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 12:48 p.m. Elizabeth A. Brown Clerk of Supreme Court Supreme Court Case No. 82058 Dist. Ct. Case No. A-19-807433-C **JOINT APPELLANTS' APPENDIX IN SUPPORT OF ALL APPELLANTS' OPENING BRIEFS** **VOLUME VI** **BATES NO. AA001023 - 1213**

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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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OPPS
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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, 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 HEARING DATE: JUNE 30, 2020 HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION TO DEFENDANTS ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT, AND MOTION IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a)

The Plaintiffs, by and through undersigned counsel, hereby submits their Opposition to Defendants' Motion to Dismiss and Leave to file Motion in Excess of 30 Pages Pursuant to EDCR 2.20(a).

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This Opposition is made and based on all the pleadings and papers on file herein, the following Points and Authorities, and such oral argument as may be permitted at the hearing hereon.

Dated this 26th day of May, 2020.

By _____
PETER S. CHRISTIANSEN, ESQ.
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REQUEST FOR LEAVE TO FILE OPPOSITION IN EXCESS OF 30 PAGES

Plaintiffs, hereby move this honorable Court, pursuant to EDCR 2.20(a), for an Order granting leave to file their OPPOSITION TO DEFENDANTS ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT, AND MOTION IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT AND 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, Plaintiffs state as follows:

1. Local Rule 2.20(a) provides, in relevant part, that, "Unless otherwise ordered by the court, papers submitted in support of pre-trial and post-trial briefs shall be limited to 30 pages, excluding exhibits."

2. Plaintiffs Opposition totals approximately 71 pages.

3. Plaintiffs have made every effort to be brief and complete in their Opposition. However, due to the extensive history of the underlying cases, intensive facts and multiple parties and the need to set forth the complex and contentious nature of the parties' dealings and the law addressed in Defendants' Motion, Plaintiffs respectfully submit that the these arguments and the factual background require greater length than is permitted in a standard brief filed with this Court.

4. This extensive brief will allow other briefs to be more concise by adopting most of the factual and legal analysis set forth herein.

WHEREFORE, Plaintiffs respectfully request that this Court allow Plaintiffs to file their OPPOSITION TO DEFENDANTS ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT, AND MOTION IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT in excess of 30 pages and in the amount specifically identified in paragraph 2 of this Request.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants are not entitled to the benefit of immunity under the litigation privilege or Anti-SLAPP statutes. The facts here demonstrate Defendants failed to contemplate and pursue the conversion claim against Plaintiffs in good faith. In analyzing the lack of good faith, this Court needs to look no further than the judicial finding of Judge Jones when she awarded fees against the Edgeworths for Defendants having filed and maintained the frivolous conversion claim in bad faith. The Court stated:

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> The Edgeworth's did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, Order on Motion for Attorney's Fees and Costs, attached hereto as **Exhibit 1.**

Judge Jones made this same finding in dismissing the Edgeworths' baseless conversion claim. These are final appealable orders and should be treated as having preclusive effect with respect to Defendants' failure to act in good faith. While the Edgeworths filed an appeal which challenges the impact and use of the factual findings by the District Court, *the Edgeworths did not attack the findings of fact themselves in an effective or supported manner.* So although the appeal will determine whether the District Court acted within its discretion when it made certain conclusions of *law* based on the Court's finding of fact, the findings of fact will remain untouched no matter what the appellate decision may be. Moreover, "an appeal has no effect on a judgment's finality for purposes of claim preclusion." *Edwards v. Ghandour*, 123 Nev. 105, 159 P.3d 1086 (2007)(abrogated on other grounds by *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008)).

The Vannah attorneys also ignore that victorious litigants are permitted to pursue claims when they have been abused by false allegations and frivolous complaints. *Bull v. McCuskey. Id.* Because Defendants must have acted in good faith to be afforded immunity, dismissal of Simon's amended complaint is precluded. Not surprisingly, the instant motion glosses over the essential elements and analysis of good faith and merely seeks a broad, over inclusive order dismissing all claims. Simon's complaint properly alleges that the conduct of all Defendants was not in Good Faith and details the abusive measures Defendants undertook long after filing their complaint and amended complaint. When the allegations in Plaintiffs' Complaint are taken in the light most favorable to Plaintiffs, the overwhelming conclusion is that Defendants did not act in good faith

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when filing and maintaining the frivolous conversion claim as the ability to achieve legal success on that claim was always a factual and legal impossibility.

To that exact end, the Honorable Tierra Jones conducted a five-day evidentiary hearing and ultimately found that the Edgeworths' conversion allegations did not have a good faith basis in law or fact. Judge Jones dismissed the conversion claim and awarded Simon attorney's fees and costs for having to defend against the baseless cause of action. The act of filing a frivolous complaint is not a protected activity under the Anti-SLAPP statute, nor is filing a frivolous complaint a good faith communication which is protected by the litigation privilege. Frivolous litigation does not qualify for protection under any statute or privilege. Quite the opposite, public policy mandates punishment for those who pursue frivolous claims, including the attorneys who pursue such claims. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980).

It is undisputed that prior to filing the underlying conversion claim, all Defendants knew Mr. Simon never had exclusive control of the money – a necessary element to establish conversion. *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir. Cal.2003); *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist., C.A., 2009 (unpublished). All Defendants also concede they always knew Simon was owed money and always had an interest in the disputed funds. All Defendants met Mr. Simon at the bank to sign the settlement checks and the lawsuit was filed before the settlement checks were even deposited. Mr. Simon was admittedly owed substantial attorneys fees and filed a lawful attorney lien under Nevada law. *See*, NRS 18.015; *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Defendants never challenged Simon's lien as improper. In

short, Defendants knew the allegation that Simon exercised wrongful control of the subject funds was a legal impossibility.[1]

Additionally, the Edgeworths never had any recoverable damages because the settlement money was and is safekept in trust and the Edgeworths continue to earn interest on the entire sum, including the amount due Simon. The money is kept in trust pursuant to an express agreement between Vannah and Edgeworth on one hand, and Simon on the other. *See*, December 28, 2017 Email, attached hereto as **Exhibit 3.** On January 8, 2018, the settlement checks were deposited. On January 16, 2018 after the checks cleared, the Edgeworths received an undisputed sum of just under $4,000,000.00 for their $500,000 property damage claim, which the Edgeworths agreed made them whole. Still, the amended conversion complaint, which Defendants filed in March, 2018, maintained the same conversion allegations. Defendants continued to further those false accusations with affidavits claiming extortion, blackmail and theft - all for the filing of an attorney's lien.

So it is not merely the act of filing the frivolous lawsuit that gives rise to liability here, but the ongoing abusive conduct engaged in by all Defendants to continually attack Mr. Simon's professional and moral character when falsely accusing him of the most egregious conduct a lawyer can commit – stealing millions from a client's settlement. Of course, abandoning these frivolous conversion arguments would only scream an admission of liability. Nevertheless, the facts as alleged in this case, coupled with the prior judicial determinations, demonstrate

[1] Following the law by filing a lawful attorney lien is not a wrongful act that can be used to establish conversion.

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

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

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Defendants did not act in good faith in claiming conversion and they should not be permitted to use the litigation privilege or Anti SLAPP statute as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

THE PARTIES

1. Angela Edgeworth

Angela Edgeworth is a principal and trustee of Defendants, Edgeworth Family Trust and American Grating, LLC. She is married to Brian Edgeworth. She has adopted all testimony of Brian Edgeworth. *See*, September 18, 2018 Transcript at 108:1-12, attached hereto as **Exhibit 4.** She has also ratified the conduct of all parties on behalf of the entities. *Id.* at 168:18-169:11**.** Angela Edgeworth has individually committed the torts set forth in this Motion and acted in her fiduciary capacity on behalf of her entities, Edgeworth Family Trust and American Grating, LLC.

2. Brian Edgeworth

Brian Edgeworth is a principal and trustee of Defendants, Edgeworth Family Trust and American Grating, LLC. He is married to Angela Edgeworth. They both have equal motive to gain from the false and defamatory statements and ill-will toward Mr. Simon and his Law Firm. At all times in this case, he was the speaking agent for himself and the Edgeworth Family Trust and American Grating, LLC, as well as Angela Edgeworth and ratified the conduct of all parties on behalf of the entities. Brian Edgeworth has individually committed the torts set forth in this Motion and also acting in his fiduciary capacity on behalf of Edgeworth Family Trust and American Grating, LLC.

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3. Edgeworth Family Trust

The Edgeworth Family Trust was the Plaintiff in the underlying case. Brian Edgeworth and Angela Edgeworth, husband and wife, were co-trustees acting in their fiduciary capacities of the Edgeworth Family Trust and their conduct was done to benefit the trust. The trust ratified the conduct of Brian and Angela Edgeworth and is therefore, liable for all acts of Brian and Angela Edgeworth.

4. American Grating, LLC

American Grating, LLC was the Plaintiff in the underlying case. Brian Edgeworth and Angela Edgeworth, husband and wife, equally own and were principles of American Grating, LLC. Their conduct was done to benefit American Grating, LLC in their fiduciary capacity. American Grating, LLC has ratified the conduct of Brian and Angela Edgeworth and is therefore liable for all acts of Brian and Angela Edgeworth.

5. Robert D. Vannah, Chtd. d/b/a Vannah and Vannah

Robert D. Vannah, Chtd. d/b/a Vannah and Vannah is the corporate name of the law firm that represented the Edgeworth entities to maliciously prosecute and abuse the process. This legal entity employed and/or acted as the principle for the acts of Mr. Vannah and Mr. Greene, who were the attorneys acting individually and on behalf of the Law Firm within the course and scope of their employment and/or agency relationship. As such, their conduct is imputed to the Law Firm, which was ratified by the Law Firm on an ongoing basis.

6. Robert D. Vannah, Esq.

Mr. Vannah is lead counsel representing the Edgeworth entities, who knowingly advanced the false narratives and individually acted for his own pecuniary gain when charging $925.00 an hour. He supervised John Green, Esq. on behalf of Robert D. Vannah, Chtd. d/b/a Vannah and

Vannah. Mr. Vannah at all times acted within his capacity as a lawyer benefitting himself and his law firm when he conspired to maliciously prosecute the frivolous claims and abuse the process, among the other torts set forth herein.

7. John Greene, Esq.

Mr. Green was the primary attorney at the firm handling the day-to-day matters for the Edgeworth entities. He was actively engaged in all decision making, filing the false documents and arguing the false narrative to the courts. He knowingly advanced the false narratives and individually acted for his own pecuniary gain when charging $925.00 an hour. His conduct was all done for the benefit of Robert D. Vannah, Chtd. d/b/a Vannah and Vannah and at all times acted within his capacity as a lawyer benefitting himself and his law firm when he conspired to maliciously prosecute the frivolous claims and abuse the process, among the other torts set forth herein.

8. All Defendants acted in concert to achieve an unlawful objective

Robert Vannah, John Greene, Angela Edgeworth, Brian Edgeworth, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah, Edgeworth Family Trust, acting through its trustees and American Grating, LLC, acting through its principals, devised a plan to file false claims alleging theft and filing false statements alleging other crimes of blackmail and extortion for an improper purpose. These claims were filed to refuse payment admittedly owed for the work already performed. It was also filed to damage the reputation of Mr. Simon and cause financial harm motivated by ill-will to punish Mr. Simon and his firm. Accusing a lawyer of stealing millions of dollars from a client in a lawsuit is one of the most serious allegations and egregious acts that can be made against an attorney. Defendants knew these false and wild accusations would have a devastating effect on Mr. Simon's livelihood and that is why they did it. The Defendants continual

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abuses was maintained on an on-going basis under the mistaken belief that the litigation privilege would shield them from liability in any later action. Defendants are wrong as Nevada law does not provide immunity for those who intentionally and maliciously abuse the process to harm another. The on-going abusive conduct, not just the statements, as specifically alleged in the amended complaint precludes dismissal of the Defendants. The conduct involved much more than the mere filing of the complaint and amended complaint as alleged by Vannah. *See*, Motion to Dismiss at 3:26-27. The conduct involves abusive measures that confirm the lack of good faith on the part of all Defendant's. Vannah also admits he has a duty to only bring meritorious claims that he has a good faith basis to bring (NRPC 3.1). *See*, Motion to Dismiss at 18:20-21.

As demonstrated below, all Defendant's did not have a good faith basis to file the conversion claim, let alone maintain it for years as already found by the Honorable Tierra Jones in her order dated October 11, 2018 and amended on November 19, 2018.

III.

FACTUAL BACKGROUND

A. THE UNDERLYING CASE

That on or about April 10, 2016, the sprinkler head and system sold and installed by a plumbing contractor failed, causing a massive flood during construction of the Edgeworth's multi-million-dollar speculation home. Nobody was injured in the flood. This caused damage to the interior of the home in approximately $500,000 dollars. *See*, ¶12 of Complaint. Mr. Simon represented the Edgeworth entities in a complex and hotly contested products liability and contractual dispute stemming from the premature fire sprinkler activation. *See*, ¶13 of Complaint. Mr. Simon and his family were close friends with the Edgeworth's and he agreed to represent them on a friends and family basis starting out as a favor. *Id.* In May of 2016, Simon started

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helping the Edgeworth's on the flood claim arising from a defective sprinkler, **as a favor**, with the goal of ending the dispute by triggering insurance to adjust the property damage loss. Simon and Edgeworth never had an express written or oral attorney fee agreement initially as it started out as a favor. *Id.* The insurance denied all of Edgeworth's claims and since Edgeworth did not purchase course of construction insurance, they needed help. Mr. Simon was the only attorney that they could turn to at that time. The only other attorney Edgeworth spoke with wanted a $50,000 retainer to get started, which Edgeworth did not want to pay. *See*, Email dated May 27, 2016, attached hereto as **Exhibit 5.** Mr. Simon, as a close friend provided options to the Edgeworth's to help them with this difficult case.

Mr. Will Kemp, Esq. reviewed the case and testified he would have never taken this single-family products liability case as it is not economically feasible and Mr. Edgeworth was lucky that Mr. Simon was willing to get involved. *See*, August 30, 2018 Transcript at 182:24-183:17, attached hereto as **Exhibit 6.** As the case became extremely demanding, attempts to reach an express agreement for attorney's fees were made but one could not be reached due to the unique nature of the property damage and extent of legal services and costs required to achieve a successful result. *See*, ¶14 of Complaint. 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. *See*, August 22, 2017 Contingency Email, attached hereto as **Exhibit 7;** *See also*, ¶14 of Complaint. Although it was always the understanding that a fair fee would be worked out at the end of the case, Mr. Simon and Edgeworth agreed that the specific amount for the attorney fees was in flux during this period due to the unique nature of the case. *See*, August 27, 2018 Transcript at 121:2-8; 124:22-125:12, attached hereto as **Exhibit 8.** Edgeworth also admitted that a written fee agreement could not

have been reached earlier because the case that changed in discovery could not have been anticipated at the beginning of the case. *See*, **Exhibit 8** at160:14-20**;** *See also*, ¶13 of Complaint.

The bills generated only contained a fraction of the time spent. Mr. Simon does not generally bill hourly, and the bills were created to produce as damages against the plumber only. The plumbers contract had a provision allowing for the recovery of attorney's fees and costs incurred to enforce the warranty of the sprinkler they installed. The bills were produced pursuant to NRCP 16.1. The first bill was generated seven months after work started to produce at the upcoming ECC. Only a few other bills were generated as time permitted over the next 10 months. If it was a pure hourly case, these bills would have been billed regularly every 30 days, with all time included, which would have amounted to well over 1.5 million. Edgeworth was on the other end of the phone calls and 2,000 plus emails not billed. Mr. Edgeworth is a sophisticated businessman with an MBA from Harvard. He has multiple international businesses with factories in China. He has hired many law firms before Simon, and is not the naive victim he incredibly portrays. Notably, the full fee and costs of Simon for the reasonable value of services could have been pursued against the plumber under the contract, but Vannah and Edgeworth waived this valuable claim to engage in the path of destruction against Simon. This further underscores their ill-will and improper motives.

Due to their friendship, **and only their friendship**, Mr. Simon continued with the case under this arrangement. Mr. Simon devoted his practice to prosecuting the case, requiring him to put many other large cases on hold and limiting his time to secure new cases and grow his practice. *See*, ¶14 of Complaint. He treated the Edgeworth's like family - taking their case when others would not absent the payment of a large retainer. *See*, **Exhibit 5.** Mr. Simon never asked for a retainer (even for costs) and advanced $200,000 in costs that were periodically reimbursed. This

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was done only because of the close trusting relationship he felt he had with the Edgeworth's. Angela Edgeworth considered Mrs. Simon one of her closest friends. Mrs. Simon planned her father's funeral and also planned a surprise party for her with Brian Edgeworth inviting 60 plus guests. The families travelled around the world together and their kids went to the same school and shared special events, birthdays, etc. These are just a few examples. It was only because of this perceived close friendship that Mr. Simon let his guard down and did not secure a written fee agreement for his own protection.

B. THE RESULT AND CONSPIRACY

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim. The Edgeworth's admit they were made whole when they received their share of almost $4 million. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment. Instead of even having a discussion about a fair fee, the Edgeworth's stopped talking to Mr. Simon and fired him immediately when retaining Robert D. Vannah and John Greene to bring frivolous claims and wild accusations against Mr. Simon and his Law Firm. *See*, ¶¶15,16 of Complaint. This strategy grounded in hostility was used in an attempt to refuse payment, attack Mr. Simon's integrity and moral character, as well as cause substantial expenses and loss of income to Mr. Simon and his firm.

To that end, on January 4, 2018, the Edgeworth's and the Vannah firm filed a lawsuit alleging conversion of the settlement money. *See*, ¶19 of Complaint. The frivolous conversion lawsuit sought relief that Simon was "paid in full" and asserted the settlement proceeds were solely the Edgeworth's (Vannah Complaint at 8:6-8; Vannah Amended Complaint at 8:21-9:21) which is in stark contrast to the sworn testimony of Edgeworth, who confirmed he "always knew

he owed Simon money," (August 27, 2018 Hearing at 178:20-25), along with his attorneys statement in open court, as follows:

> MR. VANNAH: Our position is we owe Danny Simon money, and that's what you're going to decide, Your Honor. You're going to decide how much he's owed in September 22nd until the date that he stopped billing.
>
> THE COURT: Right. And are you –
>
> MR. VANNAH: There's a bill there.
>
> THE COURT: -- referring to the conversion claim? There's a conversion claim in the lawsuit, Mr. Vannah. Is that what -- that's what I believe Mr. Christiansen is getting at.
>
> MR. VANNAH: No, he's asking -- he keeps asking him over and over again, if he doesn't owe him any money from September 22nd to January 8th, that's never been our position, everybody knows that. And that's why we're here to determine how much money he's owed during that four or five month period. We owe him money; we're going to have you make that decision.
>
> THE COURT: Okay.

See, August 28, 2018 Transcript at 36:1-37:3, attached hereto as **Exhibit 9.** *See*, ¶¶19,20 of Complaint. Certainly, this portion of the complaint was not made in good faith similar to the rest of the Vannah complaint.

Realizing the bizarre behavior of Brian and Angela Edgeworth when they refused to discuss a fair fee and retained Vannah and Greene to refuse payment, Mr. Simon followed the law and promptly filed an attorney's lien pursuant to NRS 18.015. *See*, ¶17 of Complaint. The amount in dispute was placed in an account requested to be set up at the direction of Mr. Vannah, who was a signer and equally controlled the new trust account with 100% of the interest going to Mr. Edgeworth. *See*, Letter from Vannah to Bank of Nevada, attached hereto as **Exhibit 10.** *See*, ¶20 of Complaint. Mr. Vannah also confirmed the agreement to the Court when he represented that he agreed to have Mr. Simon place the ***biggest number he could recover in the trust account***.

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See, **Exhibit 4** at 146: 17-147:4. Specifically, Mr. Vannah stated the agreement to the Court, as follows:

MR. VANNAH:	So there's $6 million that went into the trust account.
THE COURT:	Okay.
MR. VANNAH:	Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get, and then we gave the clients the remainder.
THE COURT:	So the six –
MR.VANNAH:	In other words, he chose a number that – *in other words we both agreed that*, look, here's the deal. Odds you can't take and keep the client's money, which is about 4 million. *So I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account*. (Italics added.)

See, **Exhibit 4** at 146: 17-147:4.

Will Kemp reviewed the case and opined the reasonable value of services owed to Simon was $2,440,000. The Vannah attorneys and the Edgeworths were provided Will Kemps opinion as to the value of the lien on February 5, 2018. Mr. Simon's lien was less than Mr. Kemp's opinion and approximately $2 million was placed in a separately created trust account equally controlled by Vannah with 100% interest going to Edgeworth, even Simon's share. How can Vannah accept the lien amount, which was supported by expert testimony, the amazing result and amount of substantial work performed, and now genuinely suggest to this court that the lien was unreasonable on its face? This was not the basis for his conversion complaint as he did not even challenge the validity of the amount of the lien at the evidentiary hearing. Vannah's new unfounded ad hoc rescue arguments and admissions in open court are yet more acts demonstrating bad faith motivation to pursue the frivolous conversion claims aimed to destroy Simon.

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C. SIMON FOLLOWED THE LAW AND IS IN FULL COMPLIANCE WITH ALL ETHICAL RULES

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

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

The Law Office of Daniel S. Simon, A Professional Corporation followed the exact course mandated by the Rules of Professional Conduct. The Law Office followed the law and placed the settlement money into a joint trust account with all interest accruing to Edgeworth. *See*, ¶20 of Complaint. Mr. Simon is allowed by law to assert an attorney lien pursuant to NRS 18.015. There is nothing fraudulent about asserting an attorney lien for attorney's fees and costs that are still due and owing. The declaration of David Clark, former State Bar Counsel for Nevada, reviewed the case and explains in detail that Mr. Simon followed the exact procedure mandated by law. *See*, Declaration by David Clark, attached hereto as **Exhibit 11.** The District Court noted in its decision and order that Vannah and Edgeworth never disputed Mr. Clark's opinion.

Notwithstanding the agreement expressed to the Court, Mr. Vannah presented a letter to the Bank consenting to the handling of the funds. *See*, **Exhibit 10**. How can you wrongfully convert funds when the complaining party agrees to where the funds should be placed and when Mr. Simon fully complied with the Edgeworth/Vannah's direction and placed the funds in a protected account immediately?

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D. THE FIRING OF SIMON

Mr. Simon was fired toward the end of the case when the Edgeworth's hired Mr. Vannah and Mr. Greene. When a lawyer is fired, the amount of the lien is for the reasonable value of services still owed. The District Court found Simon was fired on November 29, 2017. Mr. Simon filed an attorney lien as he was owed in excess of $68,000 for costs alone, as well as a substantial amount for outstanding attorney fees. Will Kemp reviewed the case and opined the reasonable value of services was $2,440,000. This evidence confirming the value of services also remains undisputed. Notably, there was not an express written contract with the client and NRS 18.015 allows for a lawyer to recover the reasonable value of his services. Instead, Mr. Vannah and the Edgeworth's invented a story asserting an express oral contract was entered into for an hourly rate of $550 per hour. This was part of their fraudulent plan to avoid paying the reasonable value of services. The District Court heard Mr. Edgeworth's story and weighed the evidence and found that ***an express oral contract did not exist*** as alleged by Mr. Edgeworth. *See*, **Exhibit 2** at p.7**;** *See also*, ¶27 of Complaint. Vannah agrees that Edgeworth was not credible when he conceded six times in his opening brief to the Nevada Supreme Court that the District Judge believed Mr. Simon over Edgeworth. *See*, Appellants Opening Brief at pp. 11, 12, 15, 18 & 28, attached hereto as **Exhibit 12.** These are findings of fact made by the District Court and are no longer in dispute. *Id*. The District Court also found the attorney lien was properly filed, which was never challenged by the Edgeworths or the Vannah attorneys, likely because the evidence supported the amount of the lien. *Id*. As discussed in detail below, Mr. and Mrs. Edgeworth, through Vannah and Greene also created a fraudulent story of extortion, blackmail, stealing, intimidation and threats to support the frivolous conversion claim for the mere act of filing a lawful attorney lien. *See*, ¶25 of Complaint. Angela Edgeworth and Brian Edgeworth admitted, under oath, they repeated these

false and defamatory statements to third persons outside the litigation and admitted to filing the conversion claim for the ulterior purpose of punishing Mr. Simon and his firm. *See*, **Exhibit 4** at 145:10-21**;** *See also*, ¶¶66,67,68 of Complaint. These admissions confirm the lack of good faith basis necessary to seek protection of the litigation privilege or the Anti-SLAPP protections under Nevada law.

E. THE MALICIOUS LAWSUIT ABUSING THE PROCESS FOR AN IMPROPER PURPOSE.

The lack of Good Faith is also demonstrated by the events leading up to and continuing long after the filing of the complaint. On November 29, 2019, the Edgeworths retained Vannah and Greene, and notified Mr. Simon. *See*, November 29, 2017 Letter of Direction, attached hereto as **Exhibit 13;** *See also*, ¶16 of Complaint. On November 30, 2019, the attorney lien was served. *See*, Attorney Lien, attached hereto as **Exhibit 14;** *See also*, ¶17 of Complaint. On December 1, 2017 Vannah signs the release for settlement of $6 million. *See*, Viking Release, attached hereto as **Exhibit 15;** *See also*, ¶18 of Complaint. On December 18, 2017, settlement checks were picked up by Mr. Simon, who notified Vannah's office to have clients endorse the checks in order to deposit into the trust account. Clients became unavailable and refused to sign. On December 26, 2017, Vannah sends email "clients are fearful Simon will steal money." *See*, December 26, 2017 email, attached hereto as **Exhibit 16.** On December 27, 2017, Mr. Simon's lawyer, Jim Christensen, sent a letter with specific timelines and a request to avoid hyperbole of false accusations and offered to work collaboratively for a resolution. *See*, December 27, 2017 Letter, attached hereto as **Exhibit 17.** On December 28, 2017, Vannah wrote in an email, he did not believe Simon would steal money, he was simply relaying his client's statements." *See*, **Exhibit 3.** Later that day, Vannah proposed and Mr. Simon agreed, to a single purpose trust account that has both Mr. Simon and Mr. Vannah as signors and that the client would get all interest from

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account. *Id.* On January 2, 2018, Mr. Simon's law firm filed an amended lien with specific amounts. *See*, Amended Attorney Lien, attached hereto as **Exhibit 18.** On January 4, 2018, a frivolous conversion theft suit was filed against Mr. Simon, individually and his law firm without any basis that Simon stole the money. *See,* Vannah Complaint, attached hereto as **Exhibit 19;** *See also*, ¶19 of Complaint. The conversion theft lawsuit was filed one week after Vannah confirmed he did not believe Simon would steal the money, and after all parties agreed to put the disputed money in the special trust account. *See*, **Exhibit 3.**

On January 8, 2018, Simon, Vannah, Brian Edgeworth and Angela Edgeworth all went to the bank at the same time to endorse the settlement checks, which were given to the banker and deposited into the new joint trust account. *See,* ¶20 of Complaint. On January 9, 2018, Simon was served with the Vannah Complaint for conversion. *See*, ¶21 of Complaint. When the Vannah Complaint was served, the Edgeworths, Greene and Vannah had actual knowledge that the funds were sitting in the protected account. Vannah and Greene filed an Amended Complaint without leave of court on March 15, 2018, re-asserting the conversion theft and punitive damage claims. *See*, Vannah Amended Complaint, attached hereto as **Exhibit 20;** *See also*, ¶22 of Complaint. Since the money was safe kept in the protected joint account for two months, the new Amended Complaint underscores the transparent malicious motives of Vannah, Greene and the Edgeworth's. The Edgeworth's, Vannah and Greene also filed affidavits containing false allegations of theft, extortion and blackmail to persuade the court not to dismiss the conversion claim. *See*, ¶23 of Complaint. Specifically, Edgeworth stated, as follows:

> "I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and **SIMON'S attempt at trying to extort millions of dollars from me**. …"

See, March 15, 2018 Affidavit of Brian Edgeworth at 8:17-20, attached hereto as **Exhibit 21.**

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Significantly, Mr. Herrera has no interest in the proceedings and these defamatory statements are not protected by the litigation privilege. The purpose of maintaining the conversion theft claim was malicious for several improper purposes, including but not limited to (1) Avoid paying attorney fees admittedly owed; (2) Punish Mr. Simon; (3) Cause substantial expense to Mr. Simon and his Firm; (4) Attack Mr. Simon and the firm's integrity and moral character to smear his name and reputation to make him lose clients and cause the firm to lose income; (5) Ill-will, hostility and harassment; (6) Avoiding lien adjudication and to delay the proceedings. *See*, ¶¶22,23,24, 25,26,50,89 of Complaint. Another abusive act is suing Mr. Simon personally when the lien was only filed by the Law Office. This strategy was likely to also persuade the court to award less than the reasonable value of Mr. Simon's work. Simon need only show the Court one improper purpose, but Vannah, Greene, and the Edgeworths have admitted to all of these several improper purposes.

F. <u>The Unprivileged Defamatory Statements of Angela and Brian Edgeworth were adopted by all Defendants, including the Vannah Attorney's</u>

Angela Edgeworth confirmed the frivolous conversion theft claim was filed for an ulterior purpose out of ill-will and hostility to punish Mr. Simon when she testified, under oath, as follows:

> Q. You made an intentional choice to sue him as an individual as opposed to just his law office, fair?
>
> A. Fair.
>
> Q. That is an effort to get his individual money; correct? His personal money as opposed to like some insurance for his law practice?
>
> A. Fair.
>
> Q. And you wanted money to punish him for stealing your money, converting it; correct?

A. Yes.

Q. And he hadn't even cashed the check yet; correct?

A. No.

See, Exhibit 4 at 145:10-21; *See also*, ¶¶66,67,68,70,75,76,77,78, 79,of Complaint.

There is no mistake about the ulterior purpose to injure Simon. The Vannah attorneys adopted these statements as part of their plan and they have yet to rebuke these statements after they were made in open court in their presence. *See also*, ¶¶66,67,68,70,75,76,77,78, 79 of Complaint. These statements, under oath, confirm the reason for the conversion claims pursued by the Edgeworth's and the Vannah attorney's. This fact is undisputed. Additionally, there is also no mistake about how frivolous the conversion theft claim has always been, especially when the District Court entered findings on the conversion claim, and explicitly found in its decision as follows:

> The Edgeworth's did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, **Exhibit 1;** *See also*, ¶¶29 of Complaint.

Angela Edgeworth also confirmed that she was the equal owner of American Grating, LLC and equal trustee of Edgeworth Family Trust, acting on behalf of the entities and fully approved and ratified the conduct of these entities. *See*, **Exhibit 4** at 168:18-169:11. She also testified that she adopted all testimony of her husband. *See*, Exhibit 4 at 108:1-12. Individually, she admitted under oath that she told several people outside of the litigation that Mr. Simon was extorting and blackmailing them, including Lisa Carteen and Justice Miriam Shearing. *See*, **Exhibit 4** at 133:5-15; *See also*, ¶¶66,67,68,70,75,76,77,78,79,84 of Complaint. At the time the defamatory statements were made, these individuals did not have a significant interest in the

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proceedings, therefore, these statements are not protected by the litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014).

Specifically, Mrs. Edgeworth stated to Ms. Carteen, as follows:

> Q. Okay. The words you used, ma'am, and I won't go back through them all, when you talked to Ms. Carteen -- Did I get that right?
>
> A. Yes.
>
> Q. -- were those the words you use to her when describing Mr. Simon?
>
> A. I'm sorry. Which – what do you mean?
>
> Q. Terrified? Blackmailed? Extorted?
>
> A. I used blackmailed, yes.
>
> Q. You used those words to her?
>
> A. And I used extortion, yes.
>
> Q. Similarly, when you talked to Justice Shearing in February 2018, were those the words you used?
>
> A. I don't think they were that strong. I just told her what happened. Lisa is more of a closer friend of mine. So I was a little bit more open with her.
>
> Q. And you were talking to Lisa as your friend, not your lawyer; right?
>
> A. Correct.

See, Exhibit 4 at 133:5-23.

These admissions alone establish all elements for Simon's claims against all Defendants. Mr. Edgeworth equally adopted the statements of his wife and also independently told third parties outside the litigation that Mr. Simon was extorting and blackmailing the Edgeworths for millions of dollars as set forth in his affidavit. *See*, ¶¶66,67,68,84 of Complaint. Harming Mr. Simon's reputation and business is an ulterior motive. *See, e.g., Datacomm Interface, Inc. v. Computerworld, Inc*., 396 Mass. 760, 775, 489 N.E.2d 185 (1986). A false statement involving the imputation of a crime has historically been designated as defamatory per se." *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (Nev. 2005).

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The Vannah lawyers prepared these affidavits, and filed the false affidavits to defend dismissal of the conversion claims. *See,* ¶¶23 of Complaint. They are well aware that filing an attorney lien is not theft, blackmail or extortion. In the Vannah attorneys moving papers, they attempt to distance themselves from the false statements they have repeatedly advanced – theft, extortion and blackmail. The ill-will is further confirmed when Vannah, Greene and the Edgeworth's all stated in Court - we always knew we owed Simon Money. *See*, **Exhibit 8** at 178:20-25. Simon always had an interest in the disputed funds, never controlled the funds and conversion has always been a legal impossibility. *See*, ¶22 of Complaint. The Vannah attorneys have always known this simple and undeniable fact from the outset of the case, but intentionally refused to abandon the false narrative to harm Simon.

G. THE EVIDENTIARY HEARING AND THE DISTRICT COURT'S DECISION AND ORDER ON THE MERITS

The Court held a five-day evidentiary hearing taking evidence from Mr. Simon, Mr. Kemp, Brian Edgeworth and Angela Edgeworth, among other witnesses. The court reviewed over 80 exhibits entered into evidence. On October 11, 2018, the District Court dismissed Edgeworths Amended Complaint and entered findings of fact. She amended her order on November 19, 2018. 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. No express oral contract was formed.
e. There was no evidence to support the conversion claim.

See, Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5), attached hereto as **Exhibit 22;** *See also*, ¶28 of Complaint.

In a later motion, Defendants were ordered to pay $55,000 in attorneys fees incurred in having to defend against the frivolous conversion theft claim. *See*, **Exhibit 1;** *See also*, ¶29 of

Complaint. This is a final order even though it was appealed to the Supreme Court and may possibly get reversed or modified. Notably however, Edgeworth did not challenge the non-existence of the alleged express oral contact and this finding is now final and also constitutes issue preclusion the same as the bad faith motives when pursuing the conversion claims.

H. THE INTENT TO PUNISH MR. SIMON BY FILING THE CONVERSION/THEFT CLAIM IS ADMITTED BY ALL PARTIES.

Prior to receiving the settlement money, Vannah sent an email stating client believes Simon is going to steal money, yet Vannah admits he does not believe this is the case. *See*, **Exhibit 3.** Since Vannah admits in his own email he does not believe Simon would steal the money, his lawsuit filed a week later certainly was not contemplated in good faith. Even worse, Vannah, Greene and the Edgeworths all had actual knowledge that the money was safe kept in a joint trust account controlled equally by Vannah earning Edgeworth interest. *See*, ¶20 of Complaint. Since they knew the money was not stolen and stated in an email, they did not believe theft was an issue, Vannah and Greene conspired with the Edgeworths to abuse the process when maliciously filing and maintaining the conversion claims. *See*, ¶¶49,50,51,52,53,89,90 of Complaint. Simon relied on the statements of the Vannah attorneys when entering into an agreement to protect the funds in a special account for the benefit of Edgeworth. *See*, ¶19 of Complaint. How can Vannah or Edgeworth enter into an agreement that solely benefits them, confirm in an email he does not believe theft is an issue, and then turn around and suggest to this court that his conversion complaint was filed and maintained in good faith?

1. The amount of the lien is a new argument contrary to the District Court's findings

The desperate ad hoc rescue argument now alleges the lien is unreasonable on its face and ignores the blackmail, extortion and theft assertions. This new argument is not genuine, which is

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confirmed by the fact that the conversion claim in the complaints allege that a lien amount has not been provided and the amount of the lien is not suggested as a basis for the conversion claim. This new argument also ignores the opinion of Will Kemp and the substantial evidence admitted at the evidentiary hearing. This new argument was not pursued before the District Court at the evidentiary hearing. The Edgeworth's did not argue against the Courts finding of a proper lien, likely, because the only evidence as to the reasonableness of the lien supported its amount. Not only did Will Kemp opine that the Simon lien was low, but the evidence received by the Court hit every *Bruznell* factor for a large fee, including the enormous amount of the unbilled work and the undeniably fantastic result. Simply, the Edgeworth's did not argue or establish that the lien amount was unreasonable on its face at the hearing. The time to assert the challenge was when adjudicating the attorney lien – the entire purpose of the hearing. Accordingly, the District Court found a proper lien as a matter of law and any new arguments of same should be summarily dismissed. *See,* ¶27 of Complaint.

Instead, the Edgeworths' argument before the District Court was only that the lien conflicted with the alleged oral contract. However, the alleged oral contract was found to have never existed, the implied contract was found to be terminated, and any argument is waived because Mr. Vannah invited Simon's lien. *Id.* When a lawyer is discharged, he/she is entitled to receive the reasonable value of services for the work performed. Will Kemp's testimony supporting the lien remains undisputed. The Supreme Court is reviewing the application of Quantum Meruit and if remanded, the District Court has an opportunity to award the full amount of the lien.

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2. Vannah/Edgeworths' Narrative was Rejected by the District Court

When the Edgeworths stop talking to Simon on November 29, 2017, Vannah threatened Simon with increased damages if Simon withdrew. The threat was partly based on the large amount of time it would take Vannah to come up to speed in order to match Simon's knowledge of the case. *See,* January 9, 2018 Email, attached hereto as **Exhibit 23.** Vannah repeated the sentiment in Court on February 6, 2018. *See*, February 6, 2018 Transcript at 35:22-24, attached hereto as **Exhibit 24.** However, Edgeworth/Vannah continue to advance inconsistent arguments. They argued to the Supreme Court that the work Simon was doing at that time was ministerial. If this is true, the Vannah threats were not made in good faith and yet more evidence of ill will to abuse the process. Further, the Edgeworths theme is that Simon sought a bonus only after a significant offer was made, but the Edgeworths were petrified when Simon allegedly threatened to withdraw because that would critically damage the case. That threat now has no weight, because only ministerial work remained as argued in the Supreme Court. Even more telling was the allegation asserted under oath in an affidavit to the court that the alleged bonus was sought by Simon in August, 2017 after a significant offer was made. *See*, Brian Edgeworth February 12, 2018 Affidavit at 3:1-3, attached hereto as **Exhibit 25.** When Simon pointed out this falsehood based on the undeniable fact that an offer was not made in the case until late October, 2017, this portion of the affidavit did not make it into the several subsequent affidavits. The Edgeworth's assertions, through the Vannah attorneys follow a long and winding road. Bonus is a word created and used solely by Vannah and Edgeworth. Simon wanting a contingency fee was a story solely created by Vannah and Edgeworth. Simon never stated anywhere that he wanted a bonus or a contingency fee. All Simon ever wanted was a reasonable fee for the work actually performed.

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3. The Vannah Attorneys Threats

The primary issue supporting the abuses in the instant case, is that the Vannah attorneys have an independent duty to refrain from filing and maintaining frivolous claims, and refrain from performing acts inconsistent with their oath, as well as the Nevada Rules of Professional Conduct. *See,* ¶¶31,32,33,34, of Complaint. In their moving papers, the Vannah attorneys concede that NRCP 3.1 requires that attorneys only pursue meritorious claims in good faith. The plan to attack Simon was devised by all Defendants to punish Mr. Simon as confirmed by the testimony of Angela Edgeworth. *See*, **Exhibit 4** at 145:10-21**.** This is also corroborated by the Vannah attorney emails.

Long after Judge Jones told Vannah, Greene and Edgeworth that their conversion claim was frivolous, they openly admitted to their ill-will toward Simon. Mr. Christensen again requested that they withdraw their appeal and arguments of conversion, which always were and remain a legal impossibility. *See*, December 20, 2019 Email, attached hereto as **Exhibit 26.** On January 9, 2020, Mr. Vannah wrote an email confirming his true malicious intent to personally punish Mr. Simon. *See*, January 9, 2020 Email, attached hereto as **Exhibit 27.** Mr. Vannah stated **"I have no intention of abandoning our efforts to hold Danny Simon liable for what he has done in this case, which I interpret as taking our clients money hostage… Whether you call that conversion, or some other tort, doesn't really matter to me. …. I am asking the Supreme Court to reverse that dismissal of our case, then I intend to pursue that case, including punitive damages."** *Id.* (Emphasis added) Vannah confirms it is his personal intent to punish Mr. Simon. His malice is expressed when stating it does not matter to him what you call the claim (whether a claim exists or not), his intent is to punish Mr. Simon. This email was sent on behalf of the Edgeworths and Greene was copied thereby adopting the malicious nature of their conduct

aimed to harm Simon. This further confirms the civil conspiracy of their devised plan to harm Mr. Simon as outlined in detail below. *See,* ¶¶89,90,91 of Complaint. This conduct also confirms abuse of process and is not protected by Anti-SLAPP or the litigation privilege.

At the time the checks were deposited, Simon had already served a proper attorney lien and Vannah, Greene and both Edgeworths admit they all knew Simon was owed money for fees and costs. *See,* **Exhibit 9** at 36:1-37:3. Yet, the frivolous complaint filed by Vannah, Greene and the Edgeworths sought relief that Simon was already paid in full. *See*, **Exhibit 19** at 8:6-8; *See,* ¶¶49,50,51,52 of Complaint. The false affidavits of Brian Edgeworth, also stated Simon was already "paid in full." *See*, **Exhibit 19** at 8:6-8; *See also*, **Exhibit 20** at 8:21-9:21; *See, also*, **Exhibit 8** at 178:20-25; *See also*, February 2, 2018 Affidavit at 6:10-11 attached as **Exhibit 28;** *See also*, **Exhibit 25** at 7:11-12; *See also*, **Exhibit 21** at 7:16-17.

On January 9, 2018, after Simon was served with the conversion lawsuit, Vannah threatens Simon that if he formally withdraws, bad things will happen. *See*, **Exhibit 23;** *See also,* ¶21 of Complaint. Greene intentionally ignored Mr. James Christensen's efforts to focus on resolution of the money owed to Mr. Simon and he continued to maliciously pursue the theft claims at the direction of Vannah and the clients. Mr. Christensen repeatedly asked for the authority or a basis for the theft claim. None could be given. Vannah stated in open Court to the judge his basis that **"we just think it is a good theory"** *See*, **Exhibit 24** at 34:20-24; *See,* ¶22 of Complaint. At this same hearing Vannah also confirmed that this is just a dispute over money and we do not criticize any work that Mr. Simon did. *See*, **Exhibit 24** at 32:5-9. These statements further corroborate the transparent motives to harm Simon and is contrary to their baseless assertion of good faith. *See,* ¶25 of Complaint.

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Simon filed two separate motions to dismiss, one of which, was based on Anti-Sapp. Vannah and Greene and Edgeworth, were all made aware of the facts and law as to why the conversion theft claim was frivolous. *See,* ¶ 22 of Complaint. The law is clear that filing an attorney lien is a protected communication and Edgeworth could never sue Simon for filing the attorney lien. Rather than conceding the lack of merit, they all continued with their malicious smear campaign. In their Oppositions to the Simon Motions to Dismiss, Vannah and Greene advanced the conversion theft claim in the body of their Oppositions and attached three separate affidavits from Mr. Edgeworth. *See,* ¶ 23 of Complaint. In the affidavit, it asserts theft, blackmail, extortion of millions of dollars which Edgeworth told his volleyball coach and also falsely asserted Simon has been paid in full. *Id. See*, **Exhibit 28** at 3:22-23. Their conduct when advancing conversion in their Opposition is additional abusive conduct supporting abuse of process. This is completely opposite of Edgeworth's testimony and the Vannah attorneys' statements at the evidentiary hearing **stating we always knew he owed Simon money.** Angela Edgeworth admits to telling her friend Lisa Carteen and Justice Miriam Shearing essentially the same false accusations of criminal conduct against Mr. Simon. *See*, **Exhibit 4** at 133:5-23. This is more egregious conduct after the initial Vannah Complaint was filed. There is no mistake about the malice of the Edgeworths, Vannah and Greene. However, it gets worse.

On March 15, 2018, they continued with the wrongful abuses of the process when they filed an Amended Complaint re-asserting the same conversion theft claim again seeking punitive damages to punish Mr. Simon personally. *See,* **Exhibit 20;** *See,* ¶ 22 of Complaint. The money they allege was stolen was sitting in the equally controlled protected account earning Edgeworth 100% of the interest, even on Mr. Simon's share. Notably, Edgeworth could never establish damages making the claims even more frivolous.

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Vannah and Greene sued Simon personally despite the fact that the Law Office of Daniel Simon, A Professional Corporation asserted the lien. This is another abusive measure substantiating malice. Simon only followed the law precisely pursuant to NRS 18.015 as confirmed by David Clark, Esq. *See*, **Exhibit 11.** Vannah and Greene were given Mr. Clark's report at the beginning of the case and they never disputed his opinion. Additionally, pursuant to the Anti-SLAPP line of cases, Vannah and Greene could not sue Mr. Simon for filing an attorney lien. The District Court finally entered an order in October, 2018 dismissing the conversion claim finding that there were no legal grounds to bring the claim or maintain the claim. *See,* ¶28 of Complaint. The Court Amended her decision on November 19, 2018. *See*, **Exhibit 22.** Despite the Districts Courts order, the Defendants continued with their devised plan.

On December 13, 2018, a motion to direct Simon to release the disputed funds was filed by Vannah and Greene again accusing Simon of theft. *See,* Motion to Release Funds at 6:7-9, attached hereto as **Exhibit 29.** This is more egregious conduct. On December 31, 2018, Mr. James Christensen sent a letter again asking Vannah and Greene to avoid accusations of theft and conversion pointing out that their motion for an order directing Simon to release funds repeats the false conversion accusation. *See*, December 31, 2018 Letter, attached hereto as **Exhibit 30.** Edgeworth, Vannah and Greene continued to argue the theft conversion claim in all of their briefing, including the briefs to the Nevada Supreme Court. They also are still advancing the same arguments to this court. All of the Defendants' conduct extends well beyond the mere filing of the complaint and amended complaint as asserted in their moving papers. *See,* ¶¶31,32,33,34 of Complaint.

In their moving papers the Vannah attorneys state "if the defendant here had not filed the complaint and amended complaint the underlying matter …., Simon never would have filed his

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complaint. This is partially true. These acts started the machinery that establishes the abuse of process and other claims. Simon's complaint is also based on the abusive on-going conduct after repeated requests to withdraw the claims. *See,* ¶33 of Complaint. The Vannah attorney's also attempt to appeal to the emotion of the court stating the Edgeworth did not ask for any of this from Simon; they simply wanted the contract honored and their funds given to them. This is equally disingenuous. There was never an express contract to honor, the implied contract was terminated by the Edgeworths and Simon filed a proper lien. They filed the lawsuit to avoid lien adjudication and to punish not to determine a fee in the expedited adjudication process. *See,* ¶¶49,50,51 of Complaint. They now argue they agreed to pay Simon, contrary to their conduct appealing the decision first to the Supreme Court and are still arguing the meritless claim for conversion. The funds are not all of the Edgeworths, as alleged in their initial conversion complaint. They are not victims. They were made whole when they received almost 4 million dollars for their 500k property damage claims. They now should have to answer for the malicious conduct in abusing the process, which was well beyond a simple dispute over money and engaged in to destroy Simons livelihood. *See,* ¶¶48,49,50, 51, 52, 53 of Complaint.

Mr. Simon and the Edgeworths share a lot of common friends and when the Vannah attorneys followed the plan to falsely allege criminal accusations that Simon extorted millions from them is well outside the privileges or statutes created to protect good faith litigation. The overwhelming admissions by the Defendants confirm that their conduct was NOT in GOOD FAITH.

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IV.

ARGUMENT

Defendants contend that Plaintiffs' claims against Defendants Robert D. Vannah, Esq., John B. Greene, Esq., and Robert D. Vannah, Chtd., d/b/a Vannah & Vannah must be dismissed on three different grounds: 1) the common law litigation privilege bars the claims; 2) the claims are barred by Nevada's anti-SLAPP statute; and 3) the claims are premature and not ripe. As discussed in detail below, all of Defendants assertions have failed to correctly apply Nevada law to the present facts alleged by Plaintiffs in their Complaint.

A. Applicable Law.

NRCP 8(a) provides in pertinent part, "A pleading that states a claim for relief must contain... (2) a short and plain statement of the claim showing that the pleader is entitled to relief; (3) a demand for the relief sought, which may include relief in the alternative or different types of relief..." Courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party. *Hay vs. Hay*, 100 Nev. 196; 678 P.2d 672 (1984). Moreover, pleading of conclusions, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim. *Crucil vs. Carson City*, 95 Nev. 583; 600 P.2d 216 (1979).

B. Standard for Motion for Failure to State a Claim.

NRCP 12(b)(5) provides in pertinent part: "Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . . (5) failure to state a claim upon which relief can be granted."

Further, "The standard of review for a dismissal under subsection (5) is rigorous, as the court must construe the pleading liberally and draw every fair inference in favor of the nonmoving party." *Simpson vs. Mars Inc.*, 113 Nev. 188; 929 P.2d 966 (1997). Moreover, "On a motion to

dismiss for failure to state a claim for relief, the trial court, and the Supreme Court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff." *Merluzzi vs. Larson*, 96 Nev. 409, 610 P.2d 739 (1980). When tested by a subdivision of (b)(5) motion to dismiss for failure to state a claim upon which relief can be granted, the allegations of the complaint must be accepted as true. *Hynds Plumbing & Heating Co. vs. Clark County Sch. Dist.*, 94 Nev. 776; 587 P.2d 1331 (1978).

C. The Litigation Privilege Does Not Apply Because Defendants Did Not Contemplate the Conversion Claim Against Plaintiffs in Good Faith.

The District Court has already made factual findings and ruled as a matter of law that the conversion claims were not brought or maintained in good faith and were based on a legal impossibility. The doctrine of res judicata has already established Simon's claims and Defendants lack of good faith. Therefore, the litigation privilege, as well as the Anti-SLAPP protection do not apply.

The Conversion claim was based upon allegations that Simon had somehow converted the settlement proceeds obtained while representing them in the underlying civil case, Case No. Case No. A-18-767242-C. *See id.* Conversion is defined as "a distinct act of dominion **wrongfully** exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (internal quotations omitted). Mr. Simon never had receipt of the proceeds when the lawsuit was filed. Vannah and Edgeworth had actual knowledge of this undisputed fact. Mr. Simon never had exclusive control of the proceeds and did not perform a wrongful act over the disputed funds as he always had an interest in the disputed money and only filed a lawful attorneys lien. Following the law pursuant to NRS 18.015 is not a wrongful act as a matter of law. The almost $4 million dollars of undisputed funds were

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immediately given to the Edgeworth's. The disputed funds were always placed in a protected trust account. The amount of the disputed funds held in the account was never challenged at the evidentiary hearing. In fact, the amount was supported by Will Kemp that the lien was low and his opinion was not challenged. *See*, Will Kemp Declaration, attached hereto as **Exhibit 31.** The amount was further supported by the unbilled work, substantial work performed and that every factor in *Brunzell* was met, including the amazing result. The amount owed to Simon was the entire reason of the District Court's adjudication. The Defendants concede they always knew they owed Mr. Simon money before the lawsuit was filed, the amount owed was what was to be determined. Mr. Simon always had an interest in the disputed funds and filing an attorney lien is not conversion. Even more telling of their motives, it was the Vannah/Edgeworth team that first appealed the Decision and Order to the Supreme Court. When the extortion, theft and blackmail approach did not work, they now change course and reduce the conversion to an unreasonable amount argument. This also equally fails and also adds the abusive measures establishing Simon's claims.

Vannah now argues that the amount of the lien is unreasonable on its face and suggests the superbill of $692,000 of unbilled work supports this conclusion. The superbill was merely an itemization re-created by Simon to show the court the substantial work performed in support of the full amount of Quantum Meruit as testified to by Will Kemp. This bill only includes work tied to a tangible event and does not include substantial work that could not be recovered. The court was free to award any sum up to the full lien and this itemization merely was one piece of evidence, along with much more, to support Will Kemp's undisputed opinion. The Vannah attorneys know that this bill is much less than the total work actually performed.

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The undisputed facts were known to all defendants prior to the lawsuit, which confirms they never contemplated in good faith a legitimate claim for Conversion. An attorney asserting a lien pursuant to NRS 18.015 has a legal right to seek attorneys fees owed, and is not "inconsistent with a clients rights" pursuant to Nevada law. *Id.* This fact has been concrete since the Vannah Defendants began representing Edgeworths but even more notably when the proceeds were deposited on January 8, 2018. How can the Vannah attorneys suggest they acted in good faith when surreptitiously filing the lawsuit for conversion after entering into an agreement to place the disputed funds in a special account with all interest going to the client? His lack of Good Faith is cemented based on his own email confirming his personal belief was that Simon would not steal the money. *See,* **Exhibit 3.** The new ad hoc rescue argument of an unreasonable number on its face belies the record and does not save their position. Have they now officially abandoned the theft, blackmail and extortion?

Consequently, there was no legitimate purpose for seeking Conversion against Simon – both professionally and personally – other than to punish and harm him, also both professionally and personally. Even though a mere filing of a Complaint alone is not enough for abuse of process, the information known at the time and thereafter is enough to determine a lack of good faith when analyzing the application of the litigation privilege. Success on the Conversion claim was a legal impossibility and Defendants had no good faith basis to assert that claim, which they continue to do even today. Obviously, the Defendants are in too deep and cannot abandon the frivolous conversion arguments as it will scream an admission of liability. However, every continued ad hoc rescue argument only adds to and solidifies their long list abusing the process.

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1. <u>The litigation privilege does not apply to the facts of this case.</u>

The Vannah Defendants contend that the litigation privilege defeats the civil tort claims for Wrongful Use of Civil Proceedings, Defamation Per Se and Business Disparagement. They cite *Greenberg Traurig v. Frias Holding Co., 331 P.3d 901 (Nev. 2014),* for this proposition. However, *Greenberg* is unavailing and confirms the privilege is not absolute. All other cases cited by the Vannah Defendants do not support their position when the lack of good faith is analyzed, as the test for good faith litigation controls. The *Greenberg* and Vannah cited cases do not change the separate analysis for the abuse of process and civil conspiracy claims. *Bull v. McCuskey, Supra.* Therefore, the Vannah Defendants have failed to correctly apply the test for the litigation privilege to apply in this matter.

.In *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), the Nevada Supreme Court analyzed the litigation privilege, stating that "Nevada has long recognized the existence of an absolute privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings." *Id.* at 412 (citations omitted). Notably, the Court held as follows:

> In order for the absolute privilege to apply to defamatory statements made in the context of a judicial or quasi-judicial proceeding, **"(1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation."** Therefore, the privilege applies to communications made by either an attorney or a non-attorney that are related to ongoing litigation or future litigation contemplated in good faith. When the communications are made in this type of litigation setting and are in some way pertinent to the subject of the controversy, the absolute privilege protects them even when the motives behind them are malicious and they are made with knowledge of the communications' falsity. **<u>But we have also recognized that "[a]n attorney's statements to someone who is not directly involved with the actual or anticipated judicial proceeding will be covered by the absolute privilege only if the recipient of the communication is 'significantly interested' in the proceeding.</u>**"

Id. at 413 (citations omitted) (emphasis added).

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The proceeding must be "contemplated in good faith" in order for the privilege to apply. *Id.*; *see also Restatement (Second) of Torts*, § 586 cmt. e (1977). This requirement is notable and illustrates how Nevada has balanced the prosecution of claims like abuse of process while still upholding the litigation privilege. Here, the facts show that Defendants did not "contemplate in good faith" the Conversion claim against Simon.

Another way to view the "contemplated in good faith" component in determining whether to apply the litigation privilege is to determine whether the judicial proceeding had a "legitimate purpose." *See e.g., Herzog v. "a" Co.,* 138 Cal. App. 3d 656, 661-62,188 Cal. Rptr. 155, 158 (Cal. Ct. App. 4th Dist. 1982):

> In *Larmour v. Campanale, supra*, 96 Cal.App.3d 566, 568, the court stated: "The purpose of the privilege under Civil Code section 47 [the litigation privilege codified in California] is to afford litigants the utmost freedom of access to the courts, to preserve and defend their rights [citation] and to protect attorneys during the course of their representation of their clients [citation]. 'It is . . . well established legal practice to communicate promptly with a potential adversary, setting out the claims made upon him, urging settlement, and warning of the alternative of judicial action.'" (Fn. omitted.) In a footnote, *Larmour* quoted comment e to the Restatement Second of Torts, section 586: **"As to communications preliminary to a proposed judicial proceeding the rule stated in this Section applies only when the communication has some relation to a proceeding that is contemplated in good faith and under serious consideration. The bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered." (*Larmour, supra*, 96 Cal.App.3d at p. 569, fn. 2.) We hold a communication not related to a potential judicial action contemplated for legitimate purposes is not protected by the privilege**

Id. (emphasis added)

Another way to consider the "contemplated in good faith" requirement is to assess whether Defendants had a "good faith belief in a legally viable claim" in order for their statements to be

privileged. *See e.g., Hawkins v. Portal Publs., Inc.,* 1999 U.S. App. LEXIS 18312 *8 (9th Cir. 1999). Either way, when taking the allegations in the Complaint in the most favorable light for Plaintiffs, it is clear that Defendants did not have a good faith belief in a legally viable claim for Conversion against Simon. Simply, Defendants contemplated the Conversion in bad faith for the ulterior purpose to avoid paying the reasonable attorneys fees admittedly owed and to harm and punish Simon, not to obtain legal success of the Conversion claim at trial. Therefore, Defendants acts and statements are not entitled to the protections of the litigation privilege.

Further, the Court should not entertain arguments that Defendants will be prejudiced by a denial at this stage of the case. The record is abundantly clear that the claim was not made in good faith and the court should easily make that finding now. However, if the Court is not inclined to make that finding now, the litigation privilege is an affirmative defense. Thus, after discovery, Defendants can again attempt to raise the defense. Defendants have not provided authority that the litigation privilege precludes to constitution right to discovery. At this stage of the case, when taking the facts alleged in the Complaint in the light most favorable to Plaintiffs as true, it is clear that privilege cannot be applied. *See e.g., Eaton v. Veterans, Inc.*, 2020 U.S. Dist. LEXIS 7569, *5-6 (U.S. Dist. Ct. Mass., Jan. 16, 2020) (When ruling on Defendant's motion to dismiss, the court held that it must accept plaintiff's allegations as true at that stage of the proceeding and that the allegations created the reasonable inference that Defendant threatened legal action in bad faith and, therefore, was not entitled to the litigation privilege at that juncture). Therefore, Defendants' motion to dismiss should be denied.

In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd*., 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court recognized the need to establish the right to "exclusivity" of the chattel or property alleged to Plaintiffs claim they are due money via

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a settlement agreement, a contract, and that they have compensated Defendant in full for legal services provided pursuant to a contract. Thus, Edgeworths have plead a right to payment based upon contract. However, an alleged contract right to possession is not exclusive enough, without more, to support a conversion claim as a matter of law:

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

Plummer v. Day/Eisenberg, 184 Cal.App.4th 38, 45 (Cal. CA, 4th Dist. 2010). *See*, Restatement (Second) of Torts §237 (1965), comment d. Obviously, the Vannah/Edgeworth team needed more and fabricated the conversion claim encompassing theft, extortion and blackmail while at the same time seeking an order that Simon was "paid in full." This wreaks of bad faith and the admissions already made during the lien adjudication proceedings confirms it all. The bad faith motives equally deprive all parties of the protections of Anti-SLAPP relief.

D. Defendants Are Not Entitled To Anti-SLAPP Relief.

Pursuant to NRS 41.660(1), Nevada's Anti-SLAPP statue, a Defendant can file a motion to dismiss only if the complaint is based on the Defendants' good faith communication in furtherance of the right to petition or right to free speech in direct connection with an issue of public concern. *See* NRS 41.660(1). The Vannah frivolous conversion complaint and subsequent filings were not made in good faith and are not the good faith communications as required. Simply, a frivolous complaint riddled with false allegations known to the parties at the time they filed the multiple documents are not protected by Anti-SLAPP. Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team.

In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), the Nevada Supreme Court explained that to determine whether an issue is one of public interest pursuant to NRS 41.637(4), the district court must evaluate the issue using the following relevant guiding principles:

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> (1) "public interest" does not equate with mere curiosity;
>
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
>
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
>
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

Shapiro, 133 Nev. at *9-10 (citing *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.,* 946 F. Supp.2d 957. 968 (N.D. Cal. 2013) *aff'd*, 609 F. App'x 497 (9th Cir. 2015)).

A moving party seeking protection under NRS 41.660 must demonstrate by "'a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of . . . the right to free speech in direct connection with an issue of public concern.'" *See Coker v. Sassone*, 135 Nev. Adv. Rep. 2, 432 P.3d 746, 749 (2019) (quoting NRS 41.660(3)(a)). "If successful, the district court advances to the second prong, whereby "'the burden shifts to the plaintiff to show 'with prima facie evidence a probability of prevailing on the claim.'" *Id.* at 750 (quoting NRS 41.660(3)(b)). "Otherwise, the inquiry ends at the first prong, and the case advances to discovery." *Id.* NRS 41.637(4) defines one such category as: "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum . . . which is truthful or is made without knowledge of its falsehood."

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The Vannah attorneys and Edgeworths cannot meet the requirements of the first prong. The communication of a conversion lawsuit was not a good faith communication. It was frivolous. Undeniably, their statements were not truthful and all Defendants who were at the bank were very aware of the falsity thereof when continuing with the wild accusations supporting the conversion claim. They all admitted they all always knew they owed Simon money. The lien was always supported by substantial evidence. The lack of good faith is demonstrated by the mere fact Vannah/Edgeworth never challenged the validity of the lien, never disputed Will Kemp or David Clark or that the lien was somehow improper because of the amount that they agreed and invited as the undisputed amount. All Defendants do not meet the first prong and the motion should be denied. However, if a Defendant makes this initial showing as to both requirements, the burden shifts to the Plaintiff to show with prima facie evidence a probability of prevailing on the claim. NRS 41.660(3)(b), *Shaprio, Supra*. If the Court gets that far in the analysis, and then the Plaintiff shows a probability of prevailing on the claim, the Anti-SLAPP motion is denied.

In the present case, Defendants' motion should be denied because they knew their statements were false. Defendants, and each of them, made allegations of theft, extortion, blackmail, and conversion – all of which were false and only made in an improper attempt to refuse payment of attorneys fees admittedly owed and to punish and harm Simon, not to achieve success on the conversion claim. This is already admitted by all Defendants and correctly asserted in Simon's complaint and amended complaint. *See,* Amended Complaint at ¶ ¶ 24,26,27, 59, 60, 61, 103 and 104. Defendants' statements were not made in direct connection with a public interest, but were made falsely in order to provide ammunition for the private controversy between the Edgeworth's and Simon for their refusal to pay his reasonable attorney's fees. An attorney lien dispute does not rise to the level of public concern for a

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substantial number of people – instead, by lying about Simon's conduct and claiming that he stole money, extorted and blackmailed them for filing an attorney lien, Defendants have attempted to make the action rise to that level of public concern. NRS 41.637(5), makes is clear that protection cannot be afforded to Defendants, which states "a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." Mr. Simon had a duty to safekeep the property of the disputed funds and this is exactly what he did. Vannah invited the lien amount and cannot now claim his conversion claim is protected. Certainly, it is not of public interest when falsely attacking a lawyer who sought payment allowed by law as provided by NRS 18.015. The lack of good faith is further demonstrated when seeking relief that Simon was "paid in full," and suing him personally

Even assuming the filing of the complaint, the amended complaint and the false affidavits to support the lawsuit is somehow determined to be of public concern, Defendants can never meet the threshold that the statements were made truthfully or without the knowledge of its falsehood. Simon has properly plead in the Complaint and the Amended Complaint that Defendants statements were a complete falsehood and not truthful. *See,* Amended Complaint at ¶ ¶ 22,23,24,41,50,59,68,70,75,76,77,78,85,103. All Defendants had actual knowledge that Simon did not and could not convert or steal the money. *Id.* All Defendants admitted that they always knew Mr. Simon and his Law Office were owed money. *See,* **Exhibit 8** at 178:20-25; *See also,* **Exhibit 9** at 36:1-37:3. They also had actual knowledge that a special bank account was opened to protect the funds. *Id.* This special account was proposed by Defendants and Simon immediately agreed. The Defendants were present at the bank when the account was opened and when the checks were endorsed by all parties. *Id.* These funds were directly deposited into the special account and still remain there today. *Id.* All Defendants knew the falsity of their claims

and that their statements of theft, blackmail and extortion to support conversion were always false as they are and remain, a factual and legal impossibility.

Consequently, Defendants' attempt to shield themselves with the protections of NRS 41.660 is without merit as they do not meet any element of the requirements for such protection. Even if this Court finds that the initial requirements are met, Simon has clearly established a prima facia case and the probability of success on the merits as liability is already established conclusively with the under-oath admissions and findings of the District Court. *See* Order by District Court. As demonstrated below, Nevada law precludes dismissal of the Mr. Simon's claims at this stage of the proceedings.

E. <u>All Defendants, including the Vannah attorneys are liable for Abuse of Process.</u>

Even if this Court was inclined to apply the litigation privilege (or anti-SLAPP protections) to Defendants' statements in the proceedings – which it should not at this stage of the case – that privilege does not thwart Simon's Abuse of Process claims against Defendants. In Nevada, the elements for a claim of abuse of process are:

1. Filing of a lawsuit made with ulterior purpose other than to resolving a dispute;
2. Willful act in use the use of legal process not proper in the regular conduct of the proceeding; and
3. Damages as a direct result of abuse.

LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002); *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980); *Dutt v. Kremp*, 111 Nev.567, 894 P.2d 354, 360 (Nev. 1995) overruled on other grounds by *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002)); *Laxalt v. McClatchy*, 622 F.Supp. 737, 751 (1985) (citing *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980); *Nevada Credit Rating Bureau, Inc. v. Williams,* 88 Nev. 601 (1972);

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1 Am. Jur. 2d Abuse of Process; *K-Mart Corporation v. Washington*, 109 Nev. 1180 866 P.2d 274 (1993)).

Notably, one who procures a third person to institute an abuse of process is liable for damages to the party injured to the same extent as if he had instituted the proceeding himself. *Catrone v. 105 Casino Corp.,* 82 Nev. 166, 414 P.2d 106 (1966). In both *Datacomm Interface, Inc. v. Computerworld, Inc*., 396 Mass. 760, 775, 489 N.E.2d 185 (1986), and *Neumann v. Vidal*, 228 U.S. App. D.C. 345, 710 F.2d 856, 860 (D.C. Cir. 1983), the courts recognized an injury to business and business reputation as an improper ulterior motive and abuse of process. An "ulterior purpose" includes any improper motive underlying the issuance of legal process. *Dutt v. Kremp*, 108 Nev. 1076, 844 P.2d 786, 790 (Nev. 1992). For example, in *Momot v. Mastros*, 2010 U.S. Dist. LEXIS 67156, 2010 WL 2696635 (Nev. Dist. July 6, 2010), Mastros filed a counterclaim alleging Momot filed suit against them "in bad faith and for an improper purpose" because he invented the story that the Mastros' forged his signature in an attempt to "extort an unjust settlement" from them. *Id.* at *12. "Taking this assertion as true, the Court finds the Mastros have properly identified an ulterior purpose and that they satisfy the first element of the abuse of process test." *Id.*

Here, Edgeworth and the Vannah attorneys invented a story of an express contract for an hourly rate only to refuse payment of the reasonable value of Mr. Simon's services. They also filed the conversion claim to refuse payment of attorney fees admittedly owed and to punish Simon as admitted by Edgeworth and all of these acts have been adopted by the Vannah attorneys. Their conduct was also aimed to destroy Mr. Simon's practice, another ulterior purpose. They sued him personally to punish him. *See,* **Exhibit 4** at 145:10-21. They also sought to avoid lien adjudication and intentionally cause substantial expense to defend the frivolous claims. This is

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also an ulterior purpose. Nie*nstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876 (1982). Defendants attempt to dismiss all claims with the brush of a litigation privilege wand is contrary to Nevada law. Nevada clearly allows abuse of process claims, even against attorneys. In *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980), the Nevada Supreme Court confirmed that abuse of process claims can go forward regardless of the litigation privilege.

In *Bull*, Dr. McCuskey was sued by attorney Samuel Bull for medical malpractice "for the ulterior purpose of coercing a nuisance settlement knowing that there was no basis for the claim of malpractice." *Id.* at 707. A jury returned a defense verdict in the underlying frivolous case. Then, Dr. McCuskey sued Bull for abuse of process and a jury returned a verdict in favor of Dr. McCuskey. The District Court entered a judgment for the award of compensatory and punitive damages against the attorney and denied the attorney's post-trial motion for JNOV and for a new trial. The Attorney appealed. On appeal, the Nevada Supreme Court held that evidence that the attorney willfully misused the process for the ulterior purpose of coercing a settlement supported the jury's verdict. In doing so, the court considered the application of the litigation privilege and confirmed it does not preclude an abuse of process claim when it upheld the judgment. The Bull Court stated the elements for abuse of process as follows:

> [T]the two essential elements of abuse of process are an ulterior purpose, and a willful act in the use of the process not proper in the regular conduct of the proceeding. The malice and want of probable cause necessary to a claim of malicious prosecution are not essential to recovery for abuse of process. Moreover . . . abuse of process hinges on the misuse of regularly issued process in contrast to malicious prosecution which rests upon the wrongful issuance of process.

Id. at 709.

The Edgeworths invented a story of blackmail, extortion and theft and they, along with the Vannah Defendants, abused the judicial process when knowing they had no legal or factual

basis to sue Simon both professionally and **personally** for Conversion. Despite that knowledge, Defendants went forward with the suit and continue to maintain the Conversion claim to the present date, despite having no legal basis to do so. As such, Simon has properly pled in the Complaint that Defendants have maintained the Conversion claim for the ulterior purpose of punishing Simon and injuring his business and reputation. Significantly, Defendants had actual knowledge that there was no legal basis for the Conversion claim and then issued false statements in the proceedings in order to maintain that claim. *Id.* These same false statements were communicated to third parties not having an interest in the proceedings. This further corroborates the abuse of process.

The fact that Defendants never provided any expert or lay evidence at the five-day evidentiary hearing is further proof of their ulterior purpose. *Id.* There is substantial evidence supporting the abuse of process. Just one recent example is the misciting of the viability of the conversion claim. In its opposition to Plaintiffs motion to preserve evidence, the Vannah attorneys cited the case *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, as if it supported a conversion claim. To the contrary, this case supports Simon and confirms that Edgeworth, through the Vannah attorneys, could have never sued Simon. They also wrongfully cite *Evans v. Dean Whitter Reynolds, Inc., 116 Nev. 598 (2000).* This case equally does not apply as the attorney in the *Evans* case actually controlled the money by fraudulently signing his aunt's name and put the money in his own account. We do not have any of those conversion facts in this case and the Vannah attorneys are well aware that the *Evans* case does not support their conversion claims. They have no authority that an attorney exercising his attorney lien rights is an act of conversion. Again, Simon never had exclusive control of the money, always had an interest and never did a wrongful act to deprive them of the money. Simon

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has properly plead the Abuse of Process claims based on Defendants' conduct long after the mere filing of the Complaint – the false statements only corroborate their conduct and the ulterior purposes. *Id.* Vannah should not be able to defeat Simon's claims as good faith litigation controls.

The facts in *Bull* are similar to the present case. What possible legal standing did the Vannah Defendants have to pursue a conversion claim against Simon on behalf of the Edgeworths? None. There was no justiciable claim at any time. The facts and case law support this conclusion. The only basis from Vannah was "He thought it was a good theory." Simon never had the money, much less deposited it into his own bank account. Whether Simon "wanted" to deposit the money in his own trust account is irrelevant. Depositing money into a lawyer trust account pending a lien dispute is the same as depositing it with the court. Mr. Vannah knows this is true. *See e.g., Golightly & Vannah*, 132 Nev. 416, 418 (2016) ("an attorney need not deposit funds with the court in an interpleader action so long as the attorney keeps the funds in his or her client trust account for the duration of the interpleader action.") It is disingenuous for the new ad hoc rescue argument that the amount was unreasonable when the Edgeworth's, through Vannah, never pursued this argument at the evidentiary hearing. The District Court finding of a proper lien is a finding of fact adjudicating this issue. Defendants knew prior to filing their lawsuit that an actual conversion never occurred and could never occur in the future. This is bad faith. Success of conversion at trial was a legal impossibility and only proves that Defendants brought and maintained the conversion claim for an ulterior purpose. When viewing the malicious emails and testimony under oath, confirming the ulterior purpose of "punishment," the reasonable conclusion is that they all never contemplated and certainly did not maintain the conversion claim in good faith. Thus, when taking these facts in the light most favorable to Plaintiffs, the motion to dismiss should be denied.

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F. Plaintiffs' Claims Are Ripe for Adjudication.

The Vannah Defendants contend that several of Simon's claims are premature because a final determination must be made by the Supreme court. This is not true. The majority of Simon's claims do not have that requirement. Abuse of Process; Defamation Per Se; Civil Conspiracy; Negligence; Negligence Hiring, Supervision and Retention; and Business Disparagement do not require a final determination in Simon's favor. *See e.g., Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980) (the two essential elements of abuse of process are: (1) an ulterior purpose behind the issuance of process; and (2) a willful act in the use of process not proper in the regular conduct of the proceeding); *see also Ging v. Showtime Entm't, Inc.,* 570 F.Supp. 1080, 1083 (Nev. Dist. Ct. 1983) (a termination of the underlying action in favor of the defendant is not a necessary pre-requisite to bringing an action for abuse of process.)

Plaintiffs also submit that the District Court order is a final order only subject to modification. An appeal can only be filed from a final order. NRAP 4. Presently, the order is final even though it may be stayed pending appeal, or later modified by the Supreme Court. *See also Edwards v. Ghandour*, 123 Nev. 105, 159 P.3d 1086 (2007)(abrogated on other grounds).

1. Wrongful Use of Civil Proceedings

The only cause of action that requires a final determination is Wrongful Use of Civil Proceedings. As set out in the Restatement (Second) of Torts, § 653 (1977):

> A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if
>
> (a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and
>
> (b) the proceedings have terminated in favor of the accused.

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While the State of Nevada has not expressly adopted this tort via the Restatement, it has been adopted by several jurisdictions, including Arizona. *See e.g., Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 758 P.2d 1313, 1318 (Ariz. 1988) and *Wolfinger v. Cheche*, 80 P.3d 783, 787 ¶ 23 (Ariz. App. 2003).

Importantly, the District Court has already decided all facts and ruled as a matter of law that the Conversion theft claim was brought without probable cause. The Defendants all admit the claim was brought to punish Mr. Simon and his Law Firm. Now, the only remaining element to establish is whether the proceedings terminated in Plaintiff's favor, and this determination is a question of law. The District Court dismissed Defendants' Complaint and made findings of fact that the conversion claim had no merit and was not initiated and certainly not maintained in good faith as the conversion claim was a factual and legal impossibility. There is no material dispute of fact about the circumstances under which Defendant's claims were dismissed, and that the circumstances reflected favorably on the merits of the matter.

Defendants assert that this claim is not recognized in Nevada. This is a leap. The Nevada Supreme Court has never been asked to consider the merits of this claim within the context of Nevada law. The only comments referring to Nevada law are two Federal District Court Judges speculating about what the Nevada Supreme Court may or may not do. Plaintiff submits that Nevada law would likely officially recognize this claim under the circumstances of this case. This claim is well recognized under the Restatement of Torts. It is also recognized in neighboring jurisdictions. This claim has similar damages as abuse of process, but has slightly different elements that would only enhance the public policy precluding malicious conduct when abusing the judicial process.

The District Court made findings in this case, and concluded:

> "The Edgeworths did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed."

See, **Exhibit 1.**

The District Court's finding is sufficient to meet the "final determination" prong. More so, the appellate action will likely be resolved prior to the close of this action as all appellate briefing has been submitted to the Nevada Supreme Court. Nevertheless, if the Court is inclined to dismiss this claim due to the ongoing appellate action, then it should do so without prejudice or merely stay the claim until a final ruling.

Notably, the statute of limitations on the majority of the claims required they be filed by December of 2019. For purposes of judicial economy, it is proper to include the Wrongful Use of Civil Proceedings claim, especially as the discovery conducted for the Abuse of Process claim will involve similar elements that would support Wrongful Use of Civil Proceedings.

As for the first element of Wrongful Use of Civil Proceedings, Simon has plead the factual allegations sufficiently in the Complaint and Amended Complaint to satisfy the claim. Defendants did not have probable cause that their claims would succeed and was only brought for an improper purpose. *See,* Amended Complaint at ¶ ¶ 35,36,37,38. The person who initiates civil proceedings is the person who sets the machinery of the law in motion, whether he acts in his own name or in that of a third person, or whether the proceedings are brought to enforce a claim of his own or that of a third person. *Id.* An attorney who acts without probable cause that the claim will succeed, and for an improper purpose is subject to the same liability as any other person. *Id.* An attorney who takes an active part in continuing a civil proceeding for an improper purpose and without probable cause is subject to liability. *Id.*

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a. Defendants Lacked Probable Cause and Malice Is Established.

What constitutes probable cause is determined by the court as a question of law. *Bradshaw*, 157 Ariz. at 419, 758 P.2d at 1321 (1977). When the Court reviews these claims, "[t]he malice element in a civil malicious prosecution action does not require proof of intent to injure." *Bradshaw*, 157 Ariz. at 418–19, 758 P.2d at 1320–21 (citing Restatement (Second) of Torts §676 (1977), hereinafter referred to as the "Restatement," comment c). "Instead, a plaintiff must prove that the initiator of the action primarily used the action for a purpose 'other than that of securing the proper adjudication of the claim.'" *Id.* (again citing Restatement § 676, *inter alia*). Malice may be inferred from the lack of probable cause. The Restatement discusses several "patterns" of wrongful use of civil proceedings ("WUCP"), such as "when the person bringing the civil proceedings is aware that his claim is not meritorious"; or "when a defendant files a claim, not for the purpose of obtaining proper adjudication of the merits of that claim, but solely for the purpose of delaying expeditious treatment of the original cause of action," "**or causing substantial expense to the party to defend the case."** Restatement (Second) of Torts § 676, comment c. (emphasis added). *Nienstedt v. Wetzel*, 133 Ariz. 348, 354, 651 P.2d 876, 882 (App. 1982), is exemplative of when and against whom a WUCP claim can be asserted: "In all of these situations, if the proceedings are also found to have been initiated without probable cause, the person bringing them may be subject to liability for wrongful use of civil proceedings." Of course, WUCP also includes "when the proceedings are begun primarily because of hostility or ill will" "this is 'malice' in the literal sense of the term, which is frequently expanded beyond that sense to cover any improper purpose." *Id.* Vannah/Edgeworth's attempt to circumvent expedited lien adjudication and delay the Court decision is yet another basis to established liability.

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i. <u>Defendants Knew They Did Not Have Probable Cause to File or Maintain Conversion</u>.

Probable cause is determined by the court as a question of law. *Bradshaw*, 157 Ariz. at 419, 758 P.2d at 1321. Both a subjective and objective test must be met for probable cause to exist—i.e., "[t]he initiator of the action must honestly believe in its possible merits; and, in light of the facts, that belief must be objectively reasonable." *Id*., 157 Ariz. at 417, 758 P.2d at 1319. If either test fails—i.e., if probable cause objectively or subjectively did not exist—then a claim for WUCP will lie. Probable cause does not exist "merely because at the time an action is filed there is some evidence that will withstand a motion for summary judgment." *Id.* "Such a rule, we believe, would be unwise because it would permit people to file actions they believed or even knew to be unfounded simply because they could produce a scintilla of evidence sufficient to withstand a motion for summary judgment"; and "[t]he law has never recognized this as the test for malicious prosecution." *Id.* The test is whether the initiator of the action "reasonably believes that he has a good chance of establishing [his case] to the satisfaction of the court or the jury." *Id.*

The District Court made a finding as to the merits of the conversion theft claim when awarding attorney's fees and costs, as follows:

> The Edgeworths did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, **Exhibit 1.** The doctrine of res judicata has already established Simon's claims.

In order for a case to be filed properly, the parties and lawyers must have some evidentiary basis and have probable cause to support the allegations. The conversion claim alleging theft against Simon and his Law Firm was a factual and legal impossibility. The Defendants all knew at the time of the filing of the conversion claim that they were acting without probable cause and that they had no evidentiary basis to ever support the conversion theft claim. Accusing a lawyer

of stealing millions of dollars from his client is the most egregious allegation that can ever be made against a lawyer and will undeniably have a devastating impact on his reputation and practice. All Defendants committed the Wrongful Institution of Civil Proceedings when filing the conversion theft claim and then independently maintaining it for years when asserting it in many filings over and over.

Here, Defendants have rather consistently argued that their probable cause to allege that Mr. Simon maliciously and willfully stole the settlement money was that Mr. Simon and his Law Firm followed the law when filing an attorney lien. NRS 18.015. The conversion claim was always and still remains a factual and legal impossibility.

G. THE VANNAH ATTORNEYS CANNOT INSULATE THEIR OWN MALICIOUS CONDUCT THROUGH EDGEWORTH.

Malice is proven when claims are so obviously lacking in merit that they "could not logically be explained without reference to the defendant's improper motives." *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252,259, 92 P.3d 882, 889 (App. 2004). Attorneys representing clients pursuing frivolous claims are equally and separately liable. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980). In general, "a lawyer is subject to liability to a client or nonclient when a nonlawyer would be in similar circumstances." Restatement (Third) of the Law Governing Lawyers § 56 (Am. Law Inst. 2000). Thus, a lawyer who commits wrongful acts in the name of representing a client outside the litigation setting does not enjoy absolute immunity from suit. *See Dutcher v. Matheson*, 733 F.3d 980, 988-89 (10th Cir. 2013) (reversing district court order deeming a lawyer immune from liability in tort merely because the lawyer committed the tort alleged while representing a client; "like all agents, the lawyer would be liable for torts he committed while engaged in work for the benefit of a principal"); accord *Chalpin v. Snyder*, 220 Ariz. 413, 207 P.3d 666, 677 (Ariz. Ct. App. 20.08) (noting that "lawyers have no special privilege against civil suit" and that "[w]hen a lawyer advises or assists a client in acts that subject the client to civil liability to others, those others may seek to hold the lawyer liable along with or instead of

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the client") (quoting *Safeway Ins. Co. v. Guerrero*, 210 Ariz. 5, 106 P.3d 1020, 1025 (Ariz. 2005), and Restatement (Third) of the Law Governing Lawyers § 56 cmt. c). While statements attorneys make representing clients in court are privileged if in good faith, and a third party ordinarily may not sue a lawyer for malpractice committed against a client, these propositions do not immunize lawyers from liability in other settings.

> Lawyers are subject to the general law. If activities of a non-lawyer in the same circumstances would render the non-lawyer civilly liable or afford the non-lawyer a defense to liability, the same activities by a lawyer in the same circumstances generally render the lawyer liable or afford the lawyer a defense.

Restatement (Third) of the Law Governing Lawyers § 56 cmt. b.

Defendants, and each of them, consistently argued that Mr. Simon extorted, blackmailed and stole their money. The Vannah/ Edgeworth team presented these false claims to defend and support their frivolous conversion claim. The Vannah attorneys took an active part in the initiation, continuation and/or procurement of the civil proceedings against Mr. Simon and his Law Office. The person who initiates civil proceedings is the person who sets the machinery of the law in motion, whether he acts in his own name or in that of a third person, or whether the proceedings are brought to enforce a claim of his own or that of a third person. Restatement (Second) of Torts §674 (1986). An attorney who acts without probable cause that the claim will succeed, and for an improper purpose is subject to the same liability as any other person. *Id.* An attorney who takes an active part in continuing a civil proceeding for an improper purpose and without probable cause is subject to liability. *Id.*

The primary ulterior purpose here was to refuse payment of attorney's fees admittedly owed and subject Mr. Simon to harsh punishment by causing him to incur substantial expenses currently in excess of $300,000 to defend the frivolous abuses, as well as harm his reputation to their friends, colleagues and general public and cause damage and loss to his business and ultimately him. The claims were so obviously lacking in merit that they could not logically be explained without reference to the Defendants improper motive and ill-will. The proceedings terminated in favor of Simon as Judge Jones order is a final order, albeit pending appeal in the Supreme Court.

