has been completed and the issues on appeal are waiting further action  
24 by that judicial body.  
25  
26

27 The basis for SIMON'S allegations contained in Count I (Wrongful Use of Civil  
28 Proceedings), Count V (Defamation Per Se), and Count VI (Business Disparagement),

1 are some statements allegedly made by the EDGEWORTH FAMILY TRUST,  
2 AMERICAN GRATING, LLC, Angela and Brian Edgeworth (the Edgeworths) and  
3 perhaps their counsel, VANNAH, **in the course of litigation and various judicial**  
4 **proceedings, together with the filing of pleadings.** (See, Exhibit A, SIMON'S  
5 Complaint). As such, these Counts/claims are barred by the time-honored and absolute  
6 litigation privilege. *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901, 903 (Nev.  
7 2014).

8  
9  
10 These Counts also lack specificity such as whom SIMON is making the claims  
11 against, what statements were made, when the statements were made, where the  
12 statements were made, who made the statements, and who heard the statements, etc.  
13 (Exhibit A.) The law requires that claims for false, defamatory, and/or disparaging  
14 statements must be pled with specificity. *Kahn v. Bower*, 232 Cal.App.3d 1599, 1612  
15 (1991). There is also a complete lack of clarity as to whether these allegations in  
16 SIMON'S Complaint are made against VANNAH. If they survive dismissal, which  
17 there is no factual or legal reason why they should, a more definite statement is required  
18 pursuant to NRCP 12(e).  
19  
20

21 Additionally, the primary basis for SIMON'S allegations contained in Count I  
22 (Wrongful Use of Civil Proceedings), Count II (Malicious Prosecution), and Count III  
23 (Abuse of Process), are seemingly centered on actions allegedly taken during the  
24 litigation, and without any measure of discovery allowed, that: a.) are on appeal, thus no  
25 final determination has been made, let alone one in favor of SIMON; and/or, b.) did not  
26 involve any action other than the filing of a complaint and an amended complaint—  
27  
28

1 protected acts pursuant to NRS sections 41-635-670, Nevada's Anti-SLAPP statutes—  
2 and participating in judicial hearings (to dismiss the complaint/amended complaint and  
3 to adjudicate SIMON'S lien). (See, Appellants' Appendix attached to VANNAH'S  
4 Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as  
5 Exhibit A.)

7 Not only are these Counts (I-III) unsupported by the facts, they are neither ripe  
8 nor legally appropriate for consideration under the law. In short, they are inextricably  
9 linked to the matters on appeal. (See, Appellants' Appendix attached to VANNAH'S  
10 Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as  
11 Exhibit A); *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002)(One of the elements for a  
12 claim for malicious prosecution is a favorable termination of a prior action.) With an  
13 appeal pending, this reality extinguishes SIMON'S claim for malicious prosecution.  
14

16 SIMON's claim for abuse of process is lacking, too, since all the Defendants did  
17 substantively to pursue the Edgeworths' claims against SIMON in the underlying matter  
18 was to file and serve the complaint and amended complaint; nothing else was allowed  
19 by the judge. (See, Appellants' Appendix attached to VANNAH'S Opposition to  
20 Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) In  
21 Nevada, a claim for abuse of process requires more than the mere filing of a complaint.  
22 *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985)(The mere filing of a  
23 complaint itself is insufficient to establish the tort of abuse of process...Instead, the  
24 complaining party must include some allegation of abusive measures taken after the  
25 filing of the complaint in order to state a claim.). The absence of any additional action  
26  
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1 allowed, or taken, also negates SIMON’S claim for abuse of process.

2 Furthermore, the basis for SIMON’S allegations contained in Count IV  
3 (Negligent Hiring, Supervision, and Retention), Count VII (Negligence), and Count  
4 VIII (Civil Conspiracy) are brought by SIMON as an admitted adversary of the  
5 Edgeworths due to actions allegedly taken in the underlying judicial action by the  
6 Edgeworths and their attorneys, VANNAH. The law is clear that VANNAH, as  
7 attorneys, do not owe a duty of care to SIMON, an adversary of a client in the  
8 underlying litigation. *Dezzani v. Kern & Associates, Ltd.*, 134 Nev.Adv.Op. 9, 12, 412  
9 P.3d 56 (2018); See also *Fox v. Pollack*, 226 Cal.Rptr. 532, 536 (Ct. App. 1986).

12 SIMON’S claim of civil conspiracy also fails as a matter of law, since SIMON  
13 did not, and cannot, allege sufficient facts to meet the essential elements of that claim.  
14 Nevada law states that a civil conspiracy is a combination of two or more persons by  
15 some concerted action to accomplish some criminal or unlawful purpose or to  
16 accomplish some purpose not in itself criminal or unlawful, but by criminal or unlawful  
17 means. *Eikelberger v. Tolotti*, 96 Nev. 525, 528, 611 P.2d 1086, 1088 (1980) (emphasis  
18 added); *Sunderland v. Gross*, 105 Nev. 192, 772 P.2d 1287 (1989).

21 Here, VANNAH (the attorney) met with, advised, and counseled clients—the  
22 Edgeworths. In furtherance of the role as attorney, VANNAH prepared and filed a  
23 complaint and an amended complaint against SIMON, and thereafter participated in  
24 public judicial proceedings to further the representation of the Edgeworths’ interests and  
25 claims. These acts are exactly what attorneys do and are required to do, under the  
26 Nevada Rules of Professional Conduct.  
27  
28

1       Clearly, what VANNAH did is an open book, available to any reader of this  
2 public record. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to  
3 Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) It's  
4 also protected under Nevada's Anti-SLAPP laws (NRS sections 41.635-670). There is  
5 no legal authority or rule that SIMON can cite that could possibly deem these legal,  
6 customary, and protected actions to rise to the level of a civil conspiracy. *Eikelberger v.*  
7 *Tolotti*, 96 Nev. 525, 528, 611 P.2d 1086, 1088 (1980)(emphasis added); *Sunderland v.*  
8 *Gross*, 105 Nev. 192, 772 P.2d 1287 (1989).  
9  
10

11       To paraphrase SIMON from the underlying matter on appeal, none of his  
12 allegations against VANNAH "rise to the level of a plausible or cognizable claim for  
13 relief." Some are barred by the litigation privilege, others by a lack of procedural  
14 ripeness (and a lack of merit), others still by the absence of any duty owed or legal  
15 remedy afforded, and all by Nevada's Anti-SLAPP laws. Since none of SIMON'S  
16 claims are left unscathed, they all should be dismissed pursuant to NRCP 12(b)(5), and  
17 NRS Sections 41.635-670.  
18

19       Finally, SIMON'S claims for defamation and disparagement lack clarity,  
20 specificity, and definiteness regarding the claims made, the factual basis for his claims,  
21 when and where they were made, as well as the specific parties he is making these  
22 claims against. Therefore, VANNAH seeks additional relief, alternatively, for a more  
23 definite statement pursuant to NRCP 12(e).  
24  
25

26       But let there be no doubt: If the Defendants here had not filed the complaint and  
27 amended complaint in the underlying matter, the dismissal of which is presently on  
28

1 appeal, SIMON never would have filed his complaint. As the appellate record shows,  
2 the Edgeworths did not ask for any of this from SIMON; they simply wanted the  
3 contract honored and their funds given to them. (*See*, Appellants' Appendix attached to  
4 VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve  
5 Evidence as Exhibit A.) Any other inference, assertion, argument, or allegation by  
6 SIMON to the contrary is nonsensical and belied by the facts and the record. (*Id.*)

7  
8 What this Court is being asked to do is to preside over a matter that arose  
9 because SIMON wants to punish the Edgeworths and their attorneys, VANNAH, for  
10 filing a lawsuit in good faith to redress wrongs that were allegedly committed by  
11 SIMON. However, SIMON's Complaint flies in the face of the facts, the law, and  
12 Nevada's Anti-SLAPP statutes (NRS Sections 41.635-670). To again paraphrase  
13 SIMON, "Anti-SLAPP statutes protect those who exercise their right to free speech,  
14 petition their government on an issue of concern, and/or try to resolve a conflict through  
15 use of the judiciary." SIMON'S suit was brought in direct response to the Defendants'  
16 legal use of the judiciary through the filing of a complaint and an amended complaint to  
17 redress wrongs. SIMON'S suit is a SLAPP and must be dismissed under Nevada's  
18 Anti-SLAPP law, a law SIMON is well aware of, having personally referenced it in the  
19 proceedings on appeal.

20  
21 It is foreseeable that the Nevada Supreme Court will agree with the Edgeworths  
22 that the dismissal of their amended complaint was improper and then remand that matter  
23 for further proceedings. Thereafter, it is likely that discovery and a trial on the merits of  
24 the Edgeworths' claims will follow. (*Id.*) Also, it is equally foreseeable that a jury will  
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26  
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1 then decide that SIMON breached the oral contract he had with the Edgeworths,  
2 converted their money when he exercised dominion and control over amounts that he  
3 knew or should have known that he had no basis to claim and refused to release to his  
4 clients, and that the Edgeworths, as the victims, are entitled to the damages they seek.  
5 (*Id.*) Should that occur, the factual and legal basis for all of SIMON’S claims would be  
6 eradicated.  
7

8 Even if the Nevada Supreme Court agrees that the dismissal of the Edgeworths’  
9 Amended Complaint was somehow proper, that should have no bearing on the need to  
10 dismiss SIMON’S complaint here and now. Every lawsuit has a winner and a loser,  
11 whether it be a breach of contract matter or a personal injury suit. There is nothing  
12 novel about that reality. If SIMON’S act of filing his retaliatory Complaint is condoned  
13 with life and legs by denying this Motion, the floodgates of retaliatory litigation of these  
14 types of Counts/claims will surely follow. Every “victorious litigant” would be given  
15 the green light to return fire, so to speak, with a new complaint alleging the garden  
16 variety of Counts/claims seen here. That would be a very unwise precedent to set, and a  
17 really bad set of facts to set it with.  
18  
19  
20

## 21 II. ARGUMENT

### 22 A. SIMON CONTINUES TO EXERCISE DOMINION AND CONTROL OVER 23 THE EDGEWORTHS’ MONEY, THUS UNDERMINING THE BASIS FOR 24 HIS COMPLAINT.

25 SIMON is wrong, factually and legally, when he speaks of an “arrangement” that  
26 purportedly undermines the Edgeworths’ claim for conversion. When the underlying  
27 settlements were reached with the Viking and Lange entities, the Edgeworths wanted,  
28 and were/are entitled to, the full measure of these/their funds. (*See*, Appellants’

1 Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency  
2 Motion to Preserve Evidence as Exhibit A.) From May of 2016, through the submission  
3 of and payment of the fourth and final invoice, SIMON had provided, and the  
4 Edgeworths had always paid, invoices for work performed by SIMON at the rate of  
5 \$550 per hour. (*Id.*) That was the contract. (*Id.*)

7 The Edgeworths expected that the contract with SIMON would be honored by  
8 him. (*Id.*) Yet, as alleged in the Amended Complaint, and contained in the appellate  
9 record (*Id.*), rather than abide by the contract and provide the Edgeworths with a fifth  
10 and final invoice for his work, SIMON demanded a bonus, served an attorney's lien in  
11 an unspecified amount, demanded what amounted to a contingency fee of nearly 40% of  
12 the amount of the underlying settlements, served a second lien for millions in additional  
13 fees and costs, and refused to release the settlement funds to the Edgeworths. (*Id.*)

16 SIMON'S proposal was to deposit the settlement funds in his trust account. That  
17 was unacceptable to the Edgeworths. VANNAH'S proposal was to deposit the  
18 Edgeworths' funds into VANNAH'S trust account. That was unacceptable to SIMON.  
19 Since these funds needed to be deposited so the check didn't become stale, a  
20 compromise was reached that caused the funds to be deposited at Bank of Nevada. In  
21 order for the Edgeworths' funds to be disbursed, both SIMON and VANNAH must  
22 consent and co-sign on a check. This was not and is not what the Edgeworths wanted or  
23 want—they want their money. (*Id.*)

26 Even now, SIMON continues to exercise dominion and control of well over \$1  
27 million dollars of the Edgeworths' funds with no reasonable factual or legal basis to do  
28

1 so. (*Id.*) This constitutes conversion of the Edgeworths' property. Under Nevada law,  
2 conversion is, "a distinct act of dominion wrongfully exerted over another's personal  
3 property in denial of, or inconsistent with, his title or rights therein or in derogation,  
4 exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev.  
5 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413  
6 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)("We conclude that  
7 it was permissible for the jury to find that a conversion occurred when Bader refused to  
8 release their brand.") Nevada law also holds that conversion is an act of general intent,  
9 which does not require wrongful intent and is not excused by care, good faith, or lack of  
10 knowledge. (*Id.*)

11  
12  
13 It's clear that, contrary to the assertions of SIMON, to prevail on their claim for  
14 conversion, the Edgeworths only need to prove what they've asserted: that SIMON  
15 exercised, and continues to exercise, dominion and control over the Edgeworths' money  
16 without a reasonable basis to do so. (*Id.*) It doesn't require proof of theft or ill intent, as  
17 SIMON wants everyone to believe. (*Id.*) Rather, the conversion is his unreasonable  
18 claim to an excessive amount of the Edgeworths' money that SIMON knew and had  
19 every reason to believe that he had no reasonable basis to lay claim to. (*See*, Exhibit A  
20 to Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously  
21 filed Emergency Motion to Preserve Evidence)

22  
23  
24  
25 The best evidence of this factual and legal reality of SIMON'S conversion is the  
26 amount of his superbill (\$692,120) versus the amount of his Amended Lien  
27 (\$1,977,843.80). (*Id.*) At the near conclusion and resolution of the flood litigation in  
28

1 mid-November of 2017, SIMON decided he wanted a contingency fee from the  
2 Edgeworths but failed, as the lawyer, to reduce any fee agreement to writing. (*Id.*)  
3 Thus, per the Rules and order of Judge Jones, that option was precluded. (*Id.*) Even  
4 though the evidence that SIMON himself generated shows that the most he could  
5 reasonably have expected to receive in additional proceeds from the Edgeworths for the  
6 work he performed was \$692,120, SIMON still served his Amended Lien and *still*  
7 *refuses* to release over one million dollars of the Edgeworths' money to them. (*Id.*)  
8 That, without any reasonable doubt, is conversion under Nevada law. *Evans v. Dean*  
9 *Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*,  
10 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314,  
11 317 (1980).

12  
13  
14  
15 SIMON'S lien has been adjudicated, he's been awarded \$484,982.50 in fees that  
16 the Edgeworths have agreed to pay to him (*See*, Exhibit B to VANNAH'S previously  
17 filed Opposition to SIMON'S emergency motion), yet SIMON won't release the  
18 balance of the Edgeworths' money to them. (*See*, Exhibit A to Appellants' Appendix  
19 attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to  
20 Preserve Evidence). These facts, together with the law cited above, provide more than  
21 enough of a good faith basis to seek and maintain a claim for conversion (as well as the  
22 other claims in the underlying Amended Complaint) against SIMON. (Nevada Rule of  
23 Professional Conduct 3.1).  
24

25  
26 ///

27 ///





1 *Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las*  
2 *Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

3 A plain reading of SIMON'S Complaint reveals that the primary basis for SIMON'S  
4 claims for wrongful use of civil proceedings, for defamation per se, and for business  
5 disparagement are statements allegedly made by one or more of the defendants in the course of  
6 the underlying litigation and judicial proceedings. (Exhibit A.) (An additional basis is the filing  
7 of the complaint and the amended complaint by VANNAH on behalf of the Edgeworths.) Since  
8 these statements are "absolutely privileged," there is no set of facts...which would entitle  
9 SIMON to any relief. *See, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181  
10 P.3d 670, 672 (2008). Therefore, these claims must be dismissed pursuant to NRCP 12(b)(5), as  
11 they do not state a claim upon which relief could ever be granted.  
12

13 The law requires that SIMON'S claims for false, defamatory, and/or disparaging  
14 statements must be pled with specificity. *Kahn v. Bower*, 232 Cal.App.3d 1599, 1612 (1991).  
15 SIMON'S complaint merely speaks in general terms, failing to identify which alleged statements  
16 are defamatory or disparaging, what the statement actually are, when and where they were  
17 offered, who offered them and why, and whom are these claims made against. (Exhibit A.)  
18 Without this requisite specificity and clarity, and if these claims which should be dismissed are  
19 not, then a more definite statement on these Counts is requested and required pursuant to NRCP  
20 12(e).  
21

22 SIMON'S claims for malicious prosecution, abuse of process, and wrongful use of civil  
23 proceedings must also be dismissed on the grounds that they are either procedurally premature  
24 and/or there is no set of facts that SIMON could prove that would entitle him to a remedy at law.  
25 *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). One  
26 of the key elements for a claim for malicious prosecution is a favorable termination of a prior  
27  
28

1 action. *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002). The same case speaks of the elements  
2 of a claim for abuse of process, which also includes the requirement of the resolution of a prior,  
3 or underlying action. *Id.* The language in SIMON’S claim for wrongful use of civil proceedings  
4 is nothing more, either factually or legally, than one couched in malicious prosecution and/or  
5 abuse of process, and should be disposed in like manner with them. (Exhibit A, pp. 9-10.)

6  
7 A claim for abuse of process also requires more than the mere filing of a complaint itself.  
8 *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Rather, the complaining party must  
9 include some allegation of abusive measures taken after the filing of a complaint to state a claim.  
10 *Id.* As indicated in the appellate record, nothing substantive with the Edgeworths’ Amended  
11 Complaint was allowed to be taken after it was filed and served. (See, Exhibit A to Appellants’  
12 Appendix attached to VANNAH’S Opposition to Plaintiff’s previously filed Emergency Motion  
13 to Preserve Evidence) No discovery, no depositions, no nothing. (*Id.*) Without any additional  
14 “abusive measure,” SIMON’S claim for abuse of process is legally insufficient and must be  
15 dismissed pursuant to NRCP 12(b)(5). See, *Laxalt*, 622 F. Supp. at 752.

16  
17 As Appellants Appendix clearly shows, the underlying action is presently on appeal.  
18 Included in that appeal is the order dismissing the Edgeworths’ Amended Complaint, the award  
19 of a certain measure of fees and costs associated with that dismissal, the finding that SIMON was  
20 constructively discharged by the Edgeworth’s, and the award of \$200,000 in fees to SIMON  
21 based on quantum meruit when any finding of a constructive discharge was belied by the facts,  
22 including the exact amount of time that SIMON actually and admittedly worked for the  
23 Edgeworths, and billed them, from November 30, 2017, through January 8, 2018, which totaled  
24 \$33,811.25 in fees, not the \$200,000 awarded. (*Id.*)

25  
26 Since SIMON’S suit/complaint is inextricably linked to the underlying judicial action  
27 that is presently on appeal (with all briefing completed and submitted), and since there is no  
28

1 “favorable termination of a prior action,” and no “additional abusive measure,” SIMON cannot  
2 state a claim for which relief can be granted for his claims for malicious prosecution, abuse of  
3 process, and wrongful use of civil proceedings. *See, LaMantia v. Redisi*, 38 P.3d 877, 879-80  
4 (2002); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Therefore, these claims  
5 must be dismissed as a matter of law pursuant to NRCP 12(b)(5).  
6

7 The basis for SIMON’S allegations contained in Count IV (Negligent Hiring,  
8 Supervision, and Retention), Count VII (Negligence), and Count VIII (Civil Conspiracy) are  
9 factually and legally defective, as well. There is no reasonable question that an attorney client  
10 relationship never existed in the underlying action between SIMON and VANNAH. (*See*,  
11 Exhibit A to Appellants’ Appendix attached to VANNAH’S Opposition to Plaintiff’s previously  
12 filed Emergency Motion to Preserve Evidence). There is no dispute that these Counts (IV, VII &  
13 VIII) are brought by SIMON, who is an admitted and documented adversary of the Edgeworths,  
14 due to actions allegedly taken in the underlying action by the Edgeworth’s and their attorneys,  
15 VANNAH, namely the filing of a complaint and an amended complaint.  
16

17 The law is clear that VANNAH, as attorneys, do not owe a duty of care to SIMON, an  
18 adversary of a client, the Edgeworths, in the underlying litigation. *Dezzani v. Kern & Associates*,  
19 *Ltd.*, 134 Nev.Adv.Op. 9, 12, 412 P.3d 56 (2018). Rather, an attorney providing legal services to  
20 a client generally owes no duty to adverse or third parties. *Id.* *See also, Fox v. Pollack*, 226  
21 Cal.Rptr. 532, 536 (Ct. App. 1986); *GemCap Lending, LLC v. Quarles & Brady, LLP*, 269 F.  
22 Supp. 3d 1007 (C.D. Cal 2017); *Borissoff v. Taylor & Faust*, 96 Cal. App. 4th 418, 117 Cal.  
23 Rptr. 2d 138 (1st District 2002). (An attorney generally will not be held liable to a third person  
24 not in privity of contract with him since he owes no duty to anyone other than his client.); *Clark*  
25 *v. Feder and Bard, P.C.*, 634 F. Supp. 2d 99 (D.D.C.)(applying District of Columbia law)(Under  
26 District of Columbia law, with rare exceptions, a legal malpractice claim against an attorney  
27  
28

1 requires the existence of an attorney-client relationship; the primary exception to the requirement  
2 of an attorney-client relationship occurs in a narrow class of cases where the “intended  
3 beneficiary” of a will sues the attorney who drafted that will.)

4 A simple and plain reading of Counts IV, VII & VIII of SIMON’S Complaint shows that  
5 all of these claims are based on the alleged breach of an alleged duty by VANNAH to SIMON in  
6 the filing of litigation. The law does not allow SIMON to make or maintain such claims. (*Id.*)  
7 Since SIMON cannot maintain these claims as a matter of law pursuant to Nevada (and general)  
8 law, they must be dismissed, pursuant to NRCP 12(b)(5). See, *Vacation Village, Inc. v. Hitachi*  
9 *Am. Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)(quoting *Edgar v. Wagner*, 101 Nev. 226,  
10 228 ,699 P.2d 110, 112 (1988); and, *Stockmeier v. Nev. Dep’t of Corr. Psychological Review*  
11 *Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008).

12  
13  
14 SIMON’S claim for civil conspiracy has additional legal flaws, as SIMON’S  
15 allegations are insufficient to establish the elements of a claim for this relief.  
16 *Stockmeier v. Nev. Dep’t of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183  
17 P.3d 133, 135 (2008). VANNAH agrees that meetings were held with the Edgeworths,  
18 the first of which occurred with Brian Edgeworth on November 29, 2017; that the initial  
19 meeting was held at the encouragement of SIMON; that VANNAH was retained to  
20 represent the Edgeworths’ interests; that VANNAH counseled and advised the  
21 Edgeworths on their litigation options; that, as a result of the client meetings, VANNAH  
22 prepared and caused to be filed a complaint and an amended complaint to address  
23 wrongs committed by SIMON, naming SIMON as defendants. (See, Appellants’  
24 Appendix attached to VANNAH’S Opposition to Plaintiff’s previously filed Emergency  
25 Motion to Preserve Evidence as Exhibit A; and, Exhibit B to this Motion.)  
26  
27  
28

1 VANNAH also agrees that the allegations in the complaints represented the  
2 reality that the Edgeworths had lived as a result of the actions and inactions of SIMON;  
3 that VANNAH had and has a good faith belief regarding the viability of each claim for  
4 relief in the complaints; that VANNAH opposed SIMON'S efforts to dismiss the  
5 complaints; and, that VANNAH caused to be filed a Notice of Appeal of, among other  
6 things, the order dismissing the Amended Complaint. All of these facts are part of the  
7 judicial proceedings that are presently on appeal. (*Id.*)  
8  
9

10 There is nothing in Nevada law that makes it criminal or unlawful for a lawyer to  
11 meet with a client and advise the client of the option to use the judiciary to take public  
12 action to seek redress for injuries suffered at the hands of another. There is also nothing  
13 in Nevada law that makes it criminal or unlawful for an attorney to then file a complaint  
14 alleging various claims for relief, including conversion, when an adverse attorney has  
15 laid claim to an amount of money that he knew and had reason to know that he had no  
16 legal basis to exercise dominion and control over through an attorney's lien. *Evans v.*  
17 *Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v.*  
18 *Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609  
19 P.2d 314, 317 (1980). Finally, there is nothing in Nevada law that makes it criminal or  
20 unlawful to vigorously defend the interest and claims of that client in judicial  
21 proceedings. *NRS* sections 41.635-670. This is all part of the public record and was all  
22 done to seek a remedy that SIMON withheld—the Edgeworths' money. (*See*,  
23 Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously  
24 filed Emergency Motion to Preserve Evidence as Exhibit A).  
25  
26  
27  
28

1 To put the Dr. Marten boots on the other foot, SIMON'S suit is a violation of  
2 Nevada's Anti-SLAPP statute, which SIMON is aware is found in NRS Sections  
3 41.635-670. The sole design of SIMON'S suit is to punish the Edgeworths and their  
4 lawyers, VANNAH, for bringing claims and seeking redress through the judiciary  
5 against SIMON for conduct that amounted to breach of contract, to converting the  
6 Edgeworths' proceeds, and for treating them in a way that lawyers/others are not  
7 allowed to treat clients/others. A simple reading of the Edgeworths' Amended  
8 Complaint (Exhibit B) makes all of that abundantly clear.  
9  
10

11 There is nothing criminal or illegal about these actions. If it was or is, then Dick  
12 the Butcher had it all wrong in Shakespeare's Henry VI, as the first thing we do isn't to  
13 "kill all the lawyers." Rather, we'd have to jail all the lawyers, or file claims for civil  
14 conspiracy against them, as the essential nature of our work is to provide advice,  
15 counsel, and necessary action for our clients, such as filing complaints to address  
16 wrongs. Pursuant to the Nevada Rules of Professional Conduct (NRPC), that's what we  
17 attorney's do. We're competent (NRPC 1.1), diligent (NRPC 1.3), advisors (NRPC  
18 2.1), and we bring meritorious claims in which we have a good faith basis to bring  
19 (NRPC 3.1). That's what the record on appeal shows that VANNAH did, and in  
20 response, SIMON filed the instant Complaint. Since neither the facts, nor the law, nor  
21 common sense support SIMON'S claim for civil conspiracy, it must be dismissed  
22 pursuant to NRCP 12(b)(5). *Stockmeier v. Nev. Dep't of Corr. Psychological Review*  
23 *Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008).  
24  
25  
26

27 To paraphrase SIMON in a motion he brought in the matter now on appeal, none of his  
28 allegations against VANNAH "rise to the level of a plausible or cognizable claim for relief."

1 Some are barred by the litigation privilege, others by a lack of procedural ripeness, some by the  
2 failure to allege all conditions precedent having occurred, others still by the clear absence of any  
3 duty owed or remedy afforded, and all by Nevada's Anti-SLAPP laws. None are left unscathed  
4 and all should be dismissed pursuant to NRCP 12(b)(5).

5  
6 Additionally, the allegations in SIMON'S Complaint for defamation and business  
7 disparagement are not at all sufficiently clear on key issues, such as to whom SIMON is making  
8 the claims against, what statements were made, when the statements were made, where the  
9 statements were made, who made the statements, and who heard the statements, etc. *Kahn v.*  
10 *Bower*, 232 Cal.App.3d 1599, 1612 (1991). These specific facts must be included in SIMON'S  
11 Complaint to withstand scrutiny, and for any target defendant to have a fair and reasonable  
12 opportunity to respond and defend their respective rights and interest. (*Id.*) Thus, at a bare  
13 minimum, a more definitive statement from SIMON pursuant to NRCP 12(e) is necessary.  
14

15 **C. DISMISSAL OF SIMON'S COMPLAINT IS REQUIRED UNDER NEVADA'S**  
16 **ANTI-SLAPP LAWS.**

17 Again, what this Court is being asked to do is preside over a matter that arose because  
18 SIMON wants to punish the Edgeworths and their attorneys, VANNAH, for filing a lawsuit in  
19 good faith to redress wrongs in the judiciary that were allegedly committed by SIMON. His  
20 filing flies in the face of the facts, the law, and Nevada's Anti-SLAPP statutes (NRS Sections  
21 41.635-670). To again paraphrase SIMON from his position in the underlying matter on appeal,  
22 "Anti-SLAPP statutes protect those who exercise their right to free speech, petition their  
23 government on an issue of concern, or to try to resolve a conflict through use of the judiciary."  
24 SIMON'S suit was brought in response to the legal use of the judiciary through a complaint and  
25 amended complaint to redress wrongs.  
26

27 SIMON'S suit is a SLAPP and must be dismissed under Nevada's Anti-SLAPP laws.  
28 (*Id.*)

1 **IV. CONCLUSION.**

2 For each of the reasons set forth in this Motion, VANNAH respectfully requests that  
3 SIMON'S Complaint be dismissed pursuant to NRCP 12(b)(5), and NRS Sections 41.635-670.  
4 To the extent that the defamation and disparagement claims are not dismissed, VANNAH  
5 alternatively request a more definite statement from SIMON, as indicated, pursuant to NRCP  
6 12(e).  
7

8 DATED this 30<sup>th</sup> day of April, 2020.

9 PATRICIA A. MARR, LTD.

10 /s/Patricia A. Marr, Esq.

11 \_\_\_\_\_  
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19 *Counsel for Defendants*  
20 *Robert Darby Vannah, Esq.,*  
21 *John B. Greene, Esq. and*  
22 *Robert D. Vannah, Chtd., dba Vannah &*  
23 *Vannah*  
24  
25  
26  
27  
28



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the following parties are served with the foregoing Motion on April  
3 30, 2020, as follows:

4 Electronically:

5 Peter S. Christiansen, Esq.  
6 **CHRISTIANSEN LAW OFFICES**  
810 S. Casino Center Blvd., Ste. 104  
7 Las Vegas, Nevada 89101

8 Patricia Lee, Esq.  
9 **HUTCHINSON & STEFFEN, PLLC**  
Peccole Business Park  
10080 West Alta Dr., Ste. 200  
10 Las Vegas, NV 89145

11 Traditional Manner:  
12 *None*

/s/Patricia A. Marr

13 \_\_\_\_\_  
14 An employee of Patricia A. Marr, Ltd.  
15  
16  
17  
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EXHIBIT A

EXHIBIT A

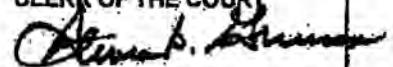
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CLERK OF THE COURT



1 **COMP**

2 **PETER S. CHRISTIANSEN, ESQ.**

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9 Attorneys for Plaintiff

CASE NO: A-19-807433-C

Department 2

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

9 LAW OFFICE OF DANIEL S. SIMON, )

10 A PROFESSIONAL CORPORATION; )

11 DANIEL S. SIMON; )

12 Plaintiffs, )

13 vs. )

CASE NO.:

DEPT. NO.:

14 EDGEWORTH FAMILY TRUST; )

15 AMERICAN GRATING, LLC; )

16 BRIAN EDGEWORTH AND ANGELA )

17 EDGEWORTH, INDIVIDUALLY, AND )

18 AS HUSBAND AND WIFE, )

19 ROBERT DARBY VANNAH, ESQ.; )

20 JOHN BUCHANAN GREENE, ESQ.; and )

21 ROBERT D. VANNAH, CHTD. d/b/a )

22 VANNAH & VANNAH, )

23 and DOES I through V and ROE )

24 CORPORATIONS VI through X, inclusive, )

25 Defendants. )

**COMPLAINT**

**(Jury Trial Requested)**

26 COMES NOW the Plaintiffs, by and through undersigned counsel, hereby alleges as  
27 follows:

**PARTIES, JURISDICTION, AND VENUE**

28 1. Plaintiff LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation,  
was at all times relevant hereto a professional corporation duly licensed and authorized to

1 conduct business in the County of Clark, state of Nevada and will hereinafter be referred to as  
2 ("plaintiff" or "Mr. Simon," or "Simon" or "Law Office.")

3 2. Plaintiff, DANIEL S. SIMON, was at all times relevant hereto, a resident of the  
4 County of Clark, state of Nevada and will hereinafter be referred to as ("plaintiff" or "Mr.  
5 Simon," or "Simon" or "Law Office.")

6 3. Defendant, EDGEWORTH FAMILY TRUST, was and is a revocable trust  
7 created and operated in Clark County, Nevada with Brian Edgeworth and Angela Edgeworth,  
8 acting as Trustees for the benefit of the trust, and at all times relevant hereto, is a recognized  
9 entity authorized to do business in the County of Clark, state of Nevada.

10 4. AMERICAN GRATING, LLC, a Nevada Limited Liability Company, was and  
11 is, duly licensed and authorized to conduct business in Clark County, Nevada and all acts and  
12 omissions were all performed, at all times relevant hereto, in the County of Clark, state of  
13 Nevada. This entity and Brian Edgeworth and Angela Edgeworth and the Edgeworth Family  
14 Trust will be referred to collectively as ("The Edgeworth's" or "Edgeworth" or "Edgeworth  
15 entities")

16 5. Defendant, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, were at all  
17 times relevant hereto, husband and wife, and residents of the state of Nevada, acted in their  
18 individual capacity and corporate/trustee capacity on behalf of the Edgeworth entities for its  
19 benefit and their own personal benefit and for the benefit of the marital community in Clark  
20 County, Nevada. Brian Edgeworth and Angela Edgeworth, at all times relevant hereto, were the  
21 principles of the Edgeworth entities and fully authorized, approved and/or ratified the conduct  
22 of each other and the acts of the entities and each other personally and the Defendant attorneys.

23 6. Defendant, ROBERT DARBY VANNAH was and is an attorney duly licensed  
24 pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts  
25 and omissions, individually and in the course and scope of his employment, in his master,  
26 servant and/or agency relationship with each and every other Defendant, including, Robert D.  
27 Vannah Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized,  
28 approved and/or ratified the conduct of each other Defendant, including the conduct of the

1 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of  
2 Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

3 7. Defendant, JOHN BUCHANAN GREENE was and is an attorney duly licensed  
4 pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts  
5 and omissions, individually and in the course and scope of his employment, in his master,  
6 servant and/or agency relationship with each and every other Defendant, including, Robert D.  
7 Vannah Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized,  
8 approved and/or ratified the conduct of each other Defendant, including the conduct of the  
9 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of  
10 Robert D. Vannah, individually and Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

11 8. Defendant, ROBERT D. VANNAH, CHTD, D/B/A VANNAH & VANNAH,  
12 was at all times relevant hereto, a Nevada Corporation duly licensed and doing business in  
13 Clark County, Nevada. The individual attorneys, ROBERT DARBY VANNAH AND JOHN  
14 BUCHANAN GREENE and Robert D. Vannah, Chtd. d/b/a Vannah and Vannah will be  
15 collectively referred to as "Defendant attorneys."

16 9. Venue and jurisdiction are proper in this Court because the actions taken  
17 between the parties giving rise to this action and the conduct complained of occurred in Clark  
18 County, Nevada.

19 10. The true names and capacities, whether individual, corporate, partnership,  
20 associate or otherwise of Defendants named herein as DOES 1 through 10 inclusive, and ROE  
21 CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20, inclusive, and  
22 each of them are unknown to Plaintiff's at this time, and Plaintiff therefore sues said  
23 Defendants and each of them by such fictitious name. Plaintiff will advise this Court and seek  
24 leave to amend this Complaint when the names and capacities of each such Defendant have  
25 been ascertained. Plaintiff alleges that each Defendant herein designated as DOE, ROE  
26 CORPORATION is responsible in some manner for the events and happenings herein referred  
27 to as hereinafter alleged, including but not limited to advising, supporting, assisting in causing  
28

1 and maintaining the institution of the proceedings, abusing the process and/or republishing the  
2 defamatory statements at issue.

3 11. Plaintiff is informed and believes and thereupon alleges that DOES 1 through 10,  
4 inclusive, ROE CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20,  
5 inclusive, or some of them are either residents of the State of Nevada and/or were or are doing  
6 business in the State of Nevada and/or have targeted their actions against Plaintiff in the State of  
7 Nevada.

### 8 I. GENERAL ALLEGATIONS

9 12. Mr. Simon represented the Edgeworth entities in a complex and hotly contested  
10 products liability and contractual dispute stemming from a premature fire sprinkler activation in  
11 April of 2016 which flooded Plaintiffs speculation home during its construction causing  
12 \$500,000.00 in property damage.

13 13. In May/June of 2016, Simon helped the Edgeworth's on the flood claim as a  
14 favor, with the goal of ending the dispute by triggering insurance to adjust the property damage  
15 loss. Mr. Simon and Edgeworth never had an express written or oral attorney fee agreement.  
16 They were close family friends at the time and Mr. Simon decided to help them.

17 14. In June of 2016, a complaint was filed. In August/September of 2017, Mr. Simon  
18 and Brian Edgeworth both agree that the flood case dramatically changed. The case had become  
19 extremely demanding and was dominating the time of the law office precluding work on other  
20 cases. Determined to help his friend at the time, Mr. Simon and Brian Edgeworth made efforts  
21 to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon  
22 and Brian Edgeworth agreed that the nature of the case had changed and had discussions about  
23 an express fee agreement based on a hybrid of hourly and contingency fees. However, an  
24 express agreement could not be reached due to the unique nature of the property damage claim  
25 and the amount of work and costs necessary to achieve a great result.

26 15. Although efforts to reach an express fee agreement failed, Mr. Simon continued  
27 to forcefully litigate the Edgeworth claims. Simon also again raised the desire for an express  
28



1 attorney fee agreement with the clients, at which time, the Clients refused to speak to Simon  
2 about a fair fee and instead stopped talking to him and hired other counsel.

3 16. On November 29, 2017, the Edgeworth's fired Simon by retaining new counsel,  
4 Robert D. Vannah, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah and John Green  
5 (hereinafter the "Defendant Lawyers"), and ceased all direct communications with Mr. Simon.  
6 On November 30, 2017, the Defendant Lawyers provided Simon notice of retention.

7 17. On November 30, 2017, Simon served an attorney lien pursuant to NRS 18.015.  
8 However, Simon continued to protect his former clients' interests in the complex flood  
9 litigation, to the extent possible under the unusual circumstances.

10 18. On December 1, 2017, the Edgeworths entered into an agreement to settle with  
11 Viking and release Viking from all claims in exchange for a promise by Viking to pay six  
12 million dollars (\$6,000,000.00 USD). On January 2, 2018, Simon served an amended attorney  
13 lien.

14 19. On January 4, 2018, Edgeworth's, through Defendant Lawyers, sued Simon,  
15 alleging Conversion (stealing) and various other causes of actions based on the assertion of  
16 false allegations. At the time of this lawsuit, the Defendant Lawyers and Edgeworth entities  
17 actually knew that the settlement funds were not taken by Simon and were not deposited in any  
18 other account as arrangements were being made at the request of Edgeworth and Defendant  
19 Lawyers to set up a special account so that Robert D. Vannah on behalf of Edgeworth would  
20 control the funds equally pending the lien dispute. When Edgeworth and the Defendant lawyers  
21 sued Simon, they knew Mr. Simon was owed more than \$68,000 for outstanding costs advanced  
22 by Mr. Simon, as well as substantial sums for outstanding attorney's fees yet to be determined  
23 by Nevada law.

24 20. On January 8, 2018, Robert D. Vannah, Brian Edgeworth and Angela Edgeworth  
25 met Mr. Simon at Bank of Nevada and deposited the Viking settlement checks into a special  
26 trust account opened by mutual agreement for this case only. Mr. Simon signed the checks for  
27 the first time at the bank, provided the checks to the banker who took custody of the checks.  
28 The banker then provided the checks to Brian and Angela Edgeworth for signature in the

1 presence of Robert D. Vannah. Mr. Vannah signed bank documents to open the special account.  
2 The checks were deposited into the agreed upon account. In addition to the normal safeguards  
3 for a trust account, this account required signatures of both Robert D. Vannah and Mr. Simon  
4 for a withdrawal. Thus, Mr. Simon stealing money from the trust account was an impossibility  
5 that was known to the Defendants, and each of them. After the checks were deposited, the  
6 Edgeworths and Defendant attorneys proceeded with their plan to falsely attack Simon.

7 21. On January 9, 2018, Plaintiffs served their complaint which alleged that Simon  
8 stole their money-money which was safe kept in a Bank of Nevada account, earning them  
9 interest. Edgeworth and Robert D. Vannah and Defendant attorneys all knew Simon did not and  
10 could not steal the money, yet they pursued their serious theft allegations knowing the falsity  
11 thereof. The Defendants, and each of them, knew and had reason to know, the conversion  
12 complaint was objectively baseless and the Defendants, and each of them, did not have probable  
13 cause to begin or maintain the action.

14 22. Simon responded with two motions to dismiss, which detailed the facts and  
15 explained the law on why the complaint was frivolous. Rather than conceding the lack of merit  
16 as to even a portion of the complaint, Plaintiffs maintained the actions. On March 15, 2018,  
17 Defendants filed an Amended Complaint to include new causes of action and reaffirmed all the  
18 false facts in support of the conversion claims. The false facts asserted stealing by Simon, and  
19 sought punitive damages. When these allegations were initially made and the causes of actions  
20 were maintained on an ongoing basis, all Defendant Lawyers and Brian and Angela Edgeworth,  
21 individually and on behalf of the Edgeworth entities, all actually knew the allegations were false  
22 and had no legal basis whatsoever because their allegations were a legal impossibility. When  
23 questioning the Defendant lawyers for the legal or factual support for their conversion claims,  
24 they could not articulate a basis.

25 23. During the course of the litigation, Defendants, and each of them, filed false  
26 documents asserting blackmail, extortion and converting the Edgeworth's portion of the  
27 settlement proceeds.

28 24. The facts elicited at the five-day evidentiary hearing concerning the substantial



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1 Attorney's fees still owed and not paid by the Edgeworth's further confirmed that the  
2 allegations in both Edgeworth complaints were false and that the complaints were filed for an  
3 improper purpose as a collateral attack on the lien adjudication proceeding; which forced Simon  
4 to retain counsel and experts to defend the suit at substantial expense. The initial complaint and  
5 subsequent filings were done primarily because of hostility or ill will, to cause unnecessary and  
6 substantial expense to Simon, damage and harm the reputation and business of Mr. Simon and  
7 to avoid lien adjudication (for a carved out exception for legal malpractice or theft), all of  
8 which, are independent improper purposes. Edgeworth's and the Defendant attorneys never  
9 alleged malpractice and have no criticism of the work performed by Mr. Simon for the  
10 Edgeworth's.

11 25. All filings for conversion were done without probable cause or a good faith  
12 belief that there was an evidentiary basis. The Defendants, and each of them, were aware that  
13 the conversion claim and allegations of extortion, blackmail or other crimes were not  
14 meritorious. The Defendants, and each of them, did not reasonably believe they had a good  
15 chance of establishing a conversion claim to the satisfaction of the Court. The complaint was  
16 filed for the purpose other than securing the proper adjudication of the Attorney-Client fee  
17 dispute pursuant to the statutory lien adjudication process.

18 26. When the complaint filed by Defendants and subsequent filings were made and  
19 arguments presented, the Defendants, and each of them, did not honestly believe in its possible  
20 merits and did not reasonably believe that they had a good chance of establishing the case to the  
21 satisfaction of the court. Defendants, and each of them, consistently argued that Mr. Simon  
22 extorted and blackmailed them and stole their money. Defendants, and each of them, took an  
23 active part in the initiation, continuation and/or procurement of the civil proceedings against  
24 Mr. Simon and his Law Office. The primary ulterior purpose was to subject Mr. Simon to  
25 excessive expenses, to avoid lien adjudication and to harm his reputation to their friends,  
26 colleagues and general public and cause damage and loss of his business. The claims were so  
27 obviously lacking in merit that they could not logically be explained without reference to the  
28 Defendants improper motive and ill will. The proceedings terminated in favor of Simon.

1           27.     The District Court found that the attorney lien of the Law Office of Daniel S.  
2 Simon dba Simon Law (hereafter "Mr. Simon") was proper and that the lawsuit brought by the  
3 Edgeworth entities through the Defendant lawyers against Mr. Simon and his Law Office had  
4 no merit. Accordingly, on October 11, 2018, the District Court dismissed Defendants complaint  
5 in its entirety against Mr. Simon. The court found, Edgeworth and the Defendant lawyers  
6 brought claims that were not well grounded in fact or law confirming that it is clear that the  
7 conversion claim was frivolous and filed for an improper purpose, when the Court examined the  
8 facts known to Edgeworth and Defendant lawyers when they filed the complaint on January 4,  
9 2018; which were, Mr. Simon did not have the money and had not stolen any money. In fact, he  
10 did not even have the ability to steal the money as Mr. Vannah equally controlled the account.  
11 Additionally, there was no merit to Plaintiffs' claims that:

- 12           a.     Simon "intentionally" converted and was going to steal the settlement proceeds;
- 13           b.     Simon's conduct warranted punitive damages;
- 14           c.     Daniel S. Simon individually should be named as a party;
- 15           d.     Simon had been paid in full;
- 16           e.     Simon refused to release the full settlement proceeds to Plaintiffs;
- 17           f.     Simon breached his fiduciary duty to Plaintiffs;
- 18           g.     Simon breached the covenant of good faith and fair dealing; and,
- 19           h.     Plaintiffs were entitled to Declaratory Relief because they had paid Simon in  
20 full.

21           28.     On October 11, 2018, the Court dismissed Plaintiffs amended complaint. Of  
22 specific importance, the Court found that:

- 23           a.     On November 29, Mr. Simon was discharged by Edgeworth,
- 24           b.     On December 1, Mr. Simon appropriately served and perfected a charging lien  
25 on the settlement monies.
- 26           c.     Mr. Simon was due fees and costs from the settlement monies subject to the  
27 proper attorney lien.
- 28           d.     Found no evidence to support the conversion claim.

1 e. The Court did not find that Simon converted the clients' money.

2 29. On February 6, 2019, the Court found that:

3 a. The Edgeworth's and Defendant attorneys did not maintain the conversion claim  
4 on reasonable grounds since it was an impossibility for Mr. Simon to have converted the  
5 Edgeworth's property at the time the lawsuit was filed.

6 **COUNT I**

7 **WRONGFUL USE OF CIVIL PROCEEDINGS - ALL DEFENDANTS**

8 30. Plaintiff incorporates all prior paragraphs and incorporates by reference the  
9 preceding allegations as though fully set forth herein.

10 31. The Edgeworth entities, through the Defendant attorneys, initiated a complaint  
11 on January 4, 2018 alleging that Mr. Simon and his Law Office converted settlement proceeds  
12 in the amount of 6 million dollars.

13 32. The Edgeworth entities, through the Defendant attorneys, maintained the  
14 conversion of the settlement when filing an amended complaint re-asserting the same  
15 conversion allegations on March 15, 2018.

16 33. The Edgeworth entities, through the Defendant attorneys, maintained the  
17 conversion and stealing of the settlement when filing multiple public documents and presenting  
18 oral argument at hearings containing a public record when re-asserting the conversion and theft  
19 by Mr. Simon and his Law Office.

20 34. The Edgeworth's and the Defendant attorneys acted without probable cause and  
21 with no evidentiary basis.

22 35. The Edgeworth's and the Defendant attorneys acted with malice, express and/or  
23 implied and their actions were malicious, oppressive, fraudulent and done with a conscious and  
24 deliberate disregard of Plaintiffs rights and Plaintiffs are entitled to punitive damages in a sum  
25 to be determined at the time of trial. The Defendants, and each of them, knew of the probable  
26 and harmful consequences of their false claims and intentionally and deliberately failed to act to  
27 avoid the probable and harmful consequences.

28.

1           36.     The Edgeworth's and the Defendant attorneys conduct proximately caused  
2 injury, damage, loss, and/or harm to Mr. Simon and his Law Office in a sum to be determined at  
3 the time of trial. Asserting what amounts to theft of millions of dollars against Mr. Simon and  
4 his Law Office harmed his image in his profession and among the community, and the  
5 allegations damaged his reputation.

6           37.     The Edgeworth's and the Defendant attorneys advanced arguments in public  
7 documents that Mr. Simon committed crimes of stealing, extortion and blackmail knowing  
8 these filings and arguments were false and defamatory.

9           38.     Plaintiffs were forced to retain attorneys to defend the wrongful use of civil  
10 proceedings and incurred substantial attorney's fees and costs, which are specially plead  
11 pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

12           39.     Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
13 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

## 14                                   COUNT II

### 15                                   MALICIOUS PROSECUTION - ALL DEFENDANTS

16           40.     Plaintiff incorporates the preceding paragraphs and allegations as though fully  
17 set forth herein.

18           41.     The Edgeworth's and the Defendant attorneys initiated a complaint on  
19 January 4, 2018 alleging that Mr. Simon and his Law Office, converted the settlement proceeds  
20 in the amount of 6 million dollars.