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H. VANNAH DEFENDANTS HAVE AN INDEPENDENT DUTY TO SIMON NOT TO SEEK FRIVOLOUS CLAIMS

The Vannah Defendants have an independent duty to refrain from doing everything their clients want them to do when it violates their oath and ethical duties. NRCP 1.2,3.1, 4.4, 5.1, 8.4. The Supreme Court has acknowledged this duty. *Achrem v. Expressway Plaza Ltd. Pshp*., 112 Nev. 737 (1996). Also confirmed in *Bull v. Mccuskey, supra.*

The Vannah Defendants did not have a good faith evidentiary basis to assert the conversion claim against Simon, much less continue to maintain them – a factual and legal impossibility. Significant facts reveal that the Vannah Defendants did not earnestly believe in the validity of the conversion claim prior to the filing of the lawsuit. In an email dated December 28, 2017, Robert Vannah's message proves beyond a reasonable doubt he did not have the belief that Mr. Simon or his Law Office would steal the money. *See*, **Exhibit 3.** This belief was just a week before the actual filing of the complaint for theft. Mr. Vannah invited the amount of the lien and never challenged the amount at the evidentiary hearing. Vannah/Edgeworth refused to respond to multiple inquiries by Mr. Christensen for the basis of the conversion claim. They refused to respond to each and every request.

Even worse, the Vannah attorneys further admitted the malice to abuse the process by filing a frivolous claim when the Vannah attorneys recently re-confirmed their conduct in their email in January, 2020. They don't know what to call the cause of action if it exists, but the Vannah attorneys personally intend to punish Simon. Enough is enough. The Vannah attorneys also had a duty to Simon not to present false witnesses. The Vannah attorneys are well aware that filing an attorney lien is not theft, blackmail or extortion. The Vannah attorneys prepared the affidavits and presented the false testimony to desperately keep the conversion claim alive. The Vannah attorneys conduct violates many sections of the Nevada Rules of Professional

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Responsibility. Therefore, when filing the complaint alleging conversion (stealing), the Vannah/Edgeworth team did not have a good faith belief in the merits and did not have any other facts to lead them to believe that Mr. Simon or his Law Firm would in fact steal the settlement money and his continued pursuit of the blackmail, extortion and theft as cited to in their briefs is more abusive measures verifying all claims in Simon's complaint and amended complaint.

1. Robert D. Vannah, Esq.

Mr. Vannah has been practicing tort law for over 40 years. Mr. Vannah actually knew that the elements of conversion were not satisfied at the time he filed the lawsuit and knew he never could satisfy the legal elements of such a claim in a court of law. Mr. Vannah also could not justify maintaining the claims after he was repeatedly asked to dismiss or withdraw them. The admissions of Vannah confirm this undisputed fact, which was properly pled in the Complaint. *See,* Amended Complaint at ¶ 22. His statements that "we just think it is a good theory," is not the legal basis that allows for frivolous litigation. His email to Mr. Christensen verifying his motives to punish Simon without first understanding that claim even exists, along with presenting false testimony to the court is a breach of his duties to Simon. Simply, Vannah's conduct wreaks of bad faith everywhere and any suggestion of good faith should not be condoned by applying the litigation privilege to this abusive conduct.

2. John B. Greene, Esq.

Like Robert D. Vannah, Esq., co-counsel John B. Greene, Esq., was involved in all communications and was the day-to-day handling attorney on all matters. Mr. Greene's name appears on all pleadings. Mr. Greene reviewed and acknowledged Mr. Vannah's December 28, 2017 E-mail and proves that neither he or Mr. Vannah had the belief that Mr. Simon or his Law Office would steal the money. Like Mr. Vannah, John Greene, Esq., did NOT have a good faith

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belief when filing the complaint alleging conversion and still has no good faith belief while continuing to maintain that claim to the present day. He also has his own independent duties. NRCP 5.1, 5.2, 8.4.

Mr. Greene has been practicing tort law for over 25 years. Mr. Greene actually knew that the elements of conversion were not satisfied and never could be satisfied to the legal standard necessary in a court of law. Mr. Greene knew and worked jointly with Mr. Vannah on all filings and appearances in the case. He knew the settlement funds were deposited and that Simon did not and could not steal or convert those funds. Their self-serving affidavits is not sufficient to support dismissal at this stage.

On December 13, 2018, Mr. Greene filed a motion to release the funds asserting conversion. *See*, **Exhibit 29.** Mr. Simon's counsel requested Mr. Greene to refrain from asserting conversion (theft). *See*, **Exhibit 30.** Despite multiple warnings, Mr. Greene continued to pursue filings and arguments of conversion (theft). Since it was a legal impossibility, his continued pursuit of these serious allegations constitutes malice aimed to harm Mr. Simon and all acts were part of the smear campaign.

Accusing a lawyer of stealing millions of dollars from a client in a lawsuit is one of the most serious allegations that can be made against an attorney. The utmost care must be taken to have the factual and evidentiary basis to file such a cause of action. When filing such serious allegations against an attorney for theft, it is highly probable it will have a devastating impact on the lawyer's reputation and practice. Since Mr. Greene actually knew this serious allegation could never be proven in a court of law, his conduct in filing the complaint and thereafter was in a conscious and deliberate disregard of Plaintiffs' rights in this case. Mr. Greene's continued

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conduct throughout the case further proves his malice, express and implied, toward Mr. Simon and his Law Firm.

3. Robert D. Vannah, Chtd. d/b/a Vannah & Vannah.

Robert D. Vannah, Chtd d/b/a Vannah and Vannah had a duty to properly train, supervise and retain lawyers and staff to competently pursue valid claims that are maintained in good faith with probable cause based on the facts and law. NRCP 3.1. When filing the frivolous theft conversion claim, Robert D. Vannah d/b/a Vannah and Vannah failed to properly supervise its lawyers and staff who assisted in preparing and filing briefs that had no factual or legal basis to be plead. These briefs also allowed their clients to advance false testimony in support of the meritless conversion theft claim, all to the damage of Simon. Simon does not have to be a client to be harmed. *See Bull v. McCuskey, Supra.*

Defendants' continued pursuit of the conversion theft claim that is so lacking in merit, along with the admissions by Angela Edgeworth and Mr. Vannah, confirm beyond a reasonable doubt that this claim was brought with malice to punish Mr. Simon and his Law Office and to cause damages and harm. These admissions substantiate a prima facie case of abuse of process and civil conspiracy to harm Simon. This conduct was intentional and done with a conscious and deliberate disregard for the rights of Mr. Simon and his Law Office and is despicable conduct that should not be allowed in any civilized community. Robert D. Vannah d/b/a Vannah and Vannah fully approved, authorized and ratified the intentional conduct of its attorneys when it permitted its attorneys to attack the integrity of a lawyer without any factual or legal basis.

I. DEFAMATION PER SE IS PROPER.

As discussed in detail above, the litigation privilege and anti-SLAPP statutes are not applicable in this case. Therefore, Simon's defamation per se claim against the Vannah

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Defendants based upon the statements in the pleadings, filings, affidavits, and supporting papers along with the evidentiary hearing testimony, are all actionable statements. Discovery will likely reveal additional statements made to third parties. On May 21, 2020, Plaintiffs filed an amended complaint. Since the specific statements to third parties have yet to be verified under oath, Plaintiffs omitted the Vannah attorneys from these specific causes of actions. However, they are clearly on notice that upon learning the statements that plaintiff believes that have been published, they will promptly move to amend the complaint to include these claims.

In *Pope v. Motel 6*, the Supreme Court of Nevada stated that "[a] defamation claim requires demonstrating (1) a false and defamatory statement of fact by the defendant concerning the plaintiff, (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. Certain classes of defamatory statements are, however, considered defamatory per se and actionable without proof of damages. A false statement involving the imputation of a crime has historically been designated as defamatory per se." *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (Nev. 2005).

If the defamatory communication imputes a "person's lack of fitness for trade, business, or profession," or tends to injure the plaintiff in his or her business, it is deemed defamation per se and damages are presumed. *K-Mart Corp v. Washington,* 109 Nev. 1180, 1192, 866 P.2d 274 (1993). "Defamation" is defined as "a publication of a false statement of fact." *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). Further, when determining the difference between a fact statement and an opinion statement, one must consider that "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false." *K-Mart Copr.*, 109 Nev. at 1192 (citations omitted). A statement is defamatory when such charges would tend to lower

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the subject in the estimation of the community, to excite derogatory opinions against him, and to hold him up to contempt. *PETA v. Boby Berosini, Ltd.*, 111 Nev. 615, 619, 895 P.2d 1269, 1272 (1995). Evidence of negligence, motive, and intent may cumulatively establish the necessary recklessness to prove actual malice in a defamation action. *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993).

Notwithstanding the amended complaint, Simon submits they have properly pled the defamation claims against all Defendants in that regard. *See* Complaint, at ¶ ¶ 66-73Simon never stole the settlement money. Simon never extorted or blackmailed the Edgeworths and their statements to others that he engaged in this criminal conduct is intentionally false and solely aimed to harm Mr. Simon and his firm. The Vannah Defendants know that filing an attorney lien is not blackmail, extortion or conversion and they continually made these same defamatory statements in the legal proceeding and likely to third persons not interested in the proceedings. These statements are not just simple opinion statements about the quality of Simon's services but are factual statements averring illegal, criminal conduct. Notably, "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which [***23] will be sufficient to render the message defamatory if false. *Milkovich v. Lorain Journal Co*., 497 U.S. 121-22 (1990). It is clear that the statements were made maliciously in order to harm Mr. Simon and his firm.

1. <u>Defamation Damages Are Presumed.</u>

In Nevada, presumed general damages are permitted when there exists slander per se. *Bongiovi v. Sullivan*, 138 P.3d 433, 448 (Nev. 2006). Slander per se is a statement "which would tend to injure the plaintiff in his or her trade, business, profession or office." *Id.* General damages are those that are awarded for "loss of reputation, shame, mortification and hurt feelings." *Id.*

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General damages are presumed upon proof of the defamation alone because that proof establishes that there was an injury that damaged plaintiff's reputation and "because of the impossibility of affixing an exact monetary amount for present and future injury to the plaintiff's reputation, wounded feelings and humiliation, loss of business, and any consequential physical illness or pain." *Id.* The Supreme Court will affirm an award for compensatory damages "unless the award is so excessive that it appears to have been given under the influence of passion or prejudice." *Id.* The statements of stealing, extortion and blackmail are not merely opinion statements but factual statements regarding illegal, criminal acts committed or attempted to be committed by Simon.

As party of the conspiracy to punish Simon, the Vannah attorneys co-conspirator, Angela Edgeworth admitted, under oath, to telling third persons outside the litigation that Mr. Simon engaged in criminal conduct of extorting and stealing - specifically, Lisa Carteen and Myriam Shearing, a retired supreme court justice before whom Simon has practiced.

The Vannah attorneys co-conspirator, Brian Edgeworth, admitted in his affidavit that he told another person by the name of Ruben Herrera, the volleyball coach that Simon extorted millions from him. *See*, **Exhibit 21** at 8:17-20. These under oath statements are admissions of the false and defamatory statements warranting summary judgment as a matter of law. Since the Vannah attorneys knowingly advanced these false statement injuring Plaintiffs trade, business and profession, they will be equally liable. Restatement (Second) of Torts §674 (1986).

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. 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. All Defendants ratified each other's actions in attacking the integrity and moral character of Mr.

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Simon and his law office. Interestingly, all Defendants do not deny their malice warranting punitive damages. They again rest their entire position on the litigation privilege that does not apply. This was part of their smear campaign scheme to injure Simon. The law and public policy is to punish those who abuse the systemin with frivolous lawsuits. The conversion complaint is despicable in light of the all of the Defendants knowledge and ill-will that the Vannah attorneys equally participated in on an on-going basis.

As the claim relates to the Vannah attorneys, they conspired with the Edgeworth's and they are jointly and severally liable for the acts of the co-conspirators. As it relates to their independent statements, they are in possession of the facts and evidence necessary to establish these claims. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d 703, 708 (2006). The amended complaint omits the Vannah Defendants from this cause of action pending discovery, at which time, Plaintiffs will likely request the court to apply this cause of action to the Vannah attorneys.

J. <u>BUSINESS DISPARAGEMENT IS PROPERLY PLED.</u>

Defendants' actionable statements have not only attacked Simon personally but his business and the tort of business disparagement and/or trade libel is appropriate. Daniel Simon the person and Daniel Simon the law firm are inextricably intertwined and defamatory statements against him and his professional reputation are imputed against the business as well. To succeed in a claim for business disparagement, one must prove:

(1) a false and disparaging statement,

(2) the unprivileged publication by the defendant,

(3) malice, and

(4) special damages.

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See Clark County Sch. Dist. v. Virtual Educ. Software, Inc., 125 Nev. 374. 386, 213 P.3d 496 (2009) (citations omitted).

Unlike defamation, business disparagement requires "something more," i.e., malice. *Id.* "Malice is proven when the plaintiff can show either that the defendant published the disparaging statement with the intent to cause harm to the plaintiff's pecuniary interests, or the defendant published a disparaging remark knowing its falsity or with reckless disregard for its truth." *Id.* (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 722, 57 P.3d 82, 92-93 (2002); *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987); *Restatement (Second) of Torts*, 623A (1977).

As discussed in great detail above, the entire purpose of Defendants conversion case was to harm and punish Simon, both personally and professionally. If Simon steals money from his clients, he is personally a crook and his business and, its services, are criminal. Defendants had no factual or legal basis to say that he stole, extorted or blackmailed the Edgeworth's, and they definitely had no probable cause for asserting conversion against him. The Defendants' statements were proffered to injure Simon and all Defendants knew the statements were false at the time they were made. The conduct wreaks of malice which as been admitted in testimony, under oath, and their own writings by all Defendants.

Mr. Simon and his law practice has enjoyed and an outstanding reputation in the community for over 25 years. In the underlying case he did an amazing job for the clients. The clients' smear campaign was based on false theft claims and was done intentionally to harm Mr. Simon and his Law Firm. Consequently, Simon's Business Disparagement cause of action has been properly pled and should not be dismissed.

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As the claim relates to the Vannah attorneys, they conspired with the Edgeworth's and they are jointly and severally liable for the acts of the co-conspirators. As it relates to their independent statements, they are in possession of the facts and evidence necessary to establish these claims. Simon's amended complaint omits the Vannah Defendants from this cause of action pending discovery, at which time, Plaintiffs will likely request the court to apply this cause of action equally to the Vannah attorneys.

K. CIVIL CONSPIRACY IS PROPERLY PLED.

A claim for Civil Conspiracy is established when:

1. Defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming Plaintiff; and

2. Plaintiff sustained damage resulting from their act or acts.

C*onsolidated Generator-Nevada, Inc. v. Cummings Engine Co.,* Inc., 114 Nev. 1304, 971 P.2d 1251 (1999). The Plaintiff merely needs to show an agreement between the tortfeasors, whether explicit or tacit. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). The cause of action is not created by the conspiracy but by the wrongful acts done by the defendants to the injury of the plaintiff. *Eikelberger v. Tolotti*, 96 Nev. 525, 611 P.2d 1086 (1980). Plaintiff may recover damages for the acts that result from the conspiracy. *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965), overruled on other grounds by *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998). An act lawful when done, may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the individual against whom the concerted action is taken. *Eikelberger, supra.* The tortious conduct of the Defendants set forth in the abuse of process and deformation is the wrongful conduct establishing the conspiracy. *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003).

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The Edgeworths, Vannah and Greene devised a plan to punish Mr. Simon, through their concerted actions among themselves and others, intended to accomplish the unlawful objectives of filing false claims for an improper and ulterior purpose to cause harm to Mr. Simon's reputation and cause significant financial loss. These tortious acts are the wrongful acts that were performed with an unlawful objective to cause harm to Simon. It is unlawful to file frivolous lawsuits and present false testimony of theft, extortion and blackmail. The Edgeworth's and the Vannah attorney's all followed through with this plan. As stated in significant detail above, the conversion claim was a legal impossibility that was known by all Defendants prior to the initiation of their lawsuit against Simon. Vannah, Greene and the Edgeworths all knew that the Plaintiffs did not convert or steal the settlement money.

Simon has pled that Defendants devised a plan to knowingly commit wrongful acts to file the frivolous claims for an improper purpose to damage the Plaintiff's reputation; cause harm to his law practice; intimidate him; cause him unnecessary and substantial expense to expend valuable resources and money to defend meritless claims; all with the desire to manipulate the proceedings to persuade the court to give a lower amount on the disputed attorney lien that would be in Defendants' favor. *See,* Amended Complaint at ¶ ¶ 102-111. They invented a story of theft, blackmail and extortion, and that Simon was already paid in full, among other unfounded assertions. They all mistakenly believed that their conduct was immune from liability based on the litigation privilege.

Defendants continue to act in concert, maintaining the conversion claim against Simon, which was recently re-confirmed in the briefing to this court. All Defendants have joined each others motions re-asserting the false narratives together to follow their devised plan as co-conspirators. Defendants' ongoing wrongful conduct has harmed Simon personally and

professionally. As such, the Civil Conspiracy claim is proper and sufficiently pled and Defendants' motion to dismiss should be denied.

V.

CONCLUSION

Based on the foregoing discussion, dismissal is improper at this juncture. Defendants have not met the necessary requirements that would entitle them to the litigation privilege or protection under the anti-SLAPP statutes. Plaintiffs have pled sufficient facts supporting all of their causes of action, especially when taking the plead facts in the light most favorable to the non-moving party. Therefore, Plaintiffs respectfully request this Court DENY the Vannah Defendants' Motion in its entirety.

Dated this 26th day of May, 2020.

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CERTIFICATE OF SERVICE

I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 26th day of May, 2020 I caused the foregoing document entitled **PLAINTIFFS' OPPOSITION TO DEFENDANTS ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., AND ROBERT D. VANNAH, CHTD. D/B/A VANNAH & VANNAH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT, AND MOTION IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(A)** 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

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Exhibit 1

ORDR

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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.

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

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

This matter came on for hearing on January 15, 2019, 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 (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

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

claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

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

factors pertinent to attorney's fees and attorney's fees are GRANTED in the amount of $50,000.00 and costs are GRANTED in the amount of $5,000.00.

IT IS SO ORDERED.

Dated this 6 day of February, 2019.

DISTRICT COURT JUDGE SW

Submitted by:

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Exhibit 2

ORD

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

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

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

(Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

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

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

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

(Def. Exhibit 27).

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

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

Constructive Discharge

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

- 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

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

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

Id.

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

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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

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

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

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

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

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

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

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

3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or 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.

4. A lien pursuant to:

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

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

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

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

Amount of Fees Owed Under Implied Contract

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

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

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

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

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

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

---

[2]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.[3]

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.[4] 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.[5] 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.[6]

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

---

[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

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

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

Costs Owed

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

Quantum Meruit

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

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

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

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

1. Quality of the Advocate

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

2. The Character of the Work to be Done

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

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

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, 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;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

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

CONCLUSION

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

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

ORDER

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

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

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 3

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Thu 12/28/2017 3:21 PM

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

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

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

Sent from my iPad

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

> Bob,
>
> I am available tomorrow for a call.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406
>
> ---
>
> **From:** Robert Vannah <rvannah@vannahlaw.com>
> **Sent:** Thursday, December 28, 2017 3:07:06 PM
> **To:** James R. Christensen
> **Cc:** John Greene; Daniel Simon
> **Subject:** Re: Edgeworth v. Viking
>
> I took the liberty of calling Bank Of Nevada and left a message for Sarah Guindy, asking her if we can do exactly what we seem to be agreeing to. I left her my phone number, and am expecting a call back. If she thinks we can do that, we can set up a conference call between you and me and work out the details with her. This seems to be the best way to get this money distributed to Danny and to the clients.
>
> Sent from my iPad
>
> On Dec 28, 2017, at 2:03 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

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

How about Bank of Nevada?

Jim

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

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

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

Sent from my iPad

On Dec 27, 2017, at 1:14 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Please see attached
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

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

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

Sent from my iPad

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

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

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

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

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

Sent from my iPad

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

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.

Happy Holidays!

Jim

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

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

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

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

Danny:

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

John

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

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

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

<image001.jpg>

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

<Ltr to Mr. Vannah.pdf>

<Zurich_Check[1].pdf>

<Zurich_Check[1].pdf>

<Email string.pdf>

Exhibit 4

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 18, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

So from the moment Danny agreed -- you got to listen to your husband, Mr. Edgeworth, testify -- I think it's been a few weeks now -- over the course of a series of days. Do you remember that testimony?

A Yes.

Q And Mr. Edgeworth and you are 50-50 owners -- I may be using the incorrect word -- and both the plaintiffs that Danny represented in the underlying litigation against Lange and Viking; correct?

A Yes.

Q You agree with everything your husband testified to?

A Yes.

Q All right. And you --

A I've heard it. I don't know -- I don't know what you are referring to specifically, Mr. Christiansen.

Q Well, I'll give you an easy example. You just told the Court you think or you -- I think you said your best guess is that you may owe Danny another $144,000. Remember that?

A Yes.

Q And you remember me questioning your husband; correct?

A Yes.

Q You remember your husband conceding to me that he had nothing, no information whatsoever to indicate any of the bills presented, superbill or otherwise, were false. Do you remember

Q Do you remember him not, and I want to be clear, not testifying consistent with the physical aspect of how this meeting took place that you gave, the version you gave this morning?

A I do not remember that.

Q Brian Edgeworth another never testified, told this Judge that Danny leaned against a desk between you and some chair, between his desk and some chairs and sort of leered over you as you described this morning?

A I remember it like it was yesterday.

Q Ma'am, that's not my question. You sat here for a week and your husband testifying, and isn't it true Mr. Edgeworth did not recite that same version?

A I don't recall.

Q Okay. Well, do you remember Mr. Edgeworth telling me that he felt threatened?

A Yes.

Q And, you know, if we were to compare sizes, Mr. Simon is probably closer to you then to Brian's size; right?

A Fair.

Q And so Danny Simon wasn't physically threatening anybody, was he?

A Physically, no.

Q All right. And the words, I wrote it down. You had lots of words for that meeting. Let me get to them.

Terrified -- I'm just going to go through them with you. Okay? Terrified, fair?

A Fair.

Q Shocked?

A Yes.

Q Shaken?

A Yes.

Q Taken aback?

A Yes.

Q Threatened?

A Yes.

Q Worried?

A Yes.

Q Blackmailed?

A Yes.

Q You thought he was trying to convert your money? Take your money? Right?

A Yes.

Q You actually sued him, and that was one of the claims is that he was converting your money; right?

A I wasn't worried about conversion at the time because I was worried about the settlement deal not happening.

Q Flabbergasted is another word?

A Yes.

Q And can we agree that nowhere in the email

communications between November the 17th and when Mr. Simon is notified on November the 30th that the Vannah firm is involved do you use any of those words in any of your emails?

A That's how I felt inside.

Q No, ma'am, just listen to my question. It's a very particular question.

Can we agree all of those words, none of them make their way into any email you typed?

A I was being polite.

Q Is that a yes? They're not in your emails; correct?

A Correct.

Q In fact, in your emails, and we'll go through them, but in your emails are these promises that you're going to sit down and meet with Danny; right?

A [No audible response.]

Q Right?

A Yes.

Q And at the time you put that in the email, you knew you weren't going to; correct?

A I didn't know that for sure, but I was stalling.

Q Ma'am, that's not what you told the Judge this morning. You told the Judge you made a determination after you had talked to your friend on the 17th or 18th of November --

I forgot that lady's name, the out-of-state lawyer.

A Lisa Carteen.

Q Carteen. T with a T, Carteen?
A Uh-huh.
Q -- Ms. Carteen that you were in no way going to sit in Danny's office without a lawyer; right?
A No. I said I wasn't going to go there by myself and sit in front of Danny Simon and get bullied into signing something.
Q Okay. Bullied. That's another term you used; right?
A [No audible response.]
Q Do you remember Brian -- Mr. Edgeworth's testimony that he was never shown a document on that day, the 17th, that he was to sign? Do you remember that?
A Yes.
Q Okay. Do you remember your testimony?
A [No audible response.]
Q Yes?
A Yes.
Q Tell me what the document Mr. Simon presented to you to sign looked like.
A I didn't see the document. He alluded to the document behind him on the desk, like this, that he was -- he had it if we were ready to sign it, and so I didn't see the actual document.
Q So in the opening --
You were here for the opening?

A Yes.

Q -- when your lawyer stood up and said that there was a document that Mr. Simon put in front of you, tried to force you to sign, that that factually was a little bit off?

A I didn't hear that, but, yes, that would be factually off. There wasn't a document presented to us there, no.

Q It's a little bit like -- do you know what the word outset means, ma'am?

A Yes.

Q Outset means the beginning; correct?

A Correct.

Q You saw all of Brian's affidavits; correct?

A Yes. Which ones? I don't know which ones you're referring to.

Q 2/2, 2/12 and 3/15. He signed three affidavits in support of the -- this litigation for attorneys' fees. You've seen them all?

A I've seen them at some point.

Q Now, you know that in each one of them he said, At the outset of the arrangement with Mr. Simon, Danny agreed to 550 an hour; correct?

A Correct.

Q Were you here last week when your husband couldn't understand what the word outset meant?

A He thought outset meant --

Q Ma'am, just answer my question.
A -- the very first day.
Q Did you -- were you here when he didn't understand, to my questions, what the word outset meant?
A Yes.
Q Okay. Outset, you know means the first day; right?
A I would interpret it to mean the beginning, which meant at the beginning of the case. So the outset to me would be at the beginning of the case, so sometime at the beginning of the case. The outset doesn't necessarily mean the very first day.
Q Okay. Isn't that kind of like revisiting history when your husband says, I retained Danny on the 27th of May, and from the outset, he agreed to 550 an hour? That's what all of those affidavits said?
A The outset means the beginning, and that was the beginning.
Q Ma'am, isn't it true that it's not until I confront your husband with the email from Danny Simon that says, Let's cross that bridge when we come to it, relative to what he's going to get paid that Mr. Edgeworth and you then have to change your story for the outset to become June 10th as opposed to May 27th?
A No.
Q Prior to me confronting Mr. Edgeworth with the email

that said, We'll cross that bridge when we come to it, had he ever in writing said June 10th is the day Danny Simon told him 550 an hour?

A I don't know.

Q Okay. The words you used, ma'am, and I won't go back through them all, when you talked to Ms. Carteen --

Did I get that right?

A Yes.

Q -- were those the words you use to her when describing Mr. Simon?

A I'm sorry. Which -- what do you mean?

Q Terrified? Blackmailed? Extorted?

A I used blackmailed, yes.

Q You used those words to her?

A And I used extortion, yes.

Q Similarly, when you talked to Justice Shearing in February of 2018, were those the words you used?

A I don't think they were that strong. I just told her what happened. Lisa is more of a closer friend of mine. So I was a little bit more open with her.

Q And you were talking to Lisa as your friend, not your lawyer; right?

A Correct.

Q Okay. And if I get the gist of what you were saying is that you were of the belief that if you didn't sign the

Q You accused him of converting your money; correct?
A Yes.
Q Before you even had the money; correct?
A Yes.
Q Before the money was in a bank account; right?
A Yes.
Q Okay. In that lawsuit, you sought to get from him personally and individually, from him and his wife, Elena, your friend? You wanted punitive damages; right?
A Yes. I didn't ask --
Q Yes?
A -- to be in this position?
Q Just yes? Just yes?
A Yes.
Q Okay.
MR. GREENE: Your Honor, object. Again --
MR. CHRISTIANSEN: Most certainly did.
MR. GREENE: Elena wasn't sued.
MR. CHRISTIANSEN: Well, it's the family --
THE COURT: Well, I mean, it's Daniel Simon as an individual and the law office of Danny Simon, isn't it?
MR. GREENE: Yes, but we didn't name his wife as a defendant.
BY MR. CHRISTIANSEN:
Q Is Elena married to Danny?

A Yes.

Q Okay. So if you're trying to get punitive damages from a husband individually, you're trying to get the family's money; right?

MR. GREENE: Same objection.

THE COURT: And, Mr. Christiansen, the lawsuit is against Danny Simon as an individual and the law office of Danny Simon. So that's who they sued.

BY MR. CHRISTIANSEN:

Q You made an intentional choice to sue him as an individual as opposed to just his law office, fair?

A Fair.

Q That is an effort to get his individual money; correct? His personal money as opposed to like some insurance for his law practice?

A Fair.

Q And you wanted money to punish him for stealing your money, converting it; correct?

A Yes.

Q And he hadn't even cashed the check yet; correct?

A No.

Q All right. He couldn't cash a check because Mr. Vannah and him had to make an agreement. Mr. Vannah I figured out how to do it I think at a bank, right, how to do like a joint --

MR. VANNAH: Yeah. We opened a trust account for, both he and I alone, so that neither one of our trust accounts got it, but it went into a trust account by the Bar rules.

THE COURT: Okay.

MR. VANNAH: If that helps.

MR. CHRISTIANSEN: It does. Thank you, Mr. Vannah.

MR. VANNAH: Sure.

BY MR. CHRISTIANSEN:

Q That's what happened; right? That's where the money got deposited?

A Yes.

THE COURT: And just so I'm clear about that, is the whole $6 million in that trust account?

MR. VANNAH: Yeah. I can help with that.

MR. CHRISTIANSEN: Me too, but go ahead, Bob.

THE COURT: Okay.

MR. VANNAH: So there's $6 million that went into the trust account.

THE COURT: Okay.

MR. VANNAH: Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get, and then we gave the clients the remainder.

THE COURT: So the six --

MR. VANNAH: In other words, he chose a number that -- in other words we both agreed that, look, here's the

deal. Odds you can't take and keep the client's money, which is about 4 million. So I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account.

THE COURT: Okay.

MR. VANNAH: And the remainder of the money went to the Edgeworths.

THE COURT: Okay. So there's about 2.4 million or something along those lines in the trust account?

MR. VANNAH: Yeah. There's like 2.4 million minus the 400,000 that was already paid. So there's a couple million dollars in the account.

THE COURT: Okay.

MR. GREENE: It's 1.9 and change, Your Honor.

THE COURT: Okay. Mr. --

MR. CHRISTIANSEN: Well, that's true. Mr. Greene was correct.

THE COURT: Yeah, just so I was sure about what happened with that. And then the rest of the money was dispersed because I heard her testifying about paying back the in-laws and all this stuff. So they paid that back out of their portion, and the disputed portion is in the trust account?

MR. VANNAH: Right. So they took that money, paid back the in-laws on everything so they wouldn't keep the

interest running.

THE COURT: Right.

MR. VANNAH: And then the money that we're disputing --

THE COURT: Is in the trust account?

MR. VANNAH: -- is held in trust, as the Bar requires.

THE COURT: Okay.

MR. CHRISTENSEN: And, Your Honor, just to follow up on that, the amount that's being held in trust is the amount that was claimed on the attorney lien.

THE COURT: Okay.

MR. VANNAH: That's correct.

MR. CHRISTENSEN: And also any interest that accrues on the money held in the trust inures to the benefit of the clients.

THE COURT: Right. I was aware of that. Yes. It would go to the Edgeworths; right?

MR. VANNAH: Exactly.

MR. CHRISTENSEN: That's correct.

MR. VANNAH: Yeah, that's what we all agree to. Yes. That's accurate.

BY MR. CHRISTIANSEN:

Q Ms. Edgeworth, in time, timingwise, when was the first time you ever looked at one of your husband's

spreadsheets for the calculation of damages?

A I don't know exactly the time. It was a long duration of the case, but, you know, some time during the case.

Q Okay. Is it fair to say you never looked at any of the damages calculations until after the November 17th meeting at Danny Simon's office?

A No.

Q You looked at them before then?

A Yes.

Q Did you see on them, and I can show you, and I'm trying to kind of move it along, where your husband leaves blank spaces that he still owes money for attorneys' fees in October and November?

A Yes.

Q All right. And so that's leading up to when you guys hire Mr. Vannah, and I'll show you just by way of ease.

MR. CHRISTIANSEN: This is 90, Jim.

BY MR. CHRISTIANSEN:

Q -- Mr. Vannah's fee agreement, which is signed by yourself, ma'am? Or is that Brian's signature? I'm sorry.

A That's Brian.

Q And it's dated the 29th of November, 2017?

A Yes.

Q And this is before the Viking -- just in time, this is before the Viking settlement agreement is executed by you

and your husband; correct?

A Yes, the day before.

Q And the Viking settlement agreement says that you're being advised on that agreement by Vannah & Vannah; correct?

A Correct.

Q And you signed it after you hired Vannah & Vannah; correct?

A Correct.

Q And you hired Vannah & Vannah on the 29th, the same day that you're sending Mr. Simon by my count two or three emails saying we're going to sit down as soon as Brian gets back; correct?

A Yes.

Q All right. So you knew you weren't going to sit down with Danny when Brian got back, when you sent those emails; right?

A No.

Q You were just leading Danny along till you got a new lawyer that you could listen to and disregard his advice; correct?

A We hired Vannah & Vannah to protect us from Danny, and we wanted Danny to finish the settlement agreement.

Q And you stopped listening to Danny in terms of following his advice; correct?

A No.

July 6th?

A What is the contents of that?

Q It's a production by Viking. Had you seen it?

A Yes.

Q And then did you see the email where Ms. Ferrel, before your husband and you, before your husband is given the information, puts in big letters, Can you say punitive damages?

A Yes.

Q And that was before Brian even had the information to go through; right?

A What do you mean "the information to go through"? I don't understand what you are asking.

Q Sure. The Viking productions that he went through and worked with his lawyers on.

A The "Viking productions," I don't understand that.

Q Okay. Well, I'll move on to a different area with you.

Do you remember in -- do you agree with all of the assertions made by Mr. Edgeworth and all of the affidavits on behalf of the two entities that sued Mr. Simon?

A Could you please repeat that question.

Q Sure. Mr. Edgeworth signed affidavits in support of this hearing on February the 2nd, February the 12th and March 15th of this year. Did you know that?

A Yes.

Q Did you read those?
A Yes.
Q He signed those as a co-owner of the two entities that sued Mr. Simon; correct?
A Correct.
Q Now, you were the other co-owner; correct?
A Yes.
Q Do you agree with all those statements?
A Yes.
Q You've ratified those statements; correct?
A Yes.
Q All right. Do you agree with the statement he put in the third one that as of September Mr. Simon had been paid in full for all of his work?
A I believe -- yes.
Q Do you agree with him that he put in his third affidavit that Mr. Simon -- I want to tell you exactly right.
Let me stop and back up to -- the 17th is the uncomfortable meeting of November? And that's my word, not yours. I'm sorry. I was trying to make it easy. Is that fair?
A Yes.
Q And after the 17th, you're texting Elena Simon; right? You text her on November the 23rd said, Happy Thanksgiving?

Exhibit 5

Daniel Simon

From: Daniel Simon
Sent: Friday, May 27, 2016 4:25 PM
To: Brian Edgeworth
Subject: RE: Insurance Claim

I can meet you tomorrow about 11a.m. at starbucks on St Rose and Spencer

-----Original Message-----
From: Brian Edgeworth [mailto:brian@pediped.com]
Sent: Friday, May 27, 2016 3:37 PM
To: Daniel Simon
Subject: RE: Insurance Claim

Too big to scan. I could drop off at your house or meet you somewhere tomorrow. I will not be done until very late tonight.

-----Original Message-----
From: Daniel Simon [mailto:dan@simonlawlv.com]
Sent: Friday, May 27, 2016 3:35 PM
To: Brian Edgeworth <brian@pediped.com>
Subject: RE: Insurance Claim

Our job is not easy. LOL however you want.

-----Original Message-----
From: Brian Edgeworth [mailto:brian@pediped.com]
Sent: Friday, May 27, 2016 3:30 PM
To: Daniel Simon
Subject: RE: Insurance Claim

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

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

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

> On May 27, 2016, at 9:30 AM, Brian Edgeworth <brian@pediped.com> wrote:
>
> Hey Danny;
>
> I do not want to waste your time with this hassle (other than to force

> you
to listen me bitch about it constantly) and the insurance broker says I should hire Craig Marquiz and start moving the process forward.
Should I just do that and not bother you with this?
> My only concern is that some goes nuclear (with billing and time) when
just a bullet to the head was all that was needed to end this nightmare (and I do not know this person from Adam).
>
> --
>
>
> Brian Edgeworth
> pediped Footwear
> 1191 Center Point Drive
> Henderson, NV
> 89074
>
> 702 352-2580

Exhibit 6

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
THURSDAY, AUGUST 30, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Q All right. It looks like you start to address the Brunzell factors at paragraph 15 --

A Right.

Q -- page 5 of your report?

A Right. You know, Brunzell is kind of a funky case, it's really kind of an off-chute V-case. So, when you read Brunzell they really don't elaborate on these factors much, but these are the four factors.

Q And it sounded like at least in general the four Brunzell factors were very similar to the factors that you applied in the tobacco litigation and maybe in other contexts?

A Yeah. What happened in, you know, the old days, and Mr. Vannah will remember too, we used to call this the Lindy Lodestar factors after the Lindy case, and then that kind of got changed, and then each State court had their case, and so it's now the Brunzell cases, but basically the Lindy Lodestar factors.

Q Okay. So, the first one is the qualities of the advocate?

A Right.

Q So what is your opinion concerning the qualities of Mr. Simon and the rest of his office?

A You know, I really started with 4, results, so can we start --

Q Okay.

A -- there perhaps. You know, there --

Q Let's start with number 4.

A Yeah. the result of this case, I don't think anybody involved can dispute it's amazing. You know, that we have a single house that

has a defective sprinkler that has flooding; as I understand it the house wasn't occupied at the time, they were building it. But we don't have any personal injury, we don't have any death, we have property damage.

You know, we can get into the amount of property damage, but, I mean, you know, like I say in my affidavit, we probably wouldn't take this case unless it was a friends and family situation, which I understand to be the case here.

But we probably wouldn't take this case because it -- it is really hard to do a products liability case and make everything add up, if you have a limited amount of damages in one point. So, the result in this case, you know, when you have this kind of property damage, 500 to 750, you know, depending on how you want to characterize it, and they get $6 million, 6.1, it's just -- it's just phenomenal.

You know, I'm not saying it was all Mr. Simon. It sounds like they had a pretty bad sprinkler. You know, Mr. Edgeworth obviously contributed, he did a lot of work, but it is a pretty fantastic result for what they did.

Q What's the highest trial verdict that you've been involved in?

A A verdict? Well, we got 505 million in the hepatitis case, which was tried in this courtroom, by the way. We got five hundred twenty-four and twenty-eight in an HMO case, and then I think we got 205 in some other case.

Q Okay.

A So those are the three highest, and two out of three were products' cases.

Exhibit 7

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

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

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

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

Exhibit 8

Electronically Filed
6/13/2019 3:22 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

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

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

damages. Is that what you mean?

Q Yep.

A Yes, they're expenses.

Q And so everybody -- because you get involved in these cases, you forget maybe some things aren't super clear when you start, but you had about $500,000 in hard cost damage to your house, and then some future hard card cost damage that you needed to repair, correct?

A Yeah. It was between 3 and 8. You know, there was a lot of different estimates, but that's fair.

Q And then ultimately, you had several hundred thousand dollars' worth of interest you owed?

A Highly likely over two years, yes.

Q And those future damages, like replacing your kitchen cabinets?

A Yes.

Q Have you replaced those kitchen cabinets?

A Yes. We've paid -- well, no. They haven't replaced them. They've been paid to make them. They haven't come back to put them in.

Q So a line item of damages that you collected for haven't been replaced yet?

A No.

Q They're on their way, but just not yet?

A I don't know. I haven't called the guy.

Q All right.

A They better be on their way.

Q And as of June 5th, not even the scope of Mr. Simon's representation has been determined, because he doesn't know if he's supposed -- you don't know if he's going to write your loan agreements or you should have somebody else?

A Correct.

Q Was in flux?

A Correct.

MR. CHRISTIANSEN: And Exhibit 80, Mr. Greene. Bate stamps 3425 and 6.

BY MR. CHRISTIANSEN:

Q And so we're clear, did you get a bill in June for Mr. Simon's work in May?

A June of 2016, sir?

Q Yes, sir.

A No.

Q Did you get a bill in July for Mr. Simon's work in May or June?

A No.

Q Did you get a bill in August for May, June or July?

A No.

Q September?

A No.

Q October?

A No.

Q December?
A Yes.
Q And December of 2016 is the first time you saw a bill with the number 550 on it. It's the first bill you saw, correct?
A Yes. Correct.
Q Seven months after he started representing you?
A Correct.
Q And can we agree that that bill did not contain all of Mr. Simon's time?
A I think it was pretty generous.
Q I don't understand that answer, sir.
A I think it encompassed all his time and there was blocks that looked generous, the amount of time.
THE COURT: What do you mean by generous, sir?
THE WITNESS: I mean, like sometimes a lawyer will write a letter and say it took them two hours, where I could pound it out on typewriter in 15 minutes. The two hours seems generous. It seems aggressive.
THE COURT: So, when you say generous, you mean generous in like he's exaggerating the time, you thought?
THE WITNESS: Well, it's typical on lawyer's bills, they bill in their favor. They bill blocks, and it's a generous amount of time.
THE COURT: So, you're saying the amount was more than the work he did?
THE WITNESS: I'm not contesting that at all. He -- I was just

asking -- answering his question. He said did I --

THE COURT: Right. But I don't know what you mean --

THE WITNESS: Oh.

THE COURT: -- by generous. I don't know what you're -- I mean, are you saying that the amount that you paid was more than the work that was done?

THE WITNESS: I think the number of hours on the bill was generous. It's fair. It's a fair amount --

MR. VANNAH: She doesn't understand --

THE WITNESS: -- to do the work that was done.

MR. VANNAH: -- what you mean by generous.

THE COURT: Yeah. Is it fair or --

MR. VANNAH: Is he being charitable to you --

THE WITNESS: It's fair.

THE COURT: -- generous?

MR. VANNAH: -- that he doesn't --

THE WITNESS: It was not charitable in my favor. It was likely on the -- skewing on the side towards Mr. Simon's favor for the hours --

THE COURT: Okay.

THE WITNESS: -- but I'm not contesting that.

THE COURT: No. I understand that, but when you say that --

THE WITNESS: Oh, I'm sorry.

THE COURT: -- I need to understand exactly what you're saying. And then you turn around and say fair. I don't know which one

you mean. Okay, Mr. Christensen. Sorry, I was just --

MR. CHRISTIANSEN: That's okay, Your Honor.

THE COURT: -- for the Court's clarification.

MR. CHRISTIANSEN: I didn't understand, either.

THE COURT: Okay.

MR. CHRISTIANSEN: So that's why I asked.

BY MR. CHRISTIANSEN:

Q I -- in the Mark Katz email --

A Uh-huh.

Q -- you're talking about starting to borrow money. Is that as I understand it, Mr. Edgeworth?

A Correct.

Q You say you want to do it by Friday, 350,000 plus however much I need to pay legal fees during the insurance company's delays.

A Correct.

Q You didn't know how much you were going to have to pay?

A No idea.

Q You didn't write a rate, correct?

A A rate of interest?

Q A rate of hours, per hour what you were going to pay?

A Oh, no.

Q And insurance company delays, that reflects again sort of this state of in flux the case was in. Simon's trying to get insurance companies to step in and do the right thing. They don't, so he's gotta sue. Then he sort of tells you, hey, maybe the lawyers will get involved,

and they'll get their insurance companies to do the right thing. That's what you meant when you said insurance company delays?

A No. At this point, he hadn't sued. At that point --

Q No.

A -- insure --

Q I'm aware of this. This was before he filed suit, but --

A Correct. Yes.

Q -- it just -- this just reflects the relationship is in flux, correct?

A Yeah. Represents that the insurance companies just aren't paying. They're delaying the payment of the claim --

Q Got it.

A -- that inevitably, they'll have to pay.

Q Well, not inevitably. If you prevail on the lawsuit, they have to pay. Insurance companies -- I bet you I can even get Mr. Vannah to agree they don't pay most of the time, unless he makes them.

MR. VANNAH: No, I -- Your Honor, would you -- I don't want you to think I'm rude. I just want to go to the bathroom. I didn't want to interrupt anything.

THE COURT: Okay.

MR. CHRISTIANSEN: Is -- this maybe is a good time?

THE COURT: This is a good time, Mr. Vannah. I'm glad you brought that up. We sometimes get caught up in not doing it. All right. So, we'll be at recess about 15 minutes.

MR. GREENE: Thank you, Your Honor.

THE COURT: So, we'll come back at a quarter to.

MR. VANNAH: Thank you, Your Honor.

[Recess at 2:36 p.m., recommencing at 2:47 p.m.]

THE COURT: A-738444, Edgeworth Family Trust; American Grating v. Daniel Simon, doing business as Simon Law.

Mr. Christiansen, you may resume.

MR. CHRISTIANSEN: Thank you, Your Honor.

BY MR. CHRISTIANSEN:

Q Mr. Edgeworth, I want to direct your attention back to the affidavit you signed February the 2nd of this year. And it was signed and attached as an exhibit to briefs dealing with the attorney's lien that Mr. Simon filed in your Edgeworth v. Viking case; does that sound familiar to you?

A The attorney's briefs, whoa. That's --

Q It was attached to something Mr. Vannah and Mr. Greene filed on your behalf --

A Okay.

Q -- arguing -- we've argued about a bunch of different things, but relative to the lien.

A Okay.

Q Make sense?

A Okay.

Q All right. So, I can make sure I show you Mr. Greene's 16, the day, sir, is the 2nd of February, this is the one you and I were talking about; is that right?

A It's the 2nd of February, correct, yes.

Did I read that correctly?

A Yes, you did.

Q And then -- so just from the first two sentences, as of August 22nd, 2017, you never had a structured discussion about going after punitives, correct?

A Correct.

Q No terms had been reached, correct?

A Correct.

Q Then you go on to say, obviously, that could not have been done earlier, since -- I think again that's just a typo -- who would have thought this case would meet the hurdle of punitives at the start?

Did I read that correctly?

A Correct.

Q So, in addition to saying this is your first, or this is a stab at a constructive discussion about punitives, you concede from that sentence, that way back in May of 2016, at the outset of the litigation there was no way to contemplate the case being punitive in nature?

A Correct.

Q So no terms could have been reached?

A Correct.

Q Then you go down to say, I could also swing hourly for the whole case (unless if I'm off what this is going cost). I would likely borrow another 450,000 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.

Did I read that accurately, sir?

A Yes, you did.

Q Doubt we will get Kinsale, that's one of the insurance companies --

A That's Lange's insurance.

Q Thank you. To settle for enough to really finance this. Did I read that correctly?

A Correct.

Q So in other words, that's you saying, I doubt we can get the insurance companies to settle for enough to finance me [Brian], going and borrowing more money to keep paying for this case hourly?

A Incorrect.

Q I would have to pay the first 750,000 or so back to Collin and Margaret, and why would Kinsale sell it for 1 MM, when their exposure is only 1 MM. 1 MM means a million, I assume?

A Yes, it is.

Q Did I read that all correctly?

A Correct.

Q And this is the email you wrote after the case had blossomed and one of the Defendants had offered a considerable sum of money, right?

A This is not written after the case had -- or after the Defendants had offered a considerable sum of money.

Q That's what you wrote in your affidavit, so I'm just asking you, is that your testimony?

A That's not what I wrote in my affidavit.
Q All right.
A It's commas, beside each of those four events.
Q Do you know what a register of actions is, sir?
A No.
Q That's like all of us can look on it and see what was done in a case and --
A Oh, I know what it is then, yeah --
MR. CHRISTIANSEN: It's Exhibit 63, Mr. Greene.
THE WITNESS: -- I have that link, yeah.
BY MR. CHRISTIANSEN:
Q And in your case, do you know how many entries are in the register of actions?
A A lot.
Q Who made all those entries? Whose work culminated in those entries, yours or Danny Simon's?
A Danny Simon filed them.
Q Danny Simon's works, what took this case in March for a million bucks, that you were willing to settle the whole thing for, to November in six, fair?
A His filings in court?
Q This case turned from a property damage claim to a punitive damage case, correct?
A I don't think we ever got a punitive damage case, no. There was potential, though.

Q Do you think Zurich paid 11, 12 times your property damage, because there's some like emotional distress attached to property damage?

A Zurich didn't pay 11 or 12 times my property damage, sir?

Q Zurich paid 6 million, right?

A Zurich paid $6 million, correct.

Q And your estimation of your property damage, all these documents I've been showing you, is about 500 grand, before you start adding in interest and things of that nature?

A Correct.

Q Right. You know, I know you're not a lawyer, that there's no emotional distress claim attaching to a property damage case, correct?

A Correct.

Q All right. And so, the difference between your hard costs and what you got reflects Danny Simon changing the nature of the claim, correct?

A I guess we disagree on why the parties settled, because my answer would be incorrect.

Q Okay. Well, we're going to have a lawyer from one of the parties come tell us why they settled. But they settled when there was a pending motion to strike their answer, correct?

A Correct.

Q They settled after Her Honor excluded one of their experts, because Danny Simon wrote a motion to exclude it, correct?

A Correct.

Q And they settled because there was a real risk their insured, Viking, would be hit with a punitive damage award, which is non-insurable, correct?

A I don't know that that's correct.

Q What don't you know was correct?

A You just said -- you said they settled because their insured was going to -- I don't know that that's correct. That's not my opinion on why they settled at all.

Q All right. One day after, just one day after your contingency email, I've got it somewhere, you did another email to Mr. Simon, with the spreadsheet of your view of the value of your case; do you remember that?

MR. CHRISTIANSEN: That's exhibit, Mr. Greene, 28, Bate stamp 400.

BY MR. CHRISTIANSEN:

Q August 23rd, Brian Edgeworth to Danny Simon?

A Yes.

Q Did this email, like two-thirds of these other emails, is after-hours; is that right, Mr. Edgeworth?

A I don't know if they're two-thirds after hours or not.

Q Did you write emails at all times of the day or night to Danny Simon?

A Yes. I would write emails at all times --

Q Did you call --

A -- day and night.

Q -- on a cell phone on all times day and night?
A Not all times, but, yes, after --
Q Weekends?
A -- business hours, definitely.
Q And what you say here is, we may be past the point of no return. What you mean by that is this case might have to go to trial, right?
A I don't know that that's what I meant, but --
Q The costs have added up so high I doubt they'll settle anyway -- I doubt they settle anyway, I apologize. This does not even include upgraded -- updated --
A Updated.
Q -- legal and experts, any of my time wasted, et cetera. I already owe Collin and Margaret over 85,000 now -- 850,000 now?
A Correct.
Q So you don't, at the time you author this, have a bill, or even an understanding of what the updated legal and expert fees are, correct?
A It's on the sheet, sir.
Q This does not even include updated, legal and experts. Okay. This is written August 23rd, the last legal cost you've got is July 31st. So, my question is -- the answer is, yes, you don't update to the day of the --
A Oh 31 to 23, correct.
Q And here you value your case, the one that you valued to a million bucks in March, at 3 million bucks, 3,078,000, right?

A I would agree if you use a different term than value. My damages, or costs at that point were this.

Q Right. And the biggest line item is the million-five stigma damage, Danny's book and brother-in-law found you, right?

A Correct.

Q Then you're pestering Mr. Simon during this time to give you -- pester is pejorative, I don't mean it that way, you're being proactive with Mr. Simon to give you bills during this timeframe, right?

A Yes, I was.

Q Because you knew that you could add the bills to your damages, and potentially recover those bills under the contract claim against Lange, right?

A That's not the reason I was being aggressive, but I agree with part of your statement, just not the first half of your question, that that was the reason I was being aggressive, asking for bills.

Q Reflective of that is the August 29, 2017 email from -- it looks like you must have sent it. It says, your office still not has cashed $170,000 check. And that's in like the subject line. And then Mr. Simon answers you back, I've been too busy with the Edgeworth case, fair?

A Correct.

Q You had your first mediation scheduled in this case October the 10th; is that right?

A I think it's the 20th, sir.

Q October the 20th?

A I think so. I could be wrong.

Q I think it's the 10th. If it's not the 10th Mr. Greene can correct me when I get done.

A The second one was November 10th?

Q That's accurate?

A Yes.

Q Okay. So, in anticipation of your first mediation had there been any monies offered, leading up to the mediation by any of the Defendants?

A No, I don't think so.

Q And going up to your first mediation you wrote Mr. Simon an email that talked about -- I'll just -- settlement tolerance for mediation.

MR. CHRISTIANSEN: Sorry, John, that's Exhibit 34.

THE COURT: Did you say 34, Mr. Christiansen?

MR. CHRISTIANSEN: It is. I can't read the little tiny numbers for the Bate stamp -- 408, Bate stamp 408.

THE CLERK: 406.

MR. CHRISTIANSEN: 406, sorry.

BY MR. CHRISTIANSEN:

Q Is this --

MR. CHRISTIANSEN: -- and it's 407, too, John.

BY MR. CHRISTIANSEN:

Q Look like one of your spreadsheets, sir?

A Yeah. Simon asked for this to be made, correct?

Q This is leading into mediation number one?

A Correct.

Q And you have sort of three columns, what's non-negotiable, in your view?

A Correct.

Q All right. And what's negotiable, or I think you say, limited tolerance for negotiation?

A Correct.

Q All right. Like the stigma damage, that's negotiable?

A Limited tolerance for negotiation, correct.

Q Trapped capital interest. That's a line item I've not seen before in any of your calculations. Is that something you created?

A Craig Marquis told us that we could claim that.

Q But you figured how much it was?

A Correct. Yes, I did.

Q And this is the first time it makes its way into one of your line items of damages?

A Correct. Or maybe not, but I'd have to look at all the spreadsheets that were made.

Q Prejudgment interest?

A Correct.

Q Well, what do you think you get 268,000 for in prejudgment interest?

A Well, if you prevail in a case -- if you prevail at the end of court you'll get judgment on -- you'll get judgment -- interest on the judgment amount --

Q Judgment exceeding --

A -- for the amount that --
Q -- half of your $500,000 property claim?
A What judgment? You're confusing me with the question.
Q Sure. Your property claim you told me is a $500,000 property claim, and you think you're going to get 270 grand in interest?
A If it's just simple math, sir. It says the assumptions over here, and then you just take the number, and it's just math from it.
Q See the first bill, it says legal bills? The first line, sorry.
A Yes.
Q That 518,000, that's not all attorney's fees, right; that's fees and costs lumped together?
A I think so.
Q And then do you see your comment out there to the right?
A Likely more comment.
Q So you authored this, you had no idea what was coming?
A Correct.
Q And you had no structured discussions with Danny about pursuing a punitive claim, correct?
A You asked two questions. Correct, I had no idea how many more hourly bills would be coming, and correct, we still hadn't had a structured conversation about how to convert into a punitive agreement, correct.
Q And the total -- I'm sorry, Mr. Edgeworth, I didn't ask you one I had. The total of your damages with the negotiable and non-negotiable items is just under 3.8 million?

A Other than the line items that are --

THE COURT: Under the line items what?

THE WITNESS: And the two on the side which may, or may not be able to be claimed, yes. See the two I said -- they destroyed the building reputation and, you know, nothing in here for the -- all the thousands of hours that have been wasted, so, yes.

BY MR. CHRISTIANSEN:

Q And at the very bottom here you write, I'm more interested in what we could get Kinsale to pay and still have a claim large enough against Viking. That's what you wanted to get -- Kinsale is, as you were told, is the Lange Plumbing insurance company?

A Insurance carrier.

Q So you wanted to get at Kinsale and try to settle them first?

A Correct. The same with that email you put up three or four ago, it's roughly saying the same thing. Let's get Kinsale to settle, because it's in their interest for me to pursue the claim against Viking; and they're not doing it at all. And then we use that money so that I don't have to take more loans. They're the weaker link of the two in the negotiation.

Q Right. You saw that from a business standpoint?

A Yes.

Q All right. It turns out you were wrong, right?

A Correct.

Q Mr. Simon was right, you were wrong?

A Mr. Simon didn't rebut that.

Q You wanted to go hard at Lange. Lange gave you, pursuant to advice by a different --

A This is --

Q -- office?

A -- not a mediation, a one-day mediation --

THE COURT: Okay, sir. You have to let him finish --

THE WITNESS: Oh, sorry. I'm sorry.

THE COURT: -- asking the question. Only one of you can talk --

THE WITNESS: I'm sorry --

THE COURT: -- at a time.

THE WITNESS: -- I haven't done this.

THE COURT: Okay. You need to let him finish. I told him the same thing earlier. It applies to you too. Mr. Christiansen?

MR. CHRISTIANSEN: Thank you, Your Honor.

BY MR. CHRISTIANSEN:

Q All right. How much did -- was offered at the October -- I think it's October 10, it you're right, it's October 20th -- what was offered at that mediation?

A I think very little. I think Viking -- I don't even remember. I think Lange said 25 grand. I'm not sure if Viking said anything, or -- I don't remember.

Q Okay. So nominal?

A Nominal, that's one, correct.

Q All right. Do you know what happened from a lawyer

standpoint, and a courtroom standpoint, between October and November, at the second mediation?

A Do I know --

Q Do you know what Danny did, or his office did?

A I know some of the things they did, yes.

Q And when you went to the November mediation, the case as it pertained to Viking resolved, right?

A Yeah. A week later, the mediation -- the mediator settlement you mean?

Q Yeah.

A Yes.

Q So we're clear on the mediator settlement -- let's just back up, we'll get you the -- in this case you provided an affidavit --

MR. CHRISTIANSEN: -- John, I 'm not sure which one, this is your group, it's in your list; 9, I think.

[Parties confer]

THE CLERK: Exhibit 9.

BY MR. CHRISTIANSEN:

Q You wrote an affidavit dated July 25th, 2017, and it's one of the exhibits I'm sure Mr. Greene will talk to you about. Do you remember authoring that?

A Yes.

MR. GREENE: Hey, Pete, that's not an affidavit, that's an email.

MR. CHRISTIANSEN: I apologize, an email.

BY MR. CHRISTIANSEN:

Q Just chronologically, that's all I want to question you about now, is what you wrote, it looks like items you were able to locate, or you thought were of some importance, and you wanted Danny and his office to look at, correct?

A Correct. I was passing on information.

Q Right. And that information came to you 15 days earlier from Ashley Ferrel, who sent you a Dropbox link, from the data doc?

A No, sir.

Q No?

A The email actually tells where that information would come from.

Q All right. Well, just help me this way --

A Okay.

Q -- Ashley's email is dated --

A Okay.

Q -- 15 days earlier than your email?

A Correct.

Q In Ms. Ferrel's email she provides a Dropbox link --

A Correct.

Q -- to the data dump that Viking, in the summer of 2017 finally gave up after a protective order was litigated in the litigation?

A Yeah. I think the data dump that they referenced, could come a little later when you dump like seven or 8,000, but the first two or 3,000 were in the --

Q And this is in Exhibit 80, as well. This is that same day, Danny tells Ashley to send to the experts and to Brian, the Dropbox link, and Ashley says to Danny, holy crap two words, punitive damages.

Did I read that correctly?

A You read it correctly, yes.

Q And at the mediation in November, the one that was successful getting you $6 million for your property damage claim, do you remember having a disagreement with Mr. Simon about what the mediator's proposal should be?

A I believe that was the next day or after, yes.

Q Right. You wanted the mediator to propose $5 million, right?

A Correct.

Q Danny said, no, let's make him force -- propose 6?

A Correct.

Q And the case settled for 6?

A Correct.

Q So between Danny's brother, the mediator's proposal, he made you two and a half million bucks, right?

A Not true. I wanted the 5 million for a different reason, but --

Q You wanted 5 more than 6; is that your testimony?

A No, it's not my testimony.

Q All right.

A I said I wanted the 5 in the agreement for a very specific reason.

Q For example, you had all kinds of ideas in this case, and

before the first mediation you wrote, let's go hard at Lange, right out the gate and ignore Viking. Lange doesn't settle until after Viking pays you 6 million, right?

A Correct.

Q Then after the November 10th mediation --

MR. CHRISTIANSEN: -- Exhibit 36, Mr. Greene, Bate 409.

BY MR. CHRISTIANSEN:

Q Danny said, I want authority to tell the mediator to propose 6. You said he should have proposed 5, but you agreed he could do 6, and then Viking paid 6?

A No. The mediator -- this is the day after that -- the mediator put the 6 down. The arguments was over how long the two parties got to respond to him. There was something on the docket that made the date, it shouldn't be two weeks or whatever, it should be November 15th. They discussed that. We left, and I'm like I wish you would have proposed 5, to see if they'd bite, and then this is -- I agree, he should have proposed 5.

Q But Mr. Simon got you 6, based on his expertise?

A The settlement was offered at 6, correct.

Q And that was Danny's suggestion --

A It was Floyd --

Q -- not yours?

A -- Hill, actually. There's a mediator guy --

Q Yeah. I know all about the mediators. You wanted 5, Danny told him 6, he proposed 6, and they accepted 6; all true?

A I didn't want 5, I wanted 5 in the proposal, that's correct.

Q All right. Now, let's fast forward, I'm going to leave some of this here, and try to get you through the timeline, Mr. Edgeworth, before the end of today. And your last estimate was October the 5th, and your case was worth, in your view, $3,764,000 and change. The case settles, on or near November the 10th, right, within about a week?

A About, yeah.

Q Like when I say settle so I'm being technical with you, the figure was agreed to? The mediator's proposal was accepted?

A November 15th.

Q And after that you went to Mr. Simon's office and had a meeting. On the day he had court he had to come see Judge Jones, and do some things in your case?

A Yeah. He texted me.

Q And you brought your wife?

A Correct. Well, I didn't bring her, she came.

Q Well, your wife was in attendance with you?

A Correct, yes.

Q And this is the meeting that you felt threatened?

A Definitely.

Q Intimidated?

A Definitely.

Q Blackmailed?

A Definitely.

Q Extorted?

A Definitely.
Q How big are you?
A 6' 4".
Q How much do you weigh?
A Two-eighty.
Q Danny goes about a buck-forty soaking wet, maybe with nickels in his pocket. He was extorting and blackmailing you?
A Definitely.
Q He threatened to beat you up?
A I didn't say that.
Q Because you write a letter, an email to him saying, you threatened me, why did you treat me like that?
A No.
Q Did you tell him in the meeting, you're threatening us, stop it, you're scaring me?
A I didn't say I was scared, sir.
Q And at the meeting Danny is trying to come to terms with what you told me had never been -- terms have never been come to, which is the value of his services for a punitive damage award, correct?
A I'm not really sure what he was trying to do. He kept saying, I want this, I want that. He said, very many things, but he never defined them all.
Q All right.
A It was a very unstructured conversation.
Q And you told the Court that he tried to force you to sign

something, but you don't have it?

A He didn't give us anything to leave with, that's correct.

Q All right. The next thing we have in writing, Mr. Edgeworth, is an email from you, November 21, 2017.

THE COURT: What exhibit is this, Mr. Christiansen?

MR. CHRISTIANSEN: 39, Your Honor. Bate stamp 413, Mr. Greene, I'm sorry.

BY MR. CHRISTIANSEN:

Q Did I get those dates right, Mr. Edgeworth?

A I'm sorry?

Q November 21st --

A November 21st, 2017, it says.

Q Right. And as of November 21st, 2017, you got legal bills, counsel, experts, et cetera, for 501,000, right, and change, I'm sorry?

A Correct.

Q And then you agree that there are legal bills not billed yet?

A Correct.

Q That's left open?

A Correct.

Q So as of November 21st, 2017, you know you own Danny Simon money?

A Well, actually as of the date of his last bill.

Q When you wrote this email you knew you owed Danny money?

A Correct.

Exhibit 9

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
TUESDAY, AUGUST 28, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER. S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

is Exhibit 48 on your screen. There's another email from Mr. Vannah's office to Mr. Christensen, where it says that you have lost faith in Mr. Simon; faith and trust, I apologize. Therefore, they, and that means you and your wife, I think Mr. Edgeworth, will not sign the checks to deposited into his trust account.

Did I read that accurately?

A Yes.

Q You didn't want your old lawyer to put his settlement checks that he had earned for you into his trust account, fair? That's --

A I don't think the lawyer earned the checks, but, yes, it's fair, I didn't want him to deposit into his trust account.

Q And you go on to say, Quite frankly, they are fearful -- you don't' say this, this is the lawyers on your behalf, Quite frankly, they are fearful you will steal the money?

A That's correct.

Q Okay. And in the course your affidavits and the complaint, did you read the complaint in this case filed by Vannah & Vannah against Mr. Simon?

A I don't think I did.

Q Okay. I won't quarrel with you then about what lawyers wrote, that's a legal thing that Her Honor can figure that out, but isn't it true that in all your affidavits you quote a portion of your September deposition, that Mr. Simon sat through, to stand for the proposition that you had paid in him full?

A Up to that point, correct?

Q All right. And it's in every single one of your affidavits, fair?
A Fair.
Q And it doesn't say in any of the affidavits, paid to in full up to that point, it just says paid in full, correct?
A Correct.
Q And you would agree with me that yesterday I showed you, and I won't get into again with you today, because I'm trying to save some time and get you off the stand, that at least the lawyers on your behalf, took the position that Danny had been paid in full, wasn't owed another dime, and he was trying to convert your money?
MR. VANNAH: I'm going to object to that, that's never been our position. He's not saying to what our position is, in which the only way he would know that is through a conversation would be. Our position is we owe Danny Simon money, and that's what you're going to decide, Your Honor. You're going to decide how much he's owed in September 22nd until the date that he stopped billing.
THE COURT: Right. And are you --
MR. VANNAH: There's a bill there.
THE COURT: -- referring to the conversion claim? There's a conversion claim in the lawsuit, Mr. Vannah. Is that what -- that's what I believe Mr. Christiansen is getting at.
MR. VANNAH: No, he's asking -- he keeps asking him over and over again, if he doesn't owe him any money from September 22nd to January 8th, that's never been our position, everybody knows that. And that's why we're here to determine how much money he's owed

during that four or five month period. We owe him money; we're going to have you make that decision.

THE COURT: Okay.

MR. VANNAH: Whatever it is we're going to write a check for it, so --

MR. CHRISTIANSEN: With all due respect to Mr. Vannah, Your Honor, it's not his witness, so he shouldn't be making objections.

MR. VANNAH: Well, but you're asking the witness, he's asking the witness, what did you learn from your attorneys.

MR. CHRISTIANSEN: No, I'm not. I asked the witness what's contained in the lawsuit.

MR. VANNAH: No. He said he never read the lawsuit.

THE COURT: He said he never read the complaint.

MR. VANNAH: Right. He never read it.

THE COURT: Okay. Mr. Christiansen, can you establish somehow how he would know this?

BY MR. CHRISTIANSEN:

Q Do you know there's a claim, that you made a claim against Danny Simon, through the lawsuit, brought by Mr. Vannah's office, that he converted your money by filing an attorneys' lien?

A Yes.

Q You claimed he stole your money?

A He was attempting to, yes.

Q Right. By filing what you now know to be the ethical approach to resolving an attorneys' fee dispute, correct?

Vannah is involved. Then you told me you didn't think you'd spoken telephonically to Mr. Simon, but you thought it might have been from a couple of days past that?

A Yes.

Q Is that fair?

A He left me a voicemail; I believe I said.

Q Right. And do you recall actually directing him, after he left you a voicemail, to just call John Greene?

A Correct.

Q And you've never spoken to him since?

A No.

Q All right. And the reason that comes out in your third affidavit, is that you thought somehow Mr. Simon had said something he should not have said to a volleyball coach, at your volleyball club?

A Correct.

Q Is that a fair statement?

A It's a very fair statement.

Q All right. And so, what you told, as I read your affidavit, I'm happy to pull it up and show you the whole thing.

A That would be helpful.

Q Is that you had to explain to -- what's that coach's name, sir?

A Coach Herrera.

Q Coach Herrera?

A Reuben Herrera.

Q Herrera?

A Herrera.
Q Herrera, okay. I'm sorry, if I'm getting it wrong.
A H-E-R-R-E-R-A.
Q All right. Coach Herrera, who's a coach at a volleyball club you have a relationship with, fair?
A I'm the founder of the non-profit, he's the --
Q I'm not disputing it.
A I'm sorry.
Q You --
A Clear, yes. I have a relationship --
Q It's your --
A -- with him.
Q It's your club?
A It's a non-profit, again.
Q And this coach and you had to have -- Mr. Simon sent an email, right --
A Correct.
Q -- about his daughter, Sienna [phonetic] leaving the club for knee issues, and then he mentions, generically, problems with the Edgeworth?
A Correct.
Q Plural, Edgeworths?
A Correct.
Q Right. And that, from your affidavit, I gather, that caused you to go talk to Coach Herrera, correct?

A Incorrect.
Q You spoke to Coach Herrera, right?
A After the second email. After Coach Herrera said, I don't want to know your business. You know, it's none of my business, and then the follow-up email came.
Q And what you told Coach Herrera, not in Court, not in litigation, not on the stand, not an affidavit, is that Danny Simon was extorting you, right?
A No, I didn't.
Q Your words not mine?
A No.
Q That's what you put in your affidavit. You didn't use that word in your affidavit. I just want to make sure we're clear, before I show you?
A I might have used the word in my affidavit, that's --
Q But you don't want to admit to telling a third party Danny was extorting you; is that what you're telling me?
A I told him the circumstances of --
Q Did you --
A -- everything going on.
Q Did you use the word extortion?
A No. I don't believe it did.
Q Did you use the word stealing?
A No.
Q Theft?

A No.
Q Blackmail?
A No.
Q Anything else that could be considered criminal?
A No. I told him the --
Q All right.
A -- entire story of the case.
Q Because for a guy that's so artfully, or so educated, Mr. Edgeworth, it's pretty clear you don't like to understand what words you use when they're used against you, like outset right. You didn't like that word yesterday. Remember, like fantasy --
A I have no problem with the word.
Q -- I asked you what fantasy mean; you didn't know what it meant?
A I know what it meant. I wanted to know the context you were using in, so --
Q Let's use your words in the context you use them. I read the email and was forced to have a phone conversation, followed up by a face-by-face meeting Herrera, where I was forced to tell Herrera everything about the lawsuit, and Simons' attempt at trying to -- this is your word, not mine, sir, extort millions of dollars from me. Right?
A Correct, that's my word.
Q And you used that word when you talked to Mr. Herrera too, didn't you?
A No, I did not.

Q So, you just decided to put it in an affidavit, to color it up a little bit?

A No. It summarizes the conversation quite well, in my opinion.

Q You told Coach Herrera, not in litigation, not on the stand, not in an affidavit that Danny Simon was trying to steal from you?

A No, I explained exactly what happened on November 17th, and then the letter of the 27th, and why Danny might be saying stuff about me, that's not true. And that I've never been a danger to children, and this lie that Simon had produced might be because of that, and no other reason.

Q Danny Simon never said you were a danger to children in that email, I got it.

A He most certainly did.

Q You said his daughter had a hurt knee. He wanted to get her out of the volleyball program. The coach isn't calling him back, and he wonders if that's because -- the problems with the Edgeworths, the people that own the place where the coach works?

A We don't own, it's a non-profit, sir.

Q I got you. That's the context of Mr. Simon's conversation.

A No, it's not.

Q We'll let your lawyers try to find words in there, where he calls you a bad guy to kids, or any of that stuff, because it's not in here.

A Is that a question, do I answer that?

THE COURT: No.

Exhibit 10

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

January 4, 2018

VIA EMAIL: sguindy@bankofnevada.com

Sarah Guindy
Executive Vice President,
Corporate Banking Manager
BANK OF NEVADA
2700 W. Sahara Avenue
Las Vegas, NV 89102

Re: Joint Trust Account

Dear Ms. Guindy:

As requested, please let this letter serve as the written basis for the creation of the subject Joint Trust Account (the Account). A litigated matter was recently settled for a considerable amount of money and Daniel S. Simon, Esq., has asserted an attorneys' lien to a portion of the proceeds. Thereafter, Brian Edgeworth retained Robert D. Vannah, Esq., as his personal counsel and Mr. Simon retained James R. Christensen, Esq., as his personal counsel. The parties and their counsel have agreed that the subject proceeds shall be deposited in the Account pending the resolution this matter. It's the desire of the parties that the account be created, named, and administered as discussed and that the proceeds accrue interest pending the resolution.

If you have any questions, please contact me directly at (702) 853-4338.

Sincerely,

VANNAH & VANNAH

JOHN B. GREENE, ESQ.

JBG/jr
Cc James R. Christensen, Esq. (via email)
Robert D. Vannah, Esq. (via email)

Exhibit 11

DECLARATION AND EXPERT REPORT OF DAVID A. CLARK

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

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

SCOPE OF REPRESENTATION.

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

SUMMARY OPINION.

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

BACKGROUND FACTS.

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

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

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

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

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

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

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

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

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

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

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

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

The breach of contract claim states:

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

is a material breach of the CONTRACT.

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

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

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

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

ANALYSIS AND OPINIONS.

Breach of Contract

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

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

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

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

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

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

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

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

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

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

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

Conversion

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

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

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

Normally, client settlement funds are placed in the attorney's IOLTA trust account (**I**nterest **O**n **L**awyer's **T**rust **A**ccount) with the interest payable to the Nevada Bar Foundation to fund legal services. Supreme Court Rules (SCR) 216-221. However, these accounts are for "clients' funds which are nominal in amount or to be held for a short period of time." SCR 78.5(9).

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

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

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

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

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

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

AMENDMENT AND SUPPLEMENTATION.

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

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

INFORMATION CONSIDERED IN REVIEWING UNDERLYING FACTS AND IN RENDERING OPINIONS.

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

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

BIOGRAPHICAL SUMMARY/QUALIFICATIONS.

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

OTHER CASES.

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

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

   Report April 2016; Rebuttal Report June 2016

   Deposition Testimony August 2016; Trial testimony October 2016

2. I was engaged and prepared a report in:

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

Report December 2016.

COMPENSATION.

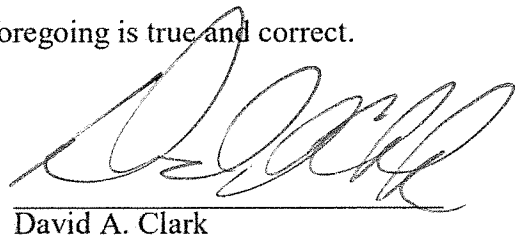
For this report, I charged an hourly rate is $350.00.

DECLARATION

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

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

Date: January 18, 2018



David A. Clark

David A. Clark

Lipson | Neilson
9900 Covington Cove Drive, Suite 120
Las Vegas, Nevada 89144-7052 (702) 382-1500 – office
(702) 382-1512 – fax
(702) 561-8445 – cell
dclark@lisponneilson.com

Biographical Summary

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

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

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

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

Work Experience

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

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

Education

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

Expert Retention and Testimony

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

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

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

   Report December 2016.

Reported Decisions

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

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

Recent Continuing Legal Education Taught

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

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

Press Appearances

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

Practice Areas

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

Exhibit 12

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.

Supreme Court Case

No. 77678 consolidated with No. 78176

APPEAL FROM FINAL JUDGMENTS ENTERED FOLLOWING

EVIDENTIARY HEARING

THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

*****

APPELLANTS' OPENING BRIEF

ROBERT D. VANNAH, ESQ.
Nevada State Bar No. 2503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
VANNAH & VANNAH
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Appellants/Cross Respondents
EDGEWORTH FAMILY TRUST;
AND, AMERICAN GRATING, LLC

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 VII** **BATES NO. AA001214 - 1421**

Steve Morris, Bar No. 1530
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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 NRCP 12(b)(5) in *Simon* 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
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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.	

ROUTING STATEMENT

This matter is not presumptively assigned to the Supreme Court as set forth in NRAP 17(a), or presumptively assigned to the Court of Appeals as set forth in NRAP 17(b).

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I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW:

Whether the District Court erred, as a matter of law, when it:

A. Ruled that the Edgeworth Family Trust and American Grating, LLC ("Appellants") constructively discharged Daniel S. Simon (Simon) and The Law Office of Daniel S. Simon, A Professional Corporation (Respondents, referred to hereafter as "Simon") on November 29, 2017;

B. Found that Simon was entitled to quantum meruit compensation of $200,000, versus his hourly rate of $550, for services rendered for Appellants between November 30, 2017, and January 8, 2018;

C. Dismissed Appellants' Amended Complaint pursuant to NRCP 12(b)(5);

D. Found the Appellants' conversion claim was not brought or maintained on reasonable grounds; and,

E. Awarded Simon $50,000 in attorney's fees and $5,000 in costs with no explanation.

II. STATEMENT OF THE CASE

A. PROCEDURAL POSTURE

This is an appeal from a final judgment entered before the Eighth Judicial District Court (hereinafter "District Court") and Order Adjudicating Simon's Attorney's Lien entered November 19, 2018; Order Dismissing the Appellants' Amended Complaint entered November 19, 2018; and, Order awarding Simon $50,000 in attorney's fees and $5,000 in costs entered February 8, 2019.

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

B. PUBLIC POLICY IMPLICATIONS OF THE SO-CALLED "SIMON RULE"

This appeal concerns issues involving great public importance: specifically, attorney's liens and fees, but more generally, when greed and coercion can cripple client trust and soil society's expectations of attorney transparency. Unfortunately, throughout the years, the legal profession has amassed a public perception of dishonesty, untowardness, and avarice. Sissela Bok, "Can Lawyers Be Trusted," Univ. of Penn. L. Rev. Vol. 138:913-933 (1990). When the behavior of attorneys

becomes marred by opportunism, dishonesty, and abuse, there is a real risk that society's distrust of lawyers will continue to worsen.

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

This Court needs to stop The Simon Rule dead in its tracks and prevent all lawyers from behaving this way then, now, and in the future. The Simon Rule incentivizes lawyers to act in a manner that lacks transparency and encourages

practices in direct violation of NRPC 1.5(b) & (c). It also leaves clients with two awful options: acquiesce or litigate. Neither the facts, nor the law, nor practical nor common sense, support The Simon Rule, or the rulings of the District Court that would allow it to either exist or flourish.

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

A. The Simon Invoices:

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

The District Court held an evidentiary hearing to adjudicate Simon's attorney's lien over five days from August 27, 2018, through August 30, 2018, and

concluded on September 18, 2018. *AA, Vol. 2* 000353-000375. The Court found that Simon and Appellants had an implied agreement for attorney's fees. *Id., at, 000365-000366;000374.* However, Appellants asserted that an oral fee agreement existed between Simon and Appellants for $550/hour for work performed by Simon. *AA, Vols. 2 & 3 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon admitted that he never reduced the hourly fee agreement to writing. *AA, Vol. 3 000515-1:8-25.* Regardless, Simon and Appellants performed the understood terms of the fee agreement with exactness. *AA, Vol. 2 000297:3-9; AA, Vol. 3 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.* How so? Simon sent four invoices to Appellants over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September 19, 2017. *AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

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

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

B. Simon's Inflated Attorney's ("Charging") Lien

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

Simon scheduled a meeting with Appellants in mid-November of 2107. At that meeting, Simon told Appellants he wanted to be paid far more than $550.00 per hour and the $367,606.25 in fees he'd already received from Appellants. *Id.*

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

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

C. Simon's Transparent Attempt to Circumvent NRPC 1.5(b) and NRPC 1.5(c):

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

Mr. Vannah told Simon that he was to continue on the case until the

settlement details were all ironed out. *Id.* And those details were clearly minimal, as the lion's share of rigorous and time-consuming work had already been completed: a successful mediation with Floyd Hale, Esq.; an offer from Viking of $6 million to resolve those claims (*Id)*; and, an offer from Lange to settle for $25,000, to which Appellants had consented to accept both no later than November 30, 2017. *AA, Vol. 2 000357:22-23*. The only tasks remaining on the case were ministerial, i.e., signing releases and obtaining dismissals of claims. *Id., 000517:13-25, 000518.*

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

Rather than own up to his mistakes and invited errors in failing to comply with NRPC 1.5(b) by not reducing the fee agreement with Appellants to writing, Simon turned on the spin cycle and blamed Appellants. *Carstarphen v. M*ilsner, 270 P.3d 1251, 128 Nev. 55 (2012). This Court should not reward Simon's invited

errors with an equitable windfall of a $200,000 fee/bonus. *Id.*

D. The Purported Constructive Discharge:

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

Yet, it was Simon who: 1.) Demanded that Appellants change the terms of the fee agreement from hourly to contingent when the case value increased; 2.) Told Appellants he couldn't afford to continue working on their case at $550 per hour; 3.) Threatened to stop working on Appellants' case if they didn't agree to modify the fee agreement; 4.) Encouraged Appellants to seek independent legal counsel; 5.) Sought legal counsel, as well; 6.) Continued to work on Appellants' case through its conclusion with Viking and Lange; and, 7.) Billed Appellants for all of his time from November 30, 2017 (the date after the alleged constructive discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3 000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

The District Court determined the appropriate method to award attorney fees after November 30, 2017, would be via quantum meruit. *AA, Vol. 2 000369:16-27.*

The District Court further decided Simon was "entitled to a reasonable fee in the amount of $200,000." *AA, Vol. 2, 000370-000373.* Appellants contest the District Court's constructive discharge determination and appeal the its determination of the $200,000 amount. Why?

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

When it became clear to him that his Plan A of a contingency fee wasn't allowed per NRPC 1.5(c), Simon adopted Plan Zombie ("Z") by creating a "super bill" that he spent weeks preparing that contains every entry for every item of work that he allegedly performed from May 27, 2016 (plus do-overs; add-ons; mistakes; etc.), through January 8, 2018. *AA, Vols 1 & 2 000053-000267.* It also contains some doozies, like a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265* All of the itemized tasks billed by Simon and Ms. Ferrel (at $550/$275 per hour, respectively) for that slim slot of time total **$33,811.25.** *Id.*

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

E. The District Court's Dismissal of Appellants' Amended Complaint

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

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

F. The District Court's Award of $50,000 in Attorney's Fees and $5,000 in Costs

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

G. The Amounts in Controversy

Appellants have no disagreement with the District Court's review of all of Simon's invoices from May 27, 2016, through January 8, 2018. Specifically, it reviewed Simon's bills and determined that the reasonable value of his services from May 27, 2016, through September 19, 2017, was $367,606.25. *AA, Vol 2000353-000374.* Appellants paid this sum in full. *Id., 000356.* It also determined that the reasonable value of Simon's services from September 20, 2017, through November 29, 2017, was $284,982.50. *Id., 000366-000369.* Appellants do not dispute this award, either. In reaching that conclusion and award, the District Court

reviewed all, and rejected many, of Simon's billing entries on his "super bill" for a variety of excellent reasons. *Id., 000366-000369; 000374.*

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

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

IV. PROCEDURAL OVERVIEW:

Simon filed a Motion to Adjudicate his $1,977,843.80 lien on January 24, 2018. *AA, Vols. 1 & 2 000025-000276.* Appellants opposed that Motion. *AA, Vol. 2 000277-000304.* The District Court set an evidentiary hearing over five days on this lien adjudication issue. *AA, Vol. 3* 000488. Appellants argued there was no

basis in fact or law for Simon's fugitive attorney's liens, or his Motion to Adjudicate Attorney's Lien, and that the amount of Simon's lien was unjustified under NRS 18.015(2). *AA, Vol. 2 000284: 21-27.* Appellants further argued that there was in fact an oral contract for fees between Simon and Appellants consisting of $550/hr for Simon's services that was proved through the testimony of Brian Edgeworth and through the course of consistent performance between the parties from the first billing entry to the last. *Id., 000284-000292.*

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

A. Simon's Motion to Dismiss Amended Complaint Under NRS 12(B)(5)

Simon filed a Motion to Dismiss Appellants' Amended Complaint pursuant to NRCP 12(b)(5). Appellants opposed Simon's Motion and argued that the claims against Simon were soundly based in fact and law. *AA, Vol. 2 000344-000351.* Appellants also stressed that Nevada is a notice-pleading jurisdiction, which the Amended Complaint had clearly met the procedural requirement of asserting "a

short and plain statement of the claim showing that the pleader is entitled to relief...." *NRCP 8(a)(1). AA, Vol. 2 000343.*

However, the District Court chose to believe Simon and dismissed Appellants' Amended Complaint in its entirety. *AA, Vol. 2 000384.* The District Court noted that after the Evidentiary Hearing and in its Order Adjudicating Attorney's Lien, no express contract was formed, only an implied contract existed, and Appellants were not entitled to the full amount of their settlement proceeds. *Id.* Yet, whose responsibility was it to prepare and present the fee agreement to the clients—Appellants—for signature? Simon's. Whose fault—invited error—was it that it wasn't? Simon's, of course, as he's the lawyer in the relationship. *NRPC 1.5(b).* Regardless, the District Court dismissed Appellants' Amended Complaint. *AA, Vol. 2 000384.* It did so without allowing any discovery and barely eight months after it was filed. *AA, Vol. 2 000381, 000384.*

B. Simon's Motion for Attorney's Fees and Costs

Simon filed a Motion for Attorney's Fees and Costs on December 7, 2018. Appellants opposed Simon's Motion, arguing their claims against Simon were maintained in good faith. *AA, Vol. 2 000437-000438.* They further argued it would be an abuse of discretion for the District Court to award Simon attorney's fees when such fees were substantially incurred as a result of the evidentiary hearing to adjudicate Simon's own lien and conduct, namely his exorbitant $1,977,843.80

attorney's lien. *AA, Vol. 2 000432-000435.* The District Court awarded Simon $50,000 in fees under NRS 18.010 (2)(b), and $5,000 in costs, but providing no explanation in its Order as to the amount of the award. *Id.*

V. STANDARD OF REVIEW:

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

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

B. Motions to Dismiss – *de novo* Review

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

C. Motions for Attorney's Fees and Costs – *Abuse of Discretion*

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

VI. SUMMARY OF ARGUMENTS:

There was no basis in fact or law for the content of Simon's fugitive lien, as its amount was never *agreed upon* by the attorney and the client under NRS 18.015(2). *Id.* In fact, there was a clear fee agreement between Appellants and Simon whereby Simon was to represent Appellants in the flood lawsuit in exchange for an hourly fee of $550. *Id.* Upon settlement of the underlying case, when Simon refused to hand over Appellants' settlement funds post lien-adjudication, effectively retaining $1,492,861.30 of Appellants' undisputed funds, a conversion of Appellants' settlement funds had taken place. And still does today.

Reviewing the District Court's Order Dismissing Appellants' Amended Complaint *de novo*, it is clear the District Court committed reversible legal error when it: 1.) Used the wrong legal standard when analyzing the Amended Complaint; 2.) Failed to accept all of Appellants factual allegations in the complaint as true; and, 3.) Failed to draw all inferences in favor of Appellants. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Rather than follow the law, the District Court did just the opposite here by ignoring the law, believing Simon's story, and drawing all inference in favor of Simon. That can't be allowed to stand.

To make the abuse of discretionary matters worse, when Simon moved for attorney's fees and costs on December 7, 2018, the District Court wrongfully awarded Simon another $50,000 pursuant to NRS 18.010(2)(b), and $5,000 in costs. *AA, Vol. 2 000484:1-2.* The $50,000 award was a manifest abuse of discretion, as it was predicated on the District Court's: 1.) Abuse of discretion by dismissing Appellants' Amended Complaint in the first place by applying the exact opposite standard of ignoring Appellants' allegations and inferences and believing Simon; 2.) Inaccurately finding that Appellants' conversion claim was maintained in bad faith; and, 3.) Failure to consider the *Brunzell* factors. *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991) And in its Order awarding $50,000 in fees

and $5,000 in costs, the District Court provided absolutely no reason or justification for awarding those amounts. *AA, Vol. 2 000481-000484.*

The District Court's finding that there was a constructive discharge was inapposite of the record, ignored material facts, was based on clearly erroneous factual determinations, and was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016). The District Court's $200,000 quantum meruit award of attorney's fees was also an abuse of discretion as it was based on an erroneous finding of constructive discharge: there was a clear contract between Simon and Appellants and no one was discharged. *Golightly v. Gassner,* 125 Nev. 1039 (2009). *AA, Vol. 2 000277-000304.* To the contrary, Simon continued to represent Appellants and bill them handsomely for his time. *Id.*

Further, there was no connection between the District Court's $200,000 award and any of the labor Simon actually did or any value he added after the date of the purported constructive discharge. *AA, Vol. 2 000369-000373.* As Appellants' Opposition to Simon's Motion for Fees and Simon's "super bill" clearly shows, Simon's (and Ms. Ferrel's) actual work performed for Appellants from November 30, 2017, through January 8, 2018, added up to **$33,811.25**. *AA, Vols. 1 & 2 000159-000163; 000263-000265; 000428-000438.*

Finally, quantum meruit is an equitable remedy that requires clean hands to obtain its benefits. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272

(1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008). Here, Simon's hands are anything but clean. *AA Vol. 2 000277-000303*. He, the lawyer, is the one who agreed to represent Appellants at the rate of $550 per hour yet failed to reduce the terms of the fee agreement to writing. *AA, Vol. 2 000290:3-18;000296-000301; 000359:15.* He's the one who billed Appellants $550 per hour for nearly 18 months and collected over $367,606 in fees over that time. *Id., at 000290:3-18; 000296-000301*. He's the one who wanted a higher fee, or a bonus, when the value of the case went up. *Id.*

He's the one who pressured Appellants to agree to a higher fee, or bonus. *Id.* He's the one who told Appellants that he was losing money on their case and couldn't afford to keep working, thus causing deep concern with Appellants that he would, in essence, quit their case before it had concluded. *Id.* He's the one who encouraged Appellants to seek the advice of independent counsel. *AA, Vol. 3 000515-2:22-25; 516:1-7.* He's the one who, despite not having a written contingency fee agreement, served an amended attorney's lien in an amount that's awfully close to 40% (aka a contingency fee) of the Viking settlement.

He's also the one who had weeks to prepare and submit a "super bill" in an amount that measured up to the amount of his lien, yet the amount of his "super bill" ($692,120) fell far short of that lien ($1,977,843.80). *AA, Vols. 1 & 2 000159-000163; 000263-000265*. Despite knowing that he can't have a contingency fee,

and despite the fact that the amount of his "super bill" had come up WAY short, it was Simon who refused, and continues to refuse, to release Appellants' money, even after his lien was adjudicated. With his egregious conduct, with his invited errors, (*see Carstarphen,* 270 P.3d 1251, 128 Nev. 55, 66 (2012)), and with his unclean hands, (*see In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008)), Simon is not entitled to the equitable remedy of quantum meruit, let alone a huge bonus.

VII. ARGUMENTS:

A. The District Court Erred When It Dismissed Appellants' Amended Complaint

A district court's order granting a motion to dismiss for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal because the Appellate Court must construe the pleadings liberally, accept all factual allegations in the complaint as true, and draw all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). Further, the complaint should be dismissed "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Pankopf v.*

Peterson, 124 Nev. 43, 175 P.3d 910 (2008). As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief."

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

The Amended Complaint alleged that a fee agreement was reached between the parties at the beginning of the attorney/client relationship; that the agreement provided for Simon to be paid $550 per hour for his services; that Simon billed $550 per hour in four invoices for his services; that the Edgeworth's paid Simon's four invoices in full; that Simon demanded far more from the Edgeworth's than the $550 per hour that the contract provided for; and, that Simon breached the contract when he demanded a bonus from the Edgeworth's that totaled close to 40% of a financial settlement, then liened the file when the Edgeworth's wouldn't agree to modify the contract. *Id.*

The District Court erred when it failed to take the Amended Complaint on its face, failed to take the allegations therein as true, and instead relied on external evidence in adopting Simon's version of the facts. *AA, Vol. 2 000376-000384.* The District Court's misuse of the proper standard and this external proof and evidence contravened Nevada law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). As such, Appellants respectfully ask this Court to reverse the District Court's dismissal of the Amended Complaint.

B. The District Court Abused Its Discretion When It Awarded $50,000 in Attorney's Fees and $5,000 in Costs

Pursuant to NRS 18.010, district courts are to interpret the provisions of the statute to award fees "in all appropriate situations,"—that is, *appropriate* situations. NRS 18.010(2)(b). Fees under this section are limited to where a district court finds "that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass..." NRS 18.010(2)(b). And the district court's award of fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). District courts are further

limited: when determining the reasonable value of an attorney's services, the court is to consider the factors under *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33-34 (1969). *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 834 (1985).

In fact, this Court has held that it is an abuse of discretion when district courts fail to consider the *Brunzell* factors when awarding fees. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427-28, (2006) (Finding that a district court's mere observation of certain *Brunzell* elements and mention of the factors is insufficient: the district court must actually consider the *Brunzell* factors when determining the amount of fees to award under NRS 40.655). Further, a district court's award of costs *must* be reasonable. NRS 18.005; *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458, 463(2002).

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

C. The District Court Abused Its Discretion When It Awarded $200,000 in Attorney's Fees Under Quantum Meruit

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

For example, Simon conceded that: 1.) He never withdrew from representing Appellants; 2.) Simon *himself* encouraged Appellants to speak with other attorneys; 3.) Simon spoke with an attorney either before or after he met with Appellants on November 17, 2017; 4.) Mr. Vannah instructed Simon that Appellants needed Simon to continue working on the case through its conclusion; and, 5.) Simon continued to work on behalf of Appellants and billed them an additional $33,811.25 in fees from November 30, 2017, through January 8, 2018. *AA Vols 1 & 2 000159-000163; 000263-000265.*

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

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

The District Court was also silent on the *timing* of Simon's labor. *AA Vol. 2 000370-000372.* The District Court must describe the work Simon performed following the alleged discharge, and that didn't happen. *AA Vol. 2 000371.* Rather, the "ultimate result" referenced (the litigation and settlements) had already been completed, or either agreed to in principle, before any alleged constructive discharge, or merely required ministerial tasks to complete. *Id., 000356:22-24, 000357:12-24.*

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

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

VIII. CONCLUSION/ RELIEF SOUGHT:

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

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

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and never acted as such, at least through the conclusion of the flood litigation. Instead, he continued to work the case through January 8, 2018, continued to represent Appellants, completed the ministerial work to close out the flood case, and billed for all his efforts.

Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992);

Truck Ins. Exchange v. Palmer, 124 Nev. 59 (2008). As argued throughout, Simon's hands are filthy, as The Simon Rule (and conduct) clearly demonstrates.

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

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because: This brief has been prepared in a proportionally spaced typeface using Word 2019, in 14 point Times New Roman font; and, complies with NRAP 32(a)(7)(c), in not exceeding 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which

requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of August, 2019.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
JOHN GREENE, ESQ.
Nevada Bar No. 004279
400 South Seventh Street, Fourth Floor
Las Vegas, Nevada 89101
(702) 369-4161

CERTIFICATE OF SERVICE

Pursuant to the provisions of NRAP, I certify that on the 8th day of August, 2019, I served **APPELLANTS' OPENING BRIEF** on all parties to this action, electronically, as follows:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, P.C.
601 S. 6th Street
Las Vegas, NV 89101

An Employee of VANNAH & VANNAH

Exhibit 13

November 29, 2017

VIA FACSIMILE: (702) 364-1655

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

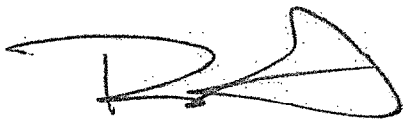
RE: Letter of Direction

Dear Mr. Simon:

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

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

Sincerely,



Brian Edgeworth

Exhibit 14

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.; Plaintiffs, vs. LANGE PLUMBING, L.L.C.; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X

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

determined.

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

This lien, pursuant to N.R.S. 18.015(3), attaches 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.

Dated this 30th day of November, 2017.

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

DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, Nevada 89101

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

That he is owed for attorney's fees for a reasonable fee for the services which have been rendered for the client, plus outstanding court costs and out-of-pocket costs, currently in the amount of $80,326.86, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution of 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. That he has read the foregoing Notice of Attorney's Lien; knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

DANIEL S. SIMON

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

TRISHA TUTTLE
Notary Public State of Nevada
No. 08-8840-1
My Appt. Exp. June 19, 2018

Notary Public

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

CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 30th 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:

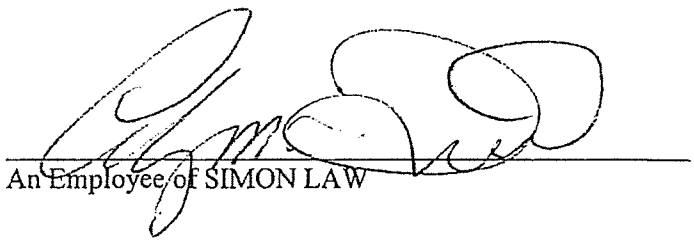
Theodore Parker, III, Esq.
PARKER NELSON & ASSOCIATES
2460 Professional Court, Ste. 200
Las Vegas, NV 89128
Attorney for Defendant
Lange Plumbing, LLC

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

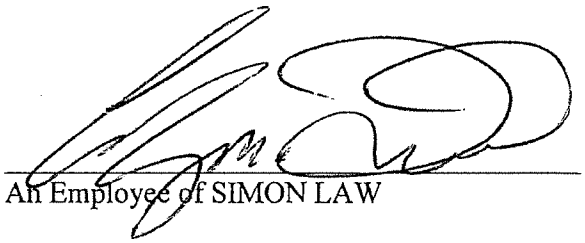


An Employee of SIMON LAW

CERTIFICATE OF MAIL

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

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



An Employee of SIMON LAW

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

CERTIFICATE OF MAIL

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

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

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

An Employee of SIMON LAW

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

Exhibit 15

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING ENTITIES" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and VIKING GROUP, INC. (the "VIKING ENTITIES") and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners,

employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. The VIKING ENTITIES will pay PLAINTFFS Six Million Dollars and Zero-Cents ($6,000,000) within 20 days of PLAINTIFFS' execution of this AGREEMENT, assuming resolution of the condition set out in § III.D below. The $6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING ENTITIES with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to the VIKING ENTITIES upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING ENTITIES (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the $6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the VIKING ENTITIES by Lange Plumbing, LLC. Alternatively, this condition would be satisfied in the event that Lange Plumbing, LLC voluntarily dismisses all claims with prejudice against the VIKING ENTITIES and executes a full release of all claims, known or unknown.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY

hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against the VIKING ENTITIES, by way of PLAINTIFFS Complaint and any amendments thereto.

V. MUTUAL RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge the VIKING ENTITIES and any of its affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. Reciprocally, in consideration of the settlement payment and promises described herein, the VIKING ENTITIES, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge PLAINTIFFS and any of PLAINTIFFs' affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.C. This AGREEMENT shall be effective as a bar to all claims, relatining to or arising from the INCIDENT or the SUBJECT ACTION, which PLAINTIFFS may

have against the VIKING ENTITIES, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

C. Reciprocally, this AGREEMENT shall be effective as a bar to all claims, relatining to or arising from the INCIDENT or the SUBJECT ACTION, which the VIKING ENTITIES may have against PLAITNIFFS, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, the VIKING ENTITIES and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

D. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and the VIKING ENTITIES and their related persons and entities.

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

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and the VIKING ENTITIES each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify the VIKING ENTITIES and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

C. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

E. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

F. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES

hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

G. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel. For PLAINTIFFS, that independent attorney is Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah.

H. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

I. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

J. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this 1ST day of DECEMBER, 2017

BRIAN EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

DATED this 1 day of December, 2017

ANGELA EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this _____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

Exhibit 16

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

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

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

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

Sent from my iPad

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

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

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

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

Sent from my iPad

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

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
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> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
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> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.
>
> Happy Holidays!
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

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

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

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

Danny:

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

John

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

> Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!
>
> <image001.jpg>

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

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

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

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

DANIEL S. SIMON
ATTORNEY AT LAW
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655
DAN@SIMONLAWLV.COM

Exhibit 17

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

December 27, 2017

Via E-Mail

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

Re: Edgeworth v. Viking

Dear Bob:

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

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

Please consider the following time line:

- On Monday, December 18, 2017, Simon Law picked up two Zurich checks in the aggregate amount of $6,000,000.00. (Exhibit 1; copies of checks.)

- On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called Mr. Greene to arrange check endorsement. Mr. Simon left a message.

- On Monday, December 18, 2017, Mr. Greene returned the call and spoke to Mr. Simon. (Exhibit 2; confirming email string.)

- During the Monday call, Mr. Simon advised that he would be on a holiday trip and unavailable beginning Friday, December 22, 2017, until after the New Year. Mr. Simon asked that the clients endorse the checks prior to December 22nd. (Exhibit 2.)

- During the Monday call, Mr. Greene told Mr. Simon that the clients would not be available to sign checks until after the New Year. (Exhibit 2.)

- During the Monday call, Mr. Greene stated that he would contact Simon Law about scheduling endorsement. (Exhibit 2.)

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

- On Saturday, December 23, 2017, at 10:45 p.m., an email was sent which indicated that delay in endorsement was not acceptable. The email also raised use of an escrow account as an alternative to the Simon Law trust account. (Exhibit 2.)

- On Tuesday, December 26, 2017, I responded by email and invited scheduling endorsement after the New Year, and discounted the escrow account option. (Exhibit 2.)

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

1. The clients are available until Saturday. This is new information and it is different from the information provided by Mr. Greene. Regardless, Mr. Simon is out of town until after the New Year.

2. Loss of faith and trust. This is unfortunate, in light of the extraordinary result obtained by Mr. Simon on the client's behalf. However, Mr. Simon is still legally due a reasonable fee for the services rendered. NRS 18.015.

3. Steal the money. We should avoid hyperbole.

4. Time to determine undisputed amount. The time involved is a product of the immense amount of work involved in the subject case, which is clearly evident from the amazing monetary result, and the holidays. And, use of a lien is not "inconsistent with the attorney's professional responsibilities to the client." NRS 18.015(5).

5. Time to clear. The checks are not cashier's checks. (Exhibit 1.) Even a cashier's check of the size involved would be subject to a "large deposit item hold" per Regulation CC.

6. Interpleader. The interpleader option - deposit with the Court - was offered as an alternative to the Simon Law trust account, to address the loss of faith issue. The cost and time investment is also minimal.

7. Escrow alternative. Escrow does not owe the same duties and obligations as those that apply to an attorney and a trust account. Please compare, *Mark Properties v. National Title Co.*, 117 Nev. 941, 34 P.3d 587 (2001); with, Nev. Rule of Professional Conduct 1.15; SCR 78.5; etc. The safekeeping property duty is also typically seen as non-delegable.

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

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

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

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

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

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

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon
enclosures

C1-10269-I (07/16)

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

CLAIM NO.-SUB NO.	DATE ISSUED	ISSUING OFFICE	
9620221400-001	12/8/2017	HO	
POLICY NO.	DATE OF LOSS	ISSUED BY	PAYMENT SERVICE DATES
GLO-8250029-04	4/9/2016	8X	

INSURED

The Viking Corporation

NATURE OF PAYMENT

NO. 299 0007621

Settlement of all Fire sprinkler related claims

$ 288,572.00

TAX ID 880354871

VALID	PAY	KD	AMOUNT
PRDPD	60	CLM	$288,572.00

NON-NEGOTIABLE

THIS IS NOT A NEGOTIABLE INSTRUMENT

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

56-1544
441

NO. 299 0007621

CLAIM NO. 9620221400-001

CLAIM HANDLING OFFICE NO. 26

EXACTLY $288,572**** DOLLARS AND 00** CENTS

VOID AFTER 180 DAYS

DATE	AMOUNT
12/8/2017	$288,572.00

PAY TO THE ORDER OF Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgworth; American Grating, LLC; and the Law Office of Daniel Simon.

TO: JPMORGAN CHASE BANK, N.A.
COLUMBUS, OH

Christine K

⑈ 299000762 1⑈ ⑆044114543⑆ 528291201⑈

C1-10269-I (07/16)

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

CLAIM NO.-SUB NO.	DATE ISSUED	ISSUING OFFICE	
9260157452 -001	12/8/2017	HO	
POLICY NO.	DATE OF LOSS	ISSUED BY	PAYMENT SERVICE DATES
AUC-0144193-00	1/1/2016	8X	
INSURED	Viking Corporation		

NATURE OF PAYMENT

NO. 299 0007622

Settlement of all Fire sprinkler related claims

$ 5,711,428.00

TAX ID 880354871

VALID	PAY	KD	AMOUNT
UBRGP	60	CLM	$5,711,428.00

NON-NEGOTIABLE

THIS IS NOT A NEGOTIABLE INSTRUMENT

56-1544
441

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

NO. 299 0007622

CLAIM NO. 9260157452 -001

CLAIM HANDLING OFFICE NO. 26

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VOID AFTER 180 DAYS

DATE	AMOUNT
12/8/2017	$5,711,428.00

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TO: JPMORGAN CHASE BANK, N.A.
COLUMBUS, OH

⑈299000762 2⑈ ⑆044114443⑆ 528291201⑈

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

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

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

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

Sent from my iPad

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

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

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

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>
> <image001.jpg>

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

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

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

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

DANIEL S. SIMON
ATTORNEY AT LAW
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655
DAN@SIMONLAWLV.COM

Exhibit 18

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

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.; Plaintiffs, vs. LANGE PLUMBING, L.L.C.; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X

NOTICE OF AMENDED 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 total lien, in the amount of $2,345,450.00, less payments made 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

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

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

This lien, pursuant to N.R.S. 18.015(3), attaches 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.

Dated this 2nd day of January, 2018.

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

DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
810 South Casino Center Blvd.
Las Vegas, Nevada 89101

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

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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 2nd 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 2nd 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

Edgeworth Family Trust
645 Saint Croix Street
Henderson, Nevada 89012

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

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

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

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

An Employee of SIMON LAW

Exhibit 19

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, d/b/a SIMON LAW; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: Department 14 **COMPLAINT**

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

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

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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5. Costs of suit; and,

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

DATED this 3 day of January, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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Exhibit 20

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

Attorneys for Plaintiffs

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XIV Consolidated with CASE NO.: A-16-738444-C DEPT. NO.: X **AMENDED COMPLAINT**

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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

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

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

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

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

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FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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Exhibit 21

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee

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was ever brought up at that time, let alone ever agreed to.

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

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

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

10. Plus, SIMON didn't express an interest in taking what amounted to a property

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damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

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

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email

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was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

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

16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. We were stunned to receive this letter. At that time, these additional "fees" were not based upon invoices submitted to us or detailed work performed. The proposed fees and costs were in

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addition to the $486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the invoices that SIMON had presented to us, the evidence that we understand SIMON produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages that SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

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

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

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

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

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

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nothing short of stealing what was ours.

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

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

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

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

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

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

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls. SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit

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from the charity are minors, an accusation of this severity. from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into. I politely sent SIMON an email on December 5. 2017. telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this. as the email. which he denied ever sending. was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON. though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

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

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

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present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Notary Public in and for said County and State

DANA FARSTAD
Notary Public State of Nevada
No. 13-10367-1
My Appt. Exp. March 21, 2021

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Exhibit 22

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Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

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

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

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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.,

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

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

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

(Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

CONCLUSION OF LAW

Breach of Contract

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

Declaratory Relief

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

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

Conversion

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

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

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

Breach of the Implied Covenant of Good Faith and Fair Dealing

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

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

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 23

Fwd: Edgeworth

James R. Christensen

Tue 1/9/2018 4:30 PM

Sent Items

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

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Robert Vannah <rvannah@vannahlaw.com>
Date: 1/9/18 3:32 PM (GMT-08:00)
To: "James R. Christensen" <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Edgeworth

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

Sent from my iPad

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

> John,
>
> That is factually correct. However, Mr. Simon was served today. You must have understood that act could have impact.
>
> The Lange status is that Mr. Simon made changes to the proposed closing documents last week. The ball is currently in defense attorney's court.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

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

Jim:

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

John

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

> John,
>
> I need to look into the propriety of Danny wrapping up Lange-after he has been sued and served. I will need to read the complaint.
>
> I have a full schedule today and tomorrow, but will try to get to this as soon as I can.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

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

Jim:

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

John

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

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

Jim

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

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

--
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jgreene@vannahlaw.com

Exhibit 24

Electronically Filed
2/20/2018 3:49 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

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

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

to -- I don't really work at 550 an hour, I'm much greater than that. $550 an hour to me is dog food. It's dog crap. It's nothing. So why don't you give me a big bonus. You ought to pay me a percentage of what I've done in the case because I did a great job.

Now, nobody's going to quarrel that it wasn't a great result. There's certainly some quall as to why the result was done, my client was very, very involved in this case, but I don't want to get into all of that and I'm certainly not criticizing Mr. Simon for anything he did, other than on the billing situation.

At that time Mr. Simon said well, I don't know if I can even continue in this case and wrap this case up unless we reach an agreement that you're going to pay me some sort of percentage, you know, I want a contingency fee and I want you guys to agree to sign that. My client said no, we're not doing that. You didn't take the risk. I've paid you hourly, I've paid you over a half a million dollars. I'm willing to continue finishing up paying you hourly.

So, Mr. Simon said well, that's not going to work, I want a contingency fee. They came to us, we got involved, we had a conversation with all of us, and at that point in time everybody agreed, he cannot have a contingency fee in this case because there's nothing in writing. You don't even have an oral agreement, much less in writing.

So what happened is -- and this is an amazing part, Judge -- and not at the time that Mr. Simon goes to one of the depositions, we quoted that, the other side said to him how much are fees in this case, have they actually been paid. And Mr. -- and that's the point of that. Mr.

Simon then pipes up and says listen, I've given that to you over and over and over again, you guys know what our fees are.

I have supplied that to you over and over and over again and you know what the fees are and those were the fees that he gave them were the amount that my clients had paid over the year and a half. And he said these are the fees that have been generated and paid. So he's admitting right there that, you know, this is the fee, you guys have got it.

As the case got better and better and better, Mr. Simon had buyer's remorse, you know, I probably could have taken this on a contingency fee. Gee, that would have been great because 40 percent of six million dollars is 2.4 million and I only got half a million dollars by billing at $550 an hour and I'm worth more than that; I'm a better lawyer than that. That's what he's saying.

So he said to -- so you guys need to pay me a contingency fee until that didn't work out so he then said well, you know, I didn't really bill all my time. All that time I billed that you paid -- by the way that's an accord and satisfaction, I sent you a bill, you pay the bill. And this happened like five or six invoices. Here's the bill, bill's paid. Here's the bill, bill's paid. Detailed time.

So Mr. Simon has actually gone back all that time and he has actually now added time. Added other tasks that he did and increased the amount of the time to the tune of what, almost a half a million dollars or so. An additional over hourly over that period of time. And then he went and he got Mr. Kemp, who is a great lawyer, who said well, you know what, a reasonable fee in this case, if there is no contract would be

40 percent, that's 2.4 million dollars, it doesn't take a genius to make that calculation.

So really, under this market value what should happen is Mr. Simon should get 2.4 million dollars, a contingency fee, even though he didn't have one and even though that would violate the State Bar rules, he actually should in essence get a contingency fee and give my client credit for the half million dollars he's already paid. That's what this is about.

When we realized that this wasn't going to resolve, I mean, we're not doing that -- we're not agreeably going to do that because there's an agreement already in place, we filed a simple lawsuit in saying that we want a declaratory relief action; somebody to hear the facts, let us do discovery, have a jury, and have a determination made as to what was the agreement. That's number one.

And number two, it's our position that by and is fact intensive, we believe that the jury is going to see and Trier of Fact would see that Mr. Simon used this opportunity to tie up the money to try to put pressure on the clients to agree to something that he hadn't agreed to and there never had been an agreement to.

So based on that we argue that that's a conversion and we think that's a factually intensive issue. None -- we don't expect -- it's not a summary judgment motion on that today, just that's the thinking that we use when we came up with that theory and we think it's a good theory.

So what I don't -- and, Your Honor, I have no problem with you

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

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

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

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

anything to preclude you, but I don't think that there's commonality of all this -- all this commonality that they're talking about. The underlying case about a broken sprinkler head, flooding, what's the value of the house, all those disputes they had going on. That's got nothing to do with the fee dispute. And --

THE COURT: But you would agree, Mr. Vannah, that's it's the underlying case with the sprinkler flooding the house, who's responsible, the defective parts, that's how you get to the settlement that leads us to the fee dispute.

MR. VANNAH: You did that, but the settlement's over.

THE COURT: Right, but it --

MR. VANNAH: It's a done deal.

THE COURT: But the fee dispute --

MR. VANNAH: I mean, we're not --

THE COURT: -- is about the settlement.

MR. VANNAH: That's going to be a ten-minute discussion with the jury. Hey, this is what happened; it was a settlement.

So the question is, is what -- were the fee reasonable -- I mean, there was an agreement on the fee. I don't think -- it boggles my mind that we've even gotten -- we're even discussing this because when a lawyer sends for a year and a half a detailed billings at a detailed rate and the client pays it for a year and a half and suddenly say well, we never had a fee agreement, that's really difficult at best. That's almost summary judgment for us.

I mean, here's the bill, here's the check, and there's no

Exhibit 25

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AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

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

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

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

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

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the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

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

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that

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if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

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

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

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

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

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

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

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

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

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

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

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

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

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

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accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls, SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit from the charity are minors, an accusation of this severity, from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he

needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON, though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Notary Public in and for said County and State

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

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Exhibit 26

Daniel Simon

From: James R. Christensen <jim@jchristensenlaw.com>
Sent: Friday, December 20, 2019 2:35 PM
To: Daniel Simon
Subject: Fw: Edgeworth v. Simon

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

From: James R. Christensen
Sent: Friday, December 20, 2019 2:35 PM
To: John Greene <jgreene@vannahlaw.com>; Robert Vannah <rvannah@vannahlaw.com>
Subject: Edgeworth v. Simon

Dear Counsel,

Shortly after the conversion complaint was served, I called John and asked for supporting authority for alleging conversion or that the action be dropped. Unfortunately, no supporting authority was provided, the claim was not dropped; and, conversion has been pursued even after a sanction and dismissal despite continued entreaties to your both to support or abandon the issue.

Please reconsider your position and withdraw the appeal regarding the conversion cause of action. I am starting on the heavy lifting portion of writing the answering brief. Please let me know your position by the end of next week.

Jim

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

Exhibit 27

Daniel Simon

From: Daniel Simon
Sent: Friday, January 10, 2020 12:50 PM
To: Daniel Simon
Subject: FW: Simon/Edgeworth

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Thursday, January 9, 2020 4:11 PM
To: James R. Christensen <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Simon/Edgeworth

Are you talking about a separate order; I didn't think she denied the order, I thought she said she couldn't hear it.

Sent from my iPad

> On Jan 9, 2020, at 3:11 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:
>
> Counsel,
>
> 1. Is the attached proposed order acceptable?
> 2. The writ of attachment argument is in your brief at pg 13 and is later mentioned as well. If its not part of your appeal, why is the argument in your brief?
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Thursday, January 9, 2020 10:11 AM
To: James R. Christensen <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Simon/Edgeworth

I think I was at the hearing on the motion to release the funds. My recollection of that was that the judge stated that she could not hear the motion because the case was on appeal. Did I misunderstand that? I do not see our appeal as asking the court to reverse that decision. I think I would have to file something with the appellate court in order to have that heard. I have no intention of abandoning our efforts to hold Danny Simon liable for what he has done in this case, which I interpret as taking our clients' money hostage… Whether you call that conversion, or some other tort, doesn't really matter to me. The bottom line is he deprived our clients of access

to their money without a reasonable basis to do so. I am asking the Supreme Court to reverse that dismissal of our case, then I intend to pursue that case, including punitive damages. Bottom line, we just agree to disagree, that doesn't change my respect for you one iota. We just don't see this case the same way. Have we heard anything from the court on your petition for writ of mandate?

Sent from my iPad

> On Jan 3, 2020, at 1:22 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:
>
> Please see attached.
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406
> <Ltr to Counsel 1.3.20.pdf>
> <Order denying motion to release funds 1.3.20.pdf>

Exhibit 28

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Kostadinka Boneva
Notary Public in and for said County and State

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

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Exhibit 29

JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
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400 S. Seventh Street, 4th Floor
Las Vegas, Nevada 89101
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Telephone: (702) 369-4161
Facsimile: (702) 369-0104
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA
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EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X **PLAINTIFFS' MOTION FOR AN ORDER DIRECTING SIMON TO RELEASE PLAINTIFFS' FUNDS**
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT. NO.: XXIX

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

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

DATED this 13th day of December, 2018.

VANNAH & VANNAH

Signing For

ROBERT D. VANNAH, ESQ.

Bar No: 14530

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I.

SUMMARY

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

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

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

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

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

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

II.

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ARGUMENTS

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

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14th Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Piphus*, 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 & Treust 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. Piphus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

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

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

Here, SIMON is holding in trust a huge sum of money: $1,977,843.80 despite this Court's Order stating that he is entitled *only* to $484,982.50. He has effectively seized, garnished, Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS Chapter 31 whatsoever.

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Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that the money be withheld. Au contraire, after listening to five days of comprehensive testimony, reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is entitled to the $1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—withheld Plaintiffs' money and still continues to do so.

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

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

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

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

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

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

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

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

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

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

C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018 ORDER, WHICH IS CLEAR AND UNABMBIGUOUS.

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

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

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III.

CONCLUSION

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

DATED this 13th day of December, 2018.

VANNAH & VANNAH

Bar No: 14530

Signing 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

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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.	CASE NO.: A-18-767242-C DEPT NO.: XXVI **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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

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

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

(Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

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

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

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

(Def. Exhibit 27).

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

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

Constructive Discharge

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

- 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

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

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

Id.

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

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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

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

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

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

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

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

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

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

3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or 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.

4. A lien pursuant to:

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

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

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

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

Amount of Fees Owed Under Implied Contract

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

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

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

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

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

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

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[2]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.[3]

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.[4] 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.[5] 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.[6]

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

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[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

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

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

Costs Owed

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

Quantum Meruit

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

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

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

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

1. *Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

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

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, 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;

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

NRCP 1.5.

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

CONCLUSION

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

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

ORDER

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

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

DISTRICT COURT JUDGE

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

Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

Bob,

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

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

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

Jim

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

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
[Quoted text hidden]

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com> Tue, Dec 26, 2017 at 12:18 PM
To: "James R. Christensen" <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

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

Sent from my iPad
[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com> Tue, Dec 26, 2017 at 12:26 PM

[redacted]

Exhibit 3

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

Gmail by Google

Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com> Wed, Oct 31, 2018 at 4:18 PM
To: Jessie Romero <Jromero@vannahlaw.com>

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number **(702) 369-4161, Ext. 302**:

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Wednesday, October 31, 2018 at 04:18 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-10-31 Edgeworth .pdf	Success

Exhibit 4

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

Gmail by Google

Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com> Mon, Nov 19, 2018 at 3:44 PM
To: Jessie Romero <Jromero@vannahlaw.com>

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number **(702) 369-4161, Ext. 302:**

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Monday, November 19, 2018 at 03:43 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-11-19 Letter to Christensen .pdf	Success

Exhibit 30

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

December 31, 2018

Via E-Serve

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

Re: Edgeworth v. Viking

Dear Mr. Vannah:

In December of 2017, I wrote to you and explained that Mr. Simon was willing to work collaboratively to resolve the attorney lien. I also advised that accusations of theft and conversion were counterproductive. The offer to work collaboratively was impliedly rejected when your office filed and served a complaint against Mr. Simon alleging conversion.

Plaintiffs' motion for an order directing Simon to release funds repeats the conversion accusation. (*See, e.g.*, Mot., at 6:7-9.)

Accusing Mr. Simon of illegality and conversion - without basis - does not promote a collaborative discussion and resolution of the lien issue, and/or disposition of the trust account during appeal.

If you would like to begin a collaborative dialogue, please contact me.

I look forward to hearing from you.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon

Exhibit 31

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
601 S. 6th Street
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(702) 272-0406
(702) 272-0415 fax
jim@christensenlaw.com
Attorney for Simon

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION; a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES I through 5 and ROE entities 6 through 10; Defendants.	CASE NO.: A738444 DEPT NO.: X **DECLARATION OF WILL KEMP, ESQ.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. I make this Declaration under penalty of perjury.

Dated this 31st day of January, 2018.

Will Kemp, Esq.

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 VIII** **BATES NO. AA001422 - 1629**

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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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OPPS
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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, 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 HEARING DATE: JULY 7, 2020 HEARING TIME: 9:00 A.M.

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PLAINTIFFS' OPPOSITION TO DEFENDANTS EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a)

The Plaintiffs, by and through undersigned counsel, hereby submits their Opposition to Defendants' Motion to Dismiss and Leave to file Motion in Excess of 30 Pages Pursuant to EDCR 2.20(a).

This Opposition is made and based on all the pleadings and papers on file herein, the following Points and Authorities, and such oral argument as may be permitted at the hearing hereon.

Dated this 28th day of May, 2020.

By _____
PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
810 South Casino Center Boulevard
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REQUEST FOR LEAVE TO FILE OPPOSITION IN EXCESS OF 30 PAGES

Plaintiffs, hereby move this honorable Court, pursuant to EDCR 2.20(a), for an Order granting leave to file their OPPOSITION TO DEFENDANTS EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S

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MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a). In support of this Request, Plaintiffs state as follows:

1. Local Rule 2.20(a) provides, in relevant part, that, "Unless otherwise ordered by the court, papers submitted in support of pre-trial and post-trial briefs shall be limited to 30 pages, excluding exhibits."

2. Plaintiffs Opposition totals approximately 50 pages, which includes the table of contents, table of authorities and request to exceed 30 pages pursuant to EDCR 2.20(a). Plaintiffs substantive portion of Plaintiffs Opposition is only 42 pages.

3. Plaintiffs have made every effort to be brief and complete in their Opposition. However, due to the extensive history of the underlying cases, intensive facts and multiple parties and the need to set forth the complex and contentious nature of the parties' dealings and the law addressed in Defendants' Motion, Plaintiffs respectfully submit that the these arguments and the factual background require greater length than is permitted in a standard brief filed with this Court.

4. This extensive brief will allow other briefs to be more concise by adopting most of the factual and legal analysis set forth herein.

WHEREFORE, Plaintiffs respectfully request that this Court allow Plaintiffs to file their OPPOSITION TO DEFENDANTS EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a) and in the amount specifically identified in paragraph 2 of this Request.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants are not entitled to the benefit of immunity under the litigation privilege or Anti-SLAPP statutes. The facts here demonstrate Defendants failed to contemplate and pursue

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the conversion claim against Plaintiffs in good faith. In analyzing the lack of good faith, this Court needs to look no further than the judicial finding of Judge Jones when she awarded fees against the Edgeworths for Defendants having filed and maintained the frivolous conversion claim in bad faith. The Court stated:

> The Edgeworth's did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, Order on Motion for Attorney's Fees and Costs, attached hereto as **Exhibit 1.**

Judge Jones made this same finding in dismissing the Edgeworths' baseless conversion claim. These are final appealable orders and should be treated as having preclusive effect with respect to Defendants' failure to act in good faith. While the Edgeworths filed an appeal, which challenges the impact and use of the factual findings by the District Court, this order remains final and provides the basis for this Court to easily conclude that the Edgeworth's did not contemplate the conversion claim in good faith. While the appeal will determine whether the District Court acted within its discretion when it made certain conclusions of *law* based on the Court's finding of fact, the findings of fact will remain untouched no matter what the appellate decision may be. Moreover, "an appeal has no effect on a judgment's finality for purposes of claim preclusion." *Edwards v. Ghandour*, 123 Nev. 105, 159 P.3d 1086 (2007)(abrogated on other grounds by *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008)).

The Edgeworth Entities also ignore that victorious litigants are permitted to pursue claims when they have been abused by false allegations and frivolous complaints. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980). Because Defendants must have acted in good faith to be afforded immunity, dismissal of Simon's amended complaint is precluded. Not surprisingly, the instant Edgeworth motion glosses over the essential elements and analysis of good faith and

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merely seeks a broad, over inclusive order dismissing all claims. Edgeworth seeks dismissal of all claims. *See*, Edgeworth Motion to Dismiss, at 8:11-13. Simon's complaint properly alleges that the conduct of all Defendants was not in Good Faith and details the abusive measures Defendants undertook leading up to and long after filing their complaint. Each claim should be analyzed independently. For example, the under-oath admissions of Edgeworth, confirm the Defamation for Per Se and Business Disparagement Claims should proceed. As detailed in the amended complaint, both Edgeworths told persons outside of the litigation not interested in the proceedings Simon was extorting them for millions. This is not covered by the litigation privilege irrespective of their lack of good faith. *Herzog v. "a" Co.,* 138 Cal. App. 3d 656, 661-62,188 Cal. Rptr. 155, 158 (Cal. Ct. App. 4th Dist. 1982). This tortious conduct also supports the civil conspiracy count. *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003). Similarly, the abuse of process claims also are allowed to proceed due the frivolous claims and abusive conduct. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980). When the allegations in Plaintiffs' Complaint are taken in the light most favorable to Plaintiffs, the overwhelming conclusion is that Defendants did not act in good faith when filing and maintaining the frivolous conversion claim as the ability to achieve legal success on that claim was always a factual and legal impossibility.

To that exact end, the Honorable Tierra Jones conducted a five-day evidentiary hearing and ultimately found that the Edgeworths' conversion allegations did not have a good faith basis in law or fact. Judge Jones dismissed the conversion claim and awarded Simon attorney's fees and costs for having to defend against the baseless cause of action. The act of filing a frivolous complaint is not a protected activity under the Anti-SLAPP statute, nor is filing a frivolous complaint a good faith communication which is protected by the litigation privilege. Frivolous litigation does not qualify for protection under any statute or privilege. Quite the opposite, public

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policy mandates punishment for those who pursue frivolous claims, including the attorneys who pursue such claims. *Bull v. McCuskey*, supra.

Even though the mere filing of the Edgeworth initial complaint, by itself, is not Abuse of Process, the conduct leading up to the filing of the complaint establishes the lack of good faith necessary for the litigation privilege to apply. Simons complaint then details all abusive conduct ***after*** the filing of the initial complaint, which indeed establishes abuse of process. Regardless, it is undisputed that prior to filing the underlying conversion claim, all Defendants knew Mr. Simon never had exclusive control of the money – a necessary element to establish conversion. *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir. Cal.2003); *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist., C.A., 2009 (unpublished). All Defendants also concede they always knew Simon was owed money and always had an interest in the disputed funds. All Defendants met Mr. Simon at the bank to sign the settlement checks and the lawsuit was filed before the settlement checks were even deposited. Mr. Simon was admittedly owed substantial attorney's fees and filed a lawful attorney lien under Nevada law. *See*, NRS 18.015; *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Defendants never challenged Simon's lien as improper. In short, Defendants knew the allegation that Simon exercised wrongful control over the subject funds was a legal impossibility.[1] This further substantiates Defendants' failure to act in good faith (exactly as

[1] Following the law by filing a lawful attorney lien is not a wrongful act that can be used to establish conversion.

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

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

Judge Jones already found), thereby precluding the protections of the litigation privilege and Anti-SLAPP.

Additionally, the Edgeworths never had any recoverable damages because the settlement money was and is safekept in trust and the Edgeworths continue to earn interest on the entire sum, including the amount due Simon. The money is kept in trust pursuant to an express agreement between Vannah and Edgeworth on one hand, and Simon on the other. *See*, December 28, 2017 Email, attached hereto as **Exhibit 3.** On January 8, 2018, the settlement checks were deposited. On January 16, 2018 after the checks cleared, the Edgeworths received an undisputed sum of just under $4,000,000.00 for their $500,000 property damage claim, which the Edgeworths agreed made them whole. Still, the amended conversion complaint, which Defendants filed in March, 2018, maintained the same conversion allegations. Defendants continued to further those false accusations with affidavits claiming extortion, blackmail and theft - all for the filing of an attorney's lien.

So it is not merely the act of filing the frivolous lawsuit that gives rise to liability here, but the ongoing abusive conduct engaged in by all Defendants to continually attack Mr. Simon's professional and moral character when falsely accusing him of the most egregious conduct a lawyer can commit – stealing millions from a client's settlement. These attacks were admittedly published to Mr. Simon's friends, colleagues and others. The Defendants have already admitted under oath several times to their ulterior motive to punish and cause harm. Of course, abandoning these frivolous conversion arguments would only scream an admission of liability. Nevertheless, the facts as alleged in this case, coupled with the prior judicial determinations, demonstrate Defendants did not act in good faith in claiming conversion and they should not be permitted to use the litigation privilege or Anti SLAPP statute as a vehicle by which to knowingly and

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intentionally abuse the system and cause harm. Certainly, discovery should be allowed and dismissal at this stage would be inconsistent with the entire purpose of the law allowing a party to seek redress for filing and maintaining frivolous claims.

II.

THE PARTIES

1. Angela Edgeworth

Angela Edgeworth is a principal and trustee of Defendants, Edgeworth Family Trust and American Grating, LLC. She is married to Brian Edgeworth. She has adopted all testimony of Brian Edgeworth. *See*, September 18, 2018 Transcript at 108:1-12, attached hereto as **Exhibit 4.** She has also ratified the conduct of all parties on behalf of the entities. *Id.* at 168:18-169:11**.** Angela Edgeworth has individually committed the torts set forth in this Motion and acted in her fiduciary capacity on behalf of her entities, Edgeworth Family Trust and American Grating, LLC.

2. Brian Edgeworth

Brian Edgeworth is a principal and trustee of Defendants, Edgeworth Family Trust and American Grating, LLC. He is married to Angela Edgeworth. They both have equal motive to gain from the false and defamatory statements and ill-will toward Mr. Simon and his Law Firm. At all times in this case, he was the speaking agent for himself and the Edgeworth Family Trust and American Grating, LLC, as well as Angela Edgeworth and ratified the conduct of all parties on behalf of the entities. Brian Edgeworth has individually committed the torts set forth in this Motion and also acting in his fiduciary capacity on behalf of Edgeworth Family Trust and American Grating, LLC.

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3. Edgeworth Family Trust

The Edgeworth Family Trust was the Plaintiff in the underlying case. Brian Edgeworth and Angela Edgeworth, husband and wife, were co-trustees acting in their fiduciary capacities of the Edgeworth Family Trust and their conduct was done to benefit the trust. The trust ratified the conduct of Brian and Angela Edgeworth and is therefore, liable for all acts of Brian and Angela Edgeworth.

4. American Grating, LLC

American Grating, LLC was the Plaintiff in the underlying case. Brian Edgeworth and Angela Edgeworth, husband and wife, equally own and were principles of American Grating, LLC. Their conduct was done to benefit American Grating, LLC in their fiduciary capacity. American Grating, LLC has ratified the conduct of Brian and Angela Edgeworth and is therefore liable for all acts of Brian and Angela Edgeworth.

5. All Defendants acted in concert to achieve an unlawful objective

Robert Vannah, John Greene, Angela Edgeworth, Brian Edgeworth, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah, Edgeworth Family Trust, acting through its trustees and American Grating, LLC, acting through its principals, devised a plan to file false claims alleging theft and filing false statements alleging other crimes of blackmail and extortion for an improper purpose. These claims were filed to avoid paying for the valuable work Defendants admit was already performed. It was also filed to damage the reputation of Mr. Simon and cause financial harm with the ill-will to punish Mr. Simon and his firm. Accusing a lawyer of stealing millions of dollars from a client in a lawsuit is one of the most serious allegations and egregious acts that can be made against an attorney. Defendants knew these false and wild accusations would have a devastating effect on Mr. Simon's livelihood and that is why they did it. The Defendants

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continual abuses were maintained on an on-going basis under the mistaken belief that the litigation privilege would shield them from liability in any later action. Defendants are wrong as Nevada law does not provide immunity for those who intentionally and maliciously abuse the process to harm another. The on-going abusive conduct, not just the statements, as specifically alleged in the amended complaint precludes dismissal of the Defendants. The conduct involved much more than the mere filing of the complaint. Although they want to include the amended complaint as an initial complaint to avoid liability, the amended complaint is an abusive act in light of its content and timing trying to save the conversion claims, which were pending a motion to dismiss at the time. Defendants have not cited any authority that amended complaints are treated the same as the initial complaint for purposes of abusive conduct. Defendants cite *Laxalt*; however, it only concerned a bare bones initial complaint. *See*, *Laxalt v. McClatchy*, 622 F.Supp. 737, 751 (1985).

III.

FACTUAL BACKGROUND

A. THE UNDERLYING CASE

The Simon Plaintiffs hereby incorporate by reference as though fully set forth herein the Opposition to the Vannah attorneys motion to dismiss filed on May 26, 2020.

B. THE RESULT AND CONSPIRACY

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim and then got sued for helping a friend when others would not. The Edgeworth's admit they were made whole when they received their share of almost $4 million. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment.

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The Simon Plaintiffs hereby incorporate by reference as though fully set forth herein the Opposition to the Vannah attorneys motion to dismiss filed on May 26, 2020.

C. SIMON FOLLOWED THE LAW AND IS IN FULL COMPLIANCE WITH ALL ETHICAL RULES

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

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

The Law Office of Daniel S. Simon, A Professional Corporation followed the exact course mandated by the Rules of Professional Conduct. The Law Office followed the law and placed the settlement money into a joint trust account with all interest accruing to Edgeworth. *See*, ¶¶19,20 of Amended Complaint. Mr. Simon is allowed by law to assert an attorney lien pursuant to NRS 18.015. *See*, ¶17 of Amended Complaint. There is nothing fraudulent about asserting an attorney lien for attorney's fees and costs that are still due and owing. The declaration of David Clark, former State Bar Counsel for Nevada, reviewed the case and explains in detail that Mr. Simon followed the exact procedure mandated by law. *See*, Declaration by David Clark, attached hereto as **Exhibit 5.** The District Court noted in its decision and order that Vannah and Edgeworth never disputed Mr. Clark's opinion.

Notwithstanding the agreement expressed to the Court, Mr. Vannah presented a letter to the Bank consenting to the handling of the funds. *See*, January 4, 2018 Letter, attached hereto as **Exhibit 6**. How can you wrongfully convert funds when the complaining party agrees to where

the funds should be placed and when Mr. Simon fully complied with the Edgeworth/Vannah's direction and placed the funds in a protected account immediately? Was their agreement to open the account and place the largest lien amount also made in bad faith?

D. THE FIRING OF SIMON

Mr. Simon was fired toward the end of the case when the Edgeworths hired Mr. Vannah and Mr. Greene. *See*, ¶16 of Amended Complaint. When a lawyer is fired, the amount of the lien is for the reasonable value of services still owed. The District Court found Simon was fired on November 29, 2017. *See*, ¶32 of Amended Complaint. Mr. Simon filed an attorney lien as he was owed in excess of $68,000 for costs alone, as well as a substantial amount for outstanding attorney fees. Will Kemp reviewed the case and opined the reasonable value of services was $2,440,000. This evidence confirming the value of services also remains undisputed. *See*, ¶24 of Amended Complaint. Notably, there was not an express written contract with the client and NRS 18.015 allows for a lawyer to recover the reasonable value of his services.

Instead, Mr. Vannah and the Edgeworth's invented a story asserting an express oral contract was entered into for an hourly rate of $550 per hour. *See*, ¶¶61, 103 of Amended Complaint. This was part of their fraudulent plan to avoid paying the reasonable value of services. The District Court heard Mr. Edgeworth's story and weighed the evidence and found that ***an express oral contract did not exist*** as alleged by Mr. Edgeworth. *See*, **Exhibit 2** at p.7**;** *See also*, ¶32 of Amended Complaint. Vannah agrees that Edgeworth was not credible when he conceded six times in his opening brief to the Nevada Supreme Court that the District Judge believed Mr. Simon over Edgeworth. *See*, Appellants Opening Brief at pp. 11, 12, 15, 18 & 28, attached hereto as **Exhibit 7.** These are findings of fact made by the District Court and are no longer in dispute. *Id*. The District Court also found the attorney lien was properly filed, which was never challenged

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by the Edgeworths or the Vannah attorneys, likely because the evidence supported the amount of the lien. *Id*. As discussed in detail below, Mr. and Mrs. Edgeworth, through Vannah and Greene also created a fraudulent story of extortion, blackmail, stealing, intimidation and threats to support the frivolous conversion claim for the mere act of filing a lawful attorney lien. *See*, ¶¶23,25,41,43,50,53,62,70,80,88,92,99,106 of Amended Complaint. Angela Edgeworth and Brian Edgeworth admitted, under oath, they repeated these false and defamatory statements to third persons outside the litigation and admitted to filing the conversion claim for the ulterior purpose of punishing Mr. Simon and his firm. *See*, **Exhibit 4** at 145:10-21**;** *See also*, ¶¶41,50,60 of Amended Complaint. These admissions confirm the lack of good faith basis necessary to seek protection of the litigation privilege or the Anti-SLAPP protections under Nevada law.

E. THE MALICIOUS LAWSUIT ABUSING THE PROCESS FOR AN IMPROPER PURPOSE.

Even though the mere filing of the complaint is not enough, by itself, to establish abuse of process, this has nothing to do with the application of the litigation privilege or Anti-SLAPP statute when there is a lack of good faith in the contemplation of the claim under serious consideration when the complaint is filed. The lack of Good Faith is also demonstrated by the events leading up to and continuing long after the filing of the complaint.

On November 29, 2019, the Edgeworths retained Vannah and Greene, and notified Mr. Simon. *See*, November 29, 2017 Letter of Direction, attached hereto as **Exhibit 8;** *See also*, ¶16 of Amended Complaint. On November 30, 2019, the attorney lien was served. *See*, Attorney Lien, attached hereto as **Exhibit 9;** *See also*, ¶17 of Amended Complaint. On December 1, 2017 Vannah signs the release for settlement of $6 million. *See*, Viking Release, attached hereto as **Exhibit 10;** *See also*, ¶18 of Amended Complaint. On December 18, 2017, settlement checks were picked up by Mr. Simon, who notified Vannah's office to have clients endorse the checks

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in order to deposit into the trust account. Clients became unavailable and refused to sign. On December 26, 2017, Vannah sends email "clients are fearful Simon will steal money." *See*, December 26, 2017 email, attached hereto as **Exhibit 11.** On December 27, 2017, Mr. Simon's lawyer, Jim Christensen, sent a letter with specific timelines and a request to avoid hyperbole of false accusations and offered to work collaboratively for a resolution. *See*, December 27, 2017 Letter, attached hereto as **Exhibit 12.** On December 28, 2017, Vannah wrote in an email, he did not believe Simon would steal money, he was simply relaying his client's statements." *See*, **Exhibit 3.** Later that day, Vannah proposed and Mr. Simon agreed, to a single purpose trust account that has both Mr. Simon and Mr. Vannah as signors and that the client would get all interest from account. *Id.* On January 2, 2018, Mr. Simon's law firm filed an amended lien with specific amounts. *See*, Amended Attorney Lien, attached hereto as **Exhibit 13.** On January 4, 2018, a frivolous conversion theft suit was filed against Mr. Simon, individually and his law firm without any basis that Simon stole the money. *See,* Vannah Complaint, attached hereto as **Exhibit 14;** *See also*, ¶19 of Amended Complaint. The conversion theft lawsuit was filed one week after Vannah confirmed he did not believe Simon would steal the money, and after all parties agreed to put the disputed money in the special trust account. *See*, **Exhibit 3.**

On January 8, 2018, Simon, Vannah, Brian Edgeworth and Angela Edgeworth all went to the bank at the same time to endorse the settlement checks, which were given to the banker and deposited into the new joint trust account. *See,* ¶20 of Amended Complaint. On January 9, 2018, Simon was served with the Vannah Complaint for conversion. *See*, ¶21 of Amended Complaint. When the Vannah Complaint was served, the Edgeworths, Greene and Vannah had actual knowledge that the funds were sitting in the protected account. Vannah and Greene filed an Amended Complaint without leave of court on March 15, 2018, re-asserting the conversion theft

and punitive damage claims. *See*, Vannah Amended Complaint, attached hereto as **Exhibit 15;** *See also*, ¶22 of Amended Complaint. Since the money was safe kept in the protected joint account for two months, the new Amended Complaint underscores the transparent malicious motives of Vannah, Greene and the Edgeworth's. The Edgeworths, Vannah and Greene also filed affidavits containing false allegations of theft, extortion and blackmail to persuade the court not to dismiss the conversion claim. *See*, ¶23 of Amended Complaint. Specifically, Edgeworth stated, as follows:

> "I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and **SIMON'S attempt at trying to extort millions of dollars from me**. …"

See, March 15, 2018 Affidavit of Brian Edgeworth at 8:17-20, attached hereto as **Exhibit 16.**

Significantly, Mr. Herrera has no interest in the proceedings and these defamatory statements are not protected by the litigation privilege. The purpose of maintaining the conversion theft claim was malicious for several improper purposes, including but not limited to (1) Avoid paying attorney fees admittedly owed; (2) Punish Mr. Simon; (3) Cause substantial expense to Mr. Simon and his Firm; (4) Attack Mr. Simon and the firm's integrity and moral character to smear his name and reputation to make him lose clients and cause the firm to lose income; (5) Ill-will, hostility and harassment; (6) Avoiding lien adjudication and to delay the proceedings. *See*, ¶¶24,26,27,59,60,61, 103, 104 of Amended Complaint. Another abusive act is suing Mr. Simon personally when the lien was only filed by the Law Office of Daniel S. Simon , A Professional Corporation. *See*, ¶¶5,24,26,50 of Amended Complaint. This strategy was likely to also persuade the court to award less than the reasonable value of Mr. Simon's work. Simon need only show the Court one improper purpose, but Vannah, Greene, and the Edgeworths have admitted to all of these several improper purposes.

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F. <u>The Unprivileged Defamatory Statements of Angela and Brian Edgeworth were adopted by all Defendants, including the Vannah Attorney's</u>

Irrespective of Good Faith, the litigation privilege does not apply to defamatory statements made to third persons not having a significant interest in the proceeding, and also does not apply to abuse of process claims when malice and an ulterior motive is demonstrated. Both Edgeworth's admits to all of it in the under-oath testimony. *See, Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (20140; *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980). Jacobs and McCuskey. Angela Edgeworth confirmed the frivolous conversion theft claim was filed for an ulterior purpose out of ill-will and hostility to punish Mr. Simon when she testified, under oath, as follows:

> Q. You made an intentional choice to sue him as an individual as opposed to just his law office, fair?
>
> A. Fair.
>
> Q. That is an effort to get his individual money; correct? His personal money as opposed to like some insurance for his law practice?
>
> A. Fair.
>
> Q. And you wanted money to punish him for stealing your money, converting it; correct?
>
> A. Yes.
>
> Q. And he hadn't even cashed the check yet; correct?
>
> A. No.

See, **Exhibit 4** at 145:10-21; *See also*, ¶¶24,26,27,59,60,61,75,76,77,78,85,86,87,103,104 of Amended Complaint.

There is no mistake about the ulterior purpose to injure Simon. The Edgeworth's openly admit under oath they filed the lawsuit before the settlement money was received to punish Mr.

Simon and they followed through with this plan after the complaint was filed. The lack of good faith is admitted by the Edgeworth's, along with the ulterior purpose and malice. Therefore, the litigation privilege does not apply to them.

These statements, under oath, confirm the reason for the conversion claims pursued by the Edgeworth's and the Vannah attorney's. *See*, ¶¶24,26,27,59,60,61,75,76,77, 78,85,86,87,103,104 of Amended Complaint. These facts are undisputed. Additionally, there is also no mistake about how frivolous the conversion theft claim has always been, especially when the District Court entered findings on the conversion claim, and explicitly found in its decision as follows:

> The Edgeworth's did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, **Exhibit 1;** *See also*, ¶¶33 of Amended Complaint.

Angela Edgeworth also confirmed that she was the equal owner of American Grating, LLC and equal trustee of Edgeworth Family Trust, acting on behalf of the entities and fully approved and ratified the conduct of these entities. *See*, **Exhibit 4** at 168:18-169:11. She also testified that she adopted all testimony of her husband. *See*, Exhibit 4 at 108:1-12. Individually, she admitted under oath that she told several people outside of the litigation that Mr. Simon was extorting and blackmailing them, including Lisa Carteen and Justice Miriam Shearing. *See*, **Exhibit 4** at 133:5-15; *See also*, ¶¶24,26,27,59,60,61,75,76,77,78,85,86,87,103,104 of Amended Complaint At the time the defamatory statements were made, these individuals did not have a significant interest in the proceedings, therefore, these statements are not protected by the litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014).

Specifically, Mrs. Edgeworth stated to Ms. Carteen, as follows:

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Q. Okay. The words you used, ma'am, and I won't go back through them all, when you talked to Ms. Carteen -- Did I get that right?

A. Yes.

Q. -- were those the words you use to her when describing Mr. Simon?

A. I'm sorry. Which – what do you mean?

Q. Terrified? Blackmailed? Extorted?

A. I used blackmailed, yes.

Q. You used those words to her?

A. And I used extortion, yes.

Q. Similarly, when you talked to Justice Shearing in February 2018, were those the words you used?

A. I don't think they were that strong. I just told her what happened. Lisa is more of a closer friend of mine. So I was a little bit more open with her.

Q. And you were talking to Lisa as your friend, not your lawyer; right?

A. Correct.

See, **Exhibit 4** at 133:5-23.

These admissions alone establish all elements for Simon's claims against all Defendants. Mr. Edgeworth equally adopted the statements of his wife and also independently told third parties outside the litigation that Mr. Simon was extorting and blackmailing the Edgeworths for millions of dollars as set forth in his affidavit. *See*, ¶¶41,50 of Amended Complaint. Harming Mr. Simon's reputation and business is an ulterior motive. *See, e.g., Datacomm Interface, Inc. v. Computerworld, Inc*., 396 Mass. 760, 775, 489 N.E.2d 185 (1986). A false statement involving the imputation of a crime has historically been designated as defamatory per se." *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (Nev. 2005).

Further demonstrating the lack of good faith, the Edgeworth affidavits are riddled with false testimony, which only adds to the list of abusive measures. The false affidavits were presented to the Court to defend dismissal of the conversion claims. *See,* ¶¶23 of Amended

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Complaint. Defendants are well aware that filing an attorney lien is not theft, blackmail or extortion. The ill-will is further confirmed when Vannah, Greene and the Edgeworth's all stated in Court - we always knew we owe Simon Money. *See*, August 27, 2018 Transcript at 178:20-25, attached hereto as **Exhibit 17.** The three separate acts, through three separate affidavits were also presented to the Court to support the falsehood alleged in the complaint that Simon was already "paid in full." Edgeworths admitted they always knew they owed Simon money and this alone establishes a lack of good faith. Simon always had an interest in the disputed funds, never controlled the funds and conversion has always been a legal impossibility. *See*, ¶20,22 of Amended Complaint. The Edgeworth/Vannah team made a conscious decision to maintain and intentionally refused to abandon the false narrative to harm Simon despite repeated requests by Simon from the outset of the case.

G. THE EVIDENTIARY HEARING AND THE DISTRICT COURT'S DECISION AND ORDER ON THE MERITS

The Court held a five-day evidentiary hearing taking evidence from Mr. Simon, Mr. Kemp, Brian Edgeworth and Angela Edgeworth, among other witnesses. The court reviewed over 80 exhibits entered into evidence. On October 11, 2018, the District Court dismissed Edgeworths Amended Complaint and entered findings of fact. She amended her order on November 19, 2018. 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. No express oral contract was formed.
e. There was no evidence to support the conversion claim.

See, Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5), attached hereto as **Exhibit 18;** *See also*, ¶32 of Amended Complaint.

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In a later motion, Defendants were ordered to pay $55,000 in attorneys fees incurred in having to defend against the frivolous conversion theft claim. *See*, **Exhibit 1;** *See also*, ¶33 of Amended Complaint. This is a final order even though it was appealed to the Supreme Court and may possibly get reversed or modified. Notably however, Edgeworth did not challenge the non-existence of the alleged express oral contact and this finding is now final and just like the finding of bad faith, is also subject to issue preclusion.

H. THE INTENT TO PUNISH MR. SIMON BY FILING THE CONVERSION/THEFT CLAIM IS ADMITTED BY ALL PARTIES.

The Simon Plaintiffs hereby incorporate by reference as though fully set forth herein the Opposition to the Vannah attorneys motion to dismiss filed on May 26, 2020. Additionally, the abusive measures after the lawsuit was filed establishes abuse of process and underscores the lack of good faith.

On January 9, 2018, after Simon was served with the conversion lawsuit, Edgeworth's agent, Mr. Vannah threatens Simon that if he formally withdraws, bad things will happen. *See*, January 9, 2018 Email, attached hereto as **Exhibit 19;** *See also,* ¶21 of Amended Complaint. Greene intentionally ignored Mr. James Christensen's efforts to focus on resolution of the money owed to Mr. Simon and he continued to maliciously pursue the theft claims at the direction of Vannah and the clients. Mr. Christensen repeatedly asked for the authority or a basis for the theft claim. None could be given. Vannah stated in open Court to the judge his basis that **"we just think it is a good theory"** *See*, February 6, 2018 Transcript at 34:20-24, attached hereto as **Exhibit 20**; *See,* ¶22 of Amended Complaint. At this same hearing Vannah also confirmed that this is just a dispute over money and we do not criticize any work that Mr. Simon did. *See*, **Exhibit 20** at 32:5-9. These statements further corroborate the transparent motives to harm Simon and is contrary to their baseless assertion of good faith. *See,* ¶¶25, 26 of Amended Complaint.

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Simon filed two separate motions to dismiss, one of which, was based on Anti-Sapp. Vannah and Greene and Edgeworth, were all made aware of the facts and law as to why the conversion theft claim was frivolous. *See,* ¶ 22 of Amended Complaint. The law is clear that filing an attorney lien is a protected communication and Edgeworth could never sue Simon for filing the attorney lien. Rather than conceding the lack of merit, they all continued with their malicious smear campaign. In their Oppositions to the Simon Motions to Dismiss, Vannah and Greene advanced the conversion theft claim in the body of their Oppositions and attached three separate affidavits from Mr. Edgeworth. *See,* ¶ 23 of Amended Complaint. In the affidavit, it asserts theft, blackmail, extortion of millions of dollars which Edgeworth told his volleyball coach and also falsely asserted Simon has been paid in full. *Id. See*, Affidavit of Brian Edgeworth dates February 2, 2018 at 3:22-23, attached hereto as **Exhibit 21;** *See also,* ¶¶23,77,87 of Amended Complaint. Their conduct when advancing conversion in their Opposition is additional abusive conduct supporting abuse of process. This is completely opposite of Edgeworth's testimony and the Vannah attorneys' statements at the evidentiary hearing **stating we always knew he owed Simon money.** *See also,* ¶¶28,29,30 of Amended Complaint. Angela Edgeworth admits to telling her friend Lisa Carteen and Justice Miriam Shearing essentially the same false accusations of criminal conduct against Mr. Simon. *See*, **Exhibit 4** at 133:5-23; *See also,* ¶¶23,77,87 of Amended Complaint. This is more egregious conduct after the initial Complaint was filed. There is no mistake about the malice of the Edgeworths, Vannah and Greene. However, it gets worse.

On March 15, 2018, they continued with the wrongful abuses of process when they filed an Amended Complaint re-asserting the same conversion theft claim again seeking punitive damages to punish Mr. Simon personally. *See,* **Exhibit 15;** *See,* ¶ 22 of Amended Complaint. The filing of the amended complaint over two months later is an independent act evidencing the

abuse of process. The money they allege was converted was sitting in the equally controlled protected account earning Edgeworth 100% of the interest, even on Mr. Simon's share. Notably, Edgeworth could never establish damages making the claims even more frivolous.

Vannah and Greene sued Simon personally despite the fact that the Law Office of Daniel Simon, A Professional Corporation asserted the lien. This is another abusive measure substantiating malice. Simon only followed the law precisely pursuant to NRS 18.015 as confirmed by David Clark, Esq. *See*, **Exhibit 5.** Vannah and Greene were given Mr. Clark's report at the beginning of the case and they never disputed his opinion. Additionally, pursuant to the Anti-SLAPP line of cases, Vannah and Greene could not sue Mr. Simon for filing an attorney lien. The District Court finally entered an order in October, 2018 dismissing the conversion claim finding that there were no legal grounds to bring the claim or maintain the claim. *See,* ¶32 of Amended Complaint. The Court Amended her decision on November 19, 2018. *See*, **Exhibit 18.** Despite the Districts Courts order, the Defendants continued with their devised plan.

On December 13, 2018, a motion to direct Simon to release the disputed funds was filed by Vannah and Greene again accusing Simon of theft. *See,* Motion to Release Funds at 6:7-9, attached hereto as **Exhibit 22.** Ignoring the District Courts findings in October, 2018 when still arguing a conversion occurred is more egregious conduct. On December 31, 2018, Mr. James Christensen sent a letter again asking Vannah and Greene to avoid accusations of theft and conversion pointing out that their motion for an order directing Simon to release funds repeats the false conversion accusation. *See*, December 31, 2018 Letter, attached hereto as **Exhibit 23.** Edgeworth, Vannah and Greene continued to argue the theft conversion claim in all of their briefing, including the briefs to the Nevada Supreme Court. They also are still advancing the same arguments to this court. All of the Defendants' conduct extends well beyond the mere filing of

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the complaint and amended complaint as asserted in their moving papers. *See,* ¶¶35,36,37,38,39,40, 41, 42 of Amended Complaint.

In their moving papers the Edgeworth's state "In an attempt to remove Simon's unrightful dominion over the settlement proceeds, the Edgeworth's filed a complaint …" *See Edgeworth Entities Motion to Dismiss, 2: 10-11.* This statement is a complete falsehood. The settlement proceeds were not even received when they filed the lawsuit and Angela Edgeworth openly admitted the reason for the complaint was to personally punish Mr. Simon. *See,* **Exhibit 4** at 145:10-21.

Mr. Simon and the Edgeworth's share a lot of common friends and when the Vannah - attorneys followed the plan to falsely allege criminal accusations that Simon extorted millions from them, this abusive conduct is well outside the privileges or statutes created to protect good faith litigation. The overwhelming admissions by the Defendants confirm that their conduct was NOT in GOOD FAITH.

IV.

ARGUMENT

Defendants contend that Plaintiffs' claims against the Edgeworth Defendants must be dismissed on three different grounds: 1) the common law litigation privilege bars the claims; 2) the claims are barred by Nevada's anti-SLAPP statute; and 3) the claims are not cognizable. As discussed in detail below, all of Defendants assertions have failed to correctly apply Nevada law to the present facts alleged by Plaintiffs in their Amended Complaint.

A. Applicable Law.

NRCP 8(a) provides in pertinent part, "A pleading that states a claim for relief must contain... (2) a short and plain statement of the claim showing that the pleader is entitled to relief;

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief..." Courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party. *Hay vs. Hay*, 100 Nev. 196; 678 P.2d 672 (1984). Moreover, pleading of conclusions, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim. *Crucil vs. Carson City*, 95 Nev. 583; 600 P.2d 216 (1979).

B. Standard for Motion for Failure to State a Claim.

NRCP 12(b)(5) provides in pertinent part: "Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . . (5) failure to state a claim upon which relief can be granted."

Further, "The standard of review for a dismissal under subsection (5) is rigorous, as the court must construe the pleading liberally and draw every fair inference in favor of the nonmoving party." *Simpson vs. Mars Inc.*, 113 Nev. 188; 929 P.2d 966 (1997). Moreover, "On a motion to dismiss for failure to state a claim for relief, the trial court, and the Supreme Court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff." *Merluzzi vs. Larson*, 96 Nev. 409, 610 P.2d 739 (1980). When tested by a subdivision of (b)(5) motion to dismiss for failure to state a claim upon which relief can be granted, the allegations of the complaint must be accepted as true. *Hynds Plumbing & Heating Co. vs. Clark County Sch. Dist.*, 94 Nev. 776; 587 P.2d 1331 (1978).

C. Malicious Prosecution

On May 21, 2020 Simon filed an amended complaint. This complaint omitted malicious prosecution pursuant to *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002). Therefore, the malicious prosecution issue is moot.

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D. Wrongful Use of Civil Proceedings

The Edgeworths contend this claim is not recognized in Nevada and should be dismissed. This claim is set out in the Restatement (Second) of Torts, § 653 (1977):

> A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if
>
> (a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and
>
> (b) the proceedings have terminated in favor of the accused.

Defendants assert that this claim is not recognized in Nevada. *See*, Motion at 5:17-24. This is a leap. The Nevada Supreme Court has never been asked to consider the merits of this claim within the context of Nevada law. The only comments referring to Nevada law are two Federal District Court Judges speculating about what the Nevada Supreme Court may or may not do. Plaintiff submits that Nevada law would likely officially recognize this claim under the circumstances of this case. This claim is well recognized under the Restatement of Torts, and is also recognized in neighboring jurisdictions, including Arizona. *See e.g., Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 758 P.2d 1313, 1318 (Ariz. 1988) and *Wolfinger v. Cheche*, 80 P.3d 783, 787 ¶ 23 (Ariz. App. 2003).

This claim has similar damages as abuse of process, but has slightly different elements that would only enhance the public policy precluding malicious conduct when abusing the judicial process.

The District Court made findings in this case, and concluded:

> "The Edgeworths did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed."

See, **Exhibit 1.**

The District Court's finding is sufficient to meet the "final determination" prong. More so, the appellate action will likely be resolved prior to the close of this action as all appellate briefing has been submitted to the Nevada Supreme Court. Nevertheless, if the Court is inclined to dismiss this claim due to the ongoing appellate action, then it should do so without prejudice or merely stay the claim until a final ruling.

Notably, the statute of limitations on the majority of the claims required they be filed by December of 2019. For purposes of judicial economy, it is proper to include the Wrongful Use of Civil Proceedings claim, especially as the discovery conducted for the Abuse of Process claim will involve similar elements that would support Wrongful Use of Civil Proceedings.

As for the first element of Wrongful Use of Civil Proceedings, Simon has plead the factual allegations sufficiently in the Complaint and Amended Complaint to satisfy the claim. Defendants did not have probable cause that their claims would succeed and was only brought for an improper purpose. *See,* Amended Complaint at ¶ ¶ 35,36,37,38. The person who initiates civil proceedings is the person who sets the machinery of the law in motion, whether he acts in his own name or in that of a third person, or whether the proceedings are brought to enforce a claim of his own or that of a third person.

Importantly, the District Court has already decided all facts and ruled as a matter of law that the Conversion theft claim was brought without probable cause. The Defendants all admit the claim was brought to punish Mr. Simon and his Law Firm. Now, the only remaining element to establish is whether the proceedings terminated in Plaintiff's favor, and this determination is a question of law. The District Court dismissed Defendants' Complaint and made findings of fact that the conversion claim had no merit and was not initiated and certainly not maintained in good

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faith as the conversion claim was a factual and legal impossibility. There is no material dispute of fact about the circumstances under which Defendant's claims were dismissed, and that the circumstances reflected favorably to Simon on the merits of the matter.

1. Defendants Lacked Probable Cause and Malice Is Established.

What constitutes probable cause is determined by the court as a question of law. *Bradshaw*, 157 Ariz. at 419, 758 P.2d at 1321 (1977). When the Court reviews these claims, "[t]he malice element in a civil malicious prosecution action does not require proof of intent to injure." *Bradshaw*, 157 Ariz. at 418–19, 758 P.2d at 1320–21 (citing Restatement (Second) of Torts §676 (1977), hereinafter referred to as the "Restatement," comment c). "Instead, a plaintiff must prove that the initiator of the action primarily used the action for a purpose 'other than that of securing the proper adjudication of the claim.'" *Id.* (again citing Restatement § 676, *inter alia*). Malice may be inferred from the lack of probable cause. The Restatement discusses several "patterns" of wrongful use of civil proceedings ("WUCP"), such as "when the person bringing the civil proceedings is aware that his claim is not meritorious"; or "when a defendant files a claim, not for the purpose of obtaining proper adjudication of the merits of that claim, but solely for the purpose of delaying expeditious treatment of the original cause of action," "**or causing substantial expense to the party to defend the case."** Restatement (Second) of Torts § 676, comment c. (emphasis added). *Nienstedt v. Wetzel*, 133 Ariz. 348, 354, 651 P.2d 876, 882 (App. 1982), is exemplative of when and against whom a WUCP claim can be asserted: "In all of these situations, if the proceedings are also found to have been initiated without probable cause, the person bringing them may be subject to liability for wrongful use of civil proceedings." Of course, WUCP also includes "when the proceedings are begun primarily because of hostility or ill will" "this is 'malice' in the literal sense of the term, which is frequently expanded beyond that sense

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to cover any improper purpose." *Id.* Vannah/Edgeworth's attempt to circumvent expedited lien adjudication with the frivolous complaint and delay the Court decision is yet another basis to established liability.

E. DEFAMATION PER SE IS PROPERLY PLED.

The Edgeworth entities gloss over this claim and aver that the litigation privilege should dismiss this claim as well. As discussed in detail above, the litigation privilege and anti-SLAPP statutes are not applicable in this case, especially to this claim. Both Edgeworths admit to telling the false story of theft, extorting and blackmail to third parties that had no interest in the proceedings. Therefore, the litigation privilege does not apply. *Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (2014); *Herzog v. "a" Co.,* 138 Cal. App. 3d 656, 661-62,188 Cal. Rptr. 155, 158 (Cal. Ct. App. 4th Dist. 1982). Therefore, Simon's defamation per se claim against the Edgeworth entities should be denied. The Edgeworth's adopted each other's statements and ratified their own conduct on the part of the Family Trust and American Grating. Discovery will likely reveal additional statements made to third parties. On May 21, 2020, Plaintiffs filed an amended complaint. The specific statements supporting Defamation Per Se and Business Disparagement are narrowly detailed in the Amended Complaint. *See,* Amended Complaint at ¶ ¶ 23,24,75,76,77,78,85,86,87,88,89,90. Therefore, Simon has satisfied all elements precluding dismissal. A brief overview of defamation in Nevada confirms their conclusive liability certainly precluding dismissal at this stage.

In *Pope v. Motel 6*, the Supreme Court of Nevada stated that "[a] defamation claim requires demonstrating (1) a false and defamatory statement of fact by the defendant concerning the plaintiff, (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. Certain classes of defamatory statements are,

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however, considered defamatory per se and actionable without proof of damages. A false statement involving the imputation of a crime has historically been designated as defamatory per se." *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (Nev. 2005).

If the defamatory communication imputes a "person's lack of fitness for trade, business, or profession," or tends to injure the plaintiff in his or her business, it is deemed defamation per se and damages are presumed. *K-Mart Corp v. Washington,* 109 Nev. 1180, 1192, 866 P.2d 274 (1993). "Defamation" is defined as "a publication of a false statement of fact." *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). Further, when determining the difference between a fact statement and an opinion statement, one must consider that "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false." *K-Mart Copr.*, 109 Nev. at 1192 (citations omitted). A statement is defamatory when such charges would tend to lower the subject in the estimation of the community, to excite derogatory opinions against him, and to hold him up to contempt. *PETA v. Boby Berosini, Ltd.*, 111 Nev. 615, 619, 895 P.2d 1269, 1272 (1995). Evidence of negligence, motive, and intent may cumulatively establish the necessary recklessness to prove actual malice in a defamation action. *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993).

Simon has properly pled the defamation claims against all Defendants. *See Amended* Complaint, at ¶ ¶ 66-7. Simon never stole the settlement money. Simon never extorted or blackmailed the Edgeworths and their statements to others that he engaged in this serious criminal conduct is intentionally false and solely aimed to harm Mr. Simon and his firm. The Vannah Defendants know that filing an attorney lien is not blackmail, extortion or conversion and they continually made these same defamatory statements in the legal proceeding and admittedly to

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third persons not interested in the proceedings. These statements are not just simple opinion statements about the quality of Simon's services but are factual statements averring illegal, criminal conduct. Notably, "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which [***23] will be sufficient to render the message defamatory if false. *Milkovich v. Lorain Journal Co*., 497 U.S. 121-22 (1990). It is clear that the statements were made maliciously in order to harm Mr. Simon and his firm.

1. Defamation Damages Are Presumed.

In Nevada, presumed general damages are permitted when there exists slander per se. *Bongiovi v. Sullivan*, 138 P.3d 433, 448 (Nev. 2006). Slander per se is a statement "which would tend to injure the plaintiff in his or her trade, business, profession or office." *Id.* General damages are those that are awarded for "loss of reputation, shame, mortification and hurt feelings." *Id.* General damages are presumed upon proof of the defamation alone because that proof establishes that there was an injury that damaged plaintiff's reputation and "because of the impossibility of affixing an exact monetary amount for present and future injury to the plaintiff's reputation, wounded feelings and humiliation, loss of business, and any consequential physical illness or pain." *Id.* The Supreme Court will affirm an award for compensatory damages "unless the award is so excessive that it appears to have been given under the influence of passion or prejudice." *Id.* The statements of stealing, extortion and blackmail are not merely opinion statements but factual statements regarding illegal, criminal acts committed or attempted to be committed by Simon.

F. BUSINESS DISPARAGEMENT IS PROPERLY PLED.

Defendants' actionable statements have not only attacked Simon personally but his business and the tort of business disparagement and/or trade libel is appropriate. Daniel Simon the person and Daniel Simon the law firm are inextricably intertwined and defamatory statements

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against him and his professional reputation are imputed against the business as well. To succeed in a claim for business disparagement, one must prove:

(1) a false and disparaging statement,

(2) the unprivileged publication by the defendant,

(3) malice, and

(4) special damages.

See Clark County Sch. Dist. v. Virtual Educ. Software, Inc., 125 Nev. 374. 386, 213 P.3d 496 (2009) (citations omitted).

Unlike defamation, business disparagement requires "something more," i.e., malice. *Id.* "Malice is proven when the plaintiff can show either that the defendant published the disparaging statement with the intent to cause harm to the plaintiff's pecuniary interests, or the defendant published a disparaging remark knowing its falsity or with reckless disregard for its truth." *Id.* (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 722, 57 P.3d 82, 92-93 (2002); *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987); *Restatement (Second) of Torts*, 623A (1977).

As discussed in great detail above, the entire purpose of Defendants conversion case was to harm and punish Simon, both personally and professionally. If Simon steals money from his clients, he is personally a crook and his business and, its services, are criminal. Defendants had no factual or legal basis to say that he stole, extorted or blackmailed the Edgeworth's, and they definitely had no probable cause for asserting conversion against him. The Defendants' statements were proffered to injure Simon and all Defendants knew the statements were false at the time they were made. They admitted to the malice while testifying at the evidentiary hearing.

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The conduct wreaks of malice which has been admitted in testimony, under oath, and their own writings by all Defendants.

Mr. Simon and his law practice has enjoyed an outstanding reputation in the community for over 25 years. In the underlying case he did an amazing job for the clients. The clients' smear campaign was based on false theft claims and was done intentionally to harm Mr. Simon and his Law Firm. Consequently, Simon's Business Disparagement cause of action has been properly pled and should not be dismissed.

G. CIVIL CONSPIRACY IS PROPERLY PLED.

A claim for Civil Conspiracy is established when:

1. Defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming Plaintiff; and

2. Plaintiff sustained damage resulting from their act or acts.

C*onsolidated Generator-Nevada, Inc. v. Cummings Engine Co.,* Inc., 114 Nev. 1304, 971 P.2d 1251 (1999). The Plaintiff merely needs to show an agreement between the tortfeasors, whether explicit or tacit. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). The cause of action is not created by the conspiracy but by the wrongful acts done by the defendants to the injury of the plaintiff. *Eikelberger v. Tolotti*, 96 Nev. 525, 611 P.2d 1086 (1980). Plaintiff may recover damages for the acts that result from the conspiracy. *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965), overruled on other grounds by *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998). An act lawful when done, may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the individual against whom the concerted action is taken. *Eikelberger, supra.* The tortious conduct of the Defendants set forth in the Abuse of Process, Defamation Per Se, Business Disparagement,

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and Wrongful Use of Civil Proceedings is the underlying tortious and wrongful conduct establishing the conspiracy. *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003). The Edgeworth's incorrectly argue that there is no tortious/wrongful conduct to support the conspiracy in this case.

The Edgeworths, Vannah and Greene devised a plan to punish Mr. Simon, through their concerted actions among themselves and others, intended to accomplish the unlawful objectives of filing false claims for an improper and ulterior purpose to cause harm to Mr. Simon's reputation and cause significant financial loss. After abusing the process, they then told the community. These tortious acts are the wrongful acts that were performed with an unlawful objective to cause harm to Simon. It is unlawful to file frivolous lawsuits and present false testimony of theft, extortion and blackmail. It is also unlawful to tell the court and others not involved with proceedings these same false statements. They were made with malice to punish and harm. The Edgeworth's and the Vannah attorney's all followed through with this plan.

Simon has pled that Defendants devised a plan to knowingly commit wrongful acts to file the frivolous claims for an improper purpose to damage the Plaintiff's reputation; cause harm to his law practice; intimidate him; cause him unnecessary and substantial expense to expend valuable resources and money to defend meritless claims; all with the desire to manipulate the proceedings to persuade the court to give a lower amount on the disputed attorney lien that would be in Defendants' favor. *See,* Amended Complaint at ¶ ¶ 102-111. They invented a story of theft, blackmail and extortion, and that Simon was already paid in full, among other unfounded assertions. They all mistakenly believed that their conduct was immune from liability based on the litigation privilege or Anti-SLAPP. Unfortunately, these protections are not available to these Defendants. The undisputed facts, admitted testimony under oath, judicial rulings and all

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pleadings in the underlying litigation already establishes these claims. As such, the Civil Conspiracy claim is proper and sufficiently pled and Defendants' motion to dismiss should be denied. However, if this court allows discovery, more egregious conduct will come to light exposing the additional wrongdoing of these Defendants. These Defendants are also in exclusive possession of the additional information establishing their conspiracy to harm Simon, as properly pled in conformance with *Rocker*. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d 703, 708 (2006)

H. The Litigation Privilege Does Not Apply Because Defendants Did Not Contemplate the Conversion Claim Against Plaintiffs in Good Faith.