21           42.     The Edgeworth's and the Defendant attorneys maintained the conversion of the  
22 settlement when filing an amended complaint re-asserting the same conversion allegations on  
23 March 15, 2018. Despite knowing the funds remained in a trust account controlled in part by  
24 Defendant Robert D. Vannah with all interest accruing to Edgeworth, the amended complaint  
25 again alleged conversion - that Mr. Simon stole the settlement money.

26           43.     The Edgeworth's and Defendant attorneys acted without probable cause and with  
27 no evidentiary basis.

28





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1 purpose of asserting claims supported by evidence.

2 51. The Edgeworth's and Defendant attorneys committed a wilful act in using the  
3 judicial process for an ulterior purpose not proper in the regular conduct of the proceedings and  
4 misapplied the process for an end other than which it was designed to accomplish, and acted  
5 and used the process for an improper purpose or ulterior motive.

6 52. The Edgeworth's and the Defendant attorneys abused the process at hearings to  
7 avoid lien adjudication, to cause unnecessary and substantial expense and to damage the  
8 reputation of Mr. Simon and financial loss to his Law Office. The Defendants, and each of  
9 them, knew of the probable and harmful consequences of their false claims and intentionally  
10 and deliberately failed to act to avoid the probable and harmful consequences.

11 53. The Edgeworth's and Defendant attorneys abuse of the process proximately  
12 caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what  
13 amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his  
14 profession and among his personal friends and the community. The false allegations damaged  
15 his reputation.

16 54. Plaintiffs were already forced to retain attorneys to defend the complaint  
17 constituting an abuse of process and incurred substantial attorney's fees and costs, which are  
18 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
19 \$15,000.

20 55. The actions of Defendants, and each of them, were sufficiently fraudulent,  
21 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
22 Defendants, and each of them, knew of the probable and harmful consequences of their false  
23 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
24 consequences.

25 56. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
26 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

27 //

28 //

COUNT IV

NEGLIGENT HIRING, SUPERVISION, AND RETENTION

57. Plaintiff incorporates the preceding paragraphs and allegations as if set forth herein.

58. Robert D. Vannah, Chtd, had a duty to hire, supervise, and retain competent employees including, Lawyers to act diligently and competently to represent valid claims to the court and to file pleadings before the court that have the legal evidentiary basis to support the claims.

59. The lawyers acting on behalf of Robert D. Vannah, Chtd. fell below the standard of care when drafting, signing, and filing complaints with allegations, known to them, to be false, a legal impossibility and without any possible evidentiary basis.

60. Robert D. Vannah, Chtd breached that duty proximately causing damage to Mr. Simon and his Law Office.

61. The Defendant attorneys abuse of the process proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office; the Law Office of Daniel Simon when asserting what amounts to illegal and fraudulent activity, including false allegations of theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. The false allegations damaged his reputation.

62. Robert D. Vannah, Chtd. acts were malicious, oppressive, fraudulent and done with a conscious and deliberate reckless disregard for the rights of the Plaintiffs. The Defendants, and each of them, knew of the probable and harmful consequences of their false claims and intentionally and deliberately failed to act to avoid the probable and harmful consequences. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. All of the acts were fully authorized, approved and ratified by Robert D. Vannah, Chtd.

63. Plaintiffs were forced to retain attorneys to defend the complaints constituting abuse of process, malicious prosecution, wrongful institution of civil proceedings, conversion claims and related proceedings and incurred substantial attorney's fees and costs, which are

1 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
2 \$15,000.

3 64. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
4 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

5 **COUNT V**

6 **DEFAMATION PER SE**

7 65. Plaintiff incorporates the preceding allegations as though fully set forth herein.

8 66. On information and belief, Brian Edgeworth and Angela Edgeworth  
9 misrepresented to the public that Mr. Simon and his Law Office committed illegal and  
10 fraudulent acts. Defendants, and each of them, also made intentional misrepresentations to the  
11 general public that Mr. Simon and his Law Office lacked integrity and good moral character  
12 including, but not limited to, its publicly filed complaint on January 4, 2018, the amended  
13 complaint filed March 15, 2018, the multiple publicly filed briefs and affidavits asserting the  
14 same false statements. The Edgeworth's repeated these statements to individuals independent of  
15 the litigation.

16 67. Brian and Angela Edgeworth's statements were false and defamatory and Brian  
17 and Angela Edgeworth knew them to be false and defamatory at the time the statements were  
18 made.

19 68. Brian and Angela Edgeworth's publication of these statements to third parties  
20 was not privileged.

21 69. The conduct by Brian and Angela Edgeworth, as described herein, was  
22 fraudulent, malicious and oppressive under NRS 42.005. The Defendants, and each of them,  
23 knew of the probable and harmful consequences of their false claims and intentionally and  
24 deliberately failed to act to avoid the probable and harmful consequences. Therefore, Plaintiff's  
25 are entitled to an award of punitive damages.

26 70. Brian and Angela Edgeworth, individually and on behalf of the Edgeworth  
27 entities made false and defamatory statements attacking the integrity and moral character of Mr.  
28 Simon and his law practice tending to cause serious injury to his reputation and ability to secure



1 new clients. Under Nevada law, the statements were defamatory per se and damages are  
2 presumed. The foregoing notwithstanding, as a direct and proximate result of the false and  
3 defamatory statements, Mr. Simon and his Law Office, the Law Office of Daniel Simon have  
4 sustained actual, special and consequential damages, loss and harm in a sum to be determined at  
5 the time of trial.

6 71. The actions of Defendants, and each of them, were sufficiently fraudulent,  
7 malicious, and/or-oppressive under NRS 42.005 to warrant an award of punitive damages. The  
8 Defendants, and each of them, knew of the probable and harmful consequences of their false  
9 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
10 consequences. All Defendants ratified each others actions in attacking the integrity and moral  
11 character of Mr. Simon and his law office.

12 72. Plaintiffs were forced to retain attorneys to defend the complaints and  
13 defamatory statements and incurred substantial attorneys fees and costs, which are specially  
14 plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

15 73. It has become necessary for Plaintiffs to retain the services of attorneys to litigate  
16 this action. Therefore, Plaintiffs are entitled to an award of attorneys' fees, costs and interest  
17 separately pursuant to Nevada law.

#### 18 **COUNT VI**

#### 19 **BUSINESS DISPARAGEMENT**

20 74. Plaintiff repeats and realleges each and every paragraph and allegation in the  
21 foregoing paragraphs as though fully set forth herein.

22 75. The statements of Brian and Angela Edgeworth, as alleged more fully herein,  
23 attacked the reputation for honesty and integrity of their lawyer at the time and alleged lack of  
24 truthfulness by stating that the Mr. Simon and his Law Office, the Law Office of Daniel S.  
25 Simon, converted and extorted millions of dollars from them. These statements were false and  
26 done with the intent to disparage and harm Mr. Simon and his Law Office and actually  
27 disparaged the Law Office of Daniel Simon.

28



1 public that were later to be determined false and defamatory to Plaintiffs. Defendants, and each  
2 of them, knew or should have known that the allegations were not supported by the law and  
3 lacked any evidentiary basis and were negligent in the communication of the statements.

4 85. Defendants, and each of them breached their duty to exercise reasonable care to  
5 Mr. Simon and his Law Office. As a direct and proximate consequence of the Defendants  
6 negligence, the statements that were defamatory resulted in the publication and broad  
7 dissemination of false and defamatory statements attacking the integrity and good moral  
8 character of Mr. Simon and his Law Office tending to cause serious injury to his reputation and  
9 ability to practice law with the same regard as he did prior to the false and defamatory  
10 statements. Under Nevada law, the statements were defamatory per se and Law Office of  
11 Daniel Simon and Mr. Simon's damages are presumed. The foregoing notwithstanding, as a  
12 direct and proximate result of the negligence of Defendants, and each of them, Mr. Simon and  
13 his Law Office has sustained actual, special and consequential damages in a sum to be  
14 determined at trial.

15 86. Plaintiffs were forced to retain attorneys to defend the frivolous lawsuit initiated  
16 by Defendants, and each of them, and incurred substantial attorney's fees and costs, which are  
17 specially plead pursuant to NRCP 9(g) in a sum in excess of \$15,000.

18 87. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
19 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

#### 20 **COUNT VIII**

#### 21 **CIVIL CONSPIRACY**

22 88. Plaintiff's repeat and reallege each and every allegation in the foregoing  
23 paragraphs and allegations as though fully set forth herein.

24 89. Defendants, and each of them, through concerted action among themselves and  
25 others, intended to accomplish the unlawful objectives of (i) filing false claims for an improper  
26 purpose. Defendant attorneys and the Edgeworth's all knew that the Plaintiffs did not steal the  
27 money. They devised a plan to knowingly commit wrongful acts to file the frivolous claims for  
28 an improper purpose to damage the reputation of Plaintiff's, cause harm to his law practice,

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1 cause him unnecessary and substantial expense to expend valuable resources to defend  
2 wrongful institution of civil proceedings and they abused the process in attempt to manipulate  
3 the proceedings. The wrongful acts were committed several times when filing the complaint,  
4 amended complaint, all briefs, 3 affidavits, oral arguments and supreme court filings, and  
5 Defendants, and each of them, took no action to correct the falsity of the statements repeatedly  
6 made.

7 90. Defendants, and each of them, through concerted action among themselves and  
8 others, intended to accomplish the foregoing unlawful objectives through unlawful means and  
9 to cause damage to Plaintiffs as herein alleged, including abusing the process, wrongfully  
10 instituting legal proceedings, defaming and disparaging Mr. Simon, his Law Office, harming his  
11 business, causing unnecessary substantial expense, among others objectives to be determined at  
12 the time of trial.

13 91. In taking the actions alleged herein, Defendants, and each of them, were acting for  
14 their own individual advantage.

15 92. As the direct and proximate result of the concerted action of Defendants, and each  
16 of them, as described herein, Plaintiff's have suffered general, special and consequential  
17 damages, loss and harm, in a sum to be determined at trial.

18 93. The actions of Defendants, and each of them, were sufficiently fraudulent,  
19 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
20 Defendants, and each of them, knew of the probable and harmful consequences of their false  
21 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
22 consequences and repeated the wrongful acts to achieve the objectives of their devised plan.

23 94. Plaintiffs were forced to retain attorneys to defend the wrongful acts to carry out  
24 their devised plan and incurred substantial attorneys fees and costs, which are specially plead  
25 pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

26 95. It has become necessary for Plaintiffs to retain the services of an attorney in this  
27 matter and he is entitled to be reimbursed for his attorneys' fees and costs incurred as a result  
28 separately pursuant to Nevada law.



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**GENERAL PRAYER FOR RELIEF**

Plaintiff's pray judgment against Defendants, and each of them, as follows:

1. For a sum to be determined at trial for actual, special, compensatory, consequential and general damages in excess of \$15,000.
2. For a sum to be determined at trial for punitive damages.
3. For a sum to be determined for attorneys fees and costs as special damages.
4. For attorneys' fees, costs and interest separately in prosecuting this action.
5. For such other relief as this court deems just and proper.

Dated this 20th day of December, 2019.

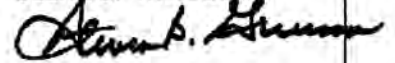
RESPECTFULLY SUBMITTED

By: 

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# EXHIBIT B

# EXHIBIT B



1 **ACOM**  
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4 JOHN B. GREENE, ESQ.  
5 Nevada Bar No. 004279  
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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF  
20 DANIEL S. SIMON, A PROFESSIONAL  
21 CORPORATION; DOES I through X, inclusive,  
22 and ROE CORPORATIONS I through X,  
23 inclusive,

24 Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: XIV

Consolidated with

CASE NO.: A-16-738444-C

DEPT. NO.: X

**AMENDED COMPLAINT**

25 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC  
26 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.  
27 GREENE, ESQ., of VANNAH & VANNAH, and for their causes of action against Defendants,  
28 complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized  
under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a  
domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL  
are referred to as PLAINTIFFS.

1 2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S.  
2 SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information  
3 and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW  
4 OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic  
5 professional corporation licensed and doing business in Clark County, Nevada. At times,  
6 Defendants shall be referred to as SIMON.  
7

8 3. The true names of DOES I through X, their citizenship and capacities, whether  
9 individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who  
10 therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and  
11 thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally  
12 responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein  
13 alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true  
14 names and capacities of such Defendants, when the same have been ascertained, and to join them  
15 in this action, together with the proper charges and allegations.  
16

17 4. That the true names and capacities of Defendants named herein as ROE  
18 CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said  
19 Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that  
20 each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for  
21 the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged  
22 herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and  
23 capacities of ROE CORPORATIONS I through X, inclusive, when the same have been  
24 ascertained, and to join such Defendants in this action.  
25

26 5. DOES I through V are Defendants and/or employers of Defendants who may be  
27 liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:  
28



1 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person  
2 shall suffer personal injury by wrongful act, neglect or default of another,  
3 the person causing the injury is liable to the person injured for damages;  
4 and where the person causing the injury is employed by another person or  
corporation responsible for his conduct, that person or corporation so  
responsible is liable to the person injured for damages.

5 6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and  
6 is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for  
7 services and the conversion of PLAINTIFFS personal property, as herein alleged.

8 7. ROE CORPORATIONS I through V are entities or other business entities that  
9 participated in SIMON'S breach of the oral contract for services and the conversion of  
10 PLAINTIFFS personal property, as herein alleged.

11 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

12 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests  
13 following a flood that occurred on April 10, 2016, in a home under construction that was owned by  
14 PLAINTIFFS. That dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as Case  
15 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in  
16 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the  
17 trial date.  
18

19 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally  
20 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs  
21 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were  
22 never reduced to writing.  
23

24 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December  
25 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs  
26 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to  
27 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of  
28

1 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to  
2 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever  
3 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees  
4 and costs to the mandated computation of damages.

5  
6 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay  
7 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by  
8 PLAINTIFFS accrued interest.

9 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall  
10 of 2017, and thereafter blossomed from one of mere property damage to one of significant and  
11 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the  
12 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the  
13 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,  
14 neither PLAINTIFFS nor SIMON agreed on any terms.

15  
16 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth  
17 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he  
18 wanted to be paid in light of a favorable settlement that was reached with the defendants in the  
19 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS  
20 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented  
21 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set  
22 forth in the computation of damages disclosed by SIMON in the LITIGATION.

23  
24 14. A reason given by SIMON to modify the CONTRACT was that he purportedly  
25 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go  
26 through his invoices and create, or submit, additional billing entries. According to SIMON, he  
27 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason  
28 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that

1 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement  
2 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

3 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and  
4 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees  
5 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following  
6 the flooding event.  
7

8 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP  
9 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS  
10 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS  
11 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect  
12 fees and costs other than those contained in his invoices that were presented to and paid by  
13 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
14 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let  
15 alone those in excess of \$1,000,000.00.  
16

17 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a  
18 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.  
19 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the  
20 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a  
21 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had  
22 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:  
23 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees  
24 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."  
25 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And  
26 they've been updated as of last week."  
27  
28

1 18. Despite SIMON'S requests and demands for the payment of more in fees,  
2 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

3 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,  
4 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement  
5 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide  
6 PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds  
7 that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can  
8 receive either the undisputed number or their proceeds.  
9

10 20. PLAINTIFFS have made several demands to SIMON to comply with the  
11 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the  
12 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To  
13 date, SIMON has refused.  
14

15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract)**

17 21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through  
18 20 of this Complaint, as though the same were fully set forth herein.

19 22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the  
20 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An  
21 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S  
22 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed,  
23 and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS  
24 best interests.  
25

26 23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that  
27 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.  
28



1 24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted  
2 pursuant to the CONTRACT.

3 25. SIMON'S demand for additional compensation other than what was agreed to in the  
4 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for  
5 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.  
6

7 26. SIMON'S refusal to agree to release all of the settlement proceeds from the  
8 LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the  
9 CONTRACT.

10 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the  
11 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a  
12 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their  
13 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.  
14

15 28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS  
16 incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

17 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS  
18 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

19 30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have  
20 been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are  
21 entitled to recover attorneys' fees and costs.  
22

23 **SECOND CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

25 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in  
26 Paragraphs 1 through 30, as set forth herein.

27 32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00  
28 per hour for SIMON'S legal services performed in the LITIGATION.

1 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour  
2 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

3 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or  
4 amend any of the terms of the CONTRACT.  
5

6 35. The only evidence that SIMON produced in the LITIGATION concerning his fees  
7 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which  
8 PLAINTIFFS paid in full.  
9

10 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in  
11 the LITIGATION was produced in updated form on or before September 27, 2017. The full  
12 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to  
13 PLAINTIFFS and that PLAINTIFFS paid in full.  
14

15 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the  
16 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and  
17 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON  
18 admitted that all of the bills for his services were produced in the LITIGATION; and, since the  
19 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to  
20 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the  
21 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the  
22 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.  
23

24 **THIRD CLAIM FOR RELIEF**

25 **(Conversion)**

26 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in  
27 Paragraphs 1 through 37, as set forth herein.  
28

1 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his  
2 services, nothing more.

3 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or  
4 before September 27, 2017, had already been produced to the defendants.  
5

6 41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable  
7 sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.  
8

9 42. Despite SIMON'S knowledge that he has billed for and been paid in full for his  
10 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay  
11 for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd  
12 produced all of his billings through September of 2017, SIMON has refused to agree to either  
13 release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed  
14 amount of the settlement proceeds would be identified and paid to PLAINTIFFS.  
15

16 43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a  
17 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

18 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises  
19 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to  
20 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount  
21 in excess of \$15,000.00.  
22

23 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
24 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
25 PLAINTIFFS are entitled to recover attorneys' fees and costs.  
26

27 ///

28 ///

**FOURTH CLAIM FOR RELIEF**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be



1 determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,  
2 SIMON breached the implied covenant of good faith and fair dealing.

3  
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**

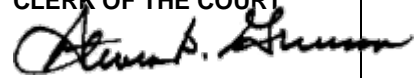
6 Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

- 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

15 DATED this 15 day of March, 2018.

16 VANNAH & VANNAH

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19 ROBERT D. VANNAH, ESQ. (4279)  
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Patricia Lee (8287)  
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*Attorney for Defendants Edgeworth Family Trust;  
American Grating, LLC; Brian Edgeworth and Angela Edgeworth*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON, a  
professional corporation; DANIEL S. SIMON,

Plaintiffs,

v.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, individually and husband and  
wife, ROBERT DARBY VANNAH, ESQ.;  
JOHN BUCHANAN GREENE, ESQ.; and  
ROBERT D. VANNAH, CHTD. d/b/a  
VANNAH & VANNAH, and DOES I through  
V and ROE CORPORATIONS VI through X,  
inclusive,

Defendants.

CASE NO.: A-19-807433-C

DEPT. NO.: XXIV

**DEFENDANTS EDGEWORTH FAMILY  
TRUST, AMERICAN GRATING, LLC,  
BRIAN EDGEWORTH AND ANGELA  
EDGEWORTH'S MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT**

**HEARING REQUESTED**

Defendants EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA EDGEWORTH (collectively the "Edgeworths") file this  
Motion to Dismiss Plaintiffs LAW OFFICE OF DANIEL S. SIMON, and DANIEL S. Simon's  
(collectively "Simon") Complaint.

This Motion is based on the attached memorandum of points and authorities, NRCP  
12(b)(5), the pleadings and papers on file herein, and any oral arguments this Court may allow.

1 **MEMORANDUM OF POINTS AND AUTHORITY**

2 **1. Introduction and factual background**

3 Before this Court, is the matter of the jilted ex-lawyer attempting to coerce his former  
4 clients to pay him more than he is owed because settlement proceeds exceeded his expectations.  
5 As detailed in the Edgeworths' opposition to Plaintiffs' emergency motion, Simon placed  
6 attorney's liens on the settlement funds seeking an amount far in excess of what was actually  
7 owed. These liens were adjudicated, and the Edgeworths offered to pay the amount awarded by  
8 the District Court, even though they disputed the amount, to resolve the matter and collect the  
9 remainder of their settlement proceeds.

10 In an attempt to remove Simon's unrightful dominion over the settlement proceeds, the  
11 Edgeworths filed a Complaint and subsequently an Amended Complaint alleging breach of  
12 contract, declaratory relief, conversion and breach of the covenant of good faith and fair dealing.  
13 The amended complaint was subsequently dismissed. As a result, the matter is now set for appeal  
14 before the Nevada Supreme Court.  
15

16 Seemingly unsatisfied with the amount adjudicated by the District Court, Simon filed the  
17 instant action seeking to further fill his pockets. In his complaint, Simon alleges (1) wrongful  
18 use of civil proceedings, (2) malicious prosecution, (3) abuse of process, (4) negligent hiring,  
19 retention and supervision, (5) defamation *per se*, (6) business disparagement, (7) negligence and  
20 (8) civil conspiracy. Every one of Simon's claims should be dismissed by this Court for the  
21 reasons stated herein.<sup>1</sup>

22 Counts 1, 5, 6, and 7 alleging wrongful use of civil proceedings, defamation *per se*,  
23 business disparagement, and negligence must all be dismissed because they are predicated on  
24 communications and arguments protected by the broad and absolute litigation privilege. *See*  
25 *Greenberg Taurig v. Frias Holding Co.*, 130 Nev. 627, 630 (2014). Plaintiff's wrongful use of  
26 civil proceedings claim must also be dismissed because the claim is not a cognizable cause of  
27

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28 <sup>1</sup> Simon does not allege negligent hiring, supervision, and retention against the Edgeworths so the Edgeworths  
need not address those claims directly. *See* Comp. ¶¶57–62.

1 action under Nevada law. *See Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-  
2 1070-KJD-RJJ, 2009 WL 2382765, at \*2 (D. Nev. July 31, 2009). Plaintiff's malicious  
3 prosecution claim is similarly improper because such a claim may only be sustained if a criminal  
4 proceeding against Simon occurred. *See LaMantia v. Redisi*, 118 Nev. 27, 30 (2002). Likewise,  
5 Plaintiff's abuse of process claim is meritless because Simon does not allege conduct by the  
6 Edgeworths or their counsel subsequent to the filing of the complaint that is improper in the  
7 regular conduct of a proceeding. *See Hampton v. Nustar Management Financial Group*, Dist.  
8 Court, (D. Nev. 2007); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Finally, the  
9 civil conspiracy claim is also incognizable because Simon does not articulate an actionable tort  
10 upon which such a claim could be predicated, which fatal omission precludes this claim as a  
11 matter of law. *See Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303 (1983). For these  
12 reasons, complete dismissal of Simon's complaint based on NRCP 12(b)(5) is appropriate.

## 13 **2. Discussion**

### 14 **A. Legal standard applicable to Motion to Dismiss**

15 "Nevada is a notice-pleading jurisdiction and thus, our courts liberally construe  
16 pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*,  
17 100 Nev. 196, 198, 678 P.2d 672, 674 (1984)). "However, a complaint must set forth  
18 sufficient facts to establish all necessary elements of a claim for relief, so that the adverse party  
19 has adequate notice of the nature of the claim and relief sought." *Johnson v. Travelers Ins. Co.*,  
20 89 Nev. 467, 472, 515 P.2d 68, 71-72 (1973)). A complaint should not be dismissed unless it  
21 appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her  
22 to relief. *See Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d  
23 670, 672 (2008). "[I]f a pleader cannot allege definitely and in good faith the existence of an  
24 essential element of his claim, it is difficult to see why this basic deficiency should not be  
25 exposed at the point of minimum expenditure of time and money by the parties and the court."  
26 *Danning v. Lum's, Inc.*, 86 Nev. 868, 870 (1970). Simon's complaint fails to satisfy even these  
27 liberal pleading standards. The Complaint should be dismissed in its entirety.  
28

1           **B. The absolute litigation privilege mandates dismissal of counts 1, 5, 6 and 7**

2           As the basis for count 1 alleging wrongful use of civil proceedings, count 5 alleging  
3 defamation *per se*, count 6 alleging business disparagement and count 7 alleging negligence,  
4 Simon cites arguments advanced and statements made during the course of litigation, judicial  
5 proceedings, and in pleadings. *See* Comp. at ¶¶ 19, 21, 23, 37, 66, 75, 84. Defendants cannot be  
6 held liable for these statements because they are shielded by the litigation privilege.<sup>2</sup>

7           “It is a long-standing common law rule that communications [made] in the course of  
8 judicial proceedings [even if known to be false] are absolutely privileged.” *Clark Cty. Sch. Dist.*  
9 *v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (quoting *Circus Circus Hotels v.*  
10 *Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). Under Nevada law, “communications  
11 uttered or published in the course of judicial proceedings are absolutely privileged, rendering  
12 those who made the communications immune from civil liability.” *Greenberg Taurig v. Frias*  
13 *Holding Co.*, 130 Nev. 627, 630 (2014). A communication can be protected under the litigation  
14 privilege even when no judicial proceeds have commenced if “(1) a judicial proceeding [is]  
15 contemplated in good faith and under serious consideration, and (2) the communication [is]  
16 related to the litigation.” *Clark Cty. Sch. Dist.*, 125 Nev. at 383.

17           “An absolute privilege bars any civil litigation based on the underlying communication.”  
18 *Hampe v. Foote*, 118 Nev. 405, 409 (2002), *abrogated on other grounds by Buzz Stew, LLC v.*  
19 *City of N. Las Vegas*, 124 Nev. 224 (2008). “The purpose of the absolute privilege is to afford  
20 all persons freedom to access the courts and freedom from liability for defamation where civil  
21 or criminal proceedings are seriously considered.” *Clark Cty. Sch. Dist.*, 125 Nev. at 383.  
22 “Therefore, the absolute privilege affords parties the same protection from liability as those  
23  
24  
25  
26

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27           <sup>2</sup> Additionally, Simon’s negligence claim is deficient because the Edgeworths do not owe any duty of care to  
28 Simon as either former clients or adverse litigants. *See Clark Cty. Sch. Dist. v. Payo*, 133 Nev. 626, 636 (2017)  
(holding that a duty of care is an essential element of negligence). To the contrary, as highlighted by the litigation  
privilege, adverse parties are free to further claims against an opposing party in a judicial proceeding without fear  
of subsequent liability to the adverse party. *See Clark Cty. Sch. Dist.*, 125 Nev. at 382.

1 protections afforded to an attorney for defamatory statements made during, or in anticipation of,  
2 judicial proceedings.” *Id.*

3 “[T]he applicability of the absolute privilege is a matter of law for the court to decide.”  
4 *Id.* at 382. “[B]ecause the scope of the absolute privilege is broad, a court determining whether  
5 the privilege applies should resolve any doubt in favor of a broad application.” *Id.*

6 This litigation privilege bars Simon from alleging civil claims against the Edgeworths  
7 based on any statements or arguments made throughout litigation because those are absolutely  
8 privileged and immunized from civil liability. In alleging his defamation *per se* claim, Simon  
9 does allege that “[t]he Edgeworth’s [sic] repeated these statements to individuals independent of  
10 the litigation.” Comp. ¶66. However, there are no factual allegations throughout the Complaint  
11 that support this bald assertion. Moreover, the absolute litigation privilege’s broad applicability  
12 extends beyond communications made during litigation to communications related to the  
13 litigation even when judicial proceedings have not commenced. Therefore, based on the  
14 litigation privilege alone Simon’s claims for wrongful use of civil proceedings, defamation *per*  
15 *se*, business disparagement, and negligence must all be dismissed as a matter of law.  
16

17 **C. Wrongful use of civil proceedings is not recognized as a distinct cause of action**  
18 **under Nevada law**

19 No Nevada court has ever recognized wrongful use of civil proceedings as a cause of  
20 action. *See Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009  
21 WL 2382765, at \*2 (D. Nev. July 31, 2009) (“Although many jurisdictions recognize [the tort  
22 of wrongful use of civil proceedings], the State of Nevada does not.”). Similarly, no Nevada  
23 Court has articulated elements constituting such a claim. *See id.* Accordingly, the claim is not  
24 cognizable under Nevada law and must be dismissed. *See id.* at \*3.

25 **D. A claim of malicious prosecution requires a criminal proceeding**

26 Under Nevada law, “[a] malicious prosecution claim requires that the defendant initiated,  
27 procured the institution of, or actively participated in the continuation of a *criminal proceeding*  
28 against the plaintiff.” *LaMantia v. Redisi*, 118 Nev. 27, 30 (2002) (emphasis added). Without

1 the existence of a criminal proceeding, a plaintiff cannot maintain a malicious prosecution claim.  
2 *See id.* Here, there was no criminal proceeding against Simon, and Simon does not allege as  
3 such. Without this critical factual allegation, Plaintiff's malicious prosecution claim is deficient  
4 as a matter of law and must be dismissed. *See id.*

5 **E. An abuse of process claim cannot be sustained based on the mere filing of a**  
6 **complaint**

7 Nevada Supreme Court precedent establishes that an allegation of an ulterior motive is  
8 insufficient to support a claim of abuse of process. *See Executive Mgmt. Ltd. v. Ticor Title Ins.*  
9 *Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). "The mere filing of a complaint itself is  
10 insufficient to establish the tort of abuse of process." *See Hampton v. Nustar Mgmt. Fin. Grp.*,  
11 *No. 2:05-CV-0824-BES-GWF*, 2007 WL 119146, at \*3 (D. Nev. Jan. 10, 2007); *Laxalt v.*  
12 *McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). "Instead, the complaining party must  
13 include some allegation of abusive measures taken *after* the filing of the complaint in order to  
14 state a claim. *Id.* Merely alleging that an opposing party has a malicious motive in commencing  
15 a lawsuit does not give rise to a cause of action for abuse of process." *Id.* (emphasis added). To  
16 be actionable, an abuse of process claim must be supported by allegations of conduct that "would  
17 not be proper in the regular conduct of the proceeding." *Land Baron Inv. v. Bonnie Springs*  
18 *Family LP*, 131 Nev. 686, 698 (2015) (quoting *Kovacs v. Acosta*, 106 Nev. 57, 59, 787 P.2d 368,  
19 369 (1990)).

20 Here, Simon makes no allegation of any abusive measures by the Edgeworths or Vannah  
21 taken *after* the filing of a complaint. Simon does make several unsubstantiated allegations that  
22 Defendants initiated the prior proceedings for an ulterior motive. *See Comp.* at ¶¶49–52.  
23 However, none of the allegations point to any improper conduct that occurred after the filing of  
24 the complaint because *no such conduct occurred*. Subsequent lien proceedings, oral arguments,  
25 affidavits, and filings to the Supreme Court are also not actionable because these processes are  
26 proper in the regular conduct of proceedings. Under the factual circumstances here, an abuse of  
27 process claim cannot be sustained. Therefore, the claim must be dismissed.  
28



1           **F. A civil conspiracy cannot exist because plaintiff fails to allege an actionable tort**  
2           **upon which such claim rests**

3           “An actionable civil conspiracy is a combination of two or more persons who, by some  
4 concerted action, intend to accomplish some unlawful objective for the purpose of harming  
5 another which results in damage.” *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303  
6 (1983). “While the essence of the crime of conspiracy is the agreement, the essence of civil  
7 conspiracy is damages.” *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). “The  
8 damages result from the tort underlying the conspiracy.” *Id.*

9           Here, Simon advances his civil conspiracy claim by asserting that “Defendants and each  
10 of them, through concerted action among themselves and others, intended to accomplish the  
11 unlawful objectives of (i) filing false claims for an improper purpose.” Comp. at ¶89. As Vannah  
12 deftly explains in its own separately-filed motion to dismiss, no case law supports the assertion  
13 that the filing of a civil complaint constitutes an unlawful objective or act sufficient to give rise  
14 to a claim of civil conspiracy. *See* Vannah Mot. to Dismiss at 11–23. To the contrary, established  
15 law shows that filing of a complaint, even if such a filing was allegedly made for an ulterior  
16 purpose, does not constitute a tort. *See Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev.  
17 823, 843, 963 P.2d 465, 478 (1998). Simon fails to establish that there is any actionable or  
18 recognized “tort” upon which the civil conspiracy claim is predicated. Thus, the civil conspiracy  
19 claim must itself fail and be dismissed as a matter of law.

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DATED this 14<sup>th</sup> day of May, 2020.

/s/ Patricia Lee

*Attorney for Defendants Edgeworth Family Trust;  
American Grating, LLC; Brian Edgeworth and  
Angela Edgeworth*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
3 PLLC and that on this 14<sup>th</sup> day of May, 2020, I caused the document entitled **DEFENDANTS**  
4 **EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN**  
5 **EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS**  
6 **PLAINTIFFS' COMPLAINT** to be served as follows:

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a  
8 sealed envelope upon which first class postage was prepaid in Las Vegas,  
9 Nevada; and/or  
10 ☒ to be electronically served through the Eighth Judicial District Court's  
11 electronic filing system pursuant to EDCR 8.02; and/or  
12 ☐ to be hand-delivered;  
13 to the attorneys/ parties listed below:

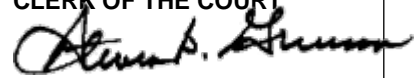
14 **ALL PARTIES ON THE E-SERVICE LIST**

15  
16  
17 */s/ Heather Bennett*

18 

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An employee of Hutchison & Steffen, PLLC  
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*Counsel for Defendants*  
*Robert Darby Vannah, Esq.,*  
*John B. Greene, Esq., and*  
*Robert D. Vannah, Chtd., dba Vannah & Vannah*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION,

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and, ROBERT D. VANNAH,  
CHTD., d/b/a VANNAH & VANNAH; and  
DOES I through V, and ROE CORPORATIONS  
VI through X, inclusive,

Defendants.

CASE NO.: A-19-807433-C  
DEPT NO.: 24

**SPECIAL MOTION OF ROBERT**  
**DARBY VANNAH, ESQ., JOHN**  
**BUCHANAN GREENE, ESQ., and,**  
**ROBERT D. VANNAH, CHTD., d/b/a**  
**VANNAH & VANNAH, TO DISMISS**  
**PLAINTIFFS' COMPLAINT: ANTI-**  
**SLAPP**

(HEARING REQUESTED)

Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ.,  
and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred to collectively as  
VANNAH), hereby file this Special Motion to Dismiss Plaintiffs' Complaint: Anti-SLAPP  
(Special Motion).

This Special Motion is based upon the attached Memorandum of Points and Authorities,  
NRS Sections 41.635-670, the pleadings and papers on file herein, the Points and Authorities  
raised in the underlying action which are now on appeal before the Nevada Supreme Court,

1 Appellants' Appendix (attached to VANNAH'S Opposition to Plaintiffs' previously filed  
2 Emergency Motion to Preserve Evidence as Exhibit A), the record on appeal (*Id.*), all of which  
3 VANNAH adopts and incorporates by this reference, the Affidavit of Robert D. Vannah, Esq.,  
4 the Affidavit of John B. Greene, Esq., and any oral arguments this Court may wish to entertain.

5 DATED this 15<sup>th</sup> day of May, 2020.

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7 **PATRICIA A. MARR, LTD.**

8 /s/Patricia A. Marr, Esq.

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PATRICIA A. MARR, ESQ.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. ANTI-SLAPP**

13 Anti-SLAPP statutes protect those who exercise their right to free speech, petition their  
14 government on an issue of concern, or try to resolve a conflict through use of the judiciary. The  
15 right to "petition the government for the redress of grievances" is a right guaranteed by the First  
16 Amendment ("the petition clause").<sup>1</sup> In the 1980s, two (2) law professors coined the phrase  
17 "Strategic Lawsuit Against Public Participation" or "SLAPP" to describe a growing trend of  
18 bringing a civil suit in response to an exercise of free speech or the right to petition.<sup>2</sup> Anti-  
19 SLAPP statutes arose to combat the growing trend. An Anti-SLAPP statute typically provides  
20 for early judicial intervention and equally early dismissal of a SLAPP lawsuit such as SIMON'S.

21 Nevada courts look to California law for guidance in interpreting Anti-SLAPP laws.  
22  
23 *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (Nev. 2017). California courts have held  
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25  
26 <sup>1</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or  
27 abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the  
28 Government for a redress of grievances." Constitution of the United States of America 1789 (rev. 1992)  
Amendment I.

<sup>2</sup> See, George W. Pring and Penelope Canan, *SLAPPS: Getting Sued for Speaking Out* (Temple University Press  
1996). Canan and Pring coined the term SLAPP. The book contains a SLAPP summary, reviews legislation, and

1 that the anti-SLAPP law “provides a procedure for weeding out, at an early stage, *meritless*  
2 claims arising from protected activity.” *Baral v. Schnitt*, 1 Cal.5th 376, 384, 205 Cal.Rptr.3d  
3 475, 376 P.3d 604 (2016). These courts have held further that, by its plain language, the anti-  
4 SLAPP law reaches not only oral and written statements “made *before* a ... judicial proceeding,”  
5 but also statements “made *in connection with* an issue under consideration or review by a ...  
6 judicial body.” (*citing*, Cal.Civ.Code Section 425.16, subd. (e)(1) & (2), italics added.)

8 As construed by California courts, these categories can include “communication[s]  
9 preparatory to or in anticipation of litigation” (*Gotterba v. Travolta*, 228 Cal.App4th 35, 41, 175  
10 Cal.Rptr.3d 47 (2014)) as well as “post judgment enforcement activities” (*Rusheen v. Cohen*, 37  
11 Cal.4th 1048, 1048, 1063, 37 Cal.4th 1000, 1063, 39 Cal.Rptr. 516, 128 P.3d 713 (2006)  
12 (Accord, *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 210, 190  
13 Cal.Rptr.3d 1 (2015) [*“all* communicative acts performed by attorneys as part of their  
14 representation of a client in a judicial proceeding or other petitioning context are per se protected  
15 as petitioning activity by the anti-SLAPP [law]” (italics added) ].)

17 Here, SIMON wants to punish VANNAH and mutual clients, the Edgeworths, for filing a  
18 lawsuit in good faith to redress wrongs that were allegedly committed by SIMON. (*See*, a copy  
19 of SIMON’S Complaint and its eight (8) counts attached to this Special Motion as Exhibit D).  
20 The Edgeworths’ Amended Complaint referenced above brought claims against SIMON for  
21 breach of contract, declaratory relief, breach of the implied covenant of good faith and fair  
22 dealing, and conversion. (*See*, a copy of the Amended Complaint attached to this Special Motion  
23 as Exhibit C). The Amended Complaint was filed by VANNAH in good faith and was based, in  
24 part, on the acts of SIMON asserting a lien in an amount that constituted a contingency fee when  
25 he had an hourly fee agreement with the Edgeworths, then holding the Edgeworths’ funds and  
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27  
28 suggests a model bill.

1 refusing the return their funds to them for what now amounts to over two (2) years. (*Id.*; *see*  
2 *also*, Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached as Exhibits A &  
3 B; *see also*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously  
4 filed Emergency Motion to Preserve Evidence as Exhibit A).

5  
6 But let there be no doubt: If the Defendants here had not filed the Amended Complaint  
7 against SIMON in the underlying matter, the dismissal of which is presently on appeal, SIMON  
8 never would have filed his SLAPP complaint in this matter. As the appellate record shows, the  
9 Edgeworths did not ask for any of this from SIMON; they simply wanted the contract for the  
10 payment of hourly fees honored and the balance of their settlement funds given to them. (*See*,  
11 Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed  
12 Emergency Motion to Preserve Evidence as Exhibit A). Any other inference, assertion,  
13 argument, or allegation by SIMON to the contrary is nonsensical and belied by the facts and the  
14 record. *Id.* Since SIMON'S suit was brought in response to the legal use of the courts by  
15 Defendants here to redress wrongs, SIMON'S complaint is a SLAPP and must be dismissed  
16 under Nevada's Anti-SLAPP law.

17  
18 The Nevada Anti-SLAPP statute shields those who make a protected communication.  
19 NRS 41.635-41.670. The act of filing a complaint to seek redress from a judicial body is a  
20 protected communication under the statute. (*See*, NRS 41.637(3)). Thus, when SIMON sued  
21 VANNAH in retaliation for asking Judge Tierra Jones to resolve a dispute with SIMON on  
22 behalf of the Edgeworths, VANNAH can file a special motion to dismiss under Nevada's Anti-  
23 SLAPP statutes and interpretive laws.

24  
25 Nevada and California courts grant Anti-SLAPP special motions in favor of attorneys  
26 who ask the Court to dismiss SLAPP complaints. *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458  
27 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law*  
28

1 *Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished). Following that  
2 direction, VANNAH respectfully requests that this Court grant the special motion to dismiss  
3 SIMON'S complaint, which is clearly a SLAPP.

## 4 **II. FACTUAL BACKGROUND**

5 The Edgeworths retained SIMON to represent their interests following a flood that  
6 occurred on April 10, 2016, in a home they owned, which was under construction. (*See*,  
7 Appellants' Appendix AA, Vol. 2, p.000296, ll. 10 through 14; 000298:10-12; 000354-000355,  
8 attached to VANNAH'S Opposition to Plaintiffs' previously filed Emergency Motion to  
9 Preserve Evidence as Exhibit A). SIMON undertook this assignment on May 27, 2016. (*Id.*, at  
10 AA, Vol. 2, 000278:18-20; 000298:10-12; 000354.) He then began billing the Edgeworths \$550  
11 per hour for his work from that date to his last entry on January 8, 2018. (*Id.*, at AA, Vols. 1 and  
12 2, 000053-000267; 000296-000297; 000365-000369). Damage from the flood caused in excess  
13 of \$500,000 of property damage, and litigation was filed in the Eighth Judicial District Court as  
14 Case Number A-16-738444-C. (*Id.*, at AA, Vol. 2, 000296). In that action, the Edgeworths  
15 brought suit against entities responsible for defective plumbing on their property: Lange  
16 Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (*Id.*, at AA, Vol. 2,  
17 000278:24-27; 000354).

18 Judge Tierra Jones conducted an evidentiary hearing over five days from August 27,  
19 2018, through August 30, 2018, and concluded on September 18, 2018, to adjudicate SIMON'S  
20 attorney's lien. (*Id.*, at AA, Vol. 2, 000353-000375). The Court found that SIMON and the  
21 Edgeworths had an implied agreement for attorney's fees. (*Id.*, at 000365-000366; 000374).  
22 However, the Edgeworths vigorously asserted that an oral fee agreement existed between  
23 SIMON and the Edgeworths for \$550/hour for work performed by SIMON. (*Id.*, at AA, Vols. 2  
24 & 3, 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25; 512:1-20). In addition to the  
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1 Edgeworths' testimony, SIMON'S invoices from May 27, 2016, through January 8, 2018, were  
2 all billed at \$550 per hour for his time. (*Id.*, at AA, Vols. 1 & 2, 000053-000267).

3 SIMON admitted that he *never* reduced the hourly fee agreement to writing; rather, the  
4 first written fee agreement he ever presented to the Edgeworths was on November 27, 2017—  
5 which was *days after* obtaining a settlement in principle for \$6 million. (*Id.*, at AA, Vol. 3,  
6 000515-1:8-25). Regardless, SIMON and the Edgeworths performed the understood terms of the  
7 original oral fee agreement with exactness. (*Id.*, at AA, Vol. 2, 000297:3-9; AA, Vol. 3,  
8 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20). This was demonstrated when  
9 SIMON sent four (4) invoices to the Edgeworths over time with very detailed invoicing, billing  
10 \$486,453.09 in fees and costs, from May 27, 2016, through September, 19, 2017. (*Id.*, at AA,  
11 Vols. 1 & 2, 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25,  
12 512:1-20).  
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14

15 One can see that SIMON always billed for his time at the hourly rate of \$550 per hour,  
16 and his two associates always billed at the rate of \$275 per hour. (*Id.*, at AA, Vols. 1 & 2,  
17 000053-000267; 000374). It is undisputed the Edgeworths paid the invoices in full, and SIMON  
18 deposited the checks without returning any money. (*Id.*, at AA, Vol. 2, 000356:14-16). And  
19 SIMON *did not express an interest* in May of 2016 in taking the property damage claim with a  
20 value of \$500,000 on a contingency basis. (*Id.*, at AA, Vol. 2, 000297:1-5).  
21

22 SIMON thought that his attorney's fees would be recoverable as damages in the  
23 underlying flood litigation. (*Id.*, at AA, Vol. 2, 000365-000366). As such, it was incumbent  
24 upon him, as the attorney, to provide and serve computations of damages pursuant to NRC 16.1  
25 listing how much in the fees he'd charged. (*Id.*, at *Id.*, 000365:24-26). At the deposition taken of  
26 Brian Edgeworth on September 27, 2017, he was asked what SIMON'S attorney's fees were to  
27 date, and, on the record, SIMON voluntarily admitted that "[the fees have] all been disclosed to  
28

1 you” and “have been disclosed to you long ago.” (*Id.*, at AA, Vol. 2, 000300:3-16; 000302-  
2 000304; 000365:27; 000366:1). That was less than two (2) months before the *crucial* meeting in  
3 his office where SIMON demanded that the fee agreement be modified to pay him a percentage  
4 of the Viking settlement. (*Id.*, at 000300:3-16; 000302-000304). Thus, we see that through  
5 SIMON’S words and deeds he clearly knew, understood, and operated with the understanding  
6 that his fee agreement with the Edgeworths was for \$550 per hour for the work he performed.  
7

8 Notwithstanding the existence of a fee agreement, a mutually understood pattern of  
9 invoices sent and paid for SIMON’S fees, and the Edgeworths’ affidavits and testimony that an  
10 oral contract for fees paid at the hourly rate of \$550 per hour had been reached in May of 2016,  
11 SIMON eventually wanted more than an hourly fee. (*Id.*, at 000271-000304). On November 17,  
12 2017, and only after the value of the case skyrocketed past \$500,000 to over \$6,000,000, SIMON  
13 demanded that the Edgeworths modify the fee contract so that he could recover a contingency  
14 fee dressed as a bonus. (*Id.*, at AA, Vol. 2, 000298:3-17).  
15

16 The Edgeworths initially understood that SIMON scheduled the meeting with the  
17 Edgeworths at SIMON’S office to discuss the flood litigation, but it became clear to the  
18 Edgeworths that SIMON agenda was to pressure them into modifying their \$550/hour fee  
19 agreement. (*Id.*, at 000298:12-24). At that meeting, SIMON told the Edgeworths he wanted to be  
20 paid far more than \$550.00 per hour and the \$486,453.09 in fees and costs he’d received from  
21 the Edgeworths for the preceding eighteen (18) months. *Id.*  
22

23 SIMON claimed that he was losing money and that it would be the right thing to do for  
24 the Edgeworths to agree to pay him basically 40% of the \$6 million settlement with Viking. (*Id.*,  
25 at AA, Vols. 2 & 3, 000299:13-22; 000270; 000275; 000515-1). At the close of that meeting,  
26 SIMON invited the Edgeworths to contact another attorney and verify that this was the way  
27 things work. (*Id.*, at AA, Vol. 3, 000000515-1, 000515-2, 000516:1-7, 000517:13-25). The  
28

1 Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29,  
2 2017. (*See*, Exhibits A & B attached to this Special Motion).

3 The Edgeworths refused to bow to SIMON'S pressure or demands. (*Id.*, at AA, Vol. 2,  
4 000300:16-23). When the Edgeworths did not acquiesce to SIMON'S demands, SIMON refused  
5 to release the settlement proceeds to the Edgeworths. *Id.* Instead, SIMON served two (2)  
6 attorney's liens: one (1) on November 30, 2017, and an Amended Lien on January 2, 2018. (*Id.*,  
7 at AA, Vol. 1, 000001; 000006). SIMON'S Amended Lien was for a net sum of \$1,977,843.80.  
8 *Id.* This amount was on top of the \$486,453.09 in fees and costs the Edgeworths had paid in full  
9 to SIMON for all his services and time from May 27, 2016, through September 19, 2017. (*Id.*, at  
10 AA, Vol. 2, 000301:12-13). Simple math reveals that 40% (a contingency fee) of \$6,000,000 is  
11 **\$2,400,000**. Similar math skills show that \$486,453.09 plus \$1,977,843.80 equals **\$2,414,296.80**.  
12

13 On January 4, 2018, VANNAH, on behalf of the Edgeworths, filed a complaint against  
14 SIMON, alleging claims for breach of contract, declaratory relief, and conversion. On March 15,  
15 2018, VANNAH, on behalf of the Edgeworths, filed an amended complaint against SIMON,  
16 alleging claims for breach of contract, declaratory relief, conversion, and breach of the implied  
17 covenant of good faith and fair dealing. (*See*, the Amended Complaint attached to this Special  
18 Motion as Exhibit C). Several relevant paragraphs of the Amended Complaint are as follows:  
19

20 (8) On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests  
21 following a flood that occurred on April 10, 2016, in a home under construction that was owned  
22 by PLAINTIFFS. That dispute was subject to litigation in the Eighth Judicial District Court as  
23 Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A  
24 settlement in favor of PLAINTIFFS for a substantial amount of money was reached with  
25 defendants prior to the trial date.  
26

27 (9) At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally  
28

1 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and  
2 costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT  
3 were never reduced to writing.