The Edgeworth's want their malice erased by the litigation privilege. This would be contrary to Nevada law and the findings already made by Judge Jones. The District Court has already made factual findings and ruled as a matter of law that the conversion claims were not brought or maintained in good faith and were based on a legal impossibility. The doctrine of res judicata has already established Simon's claims and Defendants lack of good faith. Therefore, the litigation privilege, as well as the Anti-SLAPP protection do not apply.

The Conversion claim was based upon allegations that Simon had somehow converted the settlement proceeds obtained while representing them in the underlying civil case, Case No. Case No. A-18-767242-C. *See id.* Conversion is defined as "a distinct act of dominion **wrongfully** exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (internal quotations omitted). In *Evans* a lawyer forged his aunt's name and deposited money into his personal account. Unlike *Evans*, Mr. Simon never had receipt of the proceeds when the lawsuit was filed. Mr. Simon never had exclusive control of the proceeds and did not perform a wrongful act over the disputed funds as he always

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had an interest in the disputed money and only filed a lawful attorney's lien. Following the law pursuant to NRS 18.015 is not a wrongful act as a matter of law. The almost $4 million dollars of undisputed funds were immediately given to the Edgeworth's. The disputed funds were always placed in a protected trust account. The amount of the disputed funds held in the account was never challenged at the evidentiary hearing. In fact, the amount was supported by Will Kemp that the lien was low and his opinion was not challenged. *See*, Will Kemp Declaration, attached hereto as **Exhibit 24.** The amount was further supported by the unbilled work, substantial work performed and that every factor in *Brunzell* was met, including the amazing result. The Defendants concede they always knew they owed Mr. Simon money before the lawsuit was filed, the amount owed was what was to be determined. Mr. Simon always had an interest in the disputed funds and filing an attorney lien is not conversion. Even more telling of their motives, it was the Vannah/Edgeworth team that first appealed the Decision and Order to the Supreme Court. When the extortion, theft and blackmail approach did not work, they now change course and reduce the conversion to an unreasonable amount argument. This also equally fails and also adds to the abusive measures establishing Simon's claims.

The undisputed facts were known to all defendants prior to the lawsuit, which confirms they never contemplated in good faith a legitimate claim for Conversion. An attorney asserting a lien pursuant to NRS 18.015 has a legal right to seek attorneys fees owed, and is not "inconsistent with a clients rights" pursuant to Nevada law. *Id.* This fact has been concrete since the Vannah Defendants began representing Edgeworths but even more notably when the proceeds were deposited on January 8, 2018.

Consequently, there was no legitimate purpose for seeking Conversion against Simon – both professionally and personally – other than to punish and harm him, also both professionally

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and personally. Even though a mere filing of a Complaint alone is not enough for abuse of process, the information known at the time and thereafter is enough to determine a lack of good faith when analyzing the application of the litigation privilege. Success on the Conversion claim was a legal impossibility and Defendants had no good faith basis to assert that claim, which they continue to pursue.

1. <u>The litigation privilege does not apply to the facts of this case.</u>

The Edgeworth entities contend that the litigation privilege defeats all the civil tort claims in Simons complaint. They cite *Greenberg Traurig v. Frias Holding Co., 331 P.3d 901 (Nev. 2014),* for this proposition. However, *Greenberg* is unavailing and confirms the privilege is not absolute. In Greenberg, the Nevada Supreme Court answered a certified question from the Federal Court, and confirmed that legal malpractice was an exception to the absolute privilege. All other cases cited by the Defendants do not support their position when the lack of good faith is analyzed, as the test for good faith litigation controls. Litigation privilege does not equally apply to the claims for Defamation Per Se, Business Disparagement, Abuse of Process and Civil Conspiracy based on those tortious acts. *Bull v. McCuskey, Supra.*

.In *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), the Nevada Supreme Court analyzed the litigation privilege, stating that "Nevada has long recognized the existence of an absolute privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings." *Id.* at 412 (citations omitted). Notably, the Court held as follows:

> In order for the absolute privilege to apply to defamatory statements made in the context of a judicial or quasi-judicial proceeding, **"(1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation."** Therefore, the privilege applies to communications made by either an attorney or a non-attorney that are related to ongoing litigation or future litigation contemplated in good faith. When the communications are made in this type of litigation setting and are in

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> some way pertinent to the subject of the controversy, the absolute privilege protects them even when the motives behind them are malicious and they are made with knowledge of the communications' falsity. **But we have also recognized that "[a]n attorney's statements to someone who is not directly involved with the actual or anticipated judicial proceeding will be covered by the absolute privilege only if the recipient of the communication is 'significantly interested' in the proceeding.**"

Id. at 413 (citations omitted) (emphasis added).

The proceeding must be "contemplated in good faith" in order for the privilege to apply. *Id.*; *see also Restatement (Second) of Torts*, § 586 cmt. e (1977). This requirement is notable and illustrates how Nevada has balanced the prosecution of claims like abuse of process while still upholding the litigation privilege. Here, the facts show that Defendants did not "contemplate in good faith" the Conversion claim against Simon.

Another way to view the "contemplated in good faith" component in determining whether to apply the litigation privilege is to determine whether the judicial proceeding had a "legitimate purpose." *See e.g., Herzog v. "a" Co.,* 138 Cal. App. 3d 656, 661-62,188 Cal. Rptr. 155, 158 (Cal. Ct. App. 4th Dist. 1982):

> In *Larmour v. Campanale, supra*, 96 Cal.App.3d 566, 568, the court stated: "The purpose of the privilege under Civil Code section 47 [the litigation privilege codified in California] is to afford litigants the utmost freedom of access to the courts, to preserve and defend their rights [citation] and to protect attorneys during the course of their representation of their clients [citation]. 'It is . . . well established legal practice to communicate promptly with a potential adversary, setting out the claims made upon him, urging settlement, and warning of the alternative of judicial action.'" (Fn. omitted.) In a footnote, *Larmour* quoted comment e to the Restatement Second of Torts, section 586: **"As to communications preliminary to a proposed judicial proceeding the rule stated in this Section applies only when the communication has some relation to a proceeding that is contemplated in good faith and under serious consideration. The bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered." (*Larmour, supra*, 96**

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Cal.App.3d at p. 569, fn. 2.) We hold a communication not related to a potential judicial action contemplated for legitimate purposes is not protected by the privilege

Id. (emphasis added)

Another way to consider the "contemplated in good faith" requirement is to assess whether Defendants had a "good faith belief in a legally viable claim" in order for their statements to be privileged. *See e.g., Hawkins v. Portal Publs., Inc.,* 1999 U.S. App. LEXIS 18312 *8 (9th Cir. 1999). Either way, when taking the allegations in the Complaint in the most favorable light for Plaintiffs, it is clear that Defendants did not have a good faith belief in a legally viable claim for Conversion against Simon. Simply, Defendants contemplated the Conversion in bad faith for the ulterior purpose to avoid paying the reasonable attorneys fees admittedly owed and to harm and punish Simon, not to obtain legal success of the Conversion claim at trial. Therefore, Defendants acts and statements are not entitled to the protections of the litigation privilege.

Further, the Court should not entertain arguments that Defendants will be prejudiced by a denial at this stage of the case. The record is abundantly clear that the claim was not made in good faith and the court should easily make that finding now. However, if the Court is not inclined to make that finding now, the litigation privilege is an affirmative defense. Thus, after discovery, Defendants can again attempt to raise the defense. Defendants have not provided authority that the litigation privilege precludes the constitutional right to discovery. At this stage of the case, when taking the facts alleged in the Complaint in the light most favorable to Plaintiffs as true, it is clear that privilege cannot be applied. *See e.g., Eaton v. Veterans, Inc.*, 2020 U.S. Dist. LEXIS 7569, *5-6 (U.S. Dist. Ct. Mass., Jan. 16, 2020) (When ruling on Defendant's motion to dismiss, the court held that it must accept plaintiff's allegations as true at that stage of the proceeding and that the allegations created the reasonable inference that Defendant threatened legal action in bad

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faith and, therefore, was not entitled to the litigation privilege at that juncture). Therefore, Defendants' motion to dismiss should be denied.

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

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

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

Obviously, the Vannah/Edgeworth team needed the "More" and fabricated the conversion claim encompassing theft, extortion and blackmail while at the same time seeking an order that Simon was "paid in full." This wreaks of bad faith and the admissions already made during the lien adjudication proceedings confirms it all. The bad faith motives equally deprive all parties of the protections of Anti-SLAPP relief.

I. Defendants Are Not Entitled To Anti-SLAPP Relief.

Pursuant to NRS 41.660(1), Nevada's Anti-SLAPP statue, a Defendant can file a motion to dismiss only if the complaint is based on the Defendants' good faith communication in furtherance of the right to petition or right to free speech in direct connection with an issue of public concern. *See* NRS 41.660(1). The Vannah/Edgeworth team's frivolous conversion complaint and subsequent filings were not made in good faith and are not the good faith

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communications as required. Simply, a frivolous complaint riddled with false allegations known to the parties at the time they filed the multiple documents are not protected by Anti-SLAPP. Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team.

The Edgeworth motion to dismiss does not directly address this issue in its motion, but does in its special motion to dismiss for Anti-SLAPP.

J. <u>All Defendants, including the Edgeworth Entities are liable for Abuse of Process.</u>

The Edgeworth's base their motion to dismiss the abuse of process claims solely on the assertion that "An abuse of process claim cannot be sustained based on the mere filing of a complaint …" *See, Edgeworth motion to dismiss, 6:5-12.* It is not the mere filing of the complaint that establishes the claim. The oppositions, affidavits, amended complaint, motions filed, participating in an evidentiary hearing, failing to present evidence disputing Simon's evidence, and a complete failure to present authority or evidence to establish any of the elements of conversion. Mr. Vannah stating "He thinks it is a good theory," does not suffice and only supports the abusive measures to maintain the action. The false affidavits and publishing these statements to the community, along with threatening emails and inventing stories to refuse attorneys fees owed is more than enough. The amended complaint describes substantial abusive measures after the filing of the complaint. *See,* Amended Complaint at ¶ ¶ 57-65.

Even if this Court was inclined to apply the litigation privilege (or anti-SLAPP protections) to Defendants' statements in the proceedings – which it should not at this stage of the case – that privilege does not thwart Simon's Abuse of Process claims against Defendants. In Nevada, the elements for a claim of abuse of process are:

1. Filing of a lawsuit made with ulterior purpose other than to resolving a dispute;

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2. Willful act in use the use of legal process not proper in the regular conduct of the proceeding; and

3. Damages as a direct result of abuse.

LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002); *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980); *Dutt v. Kremp*, 111 Nev.567, 894 P.2d 354, 360 (Nev. 1995) overruled on other grounds by *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002)); *Laxalt v. McClatchy*, 622 F.Supp. 737, 751 (1985) (citing *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980); *Nevada Credit Rating Bureau, Inc. v. Williams,* 88 Nev. 601 (1972); 1 Am. Jur. 2d Abuse of Process; *K-Mart Corporation v. Washington*, 109 Nev. 1180 866 P.2d 274 (1993)).

Notably, one who procures a third person to institute an abuse of process is liable for damages to the party injured to the same extent as if he had instituted the proceeding himself. *Catrone v. 105 Casino Corp.,* 82 Nev. 166, 414 P.2d 106 (1966). In both *Datacomm Interface, Inc. v. Computerworld, Inc*., 396 Mass. 760, 775, 489 N.E.2d 185 (1986), and *Neumann v. Vidal*, 228 U.S. App. D.C. 345, 710 F.2d 856, 860 (D.C. Cir. 1983), the courts recognized an injury to business and business reputation as an improper ulterior motive and abuse of process. An "ulterior purpose" includes any improper motive underlying the issuance of legal process. *Dutt v. Kremp*, 108 Nev. 1076, 844 P.2d 786, 790 (Nev. 1992). For example, in *Momot v. Mastros*, 2010 U.S. Dist. LEXIS 67156, 2010 WL 2696635 (Nev. Dist. July 6, 2010), Mastros filed a counterclaim alleging Momot filed suit against them "in bad faith and for an improper purpose" because he invented the story that the Mastros' forged his signature in an attempt to "extort an unjust settlement" from them. *Id.* at *12. “Taking this assertion as true, the Court finds the Mastros have

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properly identified an ulterior purpose and that they satisfy the first element of the abuse of process test." *Id.*

Here, the Edgeworth/Vannah team invented a story of an express contract for an hourly rate only to refuse payment of the reasonable value of Mr. Simon's services coupled with the false story of theft, extortion and blackmail. They also filed the conversion claim to refuse payment of attorney fees admittedly owed and to punish Simon as admitted by Edgeworth's at the evidentiary hearing. Their conduct was also aimed to destroy Mr. Simon's practice, another ulterior purpose. They sued him personally to punish him. *See,* **Exhibit 4** at 145:10-21. They also sought to avoid lien adjudication (another ulterior purpose) and intentionally cause substantial expense to defend the frivolous claims, and yet another ulterior purpose. Nie*nstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876 (1982). Defendants attempt to dismiss all claims with the brush of a litigation privilege wand is contrary to Nevada law. Nevada clearly allows abuse of process claims, even against attorneys. In *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980), the Nevada Supreme Court confirmed that abuse of process claims can go forward regardless of the litigation privilege.

In *Bull*, Dr. McCuskey was sued by attorney Samuel Bull for medical malpractice "for the ulterior purpose of coercing a nuisance settlement knowing that there was no basis for the claim of malpractice." *Id.* at 707. A jury returned a defense verdict in the underlying frivolous case. Then, Dr. McCuskey sued Bull for abuse of process and a jury returned a verdict in favor of Dr. McCuskey. The District Court entered a judgment for the award of compensatory and punitive damages against the attorney and denied the attorney's post-trial motion for JNOV and for a new trial. The Attorney appealed. On appeal, the Nevada Supreme Court held that evidence that the attorney willfully misused the process for the ulterior purpose of coercing a settlement supported

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the jury's verdict. In doing so, the court considered the application of the litigation privilege and confirmed it does not preclude an abuse of process claim when it upheld the judgment. The Bull Court stated the elements for abuse of process as follows:

> [T]the two essential elements of abuse of process are an ulterior purpose, and a willful act in the use of the process not proper in the regular conduct of the proceeding. The malice and want of probable cause necessary to a claim of malicious prosecution are not essential to recovery for abuse of process. Moreover . . . abuse of process hinges on the misuse of regularly issued process in contrast to malicious prosecution which rests upon the wrongful issuance of process.

Id. at 709.

The Edgeworths invented a story of blackmail, extortion and theft and they, along with the Vannah Defendants, abused the judicial process when knowing they had no legal or factual basis to sue Simon both professionally and **personally** for Conversion. Despite that knowledge, Defendants went forward with the suit and continued to maintain the Conversion claim to the present date, despite having no legal basis to do so. As such, Simon has properly pled in the Amended Complaint that Defendants have maintained the Conversion claim for the ulterior purpose of punishing Simon and injuring his business and reputation. Significantly, Defendants had actual knowledge that there was no legal basis for the Conversion claim and then issued false statements in the proceedings in order to maintain that claim. *Id.* These same false statements were communicated to third parties not having an interest in the proceedings. This further corroborates the abuse of process.

The fact that Defendants never provided any expert or lay evidence at the five-day evidentiary hearing is further proof of their ulterior purpose. *Id.* Even without engaging in discovery, there is already substantial evidence supporting the abuse of process. They have never offered any authority that an attorney exercising his attorney lien rights is an act of conversion.

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Again, Simon never had exclusive control of the money, always had an interest and never did a wrongful act to deprive them of the money. Simon has properly plead the Abuse of Process claims based on Defendants' conduct long after the mere filing of the Complaint – the false statements only corroborate their conduct and the ulterior purposes. *Id.* Edgeworth should not be able to defeat Simon's claims as good faith litigation controls.

The facts in *Bull* are similar to the present case. What possible legal standing did the Edgeworth/Vannah team have to pursue a conversion claim against Simon? None. There was no justiciable claim at any time. The facts and case law support this conclusion. The only basis from the Edgeworth/Vannah team was "He thought it was a good theory."

They did nothing to dispute Kemp and Clark and made no legal arguments that the lien was not valid. Depositing money into a lawyer trust account pending a lien dispute is the same as depositing it with the court. Mr. Vannah knows this is true. *See e.g., Golightly & Vannah*, 132 Nev. 416, 418 (2016) ("an attorney need not deposit funds with the court in an interpleader action so long as the attorney keeps the funds in his or her client trust account for the duration of the interpleader action.") It is disingenuous for the new ad hoc rescue argument that the amount was unreasonable when the Edgeworth's, through Vannah, never pursued this argument at the evidentiary hearing. The District Court's determination that Simon's lien was proper is a finding of fact adjudicating the issue. Defendants knew prior to filing their lawsuit that an actual conversion never occurred and could never occur in the future. This is bad faith. Success of conversion at trial was a legal impossibility and only proves that Defendants brought and maintained the conversion claim for an ulterior purpose. When viewing the malicious emails and testimony under oath, confirming the ulterior purpose of "punishment," the reasonable conclusion

is that they all never contemplated and certainly did not maintain the conversion claim in good faith.

Malice is proven when claims are so obviously lacking in merit that they "could not logically be explained without reference to the defendant's improper motives." *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252,259, 92 P.3d 882, 889 (App. 2004). Attorneys representing clients pursuing frivolous claims are equally and separately liable. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980).

The primary ulterior purpose here was to refuse payment of attorney's fees admittedly owed and subject Mr. Simon to harsh punishment by causing him to incur substantial expenses currently in excess of $300,000 to defend the frivolous abuses, as well as harm his reputation to their friends, colleagues and general public and cause damage and loss to his business and ultimately him. The claims were so obviously lacking in merit that they could not logically be explained without reference to the Defendants improper motive and ill-will. The proceedings terminated in favor of Simon as Judge Jones order is a final order, albeit pending appeal in the Supreme Court. Thus, when taking these facts in the light most favorable to Plaintiffs, the motion to dismiss should be denied.

K. <u>Plaintiffs' Claims Are Ripe for Adjudication</u>.

Simon incorporates the arguments from Simon's Opposition to the Vannah Defendants motion to dismiss and incorporates same herein to the extent necessary to address this issue.

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V.

CONCLUSION

Based on the foregoing discussion, dismissal is improper at this juncture. Defendants have not met the necessary requirements that would entitle them to the litigation privilege or protection under the anti-SLAPP statutes. Plaintiffs have pled sufficient facts supporting all of their causes of action, especially when taking the plead facts in the light most favorable to the non-moving party. Plaintiffs, at a minimum, should be afforded the opportunity to conduct discovery. Therefore, Plaintiffs respectfully request this Court DENY the Edgeworths' Motion in its entirety.

Dated this 28th day of May, 2020.

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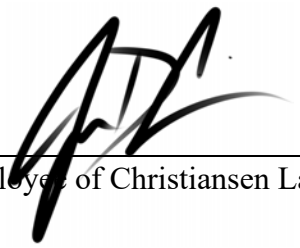
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 28th day of May, 2020 I caused the foregoing document entitled PLAINTIFFS' OPPOSITION TO DEFENDANTS EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a) 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

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Exhibit 1

ORDR

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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.

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

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

This matter came on for hearing on January 15, 2019, 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 (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

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

claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

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

factors pertinent to attorney's fees and attorney's fees are GRANTED in the amount of $50,000.00 and costs are GRANTED in the amount of $5,000.00.

IT IS SO ORDERED.

Dated this 6 day of February, 2019.

DISTRICT COURT JUDGE SW

Submitted by:

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Attorney for Plaintiffs

Exhibit 2

ORD

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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

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

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

(Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

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

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

Fee Agreement

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

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

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

(Def. Exhibit 27).

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

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

Constructive Discharge

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

- 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

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

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

Id.

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

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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

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

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

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

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

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

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

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

3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or 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.

4. A lien pursuant to:

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

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

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

Implied Contract

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

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

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

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

Amount of Fees Owed Under Implied Contract

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

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

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

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

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

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

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[2]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.[3]

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.[4] 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.[5] 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.[6]

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

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[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

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

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

Costs Owed

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

Quantum Meruit

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

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

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

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

1. Quality of the Advocate

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

2. The Character of the Work to be Done

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

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

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, 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;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

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

CONCLUSION

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

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

ORDER

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

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

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

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

Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 3

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Thu 12/28/2017 3:21 PM

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

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

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

Sent from my iPad

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

> Bob,
>
> I am available tomorrow for a call.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406
>
> ---
>
> **From:** Robert Vannah <rvannah@vannahlaw.com>
> **Sent:** Thursday, December 28, 2017 3:07:06 PM
> **To:** James R. Christensen
> **Cc:** John Greene; Daniel Simon
> **Subject:** Re: Edgeworth v. Viking
>
> I took the liberty of calling Bank Of Nevada and left a message for Sarah Guindy, asking her if we can do exactly what we seem to be agreeing to. I left her my phone number, and am expecting a call back. If she thinks we can do that, we can set up a conference call between you and me and work out the details with her. This seems to be the best way to get this money distributed to Danny and to the clients.
>
> Sent from my iPad
>
> On Dec 28, 2017, at 2:03 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

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

How about Bank of Nevada?

Jim

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

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

I'm not suggesting I have concerns over Danny stealing the money, I'm simply relaying his clients' statements to me. I have an idea. Why don't we set up a separate trust account dedicated to these clients. Any disbursement requires 2 signatures, Danny's and mine. Have Danny, expeditiously, determine exactly what his lien claim is going to be. We recognize that there will be an undisputed amount for his incurred costs and time since the last invoice. We also recognize that the clients are entitled to all the funds immediately after the checks clear, exclusive of Danny's undisputed final billing for fees and costs, since the last statement, and his claimed lien. We were under the impression that the 2 checks totaling $6,000,000 were cashiers checks. We were wrong apparently; we got that impression from the settlement agreement. In any event, I recognize that it takes time to clear the checks. The damage to the clients in delaying this disbursement is the high interest loans made by the clients to fund the underlying litigation. The pressing concern here is to get the clients, and Danny, their funds which are not in dispute. Agreed? I'm not commenting on the merits of Danny's claim. I just want to get the majority of the money distributed to both Danny and the clients. There is a fiduciary duty to get that done expeditiously. The "disputed lien" funds will be adequately segregated and protected. We are not going to allow this case to be decided in a summary interpleader action. Whatever bank we use is fine with me, I just want it done ASAP.

Sent from my iPad

On Dec 27, 2017, at 1:14 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Please see attached
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Tuesday, December 26, 2017 12:18:41 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? $4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.

Happy Holidays!

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

---------- Forwarded message ----------
From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

> Thanks for returning my call. You advised that the clients were unable to execute the settlement

checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!

<image001.jpg>

--
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--
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jgreene@vannahlaw.com

<Ltr to Mr. Vannah.pdf>

<Zurich_Check[1].pdf>

<Zurich_Check[1].pdf>

<Email string.pdf>

Exhibit 4

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 18, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

So from the moment Danny agreed -- you got to listen to your husband, Mr. Edgeworth, testify -- I think it's been a few weeks now -- over the course of a series of days. Do you remember that testimony?

A Yes.

Q And Mr. Edgeworth and you are 50-50 owners -- I may be using the incorrect word -- and both the plaintiffs that Danny represented in the underlying litigation against Lange and Viking; correct?

A Yes.

Q You agree with everything your husband testified to?

A Yes.

Q All right. And you --

A I've heard it. I don't know -- I don't know what you are referring to specifically, Mr. Christiansen.

Q Well, I'll give you an easy example. You just told the Court you think or you -- I think you said your best guess is that you may owe Danny another $144,000. Remember that?

A Yes.

Q And you remember me questioning your husband; correct?

A Yes.

Q You remember your husband conceding to me that he had nothing, no information whatsoever to indicate any of the bills presented, superbill or otherwise, were false. Do you remember

Q Do you remember him not, and I want to be clear, not testifying consistent with the physical aspect of how this meeting took place that you gave, the version you gave this morning?

A I do not remember that.

Q Brian Edgeworth another never testified, told this Judge that Danny leaned against a desk between you and some chair, between his desk and some chairs and sort of leered over you as you described this morning?

A I remember it like it was yesterday.

Q Ma'am, that's not my question. You sat here for a week and your husband testifying, and isn't it true Mr. Edgeworth did not recite that same version?

A I don't recall.

Q Okay. Well, do you remember Mr. Edgeworth telling me that he felt threatened?

A Yes.

Q And, you know, if we were to compare sizes, Mr. Simon is probably closer to you then to Brian's size; right?

A Fair.

Q And so Danny Simon wasn't physically threatening anybody, was he?

A Physically, no.

Q All right. And the words, I wrote it down. You had lots of words for that meeting. Let me get to them.

Terrified -- I'm just going to go through them with you. Okay? Terrified, fair?

A Fair.

Q Shocked?

A Yes.

Q Shaken?

A Yes.

Q Taken aback?

A Yes.

Q Threatened?

A Yes.

Q Worried?

A Yes.

Q Blackmailed?

A Yes.

Q You thought he was trying to convert your money? Take your money? Right?

A Yes.

Q You actually sued him, and that was one of the claims is that he was converting your money; right?

A I wasn't worried about conversion at the time because I was worried about the settlement deal not happening.

Q Flabbergasted is another word?

A Yes.

Q And can we agree that nowhere in the email

communications between November the 17th and when Mr. Simon is notified on November the 30th that the Vannah firm is involved do you use any of those words in any of your emails?

A That's how I felt inside.

Q No, ma'am, just listen to my question. It's a very particular question.

Can we agree all of those words, none of them make their way into any email you typed?

A I was being polite.

Q Is that a yes? They're not in your emails; correct?

A Correct.

Q In fact, in your emails, and we'll go through them, but in your emails are these promises that you're going to sit down and meet with Danny; right?

A [No audible response.]

Q Right?

A Yes.

Q And at the time you put that in the email, you knew you weren't going to; correct?

A I didn't know that for sure, but I was stalling.

Q Ma'am, that's not what you told the Judge this morning. You told the Judge you made a determination after you had talked to your friend on the 17th or 18th of November --

I forgot that lady's name, the out-of-state lawyer.

A Lisa Carteen.

Q Carteen. T with a T, Carteen?
A Uh-huh.
Q -- Ms. Carteen that you were in no way going to sit in Danny's office without a lawyer; right?
A No. I said I wasn't going to go there by myself and sit in front of Danny Simon and get bullied into signing something.
Q Okay. Bullied. That's another term you used; right?
A [No audible response.]
Q Do you remember Brian -- Mr. Edgeworth's testimony that he was never shown a document on that day, the 17th, that he was to sign? Do you remember that?
A Yes.
Q Okay. Do you remember your testimony?
A [No audible response.]
Q Yes?
A Yes.
Q Tell me what the document Mr. Simon presented to you to sign looked like.
A I didn't see the document. He alluded to the document behind him on the desk, like this, that he was -- he had it if we were ready to sign it, and so I didn't see the actual document.
Q So in the opening --
You were here for the opening?

A Yes.

Q -- when your lawyer stood up and said that there was a document that Mr. Simon put in front of you, tried to force you to sign, that that factually was a little bit off?

A I didn't hear that, but, yes, that would be factually off. There wasn't a document presented to us there, no.

Q It's a little bit like -- do you know what the word outset means, ma'am?

A Yes.

Q Outset means the beginning; correct?

A Correct.

Q You saw all of Brian's affidavits; correct?

A Yes. Which ones? I don't know which ones you're referring to.

Q 2/2, 2/12 and 3/15. He signed three affidavits in support of the -- this litigation for attorneys' fees. You've seen them all?

A I've seen them at some point.

Q Now, you know that in each one of them he said, At the outset of the arrangement with Mr. Simon, Danny agreed to 550 an hour; correct?

A Correct.

Q Were you here last week when your husband couldn't understand what the word outset meant?

A He thought outset meant --

Q Ma'am, just answer my question.
A -- the very first day.
Q Did you -- were you here when he didn't understand, to my questions, what the word outset meant?
A Yes.
Q Okay. Outset, you know means the first day; right?
A I would interpret it to mean the beginning, which meant at the beginning of the case. So the outset to me would be at the beginning of the case, so sometime at the beginning of the case. The outset doesn't necessarily mean the very first day.
Q Okay. Isn't that kind of like revisiting history when your husband says, I retained Danny on the 27th of May, and from the outset, he agreed to 550 an hour? That's what all of those affidavits said?
A The outset means the beginning, and that was the beginning.
Q Ma'am, isn't it true that it's not until I confront your husband with the email from Danny Simon that says, Let's cross that bridge when we come to it, relative to what he's going to get paid that Mr. Edgeworth and you then have to change your story for the outset to become June 10th as opposed to May 27th?
A No.
Q Prior to me confronting Mr. Edgeworth with the email

that said, We'll cross that bridge when we come to it, had he ever in writing said June 10th is the day Danny Simon told him 550 an hour?

A I don't know.

Q Okay. The words you used, ma'am, and I won't go back through them all, when you talked to Ms. Carteen --

Did I get that right?

A Yes.

Q -- were those the words you use to her when describing Mr. Simon?

A I'm sorry. Which -- what do you mean?

Q Terrified? Blackmailed? Extorted?

A I used blackmailed, yes.

Q You used those words to her?

A And I used extortion, yes.

Q Similarly, when you talked to Justice Shearing in February of 2018, were those the words you used?

A I don't think they were that strong. I just told her what happened. Lisa is more of a closer friend of mine. So I was a little bit more open with her.

Q And you were talking to Lisa as your friend, not your lawyer; right?

A Correct.

Q Okay. And if I get the gist of what you were saying is that you were of the belief that if you didn't sign the

Q You accused him of converting your money; correct?
A Yes.
Q Before you even had the money; correct?
A Yes.
Q Before the money was in a bank account; right?
A Yes.
Q Okay. In that lawsuit, you sought to get from him personally and individually, from him and his wife, Elena, your friend? You wanted punitive damages; right?
A Yes. I didn't ask --
Q Yes?
A -- to be in this position?
Q Just yes? Just yes?
A Yes.
Q Okay.
MR. GREENE: Your Honor, object. Again --
MR. CHRISTIANSEN: Most certainly did.
MR. GREENE: Elena wasn't sued.
MR. CHRISTIANSEN: Well, it's the family --
THE COURT: Well, I mean, it's Daniel Simon as an individual and the law office of Danny Simon, isn't it?
MR. GREENE: Yes, but we didn't name his wife as a defendant.
BY MR. CHRISTIANSEN:
Q Is Elena married to Danny?

A Yes.

Q Okay. So if you're trying to get punitive damages from a husband individually, you're trying to get the family's money; right?

MR. GREENE: Same objection.

THE COURT: And, Mr. Christiansen, the lawsuit is against Danny Simon as an individual and the law office of Danny Simon. So that's who they sued.

BY MR. CHRISTIANSEN:

Q You made an intentional choice to sue him as an individual as opposed to just his law office, fair?

A Fair.

Q That is an effort to get his individual money; correct? His personal money as opposed to like some insurance for his law practice?

A Fair.

Q And you wanted money to punish him for stealing your money, converting it; correct?

A Yes.

Q And he hadn't even cashed the check yet; correct?

A No.

Q All right. He couldn't cash a check because Mr. Vannah and him had to make an agreement. Mr. Vannah I figured out how to do it I think at a bank, right, how to do like a joint --

MR. VANNAH: Yeah. We opened a trust account for, both he and I alone, so that neither one of our trust accounts got it, but it went into a trust account by the Bar rules.

THE COURT: Okay.

MR. VANNAH: If that helps.

MR. CHRISTIANSEN: It does. Thank you, Mr. Vannah.

MR. VANNAH: Sure.

BY MR. CHRISTIANSEN:

Q That's what happened; right? That's where the money got deposited?

A Yes.

THE COURT: And just so I'm clear about that, is the whole $6 million in that trust account?

MR. VANNAH: Yeah. I can help with that.

MR. CHRISTIANSEN: Me too, but go ahead, Bob.

THE COURT: Okay.

MR. VANNAH: So there's $6 million that went into the trust account.

THE COURT: Okay.

MR. VANNAH: Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get, and then we gave the clients the remainder.

THE COURT: So the six --

MR. VANNAH: In other words, he chose a number that -- in other words we both agreed that, look, here's the

deal. Odds you can't take and keep the client's money, which is about 4 million. So I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account.

THE COURT: Okay.

MR. VANNAH: And the remainder of the money went to the Edgeworths.

THE COURT: Okay. So there's about 2.4 million or something along those lines in the trust account?

MR. VANNAH: Yeah. There's like 2.4 million minus the 400,000 that was already paid. So there's a couple million dollars in the account.

THE COURT: Okay.

MR. GREENE: It's 1.9 and change, Your Honor.

THE COURT: Okay. Mr. --

MR. CHRISTIANSEN: Well, that's true. Mr. Greene was correct.

THE COURT: Yeah, just so I was sure about what happened with that. And then the rest of the money was dispersed because I heard her testifying about paying back the in-laws and all this stuff. So they paid that back out of their portion, and the disputed portion is in the trust account?

MR. VANNAH: Right. So they took that money, paid back the in-laws on everything so they wouldn't keep the

interest running.

THE COURT: Right.

MR. VANNAH: And then the money that we're disputing --

THE COURT: Is in the trust account?

MR. VANNAH: -- is held in trust, as the Bar requires.

THE COURT: Okay.

MR. CHRISTENSEN: And, Your Honor, just to follow up on that, the amount that's being held in trust is the amount that was claimed on the attorney lien.

THE COURT: Okay.

MR. VANNAH: That's correct.

MR. CHRISTENSEN: And also any interest that accrues on the money held in the trust inures to the benefit of the clients.

THE COURT: Right. I was aware of that. Yes. It would go to the Edgeworths; right?

MR. VANNAH: Exactly.

MR. CHRISTENSEN: That's correct.

MR. VANNAH: Yeah, that's what we all agree to. Yes. That's accurate.

BY MR. CHRISTIANSEN:

Q Ms. Edgeworth, in time, timingwise, when was the first time you ever looked at one of your husband's

spreadsheets for the calculation of damages?

A I don't know exactly the time. It was a long duration of the case, but, you know, some time during the case.

Q Okay. Is it fair to say you never looked at any of the damages calculations until after the November 17th meeting at Danny Simon's office?

A No.

Q You looked at them before then?

A Yes.

Q Did you see on them, and I can show you, and I'm trying to kind of move it along, where your husband leaves blank spaces that he still owes money for attorneys' fees in October and November?

A Yes.

Q All right. And so that's leading up to when you guys hire Mr. Vannah, and I'll show you just by way of ease.

MR. CHRISTIANSEN: This is 90, Jim.

BY MR. CHRISTIANSEN:

Q -- Mr. Vannah's fee agreement, which is signed by yourself, ma'am? Or is that Brian's signature? I'm sorry.

A That's Brian.

Q And it's dated the 29th of November, 2017?

A Yes.

Q And this is before the Viking -- just in time, this is before the Viking settlement agreement is executed by you

and your husband; correct?

A Yes, the day before.

Q And the Viking settlement agreement says that you're being advised on that agreement by Vannah & Vannah; correct?

A Correct.

Q And you signed it after you hired Vannah & Vannah; correct?

A Correct.

Q And you hired Vannah & Vannah on the 29th, the same day that you're sending Mr. Simon by my count two or three emails saying we're going to sit down as soon as Brian gets back; correct?

A Yes.

Q All right. So you knew you weren't going to sit down with Danny when Brian got back, when you sent those emails; right?

A No.

Q You were just leading Danny along till you got a new lawyer that you could listen to and disregard his advice; correct?

A We hired Vannah & Vannah to protect us from Danny, and we wanted Danny to finish the settlement agreement.

Q And you stopped listening to Danny in terms of following his advice; correct?

A No.

July 6th?

A What is the contents of that?

Q It's a production by Viking. Had you seen it?

A Yes.

Q And then did you see the email where Ms. Ferrel, before your husband and you, before your husband is given the information, puts in big letters, Can you say punitive damages?

A Yes.

Q And that was before Brian even had the information to go through; right?

A What do you mean "the information to go through"? I don't understand what you are asking.

Q Sure. The Viking productions that he went through and worked with his lawyers on.

A The "Viking productions," I don't understand that.

Q Okay. Well, I'll move on to a different area with you.

Do you remember in -- do you agree with all of the assertions made by Mr. Edgeworth and all of the affidavits on behalf of the two entities that sued Mr. Simon?

A Could you please repeat that question.

Q Sure. Mr. Edgeworth signed affidavits in support of this hearing on February the 2nd, February the 12th and March 15th of this year. Did you know that?

A Yes.

Q Did you read those?
A Yes.
Q He signed those as a co-owner of the two entities that sued Mr. Simon; correct?
A Correct.
Q Now, you were the other co-owner; correct?
A Yes.
Q Do you agree with all those statements?
A Yes.
Q You've ratified those statements; correct?
A Yes.
Q All right. Do you agree with the statement he put in the third one that as of September Mr. Simon had been paid in full for all of his work?
A I believe -- yes.
Q Do you agree with him that he put in his third affidavit that Mr. Simon -- I want to tell you exactly right.
Let me stop and back up to -- the 17th is the uncomfortable meeting of November? And that's my word, not yours. I'm sorry. I was trying to make it easy. Is that fair?
A Yes.
Q And after the 17th, you're texting Elena Simon; right? You text her on November the 23rd said, Happy Thanksgiving?

Exhibit 5

DECLARATION AND EXPERT REPORT OF DAVID A. CLARK

This Report sets forth my expert opinion on issues in the above-referenced matter involving Nevada law and the Nevada Rules of Professional Conduct[1] as are intended within the meaning of NRS 50.275, *et seq.* I was retained by Defendant, Daniel S. Simon, in the above litigation. The following summary is based on my review of materials provided to me, case law, and secondary sources cited below which I have reviewed.

I have personal knowledge of the facts set forth below based on my review of materials referenced below. I am competent to testify as to all the opinions expressed below. I have been a practicing attorney in California (inactive) and Nevada since 1990. For 15 years I was a prosecutor with the Office of Bar Counsel, State Bar of Nevada, culminating in five years as Bar Counsel. I left the State Bar in July 2015 and reentered private practice. I have testified once before in deposition and at trial as a designated expert in a civil case. I was also retained and produced a report in another civil case. My professional background is attached as Exhibit 1.

SCOPE OF REPRESENTATION.

I was retained to render an opinion regarding the professional conduct of attorney Daniel S. Simon, arising out of his asserting an attorney's lien and the handling of settlement funds in his representation of Plaintiffs in *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C.

SUMMARY OPINION.

It is my opinion to a reasonable degree of probability that Mr. Simon's conduct is lawful, ethical and does not constitute a breach of contract or conversion as those claims are pled in *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018, in the Eighth Judicial District Court.

BACKGROUND FACTS.

In May 2016, Mr. Simon agreed to assist Plaintiffs in efforts to recover for damages resulting from flooding to Plaintiffs' home. Eventually, Mr. Simon filed suit in June 2016. The case was styled *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C and was litigated in the Eighth Judicial District Court, Clark County, Nevada.

As alleged in the Complaint (*Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018), the parties initially agreed that Mr. Simon would charge $550.00 per hour for the representation. There was no written fee agreement. Complaint, ¶ 9. Toward the end of discovery, and on the eve of trial, the matter settled for $6 million, an amount characterized in the Complaint as having "blossomed from one of mere property damage to one of significant and additional value." Complaint, ¶ 12.

On or about November 27, 2017, Mr. Simon sent a letter to Plaintiffs, setting forth

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[1] The Nevada Rules of Professional Conduct ("RPC") did not enact the preamble and comments to the ABA Model Rules of Professional Conduct. However, Rule 1.0A provides in part that preamble and comments to the ABA Model Rules of Professional Conduct may be consulted for guidance in interpreting and applying the NRPC, unless there is a conflict between the Nevada Rules and the preamble or comments.

additional fees in an amount in excess of $1 million. Complaint, ¶ 13. Thereafter, Mr. Simon was notified that the clients had retained Robert Vannah to represent them, as well. On December 18, 2017, Mr. Simon received two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon."

That same morning, Mr. Simon immediately called and then sent an email to the clients' counsel requesting that the clients endorse the checks so they could be deposited into Mr. Simon's trust account. According to the email thread, in a follow up telephone call between Mr. Simon and Mr. Greene, Mr. Greene informed that the clients were unavailable to sign the checks until after the New Year. Mr. Simon informed Mr. Greene that he was available the rest of the week but was leaving town Friday, December 22, 2017, for a family vacation and not returning until the New Year.

In a reply email, Mr. Greene stated that he would "be in touch regarding when the checks can be endorsed." Mr. Greene acknowledged that Mr. Simon mentioned a dispute regarding the fee and requested that Mr. Simon provide the exact amount to be kept in the trust account until the dispute is resolved. Mr. Greene asked that this information be provided "either directly or indirectly" through Mr. Simon's counsel.

On December 19, 2017, Mr. Simon's counsel, James Christensen, sent an email indicating that Mr. Simon was working on the final bill but that the process might take a week or two, depending on holiday staffing. However, since the clients were unavailable until after the New Year, this discussion was likely moot.

On Saturday evening, December 23, 2017, Plaintiff's counsel, Robert Vannah, replied by email asking if the parties would agree to placing the settlement monies into an escrow account instead of Mr. Simon's attorney trust account. Mr. Vannah indicated that he needed to know "right after Christmas." Mr. Christensen replied on December 26, 2017, reiterating that Mr. Simon is out of town through the New Year and was informed the clients are, as well.

Mr. Vannah then replied the same day indicating that the clients are available before the end of the year, and that they will not sign the checks to be deposited into Mr. Simon's trust account. Mr. Vannah again suggested an interest-bearing escrow account. By letter dated December 27, 2017, Mr. Christensen replied in detail to Mr. Vannah's email, discussing problems with using an escrow account as opposed to an attorney's trust account.

I am informed that following the email and letter exchange, Mr. Simon provided an amended attorneys' lien dated January 2, 2018, for a net sum of $1,977, 843.80 as the reasonable value for his services. Thereafter, the parties opened a joint trust account for the benefit of the clients on January 8, 2018. The clients endorsed the settlement checks for deposit. Due to the size of the checks, there was a hold of 7 business days, resulting the monies being available around January 18, 2018.

On January 4, 2018, Plaintiffs filed a Complaint in District Court, styled *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C (Complaint). The Complaint asserts claims for relief against Mr. Simon: breach of contract, declaratory relief, and conversion.

The breach of contract claim states:

> 25. SIMON's demand for additional compensation other that what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds

is a material breach of the CONTRACT.

26. SIMON'S refusal to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the contract.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definitive timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

As to the third claim for relief for conversion, the Complaint states:

43. SIMON'S retention of PLAINTIFF'S property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFF'S property rights.

ANALYSIS AND OPINIONS.

Breach of Contract

All attorneys' fees that are contracted for, charged, and collected, must be reasonable.[2] An attorney may also face disciplinary investigation and sanction pursuant to the inherent authority of the courts for violating RPC 1.5 (Fees).[3] As such, all attorney fees and fee agreements are subject to judicial review.

Nevada law grants to an attorney a lien for the attorney's fees even without a fee agreement,

> A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. ***In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.***

NRS 18.015(2) (emphasis added).[4] This statute provides for the mechanism to perfect the lien and for the court to adjudicate the rights and amount of the fee. The Rules of Professional Conduct direct the ethical attorney to comply with such procedures. "Law may prescribe a procedure for determining a lawyer's fee. . . . The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure." Model R. Prof. Conduct 1.5 cmt 9 (ABA 2015).

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[2] RPC 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."); *see, also* Restatement (Third) of the Law Governing Lawyers §34 (2000) ("a lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law.").

[3] SCR 99, 101; *see, also* Restatement (Third) of the Law Governing Lawyers §42, cmt b(*v*) (2000) ("A court in which a case is pending may, in its discretion, resolved disputes between a lawyer and client concerning fees for services in that case. . . . Ancillary jurisdiction derives historically from the authority of the courts to regulate lawyers who appear before them.").

[4] *See, also* Restatement (Third) of the Law Governing Lawyers §39 (2000) ("If a client and a lawyer have not made a valid contract providing for another measure of compensation, a client owes a lawyer who has performed legal services for the client the fair value of the lawyer's services").

In this instance, the fact that Mr. Simon has availed himself of his statutory lien right under Nevada law, a lien that attaches to every attorney-client relationship, regardless of agreement, cannot be a breach of contract. Mr. Simon is simply submitting his claim for services to judicial review, as the law not only allows, but requires.

In Nevada, "the plaintiff in a breach of contract action [must] show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach."[5] Here, there is neither breach nor damages arising from Mr. Simon's actions. The parties cannot contract for fees beyond the review of the courts. Mr. Simon cannot even contract for an unreasonable fee, much less charge or collect one. Likewise, Plaintiff has an obligation to compensate Mr. Simon the fair value of his services.

By operation of law, NRS 18.015, and this court's review, is an inherent term of the attorney-client fee arrangement, both with and without an express agreement. And, asserting his rights under the law, as encouraged by the Rules of Professional Conduct ("should comply with the prescribed procedure") does not constitute a breach of contract. Moreover, as discussed below, under these facts, Plaintiffs cannot establish damages and the cause of action fails.

RPC 1.15 requires that the undisputed sum should be promptly disbursed. Based upon the facts as I know them, Mr. Simon has promptly secured the money in a trust account and promptly conveyed the amount of his claimed additional compensation on January 2, 2018, which is prior to the filing of the Complaint and prior to the funds becoming available for disbursement. Thus, Mr. Simon has complied with the requirements of RPC 1.15 and his actions do not support a claimed breach of contract on the alleged basis of delay in paragraphs 26 and 27 of the Complaint.

Conversion

RPC 1.15 (Safekeeping Property) addresses a lawyer's duties when safekeeping property for clients or third-parties. It provides in pertinent part:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.
>
> . . . . .
>
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

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[5] *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919–20 (D.Nev.2006) (*citing Richardson v. Jones*, 1 Nev. 405, 408 (1865)).

Normally, client settlement funds are placed in the attorney's IOLTA trust account (Interest On Lawyer's Trust Account) with the interest payable to the Nevada Bar Foundation to fund legal services. Supreme Court Rules (SCR) 216-221. However, these accounts are for "clients' funds which are nominal in amount or to be held for a short period of time." SCR 78.5(9).

In our case, the settlement amount is substantial and the parties have agreed to place the sums into a separate trust account with interest accruing to the clients. This action comports entirely with Supreme Court Rules:

> **SCR 219. Availability of earnings to client.** Upon request of a client, when economically feasible, earnings shall be made available to the client on deposited trust funds which are neither nominal in amount nor to be held for a short period of time.
>
> **SCR 220. Availability of earnings to attorney.** No earnings from clients' funds may be made available to a member of the state bar or the member's law firm except as disbursed through the designated Bar Foundation for services rendered.

Therefore, Plaintiff's settlement monies are both segregated from Mr. Simon's own funds in a designated trust account, interest accruing to the client, and, by Supreme Court rule, Mr. Simon cannot obtain any earnings.

Conversion has been defined as "'a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.'" [6]

At the time of the filing of the complaint, Mr. Simon had already provided the clients with the amount of his claimed charging lien. Further, at the time of the filing of the Complaint, the clients had not endorsed nor deposited the settlement checks. Even if the funds had cleared the account when the complaint was filed, the monies are still segregated from Mr. Simon's ownership and benefit. He has followed the established rules of the Supreme Court governing the safekeeping of such funds when there is a dispute regarding possession. There is neither conversion of these funds (either in principal or interest) nor damages to Plaintiffs.

Based upon the foregoing, it is my opinion that Mr. Simon's conduct in this matter fails to constitute a breach of contract or conversion of property belonging to Plaintiffs.

AMENDMENT AND SUPPLEMENTATION.

Each of the opinions set forth herein is based upon my personal review and analysis. This report is based on information provided to me in connection with the underlying case as reported herein. Discovery is on-going. I reserve the right to amend or supplement my opinions if further compelling information is provided to me to clarify or modify the factual basis of my opinions.

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[6] *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 542–43 (Nev. 2008).

INFORMATION CONSIDERED IN REVIEWING UNDERLYING FACTS AND IN RENDERING OPINIONS.

In reviewing this matter, and rendering these opinions, I relied on and/or reviewed the authorities cited throughout this report and the following materials:

Doc No.	Document Description	Date
1.	Complaint – (A-18-767242-C) *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*	1/4/2018
2.	Letter from James R. Christensen to Robert D. Vannah, consisting of four (4) pages and referenced Exhibits 1 and 2, consisting of two (2) and four (4) pages, respectively.	12/27/2017
3.	Exhibit 1 to letter - Copies of two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon	12/18/2017
4.	Exhibit 2 to letter - Email thread between and among Daniel Simon, John Greene, James R. Christensen, and Robert D. Vannah, consisting of four (4) pages	12/18/201– 12/26/2017
5.	Notice of Amended Attorneys Lien, filed and served in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	1/2/2018
6.	Deposition Transcript of Brian J. Edgeworth, in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	9/29/2017

BIOGRAPHICAL SUMMARY/QUALIFICATIONS.

Please see the attached curriculum vitae as Exhibit 1. Except as noted, I have no other publications within the past ten years.

OTHER CASES.

1. I was engaged and testified as an expert in:

   Renown Health, et al. v. Holland & Hart, Anderson
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016

   Deposition Testimony August 2016; Trial testimony October 2016

2. I was engaged and prepared a report in:

   Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.
   Case No. A-16-737889-C

Report December 2016.

COMPENSATION.

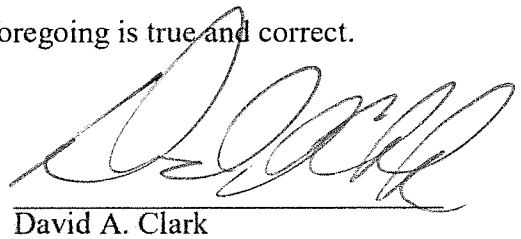
For this report, I charged an hourly rate is $350.00.

DECLARATION

I am over the age of 18 and competent to testify to the opinions stated herein. I have personal knowledge of the facts herein based on my review of the materials referenced herein. I am competent to testify to my opinions expressed in this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 18, 2018



David A. Clark

David A. Clark

Lipson | Neilson
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(702) 382-1512 – fax
(702) 561-8445 – cell
dclark@lisponneilson.com

Biographical Summary

For 15 years, Mr. Clark was a prosecutor in the Office of Bar Counsel, culminating in five years as Bar Counsel. Mr. Clark prosecuted personally more than a thousand attorney grievances from investigation through trial and appeal, along with direct petitions to the Supreme Court for emergency suspensions and reciprocal discipline. Two of his cases resulted in reported decisions, *In re Discipline of Droz*, 123 Nev. 163, 160 P.3d 881 (2007) and *In re Discipline of Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008).

Mr. Clark established the training regimen and content for members of the Disciplinary Boards, which hears discipline prosecutions. He proposed and obtained numerous rule changes to Nevada Rules of Professional Conduct and the Supreme Court Rules governing attorney discipline. He drafted the first-ever Discipline Rules of Procedure that were adopted by a task force and the Board of Governors in July 2014.

Mr. Clark has presented countless CLE-accredited seminars on all aspects of attorney ethics for the State Bar of Nevada, the Clark County Bar Assn., the National Organization of Bar Counsel (NOBC), the National Assn. of Bar Executives (NABE), and the Association of Professional Responsibility Lawyers (APRL). He has spoken on ethics and attorney discipline before chapters of paralegal groups and SIU fraud investigators, as well as in-house for the Nevada Attorney General's office and the Clark County District Attorney.

Mr. Clark received his Juris Doctor from Loyola Law School of Los Angeles following a B.S. in Political Science from Claremont McKenna College. He is admitted in Nevada and California (inactive), the District of Nevada, the Central District of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

Work Experience

August 2015 - present	**Lipson | Neilson** 9900 Covington Cove Drive, Suite 120 Las Vegas, Nevada 89144-7052 *Partner*

November 2000 – July, 2015	**Office of Bar Counsel** **State Bar of Nevada**
January 2011 - July 2015	Bar Counsel
May 2007 - December 2010	Deputy Bar Counsel/ General Counsel to Board of Governors
April 2010 - September 2010	Acting Director of Admissions
January 2007 - May 2007	Acting Bar Counsel
November 2000 - December 2006	Assistant Bar Counsel
May 1997 – October 2000	**Stephenson & Dickinson** *Litigation Associate Attorney*
November 1996 - May 1997	**Earley & Dickinson** *Litigation Associate Attorney*
April 1995 - August 1996	**Thorndal, Backus, Armstrong & Balkenbush** *Litigation Associate Attorney*
May 1992 - March 1995	**Brown & Brown** *Associate Attorney*
September 1990 -	**Gold, Marks, Ring & Pepper** (California) March 1992 *Litigation Associate Attorney*

Education

1987 - 1990	Loyola of Los Angeles Law School *Juris Doctor*
1980 – 1985	Claremont McKenna College (CA) *B.S., Political Science*

Expert Retention and Testimony

1. *Renown Health, et al. v. Holland & Hart, Anderson*
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016
   Deposition Testimony August 2016; Trial testimony October 2016

2. *Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.*
   Case No. A-16-737889-C

   Report December 2016.

Reported Decisions

In re Discipline of Droz, 123 Nev. 163, 160 P.3d 881 (2007) (Authority of Supreme Court to discipline non-Nevada licensed attorney).

In re Discipline of Lerner, 124 Nev. 1232, 197 P.3d 1067 (2008) (Only third Nevada case defining practice of law).

Recent Continuing Legal Education Taught

Office of Bar Counsel 2011 – 2015	Training of New Discipline Board members (twice yearly)
2011 SBN Family Law Conf. March 2011	Ethics and Malpractice
2011 State Bar Annual Meeting June 2011	Breach or No Breach: Questions in Ethics
Nevada Paralegal Assn./SBN April 2012	Crossing the UPL Line: What Attorneys Should Not Delegate to Assistants
2012 State Bar Annual Meeting July 2012	Lawyers and Loan Modifications: Perfect Storm or Perfect Solution
State Bar Ethics Year in Review December 2012	How Not to Leave a Firm
State Bar of Nevada June 2013	Ethics in Discovery
2013 State Bar Annual Meeting July 2013	Practice like an Attorney, not a Respondent

	Ethical Issues in Law Practice Promotion (Advertising)
	Going Solo: Building and Marketing Your Firm
Nevada Attorney General December 2013	Civility and Professionalism
Clark County Bar Assn. June 2014	Legal Ethics: Current Trends
UNLV Boyd School of Law July 2014	Discipline Process
2014 NV Prosecutors Conf. September 2014	Unauthorized Practice of Law
State Bar of Nevada November 2014	Let's Be Blunt: Ethics of Medical Marijuana
State Bar Ethics Year in Review December 2014	Ethics, civility, discipline process
LV Valley Paralegal Assn. Annual Meeting, April 2015	Paralegal Ethics
UNLV Boyd SOL May 2015	Navigating the Potholes: Attorney Ethics of Medical Marijuana
Assn. of Professional Responsibility Lawyers (APRL) February 2016 Mid-Year Mtg.	Patently different? Duty of Disclosure under USPTO and State Law (Panel member)
The Seminar Group July 2017	Medical & Recreational Marijuana in Nevada
State Bar of Nevada SMOLO Institute October 2017	Attorney-Client Confidentiality

Press Appearances

May 8, 2014 Channel 3 (Las Vegas)	Ralston Report. Ethics of attorneys owning medical marijuana businesses.

Practice Areas

Insurance and Commercial Litigation, Legal Malpractice, Ethics, Discipline Defense.

Exhibit 6

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

January 4, 2018

VIA EMAIL: sguindy@bankofnevada.com

Sarah Guindy
Executive Vice President,
Corporate Banking Manager
BANK OF NEVADA
2700 W. Sahara Avenue
Las Vegas, NV 89102

Re: Joint Trust Account

Dear Ms. Guindy:

As requested, please let this letter serve as the written basis for the creation of the subject Joint Trust Account (the Account). A litigated matter was recently settled for a considerable amount of money and Daniel S. Simon, Esq., has asserted an attorneys' lien to a portion of the proceeds. Thereafter, Brian Edgeworth retained Robert D. Vannah, Esq., as his personal counsel and Mr. Simon retained James R. Christensen, Esq., as his personal counsel. The parties and their counsel have agreed that the subject proceeds shall be deposited in the Account pending the resolution this matter. It's the desire of the parties that the account be created, named, and administered as discussed and that the proceeds accrue interest pending the resolution.

If you have any questions, please contact me directly at (702) 853-4338.

Sincerely,

VANNAH & VANNAH

JOHN B. GREENE, ESQ.

JBG/jr
Cc James R. Christensen, Esq. (via email)
Robert D. Vannah, Esq. (via email)

Exhibit 7

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.

Supreme Court Case

No. 77678 consolidated with No. 78176

APPEAL FROM FINAL JUDGMENTS ENTERED FOLLOWING

EVIDENTIARY HEARING

THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

*****

APPELLANTS' OPENING BRIEF

ROBERT D. VANNAH, ESQ.
Nevada State Bar No. 2503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
VANNAH & VANNAH
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Appellants/Cross Respondents
EDGEWORTH FAMILY TRUST;
AND, AMERICAN GRATING, LLC

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.

Supreme Court Case

No. 77678 consolidated with No. 78176

ROUTING STATEMENT

This matter is not presumptively assigned to the Supreme Court as set forth in NRAP 17(a), or presumptively assigned to the Court of Appeals as set forth in NRAP 17(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Rules:

Other Authorities:

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW:

Whether the District Court erred, as a matter of law, when it:

A. Ruled that the Edgeworth Family Trust and American Grating, LLC ("Appellants") constructively discharged Daniel S. Simon (Simon) and The Law Office of Daniel S. Simon, A Professional Corporation (Respondents, referred to hereafter as "Simon") on November 29, 2017;

B. Found that Simon was entitled to quantum meruit compensation of $200,000, versus his hourly rate of $550, for services rendered for Appellants between November 30, 2017, and January 8, 2018;

C. Dismissed Appellants' Amended Complaint pursuant to NRCP 12(b)(5);

D. Found the Appellants' conversion claim was not brought or maintained on reasonable grounds; and,

E. Awarded Simon $50,000 in attorney's fees and $5,000 in costs with no explanation.

II. STATEMENT OF THE CASE

A. PROCEDURAL POSTURE

This is an appeal from a final judgment entered before the Eighth Judicial District Court (hereinafter "District Court") and Order Adjudicating Simon's Attorney's Lien entered November 19, 2018; Order Dismissing the Appellants' Amended Complaint entered November 19, 2018; and, Order awarding Simon $50,000 in attorney's fees and $5,000 in costs entered February 8, 2019.

Appellants filed their Notice of Appeal of the District Court's Order Adjudicating Simon's Attorney's Lien and Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) on December 7, 2018, and filed their Notice of Appeal of the District Court's Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs on February 15, 2019.

B. PUBLIC POLICY IMPLICATIONS OF THE SO-CALLED "SIMON RULE"

This appeal concerns issues involving great public importance: specifically, attorney's liens and fees, but more generally, when greed and coercion can cripple client trust and soil society's expectations of attorney transparency. Unfortunately, throughout the years, the legal profession has amassed a public perception of dishonesty, untowardness, and avarice. Sissela Bok, "Can Lawyers Be Trusted," Univ. of Penn. L. Rev. Vol. 138:913-933 (1990). When the behavior of attorneys

becomes marred by opportunism, dishonesty, and abuse, there is a real risk that society's distrust of lawyers will continue to worsen.

This appeal is about Simon, a Nevada attorney, and the conduct he foisted on Appellants as their attorney. Simon's conduct is called "The Simon Rule." Here it is: 1.) Agreed to represent Appellants for an hourly fee of $550, but then, in contravention of NRPC 1.5(b), failed to ever reduce the fee agreement to writing. *Appellants' Appendix (AA), Vol. 2 000278-000304; 000354-000374.* 2.) Billed and collected over $367,000 in fees for eighteen months by sending periodic invoices to Appellants at that agreed upon rate of $550/hour. *Id., 000278-000304.* 3.) When it was certain that the value of the case increased (from a property damage case worth $500,000 to a products liability matter valued over $6,000,000), demanded more money from Appellants. *Id.* 4.) Couple the demand with threats that caused Appellants to believe that if they didn't acquiesce, he would stop working on their case. *Id.* 5.) When Appellants would not acquiesce and modify the hourly fee agreement to a contingency fee/bonus, used his failure to reduce the fee agreement to writing as a basis to get more money from Appellants via the equitable remedy of quantum meruit and its plus one, a "charging lien. *Id.*

This Court needs to stop The Simon Rule dead in its tracks and prevent all lawyers from behaving this way then, now, and in the future. The Simon Rule incentivizes lawyers to act in a manner that lacks transparency and encourages

practices in direct violation of NRPC 1.5(b) & (c). It also leaves clients with two awful options: acquiesce or litigate. Neither the facts, nor the law, nor practical nor common sense, support The Simon Rule, or the rulings of the District Court that would allow it to either exist or flourish.

III. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW:

A. The Simon Invoices:

Appellants retained Simon to represent their interests following a flood at a residence they owned. *AA, Vol. 2 page 000296, lines 10 through 14; 000298:10-12; 000354-000355.* The representation began on May 27, 2016. *AA, Vol. 2 000278:18-20; 000298:10-12; 000354.* Simon billed Appellants $550 per hour for his work from that first date to his last entry on January 8, 2018. *AA, Vols 1 and* 2 *000053-000267; 000296-000297; 000365-000369.* Damage from the flood caused in excess of $500,000 of property damage, and litigation was filed in the 8th Judicial District Court as Case Number A-16-738444-C. *AA, Vol. 2 000296.* Appellants brought suit against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (Lange and Viking). *AA, Vol. 2 000278:24-27; 000354.*

The District Court held an evidentiary hearing to adjudicate Simon's attorney's lien over five days from August 27, 2018, through August 30, 2018, and

concluded on September 18, 2018. *AA, Vol. 2* 000353-000375. The Court found that Simon and Appellants had an implied agreement for attorney's fees. *Id., at, 000365-000366;000374.* However, Appellants asserted that an oral fee agreement existed between Simon and Appellants for $550/hour for work performed by Simon. *AA, Vols. 2 & 3 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon admitted that he never reduced the hourly fee agreement to writing. *AA, Vol. 3 000515-1:8-25.* Regardless, Simon and Appellants performed the understood terms of the fee agreement with exactness. *AA, Vol. 2 000297:3-9; AA, Vol. 3 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.* How so? Simon sent four invoices to Appellants over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September 19, 2017. *AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon always billed for his time at the hourly rate of $550 per hour ($275 per hour for associates). *AA, Vols. 1 & 2 000053-000267; 000374.* It is undisputed Appellants paid the invoices in full, and Simon deposited the checks without returning any money. *AA, Vol. 2 000356:14-16.* And Simon did not express any interest in taking the property damage claim on a contingency basis with a value of $500,000. *AA, Vol. 2 000297:1-5.*

Simon believed that his attorney's fees would be recoverable as damages in the underlying flood litigation. *AA, Vol. 2 000365-000366.* To that end, he provided computations of damages pursuant to NRCP 16.1, listing how much in fees he'd charged. *Id., 000365:24-26.* At the deposition of Brian Edgeworth on September 29, 2017, Simon voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." *AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1.* Those were hourly fees spoken of and produced by Simon. *Id., 000365:24-27, 000366:1.* Thus we see that through Simon's words and deeds he clearly knew and understood that his fee agreement with Appellants was for $550 per hour…until he wanted more. *Id.*

B. Simon's Inflated Attorney's ("Charging") Lien

Despite having and benefiting from an hourly fee agreement, Simon wanted more and devised a plan to get it. *Id., 000271-000304.* In late Fall of 2017, and only after the value of the flood case skyrocketed past $500,000 to over $6,000,000, Simon demanded that Appellants modify the hourly fee contract so that he could recover a contingency fee dressed poorly as a bonus. *AA, Vol. 2 000298:3-17.*

Simon scheduled a meeting with Appellants in mid-November of 2107. At that meeting, Simon told Appellants he wanted to be paid far more than $550.00 per hour and the $367,606.25 in fees he'd already received from Appellants. *Id.*

Simon said he was losing money and that Appellants should agree to pay him more, like 40% of the $6 million settlement with Viking. *AA, Vols. 2 & 3* 000299:13-22; *000270; 000275*; *000515-1*. Simon then invited Appellants to contact another attorney and verify that "this was the way things work." *AA, Vol. 3 000000515-1, 000515-2, 000516:1-7, 000517:13-25.*

Appellants refused to bow to Simon's pressure or demands. *AA, Vol. 2 000300:16-23*. Simon then refused to release the full amount of the settlement proceeds to Appellants. *Id.* Instead, Simon served two attorney's liens on the case: one on November 30, 2017, and an Amended Lien on January 2, 2018. *Id; AA, Vol. 1 000001; 000006*. Simon's Amended Lien was for a net sum of $1,977,843.80. *Id.* This amount was on top of the $486,453.09 in fees and costs Appellants already paid in full to Simon for all his services and time from May 27, 2016, through September 19, 2017. *AA, Vol. 2 000301:12-13.*

C. Simon's Transparent Attempt to Circumvent NRPC 1.5(b) and NRPC 1.5(c):

Appellants accepted Simon's invitation to consult other attorneys and contacted Robert D. Vannah, Esq. *AA, Vol. 3 000515-2:22-25, 516:1-7.* Thereafter, Mr. Vannah contacted Simon and explained that since the settlement with Viking was essentially completed, it would not be expeditious for Mr. Vannah to substitute into the case or to associate with Simon. *AA, Vol. 3 000490-000491.*

Mr. Vannah told Simon that he was to continue on the case until the

settlement details were all ironed out. *Id.* And those details were clearly minimal, as the lion's share of rigorous and time-consuming work had already been completed: a successful mediation with Floyd Hale, Esq.; an offer from Viking of $6 million to resolve those claims (*Id)*; and, an offer from Lange to settle for $25,000, to which Appellants had consented to accept both no later than November 30, 2017. *AA, Vol. 2 000357:22-23*. The only tasks remaining on the case were ministerial, i.e., signing releases and obtaining dismissals of claims. *Id., 000517:13-25, 000518.*

At the evidentiary hearing, Simon finally admitted that he could not charge a 40% contingency fee because he had not obtained a written contingency fee agreement. *AA, Vol. 3 000515-1*. Regardless, Simon pushed the District Court to adopt The Simon Rule, arguing that since he, the lawyer, didn't reduce the fee agreement to writing, let alone a written contingency fee agreement as required by NRPC 1.5(c), he could get a 40% fee via the equitable remedy of quantum meruit because 40% is the normal charge if a contingent fee agreement existed. *AA, Vol. 1 000045.*

Rather than own up to his mistakes and invited errors in failing to comply with NRPC 1.5(b) by not reducing the fee agreement with Appellants to writing, Simon turned on the spin cycle and blamed Appellants. *Carstarphen v. M*ilsner, 270 P.3d 1251, 128 Nev. 55 (2012). This Court should not reward Simon's invited

errors with an equitable windfall of a $200,000 fee/bonus. *Id.*

D. The Purported Constructive Discharge:

The District Court held that Appellants constructively discharged Simon on November 29, 2017. *AA, Vol. 2 000369:22-25.* The basis was a purported "breakdown in attorney-client relationship," and the lack of communication with regard to the pending legal issues, i.e., the Lange and Viking Settlements. *Id.*, 000361-000364.

Yet, it was Simon who: 1.) Demanded that Appellants change the terms of the fee agreement from hourly to contingent when the case value increased; 2.) Told Appellants he couldn't afford to continue working on their case at $550 per hour; 3.) Threatened to stop working on Appellants' case if they didn't agree to modify the fee agreement; 4.) Encouraged Appellants to seek independent legal counsel; 5.) Sought legal counsel, as well; 6.) Continued to work on Appellants' case through its conclusion with Viking and Lange; and, 7.) Billed Appellants for all of his time from November 30, 2017 (the date after the alleged constructive discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3 000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

The District Court determined the appropriate method to award attorney fees after November 30, 2017, would be via quantum meruit. *AA, Vol. 2 000369:16-27.*

The District Court further decided Simon was "entitled to a reasonable fee in the amount of $200,000." *AA, Vol. 2, 000370-000373.* Appellants contest the District Court's constructive discharge determination and appeal the its determination of the $200,000 amount. Why?

Neither the facts nor the law supports a finding of any sort of discharge of Simon by Appellants, constructive or otherwise. Appellants needed him to complete his work on their settlements, and he continued to work and to bill. *AA, Vols. 1 & 2 000301:4-11; 000159-163, 000263-000265.* Plus, the amount of the awarded fees doesn't have a nexus to reality or the facts. Could there be a better barometer of truth of the reasonable value of Simon's work in wrapping up the ministerial tasks of the Viking and Lange cases for those five weeks than the work he actually performed? No.

When it became clear to him that his Plan A of a contingency fee wasn't allowed per NRPC 1.5(c), Simon adopted Plan Zombie ("Z") by creating a "super bill" that he spent weeks preparing that contains every entry for every item of work that he allegedly performed from May 27, 2016 (plus do-overs; add-ons; mistakes; etc.), through January 8, 2018. *AA, Vols 1 & 2 000053-000267.* It also contains some doozies, like a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265* All of the itemized tasks billed by Simon and Ms. Ferrel (at $550/$275 per hour, respectively) for that slim slot of time total **$33,811.25.** *Id.*

How is it less than an abuse of discretion to morph $33,811.25 into $200,000 for five weeks of nothing more than mop up work on these facts?

E. The District Court's Dismissal of Appellants' Amended Complaint

Settlements in favor of Appellants for substantial amounts of money were reached with the two flood defendants on November 30 and December 7, 2017. *AA, Vol 3 000518-3:22-25, 000518-4:1-6.* But Simon wrongfully continued to lay claim to nearly $1,977,843 of Appellants' property, and he refused to release the full amount of the settlement proceeds to Appellants. *AA, Vols. 1 & 2 000006; 000300.* When Simon refused to release the full amount of the settlement proceeds to Appellants, litigation was filed and served. *AA, Vols. 1 & 2 000014; 000358:10-12.*

Appellants filed an Amended Complaint on March 15, 2018, asserting Breach of Contract, Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair Dealing. *AA, Vol. 2 000305.* Eight months later, the District Court dismissed Appellants' Amended Complaint. *Id., 000384:1-4.* In doing so, the District Court ignored the standard of reviewing such motions by disbelieving Appellants and adopting the arguments of Simon. Therefore, Appellants appeal the District Court's decision to dismiss their Amended Complaint. *AA, Vol. 2 000425-000426.*

F. The District Court's Award of $50,000 in Attorney's Fees and $5,000 in Costs

After Simon filed a Motion for Attorney's Fees and Costs, the District Court awarded Simon $50,000 in attorney's fees and $5,000 in costs. *AA, Vol. 2 000484:1-2.* The District Court again ignored the standard of review, believed Simon over Appellants, and held that the conversion claims brought against Simon were maintained in bad faith. *AA, Vol 2 000482:16-23.* The District Court awarded these fees and costs without providing any justification or rationale as to the amounts awarded. *Id., at 000484.* Appellants appealed the District Court's decision to award $50,000 attorney's fees and $5,000 costs. *AA, Vol 2 000485-000486.*

G. The Amounts in Controversy

Appellants have no disagreement with the District Court's review of all of Simon's invoices from May 27, 2016, through January 8, 2018. Specifically, it reviewed Simon's bills and determined that the reasonable value of his services from May 27, 2016, through September 19, 2017, was $367,606.25. *AA, Vol 2000353-000374.* Appellants paid this sum in full. *Id., 000356.* It also determined that the reasonable value of Simon's services from September 20, 2017, through November 29, 2017, was $284,982.50. *Id., 000366-000369.* Appellants do not dispute this award, either. In reaching that conclusion and award, the District Court

reviewed all, and rejected many, of Simon's billing entries on his "super bill" for a variety of excellent reasons. *Id., 000366-000369; 000374.*

Appellants do, however, dispute the award of a bonus in the guise of fees of $200,000 to Simon from November 30, 2017, through January 8, 2018. In using the same fee analysis the District Court applied above, Simon would be entitled to an additional **$33,811.25**, which reflects the work he actually admits he performed, for a difference of $166,188.75. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* Appellants also dispute the $50,000 in fees and $5,000 in costs awarded to Simon when the District Court wrongfully dismissed Appellants' Amended Complaint, etc.

Finally, Appellants assert that once Simon's lien was adjudicated in the amount of $484,982.50, with Simon still holding claim to $1,492,861.30, he is wrongfully retaining an interest in $1,007,878.80 of Appellants funds. *AA, Vol. 2 000415-000424.* That's an unconstitutional pre-judgment writ of attachment. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969).

IV. PROCEDURAL OVERVIEW:

Simon filed a Motion to Adjudicate his $1,977,843.80 lien on January 24, 2018. *AA, Vols. 1 & 2 000025-000276.* Appellants opposed that Motion. *AA, Vol. 2 000277-000304.* The District Court set an evidentiary hearing over five days on this lien adjudication issue. *AA, Vol. 3* 000488. Appellants argued there was no

basis in fact or law for Simon's fugitive attorney's liens, or his Motion to Adjudicate Attorney's Lien, and that the amount of Simon's lien was unjustified under NRS 18.015(2). *AA, Vol. 2 000284: 21-27.* Appellants further argued that there was in fact an oral contract for fees between Simon and Appellants consisting of $550/hr for Simon's services that was proved through the testimony of Brian Edgeworth and through the course of consistent performance between the parties from the first billing entry to the last. *Id., 000284-000292.*

The District Court found that Simon asserted a valid charging lien under NRS 18.015. *AA, Vol. 2 000358: 18-28.* The District Court also determined that November 29, 2017, was the date Appellants constructively discharged Simon. *Id.* As a result, the District Court found that Simon was entitled to quantum meruit compensation from November 30, 2017, to January 8, 2018, in the amount of $200,000. *Id., 000373-000374.*

A. Simon's Motion to Dismiss Amended Complaint Under NRS 12(B)(5)

Simon filed a Motion to Dismiss Appellants' Amended Complaint pursuant to NRCP 12(b)(5). Appellants opposed Simon's Motion and argued that the claims against Simon were soundly based in fact and law. *AA, Vol. 2 000344-000351.* Appellants also stressed that Nevada is a notice-pleading jurisdiction, which the Amended Complaint had clearly met the procedural requirement of asserting "a

short and plain statement of the claim showing that the pleader is entitled to relief...." *NRCP 8(a)(1). AA, Vol. 2 000343.*

However, the District Court chose to believe Simon and dismissed Appellants' Amended Complaint in its entirety. *AA, Vol. 2 000384.* The District Court noted that after the Evidentiary Hearing and in its Order Adjudicating Attorney's Lien, no express contract was formed, only an implied contract existed, and Appellants were not entitled to the full amount of their settlement proceeds. *Id.* Yet, whose responsibility was it to prepare and present the fee agreement to the clients—Appellants—for signature? Simon's. Whose fault—invited error—was it that it wasn't? Simon's, of course, as he's the lawyer in the relationship. *NRPC 1.5(b).* Regardless, the District Court dismissed Appellants' Amended Complaint. *AA, Vol. 2 000384.* It did so without allowing any discovery and barely eight months after it was filed. *AA, Vol. 2 000381, 000384.*

B. Simon's Motion for Attorney's Fees and Costs

Simon filed a Motion for Attorney's Fees and Costs on December 7, 2018. Appellants opposed Simon's Motion, arguing their claims against Simon were maintained in good faith. *AA, Vol. 2 000437-000438.* They further argued it would be an abuse of discretion for the District Court to award Simon attorney's fees when such fees were substantially incurred as a result of the evidentiary hearing to adjudicate Simon's own lien and conduct, namely his exorbitant $1,977,843.80

attorney's lien. *AA, Vol. 2 000432-000435.* The District Court awarded Simon $50,000 in fees under NRS 18.010 (2)(b), and $5,000 in costs, but providing no explanation in its Order as to the amount of the award. *Id.*

V. STANDARD OF REVIEW:

A. Adjudicating Attorney's Liens - *Abuse of Discretion*:

A district court's decision on attorney's lien adjudications is reviewed for abuse of discretion standard. *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215 (2008). An abuse of discretion occurs when the court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

B. Motions to Dismiss – *de novo* Review

An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). De novo review requires a matter be considered anew, as if it had not been heard before and as if no decision had been rendered previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir.1988).

C. Motions for Attorney's Fees and Costs – *Abuse of Discretion*

A district court's decision on an award of fees and costs is reviewed for an abuse of discretion. *Gunderson v. D.R. Norton, Inc.*, 130 Nev. 67, 319 P.3d 606, 615 (2014); *LVMPD v. Yeghiazarian*, 129 Nev 760, 766, 312 P.3d 503, 508 (2013). An abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

VI. SUMMARY OF ARGUMENTS:

There was no basis in fact or law for the content of Simon's fugitive lien, as its amount was never *agreed upon* by the attorney and the client under NRS 18.015(2). *Id.* In fact, there was a clear fee agreement between Appellants and Simon whereby Simon was to represent Appellants in the flood lawsuit in exchange for an hourly fee of $550. *Id.* Upon settlement of the underlying case, when Simon refused to hand over Appellants' settlement funds post lien-adjudication, effectively retaining $1,492,861.30 of Appellants' undisputed funds, a conversion of Appellants' settlement funds had taken place. And still does today.

Reviewing the District Court's Order Dismissing Appellants' Amended Complaint *de novo*, it is clear the District Court committed reversible legal error when it: 1.) Used the wrong legal standard when analyzing the Amended Complaint; 2.) Failed to accept all of Appellants factual allegations in the complaint as true; and, 3.) Failed to draw all inferences in favor of Appellants. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Rather than follow the law, the District Court did just the opposite here by ignoring the law, believing Simon's story, and drawing all inference in favor of Simon. That can't be allowed to stand.

To make the abuse of discretionary matters worse, when Simon moved for attorney's fees and costs on December 7, 2018, the District Court wrongfully awarded Simon another $50,000 pursuant to NRS 18.010(2)(b), and $5,000 in costs. *AA, Vol. 2 000484:1-2.* The $50,000 award was a manifest abuse of discretion, as it was predicated on the District Court's: 1.) Abuse of discretion by dismissing Appellants' Amended Complaint in the first place by applying the exact opposite standard of ignoring Appellants' allegations and inferences and believing Simon; 2.) Inaccurately finding that Appellants' conversion claim was maintained in bad faith; and, 3.) Failure to consider the *Brunzell* factors. *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991) And in its Order awarding $50,000 in fees

and $5,000 in costs, the District Court provided absolutely no reason or justification for awarding those amounts. *AA, Vol. 2 000481-000484.*

The District Court's finding that there was a constructive discharge was inapposite of the record, ignored material facts, was based on clearly erroneous factual determinations, and was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016). The District Court's $200,000 quantum meruit award of attorney's fees was also an abuse of discretion as it was based on an erroneous finding of constructive discharge: there was a clear contract between Simon and Appellants and no one was discharged. *Golightly v. Gassner,* 125 Nev. 1039 (2009). *AA, Vol. 2 000277-000304.* To the contrary, Simon continued to represent Appellants and bill them handsomely for his time. *Id.*

Further, there was no connection between the District Court's $200,000 award and any of the labor Simon actually did or any value he added after the date of the purported constructive discharge. *AA, Vol. 2 000369-000373.* As Appellants' Opposition to Simon's Motion for Fees and Simon's "super bill" clearly shows, Simon's (and Ms. Ferrel's) actual work performed for Appellants from November 30, 2017, through January 8, 2018, added up to **$33,811.25**. *AA, Vols. 1 & 2 000159-000163; 000263-000265; 000428-000438.*

Finally, quantum meruit is an equitable remedy that requires clean hands to obtain its benefits. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272

(1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008). Here, Simon's hands are anything but clean. *AA Vol. 2 000277-000303*. He, the lawyer, is the one who agreed to represent Appellants at the rate of $550 per hour yet failed to reduce the terms of the fee agreement to writing. *AA, Vol. 2 000290:3-18;000296-000301; 000359:15.* He's the one who billed Appellants $550 per hour for nearly 18 months and collected over $367,606 in fees over that time. *Id., at 000290:3-18; 000296-000301*. He's the one who wanted a higher fee, or a bonus, when the value of the case went up. *Id.*

He's the one who pressured Appellants to agree to a higher fee, or bonus. *Id.* He's the one who told Appellants that he was losing money on their case and couldn't afford to keep working, thus causing deep concern with Appellants that he would, in essence, quit their case before it had concluded. *Id.* He's the one who encouraged Appellants to seek the advice of independent counsel. *AA, Vol. 3 000515-2:22-25; 516:1-7.* He's the one who, despite not having a written contingency fee agreement, served an amended attorney's lien in an amount that's awfully close to 40% (aka a contingency fee) of the Viking settlement.

He's also the one who had weeks to prepare and submit a "super bill" in an amount that measured up to the amount of his lien, yet the amount of his "super bill" ($692,120) fell far short of that lien ($1,977,843.80). *AA, Vols. 1 & 2 000159-000163; 000263-000265*. Despite knowing that he can't have a contingency fee,

and despite the fact that the amount of his "super bill" had come up WAY short, it was Simon who refused, and continues to refuse, to release Appellants' money, even after his lien was adjudicated. With his egregious conduct, with his invited errors, (*see Carstarphen,* 270 P.3d 1251, 128 Nev. 55, 66 (2012)), and with his unclean hands, (*see In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008)), Simon is not entitled to the equitable remedy of quantum meruit, let alone a huge bonus.

VII. ARGUMENTS:

A. The District Court Erred When It Dismissed Appellants' Amended Complaint

A district court's order granting a motion to dismiss for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal because the Appellate Court must construe the pleadings liberally, accept all factual allegations in the complaint as true, and draw all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). Further, the complaint should be dismissed "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Pankopf v.*

Peterson, 124 Nev. 43, 175 P.3d 910 (2008). As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief."

Upon reviewing the District Court's decision to dismiss *de novo,* this Court should reverse the District Court's ruling, as the District Court clearly applied the wrong standard when analyzing Appellants' Amended Complaint. In their Amended Complaint, Appellants included twenty (20) detailed paragraphs outlining Simon's words and deeds supporting each of their claims for relief. *AA, Vol. 2 000305-000316.* Appellants left no doubt as to the basis for their claims, who and what they're against, and why they are making them. Certainly, there could have been no reasonable dispute that Appellants met that minimum standard.

The Amended Complaint alleged that a fee agreement was reached between the parties at the beginning of the attorney/client relationship; that the agreement provided for Simon to be paid $550 per hour for his services; that Simon billed $550 per hour in four invoices for his services; that the Edgeworth's paid Simon's four invoices in full; that Simon demanded far more from the Edgeworth's than the $550 per hour that the contract provided for; and, that Simon breached the contract when he demanded a bonus from the Edgeworth's that totaled close to 40% of a financial settlement, then liened the file when the Edgeworth's wouldn't agree to modify the contract. *Id.*

The District Court erred when it failed to take the Amended Complaint on its face, failed to take the allegations therein as true, and instead relied on external evidence in adopting Simon's version of the facts. *AA, Vol. 2 000376-000384.* The District Court's misuse of the proper standard and this external proof and evidence contravened Nevada law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). As such, Appellants respectfully ask this Court to reverse the District Court's dismissal of the Amended Complaint.

B. The District Court Abused Its Discretion When It Awarded $50,000 in Attorney's Fees and $5,000 in Costs

Pursuant to NRS 18.010, district courts are to interpret the provisions of the statute to award fees "in all appropriate situations,"—that is, *appropriate* situations. NRS 18.010(2)(b). Fees under this section are limited to where a district court finds "that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass..." NRS 18.010(2)(b). And the district court's award of fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). District courts are further

limited: when determining the reasonable value of an attorney's services, the court is to consider the factors under *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33-34 (1969). *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 834 (1985).

In fact, this Court has held that it is an abuse of discretion when district courts fail to consider the *Brunzell* factors when awarding fees. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427-28, (2006) (Finding that a district court's mere observation of certain *Brunzell* elements and mention of the factors is insufficient: the district court must actually consider the *Brunzell* factors when determining the amount of fees to award under NRS 40.655). Further, a district court's award of costs *must* be reasonable. NRS 18.005; *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458, 463(2002).

Here, the District Court's $50,000 award of fees was an abuse of discretion as it was predicated on a clearly errant finding that the Appellants' conversion claim was not maintained on reasonable grounds, was unreasonable, and was made without consideration of the *Brunzell* factors. Further, the District Court's award of $5,000 in Costs was unreasonable, as it was made with absolutely no explanation or justification for the amount awarded. As such, this Court should reverse the District Court's $50,000 fee award and $5,000 in costs.