4 (10) Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December  
5 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs  
6 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to  
7 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount  
8 of \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to  
9 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever  
10 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees  
11 and costs to the mandated computation of damages  
12

13 (12) As discovery in the underlying LITIGATION neared its conclusion in the late fall of  
14 2017, and thereafter blossomed from one of mere property damage to one of significant and  
15 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the  
16 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the  
17 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months.  
18 However, neither PLAINTIFFS nor SIMON agreed on any terms.  
19

20 (13) On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth  
21 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that  
22 he wanted to be paid in light of a favorable settlement that was reached with the defendants in  
23 the LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that  
24 PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that  
25 SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the  
26 LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in  
27  
28

1 the LITIGATION.

2 (14) A reason given by SIMON to modify the CONTRACT was that he purportedly  
3 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to  
4 go through his invoices and create, or submit, additional billing entries. According to SIMON,  
5 he under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional  
6 reason given by SIMON was that he felt his work now had greater value than the \$550.00 per  
7 hour that was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed  
8 settlement breakdown with his new numbers and presented it to PLAINTIFFS for their  
9 signatures.  
10

11 (18) Despite SIMON'S requests and demands for the payment of more in fees,  
12 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.  
13

14 (22) PLAINTIFFS and SIMON have a CONTRACT. A material term of the  
15 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An  
16 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S  
17 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON  
18 owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with  
19 PLAINTIFFS best interests.  
20

21 (23) PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that  
22 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

23 (24) PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted  
24 pursuant to the CONTRACT.

25 (25) SIMON'S demand for additional compensation other than what was agreed to in the  
26 CONTRACT, and then what was disclosed to the defendants in the LITIGATION, in exchange  
27 for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.  
28

1 (26) SIMON'S refusal to agree to release all of the settlement proceeds from the  
2 LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the  
3 CONTRACT.

4 (39) Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his  
5 services, nothing more.

6 (40) SIMON admitted in the LITIGATION that all of his fees and costs incurred on or  
7 before September 27, 2017, had already been produced to the defendants.

8 (42) Despite SIMON'S knowledge that he has billed for and been paid in full for his  
9 services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to  
10 pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that  
11 he'd produced all of his billings through September 27, 2017, SIMON has refused to agree to  
12 either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an  
13 undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

14 (43) SIMON'S retention of PLAINTIFFS' property is done intentionally with a  
15 conscious disregard of, and contempt for, PLAINTIFFS' property rights.

16 (48) The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS  
17 in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior  
18 to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

19 (49) Thereafter, when the underlying LITIGATION with the Viking defendant had  
20 settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over  
21 a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral  
22 belief that he was entitled to the bonus based upon the amount of the Viking settlement.

23 (50) Thereafter, SIMON produced a super bill where he added billings to existing  
24 invoices that had already been paid in full and created additional billings for work allegedly  
25

1 occurring after the LITIGATION had essentially resolved. The amount of the super bill is  
2 \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

3 (51) If PLAINTIFFS had either been aware or made aware during the LITIGATION that  
4 SIMON had some secret unexpressed thought or plan that the invoices were merely partial  
5 invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they  
6 wanted to continue using SIMON as their attorney.  
7

8 (52) When SIMON failed to reduce the CONTRACT to writing, and to remove all  
9 ambiguities that he claims now exist, including, but not limited to, how his fee was to be  
10 determined, 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

13 (53) When SIMON executed his secret plan and went back and added substantial time to  
14 his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good  
15 faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and  
16 fair dealing.

17 (54) When SIMON demanded a bonus based upon the amount of the settlement with the  
18 Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,  
19 SIMON breached the implied covenant of good faith and fair dealing.  
20

21 (55) When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so **in an**  
22 **amount** that was **far in excess** of any amount of fees that he had billed from the date of the  
23 previously paid invoice to the date of the service of the lien, that he could bill for the work  
24 performed, that he actually billed, or **that he could possibly claim** under the CONTRACT. In  
25 doing so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON  
26 breached the implied covenant of good faith and fair dealing. (**Emphasis** added.) (*Id.*)  
27

28 As one can clearly see, there is nothing in the Amended Complaint that alleges that

1 SIMON “stole” the Edgeworths’ money, as SIMON erroneously alleges in Paragraph 21 of his  
2 complaint. (*Id.*) Put in the best possible light, that is a false allegation by SIMON in his SLAPP.  
3 A basis for the Edgeworths’ claim for conversion against SIMON is that he knew or had every  
4 reason to know through his own statements and actions (the deposition of Brian Edgeworth;  
5 NRCP 16.1 disclosures and computation of damages; the amount of the super bill of \$692,120,  
6 not a billable amount “that may well exceed \$1,500,000” that SIMON stated to VANNAH in a  
7 letter dated December 7, 2017; etc.) that the largest amount of additional fees that SIMON could  
8 reasonably claim from the Edgeworths via an attorneys lien is **\$692,120**. In other words, the  
9 Amended Complaint does not challenge SIMON’S right to assert a lien. Rather, it has always  
10 been about its amount, and SIMON’S persistent refusal to release the balance of the funds to the  
11 Edgeworths. (*See*, Exhibit C.)  
12

13  
14 As previously indicated by VANNAH in the Opposition to SIMON’S Emergency  
15 Motion, since denied, SIMON’S Complaint is the direct byproduct of a judicial matter that began  
16 in May of 2016, and that is now on appeal before the Nevada Supreme Court. (*See*, Appellants’  
17 Appendix attached to VANNAH’S Opposition to Plaintiff’s previously filed Emergency Motion  
18 to Preserve Evidence as Exhibit A.) All briefing has been completed and the issues on appeal  
19 are waiting for further action by that judicial body. (*See*, Exhibits A & B).  
20

21 The plain reading of SIMON’S Complaint clearly reveals that every count and claim  
22 against VANNAH is directly related to VANNAH’S use of the courts—a judicial body—to  
23 bring claims for relief on behalf of clients—the Edgeworths—against SIMON, namely the claim  
24 for conversion. (*See*, SIMON’S Complaint attached to this Special Motion as Exhibit D.) There  
25 is no other reasonable interpretation of the basis for, or the content of, SIMON’S Complaint.  
26 (*Id.*) Pursuant to Nevada law, a “Written or oral statement made in direct connection with an  
27 issue under consideration by a...judicial body...” is a protected communication under Nevada’s  
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1 Anti-SLAPP statute. NRS 41.637(3). Therefore, VANNAH cannot be sued for following the  
2 law. And SIMON’S SLAPP must be dismissed.

### 3 **III. ARGUMENTS**

4 The Nevada Anti-SLAPP statute allows a defendant to file a special motion to dismiss  
5 claims based on protected communications that are made in good faith, such as asking this Court  
6 to dismiss SIMON’S complaint that is solely based and grounded in the Amended Complaint  
7 that VANNAH filed in good faith on behalf of the Edgeworths, asking a judicial body to grant  
8 certain relief and to make certain findings. NRS 41.660(1)(a). A special motion to dismiss first  
9 requires the defendant—VANNAH here—to establish by preponderance of the evidence that the  
10 plaintiffs’ claim is based on a good faith communication made in furtherance of the right to  
11 petition the courts. NRS 41.660(3)(a). If the answer is yes, which it is here, then the burden  
12 shifts, and the plaintiff—SIMON here—must establish, by prima facie evidence, a likelihood of  
13 prevailing. NRS 41.665(2). If the plaintiff does not establish a likelihood of prevailing, then the  
14 special motion to dismiss must be granted. *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d  
15 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*,  
16 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished).

17 A plaintiff cannot establish a likelihood of prevailing if the claim is based upon a  
18 protected communication to a court, because the litigation privilege provides absolute immunity,  
19 even for otherwise tortious or untrue claims. *Greenberg Taurig v. Frias Holding Co.*, 331 P.3d  
20 901, 902 (Nev. 2014); and, *Blaurock v. Mattice Law Offices* 2015 WL 3540903 (Nev. App.  
21 2015). Submission of a complaint, amended complaint, briefs, and arguments to a court/judicial  
22 body for adjudication to redress wrongs are all protected communications. And they’re the  
23 whole nine (9) yards of SIMON’S SLAPP. Here, VANNAH cannot be sued by SIMON for  
24 following the law and making protected communications, written and oral, to the court.  
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1           **A.     SIMON’S COMPLAINT IS CLEARLY AND SOLELY FOUNDED ON**  
2           **PROTECTED COMMUNICATIONS TO A JUDICIAL BODY BY**  
3           **VANNAH.**

4           Filing a complaint and an amended complaint in good faith on behalf of clients to seek  
5           redress for wrong committed by another pursuant to well-founded claims for relief are two  
6           examples of petitions to the judicial body. *See, Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458  
7           P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law*  
8           *Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). As such, the  
9           complaint and amended complaint that VANNAH filed on behalf of the Edgeworths qualify as  
10          protected communications pursuant to NRS 41.637(3), which states:

11           “Good faith communication in furtherance of the right to petition or the right to free  
12           speech in direct connection with an issue of public concern” means any:

13           ...

14           3. Written or oral statement made in direct connection with an issue under consideration by  
15           a legislative, executive or judicial body, or any other official proceeding authorized by law;

16           ...

17           SIMON’S Complaint describes the use of VANNAH’S pleadings and the hearings  
18           ordered by the court to resolve disputes, including the lien adjudication that SIMON initiated, as  
19           the grounds for each of its eight (8) counts. Here are some prime examples from SIMON’S  
20           SLAPP (Attached as Exhibit D), with emphasis added in **bold**:

21           19. On January 4, 2018, Edgeworth’s, through Defendant Lawyers, **sued** Simon,  
22           **alleging conversion....**

23           23. **During the course of the litigation**, Defendants, and each of them, filed false  
24           documents asserting blackmail, extortion and converting the Edgeworth’s portion of  
25           the settlement proceeds.

26           25. **All filings for conversion** were done without probable cause or a good faith  
27           belief that there was an evidentiary basis.

28           31. The Edgeworth entities, through the Defendant attorneys, **initiated a**

1 **complaint....**

2 32. The Edgeworth entities, through the Defendant attorneys, **maintained the**  
3 **conversion...when filing an amended complaint....**

4 41. The Edgeworth entities, through the Defendant attorneys, **initiated a**  
5 **complaint....**

6 42. The Edgeworth entities, through the Defendant attorneys, **maintained the**  
7 **conversion...when filing an amended complaint....**

8 49. The Edgeworth's and the Defendant attorneys abused **the judicial process** when  
9 **initiating a proceeding and maintained the proceeding** alleging **conversion....**

10 58. Robert D. Vannah, Chtd., had a duty...to act diligently and competently **to**  
11 **represent (sic) valid claims to the court and to file pleadings before the court...**

12 89. Defendants, and each of them...intended to accomplish the unlawful objective of  
13 (i) **filing false claims...to defend wrongful institution of civil proceedings...were**  
14 committed several times **when filing the complaint, amended complaint, all briefs,**  
15 **3 affidavits, oral arguments and supreme court filings.... (Id.)**

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19 These are but a few of the numerous references in SIMON'S SLAPP that demonstrate the  
20 sole reason it was brought is because the Edgeworths, through their attorneys, VANNAH, had  
21 the temerity to bring well-recognized claims in good faith to seek redress from SIMON through a  
22 judicial body, then appeal some of the decisions to the Nevada Supreme Court when VANNAH  
23 determined, in good faith, the district court did not follow the law. (*Id.*; *see also*, Exhibit A.)  
24 The use of a complaint, an amended complaint, briefs, and arguments are all protected  
25 communications under NRS 41.637, and the use of these devices serves as **the** basis for  
26 SIMON'S Complaint. *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v.*  
27 *Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A.  
28

1 2nd Dist. Div. 1 (Calif. 2017)) (unpublished).

2 To quote SIMON’S position from an earlier-filed Special Motion to Dismiss, “...you  
3 cannot be sued for following the law.” Thus, VANNAH has satisfied their burden under NRS  
4 41.660 & 41.665, and the burden now shifts to SIMON.

5 **B. SIMON DOES NOT HAVE ANY LIKELIHOOD OF PREVAILING.**

6 Under Nevada law, “communications uttered or published in the course of judicial  
7 proceedings are absolutely privileged, rendering those who made the communications immune  
8 from civil liability.” *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67,  
9 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49  
10 P.3d 640, 643 (2002). The privilege also applies to “conduct occurring during the litigation  
11 process.” *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of*  
12 *Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute  
13 privilege that, “bars any civil litigation based on the underlying communication.” *Hampe v.*  
14 *Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las*  
15 *Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev.  
16 56, 60, 657 P.2d 101, 104 (1983).

17 The privilege, which even protects an individual from liability for statements made with  
18 knowledge of falsity and malice, applies “so long as [the statements] are in some way pertinent  
19 to the subject of controversy.” *Id.* Moreover, the statements “need not be relevant in the  
20 traditional evidentiary sense, but need have only ‘some relation to the proceeding; so long as the  
21 material has some bearing on the subject matter of the proceeding, it is absolutely privileged.” *Id.*  
22 at 61, 657 P.2d at 104. Contrary to SIMON’S allegations, there is vast evidentiary support for all  
23 of the allegations contained in the Amended Complaint. (See, Exhibit C; see also, Appellants’  
24 Appendix attached to VANNAH’S Opposition to Plaintiff’s previously filed Emergency Motion  
25  
26  
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28

1 to Preserve Evidence as Exhibit A; *see also*, Exhibits A & B attached to this Special Motion.)

2 A plain reading of SIMON’S complaint reveals that the primary basis for SIMON’S  
3 claims for wrongful use of civil proceedings, for defamation per se, and for business  
4 disparagement are pleadings filed and statements allegedly made by one or more of the  
5 defendants in the course of the underlying litigation and judicial proceedings. (*See*, Exhibit D.)  
6 Since these written and oral communications and statements are “absolutely privileged,” there is  
7 no set of facts...which would entitle SIMON to any relief, or to prevail. *See, Buzz Stew, LLC v.*  
8 *City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Therefore, SIMON does  
9 not have any prima facie evidence to support these claims/counts upon which relief could ever be  
10 granted. Therefore, he cannot meet his burden under the law. NRS 41.660(3)(b).

12 There is also a complete lack of prima facie evidence to support SIMON’S claims for  
13 malicious prosecution, abuse of process, and wrongful use of civil proceedings, as they are either  
14 procedurally premature and/or there is no set of facts that SIMON could prove that would entitle  
15 him to a remedy at law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d  
16 670, 672 (2008). One of the key elements for a claim for malicious prosecution is a favorable  
17 termination of a prior action. *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002). The same case  
18 speaks of the elements of a claim for abuse of process, which also includes the requirement of  
19 the resolution of a prior, or underlying action. *Id.* There is no dispute whatsoever that the prior  
20 action has not been terminated favorably or otherwise; it’s on appeal to the Nevada Supreme  
21 Court with both sides appealing rulings made by the district court. (*See*, Appellants’ Appendix  
22 attached to VANNAH’S Opposition to Plaintiff’s previously filed Emergency Motion to  
23 Preserve Evidence as Exhibit A; *see also*, Exhibits A & B attached to this Special Motion.)

26 The language in SIMON’S claim for wrongful use of civil proceedings is nothing more,  
27 either factually or legally, than one couched in malicious prosecution and/or abuse of process,  
28

1 and lacks sufficient factual and/or legal support to meet his burden on these counts, either. (NRS  
2 41.660(3)(b); *see also*, Exhibit D, at pp. 9-10.)

3 A claim for abuse of process also requires more than the mere filing of a complaint itself.  
4 *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Rather, the complaining party must  
5 include some allegation of abusive measures taken after the filing of a complaint to state a claim.  
6 *Id.* As indicated in the appellate record, nothing substantive with the Edgeworths' Amended  
7 Complaint was allowed to be taken after it was filed and served. (*See*, Appellants' Appendix  
8 attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to  
9 Preserve Evidence as Exhibit A.) No discovery, no depositions, no nothing. (*Id.*) Without any  
10 additional "abusive measure," SIMON'S claim for abuse of process is legally insufficient. *See*,  
11 *Laxalt*, 622 F. Supp. at 752. Since this count/claim is legally insufficient, SIMON cannot meet  
12 his burden under NRS 41.660(3)(b).  
13  
14

15 As Appellants Appendix clearly shows, the underlying action is presently on appeal.  
16 Included in that appeal is the order dismissing the Edgeworths' Amended Complaint, the award  
17 of a certain measure of fees and costs associated with that dismissal, the finding that SIMON was  
18 constructively discharged (not "fired" as alleged in Paragraph 16 of SIMON'S Complaint) by the  
19 Edgeworths, and the award of \$200,000 in fees to SIMON based on quantum meruit when any  
20 finding of a constructive discharge was belied by the facts, including the exact amount of time  
21 that SIMON actually and admittedly worked for the Edgeworths, and billed them, from  
22 November 30, 2017, through January 8, 2018, which totaled \$33,811.25 in fees, not the \$200,000  
23 awarded. (*Id.*) That's \$33,811.25 in fees that SIMON billed the Edgeworths for work he  
24 performed after SIMON alleges in Paragraph 16 of his SLAPP he was "fired" by the  
25 Edgeworths. That's also pretty good work if you can find it these days.  
26

27 Again, SIMON'S own words to his clients on November 27, 2017, is additional evidence  
28

1 that shows that SIMON wasn't fired, terminated, or the like by the Edgeworths. (A copy of  
2 SIMON'S letter to the Edgeworths is attached as Exhibit E.) These are SIMON'S own words  
3 penned at the end of his letter: "I have thought about this and this is the lowest amount I can  
4 accept...If you are not agreeable, then I cannot continue to lose money and help you...I will  
5 need to consider all options available to me." (*Id.*, emphasis added.) These words were  
6 interpreted to clearly mean that if the Edgeworths didn't acquiesce and sign a new retainer  
7 agreement that would give SIMON an additional \$1,114,000 in fees, he would no longer be their  
8 lawyer. (*See*, Exhibit A.) Meaning SIMON would quit, despite the looming reality that the  
9 litigation against the Lange defendant was set for trial early in 2018. (*Id.*) This is yet another  
10 example of the reality that the Edgeworths have lived, and a basis for the actions that were taken  
11 by VANNAH, on behalf of the Edgeworths, in return. (*See*, Exhibit C.) It resulted in a SLAPP  
12 from SIMON. (*See*, Exhibit D.)

15 Since SIMON'S suit/complaint is inextricably linked to written and oral communications  
16 made by VANNAH (and the Edgeworths) in the underlying judicial action that is presently on  
17 appeal (with all briefing now completed and submitted), and since there is no "favorable  
18 termination of a prior action," and no "additional abusive measure," SIMON cannot show by  
19 prima facia evidence that he can prevail on his claims for malicious prosecution, abuse of  
20 process, and wrongful use of civil proceedings. *See*, *LaMantia v. Redis*, 38 P.3d 877, 879-80  
21 (2002); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Therefore, SIMON again  
22 cannot meet his burden under NRS 41.660(3)(b).

24 The basis for SIMON'S allegations contained in Count IV (Negligent Hiring,  
25 Supervision, and Retention), Count VII (Negligence), and Count VIII (Civil Conspiracy) are  
26 factually and legally defective, as well. There is no reasonable question that an attorney client  
27 relationship never existed in the underlying action between SIMON and VANNAH. (*See*,  
28

1 Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed  
2 Emergency Motion to Preserve Evidence as Exhibit A; *see also*, Exhibits A & B attached to this  
3 Special Motion). There is no dispute that these Counts (IV, VII & VIII) are brought by SIMON,  
4 who is an admitted and documented adversary of the Edgeworths, due to communications and  
5 actions allegedly taken in the underlying action by the Edgeworths and their attorneys,  
6 VANNAH, namely the filing of a complaint, an amended complaint, briefs, and in making  
7 arguments to Judge Jones. (*See*, Exhibit D).

8  
9 The law is clear that VANNAH, as attorneys, does not owe a duty of care to SIMON, an  
10 adversary of a client, the Edgeworths, in the underlying litigation. *Dezzani v. Kern & Associates,*  
11 *Ltd.*, 134 Nev.Adv.Op. 9, 12, 412 P.3d 56 (2018). Rather, an attorney providing legal services to  
12 a client generally owes no duty to adverse or third parties. *Id.* *See also*, *Fox v. Pollack*, 226  
13 Cal.Rptr. 532, 536 (Ct. App. 1986); *GemCap Lending, LLC v. Quarles & Brady, LLP*, 269 F.  
14 Supp. 3d 1007 (C.D. Cal 2017); *Borissoff v. Taylor & Faust*, 96 Cal. App. 4th 418, 117 Cal.  
15 Rptr. 2d 138 (1st District 2002). (An attorney generally will not be held liable to a third person  
16 not in privity of contract with him since he owes no duty to anyone other than his client.); *Clark*  
17 *v. Feder and Bard, P.C.*, 634 F. Supp. 2d 99 (D.D.C.)(applying District of Columbia law)(Under  
18 District of Columbia law, with rare exceptions, a legal malpractice claim against an attorney  
19 requires the existence of an attorney-client relationship; the primary exception to the requirement  
20 of an attorney-client relationship occurs in a narrow class of cases where the "intended  
21 beneficiary" of a will sues the attorney who drafted that will).

22  
23  
24 A simple and plain reading of Counts IV, VII & VIII of SIMON'S Complaint shows that  
25 all of these claims are based on the breach of an alleged duty by VANNAH to SIMON in the  
26 filing of litigation. (*See*, Exhibit D.) Neither the law nor common sense allow SIMON to make  
27 or maintain such claims. Since SIMON cannot maintain these claims as a matter of law pursuant  
28



1 to Nevada (and general) law, he cannot prevail. *See, Vacation Village, Inc. v. Hitachi Am. Ltd.*,  
2 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)(quoting *Edgar v. Wagner*, 101 Nev. 226, 228 ,699  
3 P.2d 110, 112 (1988); and, *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124,  
4 Nev. 313, 316, 183 P.3d 133, 135 (2008). Since SIMON cannot prevail, he cannot meet his  
5 burden under NRS 41.660(3)(b).  
6

7 SIMON'S claim for civil conspiracy has additional legal flaws, as SIMON'S allegations  
8 are insufficient to establish the elements of a claim for this relief. *Stockmeier v. Nev. Dep't of*  
9 *Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008). VANNAH  
10 agrees that meetings were held with the Edgeworths, the first of which occurred with Brian  
11 Edgeworth on November 29, 2017; that the initial meeting was held at the encouragement of  
12 SIMON; that VANNAH was retained to represent the Edgeworths' interests; that VANNAH  
13 counseled and advised the Edgeworths on their litigation options; that, as a result of the client  
14 meetings, VANNAH prepared and caused to be filed a complaint and an amended complaint to  
15 address wrongs committed by SIMON, naming SIMON as defendants. (*See*, Appellants'  
16 Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency  
17 Motion to Preserve Evidence as Exhibit A; and, Exhibit B to this Motion).  
18

19 VANNAH also agrees that the allegations in the complaints represented a good faith  
20 understanding of the factual reality that the Edgeworths had lived as a result of the actions and  
21 inactions of SIMON; that VANNAH had and has a good faith belief regarding the viability of  
22 each claim for relief in the complaints; that VANNAH opposed SIMON'S efforts to dismiss the  
23 complaints; and, that VANNAH caused to be filed a Notice of Appeal of, among other things,  
24 the order dismissing the Amended Complaint. All of these facts are part of the judicial  
25 proceedings that are presently on appeal. (*Id.*)  
26

27 There is nothing in Nevada law that makes it criminal or unlawful for a lawyer to meet  
28

1 with a client and advise the client of the option to use the judiciary to take public action to seek  
2 redress for injuries suffered by that client at the hands of another, such as SIMON. There is  
3 also nothing in Nevada law that makes it criminal or unlawful for an attorney to then file a  
4 complaint and/or amended complaint alleging various claims for relief, including conversion,  
5 when an adverse party, even an attorney, has laid claim to an amount of money that he knew  
6 and had reason to know that he had no legal basis to exercise dominion and control over  
7 through an attorney's lien. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043,  
8 1049 (2000)(citing, *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96  
9 Nev. 352, 356, 609 P.2d 314, 317 (1980).

11 Finally, there is nothing in Nevada law that makes it criminal or unlawful to vigorously  
12 defend the interest and claims of that client in judicial proceedings. NRS sections 41.635-670.  
13 This is all part of the public record and was all done to seek a remedy that SIMON withheld—a  
14 large amount of the Edgeworths' money. (See, Appellants' Appendix attached to VANNAH'S  
15 Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit  
16 A). And he's done so now for over two (2) years. (*Id.*) Neither the facts, nor the law, nor  
17 common sense support SIMON'S claim for civil conspiracy. Therefore, he cannot prevail.  
18 *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d  
19 133, 135 (2008). Since this count/claim is legally and factually insufficient, SIMON cannot  
20 meet his burden under NRS 41.660(3)(b).

23 To paraphrase SIMON in a motion he brought in the matter now on appeal, none of his  
24 allegations against VANNAH "rise to the level of a plausible or cognizable claim for relief."  
25 Some are barred by the litigation privilege, others by a lack of procedural ripeness, some by the  
26 failure to allege all conditions precedent having occurred, others still by the clear absence of any  
27 duty owed or remedy afforded, and all by Nevada's Anti-SLAPP laws. With all of his  
28

1 counts/claims being legally and factually deficient in material respects, SIMON cannot meet his  
2 burden under NRS 41.660(3)(b).

3 **B. VANNAH HAD AND HAS A GOOD FAITH BASIS TO FILE AND**  
4 **MAINTAIN THE EDGEWORTHS' CLAIMS AGAINST SIMON,**  
5 **INCLUDING CONVERSION.**

6 SIMON is wrong, factually and legally, when he speaks of an "arrangement" that  
7 purportedly undermines the Edgeworths' claim for conversion. From May of 2016, through the  
8 submission of and payment of the fourth and final invoice, SIMON had provided, and the  
9 Edgeworths had always paid, invoices for work performed by SIMON at the rate of \$550 per  
10 hour. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously  
11 filed Emergency Motion to Preserve Evidence as Exhibit A). That was the fee contract. (*Id.*)

12 The Edgeworths reasonably expected that the fee contract with SIMON would be  
13 honored by him. (*Id.*) Yet, as alleged in the Amended Complaint, and contained in the  
14 appellate record (*Id.*), rather than abide by the contract and provide the Edgeworths with a fifth  
15 and final invoice for his work, SIMON demanded a bonus, served an attorney's lien in an  
16 unspecified amount, demanded what amounted to a contingency fee of nearly 40% of the  
17 amount of the underlying settlements, served a second lien for over \$1,977,843 in additional  
18 fees and costs, and refused to release the settlement funds to the Edgeworths, not even the  
19 funds that exceed the amount of SIMON'S own super bill, which totaled \$692,120. (*Id.*)

20 SIMON'S proposal was to deposit the settlement funds in his trust account. That was  
21 unacceptable to the Edgeworths. VANNAH'S proposal was to deposit the Edgeworths' funds  
22 into VANNAH'S trust account. That was unacceptable to SIMON. Since these funds needed  
23 to be deposited so the check didn't become stale, a compromise was reached that caused the  
24 funds to be deposited at Bank of Nevada. In order for the Edgeworths' funds to be disbursed,  
25 both SIMON and VANNAH must consent and co-sign on a check. This was not and is not  
26  
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28

1 what the Edgeworths wanted or want—they want their money above and beyond what SIMON  
2 billed for the work the court found that he performed and is entitled to receive following the  
3 adjudication proceedings. (*Id.*)

4 Even now, SIMON continues to exercise dominion and control of well over \$1 million  
5 dollars of the Edgeworths' funds, an amount in which SIMON has no reasonable factual or  
6 legal basis to do so. (*Id.*) That's conversion of the Edgeworths' property. Under Nevada law,  
7 conversion is, "a distinct act of dominion wrongfully exerted over another's personal property  
8 in denial of, or inconsistent with, his title or rights therein or in derogation, exclusion, or  
9 defiance of such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d  
10 1043, 1049 (2000)(citing, *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v.*  
11 *Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)("We conclude that it was permissible for  
12 the jury to find that a conversion occurred when Bader refused to release their brand.").  
13 Nevada law also holds that conversion is an act of general intent, which does not require  
14 wrongful intent and is not excused by care, good faith, or lack of knowledge. (*Id.*)

15 It's clear that, contrary to the allegations and arguments of SIMON, to prevail on their  
16 claim for conversion, the Edgeworths only need to prove what they've asserted and alleged:  
17 that SIMON exercised, and continues to exercise, dominion and control over an amount of the  
18 Edgeworths' money without a reasonable basis to do so. (*Id.*; see also, Exhibit C.) It doesn't  
19 require proof of theft or ill intent, as SIMON wants everyone to believe. *Evans v. Dean Witter*  
20 *Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing, *Wantz v. Redfield*, 74 Nev. 196,  
21 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). Rather, the  
22 conversion is SIMON'S unreasonable claim to an excessive amount of the Edgeworths' money  
23 that SIMON knew and had every reason to believe that he had no reasonable basis to lay claim  
24 to. (See, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously  
25  
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27  
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1 filed Emergency Motion to Preserve Evidence as Exhibit A).

2 As SIMON’S allegations in his SLAPP seems to suggest, are lawyers truly exempt from  
3 the laws governing conversion when we exercise unlawful dominion and control over an  
4 amount of money that we have no reasonable basis to lay a claim to? (*See*, Exhibit D.) What if  
5 a contingency fee agreement is actually drafted by the lawyer per NRPC 1.5(c), providing for a  
6 40% fee, then the attorney asserts a lien for 50%? Or 60%? Or more? Isn’t that conversion  
7 under the law because the amount of the lien has no reasonable basis by any factual or legal  
8 measure, thus rising to, “a distinct act of dominion wrongfully exerted over another’s personal  
9 property in denial of, or inconsistent with, his title or rights therein or in derogation, exclusion,  
10 or defiance of such title or rights.”? *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d  
11 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*,  
12 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).

13  
14  
15 Some of the best evidence of the good faith nature of the conversion claim brought  
16 against SIMON by the Edgeworths through their attorneys, VANNAH, is the amount of  
17 SIMON’S superbill (\$692,120) versus the amount of his Amended Lien (\$1,977,843.80). (*See*,  
18 Appellants’ Appendix attached to VANNAH’S Opposition to Plaintiff’s previously filed  
19 Emergency Motion to Preserve Evidence as Exhibit A.) At the near conclusion and resolution  
20 of the flood litigation, and likely just prior to November 17, 2017 (since discovery was never  
21 allowed by Judge Jones before she dismissed the Amended Complaint, these facts couldn’t be  
22 flushed out yet), SIMON firmly decided he wanted a contingency fee from the Edgeworths.  
23 (*Id.*) But SIMON failed, as the lawyer, to reduce any fee agreement to writing. (*Id.*) Thus, per  
24 the NRPC and the Decision and Order of Judge Jones Adjudicating the Lien, SIMON’S path to  
25 a contingency fee was factually and legally precluded. (*Id.*)

26  
27 Even though the super bill evidence that SIMON himself generated shows that the most  
28

1 he could reasonably have expected to receive in additional proceeds from the Edgeworths for  
2 the work he performed was \$692,120, SIMON still served his Amended Lien for \$1,977,843.80  
3 and still refuses to release well over a million dollars of the Edgeworths' money to them. (*Id.*)  
4 That conduct by SIMON constitutes a good faith basis for VANNAH, on behalf of the  
5 Edgeworths, to bring a claim against SIMON for the conversion under Nevada law. *Evans v.*  
6 *Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing, *Wantz v. Redfield*,  
7 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317  
8 (1980).

10 SIMON'S lien has been adjudicated, he's been awarded \$484,982.50 in fees that the  
11 Edgeworths have agreed to pay to him (*See*, Exhibit B to VANNAH'S previously filed  
12 Opposition to SIMON'S emergency motion), yet SIMON won't release the balance of the  
13 Edgeworths' money to them. (*See*, Appellants' Appendix attached to VANNAH'S Opposition  
14 to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A). Instead,  
15 SIMON still seeks a contingency fee despite failing to ever reduce the fee agreement to writing  
16 per NRPC 1.5(c), and despite the Decision and Order from Judge Jones stating, "...this is not a  
17 contingency fee case, and the Court is not awarding a contingency fee." (*Id.*, at AA, Vol. 2  
18 000353-000375, with specific emphasis on pages 000373-000374).

21 These facts, together with the law cited above, provide more than enough good faith  
22 basis to seek and maintain a claim for conversion (as well as the other claims in the underlying  
23 Amended Complaint) against SIMON. (NRPC 3.1).

24 As for the claim for breach of contract, the Edgeworths vigorously asserted that an oral  
25 fee agreement existed between SIMON and the Edgeworths for \$550/hour for work performed  
26 by SIMON. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's  
27 previously filed Emergency Motion to Preserve Evidence as Exhibit A, specifically at Vols. 2  
28

1 & 3, 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20). Following the  
2 evidentiary hearing to adjudicate SIMON'S lien, the Court found that SIMON and the  
3 Edgeworths had an implied agreement for attorney's fees. (*Id.*, at 000365-000366;000374).

4         Regardless, SIMON and the Edgeworths performed the understood terms of the fee  
5 agreement—the Contract—with exactness. (*Id.*, at AA, Vol. 2, 000297:3-9; AA, Vol. 3,  
6 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20). This was demonstrated when  
7 SIMON sent four (4) invoices to the Edgeworths over time with very detailed invoicing, billing  
8 \$486,453.09 in fees and costs, from May 27, 2016, through September, 19, 2017. (*Id.*, at AA,  
9 Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25,  
10 512:1-20).

11  
12         One can see that SIMON always billed for his time at the hourly rate of \$550 per hour,  
13 and his two associates always billed at the rate of \$275 per hour. (*Id.*, at AA, Vols. 1 & 2,  
14 000053-000267; 000374). It is undisputed the Edgeworths paid the invoices in full, and  
15 SIMON deposited the checks without returning any money. (*Id.*, at AA, Vol. 2, 000356:14-16).  
16 And SIMON *did not express an interest* at the outset of the flood litigation in taking the  
17 property damage claim with a value of \$500,000 on a contingency basis. (*Id.*, at AA, Vol. 2,  
18 000297:1-5).

19  
20         Notwithstanding the existence of a fee agreement, a mutually understood pattern of  
21 invoices sent and paid for SIMON'S fees, and the Edgeworths' affidavits and testimony that a  
22 contract clearly existed for fees paid at the hourly rate of \$550 per hour had been reached in  
23 May of 2016, SIMON wanted more than an hourly fee. (*Id.*, at 000271-000304). On November  
24 17, 2017, and later memorialized in a letter dated November 27, 2017, SIMON demanded that  
25 the Edgeworths modify the contract so that he could recover a contingency fee dressed as a  
26 bonus. (*Id.*, at AA, Vol. 2, 000298:3-17; *see also*, Exhibit E).

1       The Edgeworths initially understood that SIMON scheduled the meeting with the  
2 Edgeworths at SIMON'S office to discuss the flood litigation, but it became clear to Appellants  
3 that SIMON agenda was to pressure them into modifying their \$550/hour fee agreement. (*Id.*, at  
4 000298:12-24). At that meeting, SIMON told the Edgeworths he wanted to be paid far more  
5 than \$550.00 per hour and the \$486,453.09 in fees and costs he'd received from the Edgeworths  
6 for the preceding eighteen (18) months. (*Id.*)

7  
8       SIMON claimed that he was losing money and that it would be the right thing to do for  
9 the Edgeworths to agree to pay him basically 40% of the \$6 million settlement with Viking. (*Id.*,  
10 at AA, Vols. 2 & 3, 000299:13-22; 000270; 000275; 000515-1). At the close of that meeting,  
11 SIMON invited the Edgeworths to contact another attorney and verify that this was the way  
12 things work. (*Id.*, at AA, Vol. 3, 000000515-1, 000515-2, 000516:1-7, 000517:13-25). The  
13 Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29,  
14 2017.  
15

16       The Edgeworths refused to bow to SIMON'S pressure or demands. (*Id.*, at AA, Vol. 2  
17 000300:16-23). When the Edgeworths did not acquiesce to SIMON'S demands, SIMON  
18 refused to release the full amount of the settlement proceeds to the Edgeworths. *Id.* Instead,  
19 SIMON served two attorney's liens on the case: one on November 30, 2017, and an Amended  
20 Lien on January 2, 2018. (*Id.*, at AA, Vol. 1, 000001; 000006). SIMON'S Amended Lien was  
21 for a net sum of \$1,977,843.80. (*Id.*) This amount was on top of the \$486,453.09 in fees and  
22 costs the Edgeworths had paid in full to SIMON for all his services and time from May 27,  
23 2016, through September of 2017. (*Id.*, at AA, Vol. 2, 000301:12-13). This conduct by  
24 SIMON, and the facts and arguments raised in this Special Motion, supports a good faith basis  
25 for VANNAH to make written and oral communications to the court, a judicial body, for  
26 breach of contract. *May v. Anderson*, 119 P.3d 1254 (Nev. 2005).  
27  
28



1 Similarly, VANNAH also had a good faith basis, on behalf of the Edgeworths, to bring  
2 a claim against SIMON for his breach of the covenant of good faith and fair dealing. The good  
3 faith basis includes SIMON being, among other things, unfaithful to the spirit of the Contract  
4 for fees, as the Edgeworths were left with two awful options—acquiesce or litigate. That  
5 conduct constitutes a good faith basis to bring this claim. *See*, NRS 104.1203; NRS 1304; NRS  
6 104.1201(t); *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152 (D. Nev. 2009).  
7

8 Thus, we see that it is clear that SIMON cannot show by any measure of evidence a  
9 likelihood of prevailing on any of the counts/claims of his SLAPP. Therefore, SIMON’S  
10 complaint should be dismissed.

#### 11 IV. CONCLUSION

12 SIMON’S suit is a SLAPP and must be dismissed under Nevada’s Anti-SLAPP laws  
13 found in NRS sections 41.635-41.670.  
14

15 DATED this 15<sup>th</sup> day of May, 2020.

16 PATRICIA A. MARR, LTD.

17 /s/Patricia A. Marr, Esq.

18 

---

PATRICIA A. MARR, ESQ.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the following parties are to be served as follows:

3  
4 Electronically:

5 Peter S. Christiansen, Esq.  
6 **CHRISTIANSEN LAW OFFICES**  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

7 Patricia Lee, Esq.  
8 **HUTCHINSON & STEFFEN, PLLC**  
Peccole Business Park  
9 10080 West Alta Dr., Ste. 200  
Las Vegas, NV 89145

10 **MESSNER REEVES, LLP**  
11 8945 W. Russell Rd., Ste. 300  
Las Vegas, Nevada 89148

12 Traditional Manner:

13 *None*

14 DATED this 15<sup>th</sup> day of May, 2020.

15 /s/Patricia A. Marr

16 

---

An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

PATRICIA A. MARR, ESQ.  
Nevada Bar No. 008846  
PATRICIA A. MARR, LTD.  
2470 St. Rose Pkwy., Ste. 110  
Henderson, Nevada 89074  
(702) 353-4225 (telephone)  
(702) 912-0088 (facsimile)  
patricia@marrlawlv.com  
*Counsel for Defendants*  
*Robert Darby Vannah, Esq.,*  
*John B. Greene, Esq. and*  
*Robert D. Vannah, Chtd., dba Vannah & Vannah*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION EDGEWORTH FAMILY  
TRUST; AMERICAN GRATING, LLC,

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and, ROBERT D. VANNAH,  
CHTD., d/b/a VANNAH & VANNAH; and  
DOES I through V, and ROE CORPORATIONS  
VI through X, inclusive,

Defendants.

CASE NO.: A-19-807433-C  
DEPT NO.: 24

**AFFIDAVIT OF ROBERT D. VANNAH,**  
**IN SUPPORT OF SPECIAL MOTION**  
**TO DISMISS: ANTI-SLAPP**

Date of Hearing:  
Time of Hearing:

**AFFIDAVIT OF ROBERT D. VANNAH, ESQ.**

STATE OF NEVADA           )  
  ) ss.  
COUNTY OF CLARK        )

I, ROBERT D. VANNAH, being duly sworn, states:

1. I am the senior partner of Robert D. Vannah, Chtd., d/b/a Vannah & Vannah.

2. I received my J.D. from Loyola in Los Angeles in 1976. I became a licensed attorney in September of 1976, and have remained licensed to practice law since then. I have never been disciplined by the Nevada Bar Association.
3. In November of 2017, Mr. Brian Edgeworth called me and asked me for legal advice. He had a letter from Mr. Simon recommending that he seek independent legal counsel regarding legal fees. Since Mr. Simon asked him to seek independent counsel, I felt that there were no ethical concerns in my doing so.
4. I met with Mr. Edgeworth on November 29, 2017, in my office. John B. Greene, one of my associates, was also present. After reviewing documents, I concluded that on or about May 27, 2016, the Edgeworths retained Danny Simon to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by the Edgeworths. The damage from the flood caused in excess of \$500,000 of property damage to the home. It was initially hoped that Mr. Simon's drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as Case Number A-16-738444-C, with a trial date of early 2018. A settlement in favor of the Edgeworths for a substantial amount of money was reached with Defendant Viking on November 15, 2017, and a lesser settlement with Defendant Lange was reached on December 1, 2017.
5. Near the beginning of the attorney-client relationship, the Edgeworths and Mr. Simon agreed that Mr. Simon would be paid for his services by the hour and at an hourly rate of \$550. No other form or method of compensation such as a contingency fee or a hybrid was ever brought up at that time, let alone agreed to. Despite Mr. Simon serving as the attorney in this business relationship, and the one with the requisite

1 legal expertise, he never reduced the terms of the contract to writing in the form of a  
2 Fee Agreement for the Edgeworths to sign. However, that formality didn't matter to  
3 the parties as they each recognized what the terms of the contract were and performed  
4 them accordingly with exactness through September 19, 2017, a time spanning about  
5 eighteen (18) months.  
6

7 6. For example, Mr. Simon sent four invoices to the Edgeworths that were dated  
8 December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017 (the  
9 Invoices). The amount of fees and costs Mr. Simon billed the Edgeworths in the  
10 Invoices totaled **\$486,453.09**. Simple reading and math show that Mr. Simon billed  
11 for his time at the hourly rate of \$550 per hour, and his two associates billed at the  
12 rate of \$275 per hour. It's undisputed that the Edgeworths paid the Invoices in full to  
13 Mr. Simon, and that he deposited the checks without any questions and without  
14 returning any of the money.  
15

16 7. As discovery in the underlying flood litigation neared its conclusion in the late fall  
17 of 2017, after the value of the case blossomed from one of property damage of  
18 approximately \$500,000 to one of significant and additional value due to the conduct  
19 of the Viking defendant, the evidence showed that Mr. Simon became determined to  
20 get more, so he started asking the Edgeworths to modify the contract, beginning in  
21 August of 2017 and culminating the following November. On the 17<sup>th</sup> of that month,  
22 Mr. Simon scheduled an appointment for the Edgeworths to come to his office to  
23 discuss the flood litigation. Instead, the evidence determined that his only agenda  
24 item was to pressure the Edgeworths into modifying the terms of the contract.  
25

26 8. At that meeting, the evidence determined that Mr. Simon told the Edgeworths that  
27 he wanted to be paid far more than \$550.00 per hour and the \$486,453.09 he'd  
28

1 received from the Edgeworths for the preceding eighteen (18) months. On November  
2 27, 2017, Simon sent a letter to the Edgeworths. I read that letter and its attachments,  
3 such as a proposed settlement breakdown and a proposed retainer agreement. These  
4 documents set forth additional fees in the amount of \$1,114,000.00, and costs in the  
5 amount of that \$80,000.00, that he wanted to be paid in light of the favorable  
6 settlement that was reached with the defendants in the flood litigation.  
7

8 9. At that time, these additional "fees" were not based upon invoices submitted to the  
9 Edgeworths or for detailed work performed by Mr. Simon. The proposed fees and  
10 costs were in addition to the \$486,453.09 that the Edgeworths had already paid to Mr.  
11 Simon pursuant to the fee contract, the invoices that Mr. Simon had presented to the  
12 Edgeworths, the evidence produced to defendants in the flood litigation, and the  
13 amounts set forth in the computations of damages disclosed by Mr. Simon in the  
14 flood litigation.  
15

16 10. One reason given by Mr. Simon to modify the contract was he claimed he was losing  
17 money on the flood litigation. Another reason given by him was that he purportedly  
18 under billed the Edgeworths on the four invoices previously sent and paid, and that he  
19 wanted to go through his invoices and create, or submit, additional billing entries.  
20 According to Mr. Simon, he under billed in the flood litigation in an amount in excess  
21 of \$1,000,000.00.  
22

23 11. Mr. Simon concluded the letter of November 27, 2017, with these words: "I have  
24 thought about this and this is the lowest amount I can accept...If you are not  
25 agreeable, then I cannot continue to lose money and help you...I will need to consider  
26 all options available to me." I interpreted these words to clearly mean that if the  
27 Edgeworths didn't agree to sign a new retainer agreement that would give Mr. Simon  
28

1 an additional \$1,114,000 in fees, he would no longer agree to be their lawyer.  
2 Meaning he would quit, despite the looming reality that the litigation against the  
3 Lange defendant was set for trial early in 2018.

4 12. Mr. Simon doubled down on that position of under billing in a letter to Mr. Greene  
5 and me, dated December 7, 2017, where Mr. Simon claimed that the worked  
6 performed by him from the outset that has not been billed, "may well exceed \$1.5M."

7 13. Despite Mr. Simon's requests and demands for the payment of more in fees, the  
8 Edgeworths refused to alter or amend the terms of the contract. When the  
9 Edgeworths refused to alter or amend the terms of the contract, Mr. Simon refused to  
10 agree to release the full amount of the Edgeworths' settlement proceeds to them.  
11 Instead, Mr. Simon served two attorney's liens and reformulated his billings to add  
12 entries and time that never saw the light of day in the flood litigation.  
13

14 14. Even when Mr. Simon finally submitted his "new" invoices on January 24, 2018, they  
15 totaled \$692,120 for "additional" services, and billed them at the contract rate of  
16 \$550/\$275 per hour. That's less than 1/2 of the amount that he'd written to Mr.  
17 Greene and me about six weeks earlier. Yet, despite the contract, 18 months of  
18 course of dealing, and the amount of the "new" invoice/super bill of \$692,120, Mr.  
19 Simon's Amended Lien wrongfully exercised dominion and control to over  
20 \$1,977,843 of the settlement proceeds, and he refused to release to the Edgeworths'  
21 funds in excess of the amount of Mr. Simon's own super bill.  
22

23 15. When Mr. Simon continued to exercise dominion and control over an unreasonable  
24 amount of the settlement proceeds, litigation was filed and served, including a  
25 Complaint and an Amended Complaint. The claims of the Edgeworths against Mr.  
26  
27  
28



1 Simon are for Breach of Contract, Declaratory Relief, Conversion, and Breach of the  
2 Implied Covenant of Good Faith and Fair Dealing.

3 16. I, as the senior partner of the firm, made the decisions to file the pleadings with the  
4 claims made and thereafter, the arguments presented in briefs, in court, and all other  
5 judicial proceedings, including the pending appeal. These decisions were made after  
6 a thorough review of the law pertaining to these claims, and a good faith belief that  
7 all of the written and oral communications made to the court are accurate and well-  
8 founded in the law, and not done for any ulterior or improper motive.

9  
10 17. To date, Mr. Simon hasn't filed an Answer to either of the Edgeworths' Complaints.  
11 Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the  
12 Complaint and another for the Amended Complaint), and two "Special" Motions to  
13 Dismiss: Anti-SLAPP.

14  
15 18. Judge Tierra Jones held an evidentiary hearing on Mr. Simon's Motion to Adjudicate,  
16 and that hearing took place over five days. At the conclusion of the hearing, Judge  
17 Jones asked the parties to submit written closing arguments and written findings of  
18 fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to  
19 Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order  
20 on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss  
21 Anti-SLAPP. Mr. Simon's Motion to Dismiss was granted without any discovery  
22 allowed and with findings that clearly show that Judge Jones chose to believe Mr.  
23 Simon's account of several contested facts as opposed to the legal standard of  
24 accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as  
25 moot.  
26  
27  
28

1 19. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a  
2 contingency fee case; 2.) an implied agreement for fees was in existence at the rate of  
3 \$550 per hour for Mr. Simon and \$275 per hour for his two associates; 3.) Mr. Simon  
4 was paid in full by the Edgeworths for his fees for services rendered from May of  
5 2016 through September 19, 2017; 4.) Mr. Simon is entitled to \$284,982.50 in fees at  
6 the hourly rate of \$550 for Mr. Simon and \$275 for his associates from September 19,  
7 2017, through November 29, 2017; and, 5.) Mr. Simon is entitled to \$200,000 in fees  
8 under quantum meruit from the date he was constructively discharged on November  
9 30, 2017, until the case concluded in early January of 2018.