C. The District Court Abused Its Discretion When It Awarded $200,000 in Attorney's Fees Under Quantum Meruit

A district court's determination of the amount of attorney's fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). Here, the District Court's award of $200,000 in attorney's fee based on quantum meruit was predicated on the clearly erroneous determination that Appellants constructively discharged Simon. *AA, Vol. 2 000360:23-28, 361-364:1-2.* That finding was improper and an abuse of discretion, as the District Court based its determination on a clearly erroneous factual determination which was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

For example, Simon conceded that: 1.) He never withdrew from representing Appellants; 2.) Simon *himself* encouraged Appellants to speak with other attorneys; 3.) Simon spoke with an attorney either before or after he met with Appellants on November 17, 2017; 4.) Mr. Vannah instructed Simon that Appellants needed Simon to continue working on the case through its conclusion; and, 5.) Simon continued to work on behalf of Appellants and billed them an additional $33,811.25 in fees from November 30, 2017, through January 8, 2018. *AA Vols 1 & 2 000159-000163; 000263-000265.*

Under no logic or reason whatsoever could Simon's and Appellants' relationship be viewed as having "broken down" to the point where Simon was "prevented from effectively representing" them. *See Rosenberg v. Calderon Automation, Inc.*, 1986 WL 1290 (Court of Appeals, Ohio 6th Dist. 1986). He DID continue to represent Appellants effectively and billed them accordingly and handsomely...at $550 per hour. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* The District Court's quantum meruit analysis, which stemmed from an erroneous finding of constructive discharge, was unwarranted, an abuse of discretion, and should be reversed.

An award of fees must also be tempered by "reason and fairness." *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). This $200,000 award is not fair or reasonable under any circumstances. The District Court had already twice looked to Simon's invoices and utilized $550 per hour to determine Simon's reasonable fee (the four original invoices and from September 20 to November 29, 2017). *AA Vol. 2 000353-000374.* For the adjudication for any fee from November 30, 2017, through January 8, 2018, the only fair and proper analysis would consistently focus on the *actual work performed and billed* by Simon (and Ms. Ferrel). Yet, as one can clearly see, the District Court didn't even glance in that direction. *Id., 000353-000374.*

The District Court was also silent on the *timing* of Simon's labor. *AA Vol. 2 000370-000372.* The District Court must describe the work Simon performed following the alleged discharge, and that didn't happen. *AA Vol. 2 000371.* Rather, the "ultimate result" referenced (the litigation and settlements) had already been completed, or either agreed to in principle, before any alleged constructive discharge, or merely required ministerial tasks to complete. *Id., 000356:22-24, 000357:12-24.*

In the section of the Order labelled "Quantum Meruit," there is also no evidence offered or reasonable basis given that Simon did anything of value for the case after November 29, 2017, to justify an additional $200,000 "fee" for five weeks of work. Clearly, the District Court's award of fees was not tempered by "reason and fairness." Instead, it was a gift to one with unclean hands.

The fair, reasonable, and appropriate amount of Simon's attorney's lien in this case from November 30, 2017, through January 8, 2018, should be calculated in a consistent manner ($550 per hour worked/billed) as previously found from May 27, 2016, through November 29, 2017. *Id., 000353-000374.* Instead, the District Court came up with the $200,000 number seemingly out of nowhere, rather than awarding the $33,811.25 in fees for the actual work performed during that time frame. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* Therefore, this Court should reverse the $200,000 fee/bonus award.

VIII. CONCLUSION/ RELIEF SOUGHT:

The District Court committed clear and reversible error when it applied the wrong standard in considering Simon's Motion to Dismiss. When it should have considered all of Appellants' allegations and inferences as true, the District Court did just the opposite and believed Simon.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $50,000 in fees and $5,000 in costs while dismissing Appellants' Amended Complaint, a pleading that never should have been dismissed to begin with. Even so, these fees were awarded without the requisite analysis that Nevada law requires.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and never acted as such, at least through the conclusion of the flood litigation. Instead, he continued to work the case through January 8, 2018, continued to represent Appellants, completed the ministerial work to close out the flood case, and billed for all his efforts.

Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992);

Truck Ins. Exchange v. Palmer, 124 Nev. 59 (2008). As argued throughout, Simon's hands are filthy, as The Simon Rule (and conduct) clearly demonstrates.

Appellants respectfully request this Court to: 1.) REVERSE the District Court's decisions to Dismiss Appellants' Amended Complaint issued on November 19, 2018, and allow Appellants to move on with discovery and jury trial; 2.) REVERSE the District Court's award of $50,000 in fees and $5,000 in costs in its Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs from February 8, 2019; and, 3.) REVERSE the District Court's award of fees of $200,000 in its Decision and Order on Motion to Adjudicate Attorney's Lien on November 19, 2018.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because: This brief has been prepared in a proportionally spaced typeface using Word 2019, in 14 point Times New Roman font; and, complies with NRAP 32(a)(7)(c), in not exceeding 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which

requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of August, 2019.

VANNAH & VANNAH

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Las Vegas, Nevada 89101
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CERTIFICATE OF SERVICE

Pursuant to the provisions of NRAP, I certify that on the 8th day of August, 2019, I served **APPELLANTS' OPENING BRIEF** on all parties to this action, electronically, as follows:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, P.C.
601 S. 6th Street
Las Vegas, NV 89101

An Employee of VANNAH & VANNAH

Exhibit 8

November 29, 2017

VIA FACSIMILE: (702) 364-1655

Daniel S. Simon, Esq.
LAW OFFICE OF DANIEL S. SIMON
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101

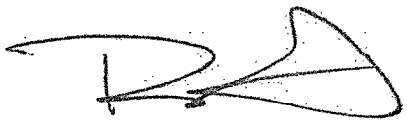
RE: Letter of Direction

Dear Mr. Simon:

Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq., and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc.

Thank you for your understanding and compliance with the terms of this letter.

Sincerely,



Brian Edgeworth

Exhibit 9

ATLN
DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Telephone (702) 364-1650
lawyers@simonlawlv.com
Attorneys for Plaintiffs

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.; Plaintiffs, vs. LANGE PLUMBING, L.L.C.; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X

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

determined.

The Law Office of Daniel S. Simon claims a lien for a reasonable fee for the services rendered by the Law Office of Daniel S. Simon on any settlement funds, plus outstanding court costs and out-of-pocket costs currently in the amount of $80,326.86 and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution. The above amount remains due, owing and unpaid, for which amount, plus interest at the legal rate, lien is claimed.

This lien, pursuant to N.R.S. 18.015(3), attaches 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.

Dated this 30th day of November, 2017.

THE LAW OFFICE OF DANIEL S. SIMON,
A PROFESSIONAL CORPORATION

DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, Nevada 89101

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

DANIEL S. SIMON, being first duly sworn, deposes and says:

That he is the attorney who has at all times represented EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC., as counsel from May 1, 2016, until present, in its claims for damages resulting from the April 16, 2016, sprinkler failure that caused substantial damage to the Edgeworth residence located at 645 Saint Croix Street, Henderson, Nevada.

That he is owed for attorney's fees for a reasonable fee for the services which have been rendered for the client, plus outstanding court costs and out-of-pocket costs, currently in the amount of $80,326.86, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution of 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. That he has read the foregoing Notice of Attorney's Lien; knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

DANIEL S. SIMON

SUBSCRIBED AND SWORN
before me this 30 day of November, 2017

TRISHA TUTTLE
Notary Public State of Nevada
No. 08-8840-1
My Appt. Exp. June 19, 2018

Notary Public

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 30th 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:

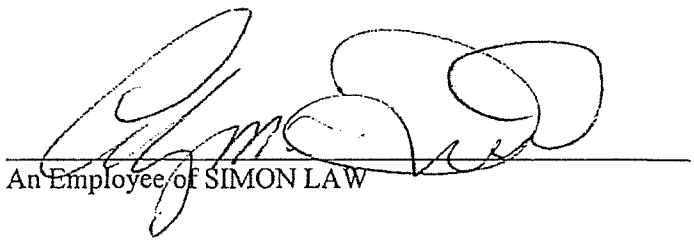
Theodore Parker, III, Esq.
PARKER NELSON & ASSOCIATES
2460 Professional Court, Ste. 200
Las Vegas, NV 89128
Attorney for Defendant
Lange Plumbing, LLC

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

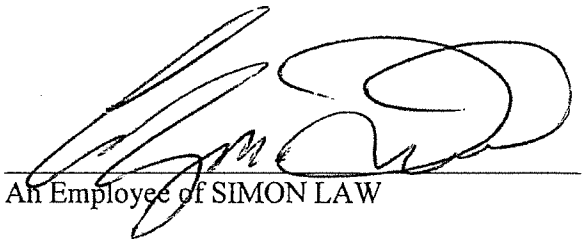


An Employee of SIMON LAW

CERTIFICATE OF MAIL

I hereby certify that on this 1st day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Brian and Angela Edgeworth
645 Saint Croix Street
Henderson, Nevada 89012



An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF MAIL

I hereby certify that on this 15th day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing NOTICE OF ATTORNEY'S LIEN on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Bob Paine
Zurich North American Insurance Company
10 S. Riverside Plz.
Chicago, IL 60606
Claims Adjustor for
Zurich North American Insurance Company

Daniel Polsenberg, Esq.
Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

Exhibit 10

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING ENTITIES" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and VIKING GROUP, INC. (the "VIKING ENTITIES") and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners,

employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. The VIKING ENTITIES will pay PLAINTFFS Six Million Dollars and Zero-Cents ($6,000,000) within 20 days of PLAINTIFFS' execution of this AGREEMENT, assuming resolution of the condition set out in § III.D below. The $6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING ENTITIES with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to the VIKING ENTITIES upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING ENTITIES (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the $6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the VIKING ENTITIES by Lange Plumbing, LLC. Alternatively, this condition would be satisfied in the event that Lange Plumbing, LLC voluntarily dismisses all claims with prejudice against the VIKING ENTITIES and executes a full release of all claims, known or unknown.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY

hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against the VIKING ENTITIES, by way of PLAINTIFFS Complaint and any amendments thereto.

V. MUTUAL RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge the VIKING ENTITIES and any of its affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. Reciprocally, in consideration of the settlement payment and promises described herein, the VIKING ENTITIES, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge PLAINTIFFS and any of PLAINTIFFs' affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.C. This AGREEMENT shall be effective as a bar to all claims, relatining to or arising from the INCIDENT or the SUBJECT ACTION, which PLAINTIFFS may

have against the VIKING ENTITIES, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

C. Reciprocally, this AGREEMENT shall be effective as a bar to all claims, relatining to or arising from the INCIDENT or the SUBJECT ACTION, which the VIKING ENTITIES may have against PLAITNIFFS, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, the VIKING ENTITIES and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

D. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and the VIKING ENTITIES and their related persons and entities.

E. PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and the VIKING ENTITIES each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify the VIKING ENTITIES and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

C. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

E. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

F. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES

hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

G. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel. For PLAINTIFFS, that independent attorney is Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah.

H. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

I. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

J. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this 1ST day of DECEMBER, 2017

BRIAN EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

DATED this 1 day of December, 2017

ANGELA EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this _____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

Exhibit 11

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

To:James R. Christensen <jim@jchristensenlaw.com>;

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? $4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.
>
> Happy Holidays!
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

---------- Forwarded message ----------
From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

> Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!
>
> <image001.jpg>

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

From: Daniel Simon
Sent: Monday, December 18, 2017 11:03 AM
To: John Greene <jgreene@vannahlaw.com>
Cc: Daniel Simon <dan@simonlawlv.com>
Subject: Edgeworth v. Viking

I have received the settlement checks. Please have the client's come in to my office to sign so I can promptly put them in my trust account. Thanks!!

DANIEL S. SIMON
ATTORNEY AT LAW
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655
DAN@SIMONLAWLV.COM

Exhibit 12

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada

December 27, 2017

Via E-Mail

Robert D. Vannah
400 S. 7th Street
Las Vegas, NV 89101
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Bob:

I look forward to working with you to resolve whatever issues may exist concerning the disbursement of funds in the Edgeworth case. To that end, I suggest we avoid accusations or positions without substance.

This letter is in response to your email of December 26, 2017. I thought it best to provide a formal written response because of the number of issues raised.

Please consider the following time line:

- On Monday, December 18, 2017, Simon Law picked up two Zurich checks in the aggregate amount of $6,000,000.00. (Exhibit 1; copies of checks.)

- On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called Mr. Greene to arrange check endorsement. Mr. Simon left a message.

- On Monday, December 18, 2017, Mr. Greene returned the call and spoke to Mr. Simon. (Exhibit 2; confirming email string.)

- During the Monday call, Mr. Simon advised that he would be on a holiday trip and unavailable beginning Friday, December 22, 2017, until after the New Year. Mr. Simon asked that the clients endorse the checks prior to December 22nd. (Exhibit 2.)

- During the Monday call, Mr. Greene told Mr. Simon that the clients would not be available to sign checks until after the New Year. (Exhibit 2.)

- During the Monday call, Mr. Greene stated that he would contact Simon Law about scheduling endorsement. (Exhibit 2.)

- On Friday, December 22, 2017, the Simon family went on their holiday trip.

- On Saturday, December 23, 2017, at 10:45 p.m., an email was sent which indicated that delay in endorsement was not acceptable. The email also raised use of an escrow account as an alternative to the Simon Law trust account. (Exhibit 2.)

- On Tuesday, December 26, 2017, I responded by email and invited scheduling endorsement after the New Year, and discounted the escrow account option. (Exhibit 2.)

In response to your December 26, 2017 email, please consider the following:

1. The clients are available until Saturday. This is new information and it is different from the information provided by Mr. Greene. Regardless, Mr. Simon is out of town until after the New Year.

2. Loss of faith and trust. This is unfortunate, in light of the extraordinary result obtained by Mr. Simon on the client's behalf. However, Mr. Simon is still legally due a reasonable fee for the services rendered. NRS 18.015.

3. Steal the money. We should avoid hyperbole.

4. Time to determine undisputed amount. The time involved is a product of the immense amount of work involved in the subject case, which is clearly evident from the amazing monetary result, and the holidays. And, use of a lien is not "inconsistent with the attorney's professional responsibilities to the client." NRS 18.015(5).

5. Time to clear. The checks are not cashier's checks. (Exhibit 1.) Even a cashier's check of the size involved would be subject to a "large deposit item hold" per Regulation CC.

6. Interpleader. The interpleader option - deposit with the Court - was offered as an alternative to the Simon Law trust account, to address the loss of faith issue. The cost and time investment is also minimal.

7. Escrow alternative. Escrow does not owe the same duties and obligations as those that apply to an attorney and a trust account. Please compare, *Mark Properties v. National Title Co.*, 117 Nev. 941, 34 P.3d 587 (2001); with, Nev. Rule of Professional Conduct 1.15; SCR 78.5; etc. The safekeeping property duty is also typically seen as non-delegable.

   To protect everyone involved, the escrow would have to accept similar duties and obligations as would be owed by an attorney. That would be so far afield from the usual escrow obligations under *Mark*, that it is doubtful that an escrow could be arranged on shorter notice, if at all; and, such an escrow would probably come at great cost.

   We are not ruling out this option, we simply see it as un-obtainable. If you believe it is viable and wish to explore it further, please do so.

8. File suit ourselves. An independent action would be far more time consuming and expensive than interpleader. However, that is an option you will have to consider on your own.

9. Fiduciary duty. Simon Law is in compliance with all duties and obligations under the law. *See, e.g.*, NRS 18.015(5).

10. Client damages. I can see no discernable damage claim.

Please let me know if you are willing to discuss moving forward in a collaborative manner.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon
enclosures

C1-10269-I (07/16)

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

CLAIM NO.-SUB NO.	DATE ISSUED	ISSUING OFFICE	
9620221400-001	12/8/2017	HO	
POLICY NO.	DATE OF LOSS	ISSUED BY	PAYMENT SERVICE DATES
GLO-8250029-04	4/9/2016	8X	

INSURED

The Viking Corporation

NATURE OF PAYMENT

NO. 299 0007621

Settlement of all Fire sprinkler related claims

$ 288,572.00

TAX ID 880354871

VALID	PAY	KD	AMOUNT
PRDPD	60	CLM	$288,572.00

NON-NEGOTIABLE

THIS IS NOT A NEGOTIABLE INSTRUMENT

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

56-1544
441

NO. 299 0007621

CLAIM NO. 9620221400-001

CLAIM HANDLING OFFICE NO. 26

EXACTLY $288,572**** DOLLARS AND 00** CENTS

VOID AFTER 180 DAYS

DATE	AMOUNT
12/8/2017	$288,572.00

PAY TO THE ORDER OF Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgworth; American Grating, LLC; and the Law Office of Daniel Simon.

TO: JPMORGAN CHASE BANK, N.A.
COLUMBUS, OH

Christine K
Fitz

⑈ 299000762 1⑈ ⑆044114543⑆ 528291201⑈

C1-10269-I (07/16)

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

CLAIM NO.-SUB NO.	DATE ISSUED	ISSUING OFFICE	
9260157452 -001	12/8/2017	HO	
POLICY NO.	DATE OF LOSS	ISSUED BY	PAYMENT SERVICE DATES
AUC-0144193-00	1/1/2016	8X	
INSURED	Viking Corporation		

NATURE OF PAYMENT

NO. 299 0007622

Settlement of all Fire sprinkler related claims

$ 5,711,428.00

TAX ID 880354871

VALID	PAY	KD	AMOUNT
UBRGP	60	CLM	$5,711,428.00

NON-NEGOTIABLE

THIS IS NOT A NEGOTIABLE INSTRUMENT

56-1544
441

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

NO. 299 0007622

CLAIM NO. 9260157452 -001

CLAIM HANDLING OFFICE NO. 26

EXACTLY $5,711,428**** DOLLARS AND 00** CENTS

VOID AFTER 180 DAYS

DATE	AMOUNT
12/8/2017	$5,711,428.00

PAY TO THE ORDER OF Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgworth; American Grating, LLC; and the Law Office of Daniel Simon.

TO: JPMORGAN CHASE BANK, N.A.
COLUMBUS, OH

⑈299000762 2⑈ ⑆044114443⑆ 528291201⑈

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

To:James R. Christensen <jim@jchristensenlaw.com>;

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? $4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.
>
> Happy Holidays!
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

---------- Forwarded message ----------
From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

> Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!
>
> <image001.jpg>

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

From: Daniel Simon
Sent: Monday, December 18, 2017 11:03 AM
To: John Greene <jgreene@vannahlaw.com>
Cc: Daniel Simon <dan@simonlawlv.com>
Subject: Edgeworth v. Viking

I have received the settlement checks. Please have the client's come in to my office to sign so I can promptly put them in my trust account. Thanks!!

DANIEL S. SIMON
ATTORNEY AT LAW
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655
DAN@SIMONLAWLV.COM

Exhibit 13

ATLN
DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Telephone (702) 364-1650
lawyers@simonlawlv.com
Attorneys for Plaintiffs

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.; Plaintiffs, vs. LANGE PLUMBING, L.L.C.; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X

NOTICE OF AMENDED 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 total lien, in the amount of $2,345,450.00, less payments made 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

rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of $76,535.93, which remains outstanding.

The Law Office of Daniel S. Simon claims a lien in the above amount, which is a reasonable fee for the services rendered by the Law Office of Daniel S. Simon on any settlement funds, plus outstanding court costs and out-of-pocket costs currently in the amount of $76,535.93, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution. The above amount remains due, owing and unpaid, for which amount, plus interest at the legal rate, lien is claimed.

This lien, pursuant to N.R.S. 18.015(3), attaches 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.

Dated this 2nd day of January, 2018.

THE LAW OFFICE OF DANIEL S. SIMON,
A PROFESSIONAL CORPORATION

DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
810 South Casino Center Blvd.
Las Vegas, Nevada 89101

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 2nd 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 2nd 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

Edgeworth Family Trust
645 Saint Croix Street
Henderson, Nevada 89012

Bob Paine
Zurich North American Insurance Company
10 S. Riverside Plz.
Chicago, IL 60606
Claims Adjustor for
Zurich North American Insurance Company

American Grating
1191 Center point Drive, Ste. A
Henderson, NV 89074

Robert Vannah, Esq.
VANNAH &VANNAH
400 South Seventh Street, Ste. 400
Las Vegas, NV 89101

Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

An Employee of SIMON LAW

Exhibit 14

COMP
ROBERT D. VANNAH, ESQ.
Nevada Bar. No. 002503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
VANNAH & VANNAH
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101
Telephone: (702) 369-4161
Facsimile: (702) 369-0104
jgreene@vannahlaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, d/b/a SIMON LAW; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: Department 14 **COMPLAINT**

VANNAH & VANNAH
400 South Seventh Street, 4th Floor • Las Vegas, Nevada 89101
Telephone (702) 369-4161 Facsimile (702) 369-0104

Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants, complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON (SIMON) is an attorney licensed to practice law in the State of Nevada and doing business as SIMON LAW.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

> [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

VANNAH & VANNAH
400 South Seventh Street, 4th Floor • Las Vegas, Nevada 89101
Telephone (702) 369-4161 Facsimile (702) 369-0104

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of $550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled $486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages.

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Telephone (702) 369-4161 Facsimile (702) 369-0104

11. SIMON was aware that PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by PLAINTIFFS accrued interest.

12. As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017, and thereafter blossomed from one of mere property damage to one of significant and additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the CONTRACT. In short, SIMON wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However, neither PLAINTIFFS nor SIMON agreed on any terms.

13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. The proposed fees and costs were in addition to the $486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in the LITIGATION.

14. A reason given by SIMON to modify the CONTRACT was that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees

VANNAH & VANNAH
400 South Seventh Street, 4th Floor • Las Vegas, Nevada 89101
Telephone (702) 369-4161 Facsimile (702) 369-0104

and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following the flooding event.

16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS paid. There is nothing in the computation of damages signed by and served by SIMON to reflect fees and costs other than those contained in his invoices that were presented to and paid by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let alone those in excess of $1,000,000.00.

17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr. Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week."

18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide

VANNAH & VANNAH
400 South Seventh Street, 4th Floor • Las Vegas, Nevada 89101
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PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept $550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

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26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of $15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of $15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, $550.00 per hour for SIMON'S legal services performed in the LITIGATION.

33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, $550.00 per hour for a total of $486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

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35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at $550.00 per hour; since SIMON billed, and PLAINTIFFS paid, $550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

39. Pursuant to the CONTRACT, SIMON agreed to be paid $550.00 per hour for his services, nothing more.

40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or before September 27, 2017, had already been produced to the defendants.

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41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

42. Despite SIMON'S knowledge that he has billed for and been paid in full for his services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd produced all of his billings through September of 2017, SIMON has refused to agree to either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFFS' property rights.

44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of $15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of $15,000;
3. Punitive damages in an amount in excess of $15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;

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5. Costs of suit; and,

6. For such other and further relief as the Court may deem appropriate.

DATED this 3 day of January, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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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 IX** **BATES NO. AA001630 - 1839**

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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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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

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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

Exhibit 15

ACOM
ROBERT D. VANNAH, ESQ.
Nevada Bar. No. 002503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XIV Consolidated with CASE NO.: A-16-738444-C DEPT. NO.: X **AMENDED COMPLAINT**

Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants, complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

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2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic professional corporation licensed and doing business in Clark County, Nevada. At times, Defendants shall be referred to as SIMON.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

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> [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of $550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled $486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of

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$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages.

11. SIMON was aware that PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by PLAINTIFFS accrued interest.

12. As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017, and thereafter blossomed from one of mere property damage to one of significant and additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the CONTRACT. In short, SIMON wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However, neither PLAINTIFFS nor SIMON agreed on any terms.

13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. The proposed fees and costs were in addition to the $486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in the LITIGATION.

14. A reason given by SIMON to modify the CONTRACT was that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given by SIMON was that he felt his work now had greater value than the $550.00 per hour that

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was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following the flooding event.

16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS paid. There is nothing in the computation of damages signed by and served by SIMON to reflect fees and costs other than those contained in his invoices that were presented to and paid by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let alone those in excess of $1,000,000.00.

17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr. Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week."

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18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept $550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

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24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of $15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of $15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, $550.00 per hour for SIMON'S legal services performed in the LITIGATION.

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33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, $550.00 per hour for a total of $486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at $550.00 per hour; since SIMON billed, and PLAINTIFFS paid, $550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

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39. Pursuant to the CONTRACT, SIMON agreed to be paid $550.00 per hour for his services, nothing more.

40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or before September 27, 2017, had already been produced to the defendants.

41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

42. Despite SIMON'S knowledge that he has billed for and been paid in full for his services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd produced all of his billings through September of 2017, SIMON has refused to agree to either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFFS' property rights.

44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

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FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling $486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is $692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

53. When SIMON executed his secret plan and went back and added substantial time to his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

54. When SIMON demanded a bonus based upon the amount of the settlement with the Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an amount that was far in excess of any amount of fees that he had billed from the date of the previously paid invoice to the date of the service of the lien, that he could bill for the work performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

56. As a result of SIMON'S breach of the implied covenant of good faith and fair dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages, including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the implied covenant of good faith and fair dealing, in an amount in excess of $15,000.00.

57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

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50. PLAINTIFFS have been compelled to retain an attorney to represent their interests in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of $15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of $15,000;
3. Punitive damages in an amount in excess of $15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
5. Costs of suit; and,
6. For such other and further relief as the Court may deem appropriate.

DATED this 15 day of March, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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Exhibit 16

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee

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was ever brought up at that time, let alone ever agreed to.

7. SIMON never reduced the terms of our fee agreement to writing. However, that formality didn't matter to us, as we each recognized what the terms of the agreement were and performed them accordingly. For example, SIMON billed us at an hourly rate of $550, his associate billed us at $275 per hour, costs incurred were billed to us, and I paid SIMON all of the invoices in full in less than one week from the date they were received.

8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in those invoices totaled $486,453.09. There were hundreds of entries in these invoices. The hourly rate that SIMON billed us in all of his invoices was at $550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of approximately $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I don't know whether SIMON ever disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages. I do know, however, that when SIMON produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018, for an additional $692,120 in fees, his hourly rate for all of his work was billed out at our agreed to rate of $550.

9. From the beginning of his representation of us, SIMON was aware that I was required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that these loans accrued interest. It's not something for SIMON to gloat over or question my business sense about, as I was doing what I had to do to with the options available to me. On that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

10. Plus, SIMON didn't express an interest in taking what amounted to a property

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damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

11. Please understand that I was incredibly involved in this litigation in every respect. Regrettably, it was and has been my life for nearly two years. While I don't discount some of the good work SIMON performed, I was the one who dug through the thousands of documents and found the trail that led to the discovery that Viking had a bad history with these sprinklers, and that there was evidence of a cover up. I was the one who located the prior case involving Viking and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's insurer), and from fire marshals, etc. I was also the one who did the research and made the calls to the scores of people who'd had hundreds of problems with these sprinklers and who had knowledge that Viking had tried to cover this up for years. This was the work product that caused this case to grow into the one that it did.

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email

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was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

15. Following that meeting, SIMON would not let the issue alone, and he was relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never agreed on any terms to alter, modify, or amend our fee agreement.

16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. We were stunned to receive this letter. At that time, these additional "fees" were not based upon invoices submitted to us or detailed work performed. The proposed fees and costs were in

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addition to the $486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the invoices that SIMON had presented to us, the evidence that we understand SIMON produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages that SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

17. A reason given by SIMON to modify the fee agreement was that he claims he under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. We were again stunned to learn of SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to us for our signatures. This, too, came with a high-pressure approach by SIMON. This new approach also came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly $500,000 from us. He said that "any judge" and "the bar" would give him the contingency agreement that he now wanted, that he was now demanding he get, and the fee that he said he was now entitled to receive.

18. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to

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be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe until the claims against defendant Viking were resolved. How can that be? All of our claims against Viking and Lange were set to go to trial in February of this year.

19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be billing more hours that he hadn't yet written down, or that additional invoices for fees or costs would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS before he could determine the amount of his fee. At that time, I felt I had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the LITIGATION.

20. Despite SIMON'S requests and demands on us for the payment of more in fees, we refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and time that he'd never previously produced to us and that never saw the light of day in the LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was

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nothing short of stealing what was ours.

21. When SIMON refused to release the full amount of the settlement proceeds to us without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable alterative available to us was to file a complaint for damages against SIMON.

22. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to have the settlement funds deposited like they were, as SIMON flatly refused to give us what was ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

23. In Motions filed in another matter, SIMON makes light of the facts that we haven't fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've already had to pay to get someone else up to speed. Plus, we've already paid nearly $500,000 to SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION were, for all intents and purposes, resolved. Since we've already paid him for this work to resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

24. Please understand that we've paid SIMON in full every penny of every invoice that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall. I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the LITIGATION.

25. I also feel that it's remarkable and so wrong that an attorney can agree to receive an hourly rate of $550 an hour, get paid $550 an hour to the tune of nearly $500,000 for a period of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless

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we agree to pay him a bonus that ranges between $692,000 to $1.9 million dollars.

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls. SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit

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from the charity are minors, an accusation of this severity. from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into. I politely sent SIMON an email on December 5. 2017. telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this. as the email. which he denied ever sending. was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON. though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

27. We did not cause the Complaint or the Amended Complaint to be filed against SIMON or his business entities to prevent him from participating in any public forum. We also didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid under the CONTRACT.

28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to

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present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

Subscribed and Sworn to before me
this 15 day of March 2018, by BRIAN EDGEWORTH.

Notary Public in and for said County and State

DANA FARSTAD
Notary Public State of Nevada
No. 13-10367-1
My Appt. Exp. March 21, 2021

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Exhibit 17

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
MONDAY, AUGUST 27, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

damages. Is that what you mean?

Q Yep.

A Yes, they're expenses.

Q And so everybody -- because you get involved in these cases, you forget maybe some things aren't super clear when you start, but you had about $500,000 in hard cost damage to your house, and then some future hard card cost damage that you needed to repair, correct?

A Yeah. It was between 3 and 8. You know, there was a lot of different estimates, but that's fair.

Q And then ultimately, you had several hundred thousand dollars' worth of interest you owed?

A Highly likely over two years, yes.

Q And those future damages, like replacing your kitchen cabinets?

A Yes.

Q Have you replaced those kitchen cabinets?

A Yes. We've paid -- well, no. They haven't replaced them. They've been paid to make them. They haven't come back to put them in.

Q So a line item of damages that you collected for haven't been replaced yet?

A No.

Q They're on their way, but just not yet?

A I don't know. I haven't called the guy.

Q All right.

A They better be on their way.

Q And as of June 5th, not even the scope of Mr. Simon's representation has been determined, because he doesn't know if he's supposed -- you don't know if he's going to write your loan agreements or you should have somebody else?

A Correct.

Q Was in flux?

A Correct.

MR. CHRISTIANSEN: And Exhibit 80, Mr. Greene. Bate stamps 3425 and 6.

BY MR. CHRISTIANSEN:

Q And so we're clear, did you get a bill in June for Mr. Simon's work in May?

A June of 2016, sir?

Q Yes, sir.

A No.

Q Did you get a bill in July for Mr. Simon's work in May or June?

A No.

Q Did you get a bill in August for May, June or July?

A No.

Q September?

A No.

Q October?

A No.

Q December?
A Yes.
Q And December of 2016 is the first time you saw a bill with the number 550 on it. It's the first bill you saw, correct?
A Yes. Correct.
Q Seven months after he started representing you?
A Correct.
Q And can we agree that that bill did not contain all of Mr. Simon's time?
A I think it was pretty generous.
Q I don't understand that answer, sir.
A I think it encompassed all his time and there was blocks that looked generous, the amount of time.
THE COURT: What do you mean by generous, sir?
THE WITNESS: I mean, like sometimes a lawyer will write a letter and say it took them two hours, where I could pound it out on typewriter in 15 minutes. The two hours seems generous. It seems aggressive.
THE COURT: So, when you say generous, you mean generous in like he's exaggerating the time, you thought?
THE WITNESS: Well, it's typical on lawyer's bills, they bill in their favor. They bill blocks, and it's a generous amount of time.
THE COURT: So, you're saying the amount was more than the work he did?
THE WITNESS: I'm not contesting that at all. He -- I was just

asking -- answering his question. He said did I --

THE COURT: Right. But I don't know what you mean --

THE WITNESS: Oh.

THE COURT: -- by generous. I don't know what you're -- I mean, are you saying that the amount that you paid was more than the work that was done?

THE WITNESS: I think the number of hours on the bill was generous. It's fair. It's a fair amount --

MR. VANNAH: She doesn't understand --

THE WITNESS: -- to do the work that was done.

MR. VANNAH: -- what you mean by generous.

THE COURT: Yeah. Is it fair or --

MR. VANNAH: Is he being charitable to you --

THE WITNESS: It's fair.

THE COURT: -- generous?

MR. VANNAH: -- that he doesn't --

THE WITNESS: It was not charitable in my favor. It was likely on the -- skewing on the side towards Mr. Simon's favor for the hours --

THE COURT: Okay.

THE WITNESS: -- but I'm not contesting that.

THE COURT: No. I understand that, but when you say that --

THE WITNESS: Oh, I'm sorry.

THE COURT: -- I need to understand exactly what you're saying. And then you turn around and say fair. I don't know which one

you mean. Okay, Mr. Christensen. Sorry, I was just --

MR. CHRISTIANSEN: That's okay, Your Honor.

THE COURT: -- for the Court's clarification.

MR. CHRISTIANSEN: I didn't understand, either.

THE COURT: Okay.

MR. CHRISTIANSEN: So that's why I asked.

BY MR. CHRISTIANSEN:

Q I -- in the Mark Katz email --

A Uh-huh.

Q -- you're talking about starting to borrow money. Is that as I understand it, Mr. Edgeworth?

A Correct.

Q You say you want to do it by Friday, 350,000 plus however much I need to pay legal fees during the insurance company's delays.

A Correct.

Q You didn't know how much you were going to have to pay?

A No idea.

Q You didn't write a rate, correct?

A A rate of interest?

Q A rate of hours, per hour what you were going to pay?

A Oh, no.

Q And insurance company delays, that reflects again sort of this state of in flux the case was in. Simon's trying to get insurance companies to step in and do the right thing. They don't, so he's gotta sue. Then he sort of tells you, hey, maybe the lawyers will get involved,

and they'll get their insurance companies to do the right thing. That's what you meant when you said insurance company delays?

A No. At this point, he hadn't sued. At that point --

Q No.

A -- insure --

Q I'm aware of this. This was before he filed suit, but --

A Correct. Yes.

Q -- it just -- this just reflects the relationship is in flux, correct?

A Yeah. Represents that the insurance companies just aren't paying. They're delaying the payment of the claim --

Q Got it.

A -- that inevitably, they'll have to pay.

Q Well, not inevitably. If you prevail on the lawsuit, they have to pay. Insurance companies -- I bet you I can even get Mr. Vannah to agree they don't pay most of the time, unless he makes them.

MR. VANNAH: No, I -- Your Honor, would you -- I don't want you to think I'm rude. I just want to go to the bathroom. I didn't want to interrupt anything.

THE COURT: Okay.

MR. CHRISTIANSEN: Is -- this maybe is a good time?

THE COURT: This is a good time, Mr. Vannah. I'm glad you brought that up. We sometimes get caught up in not doing it. All right. So, we'll be at recess about 15 minutes.

MR. GREENE: Thank you, Your Honor.

THE COURT: So, we'll come back at a quarter to.

MR. VANNAH: Thank you, Your Honor.

[Recess at 2:36 p.m., recommencing at 2:47 p.m.]

THE COURT: A-738444, Edgeworth Family Trust; American Grating v. Daniel Simon, doing business as Simon Law.

Mr. Christiansen, you may resume.

MR. CHRISTIANSEN: Thank you, Your Honor.

BY MR. CHRISTIANSEN:

Q Mr. Edgeworth, I want to direct your attention back to the affidavit you signed February the 2nd of this year. And it was signed and attached as an exhibit to briefs dealing with the attorney's lien that Mr. Simon filed in your Edgeworth v. Viking case; does that sound familiar to you?

A The attorney's briefs, whoa. That's --

Q It was attached to something Mr. Vannah and Mr. Greene filed on your behalf --

A Okay.

Q -- arguing -- we've argued about a bunch of different things, but relative to the lien.

A Okay.

Q Make sense?

A Okay.

Q All right. So, I can make sure I show you Mr. Greene's 16, the day, sir, is the 2nd of February, this is the one you and I were talking about; is that right?

A It's the 2nd of February, correct, yes.

Did I read that correctly?

A Yes, you did.

Q And then -- so just from the first two sentences, as of August 22nd, 2017, you never had a structured discussion about going after punitives, correct?

A Correct.

Q No terms had been reached, correct?

A Correct.

Q Then you go on to say, obviously, that could not have been done earlier, since -- I think again that's just a typo -- who would have thought this case would meet the hurdle of punitives at the start?

Did I read that correctly?

A Correct.

Q So, in addition to saying this is your first, or this is a stab at a constructive discussion about punitives, you concede from that sentence, that way back in May of 2016, at the outset of the litigation there was no way to contemplate the case being punitive in nature?

A Correct.

Q So no terms could have been reached?

A Correct.

Q Then you go down to say, I could also swing hourly for the whole case (unless if I'm off what this is going cost). I would likely borrow another 450,000 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.

Did I read that accurately, sir?

A Yes, you did.

Q Doubt we will get Kinsale, that's one of the insurance companies --

A That's Lange's insurance.

Q Thank you. To settle for enough to really finance this. Did I read that correctly?

A Correct.

Q So in other words, that's you saying, I doubt we can get the insurance companies to settle for enough to finance me [Brian], going and borrowing more money to keep paying for this case hourly?

A Incorrect.

Q I would have to pay the first 750,000 or so back to Collin and Margaret, and why would Kinsale sell it for 1 MM, when their exposure is only 1 MM. 1 MM means a million, I assume?

A Yes, it is.

Q Did I read that all correctly?

A Correct.

Q And this is the email you wrote after the case had blossomed and one of the Defendants had offered a considerable sum of money, right?

A This is not written after the case had -- or after the Defendants had offered a considerable sum of money.

Q That's what you wrote in your affidavit, so I'm just asking you, is that your testimony?

A That's not what I wrote in my affidavit.
Q All right.
A It's commas, beside each of those four events.
Q Do you know what a register of actions is, sir?
A No.
Q That's like all of us can look on it and see what was done in a case and --
A Oh, I know what it is then, yeah --
MR. CHRISTIANSEN: It's Exhibit 63, Mr. Greene.
THE WITNESS: -- I have that link, yeah.
BY MR. CHRISTIANSEN:
Q And in your case, do you know how many entries are in the register of actions?
A A lot.
Q Who made all those entries? Whose work culminated in those entries, yours or Danny Simon's?
A Danny Simon filed them.
Q Danny Simon's works, what took this case in March for a million bucks, that you were willing to settle the whole thing for, to November in six, fair?
A His filings in court?
Q This case turned from a property damage claim to a punitive damage case, correct?
A I don't think we ever got a punitive damage case, no. There was potential, though.

Q Do you think Zurich paid 11, 12 times your property damage, because there's some like emotional distress attached to property damage?

A Zurich didn't pay 11 or 12 times my property damage, sir?

Q Zurich paid 6 million, right?

A Zurich paid $6 million, correct.

Q And your estimation of your property damage, all these documents I've been showing you, is about 500 grand, before you start adding in interest and things of that nature?

A Correct.

Q Right. You know, I know you're not a lawyer, that there's no emotional distress claim attaching to a property damage case, correct?

A Correct.

Q All right. And so, the difference between your hard costs and what you got reflects Danny Simon changing the nature of the claim, correct?

A I guess we disagree on why the parties settled, because my answer would be incorrect.

Q Okay. Well, we're going to have a lawyer from one of the parties come tell us why they settled. But they settled when there was a pending motion to strike their answer, correct?

A Correct.

Q They settled after Her Honor excluded one of their experts, because Danny Simon wrote a motion to exclude it, correct?

A Correct.

Q And they settled because there was a real risk their insured, Viking, would be hit with a punitive damage award, which is non-insurable, correct?

A I don't know that that's correct.

Q What don't you know was correct?

A You just said -- you said they settled because their insured was going to -- I don't know that that's correct. That's not my opinion on why they settled at all.

Q All right. One day after, just one day after your contingency email, I've got it somewhere, you did another email to Mr. Simon, with the spreadsheet of your view of the value of your case; do you remember that?

MR. CHRISTIANSEN: That's exhibit, Mr. Greene, 28, Bate stamp 400.

BY MR. CHRISTIANSEN:

Q August 23rd, Brian Edgeworth to Danny Simon?

A Yes.

Q Did this email, like two-thirds of these other emails, is after-hours; is that right, Mr. Edgeworth?

A I don't know if they're two-thirds after hours or not.

Q Did you write emails at all times of the day or night to Danny Simon?

A Yes. I would write emails at all times --

Q Did you call --

A -- day and night.

Q -- on a cell phone on all times day and night?
A Not all times, but, yes, after --
Q Weekends?
A -- business hours, definitely.
Q And what you say here is, we may be past the point of no return. What you mean by that is this case might have to go to trial, right?
A I don't know that that's what I meant, but --
Q The costs have added up so high I doubt they'll settle anyway -- I doubt they settle anyway, I apologize. This does not even include upgraded -- updated --
A Updated.
Q -- legal and experts, any of my time wasted, et cetera. I already owe Collin and Margaret over 85,000 now -- 850,000 now?
A Correct.
Q So you don't, at the time you author this, have a bill, or even an understanding of what the updated legal and expert fees are, correct?
A It's on the sheet, sir.
Q This does not even include updated, legal and experts. Okay. This is written August 23rd, the last legal cost you've got is July 31st. So, my question is -- the answer is, yes, you don't update to the day of the --
A Oh 31 to 23, correct.
Q And here you value your case, the one that you valued to a million bucks in March, at 3 million bucks, 3,078,000, right?

A I would agree if you use a different term than value. My damages, or costs at that point were this.

Q Right. And the biggest line item is the million-five stigma damage, Danny's book and brother-in-law found you, right?

A Correct.

Q Then you're pestering Mr. Simon during this time to give you -- pester is pejorative, I don't mean it that way, you're being proactive with Mr. Simon to give you bills during this timeframe, right?

A Yes, I was.

Q Because you knew that you could add the bills to your damages, and potentially recover those bills under the contract claim against Lange, right?

A That's not the reason I was being aggressive, but I agree with part of your statement, just not the first half of your question, that that was the reason I was being aggressive, asking for bills.

Q Reflective of that is the August 29, 2017 email from -- it looks like you must have sent it. It says, your office still not has cashed $170,000 check. And that's in like the subject line. And then Mr. Simon answers you back, I've been too busy with the Edgeworth case, fair?

A Correct.

Q You had your first mediation scheduled in this case October the 10th; is that right?

A I think it's the 20th, sir.

Q October the 20th?

A I think so. I could be wrong.

Q I think it's the 10th. If it's not the 10th Mr. Greene can correct me when I get done.

A The second one was November 10th?

Q That's accurate?

A Yes.

Q Okay. So, in anticipation of your first mediation had there been any monies offered, leading up to the mediation by any of the Defendants?

A No, I don't think so.

Q And going up to your first mediation you wrote Mr. Simon an email that talked about -- I'll just -- settlement tolerance for mediation.

MR. CHRISTIANSEN: Sorry, John, that's Exhibit 34.

THE COURT: Did you say 34, Mr. Christiansen?

MR. CHRISTIANSEN: It is. I can't read the little tiny numbers for the Bate stamp -- 408, Bate stamp 408.

THE CLERK: 406.

MR. CHRISTIANSEN: 406, sorry.

BY MR. CHRISTIANSEN:

Q Is this --

MR. CHRISTIANSEN: -- and it's 407, too, John.

BY MR. CHRISTIANSEN:

Q Look like one of your spreadsheets, sir?

A Yeah. Simon asked for this to be made, correct?

Q This is leading into mediation number one?

A Correct.

Q And you have sort of three columns, what's non-negotiable, in your view?

A Correct.

Q All right. And what's negotiable, or I think you say, limited tolerance for negotiation?

A Correct.

Q All right. Like the stigma damage, that's negotiable?

A Limited tolerance for negotiation, correct.

Q Trapped capital interest. That's a line item I've not seen before in any of your calculations. Is that something you created?

A Craig Marquis told us that we could claim that.

Q But you figured how much it was?

A Correct. Yes, I did.

Q And this is the first time it makes its way into one of your line items of damages?

A Correct. Or maybe not, but I'd have to look at all the spreadsheets that were made.

Q Prejudgment interest?

A Correct.

Q Well, what do you think you get 268,000 for in prejudgment interest?

A Well, if you prevail in a case -- if you prevail at the end of court you'll get judgment on -- you'll get judgment -- interest on the judgment amount --

Q Judgment exceeding --

A -- for the amount that --
Q -- half of your $500,000 property claim?
A What judgment? You're confusing me with the question.
Q Sure. Your property claim you told me is a $500,000 property claim, and you think you're going to get 270 grand in interest?
A If it's just simple math, sir. It says the assumptions over here, and then you just take the number, and it's just math from it.
Q See the first bill, it says legal bills? The first line, sorry.
A Yes.
Q That 518,000, that's not all attorney's fees, right; that's fees and costs lumped together?
A I think so.
Q And then do you see your comment out there to the right?
A Likely more comment.
Q So you authored this, you had no idea what was coming?
A Correct.
Q And you had no structured discussions with Danny about pursuing a punitive claim, correct?
A You asked two questions. Correct, I had no idea how many more hourly bills would be coming, and correct, we still hadn't had a structured conversation about how to convert into a punitive agreement, correct.
Q And the total -- I'm sorry, Mr. Edgeworth, I didn't ask you one I had. The total of your damages with the negotiable and non-negotiable items is just under 3.8 million?

A Other than the line items that are --

THE COURT: Under the line items what?

THE WITNESS: And the two on the side which may, or may not be able to be claimed, yes. See the two I said -- they destroyed the building reputation and, you know, nothing in here for the -- all the thousands of hours that have been wasted, so, yes.

BY MR. CHRISTIANSEN:

Q And at the very bottom here you write, I'm more interested in what we could get Kinsale to pay and still have a claim large enough against Viking. That's what you wanted to get -- Kinsale is, as you were told, is the Lange Plumbing insurance company?

A Insurance carrier.

Q So you wanted to get at Kinsale and try to settle them first?

A Correct. The same with that email you put up three or four ago, it's roughly saying the same thing. Let's get Kinsale to settle, because it's in their interest for me to pursue the claim against Viking; and they're not doing it at all. And then we use that money so that I don't have to take more loans. They're the weaker link of the two in the negotiation.

Q Right. You saw that from a business standpoint?

A Yes.

Q All right. It turns out you were wrong, right?

A Correct.

Q Mr. Simon was right, you were wrong?

A Mr. Simon didn't rebut that.

Q You wanted to go hard at Lange. Lange gave you, pursuant to advice by a different --

A This is --

Q -- office?

A -- not a mediation, a one-day mediation --

THE COURT: Okay, sir. You have to let him finish --

THE WITNESS: Oh, sorry. I'm sorry.

THE COURT: -- asking the question. Only one of you can talk --

THE WITNESS: I'm sorry --

THE COURT: -- at a time.

THE WITNESS: -- I haven't done this.

THE COURT: Okay. You need to let him finish. I told him the same thing earlier. It applies to you too. Mr. Christiansen?

MR. CHRISTIANSEN: Thank you, Your Honor.

BY MR. CHRISTIANSEN:

Q All right. How much did -- was offered at the October -- I think it's October 10, it you're right, it's October 20th -- what was offered at that mediation?

A I think very little. I think Viking -- I don't even remember. I think Lange said 25 grand. I'm not sure if Viking said anything, or -- I don't remember.

Q Okay. So nominal?

A Nominal, that's one, correct.

Q All right. Do you know what happened from a lawyer

standpoint, and a courtroom standpoint, between October and November, at the second mediation?

A Do I know --

Q Do you know what Danny did, or his office did?

A I know some of the things they did, yes.

Q And when you went to the November mediation, the case as it pertained to Viking resolved, right?

A Yeah. A week later, the mediation -- the mediator settlement you mean?

Q Yeah.

A Yes.

Q So we're clear on the mediator settlement -- let's just back up, we'll get you the -- in this case you provided an affidavit --

MR. CHRISTIANSEN: -- John, I 'm not sure which one, this is your group, it's in your list; 9, I think.

[Parties confer]

THE CLERK: Exhibit 9.

BY MR. CHRISTIANSEN:

Q You wrote an affidavit dated July 25th, 2017, and it's one of the exhibits I'm sure Mr. Greene will talk to you about. Do you remember authoring that?

A Yes.

MR. GREENE: Hey, Pete, that's not an affidavit, that's an email.

MR. CHRISTIANSEN: I apologize, an email.

BY MR. CHRISTIANSEN:

Q Just chronologically, that's all I want to question you about now, is what you wrote, it looks like items you were able to locate, or you thought were of some importance, and you wanted Danny and his office to look at, correct?

A Correct. I was passing on information.

Q Right. And that information came to you 15 days earlier from Ashley Ferrel, who sent you a Dropbox link, from the data doc?

A No, sir.

Q No?

A The email actually tells where that information would come from.

Q All right. Well, just help me this way --

A Okay.

Q -- Ashley's email is dated --

A Okay.

Q -- 15 days earlier than your email?

A Correct.

Q In Ms. Ferrel's email she provides a Dropbox link --

A Correct.

Q -- to the data dump that Viking, in the summer of 2017 finally gave up after a protective order was litigated in the litigation?

A Yeah. I think the data dump that they referenced, could come a little later when you dump like seven or 8,000, but the first two or 3,000 were in the --

Q And this is in Exhibit 80, as well. This is that same day, Danny tells Ashley to send to the experts and to Brian, the Dropbox link, and Ashley says to Danny, holy crap two words, punitive damages.

Did I read that correctly?

A You read it correctly, yes.

Q And at the mediation in November, the one that was successful getting you $6 million for your property damage claim, do you remember having a disagreement with Mr. Simon about what the mediator's proposal should be?

A I believe that was the next day or after, yes.

Q Right. You wanted the mediator to propose $5 million, right?

A Correct.

Q Danny said, no, let's make him force -- propose 6?

A Correct.

Q And the case settled for 6?

A Correct.

Q So between Danny's brother, the mediator's proposal, he made you two and a half million bucks, right?

A Not true. I wanted the 5 million for a different reason, but --

Q You wanted 5 more than 6; is that your testimony?

A No, it's not my testimony.

Q All right.

A I said I wanted the 5 in the agreement for a very specific reason.

Q For example, you had all kinds of ideas in this case, and

before the first mediation you wrote, let's go hard at Lange, right out the gate and ignore Viking. Lange doesn't settle until after Viking pays you 6 million, right?

A Correct.

Q Then after the November 10th mediation --

MR. CHRISTIANSEN: -- Exhibit 36, Mr. Greene, Bate 409.

BY MR. CHRISTIANSEN:

Q Danny said, I want authority to tell the mediator to propose 6. You said he should have proposed 5, but you agreed he could do 6, and then Viking paid 6?

A No. The mediator -- this is the day after that -- the mediator put the 6 down. The arguments was over how long the two parties got to respond to him. There was something on the docket that made the date, it shouldn't be two weeks or whatever, it should be November 15th. They discussed that. We left, and I'm like I wish you would have proposed 5, to see if they'd bite, and then this is -- I agree, he should have proposed 5.

Q But Mr. Simon got you 6, based on his expertise?

A The settlement was offered at 6, correct.

Q And that was Danny's suggestion --

A It was Floyd --

Q -- not yours?

A -- Hill, actually. There's a mediator guy --

Q Yeah. I know all about the mediators. You wanted 5, Danny told him 6, he proposed 6, and they accepted 6; all true?

A I didn't want 5, I wanted 5 in the proposal, that's correct.

Q All right. Now, let's fast forward, I'm going to leave some of this here, and try to get you through the timeline, Mr. Edgeworth, before the end of today. And your last estimate was October the 5th, and your case was worth, in your view, $3,764,000 and change. The case settles, on or near November the 10th, right, within about a week?

A About, yeah.

Q Like when I say settle so I'm being technical with you, the figure was agreed to? The mediator's proposal was accepted?

A November 15th.

Q And after that you went to Mr. Simon's office and had a meeting. On the day he had court he had to come see Judge Jones, and do some things in your case?

A Yeah. He texted me.

Q And you brought your wife?

A Correct. Well, I didn't bring her, she came.

Q Well, your wife was in attendance with you?

A Correct, yes.

Q And this is the meeting that you felt threatened?

A Definitely.

Q Intimidated?

A Definitely.

Q Blackmailed?

A Definitely.

Q Extorted?

A Definitely.
Q How big are you?
A 6' 4".
Q How much do you weigh?
A Two-eighty.
Q Danny goes about a buck-forty soaking wet, maybe with nickels in his pocket. He was extorting and blackmailing you?
A Definitely.
Q He threatened to beat you up?
A I didn't say that.
Q Because you write a letter, an email to him saying, you threatened me, why did you treat me like that?
A No.
Q Did you tell him in the meeting, you're threatening us, stop it, you're scaring me?
A I didn't say I was scared, sir.
Q And at the meeting Danny is trying to come to terms with what you told me had never been -- terms have never been come to, which is the value of his services for a punitive damage award, correct?
A I'm not really sure what he was trying to do. He kept saying, I want this, I want that. He said, very many things, but he never defined them all.
Q All right.
A It was a very unstructured conversation.
Q And you told the Court that he tried to force you to sign

something, but you don't have it?

A He didn't give us anything to leave with, that's correct.

Q All right. The next thing we have in writing, Mr. Edgeworth, is an email from you, November 21, 2017.

THE COURT: What exhibit is this, Mr. Christiansen?

MR. CHRISTIANSEN: 39, Your Honor. Bate stamp 413, Mr. Greene, I'm sorry.

BY MR. CHRISTIANSEN:

Q Did I get those dates right, Mr. Edgeworth?

A I'm sorry?

Q November 21st --

A November 21st, 2017, it says.

Q Right. And as of November 21st, 2017, you got legal bills, counsel, experts, et cetera, for 501,000, right, and change, I'm sorry?

A Correct.

Q And then you agree that there are legal bills not billed yet?

A Correct.

Q That's left open?

A Correct.

Q So as of November 21st, 2017, you know you own Danny Simon money?

A Well, actually as of the date of his last bill.

Q When you wrote this email you knew you owed Danny money?

A Correct.

Exhibit 18

Electronically Filed
11/19/2018 2:24 PM
Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan Corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5; and, ROE entities 6 through 10; Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XXVI **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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.,

dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet with an expert. As they were in the airport waiting for a return flight, they discussed the case, and had some discussion about payments and financials. No express fee agreement was reached during the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency." It reads as follows:

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. Exhibit 8). The total of this invoice was $42,564.95 and was billed at a "reduced" rate of $550 per hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and costs through April 4, 2017 for a total of $46,620.69, and was billed at a "reduced" rate of $550 per hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and costs through July 28, 2017 totaling of $142,080.20. (Def. Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate of $550 per hour totaling $104,021.20; and services of Ashley Ferrel Esq. for a "reduced" rate of $275 per hour totaling $37,959.00. Id. This invoice was paid by the Edgeworths on August 16, 2017.

10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount of $255,186.25 for attorney's fees and costs; with $191,317.50 being calculated at a "reduced" rate of $550 per hour for Daniel Simon Esq., $60,981.25 being calculated at a "reduced" rate of $275 per hour for Ashley Ferrel Esq., and $2,887.50 being calculated at a "reduced" rate of $275 per hour for Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September 25, 2017.

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

12. Between June 2016 and December 2017, there was a tremendous amount of work done in the litigation of this case. There were several motions and oppositions filed, several depositions taken, and several hearings held in the case.

13. On the evening of November 15, 2017, the Edgeworth's settled their claims against the Viking Corporation ("Viking").

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send

[1] $265,677.50 in attorney's fees for the services of Daniel Simon; $99,041.25 for the services of Ashley Ferrel; and $2,887.50 for the services of Benjamin Miller.

Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to come to his office to discuss the litigation.

16. On November 27, 2017, Simon sent a letter with an attached retainer agreement, stating that the fee for legal services would be $1,500,000 for services rendered to date. (Plaintiff's Exhibit 4).

17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah & Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all communications with Mr. Simon.

18. On the morning of November 30, 2017, Simon received a letter advising him that the Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities, et.al. The letter read as follows:

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc."

(Def. Exhibit 43).

19. On the same morning, Simon received, through the Vannah Law Firm, the Edgeworth's consent to settle their claims against Lange Plumbing LLC for $25,000.

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of $2,345,450, less payments made in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80. This lien includes court costs and 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

express agreement of $550 an hour; and that the agreement for $550 an hour was made at the outset of the case. Mr. Simon alleges that he worked on the case always believing he would receive the reasonable value of his services when the case concluded. There is a dispute over the reasonable fee due to the Law Office of Danny Simon.

22. The parties agree that an express written contract was never formed.

23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against Lange Plumbing LLC for $100,000.

24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case number A-18-767242-C.

25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate Lien with an attached invoice for legal services rendered. The amount of the invoice was $692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

CONCLUSION OF LAW

Breach of Contract

The First Claim for Relief of the Amended Complaint alleges breach of an express oral contract to pay the law office $550 an hour for the work of Mr. Simon. The Amended Complaint alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the Court finds that there was no express contract formed, and only an implied contract. As such, a claim for breach of contract does not exist and must be dismissed as a matter of law.

Declaratory Relief

The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of the settlement proceeds. The Court finds that there was no express agreement for compensation, so there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the

settlement proceeds as the Court has adjudicated the lien and ordered the appropriate distribution of the settlement proceeds, in the Decision and Order on Motion to Adjudicate Lien. As such, a claim for declaratory relief must be dismissed as a matter of law.

Conversion

The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed that the settlement proceeds were solely theirs and Simon asserting an attorney's lien constitutes a claim for conversion. In the Amended Complaint, Plaintiffs allege "The settlement proceeds from the litigation are the sole property of the Plaintiffs." Amended Complaint, P. 9, Para. 41.

Mr. Simon followed the law and was required to deposit the disputed money in a trust account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr. Simon never exercised exclusive control over the proceeds and never used the money for his personal use. The money was placed in a separate account controlled equally by the Edgeworth's own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. They were finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds, this claim must be dismissed as a matter of law.

Breach of the Implied Covenant of Good Faith and Fair Dealing

The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no express contract existed for compensation and there was not a breach of a contract for compensation, the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter of law and must be dismissed.

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

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 19

Fwd: Edgeworth

James R. Christensen

Tue 1/9/2018 4:30 PM

Sent Items

To:Daniel Simon <dan@danielsimonlaw.com>;

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Robert Vannah <rvannah@vannahlaw.com>
Date: 1/9/18 3:32 PM (GMT-08:00)
To: "James R. Christensen" <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Edgeworth

I guess he could move to withdraw. However, that doesn't seem in his best interests. I'm pretty sure that you see what would happen if our client has to spend lots more money bringing someone else up to speed. So, it's up to him. Our client hasn't terminated him. We want this fee matter resolved by a Judge and jury.

Sent from my iPad

On Jan 9, 2018, at 3:21 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> John,
>
> That is factually correct. However, Mr. Simon was served today. You must have understood that act could have impact.
>
> The Lange status is that Mr. Simon made changes to the proposed closing documents last week. The ball is currently in defense attorney's court.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Tuesday, January 9, 2018 10:23:56 AM
To: James R. Christensen
Cc: rvannah@vannahlaw.com
Subject: Re: Edgeworth

Jim:

I believe that Danny is still the attorney of record in that litigation. He settled the case, but we're just waiting on a release and the check.

John

On Tue, Jan 9, 2018 at 9:57 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> John,
>
> I need to look into the propriety of Danny wrapping up Lange-after he has been sued and served. I will need to read the complaint.
>
> I have a full schedule today and tomorrow, but will try to get to this as soon as I can.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Tuesday, January 9, 2018 9:50:49 AM
To: James R. Christensen
Cc: rvannah@vannahlaw.com
Subject: Re: Edgeworth

Jim:

Is there an update that Danny can provide on the Lange settlement? The clients would like to get everything wrapped up as soon as possible. Thank you.

John

On Tue, Jan 9, 2018 at 9:12 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> John,
>
> Thanks for the call. I am authorized to accept service.
>
> As I mentioned during the call, I anticipate an hourly bill will be completed next week prior to funds clearing. I suggest you wait until receipt & review of the hourly bill. We may be able to avoid unnecessary litigation costs and expenses.

Jim

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Exhibit 20

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

to -- I don't really work at 550 an hour, I'm much greater than that. $550 an hour to me is dog food. It's dog crap. It's nothing. So why don't you give me a big bonus. You ought to pay me a percentage of what I've done in the case because I did a great job.

Now, nobody's going to quarrel that it wasn't a great result. There's certainly some quall as to why the result was done, my client was very, very involved in this case, but I don't want to get into all of that and I'm certainly not criticizing Mr. Simon for anything he did, other than on the billing situation.

At that time Mr. Simon said well, I don't know if I can even continue in this case and wrap this case up unless we reach an agreement that you're going to pay me some sort of percentage, you know, I want a contingency fee and I want you guys to agree to sign that. My client said no, we're not doing that. You didn't take the risk. I've paid you hourly, I've paid you over a half a million dollars. I'm willing to continue finishing up paying you hourly.

So, Mr. Simon said well, that's not going to work, I want a contingency fee. They came to us, we got involved, we had a conversation with all of us, and at that point in time everybody agreed, he cannot have a contingency fee in this case because there's nothing in writing. You don't even have an oral agreement, much less in writing.

So what happened is -- and this is an amazing part, Judge -- and not at the time that Mr. Simon goes to one of the depositions, we quoted that, the other side said to him how much are fees in this case, have they actually been paid. And Mr. -- and that's the point of that. Mr.

Simon then pipes up and says listen, I've given that to you over and over and over again, you guys know what our fees are.

I have supplied that to you over and over and over again and you know what the fees are and those were the fees that he gave them were the amount that my clients had paid over the year and a half. And he said these are the fees that have been generated and paid. So he's admitting right there that, you know, this is the fee, you guys have got it.

As the case got better and better and better, Mr. Simon had buyer's remorse, you know, I probably could have taken this on a contingency fee. Gee, that would have been great because 40 percent of six million dollars is 2.4 million and I only got half a million dollars by billing at $550 an hour and I'm worth more than that; I'm a better lawyer than that. That's what he's saying.

So he said to -- so you guys need to pay me a contingency fee until that didn't work out so he then said well, you know, I didn't really bill all my time. All that time I billed that you paid -- by the way that's an accord and satisfaction, I sent you a bill, you pay the bill. And this happened like five or six invoices. Here's the bill, bill's paid. Here's the bill, bill's paid. Detailed time.

So Mr. Simon has actually gone back all that time and he has actually now added time. Added other tasks that he did and increased the amount of the time to the tune of what, almost a half a million dollars or so. An additional over hourly over that period of time. And then he went and he got Mr. Kemp, who is a great lawyer, who said well, you know what, a reasonable fee in this case, if there is no contract would be

40 percent, that's 2.4 million dollars, it doesn't take a genius to make that calculation.

So really, under this market value what should happen is Mr. Simon should get 2.4 million dollars, a contingency fee, even though he didn't have one and even though that would violate the State Bar rules, he actually should in essence get a contingency fee and give my client credit for the half million dollars he's already paid. That's what this is about.

When we realized that this wasn't going to resolve, I mean, we're not doing that -- we're not agreeably going to do that because there's an agreement already in place, we filed a simple lawsuit in saying that we want a declaratory relief action; somebody to hear the facts, let us do discovery, have a jury, and have a determination made as to what was the agreement. That's number one.

And number two, it's our position that by and is fact intensive, we believe that the jury is going to see and Trier of Fact would see that Mr. Simon used this opportunity to tie up the money to try to put pressure on the clients to agree to something that he hadn't agreed to and there never had been an agreement to.

So based on that we argue that that's a conversion and we think that's a factually intensive issue. None -- we don't expect -- it's not a summary judgment motion on that today, just that's the thinking that we use when we came up with that theory and we think it's a good theory.

So what I don't -- and, Your Honor, I have no problem with you

being the judge and I have no problem with the other judge being the judge, that's never been an issue in the case. What we do have a problem with is -- and I don't understand and maybe Mr. Christensen can clear that up. He's saying well, we can go ahead and have you take this case and make a ruling without a jury; that you can go through here and have a hearing and make a decision on what the fee should be. And then we can have the jury make a decision as to what the fee should be, but the problem is if you make a decision on what the fee should be that's issue preclusion on the whole thing and it ends up with being a preclusion.

So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts, we'd like to hear the jury hear Mr. Simon get up and say to him $550 an hour is dog meat, you know, he can't make a living on that and I would never bill at such a cheap rate and he's much greater than that. And I'd like to hear the jury hear that, people making $12 an hour hear that kind of a conversation that Mr. Simon is apparently going to testify to.

So there -- so bottom line, we get right down -- I -- so what we're asking, it's -- what we'd like you to do -- this case over. The underlying case with the sprinkler system and the flooding of the house, it's over. In re has nothing to do with determining what the fee should be. The fee -- whole issue is based on what was the agreement. I don't know much about the underlying case and I'm not having a problem understanding the fee dispute. This is a fee dispute.

We're just -- and if you want to hear it -- I don't think there's

anything to preclude you, but I don't think that there's commonality of all this -- all this commonality that they're talking about. The underlying case about a broken sprinkler head, flooding, what's the value of the house, all those disputes they had going on. That's got nothing to do with the fee dispute. And --

THE COURT: But you would agree, Mr. Vannah, that's it's the underlying case with the sprinkler flooding the house, who's responsible, the defective parts, that's how you get to the settlement that leads us to the fee dispute.

MR. VANNAH: You did that, but the settlement's over.

THE COURT: Right, but it --

MR. VANNAH: It's a done deal.

THE COURT: But the fee dispute --

MR. VANNAH: I mean, we're not --

THE COURT: -- is about the settlement.

MR. VANNAH: That's going to be a ten-minute discussion with the jury. Hey, this is what happened; it was a settlement.

So the question is, is what -- were the fee reasonable -- I mean, there was an agreement on the fee. I don't think -- it boggles my mind that we've even gotten -- we're even discussing this because when a lawyer sends for a year and a half a detailed billings at a detailed rate and the client pays it for a year and a half and suddenly say well, we never had a fee agreement, that's really difficult at best. That's almost summary judgment for us.

I mean, here's the bill, here's the check, and there's no

Exhibit 21

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

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7. SIMON never reduced the terms of our fee agreement to writing. However, that formality didn't matter to us, as we each recognized what the terms of the agreement were and performed them accordingly. For example, SIMON billed us at an hourly rate of $550, his associate billed us at $275 per hour, costs incurred were billed to us, and I paid SIMON all of the invoices in full in less than one week from the date they were received.

8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in those invoices totaled $486,453.09. There were hundreds of entries in these invoices. The hourly rate that SIMON billed us in all of his invoices was at $550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of approximately $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I don't know whether SIMON ever disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages. I do know, however, that when SIMON produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018, for an additional $692,120 in fees, his hourly rate for all of his work was billed out at our agreed to rate of $550.

9. From the beginning of his representation of us, SIMON was aware that I was required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that these loans accrued interest. It's not something for SIMON to gloat over or question my business sense about, as I was doing what I had to do to with the options available to me. On that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

10. Plus, SIMON didn't express an interest in taking what amounted to a property damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in

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the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

11. Please understand that I was incredibly involved in this litigation in every respect. Regrettably, it was and has been my life for nearly two years. While I don't discount some of the good work SIMON performed, I was the one who dug through the thousands of documents and found the trail that led to the discovery that Viking had a bad history with these sprinklers, and that there was evidence of a cover up. I was the one who located the prior case involving Viking and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's insurer), and from fire marshals, etc. I was also the one who did the research and made the calls to the scores of people who'd had hundreds of problems with these sprinklers and who had knowledge that Viking had tried to cover this up for years. This was the work product that caused this case to grow into the one that it did.

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that

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if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

15. Following that meeting, SIMON would not let the issue alone, and he was relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never agreed on any terms to alter, modify, or amend our fee agreement.

16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. We were stunned to receive this letter. At that time, these additional "fees" were not based upon invoices submitted to us or detailed work performed. The proposed fees and costs were in addition to the $486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the invoices that SIMON had presented to us, the evidence that we understand SIMON produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages that

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SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

17. A reason given by SIMON to modify the fee agreement was that he claims he under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. We were again stunned to learn of SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to us for our signatures. This, too, came with a high-pressure approach by SIMON. This new approach also came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly $500,000 from us. He said that "any judge" and "the bar" would give him the contingency agreement that he now wanted, that he was now demanding he get, and the fee that he said he was now entitled to receive.

18. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe until the claims against defendant Viking were resolved. How can that be? All of our claims against Viking and Lange were set to go to trial in February of this year.

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19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be billing more hours that he hadn't yet written down, or that additional invoices for fees or costs would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS before he could determine the amount of his fee. At that time, I felt I had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the LITIGATION.

20. Despite SIMON'S requests and demands on us for the payment of more in fees, we refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and time that he'd never previously produced to us and that never saw the light of day in the LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was nothing short of stealing what was ours.

21. When SIMON refused to release the full amount of the settlement proceeds to us without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable alterative available to us was to file a complaint for damages against SIMON.

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22. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to have the settlement funds deposited like they were, as SIMON flatly refused to give us what was ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

23. In Motions filed in another matter, SIMON makes light of the facts that we haven't fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've already had to pay to get someone else up to speed. Plus, we've already paid nearly $500,000 to SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION were, for all intents and purposes, resolved. Since we've already paid him for this work to resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

24. Please understand that we've paid SIMON in full every penny of every invoice that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall. I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the LITIGATION.

25. I also feel that it's remarkable and so wrong that an attorney can agree to receive an hourly rate of $550 an hour, get paid $550 an hour to the tune of nearly $500,000 for a period of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless we agree to pay him a bonus that ranges between $692,000 to $1.9 million dollars.

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false

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accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls, SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit from the charity are minors, an accusation of this severity, from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he

needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON, though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

27. I ask this Court to deny SIMON'S Motion and give us the right to present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

Subscribed and Sworn to before me
this 12 day of February 2018.

Notary Public in and for said County and State

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

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Exhibit 22

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Nevada Bar No. 004279
ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA
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EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X **PLAINTIFFS' MOTION FOR AN ORDER DIRECTING SIMON TO RELEASE PLAINTIFFS' FUNDS**
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT. NO.: XXIX

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Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC (Plaintiffs), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

This Motion is based upon the attached Memorandum of Points and Authorities; the pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and, any oral argument this Court may wish to entertain.

DATED this 13th day of December, 2018.

VANNAH & VANNAH

Signing For

ROBERT D. VANNAH, ESQ.

Bar No: 14530

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I.

SUMMARY

The facts of this matter are well known to this Court. The path to this intricate knowledge was gained by, but not limited to, having listened to five days of comprehensive testimony; by having reviewed the totality of the evidence presented; by having read hundreds of pages of pre and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an amended attorneys lien with a net lien in the sum of $1,977,843.80. On January 24, 2018, SIMON filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.

This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a

fee of $550 per hour between SIMON and the Edgeworths, and once SIMON started billing the Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths constructively discharged SIMON as their attorney on November 29, 2017, when they ceased following his advice and refused to communicate with him. The Court then found SIMON was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates, up and until the last billing of September 19, 2017.

For the period between September 19, 2017 and November 29, 2017, the Court held SIMON was entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. Further, the Court decided that for the period after November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the services his office rendered in quantum meruit: an amount the Court determined to be $200,000. Accordingly, SIMON is owed a total amount of $484,982.50 in fees—taken from the net lien in the sum of $1,977,843.80—pursuant to this Court's Order adjudicating the attorneys lien.

The Edgeworths have expressed a willingness, in writing, to accept the Court's rulings on all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the trust account. The same cannot be said for SIMON: even after this Court's Order was issued, SIMON has refused to release the balance of the funds held in trust: a sum of $1,492,861.30. The Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their $1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their money—money to which they are legally entitled. Simon's unreasonable, inappropriate withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment, which is untoward—not to mention unconstitutional.

PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to release to Plaintiff the remainder of the funds SIMON is withholding in trust.

II.

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ARGUMENTS

A. SIMON'S WITHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14th Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Piphus*, 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 & Treust 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. Piphus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14th Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for *a creditor's lawyer* to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that **this prejudgment garnishment** violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*

Further, Nevada law mandates certain procedures must be followed before a garnishment takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the 14th Amendment and Supreme Court precedent, Nevada law includes multiple due process protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS 31.260; See also *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must obtain a writ of garnishment from the court—which may only issue at the same time or after the order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be served in the same manner as a summons in a civil action. *Frank Settelmeyer & Sons, Inc.,* 197 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the garnishee be given a fair hearing: "if the garnishment is contested, the matter must be tried and judgment rendered, in a manner similar to civil cases." Id. at 1056. Providing further protection still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP 3A(a) and (b)(1). *Id.*

Here, SIMON is holding in trust a huge sum of money: $1,977,843.80 despite this Court's Order stating that he is entitled *only* to $484,982.50. He has effectively seized, garnished, Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS Chapter 31 whatsoever.

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Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that the money be withheld. Au contraire, after listening to five days of comprehensive testimony, reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is entitled to the $1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—withheld Plaintiffs' money and still continues to do so.

SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg. 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1")(See also, Email dated December 26, 2018, 12:18 p.m., attached hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's words were not only just a description of client's feelings at the time, but a foreshadowing of S SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two weeks now.

Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is wholly unconstitutional under United States Supreme Court precedent. His actions are tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach* court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds

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without any opportunity to be heard and without the opportunity to tender any defense—is an unconstitutional violation of Due Process.

SIMON'S behavior in this case is similar to—but more abusive than—the procedures permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon's purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court to retain the funds, yet he has flatly refused to release Plaintiffs' money. And in terms of its overt deprivation of due process rights, SIMON'S behavior goes much, much further than the statute in *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee before garnishment procedures were to be initiated.

Here, SIMON has shown nothing but disdain for Plaintiffs' due process rights: SIMON did not follow any of Nevada's garnishment requirements or comply with Nevada statutory garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment. Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object to the withholding of money, and has not been given a hearing to address his objections to SIMON'S behavior. His outright refusal to release the remaining funds held in trust is wholly inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he answers to no one. But he does need to answer to this Court—and as such, it is the aim of this Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is legally entitled.

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B. THIS COURT HAS JURISDICTION TO ADJUDICATE THIS ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S MONEY PENDING APPEAL

A Nevada court that presided over a client's underlying action has jurisdiction to adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a retaining lien has been asserted by the attorney and the client asks the court to determine the value of the attorney's services in order to post adequate or substitute security in order to recover the file; or if the client otherwise consents. See *Argentena Consol. Min. Co. v. Jolley Urga*, 216 P. 3d 779 (2009).

Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018 Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid out findings with respect to the entitlements of all parties. SIMON'S lien rights have been exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his lien adjudication rights are *finished.*

For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the interim*—between service of the action and a trial on the suit—this Court should strike down SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance

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of the Court's November 19, 2018 Order and the final resolution of this matter on appeal. Plaintiffs should not be deprived of his money for months and months—perhaps even years—especially where SIMON'S withholding of these funds is inapposite in light of the Court's substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.

C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018 ORDER, WHICH IS CLEAR AND UNABMBIGUOUS.

The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon is $484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the full $1,977,843.80 in trust. SIMON'S withholding of $1,492,861.30 from Plaintiffs is in direct contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's Order, the Court must take remedial action and issue an Order for the release of the remainder of the funds to Plaintiffs that SIMON is withholding in trust.

It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs respectfully request that this Court issue an Order for the release of Plaintiffs' funds.

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III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13th day of December, 2018.

VANNAH & VANNAH

Bar No: 14530

Signing For → ROBERT D. VANNAH, ESQ.

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CERTIFICATE OF SERVICE

I hereby certify that the following parties are to be served as follows:

Electronically:

James 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

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.	CASE NO.: A-18-767242-C DEPT NO.: XXVI **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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., dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet with an expert. As they were in the airport waiting for a return flight, they discussed the case, and had some discussion about payments and financials. No express fee agreement was reached during the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency." It reads as follows:

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. Exhibit 8). The total of this invoice was $42,564.95 and was billed at a "reduced" rate of $550 per hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and costs through April 4, 2017 for a total of $46,620.69, and was billed at a "reduced" rate of $550 per

hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and costs through July 28, 2017 totaling of $142,080.20. (Def. Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate of $550 per hour totaling $104,021.20; and services of Ashley Ferrel Esq. for a "reduced" rate of $275 per hour totaling $37,959.00. Id. This invoice was paid by the Edgeworths on August 16, 2017.

10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount of $255,186.25 for attorney's fees and costs; with $191,317.50 being calculated at a "reduced" rate of $550 per hour for Daniel Simon Esq., $60,981.25 being calculated at a "reduced" rate of $275 per hour for Ashley Ferrel Esq., and $2,887.50 being calculated at a "reduced" rate of $275 per hour for Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September 25, 2017.

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

12. Between June 2016 and December 2017, there was a tremendous amount of work done in the litigation of this case. There were several motions and oppositions filed, several depositions taken, and several hearings held in the case.

13. On the evening of November 15, 2017, the Edgeworth's received the first settlement offer for their claims against the Viking Corporation ("Viking"). However, the claims were not settled until on or about December 1, 2017.

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the

[1] $265,677.50 in attorney's fees for the services of Daniel Simon; $99,041.25 for the services of Ashley Ferrel; and $2,887.50 for the services of Benjamin Miller.

open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to come to his office to discuss the litigation.

16. On November 27, 2017, Simon sent a letter with an attached retainer agreement, stating that the fee for legal services would be $1,500,000 for services rendered to date. (Plaintiff's Exhibit 4).

17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah & Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all communications with Mr. Simon.

18. On the morning of November 30, 2017, Simon received a letter advising him that the Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities, et.al. The letter read as follows:

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc."

(Def. Exhibit 43).

19. On the same morning, Simon received, through the Vannah Law Firm, the Edgeworth's consent to settle their claims against Lange Plumbing LLC for $25,000.

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of $2,345,450, less payments made in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80. This lien includes court costs and

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 express agreement of $550 an hour; and that the agreement for $550 an hour was made at the outset of the case. Mr. Simon alleges that he worked on the case always believing he would receive the reasonable value of his services when the case concluded. There is a dispute over the reasonable fee due to the Law Office of Danny Simon.

22. The parties agree that an express written contract was never formed.

23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against Lange Plumbing LLC for $100,000.

24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case number A-18-767242-C.

25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate Lien with an attached invoice for legal services rendered. The amount of the invoice was $692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

CONCLUSION OF LAW

The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The Court

An attorney may obtain payment for work on a case by use of an attorney lien. Here, the Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-738444-C under NRS 18.015.

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C, complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was perfected before settlement funds generated from A-16-738444-C of $6,100,000.00 were deposited, thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly & Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien is enforceable in form.

The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C. Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication under NRS 18.015, thus the Court must adjudicate the lien.

Fee Agreement

It is undisputed that no express written fee agreement was formed. The Court finds that there was no express oral fee agreement formed between the parties. An express oral agreement is formed when all important terms are agreed upon. *See,* Loma Linda University v. Eckenweiler, 469 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were not agreed upon and when the parties contemplated a written agreement*). The Court finds that the payment terms are essential to the formation of an express oral contract to provide legal services on an hourly basis.

Here, the testimony from the evidentiary hearing does not indicate, with any degree of certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon, regarding punitive damages and a possible contingency fee, indicate that no express oral fee agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August 22, 2017 email, titled "Contingency," he writes:

> "We never really had a structured discussion about how this might be done. I am more than happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc. Obviously that could not have been done earlier snce who would have thought this case would meet the hurdle of punitives at the start. I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell. I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?"

(Def. Exhibit 27).

It is undisputed that when the flood issue arose, all parties were under the impression that Simon would be helping out the Edgeworths, as a favor.

The Court finds that an implied fee agreement was formed between the parties on December 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at $550 per hour, and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was created with a fee of $275 per hour for Simon's associates. Simon testified that he never told the Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger coverage". When Simon repeatedly billed the Edgeworths at $550 per hour for his services, and $275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied fee agreement was formed between the parties. The implied fee agreement was for $550 per hour for the services of Daniel Simon Esq. and $275 per hour for the services of his associates.

Constructive Discharge

Constructive discharge of an attorney may occur under several circumstances, such as:

- 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

into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def. Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly identified as the firm that solely advised the clients about the settlement. The actual language in the settlement agreement, for the Viking claims, states:

> PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

Id.

Also, Simon was not present for the signing of these settlement documents and never explained any of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and Vannah and received them back with the signatures of the Edgeworths.

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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

and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim. The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr. Simon never signed off on any of the releases for the Lange settlement.

Further demonstrating a constructive discharge of Simon is the email from Robert Vannah Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4, 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating, LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that doesn't seem in his best interests." (Def. Exhibit 53).

The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that was attached to the letter), and that Simon continued to work on the case after the November 29, 2017 date. The court further recognizes that it is always a client's decision of whether or not to accept a settlement offer. However the issue is constructive discharge and nothing about the fact that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys on the fee agreement, not the claims against Viking or Lange. His clients were not communicating with him, making it impossible to advise them on pending legal issues, such as the settlements with Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

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Simon from effectively representing the clients. The Court finds that Danny Simon was constructively discharged by the Edgeworths on November 29, 2017.

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

(b) In any civil action, upon any file or other property properly left in the possession of the attorney by a client.

2. A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.

3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or 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.

4. A lien pursuant to:

(a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action; and

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms are applied. Here, there was no express contract for the fee amount, however there was an implied contract when Simon began to bill the Edgeworths for fees in the amount of $550 per hour for his services, and $275 per hour for the services of his associates. This contract was in effect until November 29, 2017, when he was constructively discharged from representing the Edgeworths. After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is due a reasonable fee- that is, quantum meruit.

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was $550 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was created with a fee of $275 per hour for the services of Simon's associates. This implied contract was created when invoices were sent to the Edgeworths, and they paid the invoices.

The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as to how much of a reduction was being taken, and that the invoices did not need to be paid. There is no indication that the Edgeworths knew about the amount of the reduction and acknowledged that the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the bills to give credibility to his actual damages, above his property damage loss. However, as the lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund the money, or memorialize this or any understanding in writing.

Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP 16.1 disclosures and computation of damages; and these amounts include the four invoices that were paid in full and there was never any indication given that anything less than all the fees had been produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees

had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law Office retained the payments, indicating an implied contract was formed between the parties. The Court find that the Law Office of Daniel Simon should be paid under the implied contract until the date they were constructively discharged, November 29, 2017.

Amount of Fees Owed Under Implied Contract

The Edgeworths were billed, and paid for services through September 19, 2017. There is some testimony that an invoice was requested for services after that date, but there is no evidence that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for fees was formed, the Court must now determine what amount of fees and costs are owed from September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted billings, the attached lien, and all other evidence provided regarding the services provided during this time.

At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back and attempted to create a bill for work that had been done over a year before. She testified that they added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every email that was read and responded to. She testified that the dates were not exact, they just used the dates for which the documents were filed, and not necessarily the dates in which the work was performed. Further, there are billed items included in the "super bill" that was not previously billed to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing

indicated that there were no phone calls included in the billings that were submitted to the Edgeworths.

This attempt to recreate billing and supplement/increase previously billed work makes it unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed between the actual work and the billing. The court reviewed the billings of the "super bill" in comparison to the previous bills and determined that it was necessary to discount the items that had not been previously billed for; such as text messages, reviews with the court reporter, and reviewing, downloading, and saving documents because the Court is uncertain of the accuracy of the "super bill."

Simon argues that he has no billing software in his office and that he has never billed a client on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths, in this case, were billed hourly because the Lange contract had a provision for attorney's fees; however, as the Court previously found, when the Edgeworths paid the invoices it was not made clear to them that the billings were only for the Lange contract and that they did not need to be paid. Also, there was no indication on the invoices that the work was only for the Lange claims, and not the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without emails or calls, understanding that those items may be billed separately; but again the evidence does not demonstrate that this information was relayed to the Edgeworths as the bills were being paid. This argument does not persuade the court of the accuracy of the "super bill".

The amount of attorney's fees and costs for the period beginning in June of 2016 to December 2, 2016 is $42,564.95. This amount is based upon the invoice from December 2, 2016 which appears to indicate that it began with the initial meeting with the client, leading the court to determine that this is the beginning of the relationship. This invoice also states it is for attorney's fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This amount has already been paid by the Edgeworths on December 16, 2016.[2]

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[2]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.[3]

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.[4] 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.[5] 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.[6]

The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

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[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid by the Edgeworths, so the implied fee agreement applies to their work as well.

The Court finds that the total amount owed to the Law Office of Daniel Simon for the period of September 19, 2018 to November 29, 2017 is $284,982.50.