11 20. On October 29, 2018, Mr. Simon filed a Motion for Reconsideration and to Clarify,  
12 seeking to rehash his losses and to clarify whether the agreement for fees was an  
13 implied oral agreement versus an implied agreement. Of note, the parties agreed that  
14 the LDO incorrectly awarded additional costs to Mr. Simon, when the parties  
15 stipulated that no additional costs were owed. On October 31, 2018, I sent a letter to  
16 James R. Christensen, Esq., advising him that, despite arguable errors by Judge Jones  
17 in finding a constructive termination as of December 1, 2017, in dismissing the  
18 Edgeworths' Amended Complaint, and in awarding \$200,000 in extra fees in  
19 quantum meruit when Mr. Simon had "only" billed \$33,811.25 in fees for that time  
20 frame, the Edgeworths are willing to pay Mr. Simon the \$484,982.50 in fees that  
21 Judge Jones awarded in the LDO...and call it a day. Mr. Simon never responded to  
22 that letter.

25 21. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to  
26 Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as  
27 opposed to an implied agreement and a LDO that removed any award of costs to Mr.  
28

1 Simon, as stipulated. On November 19, 2018, I sent yet another letter to Mr.  
2 Christensen telling him that, despite the same arguable errors of Judge Jones as  
3 outlined earlier, the Edgeworths are still willing to pay Mr. Simon the **\$484,982.50** in  
4 fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Mr.  
5 Simon didn't respond to that letter, either. Since Mr. Simon remained fixed and  
6 immovable in his quest for more in fees, and since a settlement couldn't be reached  
7 with one who won't communicate, the Edgeworths appealed the LDO and the  
8 Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete  
9 and we are waiting for further instruction and action from the Nevada Supreme Court.

10  
11 22. Thereafter, Mr. Simon filed a Motion for Fees and Costs, seeking \$262,099.48 in fees  
12 and \$18,434.73 in costs. The Motion was vague as to whether the fees and costs he  
13 sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both. the  
14 Edgeworths argued that there wasn't and isn't any basis on the law for Mr. Simon to  
15 seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs  
16 AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs  
17 associated with Will Kemp, Esq., and the vast majority of the fees associated with  
18 James R. Christensen, Esq., were incurred adjudicating Mr. Simon's lien in its  
19 exorbitant amount. In Mr. Simon's Reply, he limited his request for fees and costs  
20 allegedly incurred in seeking the dismissal of the Edgeworths' Complaint (original  
21 and amended), namely the claim for conversion.

22  
23  
24 23. On February 6, 2019, Judge Jones signed an order granting in part and denying in part  
25 Mr. Simon's Motion. The Court found that the conversion claim was not maintained  
26 upon reasonable grounds; that the purpose of the evidentiary hearing was primarily  
27 for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the  
28

1 purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were  
2 incurred to defend the lawsuit; and, awarded \$50,000 in fees and \$5,000 in costs.

3 24. In her ruling, Judge Jones seemed to adopt the position of Mr. Simon that conversion  
4 can't happen without some measure of actual theft or sole control. Yet, both are  
5 wrong, as Nevada law does not require theft of, or sole control of, another's property  
6 to rise to conversion. Rather, the law clearly states that conversion is, "a distinct act  
7 of dominion wrongfully exerted over another's personal property in denial of, or  
8 inconsistent with, his title or rights therein or in derogation, exclusion, or defiance of  
9 such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043,  
10 1049 (2000).  
11

12 25. Following my review of the facts, and knowing this to be the law in Nevada  
13 governing claims for conversion, I believed, and still believe, that Mr. Simon's  
14 intentional act of exerting dominion of any portion of the settlement proceeds that  
15 exceeds the amount of his own billings, including his super bill of \$692,120, is  
16 inconsistent with his rights and in derogation to those of the Edgeworths. Therefore, I  
17 determined that Nevada law clearly supported a claim for conversion against Mr.  
18 Simon. And the act of conversion continues to this day, over two years after the  
19 settlement proceeds were received and eighteen (18) months since Mr. Simon's lien  
20 was adjudicated.  
21

22 26. The evidence shows that Mr. Simon has no reasonable basis to make a claim for 40%  
23 of the Edgeworths' settlement proceeds. NRPC 1.5(c) requires that all contingency  
24 fee agreements be in writing with specific language and Mr. Simon waited until  
25 November 27, 2017, to present one to the Edgeworths, who rightfully declined to sign  
26 it. By then all of the risk that is generally associated with contingency fee agreements  
27  
28

1 was gone, as the lucrative Viking settlement had already been reached. Mr. Simon  
2 also acknowledged in his letter of November 27, 2017, that he didn't and can't have a  
3 contingency fee agreement. Judge Jones also told him and Ordered that he cannot  
4 have one, either. Yet, Mr. Simon still refuses to relinquish the control he has over the  
5 settlement funds, an amount that still closely resembles a 40% contingency fee when  
6 all payments and offered payments are factored in.  
7

8 27. What if an attorney actually has a written 40% contingency fee agreement, then  
9 serves an attorney's lien for 50% of a settlement? Or 60%? Or more? And then  
10 what if that attorney won't budge from that amount? Do we then force the client to  
11 accept one of two awful options—either acquiesce or litigate? If the second option is  
12 selected, does that attorney get a free pass on a claim for conversion? Would the  
13 average citizen get that same free pass if that citizen exercised dominion and control  
14 over an amount of money owned by another in an amount that was unreasonable on  
15 the facts?  
16

17 28. The sad irony here is that the Edgeworths wanted none of this. Instead they got all of  
18 this. Even if litigation wasn't filed, they still got over two years of litigation with the  
19 lien adjudication process, because Mr. Simon seems to have no interest in accepting  
20 anything less in fees than what he wants, which, according to his Amended Lien, is  
21 40%. It's going to take intervention from the Nevada Supreme Court to unwind what  
22 is so tightly wound. With the Decisions and Orders presently on appeal, and with  
23 briefing now complete, a final decision could take years beyond the years that the  
24 Edgeworths have been forced to wait for their property to be given to them.  
25

26 29. It did occur to me at that time that the Nevada Supreme Court may determine that,  
27 despite the unreasonable amount of an attorney's lien, an attorney cannot be sued if  
28

1 the lien adjudicating process is utilized. Perhaps that day will come, or perhaps it  
2 won't. Until that day, clients still have the right to petition the courts to seek help to  
3 redress wrongs committed by others, even if that "other" is their attorney.

4  
5 30. I am well aware of Anti-SLAPP laws and their central, important purpose. The  
6 Amended Complaint that I directed to be prepared and filed against Mr. Simon and  
7 his law firm was based on my good faith belief that the amount of his Amended Lien,  
8 coupled with the facts and evidence of this case, constituted conversion under Nevada  
9 law, as well as a breach of contract and breach of the covenant of good faith and fair  
10 dealing. Additionally, I believe that Mr. Simon knew, and still knows, that he had no  
11 reasonable basis to serve his Amended Lien in an amount that he calculated to be  
12 40% of the settlements reached with the flood defendants. My belief on the existence  
13 of Mr. Simon's knowledge and awareness on this issue was gleaned through letters he  
14 prepared, pleadings in the flood litigation, his billings, the evidence, and the  
15 conclusions of Judge Jones. Yet, Mr. Simon still won't relinquish the dominion and  
16 control that he has been exercising since January of 2018.  
17

18 31. These facts stand in stark contrast to the allegations made in the SLAPP of Mr.  
19 Simon. My law firm, my associate, and me, are all being sued for making, in good  
20 faith, written and oral communications in judicial proceedings on behalf of clients.  
21 Each of the claims for relief in the complaints that are being attacked by Mr. Simon in  
22 his SLAPP are supported by the facts, the evidence, and by Nevada law.  
23

24 32. The documents that have been attached to this Special Motion as Exhibits, as well as  
25 Appellants Appendix that was attached in the Opposition to Mr. Simon's emergency  
26 motion, which is referenced and incorporated, are all true, authentic, and correct  
27 copies of the original documents. Regarding Exhibit "E" specifically, it was  
28

1 referenced in the prior litigation and sworn testimony was offered that this letter, and  
2 its two exhibits, were prepared by Mr. Simon, were given to the Edgeworths on or  
3 near the date of the letter, and served as the basis for Mr. Simon's new fee proposal  
4 and his invitation for the Edgeworths to seek independent counsel on his proposed  
5 fees. All of the documents attached as Exhibits support the claims for relief brought  
6 by the Edgeworths and undermine the SLAPP of Mr. Simon.  
7

8 33. Finally, at no point in time was anyone at my firm retained to counsel or to represent  
9 Mr. Simon in this matter, and neither Mr. Greene nor I, ever provided counsel or  
10 representation to Mr. Simon.

11 FURTHER YOUR AFFIANT SAYETH NAUGHT.

12  
13   
14 ROBERT D. VANNAH, ESQ.

15 SUBSCRIBED and SWORN TO before me  
16 this 14<sup>th</sup> day of May, 2020.

17   
18  
19 NOTARY PUBLIC

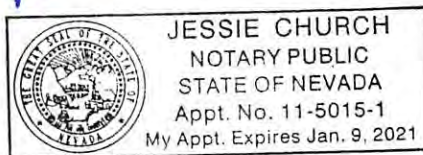


EXHIBIT B

EXHIBIT B



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5 Counsel for Defendants  
Robert Darby Vannah, Esq.,  
6 John B. Greene, Esq. and  
Robert D. Vannah, Chtd., dba Vannah & Vannah  
7

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
11 CORPORATION EDGEWORTH FAMILY  
TRUST; AMERICAN GRATING, LLC,

12 Plaintiffs,

13 vs.

14 EDGEWORTH FAMILY TRUST; AMERICAN  
15 GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
16 HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
17 GREENE, ESQ.; and, ROBERT D. VANNAH,  
CHTD., d/b/a VANNAH & VANNAH; and  
18 DOES I through V, and ROE CORPORATIONS  
VI through X, inclusive,

19 Defendants.  
20

CASE NO.: A-19-807433-C  
DEPT NO.: 24

**AFFIDAVIT OF JOHN B. GREENE, IN  
SUPPORT OF SPECIAL MOTION TO  
DISMISS: ANTI-SLAPP**

Date of Hearing:  
Time of Hearing:

21 **AFFIDAVIT OF JOHN B. GREENE, ESQ.**

22 STATE OF NEVADA )  
23 ) ss.  
24 COUNTY OF CLARK )

25 I, JOHN B. GREENE, ESQ., being duly sworn, states:

- 26 1. I am an associate of Robert D. Vannah, Chtd., d/b/a Vannah & Vannah.  
27 2. I received my J.D. from the University of the Pacific, McGeorge School of Law in  
28 1991. I became a licensed attorney in September of 1991, and have remained

1 licensed to practice law since then. I have never been disciplined by the Nevada Bar  
2 Association.

- 3 3. I have read the Affidavit of Robert D. Vannah and agree with the truthfulness and  
4 content of each paragraph, as we've discussed all of the facts and developments of  
5 this case since November 29, 2017.
- 6 4. Mr. Vannah and I met with Mr. Edgeworth on November 29, 2017, in Mr. Vannah's  
7 office. After reviewing documents, we concluded that on or about May 27, 2016, the  
8 Edgeworths retained Danny Simon to represent their interests following a flood that  
9 occurred on April 10, 2016, in a home under construction that was owned by the  
10 Edgeworths. The damage from the flood caused in excess of \$500,000 of property  
11 damage to the home. It was initially hoped that Mr. Simon's drafting a few letters to  
12 the responsible parties could resolve the matter, but that wasn't meant to be.  
13 Thereafter, that dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as  
14 Case Number A-16-738444-C, with a trial date of early 2018. A settlement in favor  
15 of the Edgeworths for a substantial amount of money was reached with Defendant  
16 Viking on November 15, 2017, and a lesser settlement with Defendant Lange was  
17 reached on December 1, 2017.
- 18 5. Near the beginning of the attorney-client relationship, the Edgeworths and Mr. Simon  
19 agreed that Mr. Simon would be paid for his services by the hour and at an hourly rate  
20 of \$550. No other form or method of compensation such as a contingency fee or a  
21 hybrid was ever brought up at that time, let alone agreed to. Despite Mr. Simon  
22 serving as the attorney in this business relationship, and the one with the requisite  
23 legal expertise, he never reduced the terms of the contract to writing in the form of a  
24 Fee Agreement for the Edgeworths to sign. However, that formality didn't matter to  
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28

1 the parties as they each recognized what the terms of the contract were and performed  
2 them accordingly with exactness through September 19, 2017, a time spanning about  
3 eighteen (18) months.

4  
5 6. For example, Mr. Simon sent four invoices to the Edgeworths that were dated  
6 December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017 (the  
7 Invoices). The amount of fees and costs Mr. Simon billed the Edgeworths in the  
8 Invoices totaled **\$486,453.09**. Simple reading and math show that Mr. Simon billed  
9 for his time at the hourly rate of \$550 per hour, and his two associates billed at the  
10 rate of \$275 per hour. It's undisputed that the Edgeworths paid the Invoices in full to  
11 Mr. Simon, and that he deposited the checks without any questions and without  
12 returning any of the money.

13  
14 7. As discovery in the underlying flood litigation neared its conclusion in the late fall  
15 of 2017, after the value of the case blossomed from one of property damage of  
16 approximately \$500,000 to one of significant and additional value due to the conduct  
17 of the Viking defendant, the evidence showed that Mr. Simon became determined to  
18 get more, so he started asking the Edgeworths to modify the contract, beginning in  
19 August of 2017 and culminating the following November. On the 17<sup>th</sup> of that month,  
20 Mr. Simon scheduled an appointment for the Edgeworths to come to his office to  
21 discuss the flood litigation. Instead, the evidence determined that his only agenda  
22 item was to pressure the Edgeworths into modifying the terms of the contract.

23  
24 8. At that meeting, the evidence determined that Mr. Simon told the Edgeworths that  
25 he wanted to be paid far more than \$550.00 per hour and the \$486,453.09 he'd  
26 received from the Edgeworths for the preceding eighteen (18) months. On November  
27 27, 2017, Simon sent a letter to the Edgeworths. I also read that letter and its  
28

1 attachments, such as a proposed settlement breakdown and a proposed retainer  
2 agreement. These documents set forth additional fees in the amount of  
3 \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be paid  
4 in light of the favorable settlement that was reached with the defendants in the flood  
5 litigation. A true and authentic copy of that letter is attached as Exhibit E.  
6

7 9. At that time, these additional "fees" were not based upon invoices submitted to the  
8 Edgeworths or for detailed work performed by Mr. Simon. The proposed fees and  
9 costs were in addition to the \$486,453.09 that the Edgeworths had already paid to Mr.  
10 Simon pursuant to the fee contract, the invoices that Mr. Simon had presented to the  
11 Edgeworths, the evidence produced to defendants in the flood litigation, and the  
12 amounts set forth in the computations of damages disclosed by Mr. Simon in the  
13 flood litigation.  
14

15 10. One reason given by Mr. Simon to modify the contract was he claimed he was losing  
16 money on the flood litigation. Another reason given by him was that he purportedly  
17 under billed the Edgeworths on the four invoices previously sent and paid, and that he  
18 wanted to go through his invoices and create, or submit, additional billing entries.  
19 According to Mr. Simon, he under billed in the flood litigation in an amount in excess  
20 of \$1,000,000.00.  
21

22 11. Mr. Simon concluded the letter of November 27, 2017, with these words: "I have  
23 thought about this and this is the lowest amount I can accept...If you are not  
24 agreeable, then I cannot continue to lose money and help you...I will need to consider  
25 all options available to me." These are Mr. Simon's words; he owns them and their  
26 meaning. I agree with Mr. Vannah and interpreted these words to clearly mean that if  
27 the Edgeworths didn't agree to sign a new retainer agreement that would give Mr.  
28

1 Simon an additional \$1,114,000 in fees, he would no longer agree to be their lawyer.  
2 Meaning he would quit, despite the looming reality that the litigation against the  
3 Lange defendant was set for trial early in 2018.

4 12. Mr. Simon doubled down on that position of under billing in a letter to Mr. Vannah  
5 and me, dated December 7, 2017, where Mr. Simon claimed that the worked  
6 performed by him from the outset that has not been billed, "may well exceed \$1.5M."

7 13. Despite Mr. Simon's requests and demands for the payment of more in fees, the  
8 Edgeworths refused to alter or amend the terms of the contract. When the  
9 Edgeworths refused to alter or amend the terms of the contract, Mr. Simon refused to  
10 agree to release the full amount of the Edgeworths' settlement proceeds to them.  
11 Instead, Mr. Simon served two attorney's liens and reformulated his billings to add  
12 entries and time that never saw the light of day in the flood litigation.  
13

14 14. Even when Mr. Simon finally submitted his "new" invoices on January 24, 2018, they  
15 totaled \$692,120 for "additional" services, and billed them at the contract rate of  
16 \$550/\$275 per hour. That's less than 1/2 of the amount that he'd written to Mr.  
17 Vannah and me about six weeks earlier. Yet, despite the contract, 18 months of  
18 course of dealing, and the amount of the "new" invoice/super bill of \$692,120, Mr.  
19 Simon's Amended Lien wrongfully exercised dominion and control to over  
20 \$1,977,843 of the settlement proceeds, and he refused to release to the Edgeworths'  
21 funds in excess of the amount of Mr. Simon's own super bill.  
22

23 15. When Mr. Simon continued to exercise dominion and control over an unreasonable  
24 amount of the settlement proceeds, litigation was filed and served, including a  
25 Complaint and an Amended Complaint. The claims of the Edgeworths against Mr.  
26  
27  
28

1 Simon are for Breach of Contract, Declaratory Relief, Conversion, and Breach of the  
2 Implied Covenant of Good Faith and Fair Dealing.

3 16. Before any of the claims were filed against Mr. Simon and his firm, I conducted  
4 research on each of the claims. After a thorough review of the law pertaining to these  
5 claims, I believed we had a good faith basis to make the claims. I also believe that all  
6 of the written and oral communications made to the court in all forums are accurate  
7 and well-founded in the law, and not done for any ulterior or improper motive.  
8

9 17. To date, Mr. Simon hasn't filed an Answer to either of the Edgeworths' Complaints.  
10 Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the  
11 Complaint and another for the Amended Complaint), and two "Special" Motions to  
12 Dismiss: Anti-SLAPP.  
13

14 18. Judge Tierra Jones held an evidentiary hearing on Mr. Simon's Motion to Adjudicate,  
15 and that hearing took place over five days. At the conclusion of the hearing, Judge  
16 Jones asked the parties to submit written closing arguments and written findings of  
17 fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to  
18 Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order  
19 on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss  
20 Anti-SLAPP. Mr. Simon's Motion to Dismiss was granted without any discovery  
21 allowed and with findings that clearly show that Judge Jones chose to believe Mr.  
22 Simon's account of several contested facts as opposed to the legal standard of  
23 accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as  
24 moot.  
25

26 19. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a  
27 contingency fee case; 2.) an implied agreement for fees was in existence at the rate of  
28

1 \$550 per hour for Mr. Simon and \$275 per hour for his two associates; 3.) Mr. Simon  
2 was paid in full by the Edgeworths for his fees for services rendered from May of  
3 2016 through September 19, 2017; 4.) Mr. Simon is entitled to \$284,982.50 in fees at  
4 the hourly rate of \$550 for Mr. Simon and \$275 for his associates from September 19,  
5 2017, through November 29, 2017; and, 5.) Mr. Simon is entitled to \$200,000 in fees  
6 under quantum meruit from the date he was constructively discharged on November  
7 30, 2017, until the case concluded in early January of 2018.

9 20. On October 29, 2018, Mr. Simon filed a Motion for Reconsideration and to Clarify,  
10 seeking to rehash his losses and to clarify whether the agreement for fees was an  
11 implied oral agreement versus an implied agreement. Of note, the parties agreed that  
12 the LDO incorrectly awarded additional costs to Mr. Simon, when the parties  
13 stipulated that no additional costs were owed. On October 31, 2018, Mr. Vannah sent  
14 a letter to James R. Christensen, Esq., advising him that, despite arguable errors by  
15 Judge Jones in finding a constructive termination as of December 1, 2017, in  
16 dismissing the Edgeworths' Amended Complaint, and in awarding \$200,000 in extra  
17 fees in quantum meruit when Mr. Simon had "only" billed \$33,811.25 in fees for that  
18 time frame, the Edgeworths are willing to pay Mr. Simon the \$484,982.50 in fees that  
19 Judge Jones awarded in the LDO...and call it a day. Mr. Simon never responded to  
20 that letter.

22  
23 21. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to  
24 Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as  
25 opposed to an implied agreement and a LDO that removed any award of costs to Mr.  
26 Simon, as stipulated. On November 19, 2018, Mr. Vannah sent yet another letter to  
27 Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as  
28

1 outlined earlier, the Edgeworths are still willing to pay Mr. Simon the **\$484,982.50** in  
2 fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Mr.  
3 Simon didn't respond to that letter, either. Since Mr. Simon remained fixed and  
4 immovable in his quest for more in fees, and since a settlement couldn't be reached  
5 with one who won't communicate, the Edgeworths appealed the LDO and the  
6 Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete  
7 and we are waiting for further instruction and action from the Nevada Supreme Court.  
8

9 22. Thereafter, Mr. Simon filed a Motion for Fees and Costs, seeking \$262,099.48 in fees  
10 and \$18,434.73 in costs. The Motion was vague as to whether the fees and costs he  
11 sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both. the  
12 Edgeworths argued that there wasn't and isn't any basis on the law for Mr. Simon to  
13 seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs  
14 AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs  
15 associated with Will Kemp, Esq., and the vast majority of the fees associated with  
16 James R. Christensen, Esq., were incurred adjudicating Mr. Simon's lien in its  
17 exorbitant amount. In Mr. Simon's Reply, he limited his request for fees and costs  
18 allegedly incurred in seeking the dismissal of the Edgeworths' Complaint (original  
19 and amended), namely the claim for conversion. In those pleadings, it was never  
20 alleged that Mr. Simon stole from the Edgeworths, as Mr. Simon wrongfully alleges  
21 in several paragraphs of his SLAPP, including 19-21. That's not a necessary element  
22 of a claim for conversion under Nevada law and not an allegation made.  
23  
24

25 23. On February 6, 2019, Judge Jones signed an order granting in part and denying in part  
26 Mr. Simon's Motion. The Court found that the conversion claim was not maintained  
27 upon reasonable grounds; that the purpose of the evidentiary hearing was primarily  
28



1 for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the  
2 purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were  
3 incurred to defend the lawsuit; and, awarded \$50,000 in fees and \$5,000 in costs.

4 24. In her ruling, Judge Jones seemed to adopt the position of Mr. Simon that conversion  
5 can't happen without some measure of actual theft or sole control. Yet, both are  
6 wrong, as Nevada law does not require theft of, or sole control of, another's property  
7 to rise to conversion. Rather, the law clearly states that conversion is, "a distinct act  
8 of dominion wrongfully exerted over another's personal property in denial of, or  
9 inconsistent with, his title or rights therein or in derogation, exclusion, or defiance of  
10 such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043,  
11 1049 (2000).  
12

13 25. Following my review of the facts, and knowing this to be the law in Nevada  
14 governing claims for conversion, I also believed, and still believe, that Mr. Simon's  
15 intentional act of exerting dominion of any portion of the settlement proceeds that  
16 exceeds the amount of his own billings, including his super bill of \$692,120, is  
17 inconsistent with his rights and in derogation to those of the Edgeworths. Therefore,  
18 it was determined that Nevada law clearly supported a good faith basis for a claim for  
19 conversion against Mr. Simon. And the act of conversion continues to this day, over  
20 two years after the settlement proceeds were received and eighteen (18) months since  
21 Mr. Simon's lien was adjudicated.  
22

23 26. The evidence shows that Mr. Simon has no reasonable basis to make a claim for 40%  
24 of the Edgeworths' settlement proceeds. NRPC 1.5(c) requires that all contingency  
25 fee agreements be in writing with specific language and Mr. Simon waited until  
26 November 27, 2017, to present one to the Edgeworths, who rightfully declined to sign  
27  
28

1 it. By then all of the risk that is generally associated with contingency fee agreements  
2 was gone, as the lucrative Viking settlement had already been reached. Mr. Simon  
3 also acknowledged in his letter of November 27, 2017, which is Exhibit E, that he  
4 didn't and can't have a contingency fee agreement. Judge Jones also told him and  
5 Ordered that he cannot have one, either. Yet, Mr. Simon still refuses to relinquish the  
6 control he has over the settlement funds, an amount that still closely resembles a 40%  
7 contingency fee when all payments and offered payments are factored in.  
8

9 27. Mr. Vannah asks a key set of questions in his Affidavit, which are: What if an  
10 attorney actually has a written 40% contingency fee agreement, then serves an  
11 attorney's lien for 50% of a settlement? Or 60%? Or more? And then what if that  
12 attorney won't budge from that amount? Do we then force the client to accept one of  
13 two awful options—either acquiesce or litigate? If the second option is selected, does  
14 that attorney get a free pass on a claim for conversion? Would the average citizen get  
15 that same free pass if that citizen exercised dominion and control over an amount of  
16 money owned by another in an amount that was unreasonable on the facts?  
17

18 28. The sad irony here is that the Edgeworths wanted none of this. Instead they got all of  
19 this. Even if litigation wasn't filed, they still got over two years of litigation with the  
20 lien adjudication process, because Mr. Simon seems to have no interest in accepting  
21 anything less in fees than what he wants, which, according to his Amended Lien, is  
22 40%. I agree that it's likely going to take intervention from the Nevada Supreme  
23 Court to unwind what is so tightly wound. With the Decisions and Orders presently  
24 on appeal, and with briefing now complete, a final decision could take years beyond  
25 the years that the Edgeworths have been forced to wait for their property to be given  
26 to them.  
27  
28

1 29. I, like Mr. Vannah, am well aware of Anti-SLAPP laws and their central, important  
2 purpose. The Amended Complaint that I prepared under Mr. Vannah's direction and  
3 filed against Mr. Simon and his law firm was based on my good faith belief that the  
4 amount of his Amended Lien, coupled with the facts and evidence of this case,  
5 constituted conversion under Nevada law, as well as a breach of contract and breach  
6 of the covenant of good faith and fair dealing. Additionally, I, like Mr. Vannah,  
7 believe that Mr. Simon knew, and still knows, that he had no reasonable basis to serve  
8 his Amended Lien in an amount that he calculated to be 40% of the settlements  
9 reached with the flood defendants. Our collective belief on the existence of Mr.  
10 Simon's knowledge and awareness on this issue was gleaned through letters he  
11 prepared, pleadings in the flood litigation, his billings, the evidence, and the  
12 conclusions of Judge Jones. Yet, Mr. Simon still won't relinquish the dominion and  
13 control that he has been exercising since January of 2018.  
14  
15

16 30. These facts stand in stark contrast to the allegations made in the SLAPP of Mr.  
17 Simon. I am being sued for making, in good faith, written and oral communications  
18 in judicial proceedings on behalf of clients. Each of the claims for relief in the  
19 complaints that are being attacked by Mr. Simon in his SLAPP are supported by the  
20 facts, the evidence, and by Nevada law.  
21

22 31. The documents that have been attached to this Special Motion as Exhibits, as well as  
23 Appellants Appendix that was attached in the Opposition to Mr. Simon's emergency  
24 motion, which is referenced and incorporated, are all true, authentic, and correct  
25 copies of the original documents. Regarding Exhibit "E" specifically, it was  
26 referenced in the prior litigation and sworn testimony was offered that this letter, and  
27 its two exhibits, were prepared by Mr. Simon, were given to the Edgeworths on or  
28

1 near the date of the letter, and served as the basis for Mr. Simon's new fee proposal  
2 and his invitation for the Edgeworths to seek independent counsel on his proposed  
3 fees. All of the documents attached as Exhibits support the claims for relief brought  
4 by the Edgeworths and undermine the SLAPP of Mr. Simon.

5  
6 32. Finally, at no point in time was anyone at this firm retained to counsel or to represent  
7 Mr. Simon in this matter, and neither Mr. Vannah, nor I, ever provided counsel or  
8 representation to Mr. Simon.

9 FURTHER YOUR AFFIANT SAYETH NAUGHT.

10  
11   
12 JOHN B. GREENE, ESQ.

13 SUBSCRIBED and SWORN TO before me  
14 this 14<sup>th</sup> day of May, 2020.

15   
16 NOTARY PUBLIC

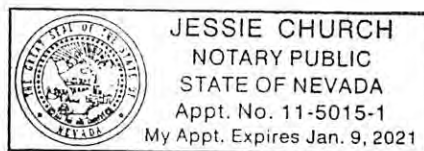
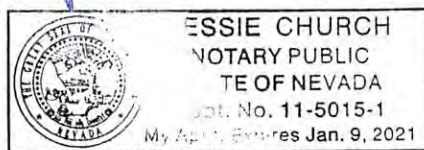
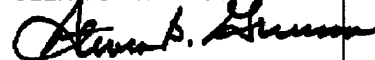


EXHIBIT C

EXHIBIT C



1 ACOM  
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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN  
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF  
20 DANIEL S. SIMON, A PROFESSIONAL  
21 CORPORATION; DOES I through X, inclusive,  
22 and ROE CORPORATIONS I through X,  
23 inclusive,

24 Defendants.

CASE NO.: A-18-767242-C  
DEPT NO.: XIV

Consolidated with

CASE NO.: A-16-738444-C  
DEPT. NO.: X

**AMENDED COMPLAINT**

25 Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC  
26 (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B.  
27 GREENE, ESQ., of VANNAH & VANNAH, and for their causes of action against Defendants,  
28 complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized  
under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a  
domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL  
are referred to as PLAINTIFFS.

1 2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S.  
2 SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information  
3 and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW  
4 OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic  
5 professional corporation licensed and doing business in Clark County, Nevada. At times,  
6 Defendants shall be referred to as SIMON.  
7

8 3. The true names of DOES I through X, their citizenship and capacities, whether  
9 individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who  
10 therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and  
11 thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally  
12 responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein  
13 alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true  
14 names and capacities of such Defendants, when the same have been ascertained, and to join them  
15 in this action, together with the proper charges and allegations.  
16

17 4. That the true names and capacities of Defendants named herein as ROE  
18 CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said  
19 Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that  
20 each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for  
21 the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged  
22 herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and  
23 capacities of ROE CORPORATIONS I through X, inclusive, when the same have been  
24 ascertained, and to join such Defendants in this action.  
25

26 5. DOES I through V are Defendants and/or employers of Defendants who may be  
27 liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:  
28

1 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person  
2 shall suffer personal injury by wrongful act, neglect or default of another,  
3 the person causing the injury is liable to the person injured for damages;  
4 and where the person causing the injury is employed by another person or  
corporation responsible for his conduct, that person or corporation so  
responsible is liable to the person injured for damages.

5 6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and  
6 is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for  
7 services and the conversion of PLAINTIFFS personal property, as herein alleged.

8 7. ROE CORPORATIONS I through V are entities or other business entities that  
9 participated in SIMON'S breach of the oral contract for services and the conversion of  
10 PLAINTIFFS personal property, as herein alleged.

11 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

12 8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests  
13 following a flood that occurred on April 10, 2016, in a home under construction that was owned by  
14 PLAINTIFFS. That dispute was subject to litigation in the 8<sup>th</sup> Judicial District Court as Case  
15 Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in  
16 favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the  
17 trial date.

18 9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally  
19 agreed that SIMON would be paid for his services at an hourly rate of \$550 and that fees and costs  
20 would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were  
21 never reduced to writing.

22 10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December  
23 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs  
24 SIMON billed PLAINTIFFS totaled \$486,453.09. PLAINTIFFS paid the invoices in full to  
25 SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of  
26  
27  
28



1 \$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to  
2 PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever  
3 disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees  
4 and costs to the mandated computation of damages.

5  
6 11. SIMON was aware that PLAINTIFFS were required to secure loans to pay  
7 SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by  
8 PLAINTIFFS accrued interest.

9 12. As discovery in the underlying LITIGATION neared its conclusion in the late fall  
10 of 2017, and thereafter blossomed from one of mere property damage to one of significant and  
11 additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the  
12 CONTRACT. In short, SIMON wanted to be paid far more than \$550.00 per hour and the  
13 \$486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However,  
14 neither PLAINTIFFS nor SIMON agreed on any terms.

15  
16 13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth  
17 additional fees in the amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he  
18 wanted to be paid in light of a favorable settlement that was reached with the defendants in the  
19 LITIGATION. The proposed fees and costs were in addition to the \$486,453.09 that PLAINTIFFS  
20 had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented  
21 to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set  
22 forth in the computation of damages disclosed by SIMON in the LITIGATION.

23  
24 14. A reason given by SIMON to modify the CONTRACT was that he purportedly  
25 under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go  
26 through his invoices and create, or submit, additional billing entries. According to SIMON, he  
27 under billed in the LITIGATION in an amount in excess of \$1,000,000.00. An additional reason  
28 given by SIMON was that he felt his work now had greater value than the \$550.00 per hour that

1 was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement  
2 breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

3 15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and  
4 indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees  
5 and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following  
6 the flooding event.  
7

8 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP  
9 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS  
10 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS  
11 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect  
12 fees and costs other than those contained in his invoices that were presented to and paid by  
13 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures  
14 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let  
15 alone those in excess of \$1,000,000.00.  
16

17 17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a  
18 deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr.  
19 Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the  
20 amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a  
21 question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had  
22 paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected:  
23 "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees  
24 and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago."  
25 Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And  
26 they've been updated as of last week."  
27  
28

1 18. Despite SIMON'S requests and demands for the payment of more in fees,  
2 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

3 19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT,  
4 SIMON refused, and continues to refuse, to agree to release the full amount of the settlement  
5 proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide  
6 PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds  
7 that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can  
8 receive either the undisputed number or their proceeds.  
9

10 20. PLAINTIFFS have made several demands to SIMON to comply with the  
11 CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the  
12 settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To  
13 date, SIMON has refused.  
14

15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract)**

17 21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through  
18 20 of this Complaint, as though the same were fully set forth herein.

19 22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the  
20 CONTRACT is that SIMON agreed to accept \$550.00 per hour for his services rendered. An  
21 additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S  
22 invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed,  
23 and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS  
24 best interests.  
25

26 23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that  
27 SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.  
28

1 24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted  
2 pursuant to the CONTRACT.

3 25. SIMON'S demand for additional compensation other than what was agreed to in the  
4 CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for  
5 PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.  
6

7 26. SIMON'S refusal to agree to release all of the settlement proceeds from the  
8 LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the  
9 CONTRACT.

10 27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the  
11 undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a  
12 definite timeline as to when PLAINTIFFS can receive either the undisputed number or their  
13 proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.  
14

15 28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS  
16 incurred compensatory and/or expectation damages, in an amount in excess of \$15,000.00.

17 29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS  
18 incurred foreseeable consequential and incidental damages, in an amount in excess of \$15,000.00.

19 30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have  
20 been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are  
21 entitled to recover attorneys' fees and costs.  
22

23 **SECOND CLAIM FOR RELIEF**

24 **(Declaratory Relief)**

25 31. PLAINTIFFS repeat and reallege each allegation and statement set forth in  
26 Paragraphs 1 through 30, as set forth herein.

27 32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, \$550.00  
28 per hour for SIMON'S legal services performed in the LITIGATION.

1 33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, \$550.00 per hour  
2 for a total of \$486,453.09, for SIMON'S services in the LITIGATION.

3 34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or  
4 amend any of the terms of the CONTRACT.  
5

6 35. The only evidence that SIMON produced in the LITIGATION concerning his fees  
7 are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which  
8 PLAINTIFFS paid in full.  
9

10 36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in  
11 the LITIGATION was produced in updated form on or before September 27, 2017. The full  
12 amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to  
13 PLAINTIFFS and that PLAINTIFFS paid in full.  
14

15 37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the  
16 CONTRACT provided for attorneys' fees to be paid at \$550.00 per hour; since SIMON billed, and  
17 PLAINTIFFS paid, \$550.00 per hour for SIMON'S services in the LITIGATION; since SIMON  
18 admitted that all of the bills for his services were produced in the LITIGATION; and, since the  
19 CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to  
20 declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the  
21 CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the  
22 CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.  
23

24 **THIRD CLAIM FOR RELIEF**

25 **(Conversion)**

26 38. PLAINTIFFS repeat and reallege each allegation and statement set forth in  
27 Paragraphs 1 through 37, as set forth herein.  
28

1 39. Pursuant to the CONTRACT, SIMON agreed to be paid \$550.00 per hour for his  
2 services, nothing more.

3 40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or  
4 before September 27, 2017, had already been produced to the defendants.  
5

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

19 44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises  
20 to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to  
21 cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount  
22 in excess of \$15,000.00.

23 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,  
24 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,  
25 PLAINTIFFS are entitled to recover attorneys' fees and costs.  
26

27 ///

28 ///

**FOURTH CLAIM FOR RELIEF**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling \$486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is \$692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

1 determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,  
2 SIMON breached the implied covenant of good faith and fair dealing.

3 53. When SIMON executed his secret plan and went back and added substantial time to  
4 his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good  
5 faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and  
6 fair dealing.

7  
8 54. When SIMON demanded a bonus based upon the amount of the settlement with the  
9 Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result,  
10 SIMON breached the implied covenant of good faith and fair dealing.

11  
12 55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an  
13 amount that was far in excess of any amount of fees that he had billed from the date of the  
14 previously paid invoice to the date of the service of the lien, that he could bill for the work  
15 performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing  
16 so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON  
17 breached the implied covenant of good faith and fair dealing.

18  
19 56. As a result of SIMON'S breach of the implied covenant of good faith and fair  
20 dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access  
21 to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages,  
22 including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the  
23 implied covenant of good faith and fair dealing, in an amount in excess of \$15,000.00.

24  
25 57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a  
26 conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or  
27 malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are  
28 therefore entitled to punitive damages, in an amount in excess of \$15,000.00.



1 50. PLAINTIFFS have been compelled to retain an attorney to represent their interests  
2 in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and  
3 costs.

4  
5 **PRAYER FOR RELIEF**

6 Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

- 7 1. Compensatory and/or expectation damages in an amount in excess of \$15,000;  
8 2. Consequential and/or incidental damages, including attorney fees, in an amount in  
9 excess of \$15,000;  
10 3. Punitive damages in an amount in excess of \$15,000;  
11 4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;  
12 5. Costs of suit; and,  
13 6. For such other and further relief as the Court may deem appropriate.

14 DATED this 15 day of March, 2018.

15  
16 VANNAH & VANNAH

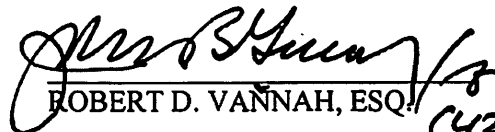
17  
18   
19 ROBERT D. VANNAH, ESQ. (4279)  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT D

EXHIBIT D

*Steven D. Grierson*

1 **COMP**  
2 **PETER S. CHRISTIANSEN, ESQ.**  
3 Nevada Bar No. 5254  
4 **pete@christiansenlaw.com**  
5 **CHRISTIENSEN LAW OFFICES**  
6 810 South Casino Center Blvd., Suite 104  
7 Las Vegas, Nevada 89101  
8 Telephone: (702) 240-7979  
9 Attorneys for Plaintiff

CASE NO: A-19-807433-C  
Department 2

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

9 LAW OFFICE OF DANIEL S. SIMON, )  
10 A PROFESSIONAL CORPORATION; )  
11 DANIEL S. SIMON; )

12 Plaintiffs, )

13 vs. )

CASE NO.:  
DEPT. NO.:

14 EDGEWORTH FAMILY TRUST; )  
15 AMERICAN GRATING, LLC; )  
16 BRIAN EDGEWORTH AND ANGELA )  
17 EDGEWORTH, INDIVIDUALLY, AND )  
18 AS HUSBAND AND WIFE, )  
19 ROBERT DARBY VANNAH, ESQ.; )  
20 JOHN BUCHANAN GREENE, ESQ.; and )  
21 ROBERT D. VANNAH, CHTD. d/b/a )  
22 VANNAH & VANNAH, )  
23 and DOES I through V and ROE )  
24 CORPORATIONS VI through X, inclusive, )

**COMPLAINT**

**(Jury Trial Requested)**

25 Defendants. )

26 COMES NOW the Plaintiffs, by and through undersigned counsel, hereby alleges as  
27 follows:

**PARTIES, JURISDICTION, AND VENUE**

28 1. Plaintiff LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation,  
was at all times relevant hereto a professional corporation duly licensed and authorized to

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Las Vegas, Nevada 89101

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1 conduct business in the County of Clark, state of Nevada and will hereinafter be referred to as  
2 ("plaintiff" or "Mr. Simon," or "Simon" or "Law Office.")

3 2. Plaintiff, DANIEL S. SIMON, was at all times relevant hereto, a resident of the  
4 County of Clark, state of Nevada and will hereinafter be referred to as ("plaintiff" or "Mr.  
5 Simon," or "Simon" or "Law Office.")

6 3. Defendant, EDGEWORTH FAMILY TRUST, was and is a revocable trust  
7 created and operated in Clark County, Nevada with Brian Edgeworth and Angela Edgeworth,  
8 acting as Trustees for the benefit of the trust, and at all times relevant hereto, is a recognized  
9 entity authorized to do business in the County of Clark, state of Nevada.

10 4. AMERICAN GRATING, LLC, a Nevada Limited Liability Company, was and  
11 is, duly licensed and authorized to conduct business in Clark County, Nevada and all acts and  
12 omissions were all performed, at all times relevant hereto, in the County of Clark, state of  
13 Nevada. This entity and Brian Edgeworth and Angela Edgeworth and the Edgeworth Family  
14 Trust will be referred to collectively as ("The Edgeworth's" or "Edgeworth" or "Edgeworth  
15 entities")

16 5. Defendant, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, were at all  
17 times relevant hereto, husband and wife, and residents of the state of Nevada, acted in their  
18 individual capacity and corporate/trustee capacity on behalf of the Edgeworth entities for its  
19 benefit and their own personal benefit and for the benefit of the marital community in Clark  
20 County, Nevada. Brian Edgeworth and Angela Edgeworth, at all times relevant hereto, were the  
21 principles of the Edgeworth entities and fully authorized, approved and/or ratified the conduct  
22 of each other and the acts of the entities and each other personally and the Defendant attorneys.

23 6. Defendant, ROBERT DARBY VANNAH was and is an attorney duly licensed  
24 pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts  
25 and omissions, individually and in the course and scope of his employment, in his master,  
26 servant and/or agency relationship with each and every other Defendant, including, Robert D.  
27 Vannah Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized,  
28 approved and/or ratified the conduct of each other Defendant, including the conduct of the

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1 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of  
2 Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

3 7. Defendant, JOHN BUCHANAN GREENE was and is an attorney duly licensed  
4 pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts  
5 and omissions, individually and in the course and scope of his employment, in his master,  
6 servant and/or agency relationship with each and every other Defendant, including, Robert D.  
7 Vannah Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized,  
8 approved and/or ratified the conduct of each other Defendant, including the conduct of the  
9 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of  
10 Robert D. Vannah, individually and Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

11 8. Defendant, ROBERT D. VANNAH, CHTD, D/B/A VANNAH & VANNAH,  
12 was at all times relevant hereto, a Nevada Corporation duly licensed and doing business in  
13 Clark County, Nevada. The individual attorneys, ROBERT DARBY VANNAH AND JOHN  
14 BUCHANAN GREENE and Robert D. Vannah, Chtd. d/b/a Vannah and Vannah will be  
15 collectively referred to as "Defendant attorneys."

16 9. Venue and jurisdiction are proper in this Court because the actions taken  
17 between the parties giving rise to this action and the conduct complained of occurred in Clark  
18 County, Nevada.

19 10. The true names and capacities, whether individual, corporate, partnership,  
20 associate or otherwise of Defendants named herein as DOES 1 through 10 inclusive, and ROE  
21 CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20, inclusive, and  
22 each of them are unknown to Plaintiff's at this time, and Plaintiff therefore sues said  
23 Defendants and each of them by such fictitious name. Plaintiff will advise this Court and seek  
24 leave to amend this Complaint when the names and capacities of each such Defendant have  
25 been ascertained. Plaintiff alleges that each Defendant herein designated as DOE, ROE  
26 CORPORATION is responsible in some manner for the events and happenings herein referred  
27 to as hereinafter alleged, including but not limited to advising, supporting, assisting in causing.  
28

1 and maintaining the institution of the proceedings, abusing the process and/or republishing the  
2 defamatory statements at issue.

3 11. Plaintiff is informed and believes and thereupon alleges that DOES 1 through 10,  
4 inclusive, ROE CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20,  
5 inclusive, or some of them are either residents of the State of Nevada and/or were or are doing  
6 business in the State of Nevada and/or have targeted their actions against Plaintiff in the State of  
7 Nevada.

### 8 I. GENERAL ALLEGATIONS

9 12. Mr. Simon represented the Edgeworth entities in a complex and hotly contested  
10 products liability and contractual dispute stemming from a premature fire sprinkler activation in  
11 April of 2016 which flooded Plaintiffs speculation home during its construction causing  
12 \$500,000.00 in property damage.

13 13. In May/June of 2016, Simon helped the Edgeworth's on the flood claim as a  
14 favor, with the goal of ending the dispute by triggering insurance to adjust the property damage  
15 loss. Mr. Simon and Edgeworth never had an express written or oral attorney fee agreement.  
16 They were close family friends at the time and Mr. Simon decided to help them.

17 14. In June of 2016, a complaint was filed. In August/September of 2017, Mr. Simon  
18 and Brian Edgeworth both agree that the flood case dramatically changed. The case had become  
19 extremely demanding and was dominating the time of the law office precluding work on other  
20 cases. Determined to help his friend at the time, Mr. Simon and Brian Edgeworth made efforts  
21 to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon  
22 and Brian Edgeworth agreed that the nature of the case had changed and had discussions about  
23 an express fee agreement based on a hybrid of hourly and contingency fees. However, an  
24 express agreement could not be reached due to the unique nature of the property damage claim  
25 and the amount of work and costs necessary to achieve a great result.

26 15. Although efforts to reach an express fee agreement failed, Mr. Simon continued  
27 to forcefully litigate the Edgeworth claims. Simon also again raised the desire for an express.  
28

1 attorney fee agreement with the clients, at which time, the Clients refused to speak to Simon  
2 about a fair fee and instead stopped talking to him and hired other counsel.

3 16. On November 29, 2017, the Edgeworth's fired Simon by retaining new counsel,  
4 Robert D. Vannah, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah and John Green  
5 (hereinafter the "Defendant Lawyers"), and ceased all direct communications with Mr. Simon.  
6 On November 30, 2017, the Defendant Lawyers provided Simon notice of retention.

7 17. On November 30, 2017, Simon served an attorney lien pursuant to NRS 18.015.  
8 However, Simon continued to protect his former clients' interests in the complex flood  
9 litigation, to the extent possible under the unusual circumstances.

10 18. On December 1, 2017, the Edgeworths entered into an agreement to settle with  
11 Viking and release Viking from all claims in exchange for a promise by Viking to pay six  
12 million dollars (\$6,000,000.00 USD). On January 2, 2018, Simon served an amended attorney  
13 lien.

14 19. On January 4, 2018, Edgeworth's, through Defendant Lawyers, sued Simon,  
15 alleging Conversion (stealing) and various other causes of actions based on the assertion of  
16 false allegations. At the time of this lawsuit, the Defendant Lawyers and Edgeworth entities  
17 actually knew that the settlement funds were not taken by Simon and were not deposited in any  
18 other account as arrangements were being made at the request of Edgeworth and Defendant  
19 Lawyers to set up a special account so that Robert D. Vannah on behalf of Edgeworth would  
20 control the funds equally pending the lien dispute. When Edgeworth and the Defendant lawyers  
21 sued Simon, they knew Mr. Simon was owed more than \$68,000 for outstanding costs advanced  
22 by Mr. Simon, as well as substantial sums for outstanding attorney's fees yet to be determined  
23 by Nevada law.

24 20. On January 8, 2018, Robert D. Vannah, Brian Edgeworth and Angela Edgeworth  
25 met Mr. Simon at Bank of Nevada and deposited the Viking settlement checks into a special  
26 trust account opened by mutual agreement for this case only. Mr. Simon signed the checks for  
27 the first time at the bank, provided the checks to the banker who took custody of the checks.  
28 The banker then provided the checks to Brian and Angela Edgeworth for signature in the

1 presence of Robert D. Vannah. Mr. Vannah signed bank documents to open the special account.  
2 The checks were deposited into the agreed upon account. In addition to the normal safeguards  
3 for a trust account, this account required signatures of both Robert D. Vannah and Mr. Simon  
4 for a withdrawal. Thus, Mr. Simon stealing money from the trust account was an impossibility  
5 that was known to the Defendants, and each of them. After the checks were deposited, the  
6 Edgeworths and Defendant attorneys proceeded with their plan to falsely attack Simon.

7 21. On January 9, 2018, Plaintiffs served their complaint which alleged that Simon  
8 stole their money-money which was safe kept in a Bank of Nevada account, earning them  
9 interest. Edgeworth and Robert D. Vannah and Defendant attorneys all knew Simon did not and  
10 could not steal the money, yet they pursued their serious theft allegations knowing the falsity  
11 thereof. The Defendants, and each of them, knew and had reason to know, the conversion  
12 complaint was objectively baseless and the Defendants, and each of them, did not have probable  
13 cause to begin or maintain the action.

14 22. Simon responded with two motions to dismiss, which detailed the facts and  
15 explained the law on why the complaint was frivolous. Rather than conceding the lack of merit  
16 as to even a portion of the complaint, Plaintiffs maintained the actions. On March 15, 2018,  
17 Defendants filed an Amended Complaint to include new causes of action and reaffirmed all the  
18 false facts in support of the conversion claims. The false facts asserted stealing by Simon, and  
19 sought punitive damages. When these allegations were initially made and the causes of actions  
20 were maintained on an ongoing basis, all Defendant Lawyers and Brian and Angela Edgeworth,  
21 individually and on behalf of the Edgeworth entities, all actually knew the allegations were false  
22 and had no legal basis whatsoever because their allegations were a legal impossibility. When  
23 questioning the Defendant lawyers for the legal or factual support for their conversion claims,  
24 they could not articulate a basis.

25 23. During the course of the litigation, Defendants, and each of them, filed false  
26 documents asserting blackmail, extortion and converting the Edgeworth's portion of the  
27 settlement proceeds.

28 24. The facts elicited at the five-day evidentiary hearing concerning the substantial



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1 Attorney's fees still owed and not paid by the Edgeworth's further confirmed that the  
2 allegations in both Edgeworth complaints were false and that the complaints were filed for an  
3 improper purpose as a collateral attack on the lien adjudication proceeding; which forced Simon  
4 to retain counsel and experts to defend the suit at substantial expense. The initial complaint and  
5 subsequent filings were done primarily because of hostility or ill will, to cause unnecessary and  
6 substantial expense to Simon, damage and harm the reputation and business of Mr. Simon and  
7 to avoid lien adjudication (for a carved out exception for legal malpractice or theft), all of  
8 which, are independent improper purposes. Edgeworth's and the Defendant attorneys never  
9 alleged malpractice and have no criticism of the work performed by Mr. Simon for the  
10 Edgeworth's.

11 25. All filings for conversion were done without probable cause or a good faith  
12 belief that there was an evidentiary basis. The Defendants, and each of them, were aware that  
13 the conversion claim and allegations of extortion, blackmail or other crimes were not  
14 meritorious. The Defendants, and each of them, did not reasonably believe they had a good  
15 chance of establishing a conversion claim to the satisfaction of the Court. The complaint was  
16 filed for the purpose other than securing the proper adjudication of the Attorney-Client fee  
17 dispute pursuant to the statutory lien adjudication process.

18 26. When the complaint filed by Defendants and subsequent filings were made and  
19 arguments presented, the Defendants, and each of them, did not honestly believe in its possible  
20 merits and did not reasonably believe that they had a good chance of establishing the case to the  
21 satisfaction of the court. Defendants, and each of them, consistently argued that Mr. Simon  
22 extorted and blackmailed them and stole their money. Defendants, and each of them, took an  
23 active part in the initiation, continuation and/or procurement of the civil proceedings against  
24 Mr. Simon and his Law Office. The primary ulterior purpose was to subject Mr. Simon to  
25 excessive expenses, to avoid lien adjudication and to harm his reputation to their friends,  
26 colleagues and general public and cause damage and loss of his business. The claims were so  
27 obviously lacking in merit that they could not logically be explained without reference to the  
28 Defendants improper motive and ill will. The proceedings terminated in favor of Simon.

27. The District Court found that the attorney lien of the Law Office of Daniel S. Simon dba Simon Law (hereafter "Mr. Simon") was proper and that the lawsuit brought by the Edgeworth entities through the Defendant lawyers against Mr. Simon and his Law Office had no merit. Accordingly, on October 11, 2018, the District Court dismissed Defendants complaint in its entirety against Mr. Simon. The court found, Edgeworth and the Defendant lawyers brought claims that were not well grounded in fact or law confirming that it is clear that the conversion claim was frivolous and filed for an improper purpose, when the Court examined the facts known to Edgeworth and Defendant lawyers when they filed the complaint on January 4, 2018; which were, Mr. Simon did not have the money and had not stolen any money. In fact, he did not even have the ability to steal the money as Mr. Vannah equally controlled the account.

Additionally, there was no merit to Plaintiffs' claims that:

- a. Simon "intentionally" converted and was going to steal the settlement proceeds;
- b. Simon's conduct warranted punitive damages;
- c. Daniel S. Simon individually should be named as a party;
- d. Simon had been paid in full;
- e. Simon refused to release the full settlement proceeds to Plaintiffs;
- f. Simon breached his fiduciary duty to Plaintiffs;
- g. Simon breached the covenant of good faith and fair dealing; and,
- h. Plaintiffs were entitled to Declaratory Relief because they had paid Simon in full.

28. On October 11, 2018, the Court dismissed Plaintiffs amended complaint. Of specific importance, the Court found that:

- a. On November 29, Mr. Simon was discharged by Edgeworth,
- b. On December 1, Mr. Simon appropriately served and perfected a charging lien on the settlement monies.
- c. Mr. Simon was due fees and costs from the settlement monies subject to the proper attorney lien.
- d. Found no evidence to support the conversion claim.

1 e. The Court did not find that Simon converted the clients' money.

2 29. On February 6, 2019, the Court found that:

3 a. The Edgeworth's and Defendant attorneys did not maintain the conversion claim  
4 on reasonable grounds since it was an impossibility for Mr. Simon to have converted the  
5 Edgeworth's property at the time the lawsuit was filed.

6 **COUNT I**

7 **WRONGFUL USE OF CIVIL PROCEEDINGS - ALL DEFENDANTS**

8 30. Plaintiff incorporates all prior paragraphs and incorporates by reference the  
9 preceding allegations as though fully set forth herein.

10 31. The Edgeworth entities, through the Defendant attorneys, initiated a complaint  
11 on January 4, 2018 alleging that Mr. Simon and his Law Office converted settlement proceeds  
12 in the amount of 6 million dollars.

13 32. The Edgeworth entities, through the Defendant attorneys, maintained the  
14 conversion of the settlement when filing an amended complaint re-asserting the same  
15 conversion allegations on March 15, 2018.

16 33. The Edgeworth entities, through the Defendant attorneys, maintained the  
17 conversion and stealing of the settlement when filing multiple public documents and presenting  
18 oral argument at hearings containing a public record when re-asserting the conversion and theft  
19 by Mr. Simon and his Law Office.

20 34. The Edgeworth's and the Defendant attorneys acted without probable cause and  
21 with no evidentiary basis.

22 35. The Edgeworth's and the Defendant attorneys acted with malice, express and/or  
23 implied and their actions were malicious, oppressive, fraudulent and done with a conscious and  
24 deliberate disregard of Plaintiffs rights and Plaintiffs are entitled to punitive damages in a sum  
25 to be determined at the time of trial. The Defendants, and each of them, knew of the probable  
26 and harmful consequences of their false claims and intentionally and deliberately failed to act to  
27 avoid the probable and harmful consequences.

28

6 37. The Edgeworth's and the Defendant attorneys advanced arguments in public  
7 documents that Mr. Simon committed crimes of stealing, extortion and blackmail knowing  
8 these filings and arguments were false and defamatory.

38. Plaintiffs were forced to retain attorneys to defend the wrongful use of civil proceedings and incurred substantial attorney's fees and costs, which are specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

12 39. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
13 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

## COUNT II

**MALICIOUS PROSECUTION- ALL DEFENDANTS**

16 40. Plaintiff incorporates the preceding paragraphs and allegations as though fully  
17 set forth herein.

18 41. The Edgeworth's and the Defendant attorneys initiated a complaint on  
19 January 4, 2018 alleging that Mr. Simon and his Law Office, converted the settlement proceeds  
20 in the amount of 6 million dollars.

42. The Edgeworth's and the Defendant attorneys maintained the conversion of the settlement when filing an amended complaint re-asserting the same conversion allegations on March 15, 2018. Despite knowing the funds remained in a trust account controlled in part by Defendant Robert D. Vannah with all interest accruing to Edgeworth, the amended complaint again alleged conversion - that Mr. Simon stole the settlement money.

26 43. The Edgeworth's and Defendant attorneys acted without probable cause and with  
27 no evidentiary basis.



1 purpose of asserting claims supported by evidence.

2 51. The Edgeworth's and Defendant attorneys committed a wilful act in using the  
3 judicial process for an ulterior purpose not proper in the regular conduct of the proceedings and  
4 misapplied the process for an end other than which it was designed to accomplish, and acted  
5 and used the process for an improper purpose or ulterior motive.

6 52. The Edgeworth's and the Defendant attorneys abused the process at hearings to  
7 avoid lien adjudication, to cause unnecessary and substantial expense and to damage the  
8 reputation of Mr. Simon and financial loss to his Law Office. The Defendants, and each of  
9 them, knew of the probable and harmful consequences of their false claims and intentionally  
10 and deliberately failed to act to avoid the probable and harmful consequences.

11 53. The Edgeworth's and Defendant attorneys abuse of the process proximately  
12 caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what  
13 amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his  
14 profession and among his personal friends and the community. The false allegations damaged  
15 his reputation.

16 54. Plaintiffs were already forced to retain attorneys to defend the complaint  
17 constituting an abuse of process and incurred substantial attorney's fees and costs, which are  
18 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
19 \$15,000.

20 55. The actions of Defendants, and each of them, were sufficiently fraudulent,  
21 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
22 Defendants, and each of them, knew of the probable and harmful consequences of their false  
23 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
24 consequences.

25 56. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
26 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

27 //

28 //

COUNT IV

NEGLIGENT HIRING, SUPERVISION, AND RETENTION

57. Plaintiff incorporates the preceding paragraphs and allegations as if set forth herein.

58. Robert D. Vannah, Chtd, had a duty to hire, supervise, and retain competent employees including, Lawyers to act diligently and competently to represent valid claims to the court and to file pleadings before the court that have the legal evidentiary basis to support the claims.

59. The lawyers acting on behalf of Robert D. Vannah, Chtd. fell below the standard of care when drafting, signing, and filing complaints with allegations, known to them, to be false, a legal impossibility and without any possible evidentiary basis.

60. Robert D. Vannah, Chtd breached that duty proximately causing damage to Mr. Simon and his Law Office.

61. The Defendant attorneys abuse of the process proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office; the Law Office of Daniel Simon when asserting what amounts to illegal and fraudulent activity, including false allegations of theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. The false allegations damaged his reputation.

62. Robert D. Vannah, Chtd. acts were malicious, oppressive, fraudulent and done with a conscious and deliberate reckless disregard for the rights of the Plaintiffs. The Defendants, and each of them, knew of the probable and harmful consequences of their false claims and intentionally and deliberately failed to act to avoid the probable and harmful consequences. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. All of the acts were fully authorized, approved and ratified by Robert D. Vannah, Chtd.

63. Plaintiffs were forced to retain attorneys to defend the complaints constituting abuse of process, malicious prosecution, wrongful institution of civil proceedings, conversion claims and related proceedings and incurred substantial attorney's fees and costs, which are

1 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
2 \$15,000.

3 64. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
4 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

5 **COUNT V.**

6 **DEFAMATION PER SE**

7 65. Plaintiff incorporates the preceding allegations as though fully set forth herein.

8 66. On information and belief, Brian Edgeworth and Angela Edgeworth  
9 misrepresented to the public that Mr. Simon and his Law Office committed illegal and  
10 fraudulent acts. Defendants, and each of them, also made intentional misrepresentations to the  
11 general public that Mr. Simon and his Law Office lacked integrity and good moral character  
12 including, but not limited to, its publicly filed complaint on January 4, 2018, the amended  
13 complaint filed March 15, 2018, the multiple publicly filed briefs and affidavits asserting the  
14 same false statements. The Edgeworth's repeated these statements to individuals independent of  
15 the litigation.

16 67. Brian and Angela Edgeworth's statements were false and defamatory and Brian  
17 and Angela Edgeworth knew them to be false and defamatory at the time the statements were  
18 made.

19 68. Brian and Angela Edgeworth's publication of these statements to third parties  
20 was not privileged.

21 69. The conduct by Brian and Angela Edgeworth, as described herein, was  
22 fraudulent, malicious and oppressive under NRS 42.005. The Defendants, and each of them,  
23 knew of the probable and harmful consequences of their false claims and intentionally and  
24 deliberately failed to act to avoid the probable and harmful consequences. Therefore, Plaintiff's  
25 are entitled to an award of punitive damages.

26 70. Brian and Angela Edgeworth, individually and on behalf of the Edgeworth  
27 entities made false and defamatory statements attacking the integrity and moral character of Mr.  
28 Simon and his law practice tending to cause serious injury to his reputation and ability to secure



1 new clients. Under Nevada law, the statements were defamatory per se and damages are  
2 presumed. The foregoing notwithstanding, as a direct and proximate result of the false and  
3 defamatory statements, Mr. Simon and his Law Office, the Law Office of Daniel Simon have  
4 sustained actual, special and consequential damages, loss and harm in a sum to be determined at  
5 the time of trial.

6 71. The actions of Defendants, and each of them, were sufficiently fraudulent,  
7 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
8 Defendants, and each of them, knew of the probable and harmful consequences of their false  
9 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
10 consequences. All Defendants ratified each others actions in attacking the integrity and moral  
11 character of Mr. Simon and his law office.

12 72. Plaintiffs were forced to retain attorneys to defend the complaints and  
13 defamatory statements and incurred substantial attorneys fees and costs, which are specially  
14 plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

15 73. It has become necessary for Plaintiffs to retain the services of attorneys to litigate  
16 this action. Therefore, Plaintiffs are entitled to an award of attorneys' fees, costs and interest  
17 separately pursuant to Nevada law.

#### 18 COUNT VI

#### 19 BUSINESS DISPARAGEMENT

20 74. Plaintiff repeats and realleges each and every paragraph and allegation in the  
21 foregoing paragraphs as though fully set forth herein.

22 75. The statements of Brian and Angela Edgeworth, as alleged more fully herein,  
23 attacked the reputation for honesty and integrity of their lawyer at the time and alleged lack of  
24 truthfulness by stating that the Mr. Simon and his Law Office, the Law Office of Daniel S.  
25 Simon, converted and extorted millions of dollars from them. These statements were false and  
26 done with the intent to disparage and harm Mr. Simon and his Law Office and actually  
27 disparaged the Law Office of Daniel Simon.

28

84. In or about January, 2018, Brian Edgeworth and Angela Edgeworth, individually and on behalf of the Edgeworth entities made material representations to individuals and the

1 public that were later to be determined false and defamatory to Plaintiffs. Defendants, and each  
2 of them, knew or should have known that the allegations were not supported by the law and  
3 lacked any evidentiary basis and were negligent in the communication of the statements.

4 85. Defendants, and each of them breached their duty to exercise reasonable care to  
5 Mr. Simon and his Law Office. As a direct and proximate consequence of the Defendants  
6 negligence, the statements that were defamatory resulted in the publication and broad  
7 dissemination of false and defamatory statements attacking the integrity and good moral  
8 character of Mr. Simon and his Law Office tending to cause serious injury to his reputation and  
9 ability to practice law with the same regard as he did prior to the false and defamatory  
10 statements. Under Nevada law, the statements were defamatory per se and Law Office of  
11 Daniel Simon and Mr. Simon's damages are presumed. The foregoing notwithstanding, as a  
12 direct and proximate result of the negligence of Defendants, and each of them, Mr. Simon and  
13 his Law Office has sustained actual, special and consequential damages in a sum to be  
14 determined at trial.

15 86. Plaintiffs were forced to retain attorneys to defend the frivolous lawsuit initiated  
16 by Defendants, and each of them, and incurred substantial attorney's fees and costs, which are  
17 specially plead pursuant to NRCP 9(g) in a sum in excess of \$15,000.

18 87. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
19 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

20 **COUNT VIII**

21 **CIVIL CONSPIRACY**

22 88. Plaintiff's repeat and reallege each and every allegation in the foregoing  
23 paragraphs and allegations as though fully set forth herein.

24 89. Defendants, and each of them, through concerted action among themselves and  
25 others, intended to accomplish the unlawful objectives of (i) filing false claims for an improper  
26 purpose. Defendant attorneys and the Edgeworth's all knew that the Plaintiffs did not steal the  
27 money. They devised a plan to knowingly commit wrongful acts to file the frivolous claims for  
28 an improper purpose to damage the reputation of Plaintiff's, cause harm to his law practice,

1 cause him unnecessary and substantial expense to expend valuable resources to defend  
2 wrongful institution of civil proceedings and they abused the process in attempt to manipulate  
3 the proceedings. The wrongful acts were committed several times when filing the complaint,  
4 amended complaint, all briefs, 3 affidavits, oral arguments and supreme court filings, and  
5 Defendants, and each of them, took no action to correct the falsity of the statements repeatedly  
6 made.

7 90. Defendants, and each of them, through concerted action among themselves and  
8 others, intended to accomplish the foregoing unlawful objectives through unlawful means and  
9 to cause damage to Plaintiffs as herein alleged, including abusing the process, wrongfully  
10 instituting legal proceedings, defaming and disparaging Mr. Simon, his Law Office, harming his  
11 business, causing unnecessary substantial expense, among others objectives to be determined at  
12 the time of trial.

13 91. In taking the actions alleged herein, Defendants, and each of them, were acting for  
14 their own individual advantage.

15 92. As the direct and proximate result of the concerted action of Defendants, and each  
16 of them, as described herein, Plaintiff's have suffered general, special and consequential  
17 damages, loss and harm, in a sum to be determined at trial.

18 93. The actions of Defendants, and each of them, were sufficiently fraudulent,  
19 malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The  
20 Defendants, and each of them, knew of the probable and harmful consequences of their false  
21 claims and intentionally and deliberately failed to act to avoid the probable and harmful  
22 consequences and repeated the wrongful acts to achieve the objectives of their devised plan.

23 94. Plaintiffs were forced to retain attorneys to defend the wrongful acts to carry out  
24 their devised plan and incurred substantial attorneys fees and costs, which are specially plead  
25 pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

26 95. It has become necessary for Plaintiffs to retain the services of an attorney in this  
27 matter and he is entitled to be reimbursed for his attorneys' fees and costs incurred as a result  
28 separately pursuant to Nevada law.

**702-240-7979 • Fax 866-412-6992**

**Attorneys for Plaintiff**

EXHIBIT E

EXHIBIT E

LAW OFFICE OF  
**DANIEL S. SIMON**  
A PROFESSIONAL CORPORATION  
810 SOUTH CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89101

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

Pursuant to your request, please find attached herewith the agreement I would like signed, as well as the proposed settlement breakdown, if a final settlement is reached with the Viking entities. The following is to merely clarify our relationship that has evolved during my representation so you are not confused with my position.

**I helped you with your case and went above and beyond for you because I considered you close friends and treated you like family**

As you know, when you first asked me to look at the case, I did not want to take it as I did not want to lose money. You already met with Mr. Marquis who wanted a 50k retainer and told you it would be a very expensive case. If Mr. Marquis did the work I did, I have no doubt his billing statements would reflect 2 million or more. I never asked you for a retainer and the initial work was merely helping you. As you know, you received excellent advice from the beginning to the end. It started out writing letters hoping to get Kinsale to pay your claim. They didn't. Then this resulted in us filing a lawsuit.

As the case progressed, it became apparent that this was going to be a hard fight against both Lange and Viking who never offered a single dollar until the recent mediations. The document production in this case was extremely voluminous as you know and caused my office to spend endless late night and weekend hours to push this case through the system and keep the current trial date.

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and John's willingness to look at the information I secured to support his position. As you know, no other appraiser was willing to go above and beyond as they believed the cost of repairs did not create a loss. As you know, John's opinion greatly increased the value of this case. Please do not think that he was paid a fee so he had to give us the report. His fee was very nominal in light of the value of his report and he stepped up to help you because of us and our close relationship. Securing all of the other experts and working with them to finalize their opinions were damaging to the defense was a tremendous factor in securing the proposed settlement amount. These experts were involved because of my contacts. When I was able to retain Mr. Pomerantz and work with him to finalize his opinions, his report was also a major factor. There are very few lawyer's in town that would approach the case the way I did to get the results I did for you. Feel free to call Mr. Hale or any other lawyer or judge in town to verify this. Every time I went to court I argued for you as if you were a family member taking the arguments against you personal. I made every effort to protect you and your family during the process. I

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was an exceptional advocate for you. It is my reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number. It is also because my office stopped working on other cases and devoted the office to your case filing numerous emergency motions that resulted in very successful rulings. My office was available virtually all of the time responding to you immediately. No other lawyer would give you this attention. I have already been complimented by many lawyers in this case as to how amazing the lawyering was including Marks lawyer who told me it was a pleasure watching me work the way I set up the case and secured the court rulings. Feel free to call him. The defense lawyers in this case have complimented me as well, which says a lot. My work in my motions and the rulings as an exceptional advocate and the relationships I have and my reputation is why they are paying this much. The settlement offer is more than you ever anticipated as you were willing to take 4-4.5 at the first mediation and you wanted the mediator's proposal to be 5 million when I advised for the 6 million. One major reason they are likely willing to pay the exceptional result of six million is that the insurance company factored in my standard fee of 40% (2.4 million) because both the mediator and the defense have to presume the attorney's fees so it could get settled. Mr. Hale and Zurich both know my usual attorney's fees. This was not a typical contract case your other hourly Lawyers would handle. This was a major fight with a world-wide corporation and you did not get billed as your other hourly lawyers would have billed you. This would have forced you to lay out substantially more money throughout the entire process. Simply, we went above and beyond for you.

**I have lost money working on your case.**

As you know, when I was working on your case I was not working on many other cases at my standard fee and I told you many times that I can't work hourly because I would be losing too much money. I felt it was always our understanding that my fee would be fair in light of the work performed and how the case turned out. I do not represent clients on an hourly basis and I have told this to you many times.

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### **Value of my Services**

The attached agreement reflects a greatly reduced sum for the value of my services that I normally charge in every case. I always expected to be compensated for the value of my services and not lose money to help you. I was troubled at your statements that you paid me hourly and you now want to just pay me hourly when you always knew this was not the situation. When I brought this to your attention you acknowledged you understood this was not just an hourly fee case and you were just playing devil's advocate. As you know, if I really treated your case as only an hourly case, I would have included all of the work my staff performed and billed you at a full hourly fee in 30 day increments and not advance so much money in costs. I would have had you sign just an hourly contract retainer just as Mr. Pomerantz had you sign. I never did this because I trusted you would fairly compensate me for the value of my services depending on the outcome. In the few statements I did send you I did not include all of the time for my staff time or my time, and did not bill you as any other firm would have. The reason is that this was not just an hourly billing situation. We have had many discussions about this as I helped you through a very difficult case that evolved and changed to a hotly contested case demanding full attention. I am a trial attorney that did tremendous work, and I expect as you would, to be paid for the value of my service. I did not have you sign my initial standard retainer as I treated you like family to help you with your situation.

### **Billing Statements**

I did produce billing statements, but these statements were never to be considered full payment as these statements do not remotely contain the full time myself or my office has actually spent. You have acknowledged many times that you know these statements do not represent all of my time as I do not represent clients on an hourly basis. In case you do not recall, when we were at the San Diego Airport, you told me that a regular firm billing you would likely be 3x my bills at the time. This was in August. When I started filing my motions to compel and received the rulings for Viking to produce the information, the case then got substantially more demanding. We have had many discussions that I was losing money but instead of us figuring out a fair fee arrangement, I did continue with the case in good faith because of our relationship focusing on winning and trusted that you would fairly compensate me at the end. I gave you several examples of why I was losing money hourly because my standard fee of 40% on all of my other cases produced hourly rates 3-10 times the hourly rates you were provided. Additionally, just some of the time not included in the billing statement is many phone calls to you at all hours of the day, review and responses of endless emails with attachments from you and others, discussions with experts, substantial review the filings in this case and much more are not contained in the bills. I also spent substantial time securing representation for Mark Giberti when he was sued. My office continued to spend an exorbitant amount of time since March and have diligently litigated this case having my office virtually focus solely on your case. The hourly fees in the billing statements are much lower than my true hourly billing. These bills were generated for several reasons. A few reasons for the billing statements is that you wanted to justify your loans and use the bills to establish damages against Lange under the contract, and this is the why all of my time was not included and why I expected to be paid fairly as we worked through the case.

I am sure you will acknowledge the exceptional work, the quality of my advocacy, and services performed were above and beyond. My services in every case I handle are valued based on results not an hourly fee. I realize that I didn't have you sign a contingency fee agreement and am not asserting a contingency fee, but always expected the value of my services would be paid so I would not lose money. If you are going to hold me to an hourly arrangement then I will have to review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rates to avoid an unjust outcome.

### **How I handle cases**

I want you to have a full understanding as to how my office works in every other case I am handling so you can understand my position and the value of my services and the favorable outcome to you.

My standard fee is 40% for a litigated case. I have told you this many times. That is what I get in every case, especially when achieving an outcome like this. When the outcome is successful and the client gets more and I will take my full fee. I reduce if the outcome is not as expected to make sure the client shares fairly. In this case, you received more than you ever anticipated from the outset of this case. I realize I do not have a contract in place for percentages and I am not trying to enforce one, but this merely shows you what I lost by taking your case and given the outcome of your case, and what a value you are receiving. Again, I have over 5 other big cases that have been put on the back burner to handle your case. The discovery period in these cases were continued several times for me to focus on your case. If I knew you were going to try and treat me unfairly by merely asserting we had an hourly agreement after doing an exceptional work with an exceptional result, I wouldn't have continued. The reason is I would lose too much money. I would hope it was never your intention to cause me hardship and lose money when helping you achieve such an exceptional result. I realize I did not have you sign a fee agreement because I trusted you, but I did not have you sign an hourly agreement either.

### **Finalizing the settlement**

There is also a lot of work left to be done. As you know, the language to the settlement must be very specific to protect everyone. This will need to be negotiated. If this cannot be achieved, there is no settlement. The Defendant will require I sign the confidentiality provisions, which could expose me to future litigation. Depending on the language, I may not be comfortable doing this as I never agreed to sign off on releases. Even if the language in the settlement agreement is worked out, there are motions to approve the settlement, which will be strongly opposed by Lange. If the Court does not grant the motion, then there is no settlement. If there is an approved settlement and Viking does not pay timely, then further motions to enforce must be filed.

Presently, there are many things on calendar that I need to address. We have the following depositions: Mr. Carnahan, Mr. Garelli, Crane Pomerantz, Kevin Hastings, Gerald Zamiski, and the UL deposition in Chicago. We have the Court hearings for Zurich's motions for protective order, our motion to de-designate the documents as confidential, our motion to make Mr. Pomerantz an initial expert, as well as the summary judgment motions involving Lange, who has

recently filed a counter motion and responses need to be filed. Simply, there is a substantial amount of work that still needs to be addressed. Since you knew of all of the pending matters on calendar, it is unfortunate that you were obligated to go to China during a very crucial week to attempt to finalize the case. When I asked if you would be available to speak if necessary, you told me that you are unavailable to discuss matters over the phone. This week was very important to make decisions to try and finalize a settlement.

I understand that the way I am looking at it may be different than the way your business mind looks at things. However, I explained my standard fees and how I work many times to you and the amount in the attached agreement is beyond fair to you in light of the exceptional results. It is much less than the reasonable value of my services. I realize that because you did not sign my retainer that you may be in a position to take advantage of the situation. However, I believe I will be able to justify the attorney fee in the attached agreement in any later proceeding as any court will look to ensure I was fairly compensated for the work performed and the exceptional result achieved.

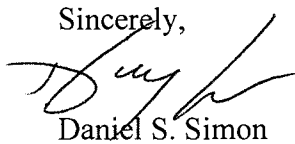
I really want us to get this breakdown right because I want you to feel like this is remarkable outcome while at the same time I don't want to feel I didn't lose out too much. Given what we have been through and what I have done, I would hope you would not want me to lose money, especially in light of the fact that I have achieved a result much greater than your expectations ever were in this case. The attached agreement should certainly achieve this objective for you, which is an incredible reduction from the true value of my services.

### **Conclusion**

If you are agreeable to the attached agreement, please sign both so I can proceed to attempt to finalize the agreement. I know you both have thought a lot about your position and likely consulted other lawyers and can make this decision fairly quick. We have had several conversations regarding this issue. I have thought about it a lot and this the lowest amount I can accept. I have always felt that it was our understanding that that this was not a typical contract lawyer case, and that I was not a typical contract lawyer. In light of the substantial work performed and the exceptional results achieved, the fee is extremely fair and reasonable.

If you are not agreeable, then I cannot continue to lose money to help you. I will need to consider all options available to me.

Please let me know your decisions as to how to proceed as soon as possible.

Sincerely,  
  
Daniel S. Simon

IN THE SUPREME COURT OF NEVADA

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, INDIVIDUALLY, AND  
AS HUSBAND AND WIFE; ROBERT  
DARBY VANNAH, ESQ.; JOHN  
BUCHANAN GREENE, ESQ.; AND  
ROBERT D. VANNAH, CHTD, d/b/a  
VANNAH & VANNAH, and DOES I  
through V and ROE CORPORATIONS VI  
through X, inclusive,

Appellants,

V.

LAW OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION;  
DANIEL S. SIMON,

Respondents.

Supreme Court Case No. 82058

Dist. Ct. Case No. A-19-807433-C

**JOINT APPELLANTS' APPENDIX  
IN SUPPORT OF ALL  
APPELLANTS' OPENING BRIEFS**

## VOLUME V

**BATES NO. AA000924 - 1022**

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***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
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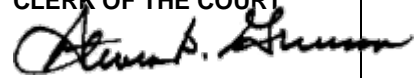
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Brian Edgeworth and Angela Edgeworth*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON, a  
professional corporation; DANIEL S. SIMON,

Plaintiffs,

v.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, individually and husband and  
wife, ROBERT DARBY VANNAH, ESQ.;  
JOHN BUCHANAN GREENE, ESQ.; and  
ROBERT D. VANNAH, CHTD. d/b/a  
VANNAH & VANNAH, and DOES I through  
V and ROE CORPORATIONS VI through X,  
inclusive,

Defendants.

CASE NO.: A-19-807433-C

DEPT. NO.: XXIV

**EDGEWORTH FAMILY TRUST, BRIAN  
EDGEWORTH, AND ANGELA  
EDGEWORTH'S SPECIAL ANTI-SLAPP  
MOTION TO DISMISS PURSUANT TO  
NRS 41.637**

**HEARING REQUESTED**

Defendants Edgeworth Family Trust (the "Trust"), Brian Edgeworth ("Brian") and Angela Edgeworth ("Angela") (collectively the "Edgeworths") by and through their counsel of record, Hutchison & Steffen, PLLC, file this SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637.

1 This Special Motion is based upon the attached Memorandum of Points and Authorities,  
2 NRS sections 41.635-670, the pleadings and papers on file herein, and any oral argument which  
3 this Honorable Court may entertain at time of hearing on this matter.

#### 4 **MEMORANDUM OF POINTS AND AUTHORITIES**

##### 5 **1. Introduction**

6 In the instant matter Plaintiffs, the Law Office of Daniel S. Simon and Daniel S. Simon  
7 (collectively “Plaintiffs”) filed a Complaint predicated upon statements made in previous  
8 litigation against Plaintiffs. Plaintiffs’ Complaint, which seeks to punish Defendants for  
9 petitioning the judiciary for a resolution of their dispute, is exactly the kind of abusive litigation  
10 the Nevada Legislature sought to prohibit when Nevada’s Anti-SLAPP law was passed. *See* NRS  
11 41.635. A strategic lawsuit against public participation, known more commonly by its shortened  
12 name “SLAPP” is a meritless lawsuit that a plaintiff initiates to chill a defendant’s freedom of  
13 speech and right to petition under the First Amendment. NRS 41.637. A linchpin of Nevada’s  
14 Anti-SLAPP statute is the protection of “the right of litigants to the utmost freedom of access to  
15 the courts without the fear of being harassed subsequently by derivative tort actions.” *Patin v.*  
16 *Ton Vinh Lee*, 134 Nev. 722, 727 (2018). When a complaint that impermissibly infringes on this  
17 right is filed, Nevada’s anti-SLAPP law permits defendants to bring a special motion to dismiss  
18 in response to which plaintiff must meet the heavy burden of showing that its case has merit.  
19 For the reasons discussed herein, Defendants’ First Amendment and other civil rights must be  
20 protected under the Anti-SLAPP law, and the Simon Complaint must be dismissed with  
21 prejudice.  
22

##### 23 **2. Relevant factual and procedural history**

24 The Relevant factual background and procedural history is fully detailed in the Special Motion  
25 of American Grating, LLC Anti-SLAPP Motion to Dismiss Pursuant To Nrs 41.637. For the  
26 sake of brevity and the Court’s convenience, the Edgeworths hereby fully incorporate the facts,  
27  
28

1 procedural history, and exhibits included and attached to American Grating LLC’S Special  
2 Motion to Dismiss Pursuant to NRS 41.637, as if fully set forth herein.

### 3 **3. Discussion**

#### 4 **1. Applicable legal standard**

5 Nevada’s anti-SLAPP statute provides that a person “who engages in a good faith  
6 communication in furtherance of the right to petition or the right to free speech in direct  
7 connection with an issue of public concern is immune from any civil action for claims based  
8 upon the communication.” *See* NRS 41.650. A district court considering a special motion to  
9 dismiss must undertake a two-prong analysis. *Coker v. Sassone*, 135 Nev. 8, 12, 432 P.3d 746,  
10 749 (2019). First, it must “[d]etermine whether the moving party has established, by a  
11 preponderance of the evidence, that the claim is based upon a good faith communication in  
12 furtherance of ... the right to free speech in direct connection with an issue of public concern. *Id.*  
13 “If successful, the district court advances to the second prong, whereby the burden shifts to the  
14 plaintiff to show ‘with prima facie evidence a probability of prevailing on the claim.’ *Id.*

15  
16 “Since the special motion to dismiss is procedurally treated as a summary judgment,  
17 summary judgment standards apply.” *Balestra-Leigh v. Balestra*, 2010 WL 4280424, at \*4 (D.  
18 Nev. Oct. 19, 2010), *aff’d*, 471 Fed. Appx. 636 (9th Cir. 2012). “The moving party bears the  
19 burden of informing the court of the basis for its motion, together with evidence demonstrating  
20 the absence of any genuine issue of material fact.” *Id.* “The moving party must thus present  
21 sufficient evidence to make a threshold showing that the lawsuit is based on good faith  
22 communication in furtherance of the right to petition the government.” *Id.* “[A] moving party  
23 seeking protection under NRS 41.660 need only demonstrate that his or her conduct falls within  
24 one of four statutorily defined categories of speech, rather than address difficult questions of  
25 First Amendment law.” *Sassone*, 135 Nev. at 12, 432 P.3d at 749.

#### 26 **2. The communications are protected under Nevada’s Anti-SLAPP Law**

27 Under the first prong of the analysis, the Edgeworths must establish only by a  
28 preponderance of the evidence that the statements are protected under the Anti-SLAPP statute.

1 See *Sassone* 135 Nev. at 12, 432 P.3d at 749 (“[A] moving party seeking protection under NRS  
2 41.660 need only demonstrate that his or her conduct falls within one of four statutorily defined  
3 categories of speech, rather than address difficult questions of First Amendment law.”). To meet  
4 this burden the Edgeworths must show that: (1) their conduct falls within one of four statutorily  
5 defined categories of speech and (2) that the communications were made in good faith. As  
6 detailed here, the Edgeworths’ conduct satisfies these requirements.

7 i. *The alleged statements directly relate to a judicial proceeding*

8 Nevada’s Anti-SLAPP statute protects good-faith statements whether written or oral  
9 “made in direct connection with an issue under consideration by a legislative, executive or  
10 judicial body, or any other official proceeding authorized by law.” NRS 41.637. Accordingly,  
11 the statute has, as one of its purposes, the protection of “the right of litigants to the utmost  
12 freedom of access to the courts without the fear of being harassed subsequently by derivative  
13 tort actions.” *Patin v. Ton Vinh Lee*, 134 Nev. 722, 727 (2018).

14 The essence of the Simon Complaint is that the Edgeworths allegedly utilized the Clark  
15 County District Court to disparage Simon’s business, thereby damaging Plaintiffs’ reputation  
16 and causing economic harm. See Simon Comp. The Edgeworths, filed their Complaint against  
17 Plaintiffs on January 4, 2018, and later filed an Amended Complaint on March 15, 2018, to seek  
18 redress for wrongs committed by another pursuant to well founded claims for relief. The  
19 Edgeworth Complaint and Amended Complaint are both examples of petitions to a judicial body.  
20 See *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135  
21 Nev. Adv. Op. 59 (2019). As such, the Complaint and Amended Complaint that the Edgeworths  
22 filed, by and through their attorneys Vannah & Vannah, qualify as, and are, protected  
23 communications pursuant to NRS 41.637(3).

24 The Simon Complaint alleges eight causes of action (identified as “Counts”): (I)  
25 Wrongful Use of Civil Proceedings – All Defendants; (II) Malicious Prosecution – All  
26 Defendants; (III) Abuse of Process – All Defendants; (IV) Negligent Hiring, Supervision, and  
27 Retention; (V) Defamation Per Se; (VI) Business Disparagement; (VII) Negligence; (VIII) Civil  
28

1 Conspiracy. Each and every one of these causes of action are based on the Edgeworth's  
2 authorized and proper use of the civil litigation process. Because Simon recognizes through The  
3 Simon Complaint that the damages he claims all stem from the lawsuit filed on January 4, 2018,  
4 Simon essentially concedes that the speech in question – all of which is contained within a civil  
5 lawsuit – is clearly and absolutely privileged as protected free speech under Nevada Anti-SLAPP  
6 law as communications to a judicial body.

7 At one point in the Simon Complaint, Plaintiffs seemingly do attempt to allege that Brian  
8 and Angela repeated the alleged statements “to individuals independent of the litigation.” *See*  
9 Simon Comp. ¶66. Outside of this single sentence, the Simon Complaint makes no other mention  
10 of statements made outside of the litigation context. The Edgeworths maintain that no such  
11 statements were made and without more information it is impossible to determine what  
12 communications Plaintiffs allege were independent of the litigation. By failing to allege any  
13 such communications in their Complaint, Plaintiffs failed to establish the existence of any  
14 communications not protected by Nevada's Anti-SLAPP law.

15  
16 ii. *Any Statements Made were True or Made without Knowledge of their Falsity*

17 In order to be protected by Nevada's Anti-SLAPP law the Edgeworths' statements must  
18 have also been made in good-faith, meaning that the statements were true or made without  
19 knowledge of their falsity. *Rosen v. Tarkanian*, 135 Nev. 436, 440 (2019). The statements made  
20 by the Edgeworths here were all true, and, in any event made in good faith. “[T]he relevant  
21 inquiry in prong one of the anti-SLAPP analysis is whether a preponderance of the evidence  
22 demonstrates that the gist of the story, or the portion of the story that carries ‘the sting’ of the  
23 [statement], is true.” *Id.* at 441.

24 The Edgeworths had a good faith basis to bring claims against Plaintiffs through the  
25 Complaint filed January 4, 2018, and the Amended Complaint filed March 15, 2018. The  
26 Edgeworths had an agreement with the Plaintiffs that Plaintiffs' legal fees would be billed on an  
27 hourly basis at a rate of \$550 / hour for Mr. Simon's services, and \$275 / hour for his associates.  
28 Plaintiffs have admitted that no contingency fee arrangement or agreement existed during their

1 representation of the Edgeworths. Through their attorney Vannah, on November 30, 2017, and  
2 at various times prior, the Edgeworths specifically and unequivocally rejected Plaintiffs' offer  
3 to enter into the belated Retainer Agreement, as proposed to the Edgeworths within Simon's  
4 Contingency Fee Arrangement Offer Correspondence of November 27, 2017. *See Affidavit of*  
5 *Brian Edgeworth* attached to American Grating LLC's Special Motion to Dismiss as Exhibit A.  
6 As such, at no time did the parties actually enter into an agreement whereby Plaintiffs would in  
7 any manner allegedly be entitled to a contingency fee or any percentage whatsoever of the Viking  
8 Settlement.

9         Given the Edgeworths' clear and unequivocal rejection of Plaintiffs' unreasonable and  
10 illicit demand that the Edgeworths enter into an "after-the-fact" and wholly unsupported "flat  
11 fee" Retainer Agreement (after having operated under a contract for hourly services throughout  
12 the entirety of the Viking litigation), Simon knew – or should have known – that he was in no  
13 way entitled to insist on the same. Moreover, the presentation of Plaintiffs' demand contained  
14 absolutely no accounting for their outrageous \$1.5M request, and instead simply stated that the  
15 monies were owed due to prior "under-billing."

16         Plaintiffs' sentiments were memorialized in a November 27, 2017 correspondence to the  
17 Edgeworths wherein Simon made extortionate demands for payment, under the threat of  
18 petitioning the Court for extraordinary compensation relief and abandoning his efforts as their  
19 counsel during a critical time in the settlement (indeed, the Edgeworths signed a settlement  
20 agreement with Viking in early December 2017, mere days after Mr. Simon's threatening letter).  
21 The message to the Edgeworths was crystal clear: either sign the unilaterally drafted "Retainer  
22 Agreement" and acknowledgement of fees or lose your chance to settle. The Edgeworths, who  
23 had already paid Simon almost \$500K in hourly fees up to that point, reasonably viewed  
24 Plaintiffs' conduct as extortionate.

25         In the underlying proceedings, Judge Jones adjudicated an additional \$484,982.50 was  
26 owed to Plaintiffs. Of note is that this is significantly less than the amount Simon had been  
27 claiming he was entitled to. Following that adjudication, the Edgeworths, through their attorney  
28



1 Vannah, offered to pay Plaintiffs the amount awarded to Plaintiffs by the Court in exchange for  
2 Simon's agreement to release the Viking Settlement funds. Despite this communication,  
3 Plaintiffs continued to maintain that they were owed more money than was adjudicated by the  
4 Court, and they continued to maintain wrongful dominion and control over the funds. The  
5 Edgeworths had no choice but to enlist the help of the Court to resolve this dispute. However,  
6 rather than accepting almost \$1 million in compensation, exactly as he had promised in his  
7 correspondence dated November 27, 2017, Simon brought this SLAPP suit purely to intimidate  
8 and punish the Edgeworths for not signing a coercive "flat fee" agreement following the  
9 settlement resolution of the Viking matter<sup>1</sup>.

10 Contrary to Plaintiffs' allegations, there is vast evidentiary support for all of the facts  
11 contained in the Edgeworth Complaint and the Edgeworths' Amended Complaint. To quote  
12 Plaintiffs' position from an earlier-filed Special Motion to Dismiss, "...you cannot be sued for  
13 following the law." The Edgeworths did nothing more than follow the law by properly utilizing  
14 the court system available to adjudicate a dispute between the parties. Thus, the Edgeworths  
15 satisfied their burden under NRS 41.660 & 41.665, and the burden now shifts to Plaintiffs.

### 16 **3. Plaintiffs cannot demonstrate a probability of success on the merits**

17 To prevail under prong two, Plaintiffs must present prima facie evidence of a probability  
18 of prevailing on their claims. As highlighted in the Edgeworths' motion to dismiss, the entirety  
19 of the Simon Complaint is ripe for dismissal because each and every one of Plaintiffs' claims  
20 are incognizable. Thus, Plaintiffs cannot establish a probability of success on the merits.

- 21  
22 i. *Plaintiffs' wrongful use of civil proceedings, defamation per se, business*  
23 *disparagement and negligence claims are precluded by the litigation privilege*

24 As the basis for count 1 alleging wrongful use of civil proceedings, count 5 alleging  
25 defamation *per se*, count 6 alleging business disparagement and count 7 alleging negligence,  
26 Plaintiffs cite arguments advanced and statements made during the course of litigation, judicial

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<sup>1</sup> While not styled as a "contingency fee" agreement, the amount demanded therein was the equivalent of what  
would have been roughly 40% of the Viking settlement funds.

1 proceedings, and in pleadings. *See* Comp. at ¶¶ 19, 21, 23, 37, 66, 75, 84. Defendants cannot be  
2 held liable for these statements because they are shielded by the litigation privilege.<sup>2</sup>  
3 “It is a long-standing common law rule that communications [made] in the course of judicial  
4 proceedings [even if known to be false] are absolutely privileged.” *Clark Cty. Sch. Dist. v.*  
5 *Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (quoting *Circus Circus Hotels v.*  
6 *Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). Under Nevada law, “communications  
7 uttered or published in the course of judicial proceedings are absolutely privileged, rendering  
8 those who made the communications immune from civil liability.” *Greenberg Taurig v. Frias*  
9 *Holding Co.*, 130 Nev. 627, 630 (2014). A communication can be protected under the litigation  
10 privilege even when no judicial proceeds have commenced if “(1) a judicial proceeding [is]  
11 contemplated in good faith and under serious consideration, and (2) the communication [is]  
12 related to the litigation.” *Clark Cty. Sch. Dist.*, 125 Nev. at 383. “An absolute privilege bars any  
13 civil litigation based on the underlying communication.” *Hampe v. Foote*, 118 Nev. 405, 409  
14 (2002), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224  
15 (2008). The purpose of the absolute privilege is to afford all persons freedom to access the courts  
16 and freedom from liability for defamation where civil or criminal proceedings are seriously  
17 considered.” *Clark Cty. Sch. Dist.*, 125 Nev. at 383. “Therefore, the absolute privilege affords  
18 parties the same protection from liability as those protections afforded to an attorney for  
19 defamatory statements made during, or in anticipation of, judicial proceedings.” *Id.* “[B]ecause  
20 the scope of the absolute privilege is broad, a court determining whether the privilege applies  
21 should resolve any doubt in favor of a broad application.” *Id.*

23         This litigation privilege bars Plaintiffs from alleging civil claims against the Edgeworths  
24 based on any statements or arguments made throughout litigation because those are absolutely  
25

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26  
27 <sup>2</sup> Additionally, Simon’s negligence claim is deficient because the Edgeworths do not owe any duty of care to  
28 Simon as either former clients or adverse litigants. *See Clark Cty. Sch. Dist. v. Payo*, 133 Nev. 626, 636 (2017)  
(holding that a duty of care is an essential element of negligence). To the contrary, as highlighted by the litigation  
privilege, adverse parties are free to further claims against an opposing party in a judicial proceeding without fear  
of subsequent liability to the adverse party. *See Clark Cty. Sch. Dist.*, 125 Nev. at 382.

1 privileged and immunized from civil liability. In alleging his defamation *per se* claim, Plaintiffs  
2 do allege that “[t]he Edgeworth’s [sic] repeated these statements to individuals independent of  
3 the litigation.” Comp. ¶66. However, there are no factual allegations throughout the Complaint  
4 that support this bald assertion. Moreover, the absolute litigation privilege’s broad applicability  
5 extends beyond communications made during litigation to communications related to the  
6 litigation even when judicial proceedings have not commenced. Therefore, based on the  
7 litigation privilege alone Plaintiffs’ claims for wrongful use of civil proceedings, defamation *per*  
8 *se*, business disparagement, and negligence are impermissible as a matter of law. Because the  
9 litigation privilege absolutely protects the Edgeworths from liability, Plaintiff cannot show a  
10 probability of prevailing on these claims.

11           ii.     *Plaintiffs cannot make a prima facie case for wrongful use of civil proceedings*  
12                 *because it is not cognizable under Nevada law*

13           No Nevada court has ever recognized wrongful use of civil proceedings as a cause of  
14 action. *See Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009  
15 WL 2382765, at \*2 (D. Nev. July 31, 2009) (“Although many jurisdictions recognize [the tort  
16 of wrongful use of civil proceedings], the State of Nevada does not.”). Similarly, no Nevada  
17 Court has articulated elements constituting such a claim. *See id.* Accordingly, the claim is  
18 incognizable under Nevada law and Plaintiffs cannot establish a prima facie case in support of  
19 the incognizable claim.