Costs Owed

The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing, LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought reimbursement for advances costs of $71,594.93. The amount sought for advanced cots was later changed to $68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

Quantum Meruit

When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g.* Golightly v. Gassner, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing,* Gordon v. Stewart, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*); and, Cooke v. Gove, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on November 29, 2017. The constructive discharge terminated the implied contract for fees. William Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion of the Law Office's work on this case.

In determining the amount of fees to be awarded under quantum meruit, the Court has wide discretion on the method of calculation of attorney fee, to be "tempered only by reason and fairness". Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the reasonableness of the fee under the Brunzell factors. Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the Court notes that the majority of the work in this case was complete before the date of the constructive discharge, and the Court is applying the Brunzell factors for the period commencing after the constructive discharge.

In considering the Brunzell factors, the Court looks at all of the evidence presented in the case, the testimony at the evidentiary hearing, and the litigation involved in the case.

1. *Quality of the Advocate*

Brunzell expands on the "qualities of the advocate" factor and mentions such items as training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr. Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr. Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's work product and results are exceptional.

2. *The Character of the Work to be Done*

The character of the work done in this case is complex. There were multiple parties,

multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the gamut from product liability to negligence. The many issues involved manufacturing, engineering, fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp testified that the quality and quantity of the work was exceptional for a products liability case against a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a substantial factor in achieving the exceptional results.

3. The Work Actually Performed

Mr. Simon was aggressive in litigating this case. In addition to filing several motions, numerous court appearances, and deposition; his office uncovered several other activations, that caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the other activations being uncovered and the result that was achieved in this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions and the litigation that allowed this case to develop into a $6 million settlement. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case.

4. The Result Obtained

The result was impressive. This began as a $500,000 insurance claim and ended up settling for over $6,000,000. Mr. Simon was also able to recover an additional $100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a $6 million settlement with a $500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they

were made more than whole with the settlement with the Viking entities.

In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a) which states:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, 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;

(3) Whether the client is liable for expenses regardless of outcome;
(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and
(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.
Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for the Edgeworths, the character of the work was complex, the work actually performed was extremely significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell factors justify a reasonable fee under NRPC 1.5. However, the Court must also consider the fact that the evidence suggests that the basis or rate of the fee and expenses for which the client will be responsible were never communicated to the client, within a reasonable time after commencing the representation. Further, this is not a contingent fee case, and the Court is not awarding a contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of $200,000, from November 30, 2017 to the conclusion of this case.

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of $550 per hour between Mr. Simon and the Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr. Simon as their attorney, when they ceased following his advice and refused to communicate with

him about their litigation. The Court further finds that Mr. Simon was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates; up and until the last billing of September 19, 2017. For the period from September 19, 2017 to November 29, 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. For the period after November 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being constructively discharged, under quantum meruit, in an amount of $200,000.

ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is $484,982.50.

IT IS SO ORDERED this 19 day of November, 2018.

DISTRICT COURT JUDGE

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

Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

Bob,

Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.

Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.

Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
[Quoted text hidden]

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com> Tue, Dec 26, 2017 at 12:18 PM
To: "James R. Christensen" <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad
[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com> Tue, Dec 26, 2017 at 12:26 PM

[redacted]

Exhibit 3

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

Gmail by Google

Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com> Wed, Oct 31, 2018 at 4:18 PM
To: Jessie Romero <Jromero@vannahlaw.com>

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number **(702) 369-4161, Ext. 302**:

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Wednesday, October 31, 2018 at 04:18 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-10-31 Edgeworth .pdf	Success

Exhibit 4

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

Gmail by Google

Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com> Mon, Nov 19, 2018 at 3:44 PM
To: Jessie Romero <Jromero@vannahlaw.com>

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number **(702) 369-4161, Ext. 302:**

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Monday, November 19, 2018 at 03:43 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-11-19 Letter to Christensen .pdf	Success

Exhibit 23

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada

December 31, 2018

Via E-Serve

Robert D. Vannah
400 S. 7th Street
Las Vegas, NV 89101
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Mr. Vannah:

In December of 2017, I wrote to you and explained that Mr. Simon was willing to work collaboratively to resolve the attorney lien. I also advised that accusations of theft and conversion were counterproductive. The offer to work collaboratively was impliedly rejected when your office filed and served a complaint against Mr. Simon alleging conversion.

Plaintiffs' motion for an order directing Simon to release funds repeats the conversion accusation. (*See, e.g.*, Mot., at 6:7-9.)

Accusing Mr. Simon of illegality and conversion - without basis - does not promote a collaborative discussion and resolution of the lien issue, and/or disposition of the trust account during appeal.

If you would like to begin a collaborative dialogue, please contact me.

I look forward to hearing from you.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon

Exhibit 24

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
601 S. 6th Street
Las Vegas, Nevada 89101
(702) 272-0406
(702) 272-0415 fax
jim@christensenlaw.com
Attorney for Simon

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION; a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES I through 5 and ROE entities 6 through 10; Defendants.	CASE NO.: A738444 DEPT NO.: X **DECLARATION OF WILL KEMP, ESQ.**

1. I have been a licensed attorney in the State of Nevada since September, 1978. I have litigated high profile products liability cases in Nevada and around the country. I have presented arguments before all the courts in the state of Nevada, as well as the First, Third and Ninth Circuit Court of Appeals and the United States Supreme Court. I have been an AV Preeminent Lawyer by Martindale Hubbell since the 1980's, which is the highest AV rating for competency and ethics. I have also been named as a Super Lawyer, named in the Mountain States Top 10, selected in the Legal Elite of Nevada Business Magazine and selected as Nevada Trial Lawyer of the year in 2012.

I have served on multiple steering committees, including but not limited to Plaintiffs' Legal Committee, MGM Multi-District Fire Litigation, 1980-1987, (the seminal mass tort case in Nevada) Plaintiffs' Steering Committee and Plaintiffs' Trial Counsel, San Juan Dupont Plaza Multi-District Fire Litigation, 1987-98, Plaintiffs' Steering Committee, Peachtree 25th Fire Litigation, 1991-94, Plaintiffs' Steering Committee and Executive Committee in Castano Tobacco Litigation, 1993-2010, Orthopedic Bone Screw Products Liability Litigation, 1994-1998, Plaintiff's Management Committee, Fen/Phen

Diet Drug Litigation, 1998-2003 (the largest pharmaceutical settlement in history--$25 Billion plus), Plaintiffs' Steering Committee, Baycol Products Liability Litigation, 2002-07, Minnesota Syngenta Litigation State Court Committee (2016-____) ($1.3 Billion settlement pending). I was the Liaison Counsel for Plaintiffs and lead attorney on the product liability committee of Plaintiffs' Legal Committee in the MGM Fire Litigation. I have tried numerous complex product liability cases, including the San Juan Dupont Plaza Multi-District Fire Litigation (15 ½ month product liability case against 200 Defendants resulting in plaintiffs' verdict). I was also lead counsel on the largest product liability verdict in the history of Nevada: $505 Million verdict in Chanin v. Teva in 2010 (defective propofol packaging theory).

2. In connection with many of the foregoing cases, I have presented the work effort of our firm to multiple state and federal courts in fee presentations. In addition, I was on the Fee Committee in the Castano Tobacco Litigation and decided on the allocation of a $1.3 Billion fee among 57 law firms based upon their relative efforts in that landmark litigation.

3. In my practice, I have represented both plaintiffs and defendants in all types of litigation, including negligence cases and product liability. I am personally familiar with the efforts required to both prosecute and defend serious cases in general, including hotly contested product liability litigation against a worldwide manufacturer.

4. I have been retained by the Law Office of Daniel Simon (hereinafter LODS) to review the case of Edgeworth Family Trust and American Grating v. Lange Plumbing and the Viking entities, hereinafter "The Edgeworth Matter." In preparing my opinion, I have reviewed the register of actions; the e-service filings, pleadings, motions, the relevant court orders; voluminous e-mails, the list of depositions taken, notices of depositions, extensions of discovery in other LODS cases and expert reports. I have a qualified understanding of the work performed on this case and the results achieved.

5. I am also aware of the billing statements produced to the client in this case and the payments that were made for these billing statements.

6. Before the mediation that occurred on November 10, 2017, LODS filed numerous motions that effectively forced the Viking entities to settle this matter prior to any rulings on the pending motions. At the time of mediation, the Trial Judge, the Honorable Tierra Jones had already set

an evidentiary hearing to occur in December 2017 in order to determine whether Viking's answer should be stricken for discovery abuses or other sanctions. Notably, the motion for to Strike Answer was filed on September 29, 2017, after Mr. Edgeworth commented in the August 22, 2017 email set forth below that no one expected "this case would meet the hurdle of punitives" and proposed a hybrid "that incents" LODS to vigorously pursue punitives. The Trial was set for February 5, 2018. The Motion to Strike Answer was obviously one of the key threats that coerced the settlement.

7. At the same time, LODS also had pending motions for summary judgment against Lange Plumbing. Lange Plumbing had cross-claims against the Viking entities.

8. The case was worked up with many experts consisting of several engineering experts, an appraiser to establish damages, litigation loan experts to justify non-recourse interest on loans and a fraud expert. The defense hired many experts that needed to be rebutted.

9. The document production was voluminous and consisted of more that 100,000 pages, there was substantial motion work and the emails with the client show continuous communication to an extent that is relatively unusual. This close communication with the client on a daily (if not more) basis obviously took much attention from LODS but appears to have been productive in multiple ways.

10. I have reviewed the email dated November 21, 2017, that Mr. Edgeworth sent to Mr. Simon setting forth damage elements. The amounts discussed in that email that I would consider to be "hard" damages were $512,636 paid for repairs to the damaged house, $24,117 (repairs owed) and $194,489 (still to repair). This totals $731,242 of "hard" damages. The other damages items such as "stigma" for $1,520,000 and the interest of $285,104 are what I would consider "soft" damages. In evaluating the value of a case, many attorneys give more credence to "hard" damages.

11. I have also reviewed the email dated August 22, 2017 from Mr. Edgeworth to Mr Simon wherein Mr. Edgeworth states as follows:

> **We never really had a structured discussion about how this might be done.** I am more that happy to keep paying hourly but **if we are going for punitive we should probably explore a hybrid** of hourly on the claim and then **some other structure that incents both of us** to win an[d] go after the appeal that these scumbags will file etc.
>
> **Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.**
>
> I could also swing hourly for the whole case (unless I am off what this is going to cost).

> I would likely borrow another $450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
>
> I doubt we will get Kinsale [the insurer for Lange Plumbing] to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Bold added) The August 22, 2017 email is significant for several reasons. First, as discussed in more detail, the settlement had to have included at least $3.3 Million of punitive damages and more likely $4 or $5 Million of punitive damages because the $6.1 Million settlement is $5,368,580 above the "hard" damages of $731,420.00 and $2,272,855 above the total damages of $3,827,147 (as set forth in the November 21, 2017 email). It should be noted that the $3,827,147 figure includes $1,520,000 for "stigma" to the house damages (of which there is not strong legal support). Under any view, the settlement included millions of dollars of punitive damages. It is unprecedented to get that much in punitive damages in a case of this nature where only property damage is involved. Indeed, some courts would hold that a 5 to 1 ratio ($5 Million punitive to $1M compensatory) is unconstitutionally excessive.

12. The second reason that the August 22, 2017 email is significant is that, Mr. Edgeworth acknowledges that he does not believe that the parties have a fee agreement ("We never really had a structured discussion about how this might be done.") and then proposed "a hybrid" fee arrangement "if we are going for punitive." Not only did Mr. Edgewroth and LODS "go for punitive" after August 22, 2017, they got millions of dollars in punitives. Mr. Edgeworth also explains why a fee agreement to pursue the punitives could not be made earlier ("Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.") Given the volume of the emails between Mr. Edgeworth and LODS between this August 22, 2017 and the mediation, it appears that a herculean (and successful) effort was made to "go for punitive."

13. The third reason that the August 22, 2017 email is significant is that Mr. Edgeworth expresses the firm opinion therein that the only way to obtain satisfactory resolution of his claim is to succeed at trial and then succeed on appeal: "some other structure that incents both of us to win [at trial] and go after the appeal that these scumbag [Defendants] will file..." Mr. Edgeworth is obviously a very sophisticated client (based on a review of his emails to LODS) and his general

expectation that the usual course to an adequate recovery would be years of litigation and success at trial and appeal is consistent with what could typically occur. This will be referred to later as "Edgeworth's expected result."

14. I have been informed and believe that, at the mediation on November 10th, 2017, the parties could not reach a settlement. Viking offered $2.5 Million. The Mediator, Floyd Hale, requested to send a mediator proposal for $5 million. LODS only agreed to a mediator proposal of $6 million. Subsequently, on November 15, 2017, Viking accepted the $6 million proposal, subject to a determination of a good faith settlement extinguishing the claims Lange Plumbing has against Viking and a confidentiality provision. Later, LODS was able to negotiate better terms, including a mutual release and omitting the confidentiality provision.

15. I am familiar with NRPC 1.5, and the Brunzell Factors that control Nevada law. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 455 P.2d 31, 33 (Nev. 1969) ("From a study of the authorities it would appear such factors may be classified under four general headings (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.") I am also familiar with the detailed analysis of the Lodestar approach for determining a reasonable attorney fee in the absence of a contract with the client. I have also argued fee dispute issues at the First Circuit Court of Appeals. See In re Thirteen Appeals Arising Out of the San Juan Dupont Hotel Fire Litigation, 56 F.3d 295, 307 (1st Cir. 1995) (approving the percentage of fund method for mass tort cases instead of the lodestar technique); In re Nineteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation (1st Cir. 1992).

16. An attorney who does not have a signed contract with a client is entitled to receive a reasonable attorneys fee for the value of his/her services. There are many factors to consider in determining the value of an attorneys services. To determine reasonableness, Nevada state courts rely heavily on the "Brunzell factors." The state court decisions applying the Brunzell factors suggest that

the analysis focuses primarily on the quantity, quality of work and advocacy rather than the hourly rate. NRCP 1.5 lists eight non-exclusive factors to consider. One of the primary factors is the fees "customarily charged in the locality for similar legal services."

17. The Edgeworth matter involved one house that was heavily damaged by flooding due to a defective sprinkler. This type of case, i.e., one client with property damage, is not attractive to most experienced product liability litigators for several reasons. First, the amount of energy involved in litigating a complex product case usually requires multiple clients (or at a minimum serious personal injury) to justify the time expended to obtain an award. Second, product liability is a legal concept that is not familiar to many jurors (and even some judges). This creates an element of uncertainty in predicting liability outcomes that is greater than most garden variety negligence cases. Third, property damage typically does not invoke sympathy with jurors needed to drive a punitive award. Fourth, no experienced litigator will take a case wherein punitive damages are the primary damages element because punitive damages are rarely awarded and paid even less often.

18. For these reasons, despite expertise in both product liability and construction defect litigation, our office probably would have not have taken this case for the reasons outlined above. If we had taken the case, the minimum contingent fee would have been 40% and more likely 45%. A settlement of $6.1 Million in a complex product liability case with no personal injury or death and only $731,242 in "hard costs" is truly remarkable.

19. When reviewing the Edgeworth matter to determine a reasonable fee, the analysis must start with the fourth Brunzell factor; the result achieved. As set forth in Paragraph 13 above, Mr. Edgeworth, a sophisticated client, expressed the opinion on August 2, 2017, that it would take a trial and appeal to get "Edgeworth's expected result." Given how involved Mr. Edgeworth was with the case (including minute details) and that he is a very sophisticated client, his belief in this regard would normally be correct. Indeed, most lawyers would agree that it would take years to even get the "hard costs." But instead of getting "Edgeworth's expected result" after years of litigation, LODS got a truly extraordinary result in less than 3 months after the date of the August 2, 2017 email. LODS secured a six million, one hundred thousand dollar ($6,100,000) settlement for a complex products liability case where the "hard" damages were only $791,242.00. The total claimed past "hard" and "soft" damages

involved, excluding attorney's fees, experts fees and costs were approximately $1.5 million dollars. Getting millions of dollars of punitives in a settlement in a case of this nature is remarkable. For these reasons, the fourth Brunzell factor (result) overwhelmingly favors a large fee.

20. The quality and quantity of the work (the third Brunzell factors) were exceptional for a products liability case against a worldwide manufacturer that is very experienced in litigating cases. LODS had to advocate against several highly experienced law firms for Viking, including local and out of state counsel. In this regard, the Motion to Strike Answer filed on September 29, 2017 is of utmost significance.

21. LODS retained multiple experts to secure the necessary opinions to prove the case. It also creatively advocated to pursue unique damages claims (e.g., the "stigma" damages) and to prosecute a fraud claim and file many motions that most lawyers would not have done. LODS also secured rulings that most firms handling this case would not have achieved. The continued aggressive representation prosecuting the case was a substantial factor in achieving the exceptional results. This (especially the Motion to Strike Answer and impending evidentiary hearing) is the second Brunzell factor.

22. I am familiar with the size of the LODS firm and the amount of work performed would have significantly impaired LODS from simultaneously working on other cases. Our firm has over a dozen litigators and a long track record of successful litigation and we often find it difficult to support a "hot" products case (i.e., one requiring the full time attention of several lawyers). It is very impressive that a small firm made the sacrifice to do so.

23. LODS does not represent clients on an hourly basis and the fee customarily charged in the locality for similar legal services should be substantial in light of the work actually performed, the LODS lost opportunities to work on other cases and the ultimate amazing result achieved. Absent a contract, LODS is entitled to a reasonable fee customarily charged in the community based on the services performed.

24. When evaluating the novelty and difficulty of the questions presented; the adversarial nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved

given the total amount of the settlement compared to the "hard" damages involved, the reasonable value of the services performed in the Edgeworth matter by LODS, in my opinion, would be in the sum of $2,440,000. This evaluation is reasonable under the Brunzell factors.

25. I make this Declaration under penalty of perjury.

Dated this 31st day of January, 2018.

Will Kemp, Esq.

PATRICIA A. MARR, LTD.
PATRICIA A. MARR, ESQ.
Nevada Bar No. 008846
2470 St. Rose Pkwy., Ste. 110
Henderson, Nevada 89074
(702) 353-4225 (telephone)
(702) 912-0088 (facsimile)
patricia@marrlawlv.com
Counsel for Robert Darby Vannah, Esq.
John Buchanan Greene, Esq. and
Vannah & Vannah, Chtd.

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' AMENDED COMPLAINT

HEARING REQUESTED

Date of Hearing:
Time of Hearing:

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' Amended Complaint.

This Motion is based upon the attached Memorandum of Points and Authorities, the Memorandum of Points and Authorities set forth in VANNAH'S previously-filed Motion to Dismiss Plaintiffs' Complaint, NRCP 12(b)(5), 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, Appellants' Appendix (attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A), the record on appeal (*Id.*), all of which VANNAH adopts and incorporates by this reference, and any oral argument this Court may wish to entertain.

DATED this 29th day of May, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.

Patricia A. Marr, Esq.
Nevada Bar No. 008846

MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

As previously indicated by VANNAH in the Opposition to SIMON'S Emergency Motion, since denied, the amended complaint of Plaintiffs DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (collectively referred to as SIMON) is the direct byproduct of a judicial matter that began in May of 2016, and that is now on appeal before the Nevada Supreme Court. (*Id.*) All briefing has been completed and the issues on appeal are waiting for further action by that judicial body.

On December 23, 2019, SIMON filed the original complaint. It contained eight (8) counts, and it was vague as to which counts applied to which Defendant. On May 21, 2020, SIMON filed an amended complaint. (*See* a copy of SIMON'S Amended Complaint attached as Exhibit A.) Of its eight (8) counts/claims, five (5) are directed towards VANNAH. (*Id.*) These include Counts/claims for Wrongful Use of Civil

Proceedings; Intentional Interference with Prospective Economic Advantage; Abuse of Process; Negligent Hiring, Supervision, and Retention; and, Civil Conspiracy. (*Id.*)

The basis for all of SIMON'S allegations against VANNAH are communications allegedly made **in the course of litigation and during various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials**. (*Id.*) As such, all of the Counts/claims are barred by the time-honored and absolute litigation privilege. *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901, 903 (Nev. 2014). They are also protected communications pursuant to NRS Sections 41.635 through 41.670, Nevada's Anti-SLAPP statutes, and "immune from any civil action for claims based upon the communication." (*Id.*, at 41.650.) Since SIMON filed his Complaint and Amended Complaint to punish the Defendants for using the judiciary to resolve a legal dispute, SIMON'S Amended Complaint is a SLAPP, and will be referred to as such throughout this Motion.

In addition to the preceding fatal defects, a basis for SIMON'S allegations contained in Count I (Wrongful Use of Civil Proceedings) and Count III (Abuse of Process) are seemingly centered on actions allegedly taken during the litigation, and without any measure of discovery allowed, that: a.) are on appeal, thus no final determination, let alone one in favor of SIMON; and/or, b.) did not involve any action other than the filing of a complaint and an amended complaint and participating in judicial hearings (to dismiss the complaint/amended complaint and to adjudicate SIMON'S lien). (*See* Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Thus, not only are Counts I and III based exclusively on privileged and protected communications that are immune from civil liability *and* unsupported by the facts, they are neither ripe nor legally appropriate for consideration under the law. In short, they are inextricably linked to the matters on appeal. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) In Nevada, a claim for abuse of process requires more than the mere filing of a complaint. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985)(The mere filing of a complaint itself is insufficient to establish the tort of abuse of process…[I]nstead, the complaining party must include some allegation of abusive measures taken after the filing of the complaint in order to state a claim.). Since Counts I and III based exclusively on privileged and protected communications that are immune from civil liability *and* unsupported by the facts, and since they are neither ripe nor legally appropriate for consideration under the law, these defects negate SIMON'S claim for abuse of process.

SIMON'S Count/Claim for Intentional Interference with Prospective Economic Advantage must also be dismissed, as there is no set of facts that he could present or prove that would entitle SIMON to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). In Nevada, the elements for a claim for intentional interference with prospective economic advantage are: 1.) A prospective contractual relationship between plaintiff and a third party; 2.) Defendant has knowledge of the prospective relationship; 3.) The intent to harm plaintiff by preventing the relationship; 4.) The absence of privilege or justification by defendants; 5.) Actual harm to plaintiff

as a result of defendant's conduct; and, 6.) Causation and damages. *Wichinsky v. Moss*, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1225 (1987).

SIMON failed to allege an actual prospective contract that VANNAH allegedly interfered with, or *the* actual harm and/or *the* damages allegedly suffered by SIMON as a result. (*See*, Exhibit A.) In short, this Count/Claim is nonsensical. (*Id*.) There is no allegation or inference that VANNAH "took" a client from SIMON, or that VANNAH agreed to represent a prospective client for less than SIMON, etc. (*Id*.; *see also*, *Wichinsky v. Moss*, 109 Nev. 84, 847 P.2d 727, (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 734 P.2d 1225 (1987)).

Finally, and most importantly, this Count/Claim is barred by the time-honored and absolute litigation privilege set forth in *Greenberg Traurig v. Frias Holding Co.*, 331 P.3d 901, 903 (Nev. 2014). It is also barred, as the communications that SIMON referenced in his SLAPP to support this Count/claim are protected communications pursuant to NRS Sections 41.635 through 41.670, and "immune from any civil action for claims based upon the communication." (*Id.*, at Section 41.650.) That's the epitome of the presence of privilege and justification for the communications.

Furthermore, the basis for SIMON'S allegations contained in Count IV (Negligent Hiring, Supervision, and Retention) and Count VIII (Civil Conspiracy) are brought by SIMON as an admitted adversary of the Edgeworths due to actions allegedly taken in the underlying judicial action by the Edgeworths and their attorneys, VANNAH. The law is clear that VANNAH, as attorneys, do not owe a duty of care to

SIMON, an adversary of a client in the underlying litigation. *Dezzani v. Kern & Associates, Ltd.*, 134 Nev.Adv.Op. 9, 12, 412 P.3d 56 (2018); *See also*, *Fox v. Pollack*, 226 Cal.Rptr. 532, 536 (Ct. App. 1986).

SIMON'S Count/claim of civil conspiracy also fails as a matter of law, since SIMON did not, and cannot, allege sufficient facts to meet the essential elements of that claim. Nevada law states that a civil conspiracy is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose or to accomplish some purpose not in itself criminal or unlawful, but by criminal or unlawful means. *Eikelberger v. Tolotti*, 96 Nev. 525, 528, 611 P.2d 1086, 1088 (1980)(emphasis added); *Sunderland v. Gross*, 105 Nev. 192, 772 P.2d 1287 (1989).

Here, VANNAH (the attorney) met with, advised, and counseled clients—the Edgeworths. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) In furtherance of the role as attorney, VANNAH prepared and filed a complaint and an amended complaint against SIMON, and thereafter participated in public judicial proceedings to further the representation of the Edgeworths' interests and claims. (*Id*.) These acts are exactly what attorneys do and are required to do, under the Nevada Rules of Professional Conduct. These acts are also protected and immune from civil liability under NRS 41.635-.670, Nevada's Anti-SLAPP statutes.

Clearly, what VANNAH did for the Edgeworths as their lawyers is an open book, conducted in a judicial forum, designed and intended to seek and obtain a legal remedy for clients, and available to any reader of this public record. (*See*, Appellants'

Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A; see also NRS Sections 41.635-670.) There is no legal authority or rule that SIMON can cite that could possibly deem that these legal, customary, and protected actions and communications rise to the level of a civil conspiracy. *Eikelberger v. Tolotti*, 96 Nev. 525, 528, 611 P.2d 1086, 1088 (1980)(emphasis added); *Sunderland v. Gross*, 105 Nev. 192, 772 P.2d 1287 (1989).

To paraphrase SIMON from the underlying matter on appeal, none of his allegations against VANNAH "rise to the level of a plausible or cognizable claim for relief." Some are barred by the litigation privilege, others by a lack of procedural ripeness (and a lack of merit), others still by the absence of any duty owed or legal remedy afforded, and all by Nevada's Anti-SLAPP laws. Since none of SIMON'S claims are left unscathed, they all should be dismissed pursuant to NRCP 12(b)(5).

But *again*, let there be no doubt: If the Defendants here had not filed the complaint and amended complaint in the underlying matter, the dismissal of which is presently on appeal, and presented legal arguments and evidence in their favor, SIMON never would have filed his SLAPP. As the appellate record shows, the Edgeworths did not ask for any of this from SIMON; they simply wanted the contract honored and their funds given to them. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Any other inference, assertion, argument, or allegation by SIMON to the contrary is nonsensical and belied by the facts and the record. (*Id*.)

What this Court is being asked to do is to preside over a matter that arose

because SIMON wants to punish the Edgeworths and their attorneys, VANNAH, for filing a lawsuit in good faith to redress wrongs that were allegedly committed by SIMON. (*See*, a copy of the Edgeworths' Amended Complaint attached as Exhibit B.) SIMON's filing flies in the face of the facts, the law, and Nevada's Anti-SLAPP statutes (NRS Sections 41.635-670). To again paraphrase SIMON, "Anti-SLAPP statutes protect those who exercise their right to free speech, petition their government on an issue of concern, and/or try to resolve a conflict through use of the judiciary." SIMON'S suit was brought in direct response to the Defendants' legal use of the judiciary through the filing of a complaint and an amended complaint to redress wrongs. SIMON'S suit is a SLAPP, nothing more.

It is foreseeable that the Nevada Supreme Court will agree with the Edgeworths that the dismissal of their amended complaint by Judge Jones was procedurally improper and then remand that matter for further proceedings. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Thereafter, it is likely that discovery and a trial on the merits of the Edgeworths' claims would follow. (*Id*.) Also, it is equally foreseeable that a jury will then decide that SIMON breached the oral contract he had with the Edgeworths, converted their money when he exercised dominion and control over amounts that he knew or should have known that he had no basis to claim and refused to release to his clients, and that the Edgeworths, as the victims, are entitled to the damages they seek. (*Id*.) Should that occur, any sliver of factual or legal basis for any of SIMON'S claims would be eradicated.

Even if the Nevada Supreme Court agrees that the dismissal of the Edgeworths' Amended Complaint was somehow proper, that should have no bearing on the need to dismiss SIMON'S SLAPP here and now. Every lawsuit has a winner and a loser, whether it be a breach of contract matter or a personal injury suit. There is nothing novel about that reality. If SIMON'S act of filing his retaliatory complaint is condoned with life and legs by denying this Motion, the floodgates of retaliatory litigation of these types of Counts/claims would surely follow. Every "victorious litigant" would be given the green light to return fire, so to speak, with a new complaint alleging the garden variety of Counts/claims seen here. That would be a very unwise precedent to set, and a really bad set of facts to set it with. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

II. SIMON CONTINUES TO EXERCISE DOMINION AND CONTROL OVER THE EDGEWORTHS' MONEY, THUS UNDERMINING THE BASIS FOR HIS COMPLAINT.

SIMON is wrong, factually and legally, when he speaks of an "arrangement" that purportedly undermines the Edgeworths' claim for conversion. When the underlying settlements were reached with the Viking and Lange entities, the Edgeworths wanted, and were/are entitled to, the full measure of these/their funds. (*Id*.) From May of 2016, through the submission of and payment of the fourth and final invoice, SIMON had provided, and the Edgeworths had always paid, invoices for work performed by SIMON at the rate of $550 per hour. (*Id*.) That was the contract. (*Id*.)

The Edgeworths expected that the contract with SIMON would be honored by

him. (*Id*.) Yet, as alleged in the Amended Complaint, and contained in the appellate record (*Id*.), rather than abide by the contract and provide the Edgeworths with a fifth and final invoice for his work, SIMON demanded a fee bonus of $1,114,000.00, served an attorney's lien in an unspecified amount, demanded what amounted to a contingency fee of nearly 40% of the amount of the underlying settlements, served a second lien for an amount that is the functional equivalent of a 40% contingency fee, and refused to release the settlement funds to the Edgeworths. (*Id*.)

In SIMON'S own words, penned in a letter to the Edgeworths on November 27, 2017 (Attached as Exhibit C), this is how SIMON presented his drop-dead demand to his clients: "I have thought about this and this is the lowest amount I can accept…If you are not agreeable, then I cannot continue to lose money and help you…I will need to consider all options available to me." (*Id.*, emphasis added.) These words clearly mean that if the Edgeworths didn't acquiesce and sign a new retainer agreement that would give SIMON an additional $1,114,000 in fees, he would no longer be their lawyer. (*Id.*) Meaning SIMON would quit, despite the looming reality that the litigation against the Lange defendant was set for trial early in 2018. (*Id*.)

This is yet another example of the reality that the Edgeworths have lived, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) It resulted in a SLAPP from SIMON. (*See*, Exhibit A.)

SIMON'S proposal was to deposit the settlement funds in his trust account. That

was unacceptable to the Edgeworths. VANNAH'S proposal was to deposit the Edgeworths' funds into VANNAH'S trust account. That was unacceptable to SIMON. Since these funds needed to be deposited so the check didn't become stale, a compromise was reached that caused the funds to be deposited at Bank of Nevada. In order for the Edgeworths' funds to be disbursed, both SIMON and VANNAH must consent and co-sign on a check. This was not and is not what the Edgeworths wanted or want—they want their money. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Even now, SIMON continues to exercise dominion and control of well over $1 million dollars of the Edgeworths' funds with no reasonable factual or legal basis to do so. (*Id.*) That's conversion of the Edgeworths' property. Under Nevada law, conversion is, "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with, his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)("We conclude that it was permissible for the jury to find that a conversion occurred when Bader refused to release their brand.") Nevada law also holds that conversion is an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge. (*Id.*) To put a finer point on it, Footnote 1 in *Bader* states as follows, "Conversion does not require a manual taking. Where one makes an unjustified claim of

title to personal property or asserts an unfounded lien to said property which causes actual interference with the owner's rights of possession, a conversion exists." (*Id*.)(Emphasis added).

It's clear that, contrary to the assertions of SIMON, to prevail on their claim for conversion, the Edgeworths only need to prove that SIMON exercised, and continues to exercise, dominion and control over the Edgeworths' money without a reasonable basis to do so. (*Id*.) It doesn't require proof of theft or ill intent, as SIMON wants everyone to believe. (*Id*.) Rather, the conversion is his unreasonable claim to an excessive amount of the Edgeworths' money that SIMON knew and had every reason to believe that he had no reasonable basis to lay claim to. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Some of the best evidence of the factual and legal reality of SIMON'S conversion is the amount of his superbill ($692,120) versus the amount of his Amended Lien ($1,977,843.80). (*Id*.) At the near conclusion and resolution of the flood litigation in mid-November of 2017, SIMON decided he wanted a contingency fee from the Edgeworths but failed, as the lawyer, to reduce any fee agreement to writing. (*Id*.) Thus, per the Rules and a Decision and Order of Judge Jones, that option was precluded. (*Id*.) Even though the evidence that SIMON himself generated shows that the most he could reasonably have expected to receive in additional proceeds from the Edgeworths for the work he performed was $692,120, SIMON still served his Amended Lien (for ($1,977,843.80) and still refuses to release over a million dollars of the Edgeworths'

money to them. (*Id*.) That, without any reasonable doubt, is conversion under Nevada law. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(*citing Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). At the very least it constitutes a good faith basis to make the claim against SIMON. NRS 41.637(3).

SIMON'S lien has been adjudicated, he's been awarded $484,982.50 in fees that the Edgeworths have agreed to pay to him (*See*, Exhibit B to VANNAH'S previously filed Opposition to SIMON'S emergency motion), yet SIMON won't release the balance of the Edgeworths' money to them. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) These facts, together with the law cited above, provide more than enough good faith basis to seek and maintain a claim for conversion (as well as the other claims in the underlying Amended Complaint) against SIMON. (Nevada Rule of Professional Conduct 3.1).

III. NRCP 12(b)(5) PAVES A CLEAR PATH TO DISMISS SIMON'S COMPLAINT.

Nevada Rule of Civil Procedure 12(b)(5) allows for the dismissal of causes of action when a pleading fails to state a claim for relief upon which relief can be granted. "This court's task is to determine whether…the challenged pleading sets forth allegations sufficient to make out the elements of the right to relief." *Vacation Village, Inc. v. Hitachi Am. Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)(quoting *Edgar v. Wagner*, 101 Nev. 226, 228 ,699 P.2d 110, 112 (1988). Dismissal is proper where the allegations are insufficient to establish the elements of a claims for relief. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008).

SIMON'S SLAPP must be dismissed, "…if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Here, SIMON cannot prove any set of facts that would entitle him to any relief as a matter of law for his Counts/claims for wrongful use of civil proceedings, for intentional interference with prospective economic advantage, for abuse of process, for negligent hiring/retention, and/or for civil conspiracy. The reason is clear and simple: these Counts/claims are firmly founded on things allegedly said and done by VANNAH **in the course of litigation and various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials**. (*See*, Exhibit A.)

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).

A plain reading of SIMON'S complaint reveals that the primary basis for all of SIMON'S claims are papers and pleadings filed, and statements allegedly made by one or more of the defendants, in the course of the underlying litigation and judicial proceedings. (*See*, Exhibit A.) Since these statements are "absolutely privileged," there is no set of facts…which would entitle SIMON to any relief. See, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181

P.3d 670, 672 (2008). These acts and communications are also protected and immune from civil liability under NRS 41.650. Therefore, these claims must be dismissed pursuant to NRCP 12(b)(5), as they do not state a claim upon which relief could ever be granted.

SIMON'S claims for abuse of process and wrongful use of civil proceedings must also be dismissed on the additional grounds that they are either procedurally premature and/or there is no set of facts that SIMON could prove that would entitle him to a remedy at law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). One of the key elements for a claim for malicious prosecution (since abandoned by SIMON in his latest SLAPP) is a favorable termination of a prior action. *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002). The same case speaks of the elements of a claim for abuse of process, which also includes the requirement of the resolution of a prior, or underlying action. *Id.* The language in SIMON'S claim for wrongful use of civil proceedings is nothing more, either factually or legally, than one couched in malicious prosecution and/or abuse of process, and should be disposed in like manner with them. (*See*, Exhibit A, at pages 11-13.)

A claim for abuse of process also requires more than the mere filing of a complaint itself. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Rather, the complaining party must include some allegation of abusive measures taken after the filing of a complaint to state a claim. *Id.* As indicated in the appellate record, nothing substantive with the Edgeworths' Amended Complaint was allowed to be taken after it was filed and served. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) No discovery, no depositions, no nothing. (*Id.*) Without any additional "abusive measure," SIMON'S claim for abuse of process is legally insufficient and must be dismissed pursuant to NRCP 12(b)(5). *See, Laxalt*, 622 F. Supp. at 752.

As Appellants' Appendix clearly shows, the underlying action is presently on appeal.

Included in that appeal is the order dismissing the Edgeworths' Amended Complaint, the award of a certain measure of fees and costs associated with that dismissal, the finding that SIMON was constructively discharged by the Edgeworth's (despite SIMON'S threat to quit the case if the Edgeworths didn't agree to sign a new fee contract and pay SIMON a fee bonus, all detailed in *his* letter attached as Exhibit C), and the award of $200,000 in fees to SIMON based on quantum meruit when any finding of a constructive discharge was belied by the facts, including the exact amount of time that SIMON actually and admittedly worked for the Edgeworths, and billed them, from November 30, 2017, through January 8, 2018, which totaled $33,811.25 in fees, not the $200,000 awarded. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Since SIMON'S SLAPP is inextricably linked to the underlying judicial action that is presently on appeal (with all briefing now completed and submitted), and since there is no "favorable termination of a prior action," and no "additional abusive measure," SIMON cannot state a claim for which relief can be granted for his claims for malicious prosecution, abuse of process, and wrongful use of civil proceedings. *See*, *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985).

SIMON'S claim/count for Intentional Interference with Prospective Economic Advantage must also be dismissed, as there is no set of facts that SIMON could present or prove that would entitle him or his firm to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). In Nevada, the elements for a claim for intentional interference with prospective economic advantage are: 1.) A prospective contractual relationship between plaintiff and a third party; 2.) Defendant has knowledge of the prospective relationship; 3.) The intent to harm plaintiff by preventing the relationship; 4.) The absence of privilege or justification by defendants; 5.) Actual harm to plaintiff as a result of defendant's conduct; and, 6.) Causation and

damages. *Wichinsky v. Moss*, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1225 (1987). Furthermore, "the intention to interfere is the sine qua non of this tort." *M&R Inv. Co., v. Goldsberry*, 101 Nev. 620, 622-23, 707 P.2d 1143, 1144 (1985)(citing *Lekich v. International Bus.Mach.Corp.*, 469 F. Supp 485 (E.D. Pa. 1979); *Local Joint Exec. Bd. Of Las Vegas v. Stern*, 98 Nev. 409, 651 P.2d 637, 638 (1982).

In the caselaw governing this tort in Nevada, the plaintiff had (and identified) an actual or a real prospective contractual relationship that was allegedly and/or actually interfered with by a defendant. (*Id*.) However, SIMON fails in his SLAPP to identify any actual prospective contractual relationship between SIMON and any third party. (*See*, Exhibit A.) Instead, SIMON'S SLAPP speaks in generalities, speculation, and conjecture. (*Id*.) Who are the third parties and what prospective contractual relationships that VANNAH allegedly interfered with? SIMON doesn't—and can't—say. (*Id*.)

Most importantly here, the facts alleged in SIMON'S Count/claim (as are all of the claims/counts in SIMON'S SLAPP) are immune from civil liability pursuant to NRS 41.650, *and* are barred by the litigation privilege. *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002); *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); and, *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).

Since this Count/claim is clearly barred by the litigation privilege, immune from civil liability under NRS 41.650, and justified by the good faith basis to bring the claims and arguments that VANNAH brought and made on behalf of the Edgeworths, this Count/claim must be dismissed as a matter of law pursuant to NRCP 12(b)(5). *See, Wichinsky v. Moss*, 109 Nev.

84, 88, 847 P.2d 727, 729-30 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1225 (1987).

The basis for SIMON'S allegations contained in Count IV (Negligent Hiring, Supervision, and Retention) and Count VIII (Civil Conspiracy) are factually and legally defective, as well. There is no reasonable question that an attorney client relationship never existed in the underlying action between SIMON and VANNAH. (See, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) There is no dispute that these Counts (IV & VIII) are brought by SIMON, who is an admitted and documented adversary of the Edgeworths, due to actions allegedly taken in the underlying judicial action by the Edgeworth's and their attorneys, VANNAH, namely the filing of various pleadings and in making necessary arguments in good faith before the courts.

The law is clear that VANNAH, as attorneys, do not owe a duty of care to SIMON, an adversary of a client, the Edgeworth's, in the underlying litigation. *Dezzani v. Kern & Associates, Ltd.*, 134 Nev.Adv.Op. 9, 12, 412 P.3d 56 (2018). Rather, an attorney providing legal services to a client generally owes no duty to adverse or third parties. *Id. See also, Fox v. Pollack*, 226 Cal.Rptr. 532, 536 (Ct. App. 1986); *GemCap Lending, LLC v. Quarles & Brady, LLP*, 269 F. Supp. 3d 1007 (C.D. Cal 2017); *Borissoff v. Taylor & Faust*, 96 Cal. App. 4th 418, 117 Cal. Rptr. 2d 138 (1st District 2002). (An attorney generally will not be held liable to a third person not in privity of contract with him since he owes no duty to anyone other than his client.); *Clark v. Feder and Bard, P.C.*, 634 F. Supp. 2d 99 (D.D.C.)(applying District of Columbia law)(Under District of Columbia law, with rare exceptions, a legal malpractice claim against an attorney requires the existence of an attorney-client relationship; the primary exception to the requirement of an attorney-client relationship occurs in a narrow class of cases where the

"intended beneficiary" of a will sues the attorney who drafted that will.)

A simple and plain reading of Counts IV & VIII of SIMON'S SLAPP shows that these claims are based on communications made in judicial proceedings by VANNAH that amount to breach of an alleged duty by VANNAH to SIMON in the filing of litigation, namely the claim for conversion. (*See*, Exhibit A.) Pursuant to the caselaw cited above, the law does not allow SIMON to make or maintain such claims against VANNAH. (*Id*.) Since SIMON cannot maintain these claims as a matter of law pursuant to Nevada (and general) law, they must be dismissed, pursuant to NRCP 12(b)(5). See, *Vacation Village, Inc. v. Hitachi Am. Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)(quoting *Edgar v. Wagner*, 101 Nev. 226, 228 ,699 P.2d 110, 112 (1988); and, *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008).

SIMON'S Count/claim for civil conspiracy has additional legal flaws, as SIMON'S allegations are insufficient to establish the elements of a claim for this relief. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008). VANNAH agrees that meetings were held with the Edgeworths, the first of which occurred with Brian Edgeworth on November 29, 2017; that the initial meeting was held at the encouragement of SIMON; that VANNAH was retained to represent the Edgeworths' interests; that VANNAH counseled and advised the Edgeworths on their litigation options; that, as a result of the client meetings, VANNAH prepared and caused to be filed a complaint and an amended complaint in a judicial proceeding to address wrongs committed by SIMON, naming SIMON as defendants. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

VANNAH also agrees that the allegations in the complaints represented the factual reality that the Edgeworths lived (and continue to live) as a result of the actions

and inactions of SIMON; that VANNAH had and has a good faith belief regarding the viability of each claim for relief in the complaints; that VANNAH opposed SIMON'S efforts to dismiss the complaints; and, that VANNAH caused to be filed a Notice of Appeal of, among other things, the order dismissing the Amended Complaint. All of these facts are part of the judicial proceedings that are presently on appeal. (*Id.*)

There is nothing in Nevada law that makes it criminal or unlawful for a lawyer to meet with a client and advise the client of the option to use the judiciary to take public action to seek redress for injuries suffered at the hands of another. NRS 41.630-.670. There is also nothing in Nevada law that makes it criminal or unlawful for an attorney to then file a complaint alleging various claims for relief, including conversion, and to file supporting briefs and present arguments before a judicial body, when an adverse attorney has laid claim to an amount of money that he knew and had reason to know that he had no legal basis to exercise dominion and control over through an attorney's lien. *Id.*; *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(*citing Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).

Finally, there is nothing in Nevada law that makes it criminal or unlawful to vigorously defend the interest and claims of that client in judicial proceedings. (*See*, Nevada Rules of Professional Conduct (NRPC); *see also*, NRS Sections 41.635-670.) This is all part of the public record and was all done to seek a remedy that SIMON withheld—a significant amount of the Edgeworths' money. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to

Preserve Evidence as Exhibit A.)

The sole design of SIMON'S suit is to punish the Edgeworths and their lawyers, VANNAH, for bringing claims and seeking redress through the judiciary against SIMON for conduct that amounted to breach of contract, to converting the Edgeworths' proceeds, and for treating them in a way that lawyers/others are not allowed to treat clients/others. A simple reading of the Edgeworths' Amended Complaint (Exhibit B) makes all of that abundantly clear.

There is nothing criminal or illegal about these actions. If it was or is, then Dick the Butcher had it all wrong in Shakespeare's Henry VI, as the first thing we do isn't to "kill all the lawyers." Rather, we'd have to jail all the lawyers, or file all sorts of claims against them, as the essential nature of our work is to provide advice, counsel, and necessary action for our clients, such as filing complaints to address wrongs. Pursuant to the NRPC, that's what we attorney's do. We're competent (NRPC 1.1), diligent (NRPC 1.3), advisors (NRPC 2.1), and we bring meritorious claims in which we have a good faith basis to bring (NRPC 3.1). That's what the record on appeal shows that VANNAH did, and in response, SIMON filed his SLAPP. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A; *see also*, Exhibit A to this Motion.) Neither the facts, nor the law, nor common sense support SIMON'S claim for civil conspiracy. Therefore, it must be dismissed pursuant to NRCP 12(b)(5). *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008).

To paraphrase SIMON in a motion he brought in the matter now on appeal, none of his allegations against VANNAH "rise to the level of a plausible or cognizable claim for relief."

Some are barred by the litigation privilege, others by a lack of procedural ripeness, some by the failure to allege all conditions precedent having occurred, others still by the clear absence of any duty owed or remedy afforded, and all by Nevada's Anti-SLAPP laws. None are left unscathed and all should be dismissed pursuant to NRCP 12(b)(5).

IV. CONCLUSION.

For each of the reasons set forth in this Motion, VANNAH respectfully requests that SIMON'S SLAPP be dismissed pursuant to NRCP 12(b)(5).

DATED this 29th day of May, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.

Patricia A. Marr, Esq.
Nevada Bar No. 008846

CERTIFICATE OF SERVICE

I hereby certify that the following parties are to be served as follows:

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None

DATED this 29th day of May, 2020.

/s/Patricia A. Marr

_____
An employee of Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

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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, 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**

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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.")

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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 Edgeworths" or "Edgeworth" or "Edgeworth entities" or "Edgeworth Defendants")

5. Defendant, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, were at all times relevant hereto, husband and wife, and residents of the state of Nevada, and 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 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

7. Defendant, JOHN BUCHANAN GREENE 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 Edgeworth entities, the acts of Brian Edgeworth, Angela Edgeworth, as well as the acts of Robert D. Vannah, individually and Robert D. Vannah Chtd. d/b/a Vannah & Vannah.

8. Defendant, ROBERT D. VANNAH, CHTD. D/B/A VANNAH & VANNAH, was at all times relevant hereto, a Nevada Corporation duly licensed and doing business in Clark County, Nevada. The individual attorneys, ROBERT DARBY VANNAH AND JOHN BUCHANAN GREENE and Robert D. Vannah, Chtd. d/b/a Vannah and Vannah will be collectively referred to as "Defendant Attorneys."

9. Venue and jurisdiction are proper in this Court because the actions taken between the parties giving rise to this action and the conduct complained of occurred in Clark County, Nevada.

10. The true names and capacities, whether individual, corporate, partnership, associate or otherwise of Defendants named herein as DOES 1 through 10 inclusive, and ROE CORPORATIONS and LIMITED LIABILITY COMPANIES 11 through 20, inclusive, and each of them are unknown to Plaintiffs at this time, and Plaintiffs therefore sue said Defendants and each of them by such fictitious name. Plaintiffs will advise this Court and seek leave to amend this Complaint when the names and capacities of each such Defendant have been ascertained. Plaintiffs allege that each Defendant herein designated as DOE, ROE CORPORATION is responsible in some manner for the events and happenings herein referred to as hereinafter alleged, including but not limited to advising, supporting, assisting in causing and maintaining the institution of the proceedings, abusing the process and/or republishing the defamatory statements at issue.

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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

attorney fee agreement with the clients on November 17, 2017, after which time, the Clients refused to speak to Simon about a fair fee and instead stopped talking to him and hired other counsel.

16. On November 29, 2017, the Edgeworths fired Simon by retaining new counsel, Robert D. Vannah, Robert D. Vannah, Chtd. d/b/a Vannah and Vannah and John Greene (hereinafter the "Defendant Attorneys"), and ceased all direct communications with Mr. Simon. On November 30, 2017, the Defendant Attorneys provided Simon notice of retention.

17. On November 30, 2017, Simon served a proper and lawful attorney lien pursuant to NRS 18.015. However, Simon continued to protect his former clients' interests in the complex flood litigation, to the extent possible under the unusual circumstances. Mr. Vannah, on behalf of the Edgeworths, threatened Mr. Simon not to withdraw from the case.

18. On December 1, 2017, the Edgeworths entered into an agreement to settle with Viking and release Viking from all claims in exchange for a promise by Viking to pay six million dollars ($6,000,000.00 USD). On January 2, 2018, Simon served an amended attorney lien.

19. On January 4, 2018, Edgeworths, through Defendant Attorneys, sued Simon, alleging Conversion (stealing) and various other causes of actions based on the assertion of false allegations. A primary reason the lawsuit was filed was to refuse payment for attorneys fees that all Defendants knew were due and owing to the Law Office of Daniel S. Simon. At the time of this lawsuit, the Defendant Attorneys and Edgeworth entities actually knew that the settlement funds were not taken by Simon and were not deposited in any other account as arrangements were being made at the request of Edgeworth and Defendant Attorneys to set up a special account so that Robert D. Vannah on behalf of Edgeworth would control the funds equally pending the lien dispute. When Edgeworth and the Defendant Attorneys sued Simon, they knew Mr. Simon was owed more than $68,000 for outstanding costs advanced by Mr. Simon, as well as substantial sums for outstanding attorney's fees yet to be determined by Nevada law.

20. On January 8, 2018, Robert D. Vannah, Brian Edgeworth and Angela Edgeworth met Mr. Simon at Bank of Nevada and deposited the Viking settlement checks into a special trust account opened by mutual agreement for the underlying case only. Mr. Simon signed the checks

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for the first time at the bank and provided the checks to the banker, who took custody of the checks. The banker then provided the checks to Brian and Angela Edgeworth for signature in the presence of Robert D. Vannah. Mr. Vannah signed bank documents to open the special account. The checks were deposited into the agreed upon account. In addition to the normal safeguards for a trust account, this account required signatures of both Robert D. Vannah and Mr. Simon for a withdrawal. Thus, Mr. Simon stealing money from the trust account was an impossibility that was known to the Defendants, and each of them. After the checks were deposited, the Edgeworths and Defendant attorneys proceeded with their plan to falsely attack Simon.

21. On January 9, 2018, the Edgeworths served their complaint, which alleged that Simon stole their money-money which was safe kept in a Bank of Nevada account, earning them interest. The Edgeworths promptly received the undisputed amount of almost $4 million dollars. The Edgeworths agreed this made them whole. Defendants all knew Simon did not and could not steal the money, yet they pursued their serious theft allegations knowing the falsity thereof. The Defendants, and each of them, knew and had reason to know, the conversion complaint was objectively baseless and the Defendants, and each of them, did not have good faith or probable cause to begin or maintain the action. Mr. Simon and his Law Office NEVER exclusively controlled the settlement funds and NEVER committed an act of wrongful dominion of control when strictly following the law pursuant to NRS 18.015. The Edgeworths and Defendant Attorneys conceded the Edgeworths owed Mr. Simon and his firm money for attorneys fees incurred in the underlying case.

22. Simon responded with two motions to dismiss, which detailed the facts and explained the law on why the complaint was frivolous. Rather than conceding the lack of merit as to even a portion of the complaint, the Edgeworth entities, through Defendant attorneys maintained the actions. On March 15, 2018, Defendants filed an Amended Complaint to include new causes of action and reaffirmed all the false facts in support of the conversion claims. The Defendants' false facts asserted stealing by Simon, sought punitive damages and sought to have the court declare that "Simon was paid in full." When these allegations were initially made and the causes of actions were maintained on an ongoing basis, Defendant Attorneys, and Brian and

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Angela Edgeworth, individually and on behalf of the Edgeworth entities, all actually knew the allegations were false and had no legal basis whatsoever because their allegations were a legal impossibility. When questioned, the Defendant Attorneys could not articulate a legal or factual basis for their conversion claims. In multiple filed pleadings, court hearings, and at a five-day evidentiary hearing, Defendants failed to provide any factual or legal basis to support their conversion claim. Defendants failed to cite any Nevada law that would support the position that an attorney lien constituted conversion. Defendants failed to provide any facts or expert opinions that placing the settlement proceeds in a joint account for all parties while the attorney lien dispute was adjudicated would support a claim for conversion. Defendant Attorneys often stated that conversion "was a good theory" without providing any factual or legal basis for doing so.

23. During the course of the litigation, Defendants, and each of them, filed false documents asserting blackmail, extortion and theft by converting the Edgeworth's portion of the settlement proceeds. This is evidenced by the Affidavit of Brian Edgeworth, dated February 12, 2018, at 7:25-8L15; the Affidavit of Brian Edgeworth, dated March 15, 2018, at 8:2-9:22; and the September 18, 2018 transcript of Angela Edgeworth's sworn testimony at 133:5-23. The District Court conducted a five-day evidentiary hearing to adjudicate Simon's attorney lien and the Motions to Dismiss Defendants' complaints.

24. The facts elicited at the five-day evidentiary hearing concerning the substantial Attorney's fees still owed and not paid by the Edgeworths, further confirmed that the allegations in both Edgeworth complaints were false and that the complaints were filed for an improper purpose - that is, to punish Mr. Simon as a collateral attack on the lien adjudication proceeding. This forced Simon to retain counsel and experts to defend the suit at substantial expense. The frivolous lawsuit was intended to cause Mr. Simon and his law practice to incur unnecessary and substantial expense. The initial complaint and subsequent filings for the ongoing litigation were done primarily because of hostility or ill will with the ulterior purposes to (1) refuse payment of attorneys fees all Defendants knew were due and owing to the Law Office of Daniel S. Simon; (2) to cause unnecessary and substantial expense to Simon; (3) to damage and harm the reputation and business of Mr. Simon; (4) to avoid lien adjudication; (5) cause humiliation, embarrassment,

mental anguish and inconvenience; and (6) to punish him personally and professionally, all of which, are independent improper purposes. Defendants had no good faith basis to pursue the conversion claim. Defendants knew there was no legal merit to asserting conversion and only pursued the claim for the ulterior purposes stated. Defendants' true purposes are further proven as the Edgeworths and the Defendant Attorneys never alleged malpractice and have no criticism of the work performed by Mr. Simon for the Edgeworths. At the evidentiary hearing, Defendants presented no evidence that supported their contention that Simon converted the settlement funds. Defendants also did not provide any expert testimony nor cite any Nevada law to support that position at the hearing or in the briefing for same. The Defendants did not rebut the expert testimony presented by Mr. Simon at the hearing. Defendants made no arguments whatsoever that their claim of conversion had merit, which only further shows their ulterior purposes for bringing the claim. It is Defendants' conduct – notably their omissions – that reveals their ulterior purposes and true goal when seeking conversion against Simon in the judicial system.

25. All filings for conversion were done without probable cause or a good faith belief that there was a factual evidentiary basis to file a legitimate conversion claim. There was no legal basis to do so as Simon never converted the settlement funds as defined by Nevada law. The Defendants, and each of them, were aware that the conversion claim and allegations of extortion, blackmail or other crimes were not meritorious. The Defendants, and each of them, did not reasonably believe they had a good faith factual or legal basis for establishing a conversion claim to the satisfaction of the Court. The complaint was filed for an ulterior purpose other than securing the success of their claims, most notably conversion.

26. When the complaint filed by Defendants and subsequent filings were made and arguments presented, the Defendants, and each of them, did not honestly believe in its possible merits and could not reasonably believe that they had a good faith factual or legal basis upon which to ever prove the case to the satisfaction of the court. Defendants, and each of them, consistently argued that Mr. Simon extorted and blackmailed them and stole their money. Defendants, and each of them, took an active part in the initiation, continuation and/or procurement of the civil proceedings against Mr. Simon and his Law Office. The primary ulterior

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purposes were (1) to refuse payment of attorneys fees all Defendants knew were due and owing to the Law Office of Daniel S. Simon; (2) to cause unnecessary and substantial expense to Simon; (3) to damage and harm the reputation and business of Mr. Simon; (4) to avoid lien adjudication; (5) cause humiliation, embarrassment, mental anguish and inconvenience; and (6) to punish him personally and professionally, all of which, are independent improper purposes. It was also admittedly pursued to punish him before the money was ever received, as testified to by Angela Edgeworth under oath at the Evidentiary hearing on September 18, 2018 at 145:10-21, and adopted by all other Defendants. The claims were so obviously lacking in merit that they could not logically be explained without reference to the Defendants improper motive and ill will. The proceedings terminated in favor of Simon.

27. Angela Edgeworth testified that the lawsuit was filed to punish Mr. Simon before the money was received.

28. Mr. Edgeworth testified he always knew he owed Mr. Simon money for attorney's fees.

29. Mr. Vannah acknowledged that Mr. Simon was always owed money for attorney's fees.

30. Mr. Greene acknowledged that Mr. Simon was always owed money for attorney's fees.

31. 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 Attorneys, against Mr. Simon and his Law Office had no merit and was NOT filed and/or maintained in GOOD FAITH. Accordingly, on October 11, 2018, the District Court dismissed Defendants complaint in its entirety against Mr. Simon. The court found, Edgeworth and the Defendant Attorneys 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. Specifically, the Court examined the facts known to Edgeworth and Defendant Attorneys 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

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money as Mr. Vannah equally controlled the account. Additionally, there was no merit to the Edgeworth entity 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.

32. 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. There was no evidence to support the conversion claim.

e. Simon did not convert the clients' money.

f. The Court did not find an express oral contract for $550 an hour.

33. On February 6, 2019, the Court found that:

a. The Edgeworths and Defendant Attorneys did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed. Mr. Simon never had exclusive control of the settlement proceeds and did not perform a wrongful act of dominion or control over the funds when merely filing a lawful attorney lien pursuant to NRS 18.015. The filing of a lawful attorney lien is a protected communication pursuant to NRS 41.635- NRS41.670, precluding a lawsuit

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against Mr. Simon, which is yet another reason the lawsuit was not filed and maintained in good faith and/or with serious consideration of a valid claim.

COUNT I

WRONGFUL USE OF CIVIL PROCEEDINGS – ALL DEFENDANTS

34. Plaintiffs incorporate all prior paragraphs and incorporate by reference the preceding allegations as though fully set forth herein.

35. The Edgeworth entities, through the Defendant Attorneys, initiated a complaint on January 4, 2018 alleging Mr. Simon and his Law Office converted settlement proceeds in the amount of 6 million dollars.

36. The Edgeworth entities, through the Defendant Attorneys, maintained the baseless conversion claim when filing an amended complaint re-asserting the same conversion allegations on March 15, 2018.

37. The Edgeworth entities, through the Defendant Attorneys, maintained the conversion and stealing of the settlement allegations when filing multiple public documents and presenting oral argument at hearings containing a public record when re-asserting the conversion and theft by Mr. Simon and his Law Office. Defendants had no factual or evidentiary basis where they could contemplate in good faith a claim for conversion against Simon. Further, Defendants had no legal basis in Nevada law that Simon's attorney lien constituted conversion of the settlement proceeds.

38. The Edgeworths and the Defendant Attorneys did not contemplate their causes of action in good faith with serious consideration against Simon and acted without probable cause and with no evidentiary basis to pursue said claims. The District Court dismissed Defendants' claims after conducting the five-day evidentiary hearing, which constitutes a final determination on the matter. The Court allowed additional time for full questioning of the witnesses and presenting evidence necessary to prove all of their claims.

39. The Edgeworths and the Defendant Attorneys acted with malice, express and/or implied and their actions were malicious, oppressive, fraudulent and done with a conscious and deliberate disregard of Plaintiffs' rights and Plaintiffs are entitled to punitive damages in a sum

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to be determined at the time of trial. 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.

40. The Edgeworths 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.

41. The Edgeworths and the Defendant Attorneys advanced arguments in public documents that Mr. Simon committed serious crimes of stealing, extortion and blackmail knowing these filings and arguments were false. The Edgeworth's admittedly made these same statements outside the litigation to third parties that were not significantly interested in the proceedings. Defendant Attorneys promulgated these same false statements under the guise of a proper lawsuit when in reality they knew they had no good faith basis or probable cause to maintain the conversion against Simon.

42. The Defendants acted without privilege or justification in causing clients to avoid representation from Plaintiffs.

43. The Edgeworth's and Defendant Attorneys' abuse of the process proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time and loss of income. The false allegations damaged his reputation, and proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

44. 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. The Defendants,

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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.

45. 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.

46. 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.

COUNT II

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE –ALL DEFENDANTS

47. Plaintiffs incorporate the preceding paragraphs and allegations as though fully set forth herein.

48. At the time of filing of this lawsuit, Plaintiffs had prospective contractual relationships with clients who had been injured due to the fault of another, including but not limited to persons injured in motor vehicle accidents, slip and falls, medical malpractice and other personal injuries.

49. The Defendants knew Plaintiffs regularly received referrals for and represented clients in motor vehicle accidents, slip and falls, medical malpractice and incidents involving other personal injuries.

50. The Defendants intended to harm Plaintiffs by engaging in one or more wrongful acts, including advancing arguments in public documents that Mr. Simon committed crimes of stealing, extortion and blackmail knowing these filings and arguments were false, all designed to prevent clients from seeking representation from Plaintiffs. The Edgeworth's made these same statements to third parties outside the litigation who did not have a significant interest in the proceedings, and Defendant Attorneys promulgated these same false statements under the guise of a proper lawsuit when in reality they knew they had no good faith basis or probable cause to maintain the conversion action against Simon. Defendants sued Simon for conversion when they had no factual or legal basis to do so. Defendants, and each of them, filed false affidavits and

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procured false testimony that Mr. Simon stole the settlement, blackmailed and extorted the Edgeworths. Defendants did not seek in good faith adjudication of the conversion claim but brought and maintained the suit for the ulterior purposes of harming Simon, personally and professionally, including his business.

51. The Defendants acted without privilege or justification in causing clients to avoid representation from Plaintiffs.

52. As a direct and proximate result of these wrongful acts, Plaintiffs have suffered, and will continue to suffer, damages in an amount in excess of $15,000.

53. The Edgeworth's and Defendant attorneys' abuse of the process and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, damage to his reputation, past and future, proximately caused by the acts of Defendants, and each of them. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

54. 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. 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.

55. Plaintiffs were forced to retain attorneys and experts to defend the intentional interference with prospective economic advantage 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.

56. 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.

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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.

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60. The Edgeworths and Defendant Attorneys committed a willful act in using the judicial process for an ulterior purpose not proper in the regular conduct of the proceedings and misapplied the process for an end other than which it was designed to accomplish, and acted and used the process for an improper purpose or ulterior motive, as stated herein. Defendants admitted their conduct was for the ulterior purpose of punishing Mr. Simon and his Law office.

61. The Edgeworths and the Defendant Attorneys abused the process at hearings to avoid lien adjudication, to cause unnecessary and substantial expense and to damage the reputation of Mr. Simon and financial loss to his Law Office, as well as to punish him. 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 Defendants, and each of them, have fully approved and ratified the conduct of the others. Defendants made these statements under the mistaken belief that they could say and do anything without consequence as they falsely believed they were shielded and had immunity under the litigation privilege. Defendants, and each of them, filed and maintained the frivolous complaint to punish Mr. Simon and Law Practice knowing the falsity of these statements. They also invented a story of an express oral contract for $550 an hour in attempt to refuse payment of a reasonable attorney fee. The frivolous complaint also alleged that Mr. Simon was "paid in full."

62. The Edgeworths and Defendant Attorneys' abuse of the process and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, damage to his reputation, past and future, proximately caused by the acts of Defendants, and each of them. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

63. Plaintiffs were already forced to retain attorneys to defend the litigation improperly brought and maintained by Defendants, constituting an abuse of process, thus

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incurring 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.

64. 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. 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.

65. 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.

COUNT IV

NEGLIGENT HIRING, SUPERVISION, AND RETENTION - THE DEFENDANT ATTORNEYS

66. Plaintiffs incorporate the preceding paragraphs and allegations as if set forth herein.

67. Robert D. Vannah, Chtd. had a duty to hire, supervise, and retain competent employees including, Defendant Attorneys, to act diligently and competently to represent valid claims to the court and to file pleadings before the court that have the legal or evidentiary basis to support the claims and not file lawsuits for an ulterior purpose. The duties, professional responsibility and acts of the Lawyer are governed by their own independent acts and the rules of professional responsibility. The Defendant Attorneys had an independent duty to act and not follow all directions of their clients inconsistent with the Nevada law and the Nevada Rules of Professional Conduct.

68. The Attorneys 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 evidentiary basis. The continuing acts of maintaining the false claims and advancing false arguments violate the rules of professional responsibility. The Defendant Attorneys had a duty to refrain from pursuing frivolous allegations of conversion despite the wishes of the clients.

69. Robert D. Vannah, Chtd breached that duty proximately causing damage to Mr.

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Simon and his Law Office, when failing to properly supervise the Attorneys in order to ensure its attorneys do not bring actions that were not contemplated in good faith but brought and maintained with ulterior purposes to cause harm to parties in judicial proceedings, including, Simon, and to ensure the Attorneys are complying with their ethical duties pursuant to the rules of professional responsibility. The false allegations damaged his reputation, and proximately caused general, special and consequential damages to be determined at the time of trial.

70. The Defendant Attorneys' abuse of the process under negligent supervision and retention, 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. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, damage to his reputation, past and future, proximately caused by the acts of Defendants, and each of them. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

71. 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 Defendant Attorneys, 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 Defendant Attorneys, 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.

72. Plaintiffs were forced to retain attorneys to defend the frivolous complaints abusing the process, and related proceedings thereby incurring 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.

73. 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.

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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

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and his law practice tending to cause serious injury to his reputation and ability to secure new clients. These statements impugn Mr. Simon's lack of fitness for his trade, business and profession and injured Plaintiffs in his business. Under Nevada law, the statements were defamatory per se and damages are presumed. The foregoing notwithstanding, as a direct and proximate result of the false and defamatory statements, Mr. Simon and his Law Office, the Law Office of Daniel Simon have sustained actual, special and consequential damages, loss and harm in a sum to be determined at the time of trial.

79. The actions of the Edgeworth Defendants, were sufficiently fraudulent, malicious, and/or oppressive under NRS 42.005 to warrant an award of punitive damages. The Edgeworth Defendants, 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 Edgeworth Defendants ratified, fully approved, authorized and ratified each other's actions in attacking the integrity and moral character of Mr. Simon and his law office and on behalf of American Grating and the Edgeworth Family Trust. Therefore, Plaintiffs are entitled to an award of punitive damages.

80. The Edgeworth's Defamation Per Se and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, past and future, damage to his reputation proximately caused by the acts of the Edgeworth Defendants. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

81. Plaintiffs were forced to retain attorneys to defend the complaints and defamatory statements 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.

82. The additional specific facts necessary for Plaintiffs to plead this cause of action are peculiarly within the Defendants' knowledge or possession, thereby precluding Plaintiffs from

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offering further specificity at this time. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d 703, 708 (2006).

83. It has become necessary for Plaintiffs to retain the services of attorneys to litigate this action. Therefore, Plaintiffs are entitled to an award of attorneys' fees, costs and interest separately pursuant to Nevada law.

COUNT VI

BUSINESS DISPARAGEMENT –THE EDGEWORTH DEFENDANTS

84. Plaintiffs repeat and reallege each and every paragraph and allegation in the foregoing paragraphs as though fully set forth herein.

85. The statements of Brian and Angela Edgeworth, as alleged more fully herein, attacked the reputation for honesty and integrity of their lawyer and communicated to others a lack of truthfulness by stating that the Mr. Simon and his Law Office, the Law Office of Daniel S. Simon, converted, blackmailed and extorted millions of dollars from them. These statements were false and done with the intent to disparage, injure and harm Mr. Simon and his Law Office and actually disparaged the Law Office of Daniel Simon.

86. Brian and Angela Edgeworth's statements were false, misleading and disparaging.

87. Brian and Angela Edgeworth's publication of the statements were not privileged, as they were communicated to third parties not significantly interested in the proceedings. These statements were confirmed by Angela Edgeworth, individually and on behalf of their entities during the evidentiary hearing on September 18, 2018. See, the 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. They knew the statements were false at the time they were made to persons who did not have significant interest in the proceedings.

88. The Edgeworths' Disparagement of the business and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for

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humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, past and future, damage to his reputation proximately caused by the acts of the Edgeworth Defendants. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

89. Brian and Angela Edgeworth published the false statements with malice, thereby entitling Plaintiffs to an award of punitive damages.

90. Brian and Angela Edgeworth published the false statements to further the amount of the recovery of the Edgeworth entities and personally benefit the Edgeworth's, disparage Mr. Simon and his Law Office with the intent to injure and cause financial harm and damage. At all times the defamatory and disparaging statements were fully authorized, approved and ratified by the Edgeworths and the Edgeworth entities, who knew the statements were false.

91. As a direct and proximate result of Brian and Angela Edgeworth's false and defamatory and disparaging statements, Plaintiffs have sustained actual, special and consequential damages, loss and harm, in a sum to be determined at trial well in excess of $15,000.

92. The Edgeworth's Defamation Per Se and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, past and future, damage to his reputation proximately caused by the acts of Defendants, and each of them. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

93. Plaintiffs were forced to retain attorneys to defend the defamatory and disparaging statements during the 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.

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94. The additional specific facts necessary for Plaintiffs to plead this cause of action are peculiarly within the Defendants' knowledge or possession, thereby precluding Plaintiffs from offering further specificity at this time. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d 703, 708 (2006).

95. It has become necessary for Plaintiffs to retain the services of attorneys to litigate this action. Therefore, Plaintiffs are entitled to an award of attorneys' fees, costs and interest separately pursuant to Nevada law.

COUNT VII

NEGLIGENCE –THE EDGEWORTH DEFENDANTS

96. Plaintiffs repeat and reallege each and every paragraph and allegation in the foregoing paragraphs as though fully set forth herein.

97. In or about January, 2018, Brian Edgeworth and Angela Edgeworth, individually and on behalf of the Edgeworth entities made material representations about Plaintiffs to individuals not having a significant interest in the proceedings and the public that were false. Defendants, and each of them, knew or should have known that the allegations were not supported by the law and lacked any evidentiary basis and were at least negligent in the communication of these statements. The Edgeworth's had a duty to Mr. Simon and his Law Office not to communicate false statements about his integrity and moral character to the anyone in the community not having a significant interest in the proceedings. Any reasonably prudent person would not have made these serious allegations against a lawyer.

98. The Edgeworth Defendants, breached their duty to exercise reasonable care to Mr. Simon and his Law Office. As a direct and proximate consequence of the Defendants' negligence, the statements that were made resulted in the publication and broad dissemination of false statements attacking the integrity and good moral character of Mr. Simon and his Law Office tending to cause serious injury to his reputation and ability to practice law with the same regard as he did prior to the false statements. These statements were known to be false when made and were not made to persons with any interest or concern in the proceedings. The foregoing notwithstanding, as a direct and proximate result of the negligence of the Edgeworth Defendants,

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Mr. Simon and his Law Office has sustained actual, special and consequential damages in a sum to be determined at trial.

99. The Edgeworth's Negligence and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, past and future, damage to his reputation proximately caused by the acts of Defendants, and each of them. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

100. Plaintiffs were forced to retain attorneys to defend the frivolous lawsuit initiated by Defendants and incurred substantial attorney's fees and costs, which are specially plead pursuant to NRCP 9(g) in a sum in excess of $15,000.

101. 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.

COUNT VIII

CIVIL CONSPIRACY –ALL DEFENDANTS

102. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs and allegations as though fully set forth herein.

103. Defendants, and each of them, through concerted action among themselves and others, intended to accomplish the unlawful objectives of (i) filing false claims for an improper purpose. Defendant Attorneys and the Edgeworths all knew that the Plaintiffs did not convert the money. They devised a plan to knowingly commit wrongful acts by filing the frivolous claims for an improper purpose to damage and harm the reputation of Mr. Simon and his Law Office; cause harm to his law practice; cause him unnecessary and substantial expense to expend valuable resources to defend the abusive and frivolous lawsuit; and they abused the process in attempt to manipulate the proceedings for an ulterior purpose. Defendants did not contemplate in good faith the initiation and continuation of these judicial proceedings. Instead, for the ulterior purposes

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described herein, Defendants chose to maintain their improper claims all in an attempt to harm Simon when they had no legal or factual basis to maintain said claims. The wrongful acts were committed several times when filing the complaint, amended complaint, all briefs, three affidavits, oral arguments and supreme court filings, and Defendants, and each of them, took no action to correct the falsity of the statements repeatedly made by all Defendants. Defendants knew prior to the initiation of the proceedings that they had no good faith basis in fact or in law to maintain their claims against Simon. They did not perform a diligent inquiry and did not have sufficient facts under Nevada law to seek adjudication of conversion against Simon, yet chose to do so and continue to advance the legally deficient claim. Defendants never presented any Nevada law or facts to support or maintain their improper claims throughout the entire litigation of the matter. Defendants made these statements under the mistaken belief that they could say and do anything without consequence as they falsely believed they were shielded and had immunity under the litigation privilege. Defendants, and each of them, filed and maintained the frivolous complaint to punish Mr. Simon and Law Practice knowing the falsity of these statements. They also invented a story of an express oral contract for $550 an hour in attempt to refuse payment of a reasonable attorney fee. The frivolous complaint also alleged that Mr. Simon was "paid in full."

104. Defendants, and each of them, through concerted action among themselves and others, intended to accomplish the foregoing unlawful objectives through unlawful means and to cause damage to Plaintiffs as herein alleged, including abusing the process, defaming and disparaging his Law Office, harming his business, causing unnecessary substantial expense, and to punish him, among others wrongful objectives to be determined at the time of trial.

105. In taking the actions alleged herein, Defendants, and each of them, were acting for their own individual advantage. Mr. Vannah was being paid $925 an hour to file and maintain the frivolous claim. Mr. Greene was also being paid $925 an hour to file and maintain the frivolous claims.

106. The Edgeworth's Defamation Per Se and conduct proximately caused injury, damage, loss, and/or harm to Mr. Simon and his Law Office when asserting what amounts to theft and crimes of extortion against Mr. Simon that harmed his image in his profession and among his

personal friends and the community. Mr. Simon and his office sustained damage for humiliation, embarrassment, mental suffering, inconvenience, loss of quality of life, lost time, loss of income, past and future, damage to his reputation proximately caused by the acts of Defendants, and each of them. These acts proximately caused general, special and consequential damages, past and future, in a sum to be determined at the time of trial.

107. As the direct and proximate result of the concerted action of Defendants, and each of them, as described herein, Plaintiffs have suffered general, special and consequential damages, loss and harm, in a sum to be determined at trial.

108. 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. 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 and repeated the wrongful acts to achieve the objectives of their devised plan. Plaintiffs are entitled to punitive damages in a sum to be determined at the time of trial.

109. The additional specific facts necessary for Plaintiffs to plead this cause of action are peculiarly within the Defendants' knowledge or possession, thereby precluding Plaintiffs from offering further specificity at this time. *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1193, 148 P.3d 703, 708 (2006).

110. Plaintiffs were forced to retain attorneys to defend the wrongful acts to carry out their devised plan 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.

111. It has become necessary for Plaintiffs to retain the services of an attorney in this matter and he is entitled to be reimbursed for his attorneys' fees and costs incurred as a result separately pursuant to Nevada law.

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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 21st day of May, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 21st 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.

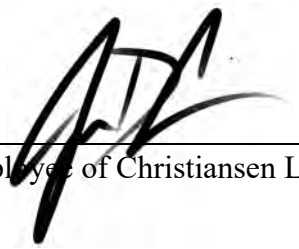

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EXHIBIT B

EXHIBIT B

ACOM
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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XIV Consolidated with CASE NO.: A-16-738444-C DEPT. NO.: X **AMENDED COMPLAINT**

Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants, complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

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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:

> [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of $550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled $486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of

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$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages.

11. SIMON was aware that PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by PLAINTIFFS accrued interest.

12. As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017, and thereafter blossomed from one of mere property damage to one of significant and additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the CONTRACT. In short, SIMON wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However, neither PLAINTIFFS nor SIMON agreed on any terms.

13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. The proposed fees and costs were in addition to the $486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in the LITIGATION.

14. A reason given by SIMON to modify the CONTRACT was that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given by SIMON was that he felt his work now had greater value than the $550.00 per hour that

was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following the flooding event.

16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS paid. There is nothing in the computation of damages signed by and served by SIMON to reflect fees and costs other than those contained in his invoices that were presented to and paid by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let alone those in excess of $1,000,000.00.

17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr. Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week."

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18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept $550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

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24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of $15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of $15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, $550.00 per hour for SIMON'S legal services performed in the LITIGATION.

33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, $550.00 per hour for a total of $486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at $550.00 per hour; since SIMON billed, and PLAINTIFFS paid, $550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

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39. Pursuant to the CONTRACT, SIMON agreed to be paid $550.00 per hour for his services, nothing more.

40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or before September 27, 2017, had already been produced to the defendants.

41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

42. Despite SIMON'S knowledge that he has billed for and been paid in full for his services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd produced all of his billings through September of 2017, SIMON has refused to agree to either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFFS' property rights.

44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

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FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling $486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is $692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

53. When SIMON executed his secret plan and went back and added substantial time to his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

54. When SIMON demanded a bonus based upon the amount of the settlement with the Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an amount that was far in excess of any amount of fees that he had billed from the date of the previously paid invoice to the date of the service of the lien, that he could bill for the work performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

56. As a result of SIMON'S breach of the implied covenant of good faith and fair dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages, including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the implied covenant of good faith and fair dealing, in an amount in excess of $15,000.00.

57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

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50. PLAINTIFFS have been compelled to retain an attorney to represent their interests in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of $15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of $15,000;
3. Punitive damages in an amount in excess of $15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
5. Costs of suit; and,
6. For such other and further relief as the Court may deem appropriate.

DATED this 15 day of March, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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EXHIBIT C

EXHIBIT C

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 Johns 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

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 you 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 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 X** **BATES NO. AA001840 - 2042**

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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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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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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 HEARING DATE: JULY 7, 2020 HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION 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 AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a)

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Vannah Defendants' Special Motion to Dismiss: Anti-SLAPP Pursuant to NRS 41.637.

/ / /

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This Opposition is made and based on all the pleadings and papers on file herein, the following Points and Authorities, and such oral argument as may be permitted at the hearing hereon.

Dated this 29th day of May, 2020.

By _____
PETER S. CHRISTIANSEN, ESQ.
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REQUEST FOR LEAVE TO FILE OPPOSITION IN EXCESS OF 30 PAGES

Plaintiffs, hereby move this honorable Court, pursuant to EDCR 2.20(a), for an Order granting leave to file their COMBINED OPPOSITION TO SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637, EDGEWORTH FAMILY TRUST, BRIAN EDGEWORTH, AND ANGELA EDGEWORTH'S SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 AND 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 AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a). In support of this Request, Plaintiffs state as follows:

1. Local Rule 2.20(a) provides, in relevant part, that, "Unless otherwise ordered by the court, papers submitted in support of pre-trial and post-trial briefs shall be limited to 30 pages, excluding exhibits."

2. Plaintiffs Opposition totals approximately 61 pages, which includes the table of contents, table of authorities and request to exceed 30 pages pursuant to EDCR 2.20(a). Plaintiffs substantive portion of Plaintiffs Opposition is only 54 pages.

3. Plaintiffs have made every effort to be brief and complete in their Opposition. However, due to the extensive history of the underlying cases, intensive facts and multiple parties and the need to set forth the complex and contentious nature of the parties' dealings and the law addressed in Defendants' Motion, Plaintiffs respectfully submit that the these arguments and the factual background require greater length than is permitted in a standard brief filed with this Court.

4. This extensive brief will allow other briefs to be more concise by adopting most of the factual and legal analysis set forth herein.

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WHEREFORE, Plaintiffs respectfully request that this Court allow Plaintiffs to file their OPPOSITION TO THE 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, in excess of 30 pages and in the amount specifically identified in paragraph 2 of this Request.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants are not entitled to the benefit of immunity under the litigation privilege or Anti-SLAPP statutes. The facts here demonstrate Defendants failed to contemplate and pursue the conversion claim against Plaintiffs in good faith. In analyzing the lack of good faith, this Court needs to look no further than the judicial finding of Judge Jones when she awarded fees against the Edgeworths for Defendants having filed and maintained the frivolous conversion claim in bad faith. The Court stated:

> The Edgeworth's did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, Order on Motion for Attorney's Fees and Costs, attached hereto as **Exhibit 1.**

Judge Jones made this same finding in dismissing the Edgeworths' baseless conversion claim. These findings alone confirm the Defendants cannot meet their burden to show by a preponderance that their conduct was in good faith. As a result, Defendants cannot be afforded the benefit of Anti-SLAPP protections. The orders of dismissal and award of fees are both final appealable orders and should be treated as having preclusive effect with respect to Defendants' failure to act in good faith. While the Edgeworths filed an appeal which challenges the impact and use of the factual findings by the

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District Court, the appeal will determine whether the District Court acted within its discretion when it made certain conclusions of *law* based on the Court's finding of fact. The findings of fact will remain untouched no matter what the appellate decision may be. Moreover, "an appeal has no effect on a judgment's finality for purposes of claim preclusion." *Edwards v. Ghandour*, 123 Nev. 105, 159 P.3d 1086 (2007)(abrogated on other grounds by *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008)).

Defendants also ignore that victorious litigants are permitted to pursue claims when they have been abused by false allegations and frivolous complaints. *Bull v. McCuskey,* 96 Nev. 706, 615 P.2d 957 (1980). Anti-SLAPP does to protect frivolous lawsuits. It is the Defendants conduct when filing the complaints that should be analyzed by the Court when conducting the Anti-SLAPP analysis. Not surprisingly, the instant motion merely asserts all of their conduct was done in good faith hoping the court will afford blanket protection across the board. All of the Defendants' motions undermine their own assertions when they affirmatively explain why the initial complaint was filed. Specifically, in Vannah's affidavit, he states: "When Mr. Simon continued to exercise dominion and control over an unreasonable amount of the settlement proceeds, litigation was filed and served including a complaint and an amended complaint." Vannah Affidavit in support of the Vannah Attorneys' Special Motion to Dismiss Anti-SLAPP, pp. 5:24-27. Mr. Vannah knows this statement, which he made under oath, is false. The proceeds had not even been received when the initial lawsuit was filed on January 4, 2018. These same facts were presented to the court in the underlying litigation and squarely rejected.

The Honorable Tierra Jones conducted a five-day evidentiary hearing and ultimately found that the Edgeworths' conversion allegations did not have a good faith basis in law or fact. Judge Jones dismissed the conversion claim and awarded Simon attorney's fees and costs for

having to defend against the baseless cause of action. The act of filing a frivolous complaint is not a protected activity under the Anti-SLAPP statute, nor is filing a frivolous complaint a good faith communication which is protected by the litigation privilege. Frivolous litigation does not qualify for protection under any statute or privilege. Quite the opposite, public policy mandates punishment for those who pursue frivolous claims, including the attorneys who pursue such claims. *See Bull v. McCuskey*, 96 Nev. at 709.

It is undisputed that prior to filing the underlying conversion claim, all Defendants knew Mr. Simon never had exclusive control of the money – a necessary element to establish conversion. *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir. Cal.2003); *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist., C.A., 2009 (unpublished). All Defendants also concede they always knew Simon was owed money and always had an interest in the disputed funds. All Defendants met Mr. Simon at the bank to sign the settlement checks and the lawsuit was filed before the settlement checks were even deposited. Mr. Simon was admittedly owed substantial attorneys fees and filed a lawful attorney lien under Nevada law. *See*, NRS 18.015; *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Defendants never challenged Simon's lien as improper. In short, Defendants knew the allegation that Simon exercised wrongful control of the subject funds was a legal impossibility.[1]

[1] Following the law by filing a lawful attorney lien is not a wrongful act that can be used to establish conversion.

> "A mere contractual right of payment, without more, will not suffice" to bring a conversion claim.

Plummer v. Day/Eisenberg, 184 Cal.App.4th 38, 45 (Cal. CA, 4th Dist. 2010). *See*, Restatement (Second) of Torts §237 (1965), comment d.