20           iii.    *Plaintiffs cannot establish a probability of success on the malicious prosecution*  
21                 *claim because there was no criminal proceeding against Plaintiffs*

22           Under Nevada law, “[a] malicious prosecution claim requires that the defendant initiated,  
23 procured the institution of, or actively participated in the continuation of a criminal proceeding  
24 against the plaintiff.” *LaMantia v. Redisi*, 118 Nev. 27, 30 (2002) (emphasis added). Without  
25 the existence of a criminal proceeding, a plaintiff cannot maintain a malicious prosecution claim.  
26 *See id.* Here, there was no criminal proceeding against Plaintiffs, and Plaintiffs make no such  
27 allegation. Without this critical factual allegation, Plaintiffs cannot establish a prima facie case  
28 of malicious prosecution.

1           iv.     *Plaintiffs cannot establish prima facie evidence in support of the abuse of*  
2                     *process claim because there was no abusive conduct occurring after filing of the*  
3                     *Complaint*

4           Nevada Supreme Court precedent establishes that an allegation of an ulterior motive is  
5           insufficient to support a claim for abuse of process. *See Executive Mgmt. Ltd. v. Ticor Title Ins.*  
6           *Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). “The mere filing of a complaint itself is  
7           insufficient to establish the tort of abuse of process.” *See Hampton v. Nustar Mgmt. Fin. Grp.*,  
8           No. 2:05-CV-0824-BES-GWF, 2007 WL 119146, at \*3 (D. Nev. Jan. 10, 2007); *Laxalt v.*  
9           *McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). “Instead, the complaining party must  
10          include some allegation of abusive measures taken *after* the filing of the complaint in order to  
11          state a claim. *Id.* Merely alleging that an opposing party has a malicious motive in commencing  
12          a lawsuit does not give rise to a cause of action for abuse of process.” *Id.* To be actionable, an  
13          abuse of process claim must be supported by allegations of conduct that “ would not be proper  
14          in the regular conduct of the proceeding.” *Land Baron Inv. v. Bonnie Springs Family LP*, 131  
15          Nev. 686, 698 (2015) (quoting *Kovacs v. Acosta*, 106 Nev. 57, 59, 787 P.2d 368, 369 (1990)).

16          Here, Plaintiffs make no allegation of any abusive measures by the Edgeworths or  
17          Vannah taken *after* the filing of a complaint. Plaintiffs do make several unsubstantiated  
18          allegations that Defendants initiated the prior proceedings for an ulterior motive. *See Comp. at*  
19          ¶¶49–52. However, none of the allegations point to any improper conduct that occurred after  
20          the filing of the Complaint because *no such conduct occurred*. Subsequent lien proceedings,  
21          oral arguments, affidavits, and filings to the Supreme Court are also not actionable because these  
22          processes are proper in the regular conduct of proceedings. Under the factual circumstances  
23          here, Plaintiffs’ abuse of process claim cannot be sustained. Accordingly, Plaintiffs cannot  
24          establish that they have a probability of success on their abuse of process claim.

25          v.     *Plaintiffs cannot make a prima facie case for negligent hiring against the*  
26                     *Edgeworths*

27          As addressed in the motion to dismiss, the negligent hiring, supervision and retention  
28          claim is not directly addressed against the Edgeworths. Because none of the elements of the

1 cause of action are alleged against the Edgeworths, Plaintiffs cannot establish a prima facie case  
2 of negligent hiring, supervision and retention against the Edgeworths.

3 vi. *Plaintiffs cannot make a prima facie for the defamation per se and business*  
4 *disparagement claims because the Edgeworths' statements were true*

5 In addition to being precluded by the litigation privilege, Plaintiffs' defamation and  
6 business disparagement claims are also deficiently pled. To establish a claim of defamation a  
7 plaintiff must establish that: (1) a false and defamatory statement by defendant concerning the  
8 plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least  
9 negligence; and (4) actual or presumed damages. *See Chowdhry v. NLVH, Inc.*, 109 Nev. 478,  
10 483 (1993). "[I]n a defamation action, it is not the literal truth of 'each word or detail used in a  
11 statement which determines whether or not it is defamatory; rather, the determinative question  
12 is whether the "gist or sting" of the statement is true or false." *Rosen v. Tarkanian*, 135 Nev.  
13 436 (2019) (internal quotation marks omitted).

14 To establish business disparagement a plaintiff must show: (1) a false and disparaging  
15 statement, (2) the unprivileged publication by the defendant, (3) malice, and (4) special damages.  
16 *See Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 386 (2009).

17 The factual allegations made by Defendants in the previous litigation were not false. If  
18 the Supreme Court somehow determines that Simon's actions do not constitute conversion, this  
19 would not render any of the factual allegations made by Defendants any less accurate. No matter  
20 how the Edgeworths described the factual scenario underlying their claims, the gist of the  
21 statements remains the same. Settlement funds are held in a trust account and cannot be released  
22 without Simon's signature. Simon refuses to sign off on the release of the funds even though  
23 the Edgeworths offered to pay the full amount adjudicated through Plaintiffs' attorney's lien.  
24 These facts are undisputed. It would have been up to a trier-of-fact to determine whether  
25 sufficient evidence existed to prevail on a claim for conversion, however, the predicate facts are  
26 indisputably true.  
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1           Additionally, Simon, who tried to change his previously agreed upon hourly fee  
2 arrangement with the Edgeworths once he realized the lucrative “pay day” on the horizon, placed  
3 substantial and undue pressure on the Edgeworths to sign an “after-the-fact” retainer agreement  
4 and “Settlement Breakdown” under the threat of jeopardizing and even destroying the settlement  
5 by withdrawing during a critical time. This, and other threats Plaintiffs made both in the  
6 November 27, 2017 letter and at other times as set forth in Mr. Edgeworths’ affidavit, were  
7 indeed extortionate and a form of blackmail. Without falsity there can be no defamation or  
8 business disparagement. Thus, Plaintiffs cannot establish a prima facie case for defamation *per*  
9 *se* or business disparagement.

10           vii.     *Plaintiff cannot make a prima facie case for civil conspiracy*

11           “An actionable civil conspiracy is a combination of two or more persons who, by some  
12 concerted action, intend to accomplish some unlawful objective for the purpose of harming  
13 another which results in damage.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303  
14 (1983). “While the essence of the crime of conspiracy is the agreement, the essence of civil  
15 conspiracy is damages.” *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). “The  
16 damages result from the tort underlying the conspiracy.” *Id.*

17           Here, Plaintiffs advance their civil conspiracy claim by asserting that “Defendants and  
18 each of them, through concerted action among themselves and others, intended to accomplish  
19 the unlawful objectives of (i) filing false claims for an improper purpose.” Comp. at ¶89. No  
20 case law supports the assertion that the filing of a civil complaint constitutes an unlawful  
21 objective or act sufficient to give rise to a claim of civil conspiracy. *See Vannah Mot. to Dismiss*  
22 *at 11–23.* To the contrary, established law shows that the filing of a complaint, even if such a  
23 filing was allegedly made for an ulterior purpose, does not constitute a tort. *See Executive Mgmt.*  
24 *Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). Plaintiffs fail to  
25 establish that there is any actionable or recognized “tort” upon which the civil conspiracy claim  
26 is predicated, occurred. Thus, Plaintiffs cannot establish a probability to prevail on the civil  
27 conspiracy claim.  
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DATED this 18<sup>th</sup> day of May, 2020.

/s/ Patricia Lee

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*Attorney for Defendants Edgeworth Family Trust;  
 Brian Edgeworth and Angela Edgeworth*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 18<sup>th</sup> day of May, 2020, I caused the document entitled **EDGEWORTH FAMILY TRUST, BRIAN EDGEWORTH, AND ANGELA EDGEWORTH’S SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637**

to be served as follows:

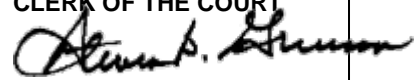
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ to be electronically served through the Eighth Judicial District Court’s electronic filing system pursuant to EDCR 8.02; and/or
- ☐ to be hand-delivered;

to the attorneys/ parties listed below:

**ALL PARTIES ON THE E-SERVICE LIST**

*/s/ Heather Bennett*  
\_\_\_\_\_  
An employee of Hutchison & Steffen, PLLC



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**DISTRICT COURT****CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON,  
A PROFESSIONAL CORPORATION;  
DANIEL S. SIMON;

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
AND AS HUSBAND AND WIFE, ROBERT  
DARBY VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; AND ROBERT D. VANNAH,  
CHTD, d/b/a VANNAH & VANNAH, and  
DOES I through V and ROE  
CORPORATIONS VI through X, inclusive,

Defendants.

CASE NO. A-19-807433-C

DEPT. NO. 24

**SPECIAL MOTION OF AMERICAN  
GRATING, LLC ANTI-SLAPP  
MOTION TO DISMISS PURSUANT  
TO NRS 41.637 AND FOR LEAVE TO  
FILE MOTION IN EXCESS OF 30  
PAGES PURSUANT TO EDCR 2.20(a)**

**(HEARING REQUESTED)**

COMES NOW, Defendant, AMERICAN GRATING, LLC, by and through counsel of record,  
M. Caleb Meyer, Esq., Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES,  
LLP, hereby files this SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP

1 MOTION TO DISMISS PURSUANT TO NRS 41.637 AND FOR LEAVE TO FILE MOTION IN  
2 EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a).

3 This Special Motion is based upon the attached Memorandum of Points and Authorities, NRS  
4 sections 41.635-670, the pleadings and papers on file herein, the Affidavit of Brian Edgewood  
5 attached hereto and any oral argument which this Honorable Court may entertain at time of hearing  
6 on this matter.

7 DATED this 18<sup>th</sup> day of May, 2020.

8 **MESSNER REEVES LLP**

9 /s/ Renee M. Finch

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11 Nevada Bar No. 13379

12 Renee M. Finch, Esq.

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17 Las Vegas, Nevada 89148

18 *Attorneys for Defendant American Grating, LLC*

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that, Defendant by and through its attorneys, MESSNER REEVES LLP, hereby submits that the foregoing, **SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 AND FOR LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a)** will be brought on for hearing on the \_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ a.m./p.m., before this honorable Court, or as soon thereafter as counsel may be heard.

DATED this 18<sup>th</sup> day of May, 2020.

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**REQUEST FOR LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES**

Defendant American Grating, LLC (“AMG”), hereby moves this Court, pursuant to EDCR 2.20(a), for an Order granting AMG leave to file its SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 AND FOR LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a) in excess of 30 pages. In support of this motion, AMG states as follows:

1. Local Rule 2.20(a) provides, in relevant part, that, “Unless otherwise ordered by the court, papers submitted in support of pretrial and post-trial briefs shall be limited to 30 pages, excluding exhibits.”
2. AMG’s Motion totals approximately 46 pages.
3. AMG has made every effort to be both brief and complete in its Motion. Because of the extensive history underlying this matter outlining the complex and contentious nature of the parties’ dealings, and the specific area of anti-SLAPP law at issue within its Motion, AMG respectfully submits that a presentation of all the relevant facts and legal arguments requires greater length than permitted in a standard-length motion filed with this Court.

WHEREFORE, AMG respectfully requests that this Court allow AMG to file its SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 in excess of 30 pages and in the amount specifically identified in paragraph 2 of this Request.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Seeking to protect the exercise of fundamental speech rights against meritless and retaliatory suits, the Nevada State Legislature passed one of the strongest anti-SLAPP laws in the country in 2015. *See* NRS 41.635 et seq. A strategic lawsuit against public participation, known more commonly by its shortened name “SLAPP” is a meritless lawsuit that a plaintiff initiates to chill a defendant’s freedom of speech and right to petition under the First Amendment. NRS 41.637. Thus, where a lawsuit such as this is brought against defendants for “communication made in direct connection with

1 an issue of public interest, in a place open to the public or public forum,” N.R.S. 41.637(4), Nevada's  
2 anti-SLAPP law permits defendants to bring a special motion to dismiss in response to which plaintiff  
3 must meet the heavy burden of showing that its case has merit, or risk paying significant fees. The  
4 Anti-SLAPP statute was designed to protect against exactly the type of lawsuit now before this Court.  
5 Accordingly, and for the reasons discussed below, Defendants’ First Amendment and other civil  
6 rights must be protected, and The Simon Complaint must be dismissed with prejudice.

## 7 **II. RELEVANT FACTUAL AND PROCEDURAL HISTORY**

### 8 **A. The Edgeworths’ Underlying Claim and Retention of Plaintiff Simon on an** 9 **Hourly Fee Contract**

10 This matter concerns Plaintiff Daniel S. Simon [hereinafter referred to as “Plaintiff Simon”]  
11 and The Law Office of Daniel S. Simon, P.C.’s [hereinafter collectively referred to with Plaintiff  
12 Simon as “Plaintiffs”] representation of Brian and Angela Edgeworth [hereinafter referred to  
13 individually as “Brian” and “Angela,” respectively, the Edgeworth Family Trust [hereinafter referred  
14 to as the “Trust”], and the company owned and operated by Brian, Angela and/or the Trust, American  
15 Grating, LLC [hereinafter referred to as “AMG”] [Brian, Angela, the Trust and AMG will be referred  
16 to collectively herein as the “Edgeworths”]. See Affidavit of Brian Edgeworth, attached hereto as  
17 **Exhibit A**. Plaintiffs’ representation of the Edgeworths stems from a complex products liability  
18 issue. See Decision and Order on Motion to Adjudicate Liens, dated November 19, 2018, attached  
19 hereto as **Exhibit B**.

20  
21  
22 On April 10, 2016, a house the Edgeworths were building as a speculation home suffered a  
23 flood. *Id.* The house was still under construction and the flood caused a delay. *Id.* The Edgeworths  
24 did not carry loss insurance if a flood occurred and the plumbing company and manufacturer refused  
25 to pay for the property damage. *Id.* A fire sprinkler installed by the plumber, and within the plumber’s  
26 scope of work, caused the flood; however, the plumber asserted the fire sprinkler was defective and  
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1 refused to repair or to pay for repairs. *Id.* The manufacturer of the sprinkler, Viking, et al., also  
2 denied any wrongdoing. *Id.*

3 In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send a few  
4 letters. *Id.* The parties initially hoped that Simon drafting a few letters to the responsible parties  
5 could resolve the matter. *Id.* Plaintiff Simon and Brian – following discussions regarding same –  
6 entered into an implied-in-fact contract for legal services on an hourly basis, with Plaintiff Simon’s  
7 hourly rate set at the exorbitant amount of \$550.00 per hour, well above the average rate for a partner  
8 in the Las Vegas market which averages \$380 to \$410 per hour. *See Exhibit A.* After meeting with  
9 Brian, Plaintiff Simon sent demand letters to the insurers of the manufacturer of the fire sprinkler,  
10 Viking Corporation [hereinafter referred to as “Viking”] and the plumbing company that installed the  
11 fire sprinkler, Lange Plumbing, LLC [hereinafter referred to as “Lange”]. *Id.* Since the matter was  
12 not resolved, a lawsuit had to be filed. *Id.*

13  
14 On June 14, 2016, a Complaint was filed in the case of *Edgeworth Family Trust, and American*  
15 *Grating LLC vs. Lange Plumbing, LLC, the Viking Corporation, Supply Network Inc., dba*  
16 *VikingSupplynet*, in case No. A-18-738444-C. *Id.* The Cost of repairs was approximately \$500,000.  
17 One of the elements of the Edgeworths damages against Lange Plumbing LLC (hereinafter “Lange”)  
18 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths. *Id.*

19  
20 While Plaintiff Simon has continually called his legal work for the Edgeworths – at least at  
21 the beginning of the course of events underlying this matter – an alleged “favor” for then family  
22 friends, Plaintiff Simon billed the Edgeworths for every moment worked, including the initial legal  
23 consultation on May 28, 2016. *See Exhibit A.* The billing statements presented to the Edgeworths  
24 clearly demonstrate there were no “favors” being provided by Plaintiff Simon to the Edgeworths. *Id.*

25  
26 On August 9, 2017, Plaintiff Simon and Brian traveled to San Diego to meet with an expert.  
27 *Id.* As they were in the airport waiting for a return flight, they discussed the case, and had some  
28

1 discussions about payments and financials. *Id.* No express fee agreement was reached during the  
2 meeting. *Id.*

3 On August 22, 2017, Brian sent an email to Simon entitled “Contingency.” It read:

4 We never really had a structured discussion about how this might be  
5 done. I am more than happy to keep paying hourly but if we are going  
6 for punitive we should probably explore a hybrid of hourly on the claim  
and then some other structure that incents both of us to win an [sic] go  
after the appeal that these scumbags will file etc.

7 Obviously that could not have been done earlier since who would have  
thought this case would meet the hurdle of punitives at the start.

8 I could also swing hourly for the whole case (unless I am off what this  
9 is going to cost). I would likely borrow another \$450K from Margaret  
10 in 250 and 200 increments and then either I could use one of the house  
11 sales for cash or if things get really bad, I still have a couple million in  
12 bitcoin I could sell. I doubt we will get Kinsale to settle for enough to  
really finance this since I would have to pay the first \$750,000 or so  
back to Colin and Margaret and why would Kinsale settle for \$1MM  
when their exposure is only \$1MM.

13 *Id.* During the litigation, Simon sent four invoices to the Edgeworths. *Id.*

#### 14 **B. Plaintiffs’ Billing Practices and Initial Attempt to Change the Fee Arrangement**

15 During his representation of the Edgeworths, Plaintiff Simon presented the following bills to  
16 the Edgeworths for attorneys’ fees and costs: (1) \$42,564.95, in December 2016; (2) \$46,620.69, of  
17 which \$11,365.69 were costs, on May 3, 2017; (3) \$142,081.20, of which \$31,943.70 were costs, on  
18 August 16, 2017; and (4) \$255,186.25, of which \$71,555.00 were costs, on September 25, 2017. *See*  
19 **Exhibit B.** These bills were billed at the rate of \$550.00 per hour. *Id.* After the first bill was sent,  
20 upon request, Plaintiff Simon provided Brian with the information on where to send a check. *See*  
21 **Exhibit A.** The Edgeworths paid Plaintiffs’ first bill for legal service in full in a prompt and timely  
22 manner. *See Exhibit B.* Plaintiffs accepted same by depositing the Edgeworths’ check, and not  
23 returning the monies. *Id.* The legal services billed in this matter between May 27, 2016 and  
24 November 29, 2017 totaled \$486,453.09, of which \$367,606.25 were attorneys’ fees and \$118,846.84  
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1 were purported costs. Per the in-fact hourly pay contract, the Edgeworths immediately paid all of  
2 Plaintiffs' legal bills and Plaintiffs accepted these payments by cashing the Edgeworths' checks. *Id.*

3 Between June 2016, and December 2017, there was a tremendous amount of work done on  
4 the litigation of the case. *See Exhibit A.* On or about the time period between May 3, 2017 and  
5 August 9, 2017, due to Brian Edgeworth's continued and tireless research and work on the matter, it  
6 it became evident that a much larger potential damages award for the Edgeworths may be starting to  
7 take shape. At that time, nearly 15 months after the Edgeworths retained Plaintiff Simon—for the  
8 first time—Simon approached Brian with a proposal for a modified fee arrangement. *Id.* Plaintiff  
9 Simon and Brian did not agree on any new structured fee agreement at that time. *Id.*

11 **C. Settlement of the Edgeworths' Claim Against Viking, Plaintiffs' Continued**  
12 **Unethical Attempts to Modify the Fee Arrangement and the Edgeworths'**  
13 **Engagement of Vannah**

14 Following two (2) mediations, on or about November 15, 2017, a settlement was reached  
15 between the Edgeworths and Viking in the amount of \$6,000,000.00, when the parties accepted the  
16 mediator's proposal (hereinafter referred to as the "Viking Settlement"). *See Exhibit B.* Also, on  
17 November 15, 2017, Brian sent an email to Plaintiff Simon asking for the open invoice. *Id.* The  
18 email stated "I know I have an open invoice that you were going to give me at a mediation a couple  
19 weeks ago and then did not leave with me. Could someone in your office send Peter (copied here)  
20 any invoices that are unpaid please?" *Id.* Just two (2) days later, on November 17, 2017, Plaintiff  
21 Simon summoned the Edgeworths to his office under the guise of discussing important business  
22 concerning the pending settlement. *Id.* In that meeting Plaintiff Simon spoke with the Edgeworths  
23 and to convince them to modify their fee agreement with him because he believed he was entitled to  
24 more than he had already been paid. *Id.* Throughout the lengthy meeting, Plaintiff Simon continued  
25 to make vague demands that the Edgeworths pay him more money from the Viking Settlement. *Id.*  
26 Plaintiff Simon supported his argument that he was entitled to more money by saying that a judge  
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1 would automatically award him forty (40) percent of the Viking Settlement, so taking anything less  
2 was cheating himself. *Id.* Plaintiff Simon claimed that it was standard practice for the attorney to take  
3 a contingency fee, and it was only fair that he be compensated for his excellent legal prowess. *Id.* He  
4 further informed the Edgeworths that he had been losing money by representing them because he  
5 always worked on a contingency fee, yet he had made an exception for them because they were “close  
6 personal friends” so he had treated them like family. *Id.* Plaintiff Simon further stated that he was  
7 taking less than he deserved and was ripping himself off, but never really explained what he wanted  
8 as compensation. *Id.* Plaintiff Simon also told Brian and Angela that if they did not agree to the  
9 newly presented contingency fee, the Viking Settlement would fall apart because it required his  
10 signature and there were many terms to still be negotiated. *Id.* At the close of that meeting, Plaintiff  
11 Simon encouraged the Edgeworths to contact another attorney and verify that his proposed  
12 modification to the fee agreement was commonplace. *Id.* During the meeting the Edgeworths did  
13 not agree to Plaintiff Simon’s proposal. *Id.*

14  
15 Plaintiff Simon told Brian he needed a swift answer because he was leaving for a trip to Peru.  
16 *Id.* In the following days, Plaintiff Simon placed numerous phone calls to Brian and Angela asking  
17 to commit to the modified fee arrangement. *Id.*

18  
19 On November 27, 2017, Plaintiff Simon retained counsel regarding the “Edgeworth Fee  
20 Dispute,” a dispute that notably did not exist at that time. *See* Billing Invoice from James Christensen,  
21 attached hereto as **Exhibit C**. That same day Plaintiff Simon sent correspondence to Brian and  
22 Angela regarding Plaintiff Simon’s positions concerning the proposed modification to the  
23 Edgeworths’ fee agreement that would entitle him to \$1,500,000 in additional attorneys’ fees, and  
24 \$200,000 in costs. (the “November 27, 2017 Letter”). *See* Plaintiff Simon’s Correspondence to  
25 Brian and Angela Edgeworth, dated November 27, 2017, attached hereto as **Exhibit D**. Within the  
26 November 27, 2017 Letter, Plaintiff Simon spent considerable time and energy boasting about his  
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1 alleged importance to the Edgeworths' securing the Viking Settlement, as well as general boasting  
2 regarding his own self-perceived importance and abilities. *Id.*

3 Within the November 27, 2017 Letter, Plaintiff Simon made broad sweeping claims regarding  
4 his efforts during discovery. *Id.* Simon made these claims even though a majority of the research  
5 and time spent in identifying other similar fire sprinkler malfunction claims was performed by Brian.  
6 *Id.* Of significant importance, Brian obtained information demonstrating potential product defects  
7 that would increase the value of his settlement potential. *Id.* at page 1; *see also* **Exhibit A**. Within  
8 his correspondence, Plaintiff Simon further indicated that the experts retained on the matter were  
9 retained only due to Plaintiff Simon's "contacts[.]" *See* **Exhibit D**. Plaintiff Simon went so far in  
10 praising himself to say that it was Plaintiff Simon's "reputation with the judiciary who know my  
11 integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number."  
12 *Id.*

14 Plaintiff Simon indicated that there was a lot of work left to be done on the settlement,  
15 including the language, which had to be very specific to protect everyone. *Id.* He claimed that this  
16 language must be negotiated, and if that could not be achieved, there would be no settlement. *Id.* He  
17 asked the Edgeworths to sign the fee agreement so that he could proceed to attempt to finalize the  
18 agreement." *Id.*

20 Plaintiff Simon went on to make the curious statement that he was allegedly losing money as  
21 a result of working on the Edgeworths' matter. *Id.* As discussed above, at the time Plaintiff Simon  
22 drafted the November 27, 2017 Letter, he had been paid \$368,588.70 in attorneys' fees and the  
23 Edgeworths had paid for all litigation costs (totaling \$114,864.39, making the total amount paid out  
24 of pocket by the Edgeworths to Plaintiffs on that date \$483,453.09), in a matter which had only been  
25 in litigation for approximately 16 months and in which discovery had not been fully completed. *See*  
26 **Exhibit A**. Plaintiff Simon further claimed that he had thought about it a lot, and the proposed fee  
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1 arrangement was the lowest amount he could accept, and if the Edgeworths were not agreeable he  
2 could no longer “help them.” *See Exhibit D.*

3 Plaintiff Simon also stated: “I believe he would be able to justify the attorney fee in the  
4 attached agreement in any later proceeding, as any court will look to ensure I was fairly compensated  
5 for the work performed and the exceptional result achieved.” *Id.*

6 Plaintiff Simon conceded in this correspondence that he did not have a contingency agreement  
7 in place and was not trying to enforce one. *See Exhibit D*, at page 4. Plaintiff Simon concluded the  
8 letter by indicating to Brian and Angela that if they did not agree to the modified fee arrangement as  
9 offered therein (which would have entitled Plaintiffs to an additional approximately \$1,500,000.00 in  
10 legal fees and costs), that Plaintiffs would no longer represent the Edgeworths in that matter. *See*  
11 **Exhibit D**, at p. 5.

12 The Edgeworths never agreed to accept Plaintiff Simon’s new fee arrangement agreement.  
13 *Id.*; *see also*, Affidavit of Robert D. Vannah, Esq., dated May 14, 2020, at paragraph 13, attached as  
14 Exhibit A to Vannah’s Special Motion to Dismiss Plaintiff’s Complaint, dated May 15, 2020, on-file  
15 herein.  
16

17 Because an agreement could not be reached between Plaintiffs and the Edgeworths, Brian  
18 sought legal counsel regarding Plaintiff Simon’s proposal to modify the fee agreement or lose  
19 representation by Plaintiff Simon. *See Exhibit A.* On November 29, 2017, the Edgeworths engaged  
20 Robert Vannah, Esq. [hereinafter referred to individually as “Mr. Vannah”], and the firm of Vannah  
21 & Vannah [hereinafter referred to collectively with Mr. Vannah as “Vannah”] regarding Plaintiff  
22 Simon’s continued persistence and threatening behavior. *See Exhibit B.*  
23

24 Thereafter, on November 30, 2017, Plaintiff Simon received a letter advising him that the  
25 Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities, *et*  
26 *al. Id.* The letter read as follows:  
27  
28

1 Please let this letter serve to advise you that I've retained Robert D.  
2 Vannah, Esq. and John B. Greene, Esq., of Vannah and Vannah to assist  
3 you in the litigation with the Viking entities, et.al. I'm instructing you  
4 to cooperate with them in every regard concerning the litigation and any  
5 settlement. I'm also instructing you to give them complete access to the  
6 file and allow them to review whatever documents they request to  
7 review. Finally, I direct you to allow them to participate without  
8 limitation in any proceedings concerning our case, whether it be at  
9 depositions, court hearings, discussions, etc."

10  
11  
12 **D. Plaintiffs' Unethical Filing of Attorney's Liens Against the Edgeworths' Viking  
13 Settlement**

14 On November 30, 2017, Plaintiff Simon was told that the Edgeworths would sign the  
15 settlement agreement as is. *Id.* That same day, he was also informed that the Edgeworths had retained  
16 counsel to assist with the fee dispute and been made aware that the Edgeworths did not intend to sign  
17 the proposed new fee arrangement agreement. *See Exhibit A.* Vannah also notified Plaintiff Simon  
18 at that time that the Edgeworths had agreed to settle their claims against Lange Plumbing LLC for  
19 \$25,000. *See Exhibit B.* On that same day, Plaintiff Simon filed a Notice of Attorney's Lien against  
20 the Edgeworths, claiming by supporting affidavit that \$80,326.86 was allegedly outstanding and had  
21 not been paid by the Edgeworths [hereinafter referred to as the "Original Lien"]. *See Notice of*  
22 *Attorney's Lien*, dated November 30, 2017, attached hereto as **Exhibit E**. At the time Plaintiff Simon  
23 filed the Original Lien, the Edgeworths had paid all of Plaintiffs' invoiced bills and had not received  
24 an invoice from Plaintiffs regarding the allegedly outstanding amount, despite Brian asking for  
25 updated bills in writing on November 15, 2017. *See Exhibit A.* On December 8, 2017, Plaintiff  
26 Simon received the certified checks for the \$6,000,000 Viking settlement. *Id.*

27 Thereafter, on January 2, 2018, Plaintiffs filed their Notice of Amended Attorney's Lien  
28 wherein Plaintiffs claimed alleged, but unproven, outstanding costs of \$76,535.93 and entitlement to  
a sum total of \$2,345,450 in attorney's fees, less payments received in the sum of \$367,606.25, for a  
net lien in the sum of \$1,977,843.80 in total attorneys' fees against the Viking Settlement [hereinafter  
referred to as the "Amended Lien"]. *See Notice of Amended Attorney's Lien*, dated January 2, 2018,

1 attached hereto as **Exhibit F**, *see also* **Exhibit B**. At the time Plaintiff Simon filed the Amended  
2 Lien, the Edgeworths had paid all of Plaintiffs' invoiced bills, yet they had not received an invoice  
3 from Plaintiffs regarding the allegedly outstanding amount even though it had been demanded.  
4 Furthermore, the Edgeworths had specifically refused to enter into Plaintiff Simon's coercive  
5 contingency fee agreement. *See* **Exhibit A**.

6 **E. Plaintiffs' Refusal to Allow the Edgeworths to Deposit the Funds from the Viking**  
7 **Settlement in Vannah's Client Trust Account and Plaintiff Simon's Continued**  
8 **Unlawful and Unethical Exercise of Dominion and Control over Said Settlement**  
9 **Funds**

10 On January 8, 2018, a separate trust account was required to be opened to deposit and hold  
11 the Edgeworths' settlement funds [hereinafter referred to as the "Settlement Trust Account"]. *See*  
12 **Exhibit A**. The Settlement Trust Account requires that both Plaintiff Simon and Mr. Vannah provide  
13 a signature for any action to be taken, thereby permitting Plaintiff Simon to continue to hold large  
14 portions of the Viking Settlement hostage and to the exclusion of the Edgeworths. *Id.*

15 To date, from the \$6,000,000 Viking Settlement funds the Edgeworths have only received  
16 \$3,950,561.27. *Id.* As of the date of this filing, Plaintiff Simon continues to exercise dominion and  
17 control over the Settlement Trust Account, even though the Court adjudicated his lien and determined  
18 that he is only entitled to an additional \$484,982.50. *Id.* Furthermore, Plaintiff Simon receives the  
19 1099-INT statements related to the Settlement Trust Account which he refuses to have sent directly  
20 to Brian, even though the account is registered under Brian's tax identification number. *Id.*

21  
22 ///

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**F. Plaintiff Simon's Continued Unethical Conduct Forces the Edgeworths to File a Lawsuit Against Plaintiffs**

Because Plaintiffs were maintaining unlawful dominion and control over funds they are not entitled to, on January 4, 2018, the Edgeworths – through Vannah as their legal representative – filed a Complaint against Plaintiffs in which the Edgeworths pled breach of contract, declaratory relief and conversion. *See* The Edgeworth Complaint, dated January 4, 2018, attached hereto as **Exhibit G**.

On March 15, 2018, the Edgeworths – through Vannah as their legal representative – filed an Amended Complaint against Plaintiffs, adding a claim for breach of the covenant of good faith and fair dealing, which was not included in their original Complaint. *See* The Edgeworths' Amended Complaint, dated March 15, 2018, attached hereto as **Exhibit H**.

The factual basis within both their original Complaint and Amended Complaint are summarized as follows: Plaintiff Simon exercised dominion and control over the settlement funds from the Viking Settlement despite his knowledge he had no legal right or basis upon which to encumber the same through an attorney's lien. *Id.* at paragraphs 19-20, 26-27, 37, 41-43, 49-55; *see also* The Edgeworth Complaint, dated January 4, 2018, at paragraphs 19-20, 23, 25-27, 41-43, attached hereto as **Exhibit G**.

**G. Plaintiffs' Continued Unlawful and Unethical Refusal to Release the Adjudicated Undisputed Amount of the Viking Settlement to the Edgeworths and the Detriment Same Has Caused to the Edgeworths**

On January 24, 2018, Plaintiffs filed their Motion to Adjudicate Lien on an order shortening time, requesting that Judge Tierra Jones resolve the final amount of the attorney's lien filed by Plaintiff Simon. *See* Plaintiffs' Motion to Adjudicate Attorney Lien, dated January 24, 2018, attached hereto as **Exhibit I**. On November 19, 2018, Judge Jones granted Plaintiffs' Motion to Adjudicate Attorneys' Liens, finding that Plaintiffs were entitled to attorney's fees totaling \$484,982.50, a number notably less than a quarter of the amount Plaintiff Simon had been claiming he was entitled to and was holding. *See* **Exhibit B**.

1 Plaintiff Simon's continued exercise of dominion and control over the Viking Settlement  
2 funds required the Edgeworths to seek judicial relief to attempt to force Simon to release the  
3 settlement funds specifically adjudicated as undisputed and rightfully the Edgeworths' property. *See*  
4 Plaintiffs' Motion for an Order Directing Simon to Release Plaintiffs' Funds, dated December 13,  
5 2018, attached hereto as **Exhibit J**.

6 Plaintiff Simon refused to release to the Edgeworths the now adjudicated undisputed amount  
7 of the Viking Settlement funds, which he had held hostage since January 2018. *See* **Exhibit A**. To  
8 date, Plaintiff Simon still has not agreed to release the adjudicated undisputed portion of the funds  
9 from the Viking Settlement to the Edgeworths. *Id.*

10  
11 On April 9, 2018, Plaintiffs filed a Motion to Dismiss<sup>1</sup> the Edgeworth Amended Complaint,  
12 arguing, *inter alia*, that Plaintiff Simon was not a proper party, the Edgeworths' conversion cause of  
13 action was incorrectly pled, as same should have been a claim for wrongful dominion, and the  
14 Edgeworths had allegedly not demonstrated that the unlawful and unethical actions of Plaintiff Simon  
15 supported their causes of action. *See* Motion to Dismiss Plaintiffs' Amended Complaint, dated April  
16 4, 2018, attached hereto as **Exhibit K**. Judge Jones held a five (5) day evidentiary hearing on five  
17 (5) separate dates between August 27, 2018 and September 18, 2018, regarding, Plaintiff's Motion to  
18 Adjudicate the Lien, and determined that the claims for Breach of Contract, Declaratory Relief,  
19 Conversion, Breach of the Implied Covenant of Good Faith and Fair Dealing, Breach of Fiduciary  
20 Duty, and Punitive damages must be dismissed as a matter of law. *See* Notice of Entry of Decision  
21 and Order on Motion to Dismiss NRCP 12(B)(5), dated October 24, 2018, attached hereto as **Exhibit**  
22 **L**.

23  
24  
25  
26  
27 <sup>1</sup> The Edgeworths note that Plaintiffs also filed a Special Motion to Dismiss the Edgeworths' Amended Complaint  
28 pursuant to Nevada's anti-SLAPP statutes on March 28, 2018, in matter number A-16-738444-C. However, that Motion  
was specifically denied as moot and, as such, and for the sake of brevity, no further presentation regarding same is  
presented herein.

1 Believing in good faith that this decision was made in error, on August 8, 2019, the  
2 Edgeworths filed an appeal challenging Judge Jones' Order Adjudicating the Lien. The appeal is  
3 currently pending before the Nevada Supreme Court. *See Appellant's Opening Brief*, dated August  
4 9, 2019, attached hereto as **Exhibit M**.

5 Plaintiffs also filed a Petition for Writ of Prohibition or Mandamus with the Nevada Supreme  
6 Court on October 17, 2019, challenging the amount adjudicated by Judge Jones. *See Nevada Supreme*  
7 *Court Docket Sheet for Case No. 7982*, attached hereto as **Exhibit N**. The Writ is also currently  
8 pending resolution. *Id.*

#### 10 **H. Plaintiffs' Improper and Unsupported Complaint Regarding AMG**

11 On December 23, 2019, while the appellate issues were still pending before the Nevada  
12 Supreme Court, and still having not released the Viking Settlement funds to the Edgeworths, Plaintiffs  
13 filed the SLAPP Complaint in this matter [hereinafter referred to as "The Simon Complaint"]. The  
14 Simon Complaint improperly seeks damages against the Edgeworths and specifically inappropriately  
15 against AMG. *See The Simon Complaint*, dated December 23, 2019, on-file herein. The Simon  
16 Complaint alleges that the Edgeworth Complaint and Amended Complaint somehow form a basis for  
17 the instant lawsuit, despite the complaints being privileged free speech protected by the absolute  
18 litigation privilege. *Id.* Further, The Simon Complaint is based upon the wholly meritless and  
19 unsupported allegation that the Edgeworths did not have honest beliefs regarding the merits of the  
20 causes of actions brought within the Edgeworth Complaint and Amended Complaint. *Id.* at paragraph  
21 26. Based upon this allegation, Plaintiffs allege in The Simon Complaint that the Edgeworth  
22 Complaint and Amended Complaint should not be afforded the absolute litigation privilege and  
23 should not be protected as free speech under Nevada's Constitution. *Id.* AMG responds as follows.

26 ///

27 ///

### III. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS

In 1993, the Nevada legislature enacted statutory provisions to protect persons from being subject to retaliatory litigation involving various communications, commonly called the “anti-Strategic Lawsuits Against Public Participation” or “anti-SLAPP” statute. In 1997, the Legislature explained that SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs. 1997 Nev. Stat., Ch. 387, Preamble, at 1364 (preamble to bill enacting anti-SLAPP statute).

Nevada’s anti-SLAPP statute provides that a person “who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication.”<sup>2</sup> The statute “only protects citizens who petition the government from civil liability arising from good-faith communications” and “it bars claims from persons who seek to abuse other citizens’ rights to petition their government, and it allows meritorious claims against citizens who do not petition the government in good faith.”<sup>3</sup>

Under the statute, “if a person is sued based upon good faith communications in furtherance of the right to petition, the person against whom the action is brought may file a special motion to dismiss.”<sup>4</sup> The Nevada anti-SLAPP statute requires courts to employ a two-step process in ruling on a special motion to dismiss. A “court first has to ‘[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon good faith communication in furtherance of the right to petition...in direct connection with an issue of public concern.’”<sup>5</sup> If the movant fails to satisfy this threshold burden, the Court must deny the motion.<sup>6</sup> “[I]f

<sup>2</sup> NRS 41.650.

<sup>3</sup> John v. Douglas Cnty. Sch. Dist., 219 P.3d 1276, 1281 (Nev. 2009).

<sup>4</sup> Rebel Commc’ns, LLC, 2010 WL 2773530, at \*2; NRS 41.660(1)(a).

<sup>5</sup> Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp., No. 2:14-cv-424, 2016 WL 4134523, at \*3 (D. Nev. Aug. 2, 2016) (quoting NRS 41.660(3)(a)) (alterations in original).

<sup>6</sup> See Baharian-Mehr v. Smith, 189 Cal. App. 4th 265, 271-72 (Cal. Ct. App. 2010).

1 the defendant does not demonstrate this initial prong, the court should deny the anti-SLAPP motion  
2 and need not address the second step.”<sup>7</sup>

3 If the moving party satisfies their initial burden, the court then determines whether the non-  
4 moving party “has demonstrated with prima facie evidence a probability of prevailing on the  
5 claim[.]”<sup>8</sup> N.R.S. 41.660’s burden-shifting framework evolved in 2015 when the Legislature  
6 *decreased* the plaintiffs’ burden of proof from “clear and convincing” to “*prima facie*” evidence.<sup>9</sup>

7  
8 The Nevada Supreme Court found it appropriate to adopt California’s recitation of the  
9 standard of review for a district court’s denial or grant of an anti-SLAPP motion to dismiss as *de*  
10 *novo*, laid out in Park v. Board of Trustees of California State University.<sup>10</sup> The Nevada Supreme  
11 Court repeatedly recognized the similarities between California’s and Nevada’s anti-SLAPP statutes,  
12 looking to California courts for guidance.<sup>11</sup>

13 We review *de novo* the grant or denial of an anti- SLAPP motion. We exercise  
14 independent judgment in determining whether, based on our own review of the  
15 record, the challenged claims arise from protected activity. In addition to the  
16 pleadings, we may consider affidavits concerning the facts upon which liability is  
17 based. We do not, however, weigh the evidence, but accept plaintiff’s submissions  
as true and consider only whether any contrary evidence from the defendant  
establishes its entitlement to prevail as a matter of law.<sup>12</sup>

18 Thus, “[a]lthough called a ‘motion to dismiss,’ anti-SLAPP motions are treated like motions  
19 for summary judgment.”<sup>13</sup> Accordingly, “summary judgment standards apply.”<sup>14</sup>

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20  
21  
22 <sup>7</sup> Id.

<sup>8</sup> NRS 41.660(3)(b).

<sup>9</sup> 2015 Nev. Stat., ch. 428, § 13, at 2455.

<sup>10</sup> Coker v. Sassone, 2019 Nev. LEXIS 1.

23  
24 <sup>11</sup> See, e.g., Patin v. Lee, 134 Nev., Adv. Op. 87, 429 P.3d 1248, 1250-51 (2018); Shapiro v. Welt, 133  
25 Nev. at 40, 389 P.3d at 268 (adopting California’s “guiding principles” to define “an issue of public interest”  
pursuant to N.R.S. §41.637(4)); John v. Douglas Cty. Sch. Dist., 125 Nev. at 752, 219 P.3d at 1281 (describing  
both states’ anti-SLAPP statutes as “similar in purpose and language”).

<sup>12</sup> Park v. Board of Trustees of California State University, 2 Cal. 5th 1057, 217 Cal. Rptr.3d 130 (Cal.  
26 2017) (citations omitted).

<sup>13</sup> Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp., No. 2:14-CV-424 JCM (NJK), 2016  
27 U.S. Dist. LEXIS 101028, at \*6-7 (D. Nev. Aug. 2, 2016) (citing Davis v. Parks, 2014 Nev. Unpub. LEXIS 651,  
2014 WL 1677659, at \*7).

<sup>14</sup> Balestra-Leigh v. Balestra, No. 3:09-cv-551, 2010 WL 4280424, at \*4 (D. Nev. Oct. 19, 2010).



Summary judgment is appropriate when a review of the record viewed in a light most favorable to the nonmoving party reveals no triable issues of material fact and judgment is warranted as a matter of law.<sup>15</sup> The two substantive requirements for the entry of summary judgment are: (1) there must be no genuine issue of material fact; and (2) the moving party is entitled to judgment as a matter of law.<sup>16</sup>

“Summary judgment is appropriate and ‘shall be rendered forthwith’ when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’”<sup>17</sup> Further, “[t]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”<sup>18</sup>

#### IV. DEFENDANT’S SPECIAL MOTION TO DISMISS SHOULD BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

Plaintiffs’ claims forwarded against AMG within The Simon Complaint should be dismissed pursuant to Nevada’s Anti-SLAPP statute and relevant case law. First, the speech in question is clearly covered by the First Amendment, as the communications at issue were made to a judicial body by AMG through their counsel Vannah. Second, Plaintiffs cannot and will not prevail on the claims alleged against AMG in The Simon Complaint. Finally, AMG unquestionably had – and continues to have – a good faith basis to file and maintain claims against Plaintiffs based on the factual allegations forwarded by the Edgeworths, including AMG, within the Edgeworth Complaint and Amended Complaint. Accordingly, as discussed in further detail below, dismissal of The Simon Complaint in its entirety as against AMG is appropriate.

<sup>15</sup> Scialabba v. Brandise Const. Co., Inc., 112 Nev. 965, 968; 921 P.2d 928 (1996).

<sup>16</sup> NRCp 56.

<sup>17</sup> Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005).

<sup>18</sup> Id. at 1031.

1 It is apparent that Plaintiff Simon's objective in filing the Simon Complaint is to harass and  
2 punish the Edgeworths over a several year intensive fee dispute. Demonstrative of this theme is the  
3 timing of Plaintiff Simon's original retention of counsel. Specifically, on November 27, 2017, the  
4 same day that Plaintiff Simon sent the November 27, 2017 Letter to Brian and Angela, Plaintiff Simon  
5 also retained and met with his own counsel regarding the Edgeworths. See Billing Invoice from  
6 Christiansen, attached hereto as **Exhibit C**.

7  
8 Thus, on the same day Plaintiff Simon attempted to coerce Brian and Angela into modifying  
9 the hourly-billed fee arrangement into a contingency agreement, which would have resulted in a  
10 windfall to Plaintiffs of nearly \$1.2 million, Plaintiff Simon was also setting up a process by which  
11 he could seek redress from, harass and punish the Edgeworths if they did not agree to his demands.  
12 Plaintiff Simon knew, or should have known, that he had no legal or equitable basis to claim any  
13 portion of the Viking Settlement. Despite this knowledge, Plaintiff Simon retained Mr. Christiansen  
14 three (3) days prior to being informed that the Edgeworths were rejecting his offer for a contingency  
15 fee agreement. Plaintiff Simon had retained Mr. Christianson three (3) days prior to the Edgeworths'  
16 retention of Mr. Vannah. Thus, the record demonstrates that Mr. Simon was preparing for litigation  
17 well in advance of the Edgeworths' final decision regarding the coercive fee agreement. Thus,  
18 Plaintiff Simon's claim that he incurred damages as he was forced to retain an attorney to defend  
19 himself is patently false. He had clearly retained counsel long before the Edgeworth Complaint was  
20 filed and served.  
21

22 The Simon Complaint was clearly brought against the Edgeworths for the improper purposes  
23 Nevada's anti-SLAPP statute specifically seeks to protect against, requiring its dismissal.  
24

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27 ///

**A. The Edgeworths Satisfy the First Prong of the Anti-SLAPP Analysis**

- i. *The Speech in Question, All Contained Within a Civil Lawsuit, Is Clearly Covered By The First Amendment As Communications To A Judicial Body and Falls Squarely Within Nevada's Anti-SLAPP Statute*

Under Nevada law, “communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability.” *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002). The privilege also applies to “conduct occurring during the litigation process.” *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, “bars any civil litigation based on the underlying communication.” *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).

The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies “so long as [the statements] are in some way pertinent to the subject of controversy.” *Id.* Moreover, the statements “need not be relevant in the traditional evidentiary sense, but need have only ‘some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged.” *Id.* at 61, 657 P.2d at 104.

Imposing tort liability on the Edgeworths, including AMG, would be in contravention of Nevada's anti-SLAPP law. NRS 41.637(3), states, “Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern” means any [ . . . ] written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law.” The

1 essence of The Simon Complaint is that the Edgeworths, including AMG, allegedly utilized the Clark  
2 County District Court system to disparage Plaintiff Simon's business, thereby damaging Plaintiff  
3 Simon's reputation and causing economic harm.

4 AMG, in conjunction with the Edgeworths, by and through their attorney of record Vannah,  
5 filed their Complaint against Plaintiffs on January 4, 2018, and later filed an Amended Complaint on  
6 March 15, 2018, to seek redress for wrongs committed by another pursuant to well-founded claims  
7 for relief. The Edgeworth Complaint and Amended Complaint are both examples of petitions to a  
8 judicial body. See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v.*  
9 *Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2<sup>nd</sup>  
10 Dist. Div. 1 Calif. 2017) (unpublished). As such, the Complaint and Amended Complaint that the  
11 Edgeworths filed by and through their attorney Vannah qualify as, and are, protected communications  
12 pursuant to NRS 41.637(3).  
13

14 In the instant case, as discussed previously, The Simon Complaint alleges eight causes of  
15 action (identified as "Counts"): (I) Wrongful Use of Civil Proceedings – All Defendants; (II)  
16 Malicious Prosecution – All Defendants; (III) Abuse of Process – All Defendants; (IV) Negligent  
17 Hiring, Supervision, and Retention; (V) Defamation Per Se; (VI) Business Disparagement; (VII)  
18 Negligence; (VIII) Civil Conspiracy. Every cause of action alleged against AMG are based in AMG's  
19 utilization of the civil litigation process. Because Plaintiff Simon recognizes through The Simon  
20 Complaint that the damages he claims all stem from the lawsuit filed on January 4, 2018, Plaintiff  
21 Simon essentially concedes that the speech in question – all of which is contained within a civil  
22 lawsuit – is clearly absolutely privileged as protected free speech under the First Amendment as  
23 communications to a judicial body.  
24  
25

26 The use of a complaint, an amended complaint, briefs, and arguments are all protected  
27 communications under NRS 41.637. The use of these protected communications serves as the basis  
28

1 for The Simon Complaint, thereby satisfying the first prong of the Anti-SLAPP statute analysis  
2 because they fall squarely within the Anti-SLAPP statute provisions.