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The Edgeworths paid a minimal amount for attorneys fees during the hotly contested case with a world-wide manufacturer. This benefited Edgeworth as he always cried poor (which was later revealed to be a ploy). This is why Mr. Simon agreed to determine a fair fee at the end of the case. Simon and Edgeworth did not have an express agreement for fees and costs. Simon created bills for calculation of damages to be produced against the plumber only as part of the construction contract. All Defendants knew that Simon does not bill hourly and the bills that could be generated only contained a fraction of the actual work performed. The few bills generated over the course of intense litigation totaled $365,006.25 in attorneys fees through 9/19/17. Vannah and Edgeworth invented the express oral contract in order to challenge Simon's true reasonable fees. The District Court uncovered the falsehood and flatly rejected this story. The Edgeworths and Vannah know the value of services were well over 2 million, yet continue to scheme to pursue frivolous claims of theft to avoid paying the reasonable fees (among other improper purposes).

Also significant, the Edgeworths never had any recoverable damages because the settlement money was and is safekept in trust. Meanwhile, the Edgeworths continue to earn interest on the entire sum, including the amount due Simon. The money is kept in trust pursuant to an express agreement between Vannah and Edgeworth on one hand, and Simon on the other. *See*, December 28, 2017 Email, attached hereto as **Exhibit 3.** On January 8, 2018, the settlement checks were deposited. On January 16, 2018 after the checks cleared, the Edgeworths received an undisputed sum of just under $4,000,000.00 for their $500,000 property damage claim, which the Edgeworths agreed made them whole. Still, the amended conversion complaint, which Defendants filed in March, 2018, maintained the same fabricated conversion allegations. Defendants continued to further those false accusations with affidavits claiming extortion,

blackmail and theft - all for the filing of an attorney's lien. These false allegations are glaringly absent in their moving papers.

Defendants newest ad hoc rescue argument also fails. In December, 2018, Defendant filed a motion to release the funds over and above the adjudication order. The Judge denied the Edgeworth/Vannah request because they appealed the decision to the Supreme Court. A party cannot appeal orders to continue the controversy and then claim conversion. Simon had a duty to safekeep property. The Edgewroth/Vannah appeal caused the funds to remain disputed. Simon is following the District Court order to keep the disputed funds safe pending appeal. Following a District Court order is not conversion. This was also not the basis for the conversion claim in January, 2018.

Equally meritless is the argument the lien was unreasonable in its amount leading up to the Adjudication hearing. This issue goes directly to the enforceability of the lien. This was never attacked by the Edgeworth/Vannah team. The Court made a finding of a proper lien as a matter of law. This is also a final order on the issue.

Defendants also attempt to confuse the application of the litigation privilege with the Anti-SLAPP protection. The Anti-SLAPP requires the communication to be true or made without knowledge of the its falsehood. The many statements contained within the complaint were knowingly false and the litigation privilege analysis is separate and independent of Anti-SLAPP.

All Defendants here seek refuge under Anti-SLAPP statutes despite knowing all along that it is Simon who was entitled to such protections when he filed a lawful attoney lien, which the court adjudicated in his favor. In stark contrast, a district court has already concluded Defendants did not act in good faith. In sum, Defendants knowingly lodged allegations having no good faith basis in law or fact. This Court should not permit Defendants to use the litigation

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privilege or Anti SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

FACTUAL BACKGROUND[2]

A. THE RESULT AND CONSPIRACY

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim. The Edgeworth's admit they were made whole when they received their share of almost $4 million. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment. Instead of even having a discussion about a fair fee, the Edgeworth's stopped talking to Mr. Simon and fired him immediately when retaining Robert D. Vannah and John Greene to bring frivolous claims and wild accusations against Mr. Simon and his Law Firm. *See*, ¶¶15,16 This strategy was grounded in hostility and intended to avoid paying Simon's reasonable fees, attack Mr. Simon's integrity and moral character, and cause substantial expenses and loss of income to Mr. Simon and his firm.

To that end, on January 4, 2018, the Edgeworth's and the Vannah firm filed a lawsuit alleging conversion of the settlement money. *See*, ¶19 of Complaint. The frivolous conversion lawsuit sought relief that Simon was "paid in full" and asserted the settlement proceeds were solely the Edgeworth's (Vannah Complaint at 8:6-8; Vannah Amended Complaint at 8:21-9:21)

[2] The Vannah attorneys' special motion to dismiss for Anti-SLAPP reiterates all facts and arguments presented in their initial motion to dismiss. Thus, Plaintiff responded to all of these same factual and legal arguments in Simon's Opposition to the Vannah attorneys' motion to dismiss. Rather than take the courts time to reiterate the same facts and arguments, the Simon Plaintiffs incorporate by reference as though fully set forth herein the Opposition to the Vannah attorneys' motion to dismiss. This opposition sets forth the reasons why Anti-SLAPP does not apply to this case, and sets forth the prima facie case precluding dismissal based on Anti-SLAPP.

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which is in stark contrast to the sworn testimony of Edgeworth, who confirmed he "always knew he owed Simon money," (August 27, 2018 Hearing at 178:20-25), along with his attorneys statement in open court, as follows:

> MR. VANNAH: Our position is we owe Danny Simon money, and that's what you're going to decide, Your Honor. You're going to decide how much he's owed in September 22nd until the date that he stopped billing.
>
> THE COURT: Right. And are you –
>
> MR. VANNAH: There's a bill there.
>
> THE COURT: -- referring to the conversion claim? There's a conversion claim in the lawsuit, Mr. Vannah. Is that what -- that's what I believe Mr. Christiansen is getting at.
>
> MR. VANNAH: No, he's asking -- he keeps asking him over and over again, if he doesn't owe him any money from September 22nd to January 8th, that's never been our position, everybody knows that. And that's why we're here to determine how much money he's owed during that four or five month period. We owe him money; we're going to have you make that decision.
>
> THE COURT: Okay.

See, August 28, 2018 Transcript at 36:1-37:3, attached hereto as **Exhibit 9.** *See*, ¶¶19,20 of Complaint. Certainly, this portion of the complaint was not made in good faith (nor was the rest of the Complaint), and the statements were absolutely false. Therefore, NRS 41.660 does not apply.

Realizing Brian and Angela Edgeworth's bizarre behavior when they refused to discuss a fair fee and retained Vannah and Greene to refuse payment, Mr. Simon followed the law and promptly filed an attorney's lien pursuant to NRS 18.015. *See*, ¶17 of Complaint. The amount in dispute was placed in an account that Vannah himself requested be set up top hold the funds. Mr. Vannah, is a signer and equally controls the new trust account with 100% of the interest going to Mr. Edgeworth. *See*, Letter from Vannah to Bank of Nevada, attached hereto as **Exhibit 10.** *See*,

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¶20 of Complaint. Mr. Vannah also confirmed the agreement to the Court when he represented that he agreed to have Mr. Simon place the ***biggest number he could recover in the trust account***. *See*, **Exhibit 4** at 146: 17-147:4. Specifically, Mr. Vannah stated the agreement to the Court, as follows:

> MR. VANNAH: So there's $6 million that went into the trust account.
>
> THE COURT: Okay.
>
> MR. VANNAH: Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get, and then we gave the clients the remainder.
>
> THE COURT: So the six –
>
> MR.VANNAH: In other words, he chose a number that – *in other words we both agreed that*, look, here's the deal. Odds you can't take and keep the client's money, which is about 4 million. *So I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account*. (Italics added.)

See, **Exhibit 4** at 146: 17-147:4.

Will Kemp reviewed the case and opined the reasonable value of services owed to Simon was $2,440,000. The Vannah attorneys and the Edgeworths were provided Will Kemps opinion as to the value of the lien on February 5, 2018. Mr. Simon's lien was less than Mr. Kemp's opinion and approximately $2 million was placed in a separately created trust account equally controlled by Vannah with 100% interest going to Edgeworth, even Simon's share of the interest. How can Vannah accept the lien amount, which was supported by expert testimony, the amazing result and amount of substantial work performed, and now genuinely suggest to this court that the lien was unreasonable on its face? The lien amount simply could not have been the basis for the conversion complaint given that Defendants did not even challenge the validity of that amount of the lien at the evidentiary hearing.

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B. SIMON FOLLOWED THE LAW AND IS IN FULL COMPLIANCE WITH ALL ETHICAL RULES

The Law Office of Daniel S. Simon, A Professional Corporation acted properly pursuant to Nevada Rule of Professional Conduct 1.15 "Safekeeping Property." The Rule states in relevant part:

> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

Simon followed the exact course mandated by the Rules of Professional Conduct. The Law Office followed the law and placed the settlement money into a joint trust account with all interest accruing to Edgeworth. *See*, ¶20 of Complaint. Mr. Simon is allowed by law to assert an attorney lien pursuant to NRS 18.015. There is nothing fraudulent about asserting an attorney lien for attorney's fees and costs that are still due and owing. Former counsel for the State Bar Nevada, reviewed the case and explains in detail that Mr. Simon followed the exact procedure mandated by law. *See*, Declaration by David Clark, attached hereto as **Exhibit 11.** The District Court noted in its decision and order that Vannah and Edgeworth never disputed Mr. Clark's opinion.

Contrary to the arguments proferred to the court, Mr. Vannah presented a letter to the Bank consenting to the handling of the funds. *See*, **Exhibit 10**. How can you wrongfully convert funds when the complaining party agrees to where the funds should be placed and when Mr. Simon fully complied with the Edgeworth/Vannah's direction and promptly placed the funds in a protected account? Even after the evidentiary hearing, Mr. Simon had and duty to safekeep the disputed funds. The funds remain disputed because the Edgeworth/Vannah team appealed the

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decision and the District Court entered an order that the funds remain in the account and not be disbursed pending appeal.

C. THE FIRING OF SIMON

Mr. Simon was fired toward the end of the case when the Edgeworth's hired Mr. Vannah and Mr. Greene. When a lawyer is fired, the amount of the lien is for the reasonable value of services still owed. The District Court found Simon was fired on November 29, 2017. Mr. Simon filed an attorney lien as he was owed in excess of $68,000 for costs alone, as well as a substantial amount for outstanding attorney fees. Will Kemp reviewed the case and opined the reasonable value of services was $2,440,000. This evidence confirming the value of services also remains undisputed. Notably, there was not an express written contract with the client and NRS 18.015 allows for a lawyer to recover the reasonable value of his services. Instead, Mr. Vannah and the Edgeworth's invented a story asserting an express oral contract was entered into for an hourly rate of $550 per hour. This was part of their fraudulent plan to avoid paying the reasonable value of services. The District Court heard Mr. Edgeworth's story and weighed the evidence and found that ***an express oral contract did not exist*** as alleged by Mr. Edgeworth. *See*, **Exhibit 2** at p.7**;** *See also*, ¶27 of Complaint.

Vannah agrees that Edgeworth was not credible when he conceded six times in his opening brief to the Nevada Supreme Court that the District Judge believed Mr. Simon over Edgeworth. *See*, Appellants Opening Brief at pp. 11, 12, 15, 18 & 28, attached hereto as **Exhibit 12.** Thus, these findings of fact by the District Court are no longer in dispute. *Id*. The District Court also found the attorney lien was properly filed, which the Edgeworth's nor and the Vannah attorneys never challenged - likely because the evidence supported the amount of the lien. *Id*.

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As discussed in detail below, Mr. and Mrs. Edgeworth, through Vannah and Greene also created a fraudulent story of extortion, blackmail, stealing, intimidation and threats to support the frivolous conversion claim for the mere act of filing a lawful attorney lien. *See*, ¶25 of Complaint. Angela Edgeworth and Brian Edgeworth admitted, under oath, they repeated these false and defamatory statements to third persons outside the litigation and admitted to filing the conversion claim for the ulterior purpose of punishing Mr. Simon and his firm. *See*, **Exhibit 4** at 145:10-21**;** *See also*, ¶¶66,67,68 of Complaint. These admissions confirm the lack of good faith basis necessary to seek protection of the litigation privilege or the Anti-SLAPP protections under Nevada law.

D. THE MALICIOUS LAWSUIT ABUSING THE PROCESS FOR AN IMPROPER PURPOSE.

The lack of Good Faith is also demonstrated by the events leading up to and continuing long after the filing of the complaint. On November 29, 2019, the Edgeworths retained Vannah and Greene, and notified Mr. Simon. *See*, November 29, 2017 Letter of Direction, attached hereto as **Exhibit 13;** *See also*, ¶16 of Complaint. On November 30, 2019, the attorney lien was served. *See*, Attorney Lien, attached hereto as **Exhibit 14;** *See also*, ¶17 of Complaint. On December 1, 2017 Vannah signs the release for settlement of $6 million. *See*, Viking Release, attached hereto as **Exhibit 15;** *See also*, ¶18 of Complaint. On December 18, 2017, settlement checks were picked up by Mr. Simon, who notified Vannah's office to have clients endorse the checks in order to deposit into the trust account. Clients became unavailable and refused to sign. On December 26, 2017, Vannah sends email "clients are fearful Simon will steal money." *See*, December 26, 2017 email, attached hereto as **Exhibit 16.** On December 27, 2017, Mr. Simon's lawyer, Jim Christensen, sent a letter with specific timelines and a request to avoid hyperbole of false

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accusations and offered to work collaboratively for a resolution. *See*, December 27, 2017 Letter, attached hereto as **Exhibit 17.**

On December 28, 2017, Vannah wrote in an email, he did not believe Simon would steal money, he was simply relaying his client's statements." *See*, **Exhibit 3.** Later that day, Vannah proposed and Mr. Simon agreed, to a single purpose trust account that has both Mr. Simon and Mr. Vannah as signors and that the client would get all interest from account. *Id.* On January 2, 2018, Mr. Simon's law firm filed an amended lien with specific amounts. *See*, Amended Attorney Lien, attached hereto as **Exhibit 18.** On January 4, 2018, a frivolous conversion theft suit was filed against Mr. Simon, individually and his law firm without any basis that Simon stole the money. *See,* Vannah Complaint, attached hereto as **Exhibit 19;** *See also*, ¶19 of Complaint. Vannah filed the conversion/theft lawsuit one week after confirming he did not believe Simon would steal the money, and after all parties agreed to put the disputed money in the special trust account. *See*, **Exhibit 3.**

On January 8, 2018, Simon, Vannah, Brian Edgeworth and Angela Edgeworth all went to the bank at the same time to endorse the settlement checks, which were given to the banker and deposited into the new joint trust account. *See,* ¶20 of Complaint. On January 9, 2018, Simon was served with the Vannah Complaint for conversion. *See*, ¶21 of Complaint. When the Vannah Complaint was served, the Edgeworths, Greene and Vannah had actual knowledge that the funds were sitting in the protected account.

Vannah and Greene filed an Amended Complaint without leave of court on March 15, 2018, re-asserting the conversion theft and punitive damage claims. *See*, Vannah Amended Complaint, attached hereto as **Exhibit 20;** *See also*, ¶22 of Complaint. Since the money was safe kept in the protected joint account for two months, the new Amended Complaint underscores the

transparent malicious motives of Vannah, Greene and the Edgeworth's. The Edgeworth's, Vannah and Greene also filed affidavits containing false allegations of theft, extortion and blackmail to persuade the court not to dismiss the conversion claim. *See*, ¶23 of Complaint. Specifically, Edgeworth stated, as follows:

> "I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and **SIMON'S attempt at trying to extort millions of dollars from me**. …"

See, March 15, 2018 Affidavit of Brian Edgeworth at 8:17-20, attached hereto as **Exhibit 21.**

Significantly, Mr. Herrera has no interest in the proceedings and these defamatory statements are not protected by the litigation privilege. The purpose of maintaining the conversion theft claim was malicious for several improper purposes, including but not limited to (1) Avoid paying attorney fees admittedly owed; (2) Punish Mr. Simon; (3) Cause substantial expense to Mr. Simon and his Firm; (4) Attack Mr. Simon and the firm's integrity and moral character to smear his name and reputation to make him lose clients and cause the firm to lose income; (5) Ill-will, hostility and harassment; (6) Avoiding lien adjudication and to delay the proceedings. *See*, ¶¶22,23,24, 25,26,50,89 of Complaint. Another abusive act is suing Mr. Simon personally when the lien was only filed by the Law Office. This strategy was likely to also persuade the court to award less than the reasonable value of Mr. Simon's work. Simon need only show the Court one improper purpose, but Vannah, Greene, and the Edgeworths have admitted to all of these several improper purposes.

E. The Unprivileged Defamatory Statements of Angela and Brian Edgeworth were adopted by all Defendants, including the Vannah Attorney's

Angela Edgeworth confirmed the frivolous conversion theft claim was filed for an ulterior purpose out of ill-will and hostility to punish Mr. Simon when she testified, under oath, as follows:

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Q. You made an intentional choice to sue him as an individual as opposed to just his law office, fair?

A. Fair.

Q. That is an effort to get his individual money; correct? His personal money as opposed to like some insurance for his law practice?

A. Fair.

Q. And you wanted money to punish him for stealing your money, converting it; correct?

A. Yes.

Q. And he hadn't even cashed the check yet; correct?

A. No.

See, **Exhibit 4** at 145:10-21; *See also*, ¶¶66,67,68,70,75,76,77,78, 79 of Complaint.

There is no mistake about the ulterior purpose to injure Simon. The Vannah attorneys adopted these statements as part of their plan and they have yet to rebuke these statements after they were made in open court in their presence. *See also*, ¶¶66,67,68,70,75,76,77,78, 79 of Complaint. These statements, under oath, confirm the reason for the conversion claims pursued by the Edgeworth's and the Vannah attorneys. This fact is undisputed. Additionally, there is also no mistake about how frivolous the conversion theft claim has always been, especially when the District Court entered findings on the conversion claim, and explicitly found in its decision as follows:

> The Edgeworth's did not maintain the conversion claim on reasonable grounds since it was an impossibility for Mr. Simon to have converted the Edgeworth's property at the time the lawsuit was filed.

See, **Exhibit 1;** *See also*, ¶¶29 of Complaint.

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Angela Edgeworth also confirmed that she was the equal owner of American Grating, LLC and equal trustee of Edgeworth Family Trust, acting on behalf of the entities and fully approved and ratified the conduct of these entities. *See*, **Exhibit 4** at 168:18-169:11. She also testified that she adopted all testimony of her husband. *See*, **Exhibit 4** at 108:1-12. Individually, she admitted under oath that she told several people outside of the litigation that Mr. Simon was extorting and blackmailing them, including Lisa Carteen and Justice Miriam Shearing. *See*, **Exhibit 4** at 133:5-15; *See also*, ¶¶66,67,68,70,75,76,77,78,79,84 of Complaint. At the time the defamatory statements were made, these individuals did not have a significant interest in the proceedings, therefore, these statements are not protected by the litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014).

Specifically, Mrs. Edgeworth stated to Ms. Carteen, as follows:

> Q. Okay. The words you used, ma'am, and I won't go back through them all, when you talked to Ms. Carteen -- Did I get that right?
> A. Yes.
> Q. -- were those the words you use to her when describing Mr. Simon?
> A. I'm sorry. Which – what do you mean?
> Q. Terrified? Blackmailed? Extorted?
> A. I used blackmailed, yes.
> Q. You used those words to her?
> A. And I used extortion, yes.
>
> Q. Similarly, when you talked to Justice Shearing in February 2018, were those the words you used?
>
> A. I don't think they were that strong. I just told her what happened. Lisa is more of a closer friend of mine. So I was a little bit more open with her.
> Q. And you were talking to Lisa as your friend, not your lawyer; right?
> A. Correct.

See, **Exhibit 4** at 133:5-23.

These admissions alone establish all elements for Simon's claims against all Defendants. Mr. Edgeworth equally adopted the statements of his wife and also independently told third

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parties outside the litigation that Mr. Simon was extorting and blackmailing the Edgeworths for millions of dollars as set forth in his affidavit. *See*, ¶¶66,67,68,84 of Complaint. Harming Mr. Simon's reputation and business is an ulterior motive. *See, e.g., Datacomm Interface, Inc. v. Computerworld, Inc*., 396 Mass. 760, 775, 489 N.E.2d 185 (1986). A false statement involving the imputation of a crime has historically been designated as defamatory per se." *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (Nev. 2005).

The Vannah lawyers prepared these affidavits, and filed the false affidavits to defend dismissal of the conversion claims. *See,* ¶¶23 of Complaint. They are well aware that filing an attorney lien is not theft, blackmail or extortion. In the Vannah attorneys moving papers, they attempt to distance themselves from the false statements they have repeatedly advanced – theft, extortion and blackmail. The ill-will is further confirmed when Vannah, Greene and the Edgeworth's all stated in Court - we always knew we owed Simon Money. *See*, **Exhibit 8** at 178:20-25. Simon always had an interest in the disputed funds, never controlled the funds and conversion has always been a legal impossibility. *See*, ¶22 of Complaint. The Vannah attorneys have always known this simple and undeniable fact from the outset of the case, but intentionally refused to abandon the false narrative to harm Simon. Vannah and Greene's affidavits presented in support of the instant motion never specifically reference or address the defamatory statements made by the Edgeworths about Simon. Why not? Because they have always known the statements were false. And unlike the litigation privilege, Nevada's anti-SLAPP statute requires that the statements intended for protection be true or made without knowledge of their falsehood. *See* NRS 41.637. This omission by Vannah and Greene, along with all of the evidence presented by Plaintiffs, clearly warrants denial of their anti-SLAPP motion because they have failed to show by a preponderance of the evidence that the statements forming the basis of Plaintiffs' claims

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were true or made without the knowledge of falsehood, as required by NRS 41.660(3)(a). *See e.g.*, *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017). Nevertheless, even if the Court is willing to give broad deference to Vannah and Greene's affidavits, wherein they attest that all the statements were "brought in good faith" and believed to be "accurate," Plaintiffs have provided prima facie evidence establishing their probability of prevailing on their claims against Defendants.

Vannah and Greene base their conclusory statements on the premise they researched the law supporting the claims. In their affidavit they cite *Evans v. Dean Witter Reynolds, Inc*., 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) as a basis. This case does not provide support and the Vannah attorneys have never provided any authority allowing them to sue an attorney for conversion for merely filing an attorney lien. Their affidavits are also contrary to the evidence in the record as already found by Judge Jones. Most tellingly is Vannah's testimony that Simon presented a contingency fee agreement to Edgeworth on November 17, 2017. *See* Vannah Affidavit, pp. 9:23-27. This is a complete falsehood. Simon never sent a "contingency fee" agreement. *Id.* The Greene Affidavit in support of this motion falsely states that "after the value of the case blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of the Viking defendant, the evidence showed that Mr. Simon became determined to get more, so he started asking the Edgeworths to modify the contract, beginning in August of 2017." There was no offer from Viking in August of 2017, confirming the affidavit's falsehood by the undeniable fact that the first significant offer was in October of 2017. *See* Greene Affidavit, pp. 3:15-19. Regardless, since Angela Edgeworth admitted to the ulterior purpose and the court has found as a matter of law as to the lack of good faith, Simon has made a prima facie showing warranting denial of the instant motion.

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F. THE EVIDENTIARY HEARING AND THE DISTRICT COURT'S DECISION AND ORDER ON THE MERITS

The Court held a five-day evidentiary hearing taking evidence from Mr. Simon, Mr. Kemp, Brian Edgeworth and Angela Edgeworth, among other witnesses. The court reviewed over 80 exhibits entered into evidence. On October 11, 2018, the District Court dismissed Edgeworths' Amended Complaint and entered findings of fact. She amended her order on November 19, 2018. 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. No express oral contract was formed.
e. There was no evidence to support the conversion claim.

See, Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5), attached hereto as **Exhibit 22;** *See also*, ¶28 of Complaint.

In a later motion, Defendants were ordered to pay $55,000 in attorneys fees incurred in having to defend against the frivolous conversion theft claim. *See*, **Exhibit 1;** *See also*, ¶29 of Complaint. This is a final order even though it was appealed to the Supreme Court and may possibly get reversed or modified. Notably however, Edgeworth did not challenge the non-existence of the alleged express oral contact and this finding is now final and also constitutes issue preclusion the same as the bad faith motives when pursuing the conversion claims.

G. THE INTENT TO PUNISH MR. SIMON BY FILING THE CONVERSION/THEFT CLAIM IS ADMITTED BY ALL PARTIES.

Prior to receiving the settlement money, Vannah sent an email stating client believes Simon is going to steal money, yet Vannah admits he does not believe this is the case. *See*, **Exhibit 3.** Since Vannah admits in his own email he does not believe Simon would steal the money, his lawsuit filed a week later certainly was not contemplated in good faith. These emails referencing

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theft just prior to the filing of the conversion claim also support the real reasons for the conversion claim -theft, blackmail and extortion. These are the same reasons Angela Edgeworth admitted to, the same statements made in the affidavits of Brian Edgworth presented to the court and are the same reasons adopted by all other Defendants.

Even worse, Vannah, Greene and the Edgeworths all had actual knowledge that the money was safe kept in a joint trust account controlled equally by Vannah earning Edgeworth interest. *See*, ¶20 of Complaint. Since they knew the money was not stolen and stated in an email, they did not believe theft was an issue, Vannah and Greene conspired with the Edgeworths to abuse the process when maliciously filing and maintaining the conversion claims. *See*, ¶¶49,50,51,52,53,89,90 of Complaint. Simon relied on the statements of the Vannah attorneys when entering into an agreement to protect the funds in a special account for the benefit of Edgeworth. *See*, ¶19 of Complaint. How can Vannah or Edgeworth enter into an agreement that solely benefits them, confirm in an email he does not believe theft is an issue, and then turn around and suggest to this court that his conversion complaint was filed and maintained in good faith?

1. <u>The amount of the lien is a new ad hoc rescue argument contrary to the District Court's findings</u>

The desperate new ad hoc rescue argument alleges the lien is unreasonable on its face and ignores the blackmail, extortion and theft assertions. This new argument is not genuine, which is confirmed by the fact that the conversion claim in the initial complaint alleges that a lien amount has not been provided and the amount of the lien is not suggested as a basis for the conversion claim. This new argument also is contrary to the undisputed facts that no money was received from the settling Defendants and no justiciable claim ever existed. The attempts to keep the conversion claim alive with false affidavits was rejected by Judge Jones. The Defendants attempt to dream up new facts for the basis of conversion for the first time on appeal also fails.

In December, 2018, Defendant filed a motion to release the funds over and above the adjudication order. The Judge denied the Edgeworth/Vannah request because they appealed the decision to the Supreme Court. A party cannot appeal orders to continue the controversy and then claim conversion. Simon had a duty to safekeep property. The Edgewroth/Vannah appeal caused the funds to remain disputed. Simon is following the District Court order to keep the disputed funds safe pending appeal. Following a District Court order is not conversion. This was also not the basis for the conversion claim in January, 2018.

Equally meritless is the argument the lien was unreasonable in its amount leading up to the Adjudication hearing. This issue goes directly to the enforceability of the lien. This was never attacked by the Edgeworth/Vannah team. The Court made a finding of a proper lien as a matter of law. This is also a final order on the issue.

Vannah now argues that the amount of the lien is unreasonable on its face and suggests the superbill of $692,000 of unbilled work supports this conclusion. The superbill was merely an itemization re-created by Simon to show the court the substantial work performed in support of the full amount of Quantum Meruit as testified to by Will Kemp. This bill only includes work tied to a tangible event and does not include substantial work that could not be recovered. The court was free to award any sum up to the full lien and this itemization merely was one piece of evidence, along with much more, to support Will Kemp's undisputed opinion. The Vannah attorneys know that this bill is much less than the total work actually performed.

The Edgeworth's did not argue against the Courts finding of a proper lien, likely, because the only evidence as to the reasonableness of the lien supported its amount. Not only did Will Kemp opine that the Simon lien was low, but the evidence received by the Court hit every *Bruznell* factor for a large fee, including the enormous amount of the unbilled work and the undeniably

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fantastic result. Simply, the Edgeworth's did not argue or establish that the lien amount was unreasonable on its face at the hearing. The time to assert the challenge was when adjudicating the attorney lien – the entire purpose of the hearing. Accordingly, the District Court found a proper lien as a matter of law and any new arguments of same should be summarily dismissed. *See,* ¶27 of Complaint.

Instead, the Edgeworths' argument before the District Court was only that the lien conflicted with the alleged oral contract. However, the alleged oral contract was found to have never existed, the implied contract was found to be terminated, and any argument is waived because Mr. Vannah invited Simon's lien. *Id.* When a lawyer is discharged, he/she is entitled to receive the reasonable value of services for the work performed. Will Kemp's testimony supporting the lien remains undisputed. Since the Court found a proper lien, this is a final order on this issue. The Supreme Court is reviewing the application of Quantum Meruit and if remanded, the District Court has an opportunity to award the full amount of the lien.

2. <u>Vannah/Edgeworths' narrative was not credible and rejected by the District Court</u>

When the Edgeworths stop talking to Simon on November 29, 2017, Vannah threatened Simon with increased damages if Simon withdrew. The threat was partly based on the large amount of time it would take Vannah to come up to speed in order to match Simon's knowledge of the case. *See,* January 9, 2018 Email, attached hereto as **Exhibit 23.** Vannah repeated the sentiment in Court on February 6, 2018. *See*, February 6, 2018 Transcript at 35:22-24, attached hereto as **Exhibit 24.** However, Edgeworth/Vannah continue to advance inconsistent arguments. They argued to the Supreme Court that the work Simon was doing at that time was ministerial. If this is true, the Vannah threats were not made in good faith and yet more evidence of ill will to abuse the process. Further, the Edgeworths theme is that Simon sought a bonus only after a

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significant offer was made, but the Edgeworths were petrified when Simon allegedly threatened to withdraw because that would critically damage the case. That threat now has no weight, because only ministerial work remained as argued in the Supreme Court. Even more telling was the allegation asserted under oath in an affidavit to the court that the alleged bonus was sought by Simon in August, 2017 after a significant offer was made. *See*, Brian Edgeworth February 12, 2018 Affidavit at 3:1-3, attached hereto as **Exhibit 25.** When Simon pointed out this falsehood based on the undeniable fact that an offer was not made in the case until late October, 2017, this portion of the affidavit did not make it into the several subsequent affidavits. The Edgeworth's assertions, through the Vannah attorneys follow a long and winding road. Bonus is a word created and used solely by Vannah and Edgeworth. Simon wanting a contingency fee was a story solely created by Vannah and Edgeworth. Simon never stated anywhere that he wanted a bonus or a contingency fee. Anyone can do the math and establish the percentages for a reasonable fee. This math equation does not support that Mr. Simon demanded a contingency fee. The court ruled that this is not a contingency fee case. Simon's lien did not request a contingency fee and the agreement and letter requested by the Edgeworths does not request a contingency fee. All Simon ever wanted was a reasonable fee for the work actually performed. Vannah's affidavit still suggests that Simon sent a contingency fee retainer. *See* Vannah Affidavit, pp. 9:23-27. This is not true.

3. <u>The Vannah Attorneys' Threats</u>

The primary issue supporting the abuses and lack of good faith in the instant case, is that the Vannah attorneys have an independent duty to refrain from filing and maintaining frivolous claims, and refrain from performing acts inconsistent with their oath, as well as the Nevada Rules of Professional Conduct. *See,* ¶¶31,32,33,34, of Complaint. In their moving papers, the Vannah

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attorneys concede that NRPC 3.1 requires that attorneys only pursue meritorious claims in good faith. The plan to attack Simon was devised by all Defendants to punish Mr. Simon as confirmed by the testimony of Angela Edgeworth. *See*, **Exhibit 4** at 145:10-21**.** This is also corroborated by the Vannah attorney emails.

Long after Judge Jones told Vannah, Greene and Edgeworth that their conversion claim was frivolous, they openly admitted to their ill-will toward Simon. Mr. Christensen again requested that they withdraw their appeal and arguments of conversion, which always were and remain a legal impossibility. *See*, December 20, 2019 Email, attached hereto as **Exhibit 26.** On January 9, 2020, Mr. Vannah wrote an email confirming his true malicious intent to personally punish Mr. Simon. *See*, January 9, 2020 Email, attached hereto as **Exhibit 27.** Mr. Vannah stated **"I have no intention of abandoning our efforts to hold Danny Simon liable for what he has done in this case, which I interpret as taking our clients money hostage… Whether you call that conversion, or some other tort, doesn't really matter to me. …. I am asking the Supreme Court to reverse that dismissal of our case, then I intend to pursue that case, including punitive damages."** *Id.* (Emphasis added) Vannah confirms it is his personal intent to punish Mr. Simon. His malice is expressed when stating it does not matter to him what you call the claim (whether a claim exists or not), his intent is to punish Mr. Simon. This email was sent on behalf of the Edgeworth's and Greene was copied thereby adopting the malicious nature of their conduct aimed to harm Simon. This further confirms the civil conspiracy of their devised plan to harm Mr. Simon as outlined in detail below. *See,* ¶¶89,90,91 of Complaint. This conduct also confirms abuse of process and is not protected by Anti-SLAPP or the litigation privilege.

At the time the checks were deposited, Simon had already served a proper attorney lien and Vannah, Greene and both Edgeworths admit they all knew Simon was owed money for fees

and costs. *See,* **Exhibit 9** at 36:1-37:3. Yet, the frivolous complaint filed by Vannah, Greene and the Edgeworths sought relief that Simon was already paid in full. *See*, **Exhibit 19** at 8:6-8; *See,* ¶¶49,50,51,52 of Complaint. The false affidavits of Brian Edgeworth, also stated Simon was already "paid in full." *See*, **Exhibit 19** at 8:6-8; *See also*, **Exhibit 20** at 8:21-9:21; *See, also*, **Exhibit 8** at 178:20-25; *See also*, February 2, 2018 Affidavit at 6:10-11 attached as **Exhibit 28;** *See also*, **Exhibit 25** at 7:11-12; *See also*, **Exhibit 21** at 7:16-17. These contradictory false statements in the complaint confirms the Anti-SLAPP in not available int his case.

On January 9, 2018, after Simon was served with the conversion lawsuit, Vannah threatens Simon that if he formally withdraws, bad things will happen. *See*, **Exhibit 23;** *See also,* ¶21 of Complaint. Greene intentionally ignored Mr. James Christensen's efforts to focus on resolution of the money owed to Mr. Simon and he continued to maliciously pursue the theft claims at the direction of Vannah and the clients. Mr. Christensen repeatedly asked for the authority or a basis for the theft claim. None could be given. Vannah stated in open Court to the judge his basis that **"we just think it is a good theory"** *See*, **Exhibit 24** at 34:20-24; *See,* ¶22 of Complaint. At this same hearing Vannah also confirmed that this is just a dispute over money and we do not criticize any work that Mr. Simon did. *See*, **Exhibit 24** at 32:5-9. These statements further corroborate the transparent motives to harm Simon and is contrary to their baseless assertion of good faith. *See,* ¶25 of Complaint.

Simon filed two separate motions to dismiss, one of which, was based on Anti-Sapp. Vannah and Greene and Edgeworth, were all made aware of the facts and law as to why the conversion theft claim was frivolous. *See,* ¶ 22 of Complaint. The law is clear that filing an attorney lien is a protected communication and Edgeworth could never sue Simon for filing the attorney lien. Rather than conceding the lack of merit, they all continued with their malicious

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smear campaign. In their Oppositions to the Simon Motions to Dismiss, Vannah and Greene advanced the conversion theft claim in the body of their Oppositions and attached three separate affidavits from Mr. Edgeworth. *See,* ¶ 23 of Complaint. In the affidavit, it asserts theft, blackmail, extortion of millions of dollars which Edgeworth told his volleyball coach and also falsely asserted Simon has been paid in full. *Id. See*, **Exhibit 28** at 3:22-23. Their conduct when advancing conversion in their Opposition is additional abusive conduct supporting abuse of process. This is completely opposite of Edgeworth's testimony and the Vannah attorneys' statements at the evidentiary hearing **stating we always knew he owed Simon money.** Angela Edgeworth admits to telling her friend Lisa Carteen and Justice Miriam Shearing essentially the same false accusations of criminal conduct against Mr. Simon. *See*, **Exhibit 4** at 133:5-23. This is more egregious conduct after the initial Vannah Complaint was filed. There is no mistake about the malice of the Edgeworths, Vannah and Greene. However, it gets worse.

On March 15, 2018, they continued with the wrongful abuses of the process when they filed an Amended Complaint re-asserting the same conversion theft claim again seeking punitive damages to punish Mr. Simon personally. *See,* **Exhibit 20;** *See,* ¶ 22 of Complaint. The money they allege was stolen was sitting in the equally controlled protected account earning Edgeworth 100% of the interest, even on Mr. Simon's share. Notably, Edgeworth could never establish damages making the claims even more frivolous.

Vannah and Greene sued Simon personally despite the fact that the Law Office of Daniel Simon, A Professional Corporation asserted the lien. This is another abusive measure substantiating malice. Simon only followed the law precisely pursuant to NRS 18.015 as confirmed by David Clark, Esq. *See*, **Exhibit 11.** Vannah and Greene were given Mr. Clark's report at the beginning of the case and they never disputed his opinion. Additionally, pursuant to

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the Anti-SLAPP line of cases, Vannah and Greene could not sue Mr. Simon for filing an attorney lien. The District Court finally entered an order in October, 2018 dismissing the conversion claim finding that there were no legal grounds to bring the claim or maintain the claim. *See,* ¶28 of Complaint. The Court Amended her decision on November 19, 2018. *See*, **Exhibit 22.** Despite the Districts Courts order, the Defendants continued with their devised plan.

On December 13, 2018, a motion to direct Simon to release the disputed funds was filed by Vannah and Greene again accusing Simon of theft. *See,* Motion to Release Funds at 6:7-9, attached hereto as **Exhibit 29.** This is more egregious conduct. On December 31, 2018, Mr. James Christensen sent a letter again asking Vannah and Greene to avoid accusations of theft and conversion pointing out that their motion for an order directing Simon to release funds repeats the false conversion accusation. *See*, December 31, 2018 Letter, attached hereto as **Exhibit 30.** Edgeworth, Vannah and Greene continued to argue the theft conversion claim in all of their briefing, including the briefs to the Nevada Supreme Court. They also are still advancing the same arguments to this court. All of the Defendants' conduct extends well beyond the mere filing of the complaint and amended complaint as asserted in their moving papers. *See,* ¶¶31,32,33,34 of Complaint.

The Vannah attorney's also attempt to appeal to the emotion of the court stating the Edgeworth did not ask for any of this from Simon; they simply wanted the contract honored and their funds given to them. This is equally disingenuous. There was never an express contract to honor, the implied contract was terminated by the Edgeworths and Simon filed a proper lien. The frivolous complaint alleges the full proceeds belong to the Edgdworth's. This is false. It also alleges Simon was paid in full. Also a false statement. It asserts conversion, which is another false statement. They filed the lawsuit to avoid lien adjudication and to punish not to determine a fee

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in the expedited adjudication process. *See,* ¶¶49,50,51 of Complaint. They now argue they agreed to pay Simon, contrary to their conduct appealing the decision first to the Supreme Court and are still arguing the meritless claim for conversion. The funds are not all of the Edgeworths, as alleged in their initial conversion complaint. They are not victims. They were made whole when they received almost 4 million dollars for their 500k property damage claims. They now should have to answer for the malicious conduct in abusing the process, which was well beyond a simple dispute over money and engaged in to destroy Simons livelihood. *See,* ¶¶48,49,50, 51, 52, 53 of Complaint.

Mr. Simon and the Edgeworths share a lot of common friends and when the Vannah attorneys followed the plan to falsely allege criminal accusations that Simon extorted millions from them is well outside the privileges or statutes created to protect good faith litigation. The overwhelming admissions by the Defendants confirm that their conduct was NOT in GOOD FAITH.

4. <u>The new Affidavits to support the instant motion confirm their false testimony</u>

The facts set forth in all of the Defendants self-serving affidavits were the same facts presented at the evidentiary hearing and rejected by the District Court. The Defendants still advance the conversion claim based on new, ***<u>ex post facto</u>***, ad hoc rescue argument that the lien was too much. Telling, they abandoned the initial arguments of theft, extortion and blackmail. This alone, is an admission of bad faith. This new argument does not save or advance their position. Their emotional appeal to the court that they never asked for any of this, but only wanted their contract honored is disingenuous. When filing the frivolous complaint, they sought much more than an expedited resolution and their efforts to provide false testimony to publish a smear campaign extends well beyond the mere desire to be paid.

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Their affidavits present the same facts that just do not exist in the record. Simon never sent them a contingency fee retainer agreement. Simon never asked for a contingency fee. The same false narrative is repeated in all affidavits and briefs, and was rejected by the District Court who found "this is not a contingency fee case." Plaintiffs submit this was meant to negate and finally put to an end the false arguments by the Edgeworth/Vannah team trying to turn the case into a contingency request. The story to modify an existing contract also failed. The Court found no express contract existed, therefore, there was nothing to modify. Finally, Simon never approached Edgeworth to change anything. This is a new falsehood.

The new affidavits in support of this motion confirms that the testimony at the evidentiary hearing was false. For example, at the hearing, Edgeworth was adamant that an oral express contract occurred over the phone on June 10, 2016, however, Mr. Vannah told the court is was agreed upon sometime around May 16, 2016 at a Starbucks. Now, in their new affidavits, Edgeworth says a new story. A phone call to discuss an hourly rate was sometime between June 8, 2016 and June 10, 2017, and it was not an express oral contract affirmatively agreed to, but a mere conversation where afterwards he was left with the impression of an agreement. The Edgeworth/Vannah team never had their story straight about the invented story of an express oral agreement and the court saw right through it. The presentation of these false facts demonstrate how incredible all Defendants are and why Anti-SLAPP should not apply to this case.

IV.

ARGUMENT

Defendants assert the claims are barred by Nevada's Anti-SLAPP statute. However, Defendants' egregious misconduct in knowingly filing false claims is not entitled to such protections. Defendants must first make a showing that the filing of the complaint and the

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statements therein were made in good faith. The statements also have to be truthful or made without the knowledge that they are false – these are burdens Defendants can never meet.

At the outset, Defendants asserted Simon was "paid in full," contrary to their under-oath testimony - they always knew they owed Simon money. They also asserted 100% of the funds were exclusively the Edgeworth's. These are blatantly false statements. They also can never show that Simon stole the money when the money went directly into the special trust account agreed to by the Vannah/Edgeworth team. Since there was never a justiciable claim, the false accusations of theft, blackmail and extortion were always known to be false by both Edgeworth and Vannah. Vannah equally knew the testimony his clients were presenting was false. In the newest affidavits to support the instant motion, the Defendants have now confirmed their story of the express oral contract was also false. Edgeworth also knew his statements were false when testifying that his August, 2017 email was sent after a significant offer was made. This under oath statement was eventually abandoned when Simon showed the first offer was not until October, 2017.

Simon was further protected by the very arguments the Defendants are now advancing. Simon was always protected because the law firm followed the judicial process of NRS 18.015. Simon was also always protected by NRS 41.660. Even if this Court is inclined to accept Defendants' version that was already rejected by the District Court in the underlying matter, the Simon Plaintiffs have clearly made a prima facie case, which also denies the Defendants of the Anti-SLAPP protection.

A. <u>Standard for Special Motion to Dismiss – Anti-SLAPP</u>

Pursuant to NRS 41.660(1), Nevada's Anti-SLAPP statue, a Defendant can file a motion to dismiss ***only*** if the complaint is based on the Defendants' good faith communication in furtherance of the right to petition or right to free speech in direct connection with an issue of

public concern. *See* NRS 41.660(1). A moving party seeking protection under NRS 41.660 must demonstrate by "'a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of . . . the right to free speech in direct connection with an issue of public concern.'" *See Coker v. Sassone*, 135 Nev. Adv. Rep. 2, 432 P.3d 746, 749 (2019) (quoting NRS 41.660(3)(a)). "If successful, the district court advances to the second prong, whereby "'the burden shifts to the plaintiff to show 'with prima facie evidence a probability of prevailing on the claim.'" *Id.* at 750 (quoting NRS 41.660(3)(b)). "Otherwise, the inquiry ends at the first prong, and the case advances to discovery." *Id.* NRS 41.637(4) defines one such category as: "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum . . . which is truthful or is made without knowledge of its falsehood."

The Vannah/Edgeworth frivolous conversion complaint and subsequent filings were not made in good faith and their attempt to assert facts justifying their wrongful conduct fails. It is the Vannah Attorneys and Edgeworth's that have the burden to show by a preponderance his conduct was truthful or made without the knowledge of its falsehood. In *Shapiro v. Welt*, the Nevada Supreme Court clarified that "no communication falls within the purview of NRS 41.660 unless it is "truthful or is made without knowledge of its falsehood."

The District Court already rejected these same factual assertions contained in the new affidavits to support the instant motion, and therefore, Defendants cannot meet the burden of a preponderance to apply Chapter 41 of the Nevada Revised Statutes as a matter of law. Simply, a frivolous complaint riddled with false allegations known to the parties at the time they filed the multiple documents are not protected by Anti-SLAPP. Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team.

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In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), the Nevada Supreme Court explained that to determine whether an issue is one of public interest pursuant to NRS 41.637(4), the district court must evaluate the issue using the following relevant guiding principles:

> (1) "public interest" does not equate with mere curiosity;
>
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
>
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
>
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
>
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

Shapiro, 133 Nev. at *9-10 (citing *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.,* 946 F. Supp.2d 957. 968 (N.D. Cal. 2013) *aff'd*, 609 F. App'x 497 (9th Cir. 2015)).

The Vannah attorneys and Edgeworths cannot meet the requirements of the first prong. A bad faith lawsuit to punish a lawyer is not a good faith communication. Undeniably, their statements were not truthful and all Defendants who were at the bank were very aware of the falsity thereof when continuing with the wild accusations supporting the conversion claim. They all admitted they always knew they owed Simon money. The lien was always supported by substantial evidence. The lack of good faith is demonstrated by the mere fact Vannah/Edgeworth never challenged the validity of the lien, never disputed Will Kemp or David Clark or that the lien was somehow improper because of the amount that they agreed and invited as the undisputed

amount. Asserting ***ex-post facto,*** a new conversion theory long after the evidentiary hearing does not rescue the lack of good faith and knowing falsehoods when the complaints were filed and maintained. All Defendants do not meet the first prong and the motion should be denied. The summary judgement standard analysis gives the Simon Plaintiffs all reasonable inferences in their favor when analyzing this issue.

However, if this Court determines that the Defendant's somehow made an initial showing as to both requirements, the burden shifts to the Plaintiff to show with prima facie evidence a probability of prevailing on the claim. NRS 41.660(3)(b), *Shaprio, Supra*. If the Court gets that far in the analysis, and then the Plaintiff shows a probability of prevailing on the claim, the Anti-SLAPP motion is denied.

In the present case, the prima facie case is established merely by the judicial finding of bad faith when dismissing the conversion complaint along with the admissions of the Edgeworths -- that the ulterior purpose was to punish Simon, among others. Defendants, and each of them, made allegations of theft, extortion, blackmail, and conversion, all of which, were false and only made in an improper attempt to refuse payment of attorneys fees admittedly owed and to punish and harm Simon, not to achieve success on the conversion claim. This is already admitted by all Defendants and correctly asserted in Simon's complaint and amended complaint. *See,* Amended Complaint at ¶ ¶ 24,26,27, 59, 60, 61, 103 and 104.

Defendants' statements were not made in direct connection with a public interest, but were made falsely in order to provide ammunition for the private controversy between the Edgeworth's and Simon for their refusal to pay his reasonable attorney's fees. An attorney lien dispute does not rise to the level of public concern for a substantial number of people – instead, by lying about Simon's conduct and claiming that he stole money, extorted and blackmailed

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them for filing an attorney lien, Defendants have attempted to make the action rise to that level of public concern. NRS 41.637(5), makes is clear that protection cannot be afforded to Defendants, which states "a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." Mr. Simon had a duty to safekeep the property of the disputed funds and this is exactly what he did. If Defendants argue Simon's theft is of public concern, this argument further underscores the bad faith as all Defendants have always known these statements were false. Vannah invited the lien amount and cannot now claim his conversion claim is protected. Certainly, it is not of public interest when falsely attacking a lawyer who sought payment allowed by law as provided by NRS 18.015. The lack of good faith is further demonstrated when seeking relief that Simon was "paid in full," and suing him personally.

Even assuming the filing of the complaint, the amended complaint and the false affidavits to support the lawsuit is somehow determined to be of public concern, Defendants can never meet the threshold that the statements were made truthfully or without the knowledge of its falsehood. Simon has properly plead in the Complaint and the Amended Complaint that Defendants statements were a complete falsehood and not truthful. *See,* Amended Complaint at ¶ ¶ 22,23,24,41,50,59,68,70,75,76,77,78,85,103. All Defendants had actual knowledge that Simon did not and could not convert or steal the money. *Id.* All Defendants admitted that they always knew Mr. Simon and his Law Office were owed money. *See,* **Exhibit 8** at 178:20-25; *See also,* **Exhibit 9** at 36:1-37:3. They also had actual knowledge that a special bank account was opened to protect the funds. *Id.*

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This special account was proposed by Defendants and Simon immediately agreed. The Defendants were present at the bank when the account was opened and when the checks were endorsed by all parties. *Id.* These funds were directly deposited into the special account and still remain there today. *Id.* All Defendants knew the falsity of their claims and that their statements of theft, blackmail and extortion to support conversion were always false as they are and remain, a factual and legal impossibility. We know the falsehoods of theft were the reason for conversion because the initial emails within weeks of the initial conversion complaint allege fear that Simon will steal the money **See Exhibit 3.** The bad faith is further established when Vannah confirmed he did not believe theft was an issue. Therefore, there is a plethora of evidence they did not have a good faith communication and that they all knew the falsity thereof.

The recent case of *Delucchi v. Songer*, 133 Nev. Adv. Rep. 42, 396 P.3d 826 (2017), also supports denial of Defendant's motion. In *Delucchi*, the Town of Pahrump hired Songer to investigate two EMS employees, Delucchi and Hollis, regarding their failure to transport Ms. Choyce to a hospital after having a miscarriage. Songer's investigation and report resulted in the Town terminating them. Delucchi and Hollis appealed and went to arbitration per Union guidelines. Arbitration found that they were terminated incorrectly and that the Songer Report was not reliable and contained misrepresentations. Deluchhi and Hollis then sued Songer.

The Nevada Supreme Court found as follows:

> Songer also made an initial showing that the Songer Report was true or made without knowledge of its falsehood. In a declaration before the district court, Songer stated, "[t]he information contained in [his] reports was truthful to the best of [his] knowledge, and [he] made no statements [he] knew to be false." **Because Songer made the required initial showing, the question becomes whether in opposing the special motion to dismiss, Delucchi and Hollis set forth specific facts by affidavit or otherwise to show that there was a genuine issue for trial regarding whether the Songer Report fit within the definition**

> **of protected communication.** *Wood v. Safeway*, 121 Nev. at 729, 121 P.3d at 1031 (explaining that the substantive law controls which factual disputes are material and will thus preclude summary judgment).

Id., 396 P.3d at 833 (emphasis added).

Importantly, the *Delucchi* Court held that Delucchi and Hollis provided sufficient evidence showing that there was a genuine issue for trial regarding whether the Songer statements were true or made with a knowledge of falsehood:

> **We conclude that Delucchi and Hollis presented sufficient evidence to defeat Songer's special motion under the summary judgment standard. In opposing Songer's special motion to dismiss, Delucchi and Hollis presented the arbitrator's findings as well as testimony offered at the arbitration hearings. The arbitrator concluded that the Songer Report was not created in a reliable manner and contained misrepresentations. The arbitrator's determination was based on the evidence presented at the hearing, which included testimony from Songer. Delucchi and Hollis thus presented facts material under the substantive law and created a genuine issue for trial regarding whether the Songer Report was true or made with knowledge of its falsehood**. *See City of Montebello v. Vasquez*, 376 P.3d at 633 (providing that the substantive law in deciding whether a communication is protected is the definition of protected communication contained in the anti-SLAPP legislation). We thus conclude that the district court erred in granting Songer's special motion to dismiss.

Id., at 833-34.

As a result, the *Delucchi* Court reversed the district court's decision granting the special motion to dismiss. Delucchi and Hollis presented sufficient evidence to create a genuine issue of material fact and, therefore, the Court instructed the district court to deny Songer's motion. *Id.*, at 834.

This case is similar to *Delucchi*. A five-day evidentiary hearing was conducted that established testimony that Defendants knew their statements about Simon stealing, extorting and blackmailing them were false. Further, the district court issued findings that the statements were not reliable and that there was no merit to the conversion claims. This judicial decision by Judge

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Jones is the prima facie evidence needed to defeat the Anti-SLAPP motion. While Plaintiffs contend it is indisputable that these statements were made with a knowledge of falsehood, at the least, there is an issue of material fact for trial regarding whether they were true or made with a knowledge of falsehood, just as in *Delucchi*.

Since Angela Edgeworth admitted to the real purpose of filing the complaint (punishment), and this reason was adopted by the Vannah attorneys, the lack of good faith is admitted to and they never filed the conversion with the good faith belief they could ever prevail. Punishing an attorney for filing a lawful attorney lien by filing and maintaining a conversion theft claim coupled with false allegations of extortion, theft and blackmail does not meet the requirements for these complaints to fall within the purview of NRS 41.660.

The falsity of the statements become more problematic when the lawsuit was filed prior to Simon ever receiving the funds. The Defendants also falsely allege in the complaint the money is all theirs. Obviously, all Defendants know this statement is false. Edgeworth would have to tell this court he believed in good fiath the money was stolen at the time of his initial complaint. We know theft was the basis for the conversion at the outset based on Vannah's email – Edgeworth's are fearful Simon would steal the money. This was always an impossibility. Vannah's lack of good faith about conversion is his own email – he didn't believe Simon would steal the money. **See exhibit 3.** This was one week before filing the conversion claim. The money was finally received 12 days after the conversion complaint. Defendants have never told this Court that they didn't know their statements regarding extortion, blackmail and theft were false.

In *Rosen v. Tarkanian*, the Nevada Supreme Court held that "in determining whether the communications were made in good faith, the court must consider the 'gist or sting' of the communications as a whole, rather than parsing individual words in the communications." 135 Nev. Adv. Rep. 59, 453 P.3d 1220, 1222 (2019). In other words, the relevant inquiry is "whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true," and not on the "literal truth of each word or detail used in a statement." *Id*. at 1224 (citations omitted).

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In *Abrams v. Sanson,* Court did note that "[a] complaint should not be dismissed in its entirety where it contains claims arising from both protected and unprotected communications." 136 Nev. Adv. Rep. 9, 458 P.3d 1062, 1069. (citing *Baral v. Schnitt*, 1 Cal. 5th 376, 205 Cal. Rptr. 3d 475, 376 P.3d 604, 613-14 (Cal. 2016)). This conclusion supports the position that, even if the Court finds some statements to be privilege, it does not mean the claims are necessarily dismissed if they can still be established without those statements, e.g., Abuse of Process, Defamation Per Se, Business Disparagement, WUCP, and Civil Conspiracy are all supported by unprotected communications. The Defamation claims were supported by publication to third parties not interested in the proceedings.

Finally, the Simon Plaintiff's request the opportunity to conduct discovery pursuant to NRS 41.660(4) pending the Anti-SLAPP ruling if the Court does not deny same outright. *Crabb v. Greenspun Media Grp., LLC*, 2018 Nev. App. Unpub. LEXIS 526, 46 Media L. Rep. 2143 (July 10, 2018).

Consequently, Defendants' attempt to shield themselves with the protections of NRS 41.660 is without merit as they do not meet any element of the requirements for such protection. Even if this Court finds that the initial requirements are met, Simon has clearly established a prima facia case and the probability of success on the merits as liability is already established conclusively with the under-oath admissions and judicial factual findings of the District Court. *See* Order by District Court. As demonstrated below, Nevada law precludes dismissal of the Mr. Simon's claims at this stage of the proceedings.

1. <u>The litigation privilege does not apply to the facts of this case.</u>

The Vannah Defendants want to confuse the application of the litigation privilege to the Anti-SLAPP analysis. The Anti-SLAPP is a separate and distinct analysis requiring truthful

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statements. Regardless, the litigation privilege does not defeat any of the claims. Vannah attorneys want absolute privilege no matter what their conduct. They cite *Greenberg Traurig v. Frias Holding Co.,* 130 Nev. 627, 331 P.3d 901 (2014), for this proposition. However, *Greenberg* is unavailing and confirms the privilege is not absolute. All other cases cited by the Vannah Defendants do not support their position when the lack of good faith is analyzed, as the test for good faith litigation controls. The *Greenberg* and the Vannah cited cases do not change the separate analysis for the abuse of process and civil conspiracy claims. *Bull v. McCuskey, Supra.* Therefore, the Vannah Defendants have failed to correctly apply the test for the litigation privilege to apply in this matter.

.In *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), the Nevada Supreme Court analyzed the litigation privilege, stating that "Nevada has long recognized the existence of an absolute privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings." *Id.* at 412 (citations omitted). Notably, the Court held as follows:

> In order for the absolute privilege to apply to defamatory statements made in the context of a judicial or quasi-judicial proceeding, **"(1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation."** Therefore, the privilege applies to communications made by either an attorney or a non-attorney that are related to ongoing litigation or future litigation contemplated in good faith. When the communications are made in this type of litigation setting and are in some way pertinent to the subject of the controversy, the absolute privilege protects them even when the motives behind them are malicious and they are made with knowledge of the communications' falsity. **But we have also recognized that "[a]n attorney's statements to someone who is not directly involved with the actual or anticipated judicial proceeding will be covered by the absolute privilege only if the recipient of the communication is 'significantly interested' in the proceeding.**"

Id. at 413 (citations omitted) (emphasis added).

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The proceeding must be "contemplated in good faith" in order for the privilege to apply. *Id.*; *see also Restatement (Second) of Torts*, § 586 cmt. e (1977). This requirement is notable and illustrates how Nevada has balanced the prosecution of claims like abuse of process while still upholding the litigation privilege. Here, the facts show that Defendants did not "contemplate in good faith" the Conversion claim against Simon.

Another way to view the "contemplated in good faith" component in determining whether to apply the litigation privilege is to determine whether the judicial proceeding had a "legitimate purpose." *See e.g., Herzog v. "a" Co.,* 138 Cal. App. 3d 656, 661-62,188 Cal. Rptr. 155, 158 (Cal. Ct. App. 4th Dist. 1982):

> In *Larmour v. Campanale, supra*, 96 Cal.App.3d 566, 568, the court stated: "The purpose of the privilege under Civil Code section 47 [the litigation privilege codified in California] is to afford litigants the utmost freedom of access to the courts, to preserve and defend their rights [citation] and to protect attorneys during the course of their representation of their clients [citation]. 'It is . . . well established legal practice to communicate promptly with a potential adversary, setting out the claims made upon him, urging settlement, and warning of the alternative of judicial action.'" (Fn. omitted.) In a footnote, *Larmour* quoted comment e to the Restatement Second of Torts, section 586: **"As to communications preliminary to a proposed judicial proceeding the rule stated in this Section applies only when the communication has some relation to a proceeding that is contemplated in good faith and under serious consideration. The bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered." (*Larmour, supra*, 96 Cal.App.3d at p. 569, fn. 2.) We hold a communication not related to a potential judicial action contemplated for legitimate purposes is not protected by the privilege**

Id. (emphasis added)

Another way to consider the "contemplated in good faith" requirement is to assess whether Defendants had a "good faith belief in a legally viable claim" in order for their statements to be privileged. *See e.g., Hawkins v. Portal Publs., Inc.,* 1999 U.S. App. LEXIS 18312 *8 (9th Cir.

1999). Either way, when taking the allegations in the Complaint in the most favorable light for Plaintiffs, it is clear that Defendants did not have a good faith belief in a legally viable claim for Conversion against Simon. Simply, Defendants contemplated the Conversion in bad faith for the ulterior purpose to avoid paying the reasonable attorneys fees admittedly owed and to harm and punish Simon, not to obtain legal success of the Conversion claim at trial. Therefore, Defendants acts and statements are not entitled to the protections of the litigation privilege.

Further, the Court should not entertain arguments that Defendants will be prejudiced by a denial at this stage of the case. The record is abundantly clear that the claim was not made in good faith and the court should easily make that finding now. However, if the Court is not inclined to make that finding now, the litigation privilege is an affirmative defense. Thus, after discovery, Defendants can again attempt to raise the defense. Defendants have not provided authority that the litigation privilege precludes to constitution right to discovery. At this stage of the case, when taking the facts alleged in the Complaint in the light most favorable to Plaintiffs as true, it is clear that privilege cannot be applied. *See e.g., Eaton v. Veterans, Inc.*, 2020 U.S. Dist. LEXIS 7569, *5-6 (U.S. Dist. Ct. Mass., Jan. 16, 2020) (When ruling on Defendant's motion to dismiss, the court held that it must accept plaintiff's allegations as true at that stage of the proceeding and that the allegations created the reasonable inference that Defendant threatened legal action in bad faith and, therefore, was not entitled to the litigation privilege at that juncture). Therefore, Defendants' motion to dismiss should be denied.

In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd*., 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court recognized the need to establish the right to "exclusivity" of the chattel or property alleged to Plaintiffs claim they are due money via a settlement agreement, a contract, and that they have compensated Defendant in full for legal

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services provided pursuant to a contract. Thus, Edgeworths have plead a right to payment based upon contract. However, an alleged contract right to possession is not exclusive enough, without more, to support a conversion claim as a matter of law:

> "A mere contractual right of payment, without more, will not suffice" to bring a conversion claim.

Plummer v. Day/Eisenberg, 184 Cal.App.4th 38, 45 (Cal. CA, 4th Dist. 2010). *See*, Restatement (Second) of Torts §237 (1965), comment d. Obviously, the Vannah/Edgeworth team needed more and fabricated the conversion claim encompassing theft, extortion and blackmail while at the same time seeking an order that Simon was "paid in full." This wreaks of bad faith and the admissions already made during the lien adjudication proceedings confirms it all. The bad faith motives equally deprive all parties of the protections of Anti-SLAPP relief.

B. <u>All Defendants, including the Vannah attorneys are liable for Abuse of Process.</u>

Even if this Court was inclined to apply the litigation privilege (or anti-SLAPP protections) to Defendants' statements in the proceedings – which it should not at this stage of the case – that privilege does not thwart Simon's Abuse of Process claims against Defendants. In Nevada, the elements for a claim of abuse of process are:

1. Filing of a lawsuit made with ulterior purpose other than to resolving a dispute;
2. Willful act in use the use of legal process not proper in the regular conduct of the proceeding; and
3. Damages as a direct result of abuse.

LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002); *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980); *Dutt v. Kremp*, 111 Nev.567, 894 P.2d 354, 360 (Nev. 1995) overruled on other grounds by *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002)); *Laxalt v. McClatchy*, 622 F.Supp. 737, 751 (1985) (citing *Bull v. McCuskey*, 96 Nev. 706, 709,

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615 P.2d 957, 960 (1980); *Nevada Credit Rating Bureau, Inc. v. Williams,* 88 Nev. 601 (1972); 1 Am. Jur. 2d Abuse of Process; *K-Mart Corporation v. Washington*, 109 Nev. 1180 866 P.2d 274 (1993)).

Notably, one who procures a third person to institute an abuse of process is liable for damages to the party injured to the same extent as if he had instituted the proceeding himself. *Catrone v. 105 Casino Corp.,* 82 Nev. 166, 414 P.2d 106 (1966). In both *Datacomm Interface, Inc. v. Computerworld, Inc*., 396 Mass. 760, 775, 489 N.E.2d 185 (1986), and *Neumann v. Vidal*, 228 U.S. App. D.C. 345, 710 F.2d 856, 860 (D.C. Cir. 1983), the courts recognized an injury to business and business reputation as an improper ulterior motive and abuse of process. An "ulterior purpose" includes any improper motive underlying the issuance of legal process. *Dutt v. Kremp*, 108 Nev. 1076, 844 P.2d 786, 790 (Nev. 1992). For example, in *Momot v. Mastros*, 2010 U.S. Dist. LEXIS 67156, 2010 WL 2696635 (Nev. Dist. July 6, 2010), Mastros filed a counterclaim alleging Momot filed suit against them "in bad faith and for an improper purpose" because he invented the story that the Mastros' forged his signature in an attempt to "extort an unjust settlement" from them. *Id.* at *12. "Taking this assertion as true, the Court finds the Mastros have properly identified an ulterior purpose and that they satisfy the first element of the abuse of process test." *Id.*

Here, Edgeworth and the Vannah attorneys invented a story of an express contract for an hourly rate only to refuse payment of the reasonable value of Mr. Simon's services. They also filed the conversion claim to refuse payment of attorney fees admittedly owed and to punish Simon as admitted by Edgeworth and all of these acts have been adopted by the Vannah attorneys. Their conduct was also aimed to destroy Mr. Simon's practice, another ulterior purpose. They sued him personally to punish him. *See,* **Exhibit 4** at 145:10-21. They also sought to avoid lien

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adjudication and intentionally cause substantial expense to defend the frivolous claims. This is also an ulterior purpose. *Nienstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876 (1982). Defendants attempt to dismiss all claims with the brush of a litigation privilege wand is contrary to Nevada law. Nevada clearly allows abuse of process claims, even against attorneys. In *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980), the Nevada Supreme Court confirmed that abuse of process claims can go forward regardless of the litigation privilege.

In *Bull*, Dr. McCuskey was sued by attorney Samuel Bull for medical malpractice "for the ulterior purpose of coercing a nuisance settlement knowing that there was no basis for the claim of malpractice." *Id.* at 707. A jury returned a defense verdict in the underlying frivolous case. Then, Dr. McCuskey sued Bull for abuse of process and a jury returned a verdict in favor of Dr. McCuskey. The District Court entered a judgment for the award of compensatory and punitive damages against the attorney and denied the attorney's post-trial motion for JNOV and for a new trial. The Attorney appealed. On appeal, the Nevada Supreme Court held that evidence that the attorney willfully misused the process for the ulterior purpose of coercing a settlement supported the jury's verdict. In doing so, the court considered the application of the litigation privilege and confirmed it does not preclude an abuse of process claim when it upheld the judgment. The Bull Court stated the elements for abuse of process as follows:

> [T]the two essential elements of abuse of process are an ulterior purpose, and a willful act in the use of the process not proper in the regular conduct of the proceeding. The malice and want of probable cause necessary to a claim of malicious prosecution are not essential to recovery for abuse of process. Moreover . . . abuse of process hinges on the misuse of regularly issued process in contrast to malicious prosecution which rests upon the wrongful issuance of process.

Id. at 709.

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The Edgeworth's invented a story of blackmail, extortion and theft and they, along with the Vannah Defendants, abused the judicial process when knowing they had no legal or factual basis to sue Simon both professionally and **personally** for Conversion. Despite that knowledge, Defendants went forward with the suit and continue to maintain the Conversion claim to the present date, despite having no legal basis to do so. As such, Simon has properly pled in the Complaint that Defendants have maintained the Conversion claim for the ulterior purpose of punishing Simon and injuring his business and reputation. Significantly, Defendants had actual knowledge that there was no legal basis for the Conversion claim and then issued false statements in the proceedings in order to maintain that claim. *Id.* These same false statements were communicated to third parties not having an interest in the proceedings. This further corroborates the abuse of process.

The fact that Defendants never provided any expert or lay evidence at the five-day evidentiary hearing is further proof of their ulterior purpose. *Id.* There is substantial evidence supporting the abuse of process. Just one recent example is the misciting of the viability of the conversion claim. In its opposition to Plaintiffs motion to preserve evidence, the Vannah attorneys cited the case *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, as if it supported a conversion claim. To the contrary, this case supports Simon and confirms that Edgeworth, through the Vannah attorneys, could have never sued Simon. They also wrongfully cite *Evans v. Dean Whitter Reynolds, Inc., 116 Nev. 598 (2000).* This case equally does not apply as the attorney in the *Evans* case actually controlled the money by fraudulently signing his aunt's name and put the money in his own account. We do not have any of those conversion facts in this case and the Vannah attorneys are well aware that the *Evans* case does not support their conversion claims. They have no authority that an attorney exercising his

attorney lien rights is an act of conversion. Again, Simon never had exclusive control of the money, always had an interest and never did a wrongful act to deprive them of the money. Simon has properly plead the Abuse of Process claims based on Defendants' conduct long after the mere filing of the Complaint – the false statements only corroborate their conduct and the ulterior purposes. Vannah should not be able to defeat Simon's claims as good faith litigation controls.

The facts in *Bull* are similar to the present case. What possible legal standing did the Vannah Defendants have to pursue a conversion claim against Simon on behalf of the Edgeworths? None. There was no justiciable claim at any time. The facts and case law support this conclusion. The only basis from Vannah was "He thought it was a good theory." Simon never had the money, much less deposited it into his own bank account. Whether Simon "wanted" to deposit the money in his own trust account is irrelevant. Depositing money into a lawyer trust account pending a lien dispute is the same as depositing it with the court. Mr. Vannah knows this is true. *See e.g., Golightly & Vannah*, 132 Nev. 416, 418 (2016) ("an attorney need not deposit funds with the court in an interpleader action so long as the attorney keeps the funds in his or her client trust account for the duration of the interpleader action.") It is disingenuous for the new ad hoc rescue argument that the amount was unreasonable when the Edgeworth's, through Vannah, never pursued this argument at the evidentiary hearing. The District Court finding of a proper lien is a finding of fact adjudicating this issue. Defendants knew prior to filing their lawsuit that an actual conversion never occurred and could never occur in the future. This is bad faith. Success of conversion at trial was a legal impossibility and only proves that Defendants brought and maintained the conversion claim for an ulterior purpose. When viewing the malicious emails and testimony under oath, confirming the ulterior purpose of "punishment," the reasonable conclusion is that they all never contemplated and certainly did not maintain the conversion claim in good

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faith. Thus, when taking these facts in the light most favorable to Plaintiffs, the motion to dismiss should be denied.

1. Wrongful Use of Civil Proceedings

If this Court allows this claim to proceed, the Simon Plaintiff have already met each and every element. As set out in the Restatement (Second) of Torts, § 653 (1977):

> A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if
>
> (a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and
>
> (b) the proceedings have terminated in favor of the accused.

While the State of Nevada has not expressly adopted this tort via the Restatement, it has been adopted by several jurisdictions, including Arizona. *See e.g., Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 758 P.2d 1313, 1318 (Ariz. 1988) and *Wolfinger v. Cheche*, 80 P.3d 783, 787 ¶ 23 (Ariz. App. 2003).

Importantly, the District Court has already decided all facts and ruled as a matter of law that the Conversion theft claim was brought without probable cause. The Defendants all admit the claim was brought to punish Mr. Simon and his Law Firm. Now, the only remaining element to establish is whether the proceedings terminated in Plaintiff's favor, and this determination is a question of law. The District Court dismissed Defendants' Complaint and made findings of fact that the conversion claim had no merit and was not initiated and certainly not maintained in good faith as the conversion claim was a factual and legal impossibility. There is no material dispute of fact about the circumstances under which Defendant's claims were dismissed, and that the

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circumstances reflected favorably on the merits of the matter. Therefore, the Simon plaintiffs have already established a prima facie case for this claim.

C. THE VANNAH ATTORNEYS CANNOT INSULATE THEIR OWN MALICIOUS CONDUCT THROUGH EDGEWORTH.

Malice is proven when claims are so obviously lacking in merit that they "could not logically be explained without reference to the defendant's improper motives." *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252,259, 92 P.3d 882, 889 (App. 2004). Attorneys representing clients pursuing frivolous claims are equally and separately liable. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980). In general, "a lawyer is subject to liability to a client or nonclient when a nonlawyer would be in similar circumstances." Restatement (Third) of the Law Governing Lawyers § 56 (Am. Law Inst. 2000). Thus, a lawyer who commits wrongful acts in the name of representing a client outside the litigation setting does not enjoy absolute immunity from suit. *See Dutcher v. Matheson*, 733 F.3d 980, 988-89 (10th Cir. 2013) (reversing district court order deeming a lawyer immune from liability in tort merely because the lawyer committed the tort alleged while representing a client; "like all agents, the lawyer would be liable for torts he committed while engaged in work for the benefit of a principal"); accord *Chalpin v. Snyder*, 220 Ariz. 413, 207 P.3d 666, 677 (Ariz. Ct. App. 2008) (noting that "lawyers have no special privilege against civil suit" and that "[w]hen a lawyer advises or assists a client in acts that subject the client to civil liability to others, those others may seek to hold the lawyer liable along with or instead of the client") (quoting *Safeway Ins. Co. v. Guerrero*, 210 Ariz. 5, 106 P.3d 1020, 1025 (Ariz. 2005), and Restatement (Third) of the Law Governing Lawyers § 56 cmt. c. While statements attorneys make representing clients in court are privileged if in good faith, and a third party ordinarily may not sue a lawyer for malpractice committed against a client, these propositions do not immunize lawyers from liability in other settings.

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> Lawyers are subject to the general law. If activities of a non-lawyer in the same circumstances would render the non-lawyer civilly liable or afford the non-lawyer a defense to liability, the same activities by a lawyer in the same circumstances generally render the lawyer liable or afford the lawyer a defense.

Restatement (Third) of the Law Governing Lawyers § 56 cmt. b.

Defendants, and each of them, consistently argued that Mr. Simon extorted, blackmailed and stole their money. The initial Vannah emails confirm the dialogue concerning the crime of theft. The Vannah/ Edgeworth team presented these false claims to defend and support their frivolous conversion claim. The Vannah attorneys took an active part in the initiation, continuation and/or procurement of the civil proceedings against Mr. Simon and his Law Office. The person who initiates civil proceedings is the person who sets the machinery of the law in motion, whether he acts in his own name or in that of a third person, or whether the proceedings are brought to enforce a claim of his own or that of a third person. Restatement (Second) of Torts §674 (1986). An attorney who acts without probable cause that the claim will succeed, and for an improper purpose is subject to the same liability as any other person. *Id.* An attorney who takes an active part in continuing a civil proceeding for an improper purpose and without probable cause is subject to liability. *Id.*

The primary ulterior purpose here was to refuse payment of attorney's fees admittedly owed and subject Mr. Simon to harsh punishment by causing him to incur substantial expenses currently in excess of $300,000 to defend the frivolous abuses, as well as harm his reputation to their friends, colleagues and general public and cause damage and loss to his business and ultimately him. The claims were so obviously lacking in merit that they could not logically be explained without reference to the Defendants improper motive and ill-will. The proceedings

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terminated in favor of Simon as Judge Jones order is a final order, albeit pending appeal in the Supreme Court.

D. VANNAH DEFENDANTS HAVE AN INDEPENDENT DUTY TO SIMON NOT TO SEEK FRIVOLOUS CLAIMS

The Vannah Defendants have an independent duty to not do everything their clients want them to do when it violates their oath and ethical duties. NRCP 1.2,3.1, 4.4, 5.1, 8.4. The Supreme Court has acknowledged this duty. *Achrem v. Expressway Plaza Ltd. Pshp*., 112 Nev. 737 (1996). Also confirmed in *Bull v. Mccuskey, supra.*

The Vannah Defendants did not have a good faith evidentiary basis to assert the conversion claim against Simon, much less continue to maintain them – a factual and legal impossibility. In an email dated December 28, 2017, Robert Vannah's message proves beyond a reasonable doubt he did not have the belief that Mr. Simon or his Law Office would steal the money. *See*, **Exhibit 3.** This belief was just a week before the actual filing of the complaint for theft. Mr. Vannah invited the amount of the lien and never challenged the amount at the evidentiary hearing. Vannah/Edgeworth refused to respond to multiple inquiries by Mr. Christensen for the basis of the conversion claim. They refused to respond to each and every request. The Vannah attorneys recently re-confirmed their conduct in their email in January, 2020. They don't know what to call the cause of action if it exists, but the Vannah attorneys personally intend to punish Simon.

The Vannah attorneys also had a duty to Simon not to present false witnesses. The Vannah attorneys are well aware that filing an attorney lien is not theft, blackmail or extortion. The Vannah attorneys prepared the affidavits and presented the false testimony to desperately keep the conversion claim alive. Therefore, when filing the complaint alleging conversion (stealing), the Vannah/Edgeworth team did not have a good faith belief in the merits.

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1. Robert D. Vannah, Esq.

Mr. Vannah has been practicing tort law for over 40 years. Mr. Vannah actually knew that the elements of conversion were not satisfied at the time he filed the lawsuit and knew he never could satisfy the legal elements of such a claim in a court of law. The admissions of Vannah confirm this undisputed fact, which was properly pled in the Complaint. *See,* Amended Complaint at ¶ 22. His statements that "we just think it is a good theory," is not the legal basis that allows for frivolous litigation. Simply, Vannah's conduct wreaks of bad faith everywhere and any suggestion of good faith should not be condoned by applying the litigation privilege to this abusive conduct.

2. John B. Greene, Esq.

Like Robert D. Vannah, Esq., co-counsel John B. Greene, Esq., was involved in all communications and was the day-to-day handling attorney on all matters. Mr. Greene's name appears on all pleadings. Mr. Greene reviewed and acknowledged Mr. Vannah's December 28, 2017 E-mail and proves that neither he or Mr. Vannah had the belief that Mr. Simon or his Law Office would steal the money. Like Mr. Vannah, John Greene, Esq., did NOT have a good faith belief when filing the complaint alleging conversion and still has no good faith belief while continuing to maintain that claim to the present day. He also has his own independent duties.

Mr. Greene has been practicing tort law for over 25 years. Mr. Greene actually knew that the elements of conversion were not satisfied and never could be satisfied to the legal standard necessary in a court of law. Mr. Greene knew and worked jointly with Mr. Vannah on all filings and appearances in the case. He knew the settlement funds were deposited and that Simon did not and could not steal or convert those funds. Their self-serving affidavits is not sufficient to support dismissal at this stage with all of the contradicting evidence disproving their false narrative.

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On December 13, 2018, Mr. Greene filed a motion to release the funds asserting conversion. *See*, **Exhibit 29.** Mr. Simon's counsel requested Mr. Greene to refrain from asserting conversion (theft). *See*, **Exhibit 30.** Despite multiple warnings, Mr. Greene continued to pursue filings and arguments of conversion (theft). Since it was a legal impossibility, his continued pursuit of these serious allegations constitutes malice aimed to harm Mr. Simon and all acts were part of the smear campaign.

Accusing a lawyer of stealing millions of dollars from a client in a lawsuit is one of the most serious allegations that can be made against an attorney. The utmost care must be taken to have the factual and evidentiary basis to file such a cause of action. When filing such serious allegations against an attorney for theft, it is highly probable it will have a devastating impact on the lawyer's reputation and practice. Since Mr. Greene actually knew this serious allegation could never be proven in a court of law, his conduct in filing the complaint and thereafter was in a conscious and deliberate disregard of Plaintiffs' rights in this case. Mr. Greene's continued conduct throughout the case further proves his malice, express and implied, toward Mr. Simon and his Law Firm.

3. <u>Robert D. Vannah, Chtd. d/b/a Vannah & Vannah.</u>

Robert D. Vannah, Chtd d/b/a Vannah and Vannah had a duty to properly train, supervise and retain lawyers and staff to competently pursue valid claims that are maintained in good faith with probable cause based on the facts and law. NRCP 3.1. When filing the frivolous theft conversion claim, Robert D. Vannah d/b/a Vannah and Vannah failed to properly supervise its lawyers and staff who assisted in preparing and filing briefs that had no factual or legal basis to be plead. These briefs also allowed their clients to advance false testimony in support of the

meritless conversion theft claim, all to the damage of Simon. Simon does not have to be a client to be harmed. *See Bull v. McCuskey, Supra.*

Defendants' continued pursuit of the conversion theft claim that is so lacking in merit, along with the admissions by Angela Edgeworth and Mr. Vannah, confirm beyond a reasonable doubt that this claim was brought with malice to punish Mr. Simon and his Law Office and to cause damages and harm. These admissions substantiate a prima facie case of abuse of process and civil conspiracy to harm Simon.

E. DEFAMATION PER SE IS PROPER.

As discussed in detail above, the litigation privilege and anti-SLAPP statutes are not applicable in this case. Therefore, Simon's defamation per se claim against the Vannah Defendants based upon the statements in the pleadings, filings, affidavits, and supporting papers along with the evidentiary hearing testimony, are all actionable statements. Discovery will likely reveal additional statements made to third parties not interested in the proceedings. On May 21, 2020, Plaintiffs filed an amended complaint. Since the specific statements to third parties have yet to be verified under oath, Plaintiffs omitted the Vannah attorneys from these specific causes of actions. However, they are clearly on notice that upon learning the statements that plaintiff believes that have been published, they will promptly move to amend the complaint to include these claims.

F. CIVIL CONSPIRACY IS PROPERLY PLED.

A claim for Civil Conspiracy is established when:

1. Defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming Plaintiff; and
2. Plaintiff sustained damage resulting from their act or acts.

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C*onsolidated Generator-Nevada, Inc. v. Cummings Engine Co.,* Inc., 114 Nev. 1304, 971 P.2d 1251 (1999). The Plaintiff merely needs to show an agreement between the tortfeasors, whether explicit or tacit. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). The cause of action is not created by the conspiracy but by the wrongful acts done by the defendants to the injury of the plaintiff. *Eikelberger v. Tolotti*, 96 Nev. 525, 611 P.2d 1086 (1980). Plaintiff may recover damages for the acts that result from the conspiracy. *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965), overruled on other grounds by *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998). An act lawful when done, may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the individual against whom the concerted action is taken. *Eikelberger, supra.* The tortious conduct of the Defendants set forth in the abuse of process is the wrongful conduct establishing the conspiracy. *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003).

The Edgeworths, Vannah and Greene devised a plan to punish Mr. Simon, and these tortious acts of abuse of process are the wrongful acts that were performed with an unlawful objective to cause harm to Simon. It is unlawful to file frivolous lawsuits and present false testimony of theft, extortion and blackmail. The Edgeworth's and the Vannah attorney's all followed through with this plan for their own benefit. Vannah and Greene were charging $925 an hour each for their efforts to overlook their independent duties. As stated in significant detail above, the conversion claim was a legal impossibility that was known by all Defendants prior to the initiation of their lawsuit against Simon. Vannah, Greene and the Edgeworths all knew that the Plaintiffs did not convert or steal the settlement money.

/ / /

/ / /

V.

CONCLUSION

Based on the foregoing discussion, dismissal is improper at this juncture. Defendants have not met the necessary requirements that would entitle them to the litigation privilege or protection under the anti-SLAPP statutes. Plaintiffs have pled sufficient facts supporting all of their causes of action, especially when taking the plead facts in the light most favorable to the non-moving party. Therefore, Plaintiffs respectfully request this Court DENY the Vannah Defendants' Motion in its entirety.

Dated this 29th day of May, 2020.

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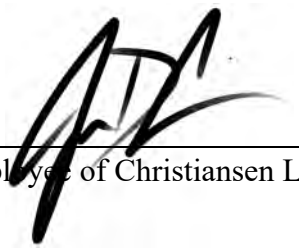
CERTIFICATE OF SERVICE

I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 29th day of May, 2020 I caused the foregoing document entitled **PLAINTIFFS' OPPOSITION 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 AND LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(A)** 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

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Exhibit 1

ORDR

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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.

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

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10;

Defendants.

Case No.: A-18-767242-C
Dept. No.: 10

This matter came on for hearing on January 15, 2019, 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 (jointly the "Defendants" or "Simon") having appeared by and through their attorneys of record, Peter Christiansen, Esq. and James Christensen, Esq.; and, Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or "Edgeworths") having appeared through by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd., John Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully advised of the matters herein, the **COURT FINDS** after review:

The Motion for Attorney s Fees is GRANTED in part, DENIED in part.

1. The Court finds that the claim for conversion was not maintained on reasonable grounds, as the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. (Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)). As such, Mr. Simon could not have converted the Edgeworths' property. As such, the Motion for Attorney s Fees is GRANTED under 18.010(2)(b) as to the Conversion

claim as it was not maintained upon reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

2. Further, the Court finds that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien. The Motion for Attorney s Fees is DENIED as it relates to the other claims. In considering the amount of attorney's fees and costs, the Court finds that the services of Mr. James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose of adjudicating the lien asserted by Mr. Simon. The Court further finds that the costs of Mr. Will Kemp Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David Clark Esq. were solely for the purposes of defending the lawsuit filed against Mr. Simon by the Edgeworths. As such, the Court has considered all of the

factors pertinent to attorney's fees and attorney's fees are GRANTED in the amount of $50,000.00 and costs are GRANTED in the amount of $5,000.00.

IT IS SO ORDERED.

Dated this 6 day of February, 2019.

DISTRICT COURT JUDGE SW

Submitted by:

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jgreene@vannahlaw.com
Attorney for Plaintiffs

Exhibit 2

ORD

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan Corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5; and, ROE entities 6 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10;

Defendants.