3 In further support of the fact that this suit is prime for dismissal under Nevada's Anti-SLAPP  
4 statute, Plaintiffs have admitted that no contingency fee arrangement or agreement ever existed  
5 between Plaintiffs and the Edgeworths. Plaintiff Simon based his wrongful and continued dominion  
6 and control over the Viking Settlement funds on a self-serving assertion that he assumed he would be  
7 fairly compensated at the end of the case in violation of NRPC 1.5, which required an agreement of  
8 this type to be in writing. Plaintiff Simon made this assertion after being paid \$368,588.70 over the  
9 course of 18 months and having incurred no risk, as the Edgeworths covered the incurred litigation  
10 costs of \$114,864.39 in their entirety.

11  
12 The Edgeworths attempted to negotiate with Plaintiffs themselves for the Viking Settlement  
13 funds to be released when they were received, but those negotiations proved fruitless. The  
14 Edgeworths then enlisted the assistance of an attorney to help with discussions to attempt to convince  
15 Plaintiffs to release the Viking Settlement funds; those discussions also proved to be fruitless. When  
16 the efforts of the attorney to negotiate this matter outside of court were fruitless, the Edgeworths were  
17 forced to file a civil complaint, asking the Court to assist them in obtaining the funds from the Viking  
18 Settlement they were rightfully due under the law.

19  
20 In the underlying proceedings, Judge Jones adjudicated an additional \$484,982.50 was owed  
21 to Plaintiffs. Of note is that this is significantly less than the amount Plaintiff Simon had been  
22 claiming he was entitled to and was based solely upon an hourly fee arrangement. Following that  
23 adjudication, the Edgeworths, through their attorney Vannah, offered to pay Plaintiffs the amount  
24 awarded to Plaintiffs by the Court in exchange for Plaintiff Simon's agreement to release the Viking  
25 Settlement funds. Despite this communication, Plaintiffs continued to maintain that they were owed  
26 more money than was adjudicated by the Court, and they continued to maintain wrongful dominion  
27  
28

1 and control over the funds. The Edgeworths had no choice but to enlist the help of the Court to  
2 resolve this dispute. However, rather than accepting almost \$1 million in compensation, exactly as  
3 he had promised in his correspondence dated November 27, 2017, Plaintiff Simon brought this  
4 SLAPP suit purely to intimidate and punish the Edgeworths for not signing a coercive contingency  
5 fee agreement following the settlement resolution of the Viking matter.

6 Contrary to Plaintiffs' allegations, there is vast evidentiary support for all of the facts  
7 contained in the Edgeworth Complaint and the Edgeworths' Amended Complaint. To quote  
8 Plaintiffs' position from an earlier-filed Special Motion to Dismiss, "...you cannot be sued for  
9 following the law." AMG did nothing more than follow the law by properly utilizing the court system  
10 available to adjudicate a dispute between the parties. Thus, AMG has satisfied its burden under NRS  
11 41.660 & 41.665, and the burden now shifts to Plaintiffs.  
12

13 **B. Plaintiffs Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis Because**  
14 **They Cannot Demonstrate a Probability of Prevailing on Their Claim**

15 Plaintiffs asserted eight causes of action in their Complaint. While on its face it appears that  
16 only claims (I) Wrongful Use of Civil Proceedings – All Defendants; (II) Malicious Prosecution –  
17 All Defendants; (III) Abuse of Process – All Defendants; and (VIII) Civil Conspiracy are actually  
18 alleged against AMG, Plaintiffs' use of the defined term "Defendants and each of them" within each  
19 count belies that Plaintiffs may have been including AMG within every Count, and thus each Count  
20 is addressed herein. Plaintiffs' allegations contained in Count V (Defamation Per Se), Count IV  
21 (Negligent Hiring, Supervision, and Retention), and Count VII (Negligence), do not appear to have  
22 been asserted against AMG, and while briefly addressed here, arguments in this regard may be  
23 addressed more extensively by the accused parties.<sup>19</sup>  
24

25  
26 <sup>19</sup> Given the vague and ambiguous nature of the allegations within Simons' Complaint and the apparent cutting and pasting  
27 of portions of same, such that the underlying allegations may be asserted against only two (2) of the Edgeworth parties  
28 and other parts of the same count then indicated other Edgeworth parties, AMG specifically reserves any and all rights to  
potentially discuss Counts IV, V and VII of Simons' Complaint within AMG's Reply to Plaintiffs' Opposition to this  
Motion, if any.

1 Plaintiffs' claims are either procedurally premature and/or there is no set of facts that Plaintiffs  
2 could prove that would entitle them to a remedy at law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124  
3 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Plaintiffs cannot show that they have a probability of  
4 prevailing on their claims and, thus, their claims must be dismissed. A plain reading of the Simon  
5 Complaint reveals that the primary basis for Plaintiffs' claims for alleged wrongful use of civil  
6 proceedings, defamation *per se* and business disparagement are pleadings filed and statements  
7 allegedly made by one or more of the defendants in the course of the underlying litigation and  
8 judicial proceedings. See The Simon Complaint, generally, on-file herein.

9  
10 As the Edgeworths' (including AMG) written and oral communications and statements, which  
11 are the only basis set forth within the Simon Complaint, upon which Plaintiffs alleged entitlement to  
12 relief, are "absolutely privileged," there is no set of facts...which would entitle Plaintiffs to any relief,  
13 or to prevail. See, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672  
14 (2008). Therefore, Plaintiffs do not have any prima facie evidence to support these claims/counts  
15 upon which relief could ever be granted and thus cannot satisfy their burden under the law. NRS  
16 41.660(3)(b).

17  
18 i. *Plaintiffs Cannot Make a Prima Facie Case for Wrongful Use of Civil*  
19 *Proceedings*

20 Plaintiffs cannot establish a prima facie case for Count I (Wrongful use of Civil Proceedings).  
21 According to the Restatement (Second) of Torts § 674, the tort for wrongful use of civil proceedings  
22 is described as follows:

23 One who takes an active part in the initiation, continuation or procurement  
24 of civil proceedings against another is subject to liability to the other for  
25 wrongful civil proceedings if:

26 (a) he acts without probable cause, and primarily for a purpose other than  
27 that of securing the proper adjudication of the claim in which the  
28 proceedings are based, and

(b) except when they are ex parte, the proceedings have terminated in  
favor of the person against whom they are brought.

1 Although many jurisdictions recognize this tort, **the State of Nevada does not**. *Ralphaelson v.*  
2 *Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009 WL 2382765, at \*2 (D. Nev. July  
3 31, 2009). Nevada Rule of Professional Conduct 1.5(c)(5), requires that any contingency fee  
4 agreement warn that “a suit brought solely to harass or to coerce a settlement may result in liability  
5 for malicious prosecution or abuse of process.” The rule also clearly states that the tort of abuse of  
6 process is the potential remedy for a vexatious civil case, indicating that a claim for wrongful use of  
7 civil proceedings neither exists nor applies in this context. NRPC 1.5(c)(5). Further NRS 199.320,  
8 which assigns criminal liability to the intentional misuse of lawsuits to distress or harass a defendant,  
9 assigns no civil liability and does not imply that a tort for wrongful use of civil proceedings exists.  
10 Because a claim for wrongful use of civil proceedings is not a recognized claim for which Plaintiffs  
11 could be granted relief under Nevada Law, Plaintiffs’ have no probability of prevailing upon their  
12 claim in Count I (Wrongful Use of Civil Proceedings), requiring that same be dismissed as against  
13 AMG.  
14

15  
16 **ii. Plaintiffs Cannot Make a Prima Facie Case for Malicious Prosecution**

17 Plaintiffs cannot establish a prima facia case for Count II (Malicious Prosecution) against  
18 AMG. Malicious prosecution is a common law intentional tort aimed at actors, whether private or  
19 governmental, which commence or institute, or cause to be commenced or instituted, unwarranted or  
20 unjustified legal proceedings against a defendant. In Nevada, the elements for a claim of malicious  
21 prosecution are:

- 22 1. Filing of **criminal action**;
- 23 2. Lack of probable cause to commence prior action;
- 24 3. Malice;
- 25 4. Favorable termination of prior the action; and
5. Causation and damages.

26 *LaMantia v. Redisi*, 38 P.3d 877 (2002); *Dutt v. Kremp*, 111 Nev. 57 (1995); *Chapman v. City of*  
27 *Reno*, 85 Nev. 365 (1969), **emphasis added**. A malicious prosecution claim requires that the  
28



1 defendant initiated, procured the institution of, or actively participated in the continuation of a  
2 criminal proceeding against the plaintiff. *LaMantia*, 118 Nev. 30, 38 P.3d 879–80. The facts of this  
3 case show that neither AMG, Vannah, or the Edgeworths initiated or procured the institution of a  
4 criminal proceeding against Plaintiffs. Therefore, as a matter of law, Plaintiffs cannot assert a  
5 malicious prosecution claim against AMG.

6 iii. Plaintiffs Cannot Make a Prima Facie Case for Abuse of Process

7  
8 In Nevada, the term “malicious prosecution[,]” which denotes the wrongful initiation of  
9 criminal proceedings, is distinguished from the “malicious use of process” which denotes the  
10 wrongful initiation of civil proceedings. Here, not only does Plaintiffs’ claim for alleged Malicious  
11 Prosecution fail as a matter of law, Plaintiffs also cannot establish a prima facie case for Count III  
12 (Abuse of Process) against AMG.

13 Abuse of process is a tortious cause of action arising from one party maliciously and  
14 deliberately misusing the courts and the law through an underlying legal action. This is to be  
15 distinguished from malicious prosecution in that it is aimed at the use and misuse of legal process for  
16 illegitimate purposes, regardless of the merit of the underlying claim. Abuse of process can be  
17 distinguished from malicious prosecution, in that abuse of process typically does not require proof of  
18 malice, lack of probable cause in procuring issuance of the process, or a termination favorable to the  
19 plaintiff, all of which are essential to a claim of malicious prosecution. An abuse of process claim in  
20 Nevada has two fundamental elements: (1) an ulterior purpose, and (2) a willful act in the use of the  
21 process not proper in the regular conduct of a proceeding. *Executive Mgmt. Ltd. v. Ticor Title Ins.*  
22 *Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). The action for abuse of process hinges on the  
23 misuse of regularly issued process. *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601,  
24 606, 503 P.2d 9 (1972).  
25  
26  
27  
28

1 The mere filing of a complaint itself is insufficient to establish the tort of abuse of process.  
2 *Hampton v. Nustar Managment Financial Group, Dist. Court*, 2007 WL 119146 (D. Nev. Jan. 10,  
3 2007); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Instead, the complaining party  
4 must include some allegation of abusive measures taken after the filing of the complaint in order to  
5 state a claim. *Id.*

6 Furthermore, maintaining a lawsuit for the purpose of continuing litigation as a lever to obtain  
7 a settlement is not an improper motive and would not demonstrate any ulterior purpose other than  
8 resolution or settlement of the suit which is an acceptable use of process. “Abuse of process will not  
9 lie for a civil action which inconveniences a defendant, or for one filed in expectation of settlement  
10 (a ‘nuisance’ suit)” because “[s]ettlement is included in the ‘goals of proper process,’ even though  
11 the suit is frivolous.” *Rashidi v. Albright*, 818 F. Supp. 1354, 1359 (D. Nev. 1993); *Wilson v. Hayes*,  
12 464 N.W. 2d 250, 267 (Iowa 1990). Likewise, the imposition of expenses arising from the defense  
13 of a lawsuit is an insufficient injury to sustain a claim for abuse of process. *Stroock & Stroock &*  
14 *Lavan v. Beltramini*, 157 A.D.2d 590, 591, 550 N.Y.S.2d 337, 338 (App Div. 1st Dept. 1990).

15  
16  
17 The second element’s reference to a willful improper action cannot simply be the filing of a  
18 complaint. Rather, it must be a subsequent willful act such as “minimal settlement offers or huge  
19 batteries of motions filed solely for the purpose of coercing a settlement.” *Laxalt v. McClatchy*, 622  
20 F. Supp. 737, 752 (1985); *Kollodge v. State*, 757 P.2d 1024 (Alaska 1988) (explaining that the second  
21 element of the tort of abuse of process contemplates some overt act done in addition to the initiating  
22 of the suit). As explained in *Laxalt*:

23  
24 This is a severely strained interpretation of the Bull case. The  
25 Nevada court clearly indicated the attorney abused the process  
26 available to him by offering to settle the case for a minimal sum and  
27 by failing to present proper evidence at trial. It was the actions  
28 which the lawyer took (or failed to take) after the filing of the  
complaint which constituted the abuse of process, and not the filing  
of the complaint itself, which constituted the tort in the Bull court’s  
estimation. Thus, Nevada follows the rule, as does an

1 overwhelming majority of states, that the mere filing of the  
2 complaint is insufficient to establish the tort of abuse of process.

3 It is clear that McClatchy has failed to state a claim for abuse of  
4 process under Nevada law. As seen above, Nevada courts have held  
5 that the filing of a complaint alone cannot constitute the willful act  
6 necessary for the tort to lie. This, however, is all that McClatchy  
7 has alleged. There is no allegation of abusive measures taken after  
8 the filing of the complaint, such as minimal settlement offers or huge  
9 batteries of motions filed solely for the purpose of coercing a  
10 settlement.

11 *Id.* (internal citations omitted). In fact, the California Supreme Court has observed that “the  
12 overwhelming majority” of states hold that “the mere filing or maintenance of a lawsuit – even for  
13 an improper purpose – is not a proper basis for an abuse of process action.” *Oren Royal Oaks Venture*  
14 *v. Greenberg, Bernhard, Weiss & Karma, Inc.*, 728 P.2d 1202, 1209 (Cal. 1986) (citations  
15 omitted). *See also, Trear v. Sills*, 82 Cal. Rptr. 2d 281, 293 (Cal. Ct. App. 1999) (“[T]he tort [of  
16 abuse of process] requires abuse of legal process, not just filing suit. Simply filing a lawsuit for an  
17 improper purpose is not abuse of process.”). Prosser concurs with this view:

18 Some definite act or threat not authorized by the process, or aimed at an  
19 objective not legitimate in the use of the process, is required; and there  
20 is no liability where the defendant has done nothing more than carry out  
21 the process to its authorized conclusion, even though with bad  
22 intentions.

23 Prosser and Keeton on the Law of Torts § 121, at 898 (footnote omitted). Thus, to survive a motion  
24 to dismiss, a party must plead a willful act taken by the defendant in addition to filing the  
25 complaint. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985).

26 As addressed *infra*, AMG filed its suit along with the Edgeworths, for a proper purpose. As  
27 such, Plaintiffs cannot establish that abusive measures were taken by AMG after the filing of the  
28 Edgeworth Complaint and Amended Complaint. The Simon Complaint is inextricably linked to  
written and oral communications made by the Edgeworths by and through their attorney Vannah in  
the underlying judicial action that is presently on appeal. Simply put, a matter that has been appealed,

1 briefed and submitted to the Nevada Supreme Court, cannot be found to support a showing of alleged  
2 “additional abusive measure,” as required to demonstrate a prima facie case for alleged abuse of  
3 process. Plaintiffs cannot then demonstrate by prima facie evidence that they can prevail on their  
4 claim for abuse of process. See, *LaMantia v. Redis*, 38 P.3d 877, 879-80 (2002); *Laxalt v. McClatchy*,  
5 622 F. Supp. 737, 752 (D. Nev. 1985). Therefore, Plaintiffs again cannot meet their burden under  
6 NRS 41.660(3)(b).

7  
8 The matter underlying the Simon Complaint is a case where discovery never occurred. In  
9 fact, the Edgeworth Complaint and the Edgeworth Amended Complaint were never answered by  
10 Simon, and the case was adjudicated and dismissed before any discovery was allowed to take place.  
11 It is impossible to state that a Complaint, to which no Answer was filed, and for which no discovery  
12 was conducted contained any semblance of “abusive measure,” to formulate a basis for a claim of  
13 abuse of process. See, *Laxalt*, 622 F. Supp. at 752. Plaintiffs would like this Court to believe that  
14 the prosecution of the legitimate claims brought in the Edgeworth Complaint and the Edgeworth  
15 Amended Complaint amount to an alleged abusive measure. However, Plaintiffs have pled no factual  
16 allegations which demonstrate the Edgeworths’ engagement in this lawful process was abusive, other  
17 than vague representations coupled with Plaintiffs’ own conclusory statement that it is so. Therefore,  
18 Plaintiffs’ cannot demonstrate that they have any probability of prevailing upon their claim for alleged  
19 abuse of process, requiring said Count be dismissed as against AMG pursuant to NRS 41.660(3)(b).  
20

21 iv. *Plaintiffs Cannot Make a Prima Facie Case Against AMG for Negligent*  
22 *Hiring, Supervision and Retention*

23 Plaintiffs’ fourth claim alleges Negligent Hiring, Supervision, and Retention. However,  
24 Plaintiffs cannot establish a prima facie case against AMG for Negligent Hiring, Supervision, and  
25 Retention, requiring that that Count be dismissed as against AMG. In Nevada, the elements of a claim  
26 for negligent hiring, retention, and supervision are:  
27  
28

1. Employer had a duty to protect plaintiff from harm resulting from its employment of the tortfeasor;
2. Employer breached that duty by hiring, retaining, failing to train, supervise, or discipline the tortfeasor;
3. Proximate cause; and
4. Causation and damages.

*Nurse v. U.S.*, 226 F.3d 99 (9th Cir. 2000); *Blanck v. Hager*, 360 F. Supp. 2d 137, 157 (2005); *Goodrich and Pennington Mortgage Fund, Inc. v. RJ Woolard, Inc.*, 120 Nev. 777 (2004); *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226-27, 925 P.2d 175, 1181 (1996); *Harrigan v. City of Reno*, 86 Nev. 678, 475 P.2d 94 (Nev. 1970); *Amen v. Mercedes Cty. Title Co.*, 58 Cal. 2d 528 (1962); *Rianda v. Sand Benito Title Guar. Co.*, 35 Cal. 2d 170 (1950).

Words can be both the greatest weapon, and the greatest source of misunderstanding. In the Simon Complaint, it appears that this claim was brought against Robert D. Vannah, Chtd. However, a careful reading of the Simon Complaint indicates that Plaintiffs, whether intentionally or unintentionally, have at least partially asserted this claim against Defendants and each of them in ¶ 62 of the Simon Complaint. See Simon Complaint, at ¶ 62, on file herein. Plaintiffs fail to allege any of the elements for a claim of negligent hiring, supervision, and retention against AMG, aside from perhaps an attempt to assert that Defendants, and each of them, should be subject to an award for punitive damages should Plaintiffs establish this claim. This logic has no basis in Nevada law, and therefore should not be countenanced by this Court. As to AMG, because Plaintiffs failed to assert ANY of the elements of this claim against AMG directly, Plaintiffs clearly cannot establish a prima facie case of alleged negligent hiring, supervision, and retention against AMG, requiring that Count be dismissed as against AMG.

v. *Plaintiffs Cannot Make a Prima Facie Case Against AMG for Defamation Per Se OR Business Disparagement OR Negligence*

Plaintiffs next assert Count V for alleged Defamation Per Se, Count VI for alleged Business Disparagement, and Count VII for alleged Negligence; however, Plaintiffs cannot establish prima

1 facie cases for any of these claims as against AMG. In Nevada, the elements for a claim of defamation  
2 per se are:

- 3 1. False and defamatory statement by defendant concerning the plaintiff;
- 4 2. Unprivileged publication of the statement to third party;
- 5 3. Some level of fault amounting at least to negligence; and
- 6 4. Actual or presumed damages.

7 To constitute defamation per se, the statement must fall into one of four categories: “(1) that the  
8 plaintiff committed a crime; (2) that the plaintiff has contracted a loathsome disease; (3) that a woman  
9 is unchaste; or (4) the allegation must be one which would tend to injury the plaintiff in his or her  
10 trade, business, profession or office.” *Nev. Indep. Broad. Corp.*, 99 Nev. 404, 409, 664 P.2d 337, 341  
11 (1983). Additionally, the defamatory comments must imply a “habitual course of similar conduct, or  
12 the want of the qualities or skill that the public is reasonably entitled to expect.” *See* Restatement  
13 (Second) of Torts §573 cmt. (1977).

14 Further, in Nevada, the elements for a claim of business disparagement are:

- 15 1. A false and disparaging statement that interferes with the  
16 plaintiff’s business or are aimed at the business’s goods or  
17 services;
- 18 2. The statement is not privileged;
- 19 3. The statement is made with malice; and
- 20 4. Proof of special damages.

21 *Clark County School District v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 213 P.3d 496 (Nev.  
22 2009). Finally, Negligence lawsuits in Nevada require that plaintiffs prove four things:

- 23 1. The defendant had a duty of care;
- 24 2. The defendant breached this duty;
- 25 3. This breach caused the plaintiff’s injuries
- 26 4. These injuries resulted in a financial loss

27 *Turner v. Mandalay Sports Entm’t, LLC*, 124 Nev. 213, 180 P.3d 1172 (2008); *Scialabba v. Brandise*  
28 *Construction Co.*, 112 Nev. 965, 921 P.2d 928 (1996); *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4,  
805 P.2d 589 (1991). Negligence is the failure to exercise that degree of care which an ordinarily

careful and prudent person would exercise under the same or similar circumstances. NEVADA JURY INSTRUCTIONS 4.02; NEVADA JURY INSTRUCTIONS 4.03; BAJI 3.10.

Again, in the Simon Complaint, it appears that these claims were brought against Brian Edgeworth and Angela Edgeworth. However, a careful reading of the Simon Complaint indicates that Plaintiffs, whether intentionally or unintentionally, have at least partially asserted these claims against “Defendants and each of them” in paragraphs 66, 69, 70, 71, and 79 of the Simon Complaint, potentially implicating AMG. See The Simon Complaint, at ¶ 62, on file herein. While unlike the claim above wherein Plaintiffs attempt to implicate that all Defendants, including AMG, are allegedly liable for punitive damages under that claim, based on the action of other parties, here, it appears as though Plaintiffs are attempting to imply that AMG allegedly committed Defamation Per Se.

“It is a long-standing common law rule that communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged.” *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (quoting *Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983)). Under Nevada law, “communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability.” *Greenberg Taurig v. Frias Holding Co.*, 130 Nev. 627, 630 (2014). A communication can be protected under the litigation privilege even when no judicial proceeds have commenced if “(1) a judicial proceeding [is] contemplated in good faith and under serious consideration, and (2) the communication [is] related to the litigation.” *Clark Cty. Sch. Dist.*, 125 Nev. at 383. “An absolute privilege bars any civil litigation based on the underlying communication.” *Hampe v. Foote*, 118 Nev. 405, 409 (2002), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224 (2008). “The purpose of the absolute privilege is to afford all persons the freedom to access the courts with assured freedom from liability for defamation where civil or criminal proceedings are seriously considered.” *Clark Cty. Sch. Dist.*, 125 Nev. at 383.



1 “Therefore, the absolute privilege affords parties the same protection from liability as those  
2 protections afforded to an attorney for defamatory statements made during, or in anticipation of,  
3 judicial proceedings.” *Id.*

4 This litigation privilege bars Plaintiffs from alleging civil claims against AMG based on any  
5 statements or arguments made within the context of litigation, as said statements and/or arguments  
6 are absolutely privileged and immunized from civil liability. In alleging their defamation *per se*  
7 claim, Plaintiffs do allege that “[t]he Edgeworth’s [sic] repeated these statements to individuals  
8 independent of the litigation.” Simon Complaint at ¶66. However, there are no factual allegations  
9 throughout the Complaint that support this bald assertion. Moreover, the absolute litigation  
10 privilege’s broad applicability extends beyond communications made during litigation to  
11 communications related to the litigation even when judicial proceedings have not commenced.  
12 Therefore, based on the litigation privilege alone Plaintiff’s claims for defamation *per se*, business  
13 disparagement, and negligence must all be dismissed as a matter of law as against AMG.  
14

15 Notwithstanding the fact that Plaintiffs have failed to show that their claims have any merit,  
16 a claim of defamation cannot stand against a corporation such as AMG based upon the factual  
17 allegations as presented within The Simon Complaint. “It is well settled ... that a corporation, just  
18 as an individual, may be liable for defamation by its employees.” Restatement, Agency 2d § 247;  
19 *Axton Fisher Tobacco Co. v. Evening Post Co.*, 1916, 169 Ky. 64, 183 S.W. 269, L.R.A. 1916E, 667;  
20 *Baker v. Atlantic Coast Line R. Co.*, 1939, 141 Fla. 184, 192 So. 606; *Hooper-Holmes Bureau v.*  
21 *Bunn*, 5 Cir. 1947, 161 F.2d 102, 104-105.  
22

23 Further, ““if an agent is guilty of defamation, the principal is liable so long as the agent was  
24 apparently authorized to make the defamatory statement.” *American Society of Mechanical Engineers*  
25 *v. Hydro Level Corporation*, 456 U.S. 556, 566, 102 S.Ct. 1335, 1342, 72 L.Ed.2d 330 (1982);  
26 Restatement (2d) of Agency, § 247 (1957). As such, “[a] master is [only] subject to liability from  
27  
28



1 defamatory statements made by an agent acting within the scope of his authority.” *Draper v. Hellman*  
2 *Commercial Trust & Savings Bank*, 203 Cal. 26, 263 P. 240 (1982); *Rosenberg v. J. C. Penney Co.*,  
3 30 Cal.App.2d 609, 86 P.2d 696 (1939); Rest. 2d Agency, sec. 247.

4 Pursuant to these principles, a corporation can only potentially be liable for the proven  
5 defamatory statements of its agent when it is also proven that the agent was authorized to make the  
6 defamatory statement by the corporation and the agent made the defamatory statement within the  
7 scope of the agent’s authority. In order to have any likelihood of surviving a motion to dismiss,  
8 Plaintiffs must have pled facts which could potentially demonstrate an agency relationship existed  
9 between AMG and Brian and/or Angela, that AMG authorized Brian and/or Angela to make the  
10 allegedly defamatory statement and that the allegedly defamatory statements were allegedly made  
11 within the scope of the authority granted to Brian and/or Angela by AMG.  
12

13 The Simon Complaint wholly fails to plead facts that, even if taken as true, would demonstrate  
14 that an agency relationship existed between AMG and Brian and/or Angela, as the only mention of  
15 any party other than Brian and Angela within Plaintiffs’ count for alleged defamation *per se* are bald,  
16 conclusory statements regarding the undefined catchall term “Defendants” and that Brian and Angela  
17 allegedly made the allegedly defamatory statements on behalf of the “Edgeworth entities[,]” defined  
18 as Brian, Angela, the Trust and AMG. See The Simon Complaint, at paragraphs 4, 69-71, on-file  
19 herein.  
20

21 As a beginning point, nothing within The Simon Complaint pleads facts that, even if taken as  
22 true, plausibly infer that AMG authorized anyone to do anything, let alone allegedly make an  
23 allegedly defamatory statement. Further, the use of the term “on behalf of” does not provide the  
24 required specificity to demonstrate that AMG allegedly authorized Brian and/or Angela to  
25 purportedly make alleged defamatory statements, as the demonstration required is not solely that the  
26 agent allegedly took the action on the company’s behalf, but that the agent undertook such action  
27  
28

1 with the company's express authority and the agent made the alleged defamatory statement within  
2 the scope of the authority granted to it by the company.

3       Given that the Simon Complaint wholly fails to plead facts which could be seen as coming  
4 anywhere close to potentially demonstrating the required elements for a claim of defamation *per se*  
5 against AMG (the existence of an agency relationship, the company authorizing the employee to  
6 make the statement and the employee making that statement within the scope of the company's  
7 granted authority), Plaintiffs simply have no possibility of success on their claim for alleged  
8 defamation *per se* against AMG. As Plaintiffs have no possibility of succeeding upon their claim for  
9 alleged defamation *per se* against AMG, as alleged defamation against a company must be  
10 demonstrated through an agency relationship which Plaintiffs have wholly failed to establish through  
11 properly pled allegations, The Simon Complaint must be dismissed against AMG regarding said  
12 claim.  
13

14               vi.       *Plaintiffs Cannot Make a Prima Facie Case for Civil Conspiracy*  
15

16       Plaintiffs cannot make a prima facie case for civil conspiracy. Count VIII (Civil Conspiracy)  
17 is factually and legally defective as well. "An actionable civil conspiracy is a combination of two or  
18 more persons who, by some concerted action, intend to accomplish some unlawful objective for the  
19 purpose of harming another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99  
20 Nev. 284, 303 (1983). "While the essence of the crime of conspiracy is the agreement, the essence of  
21 civil conspiracy is damages." *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). "The  
22 damages result from the tort underlying the conspiracy." *Id.* Here, Simon advances his civil  
23 conspiracy claim by asserting that "Defendants and each of them, through concerted action among  
24 themselves and others, intended to accomplish the unlawful objectives of (i) filing false claims for an  
25 improper purpose." Simon Complaint at ¶89.  
26  
27  
28

1 As Vannah deftly explains in its motion to dismiss, and is echoed in the Motion to Dismiss  
2 filed on behalf of the Edgeworths and AMG, no case law supports the assertion that the filing of a  
3 civil complaint constitutes an unlawful objective or act sufficient to give rise to a claim of civil  
4 conspiracy. *See Vannah Mot. to Dismiss* at 11–23, on file herein; *see also Edgeworths Mot. to*  
5 *Dismiss* at 7, on file herein. To the contrary, established law shows that filing of a complaint, even if  
6 such a filing was allegedly made for an ulterior purpose, does not constitute a tort. *See, Executive*  
7 *Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). Plaintiffs fail to  
8 establish that there is any actionable or recognized “tort” upon which the civil conspiracy claim is  
9 predicated. Thus, the civil conspiracy claim must itself fail as a matter of law.

11 In short, none of Plaintiffs’ allegations brought against AMG “rise to the level of a plausible  
12 or cognizable claim for relief.” Some are barred by the litigation privilege, others by a lack of  
13 procedural ripeness, some by the failure to allege all conditions precedent occurred, others still by the  
14 clear absence of any duty owed or remedy afforded, and all are protected by Nevada’s Anti-SLAPP  
15 laws. With all counts/claims being legally and factually deficient in material respects, Plaintiffs  
16 cannot meet their burden pursuant to NRS 41.660(3)(b), requiring that The Simon Complaint be  
17 dismissed in its entirety as against AMG.

19 **C. AMG, Along with Brian, Angela and The Trust, Unquestionably Had A Good**  
20 **Faith Basis To File And Maintain Claims Against Plaintiffs**

21 AMG had, and continues to have, a good faith basis upon which it relied upon in setting forth  
22 the claims presented within the Edgeworth Complaint and Edgeworth Amended Complaint. NRS  
23 41.637(3) defines a good faith communication in the context of Nevada’s anti-SLAPP statutes, and  
24 specifically states, in pertinent part, as follows:

25 “Good faith communication in furtherance of the right to petition or the right  
26 to free speech in direct connection with an issue of public concern” means  
27 any:

28 ...

1           3. Written or oral statement made in direct connection with an issue under  
2           consideration by a legislative, executive or judicial body, or any other official  
3           proceeding authorized by law.

4           AMG had a good faith basis to bring claims against Plaintiffs through the Complaint filed  
5           January 4, 2018, and the Amended Complaint filed March 15, 2018. Plaintiffs have admitted that no  
6           contingency fee arrangement or agreement existed during their representation of the Edgeworths.  
7           Through their attorney Vannah, on November 30, 2017, the Edgeworths specifically and  
8           unequivocally rejected Plaintiffs' offer to enter into the Retainer Agreement, as proposed to the  
9           Edgeworths within Plaintiff Simon's November 27, 2017 Letter. As such, at no time did the parties  
10          actually enter into an agreement whereby Plaintiffs would in any manner allegedly be entitled to a  
11          contingency fee of any percentage whatsoever of the Viking Settlement.  
12

13          Given the Edgeworths' clear and unequivocal rejection of Plaintiffs' offer to enter into the  
14          contingency fee Retainer Agreement, Plaintiff Simon knew – or should have known – that no new  
15          fee agreement had been created whereby Plaintiffs had any legal right to file an attorney's fee lien  
16          claiming entitlement to a percentage of the Viking Settlement via the never executed Retainer  
17          Agreement.  
18

19          Furthermore, Plaintiff Simon bases his continued wrongful dominion and control over the  
20          Viking Settlement funds on a self-serving assertion that he would be "fairly compensated" at the end  
21          of the case. It is simply unfathomable that Plaintiff Simon continues to refuse to release the Viking  
22          Settlement funds despite judicial determination of the same and when Plaintiffs have already been  
23          offered compensation in the amount of \$971,435.59.

24          The allegations contained within the Simon Complaint are based solely upon documents filed  
25          with a Court of this State and for which Plaintiffs have wholly failed to demonstrate the Edgeworths  
26          brought absent good faith. See The Simon Complaint, dated December 23, 2019, on-file herein.  
27  
28

1 Furthermore, as it specifically concerns AMG, the Simon Complaint simply does not demonstrate  
2 that AMG made knowingly false statements within court documents.

3 As is demonstrated extensively herein, the claims and allegations forwarded within the  
4 Edgeworth Complaint and Amended Complaint were made in good faith and in direct connection  
5 with an issue under consideration by the court. The Simon Complaint cannot be allowed to move  
6 forward against AMG or any other defendant named therein.

### 7 **CONCLUSION**

8  
9 Plaintiffs brought this lawsuit against AMG, the Edgeworths, and Vannah in direct  
10 contravention of Nevada's anti-SLAPP statute. AMG therefore respectfully requests that this Court  
11 grant its Special Motion to Dismiss Plaintiffs' Complaint, pursuant to Nevada's anti-SLAPP statute,  
12 and dismiss The Simon Complaint as to AMG with prejudice, as such relief is specifically warranted  
13 and required pursuant to law and equity.

14  
15 DATED this 18<sup>th</sup> day of May, 2020.

16 **MESSNER REEVES LLP**

17 /s/ Renee M. Finch

18 M. Caleb Meyer, Esq.

19 Nevada Bar No. 13379

20 Renee M. Finch, Esq.

21 Nevada Bar No. 13118

22 Christine L. Atwood, Esq.

23 Nevada Bar No. 14162

24 8945 W. Russell Road, Ste 300

25 Las Vegas, Nevada 89148

26 *Attorneys for Defendant American Grating, LLC*

**CERTIFICATE OF SERVICE**

On this 18<sup>th</sup> day of May, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 AND FOR LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a)** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

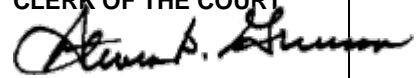
Peter S. Christensen, Esq.  
Kendele L. Works, Esq.  
CHRISTENSEN LAW OFFICES  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
*Attorney for Plaintiff*

Patricia Lee, Esq.  
HUTCHISON & STEFFEN, PLLC  
Peccole Professional Park  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145  
*Attorney for Defendants Edgeworth Family Trust;  
Brian Edgeworth and Angela Edgeworth*

Patricia A. Marr, Esq.  
PATRICIA A. MARR, LTD.  
2470 St. Rose Pkwy, Suite 110  
Henderson, Nevada 89074  
*Attorney for Defendants Robert Vannah, John Greene & Vannah & Vannah*

*/s/Michelle Ordway*

\_\_\_\_\_  
Employee of MESSNER REEVES LLP

**JOIN**

M. Caleb Meyer, Esq.  
Nevada Bar No. 13379  
Renee M. Finch, Esq.  
Nevada Bar No. 13118  
Christine L. Atwood, Esq.  
Nevada Bar No. 14162  
MESSNER REEVES LLP  
8945 W. Russell Road, Ste 300  
Las Vegas, Nevada 89148  
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Facsimile: (702) 363-5101  
E-mail: [rfinch@messner.com](mailto:rfinch@messner.com)  
[catwood@messner.com](mailto:catwood@messner.com)  
*Attorneys for Defendant American Grating, LLC*

**DISTRICT COURT****CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON,  
A PROFESSIONAL CORPORATION;  
DANIEL S. SIMON;

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
AND AS HUSBAND AND WIFE, ROBERT  
DARBY VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; AND ROBERT D. VANNAH,  
CHTD, d/b/a VANNAH & VANNAH, and  
DOES I through V and ROE  
CORPORATIONS VI through X, inclusive,

Defendants.

CASE NO. A-19-807433-C

DEPT. NO. 24

**DEFENDANT AMERICAN GRATING,  
LLC'S JOINDER TO EDGEWORTH  
FAMILY TRUST, BRIAN  
EDGEWORTH, AND ANGELA  
EDGEWORTH'S SPECIAL ANTI-  
SLAPP MOTION TO DISMISS  
PURSUANT TO NRS 41.637**

Defendant American Grating, LLC ("American Grating"), by and through its counsel of  
record, MESSNER REEVES LLP, hereby submits this Joinder to SPECIAL ANTI-SLAPP MOTION

TO DISMISS PURSUANT TO NRS 41.637, e-filed May 15, 2020.

DATED this 20<sup>th</sup> day of May, 2020.

**MESSNER REEVES LLP**

/s/ Christine Atwood

M. Caleb Meyer, Esq.

Nevada Bar No. 13379

Renee M. Finch, Esq.

Nevada Bar No. 13118

Christine L. Atwood, Esq.

Nevada Bar No. 14162

8945 W. Russell Road, Ste 300

Las Vegas, Nevada 89148

*Attorneys for Defendant American Grating, LLC*



**CERTIFICATE OF SERVICE**

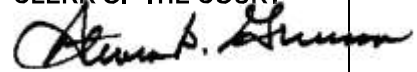
On this 20<sup>th</sup> day of May, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANT AMERICAN GRATING, LLC'S JOINDER TO SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

Peter S. Christensen, Esq.  
Kendele L. Works, Esq.  
CHRISTENSEN LAW OFFICES  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
*Attorney for Plaintiff*

Patricia Lee, Esq.  
HUTCHISON & STEFFEN, PLLC  
Peccole Professional Park  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145  
*Attorney for Defendants Edgeworth Family Trust;  
Brian Edgeworth and Angela Edgeworth*

Patricia A. Marr, Esq.  
Nevada Bar No. 008846  
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2470 St. Rose Pkwy., Ste. 110  
Henderson, Nevada 89074  
(702) 353-4225 (telephone)  
(702) 912-0088 (facsimile)  
patricia@marrlawlv.com  
*Counsel for Defendants  
Robert Darby Vannah, Esq.,  
John B. Greene, Esq., and  
Robert D. Vannah, Chtd., dba Vannah &  
Vannah*

/s/ Nicholle Pendergraft  
Employee of MESSNER REEVES LLP



**JOIN**

M. Caleb Meyer, Esq.  
Nevada Bar No. 13379  
Renee M. Finch, Esq.  
Nevada Bar No. 13118  
Christine L. Atwood, Esq.  
Nevada Bar No. 14162  
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E-mail: [rfinch@messner.com](mailto:rfinch@messner.com)  
[catwood@messner.com](mailto:catwood@messner.com)  
*Attorneys for Defendant American Grating, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON,  
A PROFESSIONAL CORPORATION;  
DANIEL S. SIMON;

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
AND AS HUSBAND AND WIFE, ROBERT  
DARBY VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; AND ROBERT D. VANNAH,  
CHTD, d/b/a VANNAH & VANNAH, and  
DOES I through V and ROE  
CORPORATIONS VI through X, inclusive,

Defendants.

CASE NO. A-19-807433-C

DEPT. NO. 24

**DEFENDANT AMERICAN GRATING,  
LLC'S JOINDER TO SPECIAL  
MOTION OF ROBERT  
DARBY VANNAH, ESQ., JOHN  
BUCHANAN GREENE, ESQ., AND,  
ROBERT D. VANNAH, CHTD., D/B/A  
VANNAH & VANNAH, TO DISMISS  
PLAINTIFFS' COMPLAINT:  
ANTISLAPP**

Defendant American Grating, LLC ("American Grating"), by and through its counsel of  
record, MESSNER REEVES LLP, hereby submits this Joinder to SPECIAL MOTION OF ROBERT  
DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH,

1 CHTD., d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' COMPLAINT: ANTI-SLAPP  
2 e-filed May 15, 2020.

3 DATED this 20<sup>th</sup> day of May, 2020.

4 **MESSNER REEVES LLP**

5 /s/ Christine Atwood

6 M. Caleb Meyer, Esq.

7 Nevada Bar No. 13379

8 Renee M. Finch, Esq.

9 Nevada Bar No. 13118

10 Christine L. Atwood, Esq.

11 Nevada Bar No. 14162

12 8945 W. Russell Road, Ste 300

13 Las Vegas, Nevada 89148

14 *Attorneys for Defendant American Grating, LLC*

**CERTIFICATE OF SERVICE**

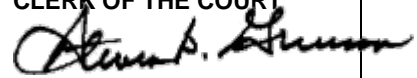
On this 20<sup>th</sup> day of May, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANT AMERICAN GRATING, LLC'S JOINDER TO SPECIAL MOTION OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' COMPLAINT: ANTI-SLAPP** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

Peter S. Christensen, Esq.  
Kendele L. Works, Esq.  
CHRISTENSEN LAW OFFICES  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
*Attorney for Plaintiff*

Patricia Lee, Esq.  
HUTCHISON & STEFFEN, PLLC  
Peccole Professional Park  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145  
*Attorney for Defendants Edgeworth Family Trust;  
Brian Edgeworth and Angela Edgeworth*

Patricia A. Marr, Esq.  
Nevada Bar No. 008846  
PATRICIA A. MARR, LTD.  
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(702) 912-0088 (facsimile)  
patricia@marrlawlv.com  
*Counsel for Defendants  
Robert Darby Vannah, Esq.,  
John B. Greene, Esq., and  
Robert D. Vannah, Chtd., dba Vannah  
& Vannah*

/s/ Nicholle Pendergraft  
Employee of MESSNER REEVES LLP



Patricia Lee (8287)  
HUTCHISON & STEFFEN, PLLC  
Peccole Professional Park  
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Las Vegas, NV 89145  
Tel: (702) 385-2500  
Fax: (702) 385-2086  
[plee@hutchlegal.com](mailto:plee@hutchlegal.com)

*Attorney for Defendants Edgeworth Family Trust;  
Brian Edgeworth and Angela Edgeworth*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON, a  
professional corporation; DANIEL S. SIMON,

Plaintiffs,

v.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, individually and husband and  
wife, ROBERT DARBY VANNAH, ESQ.;  
JOHN BUCHANAN GREENE, ESQ.; and  
ROBERT D. VANNAH, CHTD. d/b/a  
VANNAH & VANNAH, and DOES I through  
V and ROE CORPORATIONS VI through X,  
inclusive,

Defendants.

CASE NO.: A-19-807433-C

DEPT. NO.: XXIV

**JOINDER OF EDGEWORTH FAMILY  
TRUST, and BRIAN AND ANGELA  
EDGEWORTH TO AMERICAN  
GRATING, LLC'S, and ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and ROBERT D.  
VANNAH, CHTD. d/b/a VANNAH &  
VANNAH'S SPECIAL MOTIONS TO  
DISMISS PLAINTIFFS' COMPLAINT**

Defendants Edgeworth Family Trust, and Brian and Angela Edgeworth (collectively the  
"Edgeworths") hereby file this Joinder to Defendant American Grating LLC's and Defendants  
Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D. Vannah, Chtd. D/B/A  
Vannah & Vannah's Anti-SLAPP Special Motions to Dismiss Plaintiffs' Complaint.

This Joinder is based upon the Edgeworths' separately-filed Anti-SLAPP Special Motion to Dismiss, which the Edgeworths fully incorporate into this Joinder, the pleadings and papers on file herein, and any oral argument this Court may wish to entertain.

DATED this 20<sup>th</sup> day of May, 2020.

HUTCHISON &amp; STEFFEN, PLLC

/s/ Patricia Lee

Patricia Lee (8287)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Tel: (702) 385-2500  
plee@hutchlegal.com

*Attorney for Defendants Edgeworth Family Trust;  
Brian Edgeworth and Angela Edgeworth*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
3 PLLC and that on this 20<sup>th</sup> day of May, 2020, I caused the document entitled **JOINDER OF**  
4 **EDGEWORTH FAMILY TRUST, and BRIAN AND ANGELA EDGEWORTH TO**  
5 **AMERICAN GRATING, LLC'S, and ROBERT DARBY VANNAH, ESQ.; JOHN**  
6 **BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH &**  
7 **VANNAH'S SPECIAL MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT**  
8 to be served as follows:

9 ☐ by placing same to be deposited for mailing in the United States Mail, in a  
10 sealed envelope upon which first class postage was prepaid in Las Vegas,  
11 Nevada; and/or

12 ☒ to be electronically served through the Eighth Judicial District Court's  
13 electronic filing system pursuant to EDCR 8.02; and/or

14 ☐ to be hand-delivered;

15 to the attorneys/ parties listed below:

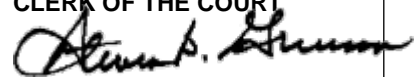
16 **ALL PARTIES ON THE E-SERVICE LIST**

17  
18 */s/ Heather Bennett*

19  
20 

---

An employee of Hutchison & Steffen, PLLC



PATRICIA A. MARR, ESQ.  
Nevada Bar No. 008846  
PATRICIA A. MARR, LTD.  
2470 St. Rose Pkwy., Ste. 110  
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(702) 353-4225 (telephone)  
(702) 912-0088 (facsimile)  
patricia@marrlawlv.com  
*Counsel for Defendants*  
*Robert Darby Vannah, Esq.,*  
*John B. Greene, Esq., and*  
*Robert D. Vannah, Chtd., dba Vannah & Vannah*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DANIEL S. SIMON; THE LAW OFFICE OF  
DANIEL S. SIMON, A PROFESSIONAL  
CORPORATION,

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN  
GRATING, LLC; BRIAN EDGEWORTH AND  
ANGELA EDGEWORTH, INDIVIDUALLY,  
HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and, ROBERT D. VANNAH,  
CHTD., d/b/a VANNAH & VANNAH; and  
DOES I through V, and ROE CORPORATIONS  
VI through X, inclusive,

Defendants.

CASE NO.: A-19-807433-C  
DEPT NO.: 24

**JOINDER OF ROBERT DARBY  
VANNAH, ESQ., JOHN BUCHANAN  
GREENE, ESQ., and, ROBERT D.  
VANNAH, CHTD., d/b/a VANNAH &  
VANNAH, TO DEFENDANTS'  
SPECIAL MOTIONS TO DISMISS  
PLAINTIFFS' COMPLAINT: ANTI-  
SLAPP**

Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ.,  
and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred to collectively as  
VANNAH), hereby file this Joinder in and to the Special Motions to Dismiss Plaintiffs'  
Complaint: Anti-SLAPP, of Defendants EDGEWORTH FAMILY TRUST, AMERICAN  
GRATING, LLC, BRIAN EDGEWORTH, AND ANGELA EDGEWORTH, INDIVIDUALLY,

///

///



1 HUSBAND AND WIFE.

2 DATED this 20<sup>th</sup> day of May, 2020.

3 **PATRICIA A. MARR, LTD.**

4  
5 /s/Patricia A. Marr, Esq.

6 PATRICIA A. MARR, ESQ.  
7

8 **CERTIFICATE OF SERVICE**

9  
10 I hereby certify that the following parties are to be served as follows:

11 Electronically:

12 Peter S. Christiansen, Esq.  
13 **CHRISTIANSSEN LAW OFFICES**  
14 810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

15 Patricia Lee, Esq.  
16 **HUTCHINSON & STEFFEN, PLLC**  
17 Peccole Business Park  
10080 West Alta Dr., Ste. 200  
Las Vegas, NV 89145

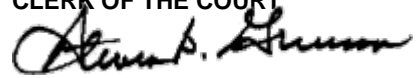
18 M. Caleb Meyer, Esq.  
19 Renee M. Finch, Esq.  
Christine L. Atwood, Esq.  
20 **MESSNER REEVES LLP**  
8945 W. Russell Road, Ste 300  
Las Vegas, Nevada 89148

21 Traditional Manner:  
22 *None*

23 DATED this 20<sup>th</sup> day of May, 2020.

24 /s/Patricia A. Marr

25 An employee of the Patricia A. Marr, Ltd.  
26  
27  
28



ACOMP  
PETER S. CHRISTIANSEN, ESQ.  
Nevada Bar No. 5254  
CHRISTIANSEN LAW OFFICES  
810 South Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
Telephone: (702) 240-7979  
pete@christiansenlaw.com  
*Attorney for Plaintiffs*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAW OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION;  
DANIEL S. SIMON;

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH, INDIVIDUALLY, AS  
HUSBAND AND WIFE; ROBERT DARBY  
VANNAH, ESQ.; JOHN BUCHANAN  
GREENE, ESQ.; and ROBERT D.  
VANNAH, CHTD. d/b/a VANNAH &  
VANNAH, and DOES I through V and ROE  
CORPORATIONS VI through X, inclusive,

Defendants.

CASE NO.: A-19-807433-C  
DEPT NO.: XXIV

**AMENDED COMPLAINT**

Plaintiffs, by and through undersigned counsel, hereby allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation, was at all times relevant hereto a professional corporation duly licensed and authorized to conduct business in the County of Clark, state of Nevada and will hereinafter be referred to as ("Plaintiff" or "Mr. Simon," or "Simon" or "Law Office.")

///

**CHRISTIANSEN LAW OFFICES**  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
702-240-7979 • Fax 866-412-6992

**AA000995**

1           2.       Plaintiff, DANIEL S. SIMON, was at all times relevant hereto, a resident of the  
2   County of Clark, state of Nevada and will hereinafter be referred to as (“Plaintiff” or “Mr. Simon,”  
3   or “Simon” or “Law Office.”)

4           3.       Defendant, EDGEWORTH FAMILY TRUST, was and is a revocable trust created  
5   and operated in Clark County, Nevada with Brian Edgeworth and Angela Edgeworth, acting as  
6   Trustees for the benefit of the trust, and at all times relevant hereto, is a recognized entity  
7   authorized to do business in the County of Clark, state of Nevada.

8           4.       AMERICAN GRATING, LLC, a Nevada Limited Liability Company, was and is,  
9   duly licensed and authorized to conduct business in Clark County, Nevada and all acts and  
10   omissions were all performed, at all times relevant hereto, in the County of Clark, state of Nevada.  
11   This entity and Brian Edgeworth and Angela Edgeworth and the Edgeworth Family Trust will be  
12   referred to collectively as (“The Edgeworths” or “Edgeworth” or “Edgeworth entities” or  
13   “Edgeworth Defendants”)

14          5.       Defendant, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, were at all  
15   times relevant hereto, husband and wife, and residents of the state of Nevada, and acted in their  
16   individual capacity and corporate/trustee capacity on behalf of the Edgeworth entities for its  
17   benefit and their own personal benefit and for the benefit of the marital community in Clark  
18   County, Nevada. Brian Edgeworth and Angela Edgeworth, at all times relevant hereto, were the  
19   principles of the Edgeworth entities and fully authorized, approved and/or ratified the conduct of  
20   each other and the acts of the entities and each other personally and the Defendant Attorneys.

21          6.       Defendant, ROBERT DARBY VANNAH was and is an attorney duly licensed  
22   pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts and  
23   omissions, individually and in the course and scope of his employment, in his master, servant  
24   and/or agency relationship with each and every other Defendant, including, Robert D. Vannah  
25   Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized, approved and/or  
26   ratified the conduct of each other Defendant, including the conduct of the Edgeworth entities, the  
27   acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of Robert D. Vannah Chtd. d/b/a  
28   Vannah & Vannah.

1           7. Defendant, JOHN BUCHANAN GREENE was and is an attorney duly licensed  
2 pursuant to the laws of the state of Nevada and at all times relevant hereto, performed all acts and  
3 omissions, individually and in the course and scope of his employment, in his master, servant  
4 and/or agency relationship with each and every other Defendant, including, Robert D. Vannah  
5 Chtd. D/B/A Vannah & Vannah in Clark County, Nevada and fully authorized, approved and/or  
6 ratified the conduct of each other Defendant, including the conduct of the Edgeworth entities, the  
7 acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of Robert D. Vannah, individually  
8 and Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

9           8. Defendant, ROBERT D. VANNAH, CHTD. D/B/A VANNAH & VANNAH, was  
10 at all times relevant hereto, a Nevada Corporation duly licensed and doing business in Clark  
11 County, Nevada. The individual attorneys, ROBERT DARBY VANNAH AND JOHN  
12 BUCHANAN GREENE and Robert D. Vannah, Chtd. d/b/a Vannah and Vannah will be  
13 collectively referred to as “Defendant Attorneys.”

14           9. Venue and jurisdiction are proper in this Court because the actions taken between  
15 the parties giving rise to this action and the conduct complained of occurred in Clark County,  
16 Nevada.

17           10. The true names and capacities, whether individual, corporate, partnership,  
18 associate or otherwise of Defendants named herein as DOES 1 through 10 inclusive, and ROE  
19 CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20, inclusive, and each  
20 of them are unknown to Plaintiffs at this time, and Plaintiffs therefore sue said Defendants and  
21 each of them by such fictitious name. Plaintiffs will advise this Court and seek leave to amend  
22 this Complaint when the names and capacities of each such Defendant have been ascertained.  
23 Plaintiffs allege that each Defendant herein designated as DOE, ROE CORPORATION is  
24 responsible in some manner for the events and happenings herein referred to as hereinafter  
25 alleged, including but not limited to advising, supporting, assisting in causing and maintaining  
26 the institution of the proceedings, abusing the process and/or republishing the defamatory  
27 statements at issue.

28

11. Plaintiffs are informed and believe and thereupon alleges that DOES 1 through 10, inclusive, ROE CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20, inclusive, or some of them are either residents of the State of Nevada and/or were or are doing business in the State of Nevada and/or have targeted their actions against Plaintiffs in the State of Nevada.

### **GENERAL ALLEGATIONS**

12. Mr. Simon represented the Edgeworth entities in a complex and hotly contested products liability and contractual dispute stemming from a premature fire sprinkler activation in April of 2016, which flooded the Edgeworth's speculation home during its construction causing approximately \$500,000.00 in property damage.

13. In May/June of 2016, Simon helped the Edgeworths on the flood claim as a favor, with the goal of ending the dispute by triggering insurance to adjust the property damage loss. Mr. Simon and Edgeworth never had an express written or oral attorney fee agreement. They were close family friends at the time and Mr. Simon decided to help them.

14. In June of 2016, a complaint was filed. Billing statements were sporadically created for establishing damages against the plumber under their contract. All parties knew that these billing statements did not capture all of the time spent on the case and were not to be considered as the full fee due and owing to the Law Office of Daniel Simon. In August/September of 2017, Mr. Simon and Brian Edgeworth both agreed that the flood case dramatically changed. The case had become extremely demanding and was dominating the time of the law office precluding work on other cases. Determined to help his friend at the time, Mr. Simon and Brian Edgeworth made efforts to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon and Brian Edgeworth had discussions about an express fee agreement based on a hybrid of hourly and contingency fees. However, an express agreement could not be reached due to the unique nature of the property damage claim and the amount of work and costs necessary to achieve a successful result.

15. Although efforts to reach an express fee agreement failed, Mr. Simon continued to forcefully litigate the Edgeworth claims. Simon also again raised the desire for an express

1 attorney fee agreement with the clients on November 17, 2017, after which time, the Clients  
2 refused to speak to Simon about a fair fee and instead stopped talking to him and hired other  
3 counsel.

4 16. On November 29, 2017, the Edgeworths fired Simon by retaining new counsel,  
5 Robert D. Vannah, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah and John Greene  
6 (hereinafter the “Defendant Attorneys”), and ceased all direct communications with Mr. Simon.  
7 On November 30, 2017, the Defendant Attorneys provided Simon notice of retention.

8 17. On November 30, 2017, Simon served a proper and lawful attorney lien pursuant  
9 to NRS 18.015. However, Simon continued to protect his former clients’ interests in the complex  
10 flood litigation, to the extent possible under the unusual circumstances. Mr. Vannah, on behalf of  
11 the Edgeworths, threatened Mr. Simon not to withdraw from the case.

12 18. On December 1, 2017, the Edgeworths entered into an agreement to settle with  
13 Viking and release Viking from all claims in exchange for a promise by Viking to pay six million  
14 dollars (\$6,000,000.00 USD). On January 2, 2018, Simon served an amended attorney lien.

15 19. On January 4, 2018, Edgeworths, through Defendant Attorneys, sued Simon,  
16 alleging Conversion (stealing) and various other causes of actions based on the assertion of false  
17 allegations. A primary reason the lawsuit was filed was to refuse payment for attorneys fees that  
18 all Defendants knew were due and owing to the Law Office of Daniel S. Simon. At the time of  
19 this lawsuit, the Defendant Attorneys and Edgeworth entities actually knew that the settlement  
20 funds were not taken by Simon and were not deposited in any other account as arrangements were  
21 being made at the request of Edgeworth and Defendant Attorneys to set up a special account so  
22 that Robert D. Vannah on behalf of Edgeworth would control the funds equally pending the lien  
23 dispute. When Edgeworth and the Defendant Attorneys sued Simon, they knew Mr. Simon was  
24 owed more than \$68,000 for outstanding costs advanced by Mr. Simon, as well as substantial  
25 sums for outstanding attorney’s fees yet to be determined by Nevada law.

26 20. On January 8, 2018, Robert D. Vannah, Brian Edgeworth and Angela Edgeworth  
27 met Mr. Simon at Bank of Nevada and deposited the Viking settlement checks into a special trust  
28 account opened by mutual agreement for the underlying case only. Mr. Simon signed the checks

1 for the first time at the bank and provided the checks to the banker, who took custody of the  
2 checks. The banker then provided the checks to Brian and Angela Edgeworth for signature in the  
3 presence of Robert D. Vannah. Mr. Vannah signed bank documents to open the special account.  
4 The checks were deposited into the agreed upon account. In addition to the normal safeguards for  
5 a trust account, this account required signatures of both Robert D. Vannah and Mr. Simon for a  
6 withdrawal. Thus, Mr. Simon stealing money from the trust account was an impossibility that  
7 was known to the Defendants, and each of them. After the checks were deposited, the Edgeworths  
8 and Defendant attorneys proceeded with their plan to falsely attack Simon.

9       21. On January 9, 2018, the Edgeworths served their complaint, which alleged that  
10 Simon stole their money-money which was safe kept in a Bank of Nevada account, earning them  
11 interest. The Edgeworths promptly received the undisputed amount of almost \$4 million dollars.  
12 The Edgeworths agreed this made them whole. Defendants all knew Simon did not and could not  
13 steal the money, yet they pursued their serious theft allegations knowing the falsity thereof. The  
14 Defendants, and each of them, knew and had reason to know, the conversion complaint was  
15 objectively baseless and the Defendants, and each of them, did not have good faith or probable  
16 cause to begin or maintain the action. Mr. Simon and his Law Office NEVER exclusively  
17 controlled the settlement funds and NEVER committed an act of wrongful dominion of control  
18 when strictly following the law pursuant to NRS 18.015. The Edgeworths and Defendant  
19 Attorneys conceded the Edgeworths owed Mr. Simon and his firm money for attorneys fees  
20 incurred in the underlying case.

21       22. Simon responded with two motions to dismiss, which detailed the facts and  
22 explained the law on why the complaint was frivolous. Rather than conceding the lack of merit  
23 as to even a portion of the complaint, the Edgeworth entities, through Defendant attorneys  
24 maintained the actions. On March 15, 2018, Defendants filed an Amended Complaint to include  
25 new causes of action and reaffirmed all the false facts in support of the conversion claims. The  
26 Defendants' false facts asserted stealing by Simon, sought punitive damages and sought to have  
27 the court declare that "Simon was paid in full." When these allegations were initially made and  
28 the causes of actions were maintained on an ongoing basis, Defendant Attorneys, and Brian and

1 Angela Edgeworth, individually and on behalf of the Edgeworth entities, all actually knew the  
2 allegations were false and had no legal basis whatsoever because their allegations were a legal  
3 impossibility. When questioned, the Defendant Attorneys could not articulate a legal or factual  
4 basis for their conversion claims. In multiple filed pleadings, court hearings, and at a five-day  
5 evidentiary hearing, Defendants failed to provide any factual or legal basis to support their  
6 conversion claim. Defendants failed to cite any Nevada law that would support the position that  
7 an attorney lien constituted conversion. Defendants failed to provide any facts or expert opinions  
8 that placing the settlement proceeds in a joint account for all parties while the attorney lien dispute  
9 was adjudicated would support a claim for conversion. Defendant Attorneys often stated that  
10 conversion “was a good theory” without providing any factual or legal basis for doing so.

11 23. During the course of the litigation, Defendants, and each of them, filed false  
12 documents asserting blackmail, extortion and theft by converting the Edgeworth’s portion of the  
13 settlement proceeds. This is evidenced by the Affidavit of Brian Edgeworth, dated February 12,  
14 2018, at 7:25-8L15; the Affidavit of Brian Edgeworth, dated March 15, 2018, at 8:2-9:22; and  
15 the September 18, 2018 transcript of Angela Edgeworth’s sworn testimony at 133:5-23. The  
16 District Court conducted a five-day evidentiary hearing to adjudicate Simon’s attorney lien and  
17 the Motions to Dismiss Defendants’ complaints.

18 24. The facts elicited at the five-day evidentiary hearing concerning the substantial  
19 Attorney’s fees still owed and not paid by the Edgeworths, further confirmed that the allegations  
20 in both Edgeworth complaints were false and that the complaints were filed for an improper  
21 purpose - that is, to punish Mr. Simon as a collateral attack on the lien adjudication proceeding.  
22 This forced Simon to retain counsel and experts to defend the suit at substantial expense. The  
23 frivolous lawsuit was intended to cause Mr. Simon and his law practice to incur unnecessary and  
24 substantial expense. The initial complaint and subsequent filings for the ongoing litigation were  
25 done primarily because of hostility or ill will with the ulterior purposes to (1) refuse payment of  
26 attorneys fees all Defendants knew were due and owing to the Law Office of Daniel S. Simon;  
27 (2) to cause unnecessary and substantial expense to Simon; (3) to damage and harm the reputation  
28 and business of Mr. Simon; (4) to avoid lien adjudication; (5) cause humiliation, embarrassment,



1 mental anguish and inconvenience; and (6) to punish him personally and professionally, all of  
2 which, are independent improper purposes. Defendants had no good faith basis to pursue the  
3 conversion claim. Defendants knew there was no legal merit to asserting conversion and only  
4 pursued the claim for the ulterior purposes stated. Defendants' true purposes are further proven  
5 as the Edgeworths and the Defendant Attorneys never alleged malpractice and have no criticism  
6 of the work performed by Mr. Simon for the Edgeworths. At the evidentiary hearing, Defendants  
7 presented no evidence that supported their contention that Simon converted the settlement funds.  
8 Defendants also did not provide any expert testimony nor cite any Nevada law to support that  
9 position at the hearing or in the briefing for same. The Defendants did not rebut the expert  
10 testimony presented by Mr. Simon at the hearing. Defendants made no arguments whatsoever  
11 that their claim of conversion had merit, which only further shows their ulterior purposes for  
12 bringing the claim. It is Defendants' conduct – notably their omissions – that reveals their ulterior  
13 purposes and true goal when seeking conversion against Simon in the judicial system.

14         25. All filings for conversion were done without probable cause or a good faith belief  
15 that there was a factual evidentiary basis to file a legitimate conversion claim. There was no legal  
16 basis to do so as Simon never converted the settlement funds as defined by Nevada law. The  
17 Defendants, and each of them, were aware that the conversion claim and allegations of extortion,  
18 blackmail or other crimes were not meritorious. The Defendants, and each of them, did not  
19 reasonably believe they had a good faith factual or legal basis for establishing a conversion claim  
20 to the satisfaction of the Court. The complaint was filed for an ulterior purpose other than securing  
21 the success of their claims, most notably conversion.

22         26. When the complaint filed by Defendants and subsequent filings were made and  
23 arguments presented, the Defendants, and each of them, did not honestly believe in its possible  
24 merits and could not reasonably believe that they had a good faith factual or legal basis upon  
25 which to ever prove the case to the satisfaction of the court. Defendants, and each of them,  
26 consistently argued that Mr. Simon extorted and blackmailed them and stole their money.  
27 Defendants, and each of them, took an active part in the initiation, continuation and/or  
28 procurement of the civil proceedings against Mr. Simon and his Law Office. The primary ulterior

1 purposes were (1) to refuse payment of attorneys fees all Defendants knew were due and owing  
2 to the Law Office of Daniel S. Simon; (2) to cause unnecessary and substantial expense to Simon;  
3 (3) to damage and harm the reputation and business of Mr. Simon; (4) to avoid lien adjudication;  
4 (5) cause humiliation, embarrassment, mental anguish and inconvenience; and (6) to punish him  
5 personally and professionally, all of which, are independent improper purposes. It was also  
6 admittedly pursued to punish him before the money was ever received, as testified to by Angela  
7 Edgeworth under oath at the Evidentiary hearing on September 18, 2018 at 145:10-21, and  
8 adopted by all other Defendants. The claims were so obviously lacking in merit that they could  
9 not logically be explained without reference to the Defendants improper motive and ill will. The  
10 proceedings terminated in favor of Simon.

11 27. Angela Edgeworth testified that the lawsuit was filed to punish Mr. Simon before  
12 the money was received.

13 28. Mr. Edgeworth testified he always knew he owed Mr. Simon money for attorney's  
14 fees.

15 29. Mr. Vannah acknowledged that Mr. Simon was always owed money for attorney's  
16 fees.

17 30. Mr. Greene acknowledged that Mr. Simon was always owed money for attorney's  
18 fees.

19 31. The District Court found that the attorney lien of the Law Office of Daniel S.  
20 Simon dba Simon Law (hereafter "Mr. Simon") was proper and that the lawsuit brought by the  
21 Edgeworth entities, through the Defendant Attorneys, against Mr. Simon and his Law Office had  
22 no merit and was NOT filed and/or maintained in GOOD FAITH. Accordingly, on October 11,  
23 2018, the District Court dismissed Defendants complaint in its entirety against Mr. Simon. The  
24 court found, Edgeworth and the Defendant Attorneys brought claims that were not well grounded  
25 in fact or law confirming that it is clear that the conversion claim was frivolous and filed for an  
26 improper purpose. Specifically, the Court examined the facts known to Edgeworth and Defendant  
27 Attorneys when they filed the complaint on January 4, 2018; which were, Mr. Simon did not have  
28 the money and had not stolen any money. In fact, he did not even have the ability to steal the

1 money as Mr. Vannah equally controlled the account. Additionally, there was no merit to the  
2 Edgeworth entity claims that:

- 3 a. Simon “intentionally” converted and was going to steal the settlement proceeds;
- 4 b. Simon’s conduct warranted punitive damages;
- 5 c. Daniel S. Simon individually should be named as a party;
- 6 d. Simon had been paid in full;
- 7 e. Simon refused to release the full settlement proceeds to Plaintiffs;
- 8 f. Simon breached his fiduciary duty to Plaintiffs;
- 9 g. Simon breached the covenant of good faith and fair dealing; and,
- 10 h. Plaintiffs were entitled to Declaratory Relief because they had paid Simon in  
11 full.

12 32. On October 11, 2018, the Court dismissed Plaintiffs’ amended complaint. Of  
13 specific importance, the Court found that:

- 14 a. On November 29, Mr. Simon was discharged by Edgeworth.
- 15 b. On December 1, Mr. Simon appropriately served and perfected a charging lien on  
16 the settlement monies.
- 17 c. Mr. Simon was due fees and costs from the settlement monies subject to the proper  
18 attorney lien.
- 19 d. There was no evidence to support the conversion claim.
- 20 e. Simon did not convert the clients’ money.
- 21 f. The Court did not find an express oral contract for \$550 an hour.

22 33. On February 6, 2019, the Court found that:

- 23 a. The Edgeworths and Defendant Attorneys did not maintain the conversion claim  
24 on reasonable grounds since it was an impossibility for Mr. Simon to have converted the  
25 Edgeworth’s property at the time the lawsuit was filed. Mr. Simon never had exclusive control of  
26 the settlement proceeds and did not perform a wrongful act of dominion or control over the funds  
27 when merely filing a lawful attorney lien pursuant to NRS 18.015. The filing of a lawful attorney  
28 lien is a protected communication pursuant to NRS 41.635- NRS41.670, precluding a lawsuit

1 against Mr. Simon, which is yet another reason the lawsuit was not filed and maintained in good  
2 faith and/or with serious consideration of a valid claim.

3 **COUNT I**

4 **WRONGFUL USE OF CIVIL PROCEEDINGS – ALL DEFENDANTS**

5 34. Plaintiffs incorporate all prior paragraphs and incorporate by reference the  
6 preceding allegations as though fully set forth herein.

7 35. The Edgeworth entities, through the Defendant Attorneys, initiated a complaint on  
8 January 4, 2018 alleging Mr. Simon and his Law Office converted settlement proceeds in the  
9 amount of 6 million dollars.

10 36. The Edgeworth entities, through the Defendant Attorneys, maintained the baseless  
11 conversion claim when filing an amended complaint re-asserting the same conversion allegations  
12 on March 15, 2018.

13 37. The Edgeworth entities, through the Defendant Attorneys, maintained the  
14 conversion and stealing of the settlement allegations when filing multiple public documents and  
15 presenting oral argument at hearings containing a public record when re-asserting the conversion  
16 and theft by Mr. Simon and his Law Office. Defendants had no factual or evidentiary basis where  
17 they could contemplate in good faith a claim for conversion against Simon. Further, Defendants  
18 had no legal basis in Nevada law that Simon's attorney lien constituted conversion of the  
19 settlement proceeds.

20 38. The Edgeworths and the Defendant Attorneys did not contemplate their causes of  
21 action in good faith with serious consideration against Simon and acted without probable cause  
22 and with no evidentiary basis to pursue said claims. The District Court dismissed Defendants'  
23 claims after conducting the five-day evidentiary hearing, which constitutes a final determination  
24 on the matter. The Court allowed additional time for full questioning of the witnesses and  
25 presenting evidence necessary to prove all of their claims.

26 39. The Edgeworths and the Defendant Attorneys acted with malice, express and/or  
27 implied and their actions were malicious, oppressive, fraudulent and done with a conscious and  
28 deliberate disregard of Plaintiffs' rights and Plaintiffs are entitled to punitive damages in a sum

1 to be determined at the time of trial. The Defendants, and each of them, knew of the probable and  
2 harmful consequences of their false claims and intentionally and deliberately failed to act to avoid  
3 the probable and harmful consequences.

4 40. The Edgeworths and the Defendant Attorneys' conduct proximately caused injury,  
5 damage, loss, and/or harm to Mr. Simon and his Law Office in a sum to be determined at the time  
6 of trial. Asserting what amounts to theft of millions of dollars against Mr. Simon and his Law  
7 Office, harmed his image in his profession and among the community, and the allegations  
8 damaged his reputation.

9 41. The Edgeworths and the Defendant Attorneys advanced arguments in public  
10 documents that Mr. Simon committed serious crimes of stealing, extortion and blackmail  
11 knowing these filings and arguments were false. The Edgeworth's admittedly made these same  
12 statements outside the litigation to third parties that were not significantly interested in the  
13 proceedings. Defendant Attorneys promulgated these same false statements under the guise of a  
14 proper lawsuit when in reality they knew they had no good faith basis or probable cause to  
15 maintain the conversion against Simon.

16 42. The Defendants acted without privilege or justification in causing clients to avoid  
17 representation from Plaintiffs.

18 43. The Edgeworth's and Defendant Attorneys' abuse of the process proximately  
19 caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what  
20 amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his  
21 profession and among his personal friends and the community. Mr. Simon and his office sustained  
22 damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life,  
23 lost time and loss of income. The false allegations damaged his reputation, and proximately  
24 caused general, special and consequential damages, past and future, in a sum to be determined at  
25 the time of trial.

26 44. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious,  
27 and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The Defendants,  
28

1 and each of them, knew of the probable and harmful consequences of their false claims and  
2 intentionally and deliberately failed to act to avoid the probable and harmful consequences.

3 45. Plaintiffs were forced to retain attorneys to defend the wrongful use of civil  
4 proceedings and incurred substantial attorney's fees and costs, which are specially plead pursuant  
5 to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

6 46. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
7 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

8 **COUNT II**

9 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC**

10 **ADVANTAGE –ALL DEFENDANTS**

11 47. Plaintiffs incorporate the preceding paragraphs and allegations as though fully set  
12 forth herein.

13 48. At the time of filing of this lawsuit, Plaintiffs had prospective contractual  
14 relationships with clients who had been injured due to the fault of another, including but not  
15 limited to persons injured in motor vehicle accidents, slip and falls, medical malpractice and other  
16 personal injuries.

17 49. The Defendants knew Plaintiffs regularly received referrals for and represented  
18 clients in motor vehicle accidents, slip and falls, medical malpractice and incidents involving  
19 other personal injuries.

20 50. The Defendants intended to harm Plaintiffs by engaging in one or more wrongful  
21 acts, including advancing arguments in public documents that Mr. Simon committed crimes of  
22 stealing, extortion and blackmail knowing these filings and arguments were false, all designed to  
23 prevent clients from seeking representation from Plaintiffs. The Edgeworth's made these same  
24 statements to third parties outside the litigation who did not have a significant interest in the  
25 proceedings, and Defendant Attorneys promulgated these same false statements under the guise  
26 of a proper lawsuit when in reality they knew they had no good faith basis or probable cause to  
27 maintain the conversion action against Simon. Defendants sued Simon for conversion when they  
28 had no factual or legal basis to do so. Defendants, and each of them, filed false affidavits and

1 procured false testimony that Mr. Simon stole the settlement, blackmailed and extorted the  
2 Edgeworths. Defendants did not seek in good faith adjudication of the conversion claim but  
3 brought and maintained the suit for the ulterior purposes of harming Simon, personally and  
4 professionally, including his business.

5 51. The Defendants acted without privilege or justification in causing clients to avoid  
6 representation from Plaintiffs.

7 52. As a direct and proximate result of these wrongful acts, Plaintiffs have suffered,  
8 and will continue to suffer, damages in an amount in excess of \$15,000.

9 53. The Edgeworth's and Defendant attorneys' abuse of the process and conduct  
10 proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when  
11 asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image  
12 in his profession and among his personal friends and the community. Mr. Simon and his office  
13 sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of  
14 quality of life, lost time, loss of income, damage to his reputation, past and future, proximately  
15 caused by the acts of Defendants, and each of them. These acts proximately caused general,  
16 special and consequential damages, past and future, in a sum to be determined at the time of trial.

17 54. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious,  
18 and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The Defendants,  
19 and each of them, knew of the probable and harmful consequences of their false claims and  
20 intentionally and deliberately failed to act to avoid the probable and harmful consequences.

21 55. Plaintiffs were forced to retain attorneys and experts to defend the intentional  
22 interference with prospective economic advantage and incurred substantial attorney's fees and  
23 costs, which are specially plead pursuant to NRCP 9(g) to be recovered as special damages in a  
24 sum in excess of \$15,000.

25 56. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
26 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

27

28

**COUNT III**

**ABUSE OF PROCESS –ALL DEFENDANTS**

57. Plaintiffs incorporate the preceding paragraphs and allegations as if fully set forth herein.

58. The Edgeworths and the Defendant Attorneys abused the judicial process when initiating and maintaining a proceeding alleging conversion, theft, and malice with no evidence to support those claims or a good faith basis to maintain such action. Defendants did not contemplate bringing these claims in good faith because they had no factual or legal basis to pursue and maintain the claims. Defendants knew they had no basis but brought the claims with the ulterior purposes in order to harm Mr. Simon and his practice. Defendants did not perform a diligent inquiry into the facts and law to support the conversion claims and knew the claims of conversion could not be established, but continued to maintain the action against Simon, all to Simon's harm. Through multiple pleadings, hearings, and testimony, Defendants never presented any sufficient facts, expert or lay testimony, or basis in Nevada law to support their claims against Simon, all of which reveal Defendants' true ulterior purposes. Simply, an attorney lien is not conversion and Defendants knew this before ever filing suit against Simon and knew it while maintaining the action.

59. The Edgeworths and Defendant Attorneys' initiation of the proceedings and continued pursuit of the false claims, was brought for ulterior purposes to refuse payment of attorneys fees all Defendants knew were due and owing to the Law Office of Daniel S. Simon; to damage the reputation of Mr. Simon and his Law Offices; to cause Mr. Simon to expend substantial resources to defend the frivolous claims; cause financial harm and the loss of business; humiliate, embarrass, cause great inconvenience; to punish Simon and his Law Office; and to avoid lien adjudication of the substantial attorney's fees and costs admittedly owed to Mr. Simon at the time the process was initiated rather than for the proper purpose of asserting claims supported by evidence. All Defendant's conduct further establishes and corroborates the ulterior purpose.



1           60.     The Edgeworths and Defendant Attorneys committed a willful act in using the  
2     judicial process for an ulterior purpose not proper in the regular conduct of the proceedings and  
3     misapplied the process for an end other than which it was designed to accomplish, and acted and  
4     used the process for an improper purpose or ulterior motive, as stated herein. Defendants admitted  
5     their conduct was for the ulterior purpose of punishing Mr. Simon and his Law office.

6           61.     The Edgeworths and the Defendant Attorneys abused the process at hearings to  
7     avoid lien adjudication, to cause unnecessary and substantial expense and to damage the  
8     reputation of Mr. Simon and financial loss to his Law Office, as well as to punish him. The  
9     Defendants, and each of them, knew of the probable and harmful consequences of their false  
10    claims and intentionally and deliberately failed to act to avoid the probable and harmful  
11    consequences. The Defendants, and each of them, have fully approved and ratified the conduct  
12    of the others. Defendants made these statements under the mistaken belief that they could say and  
13    do anything without consequence as they falsely believed they were shielded and had immunity  
14    under the litigation privilege. Defendants, and each of them, filed and maintained the frivolous  
15    complaint to punish Mr. Simon and Law Practice knowing the falsity of these statements. They  
16    also invented a story of an express oral contract for \$550 an hour in attempt to refuse payment of  
17    a reasonable attorney fee. The frivolous complaint also alleged that Mr. Simon was “paid in full.”

18          62.     The Edgeworths and Defendant Attorneys’ abuse of the process and conduct  
19    proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when  
20    asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image  
21    in his profession and among his personal friends and the community. Mr. Simon and his office  
22    sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of  
23    quality of life, lost time, loss of income, damage to his reputation, past and future, proximately  
24    caused by the acts of Defendants, and each of them. These acts proximately caused general,  
25    special and consequential damages, past and future, in a sum to be determined at the time of trial.

26          63.     Plaintiffs were already forced to retain attorneys to defend the litigation  
27    improperly brought and maintained by Defendants, constituting an abuse of process, thus  
28

1 incurring substantial attorney's fees and costs, which are specially plead pursuant to NRC 9(g)  
2 to be recovered as special damages in a sum in excess of \$15,000.

3 64. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious,  
4 and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The Defendants,  
5 and each of them, knew of the probable and harmful consequences of their false claims and  
6 intentionally and deliberately failed to act to avoid the probable and harmful consequences.

7 65. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
8 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

9 **COUNT IV**

10 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION - THE DEFENDANT**  
11 **ATTORNEYS**

12 66. Plaintiffs incorporate the preceding paragraphs and allegations as if set forth  
13 herein.

14 67. Robert D. Vannah, Chtd. had a duty to hire, supervise, and retain competent  
15 employees including, Defendant Attorneys, to act diligently and competently to represent valid  
16 claims to the court and to file pleadings before the court that have the legal or evidentiary basis  
17 to support the claims and not file lawsuits for an ulterior purpose. The duties, professional  
18 responsibility and acts of the Lawyer are governed by their own independent acts and the rules of  
19 professional responsibility. The Defendant Attorneys had an independent duty to act and not  
20 follow all directions of their clients inconsistent with the Nevada law and the Nevada Rules of  
21 Professional Conduct.

22 68. The Attorneys acting on behalf of Robert D. Vannah, Chtd. fell below the standard  
23 of care when drafting, signing, and filing complaints with allegations, known to them to be false,  
24 a legal impossibility and without any evidentiary basis. The continuing acts of maintaining the  
25 false claims and advancing false arguments violate the rules of professional responsibility. The  
26 Defendant Attorneys had a duty to refrain from pursuing frivolous allegations of conversion  
27 despite the wishes of the clients.

28 69. Robert D. Vannah, Chtd breached that duty proximately causing damage to Mr.

1 Simon and his Law Office, when failing to properly supervise the Attorneys in order to ensure its  
2 attorneys do not bring actions that were not contemplated in good faith but brought and  
3 maintained with ulterior purposes to cause harm to parties in judicial proceedings, including,  
4 Simon, and to ensure the Attorneys are complying with their ethical duties pursuant to the rules  
5 of professional responsibility. The false allegations damaged his reputation, and proximately  
6 caused general, special and consequential damages to be determined at the time of trial.

7 70. The Defendant Attorneys' abuse of the process under negligent supervision and  
8 retention, proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office,  
9 the Law Office of Daniel Simon when asserting what amounts to illegal and fraudulent activity,  
10 including false allegations of theft and crimes of extortion against Mr. Simon that harmed his  
11 image in his profession and among his personal friends and the community. Mr. Simon and his  
12 office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss  
13 of quality of life, lost time, loss of income, damage to his reputation, past and future, proximately  
14 caused by the acts of Defendants, and each of them. These acts proximately caused general,  
15 special and consequential damages, past and future, in a sum to be determined at the time of trial.

16 71. Robert D. Vannah, Chtd.' acts were malicious, oppressive, fraudulent and done  
17 with a conscious and deliberate reckless disregard for the rights of the Plaintiffs. The Defendant  
18 Attorneys, knew of the probable and harmful consequences of their false claims and intentionally  
19 and deliberately failed to act to avoid the probable and harmful consequences. The actions of  
20 Defendant Attorneys, were sufficiently fraudulent, malicious, and/or oppressive under NRS  
21 42.005 to warrant an award of punitive damages. All of the acts were fully authorized, approved  
22 and ratified by Robert D. Vannah, Chtd.

23 72. Plaintiffs were forced to retain attorneys to defend the frivolous complaints  
24 abusing the process, and related proceedings thereby incurring substantial attorney's fees and  
25 costs, which are specially plead pursuant to NRCP 9(g) to be recovered as special damages in a  
26 sum in excess of \$15,000.

27 73. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
28 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

**COUNT V**

**DEFAMATION PER SE –THE EDGEWORTH DEFENDANTS**

74. Plaintiffs incorporate the preceding allegations as though fully set forth herein.

75. On information and belief, Brian Edgeworth and Angela Edgeworth misrepresented to the public that Mr. Simon and his Law Office committed illegal and fraudulent acts. Defendants, and each of them, also made intentional misrepresentations to the general public that Mr. Simon and his Law Office lacked integrity and good moral character including, but not limited to, its publicly filed complaint on January 4, 2018, the amended complaint filed March 15, 2018, the multiple publicly filed briefs and affidavits asserting the same false statements. The Edgeworths repeated these statements to individual third parties independent of the litigation, and who were not significantly interested in the proceedings.

76. Brian and Angela Edgeworth's statements were false and defamatory and Brian and Angela Edgeworth knew them to be false and defamatory at the time the statements were made, and were at least negligent in making the statement to the third parties who were not significantly interested in the proceedings.

77. Brian and Angela Edgeworth's publication of these statements to third parties was not privileged. They were false statements intentionally made to parties with no significant interest in the proceedings, and they knew the statements were false at the time they were made. The statements were made about the business and profession of Mr. Simon and were intended to lower the opinion of others in the community about his integrity, moral character, and ability to perform his professional services. Specifically, Angela Edgeworth testified in the Evidentiary Hearing on September 18, 2018, that she made these false and defamatory statements to third parties who were not significantly interested in the proceedings. *See*, September 18, 2018 transcript of Angela Edgeworth's sworn testimony at 133:5-23. This is further evidenced by the Affidavit of Brian Edgeworth, dated February 12, 2018, at 7:25-8:15 and the Affidavit of Brian Edgeworth, dated March 15, 2018, at 8:2-9:22;

78. Brian and Angela Edgeworth, individually and on behalf of the Edgeworth entities made false and defamatory statements attacking the integrity and moral character of Mr. Simon

1 and his law practice tending to cause serious injury to his reputation and ability to secure new  
2 clients. These statements impugn Mr. Simon's lack of fitness for his trade, business and  
3 profession and injured Plaintiffs in his business. Under Nevada law, the statements were  
4 defamatory per se and damages are presumed. The foregoing notwithstanding, as a direct and  
5 proximate result of the false and defamatory statements, Mr. Simon and his Law Office, the Law  
6 Office of Daniel Simon have sustained actual, special and consequential damages, loss and harm  
7 in a sum to be determined at the time of trial.

8 79. The actions of the Edgeworth Defendants, were sufficiently fraudulent, malicious,  
9 and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The Edgeworth  
10 Defendants, knew of the probable and harmful consequences of their false claims and  
11 intentionally and deliberately failed to act to avoid the probable and harmful consequences. The  
12 Edgeworth Defendants ratified, fully approved, authorized and ratified each other's actions in  
13 attacking the integrity and moral character of Mr. Simon and his law office and on behalf of  
14 American Grating and the Edgeworth Family Trust. Therefore, Plaintiffs are entitled to an award  
15 of punitive damages.

16 80. The Edgeworth's Defamation Per Se and conduct proximately caused injury,  
17 damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft  
18 and crimes of extortion against Mr. Simon that harmed his image in his profession and among his  
19 personal friends and the community. Mr. Simon and his office sustained damage for humiliation,  
20 embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income,  
21 past and future, damage to his reputation proximately caused by the acts of the Edgeworth  
22 Defendants. These acts proximately caused general, special and consequential damages, past and  
23 future, in a sum to be determined at the time of trial.

24 81. Plaintiffs were forced to retain attorneys to defend the complaints and defamatory  
25 statements and incurred substantial attorney's fees and costs, which are specially plead pursuant  
26 to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

27 82. The additional specific facts necessary for Plaintiffs to plead this cause of action  
28 are peculiarly within the Defendants' knowledge or possession, thereby precluding Plaintiffs from

1 offering further specificity at this time. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d  
2 703, 708 (2006).

3 83. It has become necessary for Plaintiffs to retain the services of attorneys to litigate  
4 this action. Therefore, Plaintiffs are entitled to an award of attorneys' fees, costs and interest  
5 separately pursuant to Nevada law.

6 **COUNT VI**

7 **BUSINESS DISPARAGEMENT –THE EDGEWORTH DEFENDANTS**

8 84. Plaintiffs repeat and reallege each and every paragraph and allegation in the  
9 foregoing paragraphs as though fully set forth herein.

10 85. The statements of Brian and Angela Edgeworth, as alleged more fully herein,  
11 attacked the reputation for honesty and integrity of their lawyer and communicated to others a  
12 lack of truthfulness by stating that the Mr. Simon and his Law Office, the Law Office of Daniel  
13 S. Simon, converted, blackmailed and extorted millions of dollars from them. These statements  
14 were false and done with the intent to disparage, injure and harm Mr. Simon and his Law Office  
15 and actually disparaged the Law Office of Daniel Simon.

16 86. Brian and Angela Edgeworth's statements were false, misleading and disparaging.

17 87. Brian and Angela Edgeworth's publication of the statements were not privileged,  
18 as they were communicated to third parties not significantly interested in the proceedings. These  
19 statements were confirmed by Angela Edgeworth, individually and on behalf of their entities  
20 during the evidentiary hearing on September 18, 2018. See, the September 18, 2018 transcript of  
21 Angela Edgeworth's sworn testimony at 133:5-23. This is further evidenced by the Affidavit of  
22 Brian Edgeworth, dated February 12, 2018 at 7:25-8:15 and the Affidavit of Brian Edgeworth,  
23 dated March 15, 2018, at 8:2-9:22. They knew the statements were false at the time they were  
24 made to persons who did not have significant interest in the proceedings.

25 88. The Edgeworths' Disparagement of the business and conduct proximately caused  
26 injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts  
27 to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and  
28 among his personal friends and the community. Mr. Simon and his office sustained damage for

1 humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time,  
2 loss of income, past and future, damage to his reputation proximately caused by the acts of the  
3 Edgeworth Defendants. These acts proximately caused general, special and consequential  
4 damages, past and future, in a sum to be determined at the time of trial.

5 89. Brian and Angela Edgeworth published the false statements with malice, thereby  
6 entitling Plaintiffs to an award of punitive damages.

7 90. Brian and Angela Edgeworth published the false statements to further the amount  
8 of the recovery of the Edgeworth entities and personally benefit the Edgeworth's, disparage Mr.  
9 Simon and his Law Office with the intent to injure and cause financial harm and damage. At all  
10 times the defamatory and disparaging statements were fully authorized, approved and ratified by  
11 the Edgeworths and the Edgeworth entities, who knew the statements were false.

12 91. As a direct and proximate result of Brian and Angela Edgeworth's false and  
13 defamatory and disparaging statements, Plaintiffs have sustained actual, special and  
14 consequential damages, loss and harm, in a sum to be determined at trial well in excess of  
15 \$15,000.

16 92. The Edgeworth's Defamation Per Se and conduct proximately caused injury,  
17 damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft  
18 and crimes of extortion against Mr. Simon that harmed his image in his profession and among his  
19 personal friends and the community. Mr. Simon and his office sustained damage for humiliation,  
20 embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income,  
21 past and future, damage to his reputation proximately caused by the acts of Defendants, and each  
22 of them. These acts proximately caused general, special and consequential damages, past and  
23 future, in a sum to be determined at the time of trial.

24 93. Plaintiffs were forced to retain attorneys to defend the defamatory and disparaging  
25 statements during the proceedings and incurred substantial attorney's fees and costs, which are  
26 specially plead pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of  
27 \$15,000.

28

8 **COUNT VII**  
9 **NEGLIGENCE –THE EDGEWORTH DEFENDANTS**

12           97.     In or about January, 2018, Brian Edgeworth and Angela Edgeworth, individually  
13     and on behalf of the Edgeworth entities made material representations about Plaintiffs to  
14     individuals not having a significant interest in the proceedings and the public that were false.  
15     Defendants, and each of them, knew or should have known that the allegations were not supported  
16     by the law and lacked any evidentiary basis and were at least negligent in the communication of  
17     these statements. The Edgeworth's had a duty to Mr. Simon and his Law Office not to  
18     communicate false statements about his integrity and moral character to the anyone in the  
19     community not having a significant interest in the proceedings. Any reasonably prudent person  
20     would not have made these serious allegations against a lawyer.

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1 Mr. Simon and his Law Office has sustained actual, special and consequential damages in a sum  
2 to be determined at trial.

3 99. The Edgeworth's Negligence and conduct proximately caused injury, damage,  
4 loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and  
5 crimes of extortion against Mr. Simon that harmed his image in his profession and among his  
6 personal friends and the community. Mr. Simon and his office sustained damage for humiliation,  
7 embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income,  
8 past and future, damage to his reputation proximately caused by the acts of Defendants, and each  
9 of them. These acts proximately caused general, special and consequential damages, past and  
10 future, in a sum to be determined at the time of trial.

11 100. Plaintiffs were forced to retain attorneys to defend the frivolous lawsuit initiated  
12 by Defendants and incurred substantial attorney's fees and costs, which are specially plead  
13 pursuant to NRCP 9(g) in a sum in excess of \$15,000.

14 101. Plaintiffs have been forced to retain attorneys to prosecute this matter and are  
15 entitled to reasonable attorney's fees, costs and interest separately pursuant to Nevada law.

16 **COUNT VIII**

17 **CIVIL CONSPIRACY –ALL DEFENDANTS**

18 102. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs  
19 and allegations as though fully set forth herein.

20 103. Defendants, and each of them, through concerted action among themselves and  
21 others, intended to accomplish the unlawful objectives of (i) filing false claims for an improper  
22 purpose. Defendant Attorneys and the Edgeworths all knew that the Plaintiffs did not convert the  
23 money. They devised a plan to knowingly commit wrongful acts by filing the frivolous claims  
24 for an improper purpose to damage and harm the reputation of Mr. Simon and his Law Office;  
25 cause harm to his law practice; cause him unnecessary and substantial expense to expend valuable  
26 resources to defend the abusive and frivolous lawsuit; and they abused the process in attempt to  
27 manipulate the proceedings for an ulterior purpose. Defendants did not contemplate in good faith  
28 the initiation and continuation of these judicial proceedings. Instead, for the ulterior purposes

1 described herein, Defendants chose to maintain their improper claims all in an attempt to harm  
2 Simon when they had no legal or factual basis to maintain said claims. The wrongful acts were  
3 committed several times when filing the complaint, amended complaint, all briefs, three  
4 affidavits, oral arguments and supreme court filings, and Defendants, and each of them, took no  
5 action to correct the falsity of the statements repeatedly made by all Defendants. Defendants knew  
6 prior to the initiation of the proceedings that they had no good faith basis in fact or in law to  
7 maintain their claims against Simon. They did not perform a diligent inquiry and did not have  
8 sufficient facts under Nevada law to seek adjudication of conversion against Simon, yet chose to  
9 do so and continue to advance the legally deficient claim. Defendants never presented any Nevada  
10 law or facts to support or maintain their improper claims throughout the entire litigation of the  
11 matter. Defendants made these statements under the mistaken belief that they could say and do  
12 anything without consequence as they falsely believed they were shielded and had immunity  
13 under the litigation privilege. Defendants, and each of them, filed and maintained the frivolous  
14 complaint to punish Mr. Simon and Law Practice knowing the falsity of these statements. They  
15 also invented a story of an express oral contract for \$550 an hour in attempt to refuse payment of  
16 a reasonable attorney fee. The frivolous complaint also alleged that Mr. Simon was "paid in full."

17 104. Defendants, and each of them, through concerted action among themselves and  
18 others, intended to accomplish the foregoing unlawful objectives through unlawful means and to  
19 cause damage to Plaintiffs as herein alleged, including abusing the process, defaming and  
20 disparaging his Law Office, harming his business, causing unnecessary substantial expense, and  
21 to punish him, among others wrongful objectives to be determined at the time of trial.

22 105. In taking the actions alleged herein, Defendants, and each of them, were acting for  
23 their own individual advantage. Mr. Vannah was being paid \$925 an hour to file and maintain the  
24 frivolous claim. Mr. Greene was also being paid \$925 an hour to file and maintain the frivolous  
25 claims.

26 106. The Edgeworth's Defamation Per Se and conduct proximately caused injury,  
27 damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft  
28 and crimes of extortion against Mr. Simon that harmed his image in his profession and among his

1 personal friends and the community. Mr. Simon and his office sustained damage for humiliation,  
2 embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income,  
3 past and future, damage to his reputation proximately caused by the acts of Defendants, and each  
4 of them. These acts proximately caused general, special and consequential damages, past and  
5 future, in a sum to be determined at the time of trial.

6 107. As the direct and proximate result of the concerted action of Defendants, and each  
7 of them, as described herein, Plaintiffs have suffered general, special and consequential damages,  
8 loss and harm, in a sum to be determined at trial.

9 108. The actions of Defendants, and each of them, were sufficiently fraudulent, malicious,  
10 and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The Defendants,  
11 and each of them, knew of the probable and harmful consequences of their false claims and  
12 intentionally and deliberately failed to act to avoid the probable and harmful consequences and  
13 repeated the wrongful acts to achieve the objectives of their devised plan. Plaintiffs are entitled  
14 to punitive damages in a sum to be determined at the time of trial.

15 109. The additional specific facts necessary for Plaintiffs to plead this cause of action  
16 are peculiarly within the Defendants' knowledge or possession, thereby precluding Plaintiffs from  
17 offering further specificity at this time. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d  
18 703, 708 (2006).

19 110. Plaintiffs were forced to retain attorneys to defend the wrongful acts to carry out  
20 their devised plan and incurred substantial attorney's fees and costs, which are specially plead  
21 pursuant to NRCP 9(g) to be recovered as special damages in a sum in excess of \$15,000.

22 111. It has become necessary for Plaintiffs to retain the services of an attorney in this  
23 matter and he is entitled to be reimbursed for his attorneys' fees and costs incurred as a result  
24 separately pursuant to Nevada law.

25 ///

26 ///

27 ///

28 ///

**GENERAL PRAYER FOR RELIEF**

Plaintiffs pray judgment against Defendants, and each of them, as follows:

1. For a sum to be determined at trial for actual, special, compensatory, consequential and general damages, past and future, in excess of \$15,000.
2. For a sum to be determined at trial for punitive damages.
3. For a sum to be determined for attorneys' fees and costs as special damages.
4. For attorneys' fees, costs and interest separately in prosecuting this action.
5. For such other relief as this court deems just and proper.

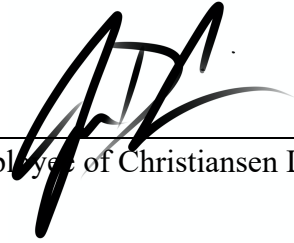
Dated this 21<sup>st</sup> day of May, 2020.

CHRISTIANSEN LAW OFFICES

By   
PETER S. CHRISTIANSEN, ESQ.  
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 21<sup>st</sup> day of May, 2020 I caused the foregoing document entitled *AMENDED COMPLAINT*, to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

  
An employee of Christiansen Law Offices