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

Hon. Tierra Jones
DISTRICT COURT JUDGE

DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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., dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet with an expert. As they were in the airport waiting for a return flight, they discussed the case, and had some discussion about payments and financials. No express fee agreement was reached during the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency." It reads as follows:

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. Exhibit 8). The total of this invoice was $42,564.95 and was billed at a "reduced" rate of $550 per hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and costs through April 4, 2017 for a total of $46,620.69, and was billed at a "reduced" rate of $550 per

hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and costs through July 28, 2017 totaling of $142,080.20. (Def. Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate of $550 per hour totaling $104,021.20; and services of Ashley Ferrel Esq. for a "reduced" rate of $275 per hour totaling $37,959.00. Id. This invoice was paid by the Edgeworths on August 16, 2017.

10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount of $255,186.25 for attorney's fees and costs; with $191,317.50 being calculated at a "reduced" rate of $550 per hour for Daniel Simon Esq., $60,981.25 being calculated at a "reduced" rate of $275 per hour for Ashley Ferrel Esq., and $2,887.50 being calculated at a "reduced" rate of $275 per hour for Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September 25, 2017.

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

12. Between June 2016 and December 2017, there was a tremendous amount of work done in the litigation of this case. There were several motions and oppositions filed, several depositions taken, and several hearings held in the case.

13. On the evening of November 15, 2017, the Edgeworth's received the first settlement offer for their claims against the Viking Corporation ("Viking"). However, the claims were not settled until on or about December 1, 2017.

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the

[1] $265,677.50 in attorney's fees for the services of Daniel Simon; $99,041.25 for the services of Ashley Ferrel; and $2,887.50 for the services of Benjamin Miller.

open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to come to his office to discuss the litigation.

16. On November 27, 2017, Simon sent a letter with an attached retainer agreement, stating that the fee for legal services would be $1,500,000 for services rendered to date. (Plaintiff's Exhibit 4).

17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah & Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all communications with Mr. Simon.

18. On the morning of November 30, 2017, Simon received a letter advising him that the Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities, et.al. The letter read as follows:

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc."

(Def. Exhibit 43).

19. On the same morning, Simon received, through the Vannah Law Firm, the Edgeworth's consent to settle their claims against Lange Plumbing LLC for $25,000.

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of $2,345,450, less payments made in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80. This lien includes court costs and

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 express agreement of $550 an hour; and that the agreement for $550 an hour was made at the outset of the case. Mr. Simon alleges that he worked on the case always believing he would receive the reasonable value of his services when the case concluded. There is a dispute over the reasonable fee due to the Law Office of Danny Simon.

22. The parties agree that an express written contract was never formed.

23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against Lange Plumbing LLC for $100,000.

24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case number A-18-767242-C.

25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate Lien with an attached invoice for legal services rendered. The amount of the invoice was $692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

CONCLUSION OF LAW

The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The Court

An attorney may obtain payment for work on a case by use of an attorney lien. Here, the Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-738444-C under NRS 18.015.

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C, complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was perfected before settlement funds generated from A-16-738444-C of $6,100,000.00 were deposited, thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly & Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien is enforceable in form.

The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C. Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication under NRS 18.015, thus the Court must adjudicate the lien.

Fee Agreement

It is undisputed that no express written fee agreement was formed. The Court finds that there was no express oral fee agreement formed between the parties. An express oral agreement is formed when all important terms are agreed upon. *See,* Loma Linda University v. Eckenweiler, 469 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were not agreed upon and when the parties contemplated a written agreement*). The Court finds that the payment terms are essential to the formation of an express oral contract to provide legal services on an hourly basis.

Here, the testimony from the evidentiary hearing does not indicate, with any degree of certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon, regarding punitive damages and a possible contingency fee, indicate that no express oral fee agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August 22, 2017 email, titled "Contingency," he writes:

> "We never really had a structured discussion about how this might be done. I am more than happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc. Obviously that could not have been done earlier snce who would have thought this case would meet the hurdle of punitives at the start. I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell. I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?"

(Def. Exhibit 27).

It is undisputed that when the flood issue arose, all parties were under the impression that Simon would be helping out the Edgeworths, as a favor.

The Court finds that an implied fee agreement was formed between the parties on December 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at $550 per hour, and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was created with a fee of $275 per hour for Simon's associates. Simon testified that he never told the Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger coverage". When Simon repeatedly billed the Edgeworths at $550 per hour for his services, and $275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied fee agreement was formed between the parties. The implied fee agreement was for $550 per hour for the services of Daniel Simon Esq. and $275 per hour for the services of his associates.

Constructive Discharge

Constructive discharge of an attorney may occur under several circumstances, such as:

- 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

into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def. Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly identified as the firm that solely advised the clients about the settlement. The actual language in the settlement agreement, for the Viking claims, states:

> PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

Id.

Also, Simon was not present for the signing of these settlement documents and never explained any of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and Vannah and received them back with the signatures of the Edgeworths.

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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

and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim. The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr. Simon never signed off on any of the releases for the Lange settlement.

Further demonstrating a constructive discharge of Simon is the email from Robert Vannah Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4, 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating, LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that doesn't seem in his best interests." (Def. Exhibit 53).

The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that was attached to the letter), and that Simon continued to work on the case after the November 29, 2017 date. The court further recognizes that it is always a client's decision of whether or not to accept a settlement offer. However the issue is constructive discharge and nothing about the fact that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys on the fee agreement, not the claims against Viking or Lange. His clients were not communicating with him, making it impossible to advise them on pending legal issues, such as the settlements with Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

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Simon from effectively representing the clients. The Court finds that Danny Simon was constructively discharged by the Edgeworths on November 29, 2017.

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

(b) In any civil action, upon any file or other property properly left in the possession of the attorney by a client.

2. A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.

3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or 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.

4. A lien pursuant to:

(a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action; and

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms are applied. Here, there was no express contract for the fee amount, however there was an implied contract when Simon began to bill the Edgeworths for fees in the amount of $550 per hour for his services, and $275 per hour for the services of his associates. This contract was in effect until November 29, 2017, when he was constructively discharged from representing the Edgeworths. After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is due a reasonable fee- that is, quantum meruit.

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was $550 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was created with a fee of $275 per hour for the services of Simon's associates. This implied contract was created when invoices were sent to the Edgeworths, and they paid the invoices.

The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as to how much of a reduction was being taken, and that the invoices did not need to be paid. There is no indication that the Edgeworths knew about the amount of the reduction and acknowledged that the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the bills to give credibility to his actual damages, above his property damage loss. However, as the lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund the money, or memorialize this or any understanding in writing.

Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP 16.1 disclosures and computation of damages; and these amounts include the four invoices that were paid in full and there was never any indication given that anything less than all the fees had been produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees

had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law Office retained the payments, indicating an implied contract was formed between the parties. The Court find that the Law Office of Daniel Simon should be paid under the implied contract until the date they were constructively discharged, November 29, 2017.

Amount of Fees Owed Under Implied Contract

The Edgeworths were billed, and paid for services through September 19, 2017. There is some testimony that an invoice was requested for services after that date, but there is no evidence that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for fees was formed, the Court must now determine what amount of fees and costs are owed from September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted billings, the attached lien, and all other evidence provided regarding the services provided during this time.

At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back and attempted to create a bill for work that had been done over a year before. She testified that they added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every email that was read and responded to. She testified that the dates were not exact, they just used the dates for which the documents were filed, and not necessarily the dates in which the work was performed. Further, there are billed items included in the "super bill" that was not previously billed to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing

indicated that there were no phone calls included in the billings that were submitted to the Edgeworths.

This attempt to recreate billing and supplement/increase previously billed work makes it unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed between the actual work and the billing. The court reviewed the billings of the "super bill" in comparison to the previous bills and determined that it was necessary to discount the items that had not been previously billed for; such as text messages, reviews with the court reporter, and reviewing, downloading, and saving documents because the Court is uncertain of the accuracy of the "super bill."

Simon argues that he has no billing software in his office and that he has never billed a client on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths, in this case, were billed hourly because the Lange contract had a provision for attorney's fees; however, as the Court previously found, when the Edgeworths paid the invoices it was not made clear to them that the billings were only for the Lange contract and that they did not need to be paid. Also, there was no indication on the invoices that the work was only for the Lange claims, and not the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without emails or calls, understanding that those items may be billed separately; but again the evidence does not demonstrate that this information was relayed to the Edgeworths as the bills were being paid. This argument does not persuade the court of the accuracy of the "super bill".

The amount of attorney's fees and costs for the period beginning in June of 2016 to December 2, 2016 is $42,564.95. This amount is based upon the invoice from December 2, 2016 which appears to indicate that it began with the initial meeting with the client, leading the court to determine that this is the beginning of the relationship. This invoice also states it is for attorney's fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This amount has already been paid by the Edgeworths on December 16, 2016.[2]

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[2]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.[3]

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.[4] 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.[5] 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.[6]

The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

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[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid by the Edgeworths, so the implied fee agreement applies to their work as well.

The Court finds that the total amount owed to the Law Office of Daniel Simon for the period of September 19, 2018 to November 29, 2017 is $284,982.50.

Costs Owed

The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing, LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought reimbursement for advances costs of $71,594.93. The amount sought for advanced cots was later changed to $68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

Quantum Meruit

When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g.* Golightly v. Gassner, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing,* Gordon v. Stewart, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*); and, Cooke v. Gove, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on November 29, 2017. The constructive discharge terminated the implied contract for fees. William Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion of the Law Office's work on this case.

In determining the amount of fees to be awarded under quantum meruit, the Court has wide discretion on the method of calculation of attorney fee, to be "tempered only by reason and fairness". Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the reasonableness of the fee under the Brunzell factors. Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the Court notes that the majority of the work in this case was complete before the date of the constructive discharge, and the Court is applying the Brunzell factors for the period commencing after the constructive discharge.

In considering the Brunzell factors, the Court looks at all of the evidence presented in the case, the testimony at the evidentiary hearing, and the litigation involved in the case.

1. Quality of the Advocate

Brunzell expands on the "qualities of the advocate" factor and mentions such items as training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr. Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr. Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's work product and results are exceptional.

2. The Character of the Work to be Done

The character of the work done in this case is complex. There were multiple parties,

multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the gamut from product liability to negligence. The many issues involved manufacturing, engineering, fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp testified that the quality and quantity of the work was exceptional for a products liability case against a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a substantial factor in achieving the exceptional results.

3. The Work Actually Performed

Mr. Simon was aggressive in litigating this case. In addition to filing several motions, numerous court appearances, and deposition; his office uncovered several other activations, that caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the other activations being uncovered and the result that was achieved in this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions and the litigation that allowed this case to develop into a $6 million settlement. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case.

4. The Result Obtained

The result was impressive. This began as a $500,000 insurance claim and ended up settling for over $6,000,000. Mr. Simon was also able to recover an additional $100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a $6 million settlement with a $500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they

were made more than whole with the settlement with the Viking entities.

In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a) which states:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, 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;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for the Edgeworths, the character of the work was complex, the work actually performed was extremely significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell factors justify a reasonable fee under NRPC 1.5. However, the Court must also consider the fact that the evidence suggests that the basis or rate of the fee and expenses for which the client will be responsible were never communicated to the client, within a reasonable time after commencing the representation. Further, this is not a contingent fee case, and the Court is not awarding a contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of $200,000, from November 30, 2017 to the conclusion of this case.

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of $550 per hour between Mr. Simon and the Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr. Simon as their attorney, when they ceased following his advice and refused to communicate with

him about their litigation. The Court further finds that Mr. Simon was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates; up and until the last billing of September 19, 2017. For the period from September 19, 2017 to November 29, 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. For the period after November 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being constructively discharged, under quantum meruit, in an amount of $200,000.

ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is $484,982.50.

IT IS SO ORDERED this 19 day of November, 2018.

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.

Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 3

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Thu 12/28/2017 3:21 PM

To:James R. Christensen <jim@jchristensenlaw.com>;

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

Sarah called me back. Apparently Danny is a bank client also. That works out well. The way she would do this is to make it a "locked" account. I wasn't very familiar with that concept, but since there will only be a few checks that is fine. Any disbursements will require both his and my signature. She asked me to give her the name of the account: it should probably read something like "Danny Simon and Robert Vannah in trust for... " Another issue that she raised is that they need a Social Security number or something like that because it is an interest-bearing account. Should it be the clients' Social Security or corporate ID number, or should it be Danny's? Obviously, at the end of the year the IRS will have to be notified as to who the real party in interest is. Just some thoughts. Since Danny is back in the office on January 4, why don't we set the account up then?

Sent from my iPad

On Dec 28, 2017, at 3:08 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> I am available tomorrow for a call.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406
>
> ---
>
> **From:** Robert Vannah <rvannah@vannahlaw.com>
> **Sent:** Thursday, December 28, 2017 3:07:06 PM
> **To:** James R. Christensen
> **Cc:** John Greene; Daniel Simon
> **Subject:** Re: Edgeworth v. Viking
>
> I took the liberty of calling Bank Of Nevada and left a message for Sarah Guindy, asking her if we can do exactly what we seem to be agreeing to. I left her my phone number, and am expecting a call back. If she thinks we can do that, we can set up a conference call between you and me and work out the details with her. This seems to be the best way to get this money distributed to Danny and to the clients.
>
> Sent from my iPad
>
> On Dec 28, 2017, at 2:03 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

Bob,

A separate trust account is a good idea. Agreed to you and Danny being co-signers, with both needed. I suggest a non-IOLTA account. The interest can inure to the clients.

How about Bank of Nevada?

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Thursday, December 28, 2017 4:17:36 AM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

I'm not suggesting I have concerns over Danny stealing the money, I'm simply relaying his clients' statements to me. I have an idea. Why don't we set up a separate trust account dedicated to these clients. Any disbursement requires 2 signatures, Danny's and mine. Have Danny, expeditiously, determine exactly what his lien claim is going to be. We recognize that there will be an undisputed amount for his incurred costs and time since the last invoice. We also recognize that the clients are entitled to all the funds immediately after the checks clear, exclusive of Danny's undisputed final billing for fees and costs, since the last statement, and his claimed lien. We were under the impression that the 2 checks totaling $6,000,000 were cashiers checks. We were wrong apparently; we got that impression from the settlement agreement. In any event, I recognize that it takes time to clear the checks. The damage to the clients in delaying this disbursement is the high interest loans made by the clients to fund the underlying litigation. The pressing concern here is to get the clients, and Danny, their funds which are not in dispute. Agreed? I'm not commenting on the merits of Danny's claim. I just want to get the majority of the money distributed to both Danny and the clients. There is a fiduciary duty to get that done expeditiously. The "disputed lien" funds will be adequately segregated and protected. We are not going to allow this case to be decided in a summary interpleader action. Whatever bank we use is fine with me, I just want it done ASAP.

Sent from my iPad

On Dec 27, 2017, at 1:14 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Please see attached
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Tuesday, December 26, 2017 12:18:41 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? $4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.

Happy Holidays!

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

---------- Forwarded message ----------
From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

> Thanks for returning my call. You advised that the clients were unable to execute the settlement

checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!

<image001.jpg>

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
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Phone: (702) 369-4161
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<Ltr to Mr. Vannah.pdf>

<Zurich_Check[1].pdf>

<Zurich_Check[1].pdf>

<Email string.pdf>

Exhibit 4

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 18, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

So from the moment Danny agreed -- you got to listen to your husband, Mr. Edgeworth, testify -- I think it's been a few weeks now -- over the course of a series of days. Do you remember that testimony?

A Yes.

Q And Mr. Edgeworth and you are 50-50 owners -- I may be using the incorrect word -- and both the plaintiffs that Danny represented in the underlying litigation against Lange and Viking; correct?

A Yes.

Q You agree with everything your husband testified to?

A Yes.

Q All right. And you --

A I've heard it. I don't know -- I don't know what you are referring to specifically, Mr. Christiansen.

Q Well, I'll give you an easy example. You just told the Court you think or you -- I think you said your best guess is that you may owe Danny another $144,000. Remember that?

A Yes.

Q And you remember me questioning your husband; correct?

A Yes.

Q You remember your husband conceding to me that he had nothing, no information whatsoever to indicate any of the bills presented, superbill or otherwise, were false. Do you remember

Q Do you remember him not, and I want to be clear, not testifying consistent with the physical aspect of how this meeting took place that you gave, the version you gave this morning?

A I do not remember that.

Q Brian Edgeworth another never testified, told this Judge that Danny leaned against a desk between you and some chair, between his desk and some chairs and sort of leered over you as you described this morning?

A I remember it like it was yesterday.

Q Ma'am, that's not my question. You sat here for a week and your husband testifying, and isn't it true Mr. Edgeworth did not recite that same version?

A I don't recall.

Q Okay. Well, do you remember Mr. Edgeworth telling me that he felt threatened?

A Yes.

Q And, you know, if we were to compare sizes, Mr. Simon is probably closer to you then to Brian's size; right?

A Fair.

Q And so Danny Simon wasn't physically threatening anybody, was he?

A Physically, no.

Q All right. And the words, I wrote it down. You had lots of words for that meeting. Let me get to them.

Terrified -- I'm just going to go through them with you. Okay? Terrified, fair?

A Fair.

Q Shocked?

A Yes.

Q Shaken?

A Yes.

Q Taken aback?

A Yes.

Q Threatened?

A Yes.

Q Worried?

A Yes.

Q Blackmailed?

A Yes.

Q You thought he was trying to convert your money? Take your money? Right?

A Yes.

Q You actually sued him, and that was one of the claims is that he was converting your money; right?

A I wasn't worried about conversion at the time because I was worried about the settlement deal not happening.

Q Flabbergasted is another word?

A Yes.

Q And can we agree that nowhere in the email

communications between November the 17th and when Mr. Simon is notified on November the 30th that the Vannah firm is involved do you use any of those words in any of your emails?

A That's how I felt inside.

Q No, ma'am, just listen to my question. It's a very particular question.

Can we agree all of those words, none of them make their way into any email you typed?

A I was being polite.

Q Is that a yes? They're not in your emails; correct?

A Correct.

Q In fact, in your emails, and we'll go through them, but in your emails are these promises that you're going to sit down and meet with Danny; right?

A [No audible response.]

Q Right?

A Yes.

Q And at the time you put that in the email, you knew you weren't going to; correct?

A I didn't know that for sure, but I was stalling.

Q Ma'am, that's not what you told the Judge this morning. You told the Judge you made a determination after you had talked to your friend on the 17th or 18th of November --

I forgot that lady's name, the out-of-state lawyer.

A Lisa Carteen.

Q Carteen. T with a T, Carteen?
A Uh-huh.
Q -- Ms. Carteen that you were in no way going to sit in Danny's office without a lawyer; right?
A No. I said I wasn't going to go there by myself and sit in front of Danny Simon and get bullied into signing something.
Q Okay. Bullied. That's another term you used; right?
A [No audible response.]
Q Do you remember Brian -- Mr. Edgeworth's testimony that he was never shown a document on that day, the 17th, that he was to sign? Do you remember that?
A Yes.
Q Okay. Do you remember your testimony?
A [No audible response.]
Q Yes?
A Yes.
Q Tell me what the document Mr. Simon presented to you to sign looked like.
A I didn't see the document. He alluded to the document behind him on the desk, like this, that he was -- he had it if we were ready to sign it, and so I didn't see the actual document.
Q So in the opening --
You were here for the opening?

A Yes.

Q -- when your lawyer stood up and said that there was a document that Mr. Simon put in front of you, tried to force you to sign, that that factually was a little bit off?

A I didn't hear that, but, yes, that would be factually off. There wasn't a document presented to us there, no.

Q It's a little bit like -- do you know what the word outset means, ma'am?

A Yes.

Q Outset means the beginning; correct?

A Correct.

Q You saw all of Brian's affidavits; correct?

A Yes. Which ones? I don't know which ones you're referring to.

Q 2/2, 2/12 and 3/15. He signed three affidavits in support of the -- this litigation for attorneys' fees. You've seen them all?

A I've seen them at some point.

Q Now, you know that in each one of them he said, At the outset of the arrangement with Mr. Simon, Danny agreed to 550 an hour; correct?

A Correct.

Q Were you here last week when your husband couldn't understand what the word outset meant?

A He thought outset meant --

Q Ma'am, just answer my question.
A -- the very first day.
Q Did you -- were you here when he didn't understand, to my questions, what the word outset meant?
A Yes.
Q Okay. Outset, you know means the first day; right?
A I would interpret it to mean the beginning, which meant at the beginning of the case. So the outset to me would be at the beginning of the case, so sometime at the beginning of the case. The outset doesn't necessarily mean the very first day.
Q Okay. Isn't that kind of like revisiting history when your husband says, I retained Danny on the 27th of May, and from the outset, he agreed to 550 an hour? That's what all of those affidavits said?
A The outset means the beginning, and that was the beginning.
Q Ma'am, isn't it true that it's not until I confront your husband with the email from Danny Simon that says, Let's cross that bridge when we come to it, relative to what he's going to get paid that Mr. Edgeworth and you then have to change your story for the outset to become June 10th as opposed to May 27th?
A No.
Q Prior to me confronting Mr. Edgeworth with the email

that said, We'll cross that bridge when we come to it, had he ever in writing said June 10th is the day Danny Simon told him 550 an hour?

A I don't know.

Q Okay. The words you used, ma'am, and I won't go back through them all, when you talked to Ms. Carteen --

Did I get that right?

A Yes.

Q -- were those the words you use to her when describing Mr. Simon?

A I'm sorry. Which -- what do you mean?

Q Terrified? Blackmailed? Extorted?

A I used blackmailed, yes.

Q You used those words to her?

A And I used extortion, yes.

Q Similarly, when you talked to Justice Shearing in February of 2018, were those the words you used?

A I don't think they were that strong. I just told her what happened. Lisa is more of a closer friend of mine. So I was a little bit more open with her.

Q And you were talking to Lisa as your friend, not your lawyer; right?

A Correct.

Q Okay. And if I get the gist of what you were saying is that you were of the belief that if you didn't sign the

Q You accused him of converting your money; correct?
A Yes.
Q Before you even had the money; correct?
A Yes.
Q Before the money was in a bank account; right?
A Yes.
Q Okay. In that lawsuit, you sought to get from him personally and individually, from him and his wife, Elena, your friend? You wanted punitive damages; right?
A Yes. I didn't ask --
Q Yes?
A -- to be in this position?
Q Just yes? Just yes?
A Yes.
Q Okay.
MR. GREENE: Your Honor, object. Again --
MR. CHRISTIANSEN: Most certainly did.
MR. GREENE: Elena wasn't sued.
MR. CHRISTIANSEN: Well, it's the family --
THE COURT: Well, I mean, it's Daniel Simon as an individual and the law office of Danny Simon, isn't it?
MR. GREENE: Yes, but we didn't name his wife as a defendant.
BY MR. CHRISTIANSEN:
Q Is Elena married to Danny?

A Yes.

Q Okay. So if you're trying to get punitive damages from a husband individually, you're trying to get the family's money; right?

MR. GREENE: Same objection.

THE COURT: And, Mr. Christiansen, the lawsuit is against Danny Simon as an individual and the law office of Danny Simon. So that's who they sued.

BY MR. CHRISTIANSEN:

Q You made an intentional choice to sue him as an individual as opposed to just his law office, fair?

A Fair.

Q That is an effort to get his individual money; correct? His personal money as opposed to like some insurance for his law practice?

A Fair.

Q And you wanted money to punish him for stealing your money, converting it; correct?

A Yes.

Q And he hadn't even cashed the check yet; correct?

A No.

Q All right. He couldn't cash a check because Mr. Vannah and him had to make an agreement. Mr. Vannah I figured out how to do it I think at a bank, right, how to do like a joint --

MR. VANNAH: Yeah. We opened a trust account for, both he and I alone, so that neither one of our trust accounts got it, but it went into a trust account by the Bar rules.

THE COURT: Okay.

MR. VANNAH: If that helps.

MR. CHRISTIANSEN: It does. Thank you, Mr. Vannah.

MR. VANNAH: Sure.

BY MR. CHRISTIANSEN:

Q That's what happened; right? That's where the money got deposited?

A Yes.

THE COURT: And just so I'm clear about that, is the whole $6 million in that trust account?

MR. VANNAH: Yeah. I can help with that.

MR. CHRISTIANSEN: Me too, but go ahead, Bob.

THE COURT: Okay.

MR. VANNAH: So there's $6 million that went into the trust account.

THE COURT: Okay.

MR. VANNAH: Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get, and then we gave the clients the remainder.

THE COURT: So the six --

MR. VANNAH: In other words, he chose a number that -- in other words we both agreed that, look, here's the

deal. Odds you can't take and keep the client's money, which is about 4 million. So I asked Mr. Simon to come up with a number that would be the largest number that he would be asking for. That money is still in the trust account.

THE COURT: Okay.

MR. VANNAH: And the remainder of the money went to the Edgeworths.

THE COURT: Okay. So there's about 2.4 million or something along those lines in the trust account?

MR. VANNAH: Yeah. There's like 2.4 million minus the 400,000 that was already paid. So there's a couple million dollars in the account.

THE COURT: Okay.

MR. GREENE: It's 1.9 and change, Your Honor.

THE COURT: Okay. Mr. --

MR. CHRISTIANSEN: Well, that's true. Mr. Greene was correct.

THE COURT: Yeah, just so I was sure about what happened with that. And then the rest of the money was dispersed because I heard her testifying about paying back the in-laws and all this stuff. So they paid that back out of their portion, and the disputed portion is in the trust account?

MR. VANNAH: Right. So they took that money, paid back the in-laws on everything so they wouldn't keep the

interest running.

THE COURT: Right.

MR. VANNAH: And then the money that we're disputing --

THE COURT: Is in the trust account?

MR. VANNAH: -- is held in trust, as the Bar requires.

THE COURT: Okay.

MR. CHRISTENSEN: And, Your Honor, just to follow up on that, the amount that's being held in trust is the amount that was claimed on the attorney lien.

THE COURT: Okay.

MR. VANNAH: That's correct.

MR. CHRISTENSEN: And also any interest that accrues on the money held in the trust inures to the benefit of the clients.

THE COURT: Right. I was aware of that. Yes. It would go to the Edgeworths; right?

MR. VANNAH: Exactly.

MR. CHRISTENSEN: That's correct.

MR. VANNAH: Yeah, that's what we all agree to. Yes. That's accurate.

BY MR. CHRISTIANSEN:

Q Ms. Edgeworth, in time, timingwise, when was the first time you ever looked at one of your husband's

spreadsheets for the calculation of damages?

A I don't know exactly the time. It was a long duration of the case, but, you know, some time during the case.

Q Okay. Is it fair to say you never looked at any of the damages calculations until after the November 17th meeting at Danny Simon's office?

A No.

Q You looked at them before then?

A Yes.

Q Did you see on them, and I can show you, and I'm trying to kind of move it along, where your husband leaves blank spaces that he still owes money for attorneys' fees in October and November?

A Yes.

Q All right. And so that's leading up to when you guys hire Mr. Vannah, and I'll show you just by way of ease.

MR. CHRISTIANSEN: This is 90, Jim.

BY MR. CHRISTIANSEN:

Q -- Mr. Vannah's fee agreement, which is signed by yourself, ma'am? Or is that Brian's signature? I'm sorry.

A That's Brian.

Q And it's dated the 29th of November, 2017?

A Yes.

Q And this is before the Viking -- just in time, this is before the Viking settlement agreement is executed by you

and your husband; correct?

A Yes, the day before.

Q And the Viking settlement agreement says that you're being advised on that agreement by Vannah & Vannah; correct?

A Correct.

Q And you signed it after you hired Vannah & Vannah; correct?

A Correct.

Q And you hired Vannah & Vannah on the 29th, the same day that you're sending Mr. Simon by my count two or three emails saying we're going to sit down as soon as Brian gets back; correct?

A Yes.

Q All right. So you knew you weren't going to sit down with Danny when Brian got back, when you sent those emails; right?

A No.

Q You were just leading Danny along till you got a new lawyer that you could listen to and disregard his advice; correct?

A We hired Vannah & Vannah to protect us from Danny, and we wanted Danny to finish the settlement agreement.

Q And you stopped listening to Danny in terms of following his advice; correct?

A No.

July 6th?

A What is the contents of that?

Q It's a production by Viking. Had you seen it?

A Yes.

Q And then did you see the email where Ms. Ferrel, before your husband and you, before your husband is given the information, puts in big letters, Can you say punitive damages?

A Yes.

Q And that was before Brian even had the information to go through; right?

A What do you mean "the information to go through"? I don't understand what you are asking.

Q Sure. The Viking productions that he went through and worked with his lawyers on.

A The "Viking productions," I don't understand that.

Q Okay. Well, I'll move on to a different area with you.

Do you remember in -- do you agree with all of the assertions made by Mr. Edgeworth and all of the affidavits on behalf of the two entities that sued Mr. Simon?

A Could you please repeat that question.

Q Sure. Mr. Edgeworth signed affidavits in support of this hearing on February the 2nd, February the 12th and March 15th of this year. Did you know that?

A Yes.

Q Did you read those?
A Yes.
Q He signed those as a co-owner of the two entities that sued Mr. Simon; correct?
A Correct.
Q Now, you were the other co-owner; correct?
A Yes.
Q Do you agree with all those statements?
A Yes.
Q You've ratified those statements; correct?
A Yes.
Q All right. Do you agree with the statement he put in the third one that as of September Mr. Simon had been paid in full for all of his work?
A I believe -- yes.
Q Do you agree with him that he put in his third affidavit that Mr. Simon -- I want to tell you exactly right.
Let me stop and back up to -- the 17th is the uncomfortable meeting of November? And that's my word, not yours. I'm sorry. I was trying to make it easy. Is that fair?
A Yes.
Q And after the 17th, you're texting Elena Simon; right? You text her on November the 23rd said, Happy Thanksgiving?

Exhibit 5

DECLARATION AND EXPERT REPORT OF DAVID A. CLARK

This Report sets forth my expert opinion on issues in the above-referenced matter involving Nevada law and the Nevada Rules of Professional Conduct[1] as are intended within the meaning of NRS 50.275, *et seq.* I was retained by Defendant, Daniel S. Simon, in the above litigation. The following summary is based on my review of materials provided to me, case law, and secondary sources cited below which I have reviewed.

I have personal knowledge of the facts set forth below based on my review of materials referenced below. I am competent to testify as to all the opinions expressed below. I have been a practicing attorney in California (inactive) and Nevada since 1990. For 15 years I was a prosecutor with the Office of Bar Counsel, State Bar of Nevada, culminating in five years as Bar Counsel. I left the State Bar in July 2015 and reentered private practice. I have testified once before in deposition and at trial as a designated expert in a civil case. I was also retained and produced a report in another civil case. My professional background is attached as Exhibit 1.

SCOPE OF REPRESENTATION.

I was retained to render an opinion regarding the professional conduct of attorney Daniel S. Simon, arising out of his asserting an attorney's lien and the handling of settlement funds in his representation of Plaintiffs in *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C.

SUMMARY OPINION.

It is my opinion to a reasonable degree of probability that Mr. Simon's conduct is lawful, ethical and does not constitute a breach of contract or conversion as those claims are pled in *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018, in the Eighth Judicial District Court.

BACKGROUND FACTS.

In May 2016, Mr. Simon agreed to assist Plaintiffs in efforts to recover for damages resulting from flooding to Plaintiffs' home. Eventually, Mr. Simon filed suit in June 2016. The case was styled *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C and was litigated in the Eighth Judicial District Court, Clark County, Nevada.

As alleged in the Complaint (*Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C, filed January 4, 2018), the parties initially agreed that Mr. Simon would charge $550.00 per hour for the representation. There was no written fee agreement. Complaint, ¶ 9. Toward the end of discovery, and on the eve of trial, the matter settled for $6 million, an amount characterized in the Complaint as having "blossomed from one of mere property damage to one of significant and additional value." Complaint, ¶ 12.

On or about November 27, 2017, Mr. Simon sent a letter to Plaintiffs, setting forth

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[1] The Nevada Rules of Professional Conduct ("RPC") did not enact the preamble and comments to the ABA Model Rules of Professional Conduct. However, Rule 1.0A provides in part that preamble and comments to the ABA Model Rules of Professional Conduct may be consulted for guidance in interpreting and applying the NRPC, unless there is a conflict between the Nevada Rules and the preamble or comments.

additional fees in an amount in excess of $1 million. Complaint, ¶ 13. Thereafter, Mr. Simon was notified that the clients had retained Robert Vannah to represent them, as well. On December 18, 2017, Mr. Simon received two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon."

That same morning, Mr. Simon immediately called and then sent an email to the clients' counsel requesting that the clients endorse the checks so they could be deposited into Mr. Simon's trust account. According to the email thread, in a follow up telephone call between Mr. Simon and Mr. Greene, Mr. Greene informed that the clients were unavailable to sign the checks until after the New Year. Mr. Simon informed Mr. Greene that he was available the rest of the week but was leaving town Friday, December 22, 2017, for a family vacation and not returning until the New Year.

In a reply email, Mr. Greene stated that he would "be in touch regarding when the checks can be endorsed." Mr. Greene acknowledged that Mr. Simon mentioned a dispute regarding the fee and requested that Mr. Simon provide the exact amount to be kept in the trust account until the dispute is resolved. Mr. Greene asked that this information be provided "either directly or indirectly" through Mr. Simon's counsel.

On December 19, 2017, Mr. Simon's counsel, James Christensen, sent an email indicating that Mr. Simon was working on the final bill but that the process might take a week or two, depending on holiday staffing. However, since the clients were unavailable until after the New Year, this discussion was likely moot.

On Saturday evening, December 23, 2017, Plaintiff's counsel, Robert Vannah, replied by email asking if the parties would agree to placing the settlement monies into an escrow account instead of Mr. Simon's attorney trust account. Mr. Vannah indicated that he needed to know "right after Christmas." Mr. Christensen replied on December 26, 2017, reiterating that Mr. Simon is out of town through the New Year and was informed the clients are, as well.

Mr. Vannah then replied the same day indicating that the clients are available before the end of the year, and that they will not sign the checks to be deposited into Mr. Simon's trust account. Mr. Vannah again suggested an interest-bearing escrow account. By letter dated December 27, 2017, Mr. Christensen replied in detail to Mr. Vannah's email, discussing problems with using an escrow account as opposed to an attorney's trust account.

I am informed that following the email and letter exchange, Mr. Simon provided an amended attorneys' lien dated January 2, 2018, for a net sum of $1,977, 843.80 as the reasonable value for his services. Thereafter, the parties opened a joint trust account for the benefit of the clients on January 8, 2018. The clients endorsed the settlement checks for deposit. Due to the size of the checks, there was a hold of 7 business days, resulting the monies being available around January 18, 2018.

On January 4, 2018, Plaintiffs filed a Complaint in District Court, styled *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*, Case No. A-18-767242-C (Complaint). The Complaint asserts claims for relief against Mr. Simon: breach of contract, declaratory relief, and conversion.

The breach of contract claim states:

> 25. SIMON's demand for additional compensation other that what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds

is a material breach of the CONTRACT.

26. SIMON'S refusal to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the contract.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definitive timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

As to the third claim for relief for conversion, the Complaint states:

43. SIMON'S retention of PLAINTIFF'S property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFF'S property rights.

ANALYSIS AND OPINIONS.

Breach of Contract

All attorneys' fees that are contracted for, charged, and collected, must be reasonable.[2] An attorney may also face disciplinary investigation and sanction pursuant to the inherent authority of the courts for violating RPC 1.5 (Fees).[3] As such, all attorney fees and fee agreements are subject to judicial review.

Nevada law grants to an attorney a lien for the attorney's fees even without a fee agreement,

> A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. ***In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.***

NRS 18.015(2) (emphasis added).[4] This statute provides for the mechanism to perfect the lien and for the court to adjudicate the rights and amount of the fee. The Rules of Professional Conduct direct the ethical attorney to comply with such procedures. "Law may prescribe a procedure for determining a lawyer's fee. . . . The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure." Model R. Prof. Conduct 1.5 cmt 9 (ABA 2015).

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[2] RPC 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."); *see, also* Restatement (Third) of the Law Governing Lawyers §34 (2000) ("a lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law.").

[3] SCR 99, 101; *see, also* Restatement (Third) of the Law Governing Lawyers §42, cmt b(*v*) (2000) ("A court in which a case is pending may, in its discretion, resolved disputes between a lawyer and client concerning fees for services in that case. . . . Ancillary jurisdiction derives historically from the authority of the courts to regulate lawyers who appear before them.").

[4] *See, also* Restatement (Third) of the Law Governing Lawyers §39 (2000) ("If a client and a lawyer have not made a valid contract providing for another measure of compensation, a client owes a lawyer who has performed legal services for the client the fair value of the lawyer's services").

In this instance, the fact that Mr. Simon has availed himself of his statutory lien right under Nevada law, a lien that attaches to every attorney-client relationship, regardless of agreement, cannot be a breach of contract. Mr. Simon is simply submitting his claim for services to judicial review, as the law not only allows, but requires.

In Nevada, "the plaintiff in a breach of contract action [must] show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach."[5] Here, there is neither breach nor damages arising from Mr. Simon's actions. The parties cannot contract for fees beyond the review of the courts. Mr. Simon cannot even contract for an unreasonable fee, much less charge or collect one. Likewise, Plaintiff has an obligation to compensate Mr. Simon the fair value of his services.

By operation of law, NRS 18.015, and this court's review, is an inherent term of the attorney-client fee arrangement, both with and without an express agreement. And, asserting his rights under the law, as encouraged by the Rules of Professional Conduct ("should comply with the prescribed procedure") does not constitute a breach of contract. Moreover, as discussed below, under these facts, Plaintiffs cannot establish damages and the cause of action fails.

RPC 1.15 requires that the undisputed sum should be promptly disbursed. Based upon the facts as I know them, Mr. Simon has promptly secured the money in a trust account and promptly conveyed the amount of his claimed additional compensation on January 2, 2018, which is prior to the filing of the Complaint and prior to the funds becoming available for disbursement. Thus, Mr. Simon has complied with the requirements of RPC 1.15 and his actions do not support a claimed breach of contract on the alleged basis of delay in paragraphs 26 and 27 of the Complaint.

Conversion

RPC 1.15 (Safekeeping Property) addresses a lawyer's duties when safekeeping property for clients or third-parties. It provides in pertinent part:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.
>
> . . . . .
>
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

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[5] *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919–20 (D.Nev.2006) (*citing Richardson v. Jones*, 1 Nev. 405, 408 (1865)).

Normally, client settlement funds are placed in the attorney's IOLTA trust account (Interest On Lawyer's Trust Account) with the interest payable to the Nevada Bar Foundation to fund legal services. Supreme Court Rules (SCR) 216-221. However, these accounts are for "clients' funds which are nominal in amount or to be held for a short period of time." SCR 78.5(9).

In our case, the settlement amount is substantial and the parties have agreed to place the sums into a separate trust account with interest accruing to the clients. This action comports entirely with Supreme Court Rules:

> **SCR 219. Availability of earnings to client.** Upon request of a client, when economically feasible, earnings shall be made available to the client on deposited trust funds which are neither nominal in amount nor to be held for a short period of time.
>
> **SCR 220. Availability of earnings to attorney.** No earnings from clients' funds may be made available to a member of the state bar or the member's law firm except as disbursed through the designated Bar Foundation for services rendered.

Therefore, Plaintiff's settlement monies are both segregated from Mr. Simon's own funds in a designated trust account, interest accruing to the client, and, by Supreme Court rule, Mr. Simon cannot obtain any earnings.

Conversion has been defined as "'a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.'" [6]

At the time of the filing of the complaint, Mr. Simon had already provided the clients with the amount of his claimed charging lien. Further, at the time of the filing of the Complaint, the clients had not endorsed nor deposited the settlement checks. Even if the funds had cleared the account when the complaint was filed, the monies are still segregated from Mr. Simon's ownership and benefit. He has followed the established rules of the Supreme Court governing the safekeeping of such funds when there is a dispute regarding possession. There is neither conversion of these funds (either in principal or interest) nor damages to Plaintiffs.

Based upon the foregoing, it is my opinion that Mr. Simon's conduct in this matter fails to constitute a breach of contract or conversion of property belonging to Plaintiffs.

AMENDMENT AND SUPPLEMENTATION.

Each of the opinions set forth herein is based upon my personal review and analysis. This report is based on information provided to me in connection with the underlying case as reported herein. Discovery is on-going. I reserve the right to amend or supplement my opinions if further compelling information is provided to me to clarify or modify the factual basis of my opinions.

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[6] *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 542–43 (Nev. 2008).

INFORMATION CONSIDERED IN REVIEWING UNDERLYING FACTS AND IN RENDERING OPINIONS.

In reviewing this matter, and rendering these opinions, I relied on and/or reviewed the authorities cited throughout this report and the following materials:

Doc No.	Document Description	Date
1.	Complaint – (A-18-767242-C) *Edgeworth Family Trust, American Grating, Inc. v. Daniel S. Simon d/b/a Simon Law*	1/4/2018
2.	Letter from James R. Christensen to Robert D. Vannah, consisting of four (4) pages and referenced Exhibits 1 and 2, consisting of two (2) and four (4) pages, respectively.	12/27/2017
3.	Exhibit 1 to letter - Copies of two (2) checks from Zurich American Insurance Company, totaling $6 million, and payable to "Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgeworth; American Grating, LLC, and the Law Offices of Daniel Simon	12/18/2017
4.	Exhibit 2 to letter - Email thread between and among Daniel Simon, John Greene, James R. Christensen, and Robert D. Vannah, consisting of four (4) pages	12/18/201– 12/26/2017
5.	Notice of Amended Attorneys Lien, filed and served in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	1/2/2018
6.	Deposition Transcript of Brian J. Edgeworth, in the case of *Edgeworth Family Trust and American Grating, LLC v. Lange Plumbing, LLC, The Viking Corp., et al.*, Case No. A738444-C	9/29/2017

BIOGRAPHICAL SUMMARY/QUALIFICATIONS.

Please see the attached curriculum vitae as Exhibit 1. Except as noted, I have no other publications within the past ten years.

OTHER CASES.

1. I was engaged and testified as an expert in:

   Renown Health, et al. v. Holland & Hart, Anderson
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016

   Deposition Testimony August 2016; Trial testimony October 2016

2. I was engaged and prepared a report in:

   Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.
   Case No. A-16-737889-C

Report December 2016.

COMPENSATION.

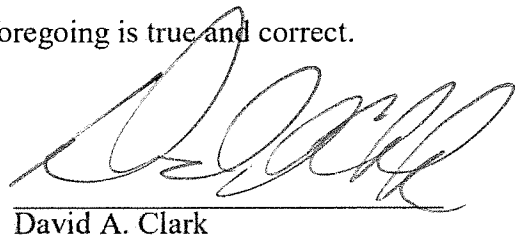
For this report, I charged an hourly rate is $350.00.

DECLARATION

I am over the age of 18 and competent to testify to the opinions stated herein. I have personal knowledge of the facts herein based on my review of the materials referenced herein. I am competent to testify to my opinions expressed in this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 18, 2018



David A. Clark

David A. Clark

Lipson | Neilson
9900 Covington Cove Drive, Suite 120
Las Vegas, Nevada 89144-7052 (702) 382-1500 – office
(702) 382-1512 – fax
(702) 561-8445 – cell
dclark@lisponneilson.com

Biographical Summary

For 15 years, Mr. Clark was a prosecutor in the Office of Bar Counsel, culminating in five years as Bar Counsel. Mr. Clark prosecuted personally more than a thousand attorney grievances from investigation through trial and appeal, along with direct petitions to the Supreme Court for emergency suspensions and reciprocal discipline. Two of his cases resulted in reported decisions, *In re Discipline of Droz*, 123 Nev. 163, 160 P.3d 881 (2007) and *In re Discipline of Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008).

Mr. Clark established the training regimen and content for members of the Disciplinary Boards, which hears discipline prosecutions. He proposed and obtained numerous rule changes to Nevada Rules of Professional Conduct and the Supreme Court Rules governing attorney discipline. He drafted the first-ever Discipline Rules of Procedure that were adopted by a task force and the Board of Governors in July 2014.

Mr. Clark has presented countless CLE-accredited seminars on all aspects of attorney ethics for the State Bar of Nevada, the Clark County Bar Assn., the National Organization of Bar Counsel (NOBC), the National Assn. of Bar Executives (NABE), and the Association of Professional Responsibility Lawyers (APRL). He has spoken on ethics and attorney discipline before chapters of paralegal groups and SIU fraud investigators, as well as in-house for the Nevada Attorney General's office and the Clark County District Attorney.

Mr. Clark received his Juris Doctor from Loyola Law School of Los Angeles following a B.S. in Political Science from Claremont McKenna College. He is admitted in Nevada and California (inactive), the District of Nevada, the Central District of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

Work Experience

August 2015 - present	**Lipson | Neilson** 9900 Covington Cove Drive, Suite 120 Las Vegas, Nevada 89144-7052 *Partner*

November 2000 – July, 2015	**Office of Bar Counsel** **State Bar of Nevada**
January 2011 - July 2015	Bar Counsel
May 2007 - December 2010	Deputy Bar Counsel/ General Counsel to Board of Governors
April 2010 - September 2010	Acting Director of Admissions
January 2007 - May 2007	Acting Bar Counsel
November 2000 - December 2006	Assistant Bar Counsel
May 1997 – October 2000	**Stephenson & Dickinson** *Litigation Associate Attorney*
November 1996 - May 1997	**Earley & Dickinson** *Litigation Associate Attorney*
April 1995 - August 1996	**Thorndal, Backus, Armstrong & Balkenbush** *Litigation Associate Attorney*
May 1992 - March 1995	**Brown & Brown** *Associate Attorney*
September 1990 -	**Gold, Marks, Ring & Pepper** (California) March 1992 *Litigation Associate Attorney*

Education

1987 - 1990	Loyola of Los Angeles Law School *Juris Doctor*
1980 – 1985	Claremont McKenna College (CA) *B.S., Political Science*

Expert Retention and Testimony

1. *Renown Health, et al. v. Holland & Hart, Anderson*
   Second Judicial District Court Case No. CV14-02049
   Reno, Nevada

   Report April 2016; Rebuttal Report June 2016
   Deposition Testimony August 2016; Trial testimony October 2016

2. *Marjorie Belsky, M.D., Inc. d/b/a Integrated Pain Specialists v. Keen Ellsworth, Ellsworth & Associates, Ltd. d/b/a Affordable Legal; Ellsworth & Bennion, Chtd.*
   Case No. A-16-737889-C

   Report December 2016.

Reported Decisions

In re Discipline of Droz, 123 Nev. 163, 160 P.3d 881 (2007) (Authority of Supreme Court to discipline non-Nevada licensed attorney).

In re Discipline of Lerner, 124 Nev. 1232, 197 P.3d 1067 (2008) (Only third Nevada case defining practice of law).

Recent Continuing Legal Education Taught

Office of Bar Counsel 2011 – 2015	Training of New Discipline Board members (twice yearly)
2011 SBN Family Law Conf. March 2011	Ethics and Malpractice
2011 State Bar Annual Meeting June 2011	Breach or No Breach: Questions in Ethics
Nevada Paralegal Assn./SBN April 2012	Crossing the UPL Line: What Attorneys Should Not Delegate to Assistants
2012 State Bar Annual Meeting July 2012	Lawyers and Loan Modifications: Perfect Storm or Perfect Solution
State Bar Ethics Year in Review December 2012	How Not to Leave a Firm
State Bar of Nevada June 2013	Ethics in Discovery
2013 State Bar Annual Meeting July 2013	Practice like an Attorney, not a Respondent

	Ethical Issues in Law Practice Promotion (Advertising)
	Going Solo: Building and Marketing Your Firm
Nevada Attorney General December 2013	Civility and Professionalism
Clark County Bar Assn. June 2014	Legal Ethics: Current Trends
UNLV Boyd School of Law July 2014	Discipline Process
2014 NV Prosecutors Conf. September 2014	Unauthorized Practice of Law
State Bar of Nevada November 2014	Let's Be Blunt: Ethics of Medical Marijuana
State Bar Ethics Year in Review December 2014	Ethics, civility, discipline process
LV Valley Paralegal Assn. Annual Meeting, April 2015	Paralegal Ethics
UNLV Boyd SOL May 2015	Navigating the Potholes: Attorney Ethics of Medical Marijuana
Assn. of Professional Responsibility Lawyers (APRL) February 2016 Mid-Year Mtg.	Patently different? Duty of Disclosure under USPTO and State Law (Panel member)
The Seminar Group July 2017	Medical & Recreational Marijuana in Nevada
State Bar of Nevada SMOLO Institute October 2017	Attorney-Client Confidentiality

Press Appearances

May 8, 2014 Channel 3 (Las Vegas)	Ralston Report. Ethics of attorneys owning medical marijuana businesses.

Practice Areas

Insurance and Commercial Litigation, Legal Malpractice, Ethics, Discipline Defense.

Exhibit 6

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

January 4, 2018

VIA EMAIL: sguindy@bankofnevada.com

Sarah Guindy
Executive Vice President,
Corporate Banking Manager
BANK OF NEVADA
2700 W. Sahara Avenue
Las Vegas, NV 89102

Re: Joint Trust Account

Dear Ms. Guindy:

As requested, please let this letter serve as the written basis for the creation of the subject Joint Trust Account (the Account). A litigated matter was recently settled for a considerable amount of money and Daniel S. Simon, Esq., has asserted an attorneys' lien to a portion of the proceeds. Thereafter, Brian Edgeworth retained Robert D. Vannah, Esq., as his personal counsel and Mr. Simon retained James R. Christensen, Esq., as his personal counsel. The parties and their counsel have agreed that the subject proceeds shall be deposited in the Account pending the resolution this matter. It's the desire of the parties that the account be created, named, and administered as discussed and that the proceeds accrue interest pending the resolution.

If you have any questions, please contact me directly at (702) 853-4338.

Sincerely,

VANNAH & VANNAH

JOHN B. GREENE, ESQ.

JBG/jr
Cc James R. Christensen, Esq. (via email)
Robert D. Vannah, Esq. (via email)

Exhibit 7

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.

Supreme Court Case

No. 77678 consolidated with No. 78176

APPEAL FROM FINAL JUDGMENTS ENTERED FOLLOWING

EVIDENTIARY HEARING

THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

*****

APPELLANTS' OPENING BRIEF

ROBERT D. VANNAH, ESQ.
Nevada State Bar No. 2503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
VANNAH & VANNAH
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Appellants/Cross Respondents
EDGEWORTH FAMILY TRUST;
AND, AMERICAN GRATING, LLC

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.

Supreme Court Case

No. 77678 consolidated with No. 78176

ROUTING STATEMENT

This matter is not presumptively assigned to the Supreme Court as set forth in NRAP 17(a), or presumptively assigned to the Court of Appeals as set forth in NRAP 17(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Rules:

Other Authorities:

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW:

Whether the District Court erred, as a matter of law, when it:

A. Ruled that the Edgeworth Family Trust and American Grating, LLC ("Appellants") constructively discharged Daniel S. Simon (Simon) and The Law Office of Daniel S. Simon, A Professional Corporation (Respondents, referred to hereafter as "Simon") on November 29, 2017;

B. Found that Simon was entitled to quantum meruit compensation of $200,000, versus his hourly rate of $550, for services rendered for Appellants between November 30, 2017, and January 8, 2018;

C. Dismissed Appellants' Amended Complaint pursuant to NRCP 12(b)(5);

D. Found the Appellants' conversion claim was not brought or maintained on reasonable grounds; and,

E. Awarded Simon $50,000 in attorney's fees and $5,000 in costs with no explanation.

II. STATEMENT OF THE CASE

A. PROCEDURAL POSTURE

This is an appeal from a final judgment entered before the Eighth Judicial District Court (hereinafter "District Court") and Order Adjudicating Simon's Attorney's Lien entered November 19, 2018; Order Dismissing the Appellants' Amended Complaint entered November 19, 2018; and, Order awarding Simon $50,000 in attorney's fees and $5,000 in costs entered February 8, 2019.

Appellants filed their Notice of Appeal of the District Court's Order Adjudicating Simon's Attorney's Lien and Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) on December 7, 2018, and filed their Notice of Appeal of the District Court's Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs on February 15, 2019.

B. PUBLIC POLICY IMPLICATIONS OF THE SO-CALLED "SIMON RULE"

This appeal concerns issues involving great public importance: specifically, attorney's liens and fees, but more generally, when greed and coercion can cripple client trust and soil society's expectations of attorney transparency. Unfortunately, throughout the years, the legal profession has amassed a public perception of dishonesty, untowardness, and avarice. Sissela Bok, "Can Lawyers Be Trusted," Univ. of Penn. L. Rev. Vol. 138:913-933 (1990). When the behavior of attorneys

becomes marred by opportunism, dishonesty, and abuse, there is a real risk that society's distrust of lawyers will continue to worsen.

This appeal is about Simon, a Nevada attorney, and the conduct he foisted on Appellants as their attorney. Simon's conduct is called "The Simon Rule." Here it is: 1.) Agreed to represent Appellants for an hourly fee of $550, but then, in contravention of NRPC 1.5(b), failed to ever reduce the fee agreement to writing. *Appellants' Appendix (AA), Vol. 2 000278-000304; 000354-000374.* 2.) Billed and collected over $367,000 in fees for eighteen months by sending periodic invoices to Appellants at that agreed upon rate of $550/hour. *Id., 000278-000304.* 3.) When it was certain that the value of the case increased (from a property damage case worth $500,000 to a products liability matter valued over $6,000,000), demanded more money from Appellants. *Id.* 4.) Couple the demand with threats that caused Appellants to believe that if they didn't acquiesce, he would stop working on their case. *Id.* 5.) When Appellants would not acquiesce and modify the hourly fee agreement to a contingency fee/bonus, used his failure to reduce the fee agreement to writing as a basis to get more money from Appellants via the equitable remedy of quantum meruit and its plus one, a "charging lien. *Id.*

This Court needs to stop The Simon Rule dead in its tracks and prevent all lawyers from behaving this way then, now, and in the future. The Simon Rule incentivizes lawyers to act in a manner that lacks transparency and encourages

practices in direct violation of NRPC 1.5(b) & (c). It also leaves clients with two awful options: acquiesce or litigate. Neither the facts, nor the law, nor practical nor common sense, support The Simon Rule, or the rulings of the District Court that would allow it to either exist or flourish.

III. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW:

A. The Simon Invoices:

Appellants retained Simon to represent their interests following a flood at a residence they owned. *AA, Vol. 2 page 000296, lines 10 through 14; 000298:10-12; 000354-000355.* The representation began on May 27, 2016. *AA, Vol. 2 000278:18-20; 000298:10-12; 000354.* Simon billed Appellants $550 per hour for his work from that first date to his last entry on January 8, 2018. *AA, Vols 1 and* 2 *000053-000267; 000296-000297; 000365-000369.* Damage from the flood caused in excess of $500,000 of property damage, and litigation was filed in the 8th Judicial District Court as Case Number A-16-738444-C. *AA, Vol. 2 000296.* Appellants brought suit against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (Lange and Viking). *AA, Vol. 2 000278:24-27; 000354.*

The District Court held an evidentiary hearing to adjudicate Simon's attorney's lien over five days from August 27, 2018, through August 30, 2018, and

concluded on September 18, 2018. *AA, Vol. 2* 000353-000375. The Court found that Simon and Appellants had an implied agreement for attorney's fees. *Id., at, 000365-000366;000374.* However, Appellants asserted that an oral fee agreement existed between Simon and Appellants for $550/hour for work performed by Simon. *AA, Vols. 2 & 3 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon admitted that he never reduced the hourly fee agreement to writing. *AA, Vol. 3 000515-1:8-25.* Regardless, Simon and Appellants performed the understood terms of the fee agreement with exactness. *AA, Vol. 2 000297:3-9; AA, Vol. 3 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.* How so? Simon sent four invoices to Appellants over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September 19, 2017. *AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20.*

Simon always billed for his time at the hourly rate of $550 per hour ($275 per hour for associates). *AA, Vols. 1 & 2 000053-000267; 000374.* It is undisputed Appellants paid the invoices in full, and Simon deposited the checks without returning any money. *AA, Vol. 2 000356:14-16.* And Simon did not express any interest in taking the property damage claim on a contingency basis with a value of $500,000. *AA, Vol. 2 000297:1-5.*

Simon believed that his attorney's fees would be recoverable as damages in the underlying flood litigation. *AA, Vol. 2 000365-000366.* To that end, he provided computations of damages pursuant to NRCP 16.1, listing how much in fees he'd charged. *Id., 000365:24-26.* At the deposition of Brian Edgeworth on September 29, 2017, Simon voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." *AA, Vol. 2 000300:3-16; 000302-000304; 000365:27, 000366:1.* Those were hourly fees spoken of and produced by Simon. *Id., 000365:24-27, 000366:1.* Thus we see that through Simon's words and deeds he clearly knew and understood that his fee agreement with Appellants was for $550 per hour…until he wanted more. *Id.*

B. Simon's Inflated Attorney's ("Charging") Lien

Despite having and benefiting from an hourly fee agreement, Simon wanted more and devised a plan to get it. *Id., 000271-000304.* In late Fall of 2017, and only after the value of the flood case skyrocketed past $500,000 to over $6,000,000, Simon demanded that Appellants modify the hourly fee contract so that he could recover a contingency fee dressed poorly as a bonus. *AA, Vol. 2 000298:3-17.*

Simon scheduled a meeting with Appellants in mid-November of 2107. At that meeting, Simon told Appellants he wanted to be paid far more than $550.00 per hour and the $367,606.25 in fees he'd already received from Appellants. *Id.*

Simon said he was losing money and that Appellants should agree to pay him more, like 40% of the $6 million settlement with Viking. *AA, Vols. 2 & 3* 000299:13-22; *000270; 000275*; *000515-1*. Simon then invited Appellants to contact another attorney and verify that "this was the way things work." *AA, Vol. 3 000000515-1, 000515-2, 000516:1-7, 000517:13-25.*

Appellants refused to bow to Simon's pressure or demands. *AA, Vol. 2 000300:16-23*. Simon then refused to release the full amount of the settlement proceeds to Appellants. *Id.* Instead, Simon served two attorney's liens on the case: one on November 30, 2017, and an Amended Lien on January 2, 2018. *Id; AA, Vol. 1 000001; 000006*. Simon's Amended Lien was for a net sum of $1,977,843.80. *Id.* This amount was on top of the $486,453.09 in fees and costs Appellants already paid in full to Simon for all his services and time from May 27, 2016, through September 19, 2017. *AA, Vol. 2 000301:12-13.*

C. Simon's Transparent Attempt to Circumvent NRPC 1.5(b) and NRPC 1.5(c):

Appellants accepted Simon's invitation to consult other attorneys and contacted Robert D. Vannah, Esq. *AA, Vol. 3 000515-2:22-25, 516:1-7.* Thereafter, Mr. Vannah contacted Simon and explained that since the settlement with Viking was essentially completed, it would not be expeditious for Mr. Vannah to substitute into the case or to associate with Simon. *AA, Vol. 3 000490-000491.*

Mr. Vannah told Simon that he was to continue on the case until the

settlement details were all ironed out. *Id.* And those details were clearly minimal, as the lion's share of rigorous and time-consuming work had already been completed: a successful mediation with Floyd Hale, Esq.; an offer from Viking of $6 million to resolve those claims (*Id)*; and, an offer from Lange to settle for $25,000, to which Appellants had consented to accept both no later than November 30, 2017. *AA, Vol. 2 000357:22-23*. The only tasks remaining on the case were ministerial, i.e., signing releases and obtaining dismissals of claims. *Id., 000517:13-25, 000518.*

At the evidentiary hearing, Simon finally admitted that he could not charge a 40% contingency fee because he had not obtained a written contingency fee agreement. *AA, Vol. 3 000515-1*. Regardless, Simon pushed the District Court to adopt The Simon Rule, arguing that since he, the lawyer, didn't reduce the fee agreement to writing, let alone a written contingency fee agreement as required by NRPC 1.5(c), he could get a 40% fee via the equitable remedy of quantum meruit because 40% is the normal charge if a contingent fee agreement existed. *AA, Vol. 1 000045*.

Rather than own up to his mistakes and invited errors in failing to comply with NRPC 1.5(b) by not reducing the fee agreement with Appellants to writing, Simon turned on the spin cycle and blamed Appellants. *Carstarphen v. M*ilsner, 270 P.3d 1251, 128 Nev. 55 (2012). This Court should not reward Simon's invited

errors with an equitable windfall of a $200,000 fee/bonus. *Id.*

D. The Purported Constructive Discharge:

The District Court held that Appellants constructively discharged Simon on November 29, 2017. *AA, Vol. 2 000369:22-25.* The basis was a purported "breakdown in attorney-client relationship," and the lack of communication with regard to the pending legal issues, i.e., the Lange and Viking Settlements. *Id.*, 000361-000364.

Yet, it was Simon who: 1.) Demanded that Appellants change the terms of the fee agreement from hourly to contingent when the case value increased; 2.) Told Appellants he couldn't afford to continue working on their case at $550 per hour; 3.) Threatened to stop working on Appellants' case if they didn't agree to modify the fee agreement; 4.) Encouraged Appellants to seek independent legal counsel; 5.) Sought legal counsel, as well; 6.) Continued to work on Appellants' case through its conclusion with Viking and Lange; and, 7.) Billed Appellants for all of his time from November 30, 2017 (the date after the alleged constructive discharge), through January 8, 2018 (the conclusion of the underlying case). *AA, Vols. 1, 2, & 3 000298:13-24; 0000159-000163, 000263-000265; 000515-2:22-125, 000516:1-7.*

The District Court determined the appropriate method to award attorney fees after November 30, 2017, would be via quantum meruit. *AA, Vol. 2 000369:16-27.*

The District Court further decided Simon was "entitled to a reasonable fee in the amount of $200,000." *AA, Vol. 2, 000370-000373.* Appellants contest the District Court's constructive discharge determination and appeal the its determination of the $200,000 amount. Why?

Neither the facts nor the law supports a finding of any sort of discharge of Simon by Appellants, constructive or otherwise. Appellants needed him to complete his work on their settlements, and he continued to work and to bill. *AA, Vols. 1 & 2 000301:4-11; 000159-163, 000263-000265.* Plus, the amount of the awarded fees doesn't have a nexus to reality or the facts. Could there be a better barometer of truth of the reasonable value of Simon's work in wrapping up the ministerial tasks of the Viking and Lange cases for those five weeks than the work he actually performed? No.

When it became clear to him that his Plan A of a contingency fee wasn't allowed per NRPC 1.5(c), Simon adopted Plan Zombie ("Z") by creating a "super bill" that he spent weeks preparing that contains every entry for every item of work that he allegedly performed from May 27, 2016 (plus do-overs; add-ons; mistakes; etc.), through January 8, 2018. *AA, Vols 1 & 2 000053-000267.* It also contains some doozies, like a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265* All of the itemized tasks billed by Simon and Ms. Ferrel (at $550/$275 per hour, respectively) for that slim slot of time total **$33,811.25.** *Id.*

How is it less than an abuse of discretion to morph $33,811.25 into $200,000 for five weeks of nothing more than mop up work on these facts?

E. The District Court's Dismissal of Appellants' Amended Complaint

Settlements in favor of Appellants for substantial amounts of money were reached with the two flood defendants on November 30 and December 7, 2017. *AA, Vol 3 000518-3:22-25, 000518-4:1-6.* But Simon wrongfully continued to lay claim to nearly $1,977,843 of Appellants' property, and he refused to release the full amount of the settlement proceeds to Appellants. *AA, Vols. 1 & 2 000006; 000300.* When Simon refused to release the full amount of the settlement proceeds to Appellants, litigation was filed and served. *AA, Vols. 1 & 2 000014; 000358:10-12.*

Appellants filed an Amended Complaint on March 15, 2018, asserting Breach of Contract, Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair Dealing. *AA, Vol. 2 000305.* Eight months later, the District Court dismissed Appellants' Amended Complaint. *Id., 000384:1-4.* In doing so, the District Court ignored the standard of reviewing such motions by disbelieving Appellants and adopting the arguments of Simon. Therefore, Appellants appeal the District Court's decision to dismiss their Amended Complaint. *AA, Vol. 2 000425-000426.*

F. The District Court's Award of $50,000 in Attorney's Fees and $5,000 in Costs

After Simon filed a Motion for Attorney's Fees and Costs, the District Court awarded Simon $50,000 in attorney's fees and $5,000 in costs. *AA, Vol. 2 000484:1-2.* The District Court again ignored the standard of review, believed Simon over Appellants, and held that the conversion claims brought against Simon were maintained in bad faith. *AA, Vol 2 000482:16-23.* The District Court awarded these fees and costs without providing any justification or rationale as to the amounts awarded. *Id., at 000484.* Appellants appealed the District Court's decision to award $50,000 attorney's fees and $5,000 costs. *AA, Vol 2 000485-000486.*

G. The Amounts in Controversy

Appellants have no disagreement with the District Court's review of all of Simon's invoices from May 27, 2016, through January 8, 2018. Specifically, it reviewed Simon's bills and determined that the reasonable value of his services from May 27, 2016, through September 19, 2017, was $367,606.25. *AA, Vol 2000353-000374.* Appellants paid this sum in full. *Id., 000356.* It also determined that the reasonable value of Simon's services from September 20, 2017, through November 29, 2017, was $284,982.50. *Id., 000366-000369.* Appellants do not dispute this award, either. In reaching that conclusion and award, the District Court

reviewed all, and rejected many, of Simon's billing entries on his "super bill" for a variety of excellent reasons. *Id., 000366-000369; 000374.*

Appellants do, however, dispute the award of a bonus in the guise of fees of $200,000 to Simon from November 30, 2017, through January 8, 2018. In using the same fee analysis the District Court applied above, Simon would be entitled to an additional **$33,811.25**, which reflects the work he actually admits he performed, for a difference of $166,188.75. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* Appellants also dispute the $50,000 in fees and $5,000 in costs awarded to Simon when the District Court wrongfully dismissed Appellants' Amended Complaint, etc.

Finally, Appellants assert that once Simon's lien was adjudicated in the amount of $484,982.50, with Simon still holding claim to $1,492,861.30, he is wrongfully retaining an interest in $1,007,878.80 of Appellants funds. *AA, Vol. 2 000415-000424.* That's an unconstitutional pre-judgment writ of attachment. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969).

IV. PROCEDURAL OVERVIEW:

Simon filed a Motion to Adjudicate his $1,977,843.80 lien on January 24, 2018. *AA, Vols. 1 & 2 000025-000276.* Appellants opposed that Motion. *AA, Vol. 2 000277-000304.* The District Court set an evidentiary hearing over five days on this lien adjudication issue. *AA, Vol. 3* 000488. Appellants argued there was no

basis in fact or law for Simon's fugitive attorney's liens, or his Motion to Adjudicate Attorney's Lien, and that the amount of Simon's lien was unjustified under NRS 18.015(2). *AA, Vol. 2 000284: 21-27.* Appellants further argued that there was in fact an oral contract for fees between Simon and Appellants consisting of $550/hr for Simon's services that was proved through the testimony of Brian Edgeworth and through the course of consistent performance between the parties from the first billing entry to the last. *Id., 000284-000292.*

The District Court found that Simon asserted a valid charging lien under NRS 18.015. *AA, Vol. 2 000358: 18-28.* The District Court also determined that November 29, 2017, was the date Appellants constructively discharged Simon. *Id.* As a result, the District Court found that Simon was entitled to quantum meruit compensation from November 30, 2017, to January 8, 2018, in the amount of $200,000. *Id., 000373-000374.*

A. Simon's Motion to Dismiss Amended Complaint Under NRS 12(B)(5)

Simon filed a Motion to Dismiss Appellants' Amended Complaint pursuant to NRCP 12(b)(5). Appellants opposed Simon's Motion and argued that the claims against Simon were soundly based in fact and law. *AA, Vol. 2 000344-000351.* Appellants also stressed that Nevada is a notice-pleading jurisdiction, which the Amended Complaint had clearly met the procedural requirement of asserting "a

short and plain statement of the claim showing that the pleader is entitled to relief...." *NRCP 8(a)(1). AA, Vol. 2 000343.*

However, the District Court chose to believe Simon and dismissed Appellants' Amended Complaint in its entirety. *AA, Vol. 2 000384.* The District Court noted that after the Evidentiary Hearing and in its Order Adjudicating Attorney's Lien, no express contract was formed, only an implied contract existed, and Appellants were not entitled to the full amount of their settlement proceeds. *Id.* Yet, whose responsibility was it to prepare and present the fee agreement to the clients—Appellants—for signature? Simon's. Whose fault—invited error—was it that it wasn't? Simon's, of course, as he's the lawyer in the relationship. *NRPC 1.5(b).* Regardless, the District Court dismissed Appellants' Amended Complaint. *AA, Vol. 2 000384.* It did so without allowing any discovery and barely eight months after it was filed. *AA, Vol. 2 000381, 000384.*

B. Simon's Motion for Attorney's Fees and Costs

Simon filed a Motion for Attorney's Fees and Costs on December 7, 2018. Appellants opposed Simon's Motion, arguing their claims against Simon were maintained in good faith. *AA, Vol. 2 000437-000438.* They further argued it would be an abuse of discretion for the District Court to award Simon attorney's fees when such fees were substantially incurred as a result of the evidentiary hearing to adjudicate Simon's own lien and conduct, namely his exorbitant $1,977,843.80

attorney's lien. *AA, Vol. 2 000432-000435.* The District Court awarded Simon $50,000 in fees under NRS 18.010 (2)(b), and $5,000 in costs, but providing no explanation in its Order as to the amount of the award. *Id.*

V. STANDARD OF REVIEW:

A. Adjudicating Attorney's Liens - *Abuse of Discretion*:

A district court's decision on attorney's lien adjudications is reviewed for abuse of discretion standard. *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215 (2008). An abuse of discretion occurs when the court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

B. Motions to Dismiss – *de novo* Review

An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). De novo review requires a matter be considered anew, as if it had not been heard before and as if no decision had been rendered previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir.1988).

C. Motions for Attorney's Fees and Costs – *Abuse of Discretion*

A district court's decision on an award of fees and costs is reviewed for an abuse of discretion. *Gunderson v. D.R. Norton, Inc.*, 130 Nev. 67, 319 P.3d 606, 615 (2014); *LVMPD v. Yeghiazarian*, 129 Nev 760, 766, 312 P.3d 503, 508 (2013). An abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

VI. SUMMARY OF ARGUMENTS:

There was no basis in fact or law for the content of Simon's fugitive lien, as its amount was never *agreed upon* by the attorney and the client under NRS 18.015(2). *Id.* In fact, there was a clear fee agreement between Appellants and Simon whereby Simon was to represent Appellants in the flood lawsuit in exchange for an hourly fee of $550. *Id.* Upon settlement of the underlying case, when Simon refused to hand over Appellants' settlement funds post lien-adjudication, effectively retaining $1,492,861.30 of Appellants' undisputed funds, a conversion of Appellants' settlement funds had taken place. And still does today.

Reviewing the District Court's Order Dismissing Appellants' Amended Complaint *de novo*, it is clear the District Court committed reversible legal error when it: 1.) Used the wrong legal standard when analyzing the Amended Complaint; 2.) Failed to accept all of Appellants factual allegations in the complaint as true; and, 3.) Failed to draw all inferences in favor of Appellants. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Rather than follow the law, the District Court did just the opposite here by ignoring the law, believing Simon's story, and drawing all inference in favor of Simon. That can't be allowed to stand.

To make the abuse of discretionary matters worse, when Simon moved for attorney's fees and costs on December 7, 2018, the District Court wrongfully awarded Simon another $50,000 pursuant to NRS 18.010(2)(b), and $5,000 in costs. *AA, Vol. 2 000484:1-2.* The $50,000 award was a manifest abuse of discretion, as it was predicated on the District Court's: 1.) Abuse of discretion by dismissing Appellants' Amended Complaint in the first place by applying the exact opposite standard of ignoring Appellants' allegations and inferences and believing Simon; 2.) Inaccurately finding that Appellants' conversion claim was maintained in bad faith; and, 3.) Failure to consider the *Brunzell* factors. *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991) And in its Order awarding $50,000 in fees

and $5,000 in costs, the District Court provided absolutely no reason or justification for awarding those amounts. *AA, Vol. 2 000481-000484.*

The District Court's finding that there was a constructive discharge was inapposite of the record, ignored material facts, was based on clearly erroneous factual determinations, and was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016). The District Court's $200,000 quantum meruit award of attorney's fees was also an abuse of discretion as it was based on an erroneous finding of constructive discharge: there was a clear contract between Simon and Appellants and no one was discharged. *Golightly v. Gassner,* 125 Nev. 1039 (2009). *AA, Vol. 2 000277-000304.* To the contrary, Simon continued to represent Appellants and bill them handsomely for his time. *Id.*

Further, there was no connection between the District Court's $200,000 award and any of the labor Simon actually did or any value he added after the date of the purported constructive discharge. *AA, Vol. 2 000369-000373.* As Appellants' Opposition to Simon's Motion for Fees and Simon's "super bill" clearly shows, Simon's (and Ms. Ferrel's) actual work performed for Appellants from November 30, 2017, through January 8, 2018, added up to **$33,811.25**. *AA, Vols. 1 & 2 000159-000163; 000263-000265; 000428-000438.*

Finally, quantum meruit is an equitable remedy that requires clean hands to obtain its benefits. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272

(1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008). Here, Simon's hands are anything but clean. *AA Vol. 2 000277-000303*. He, the lawyer, is the one who agreed to represent Appellants at the rate of $550 per hour yet failed to reduce the terms of the fee agreement to writing. *AA, Vol. 2 000290:3-18;000296-000301; 000359:15.* He's the one who billed Appellants $550 per hour for nearly 18 months and collected over $367,606 in fees over that time. *Id., at 000290:3-18; 000296-000301*. He's the one who wanted a higher fee, or a bonus, when the value of the case went up. *Id.*

He's the one who pressured Appellants to agree to a higher fee, or bonus. *Id.* He's the one who told Appellants that he was losing money on their case and couldn't afford to keep working, thus causing deep concern with Appellants that he would, in essence, quit their case before it had concluded. *Id.* He's the one who encouraged Appellants to seek the advice of independent counsel. *AA, Vol. 3 000515-2:22-25; 516:1-7.* He's the one who, despite not having a written contingency fee agreement, served an amended attorney's lien in an amount that's awfully close to 40% (aka a contingency fee) of the Viking settlement.

He's also the one who had weeks to prepare and submit a "super bill" in an amount that measured up to the amount of his lien, yet the amount of his "super bill" ($692,120) fell far short of that lien ($1,977,843.80). *AA, Vols. 1 & 2 000159-000163; 000263-000265*. Despite knowing that he can't have a contingency fee,

and despite the fact that the amount of his "super bill" had come up WAY short, it was Simon who refused, and continues to refuse, to release Appellants' money, even after his lien was adjudicated. With his egregious conduct, with his invited errors, (*see Carstarphen,* 270 P.3d 1251, 128 Nev. 55, 66 (2012)), and with his unclean hands, (*see In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992); *Truck Ins. Exchange v. Palmer*, 124 Nev. 59 (2008)), Simon is not entitled to the equitable remedy of quantum meruit, let alone a huge bonus.

VII. ARGUMENTS:

A. The District Court Erred When It Dismissed Appellants' Amended Complaint

A district court's order granting a motion to dismiss for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal because the Appellate Court must construe the pleadings liberally, accept all factual allegations in the complaint as true, and draw all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). Further, the complaint should be dismissed "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Pankopf v.*

Peterson, 124 Nev. 43, 175 P.3d 910 (2008). As set forth in NRCP 8(a)(1), Nevada is a notice-pleading jurisdiction that merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief."

Upon reviewing the District Court's decision to dismiss *de novo,* this Court should reverse the District Court's ruling, as the District Court clearly applied the wrong standard when analyzing Appellants' Amended Complaint. In their Amended Complaint, Appellants included twenty (20) detailed paragraphs outlining Simon's words and deeds supporting each of their claims for relief. *AA, Vol. 2 000305-000316.* Appellants left no doubt as to the basis for their claims, who and what they're against, and why they are making them. Certainly, there could have been no reasonable dispute that Appellants met that minimum standard.

The Amended Complaint alleged that a fee agreement was reached between the parties at the beginning of the attorney/client relationship; that the agreement provided for Simon to be paid $550 per hour for his services; that Simon billed $550 per hour in four invoices for his services; that the Edgeworth's paid Simon's four invoices in full; that Simon demanded far more from the Edgeworth's than the $550 per hour that the contract provided for; and, that Simon breached the contract when he demanded a bonus from the Edgeworth's that totaled close to 40% of a financial settlement, then liened the file when the Edgeworth's wouldn't agree to modify the contract. *Id.*

The District Court erred when it failed to take the Amended Complaint on its face, failed to take the allegations therein as true, and instead relied on external evidence in adopting Simon's version of the facts. *AA, Vol. 2 000376-000384.* The District Court's misuse of the proper standard and this external proof and evidence contravened Nevada law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 14 P.3d 1275 (2000), citing Nev. Rules Civ. Proc. Rule 12(b)(5). As such, Appellants respectfully ask this Court to reverse the District Court's dismissal of the Amended Complaint.

B. The District Court Abused Its Discretion When It Awarded $50,000 in Attorney's Fees and $5,000 in Costs

Pursuant to NRS 18.010, district courts are to interpret the provisions of the statute to award fees "in all appropriate situations,"—that is, *appropriate* situations. NRS 18.010(2)(b). Fees under this section are limited to where a district court finds "that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass..." NRS 18.010(2)(b). And the district court's award of fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). District courts are further

limited: when determining the reasonable value of an attorney's services, the court is to consider the factors under *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33-34 (1969). *Hornwood v. Smith's Food King No. 1,* 807 P2d 209 (1991); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 834 (1985).

In fact, this Court has held that it is an abuse of discretion when district courts fail to consider the *Brunzell* factors when awarding fees. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427-28, (2006) (Finding that a district court's mere observation of certain *Brunzell* elements and mention of the factors is insufficient: the district court must actually consider the *Brunzell* factors when determining the amount of fees to award under NRS 40.655). Further, a district court's award of costs *must* be reasonable. NRS 18.005; *U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458, 463(2002).

Here, the District Court's $50,000 award of fees was an abuse of discretion as it was predicated on a clearly errant finding that the Appellants' conversion claim was not maintained on reasonable grounds, was unreasonable, and was made without consideration of the *Brunzell* factors. Further, the District Court's award of $5,000 in Costs was unreasonable, as it was made with absolutely no explanation or justification for the amount awarded. As such, this Court should reverse the District Court's $50,000 fee award and $5,000 in costs.

C. The District Court Abused Its Discretion When It Awarded $200,000 in Attorney's Fees Under Quantum Meruit

A district court's determination of the amount of attorney's fees is to be tempered by "reason and fairness." *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006); *Shuette v. Beazer Homes Holdings Corp.,* 121 Nev. 837, 864-865 (2005); *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). Here, the District Court's award of $200,000 in attorney's fee based on quantum meruit was predicated on the clearly erroneous determination that Appellants constructively discharged Simon. *AA, Vol. 2 000360:23-28, 361-364:1-2.* That finding was improper and an abuse of discretion, as the District Court based its determination on a clearly erroneous factual determination which was unsupported by substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

For example, Simon conceded that: 1.) He never withdrew from representing Appellants; 2.) Simon *himself* encouraged Appellants to speak with other attorneys; 3.) Simon spoke with an attorney either before or after he met with Appellants on November 17, 2017; 4.) Mr. Vannah instructed Simon that Appellants needed Simon to continue working on the case through its conclusion; and, 5.) Simon continued to work on behalf of Appellants and billed them an additional $33,811.25 in fees from November 30, 2017, through January 8, 2018. *AA Vols 1 & 2 000159-000163; 000263-000265.*

Under no logic or reason whatsoever could Simon's and Appellants' relationship be viewed as having "broken down" to the point where Simon was "prevented from effectively representing" them. *See Rosenberg v. Calderon Automation, Inc.*, 1986 WL 1290 (Court of Appeals, Ohio 6th Dist. 1986). He DID continue to represent Appellants effectively and billed them accordingly and handsomely...at $550 per hour. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* The District Court's quantum meruit analysis, which stemmed from an erroneous finding of constructive discharge, was unwarranted, an abuse of discretion, and should be reversed.

An award of fees must also be tempered by "reason and fairness." *University of Nevada v. Tarkanian,* 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994). This $200,000 award is not fair or reasonable under any circumstances. The District Court had already twice looked to Simon's invoices and utilized $550 per hour to determine Simon's reasonable fee (the four original invoices and from September 20 to November 29, 2017). *AA Vol. 2 000353-000374.* For the adjudication for any fee from November 30, 2017, through January 8, 2018, the only fair and proper analysis would consistently focus on the *actual work performed and billed* by Simon (and Ms. Ferrel). Yet, as one can clearly see, the District Court didn't even glance in that direction. *Id., 000353-000374.*

The District Court was also silent on the *timing* of Simon's labor. *AA Vol. 2 000370-000372.* The District Court must describe the work Simon performed following the alleged discharge, and that didn't happen. *AA Vol. 2 000371.* Rather, the "ultimate result" referenced (the litigation and settlements) had already been completed, or either agreed to in principle, before any alleged constructive discharge, or merely required ministerial tasks to complete. *Id., 000356:22-24, 000357:12-24.*

In the section of the Order labelled "Quantum Meruit," there is also no evidence offered or reasonable basis given that Simon did anything of value for the case after November 29, 2017, to justify an additional $200,000 "fee" for five weeks of work. Clearly, the District Court's award of fees was not tempered by "reason and fairness." Instead, it was a gift to one with unclean hands.

The fair, reasonable, and appropriate amount of Simon's attorney's lien in this case from November 30, 2017, through January 8, 2018, should be calculated in a consistent manner ($550 per hour worked/billed) as previously found from May 27, 2016, through November 29, 2017. *Id., 000353-000374.* Instead, the District Court came up with the $200,000 number seemingly out of nowhere, rather than awarding the $33,811.25 in fees for the actual work performed during that time frame. *AA Vols. 1 & 2 000373-000374; 000159-163; 000263-000265.* Therefore, this Court should reverse the $200,000 fee/bonus award.

VIII. CONCLUSION/ RELIEF SOUGHT:

The District Court committed clear and reversible error when it applied the wrong standard in considering Simon's Motion to Dismiss. When it should have considered all of Appellants' allegations and inferences as true, the District Court did just the opposite and believed Simon.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $50,000 in fees and $5,000 in costs while dismissing Appellants' Amended Complaint, a pleading that never should have been dismissed to begin with. Even so, these fees were awarded without the requisite analysis that Nevada law requires.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional $200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and never acted as such, at least through the conclusion of the flood litigation. Instead, he continued to work the case through January 8, 2018, continued to represent Appellants, completed the ministerial work to close out the flood case, and billed for all his efforts.

Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992);

Truck Ins. Exchange v. Palmer, 124 Nev. 59 (2008). As argued throughout, Simon's hands are filthy, as The Simon Rule (and conduct) clearly demonstrates.

Appellants respectfully request this Court to: 1.) REVERSE the District Court's decisions to Dismiss Appellants' Amended Complaint issued on November 19, 2018, and allow Appellants to move on with discovery and jury trial; 2.) REVERSE the District Court's award of $50,000 in fees and $5,000 in costs in its Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs from February 8, 2019; and, 3.) REVERSE the District Court's award of fees of $200,000 in its Decision and Order on Motion to Adjudicate Attorney's Lien on November 19, 2018.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because: This brief has been prepared in a proportionally spaced typeface using Word 2019, in 14 point Times New Roman font; and, complies with NRAP 32(a)(7)(c), in not exceeding 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which

requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of August, 2019.

VANNAH & VANNAH

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Nevada Bar No. 002503
JOHN GREENE, ESQ.
Nevada Bar No. 004279
400 South Seventh Street, Fourth Floor
Las Vegas, Nevada 89101
(702) 369-4161

CERTIFICATE OF SERVICE

Pursuant to the provisions of NRAP, I certify that on the 8th day of August, 2019, I served **APPELLANTS' OPENING BRIEF** on all parties to this action, electronically, as follows:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, P.C.
601 S. 6th Street
Las Vegas, NV 89101

An Employee of VANNAH & VANNAH

Exhibit 8

November 29, 2017

VIA FACSIMILE: (702) 364-1655

Daniel S. Simon, Esq.
LAW OFFICE OF DANIEL S. SIMON
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101

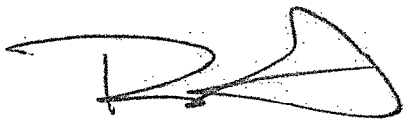
RE: Letter of Direction

Dear Mr. Simon:

Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq., and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc.

Thank you for your understanding and compliance with the terms of this letter.

Sincerely,



Brian Edgeworth

Exhibit 9

ATLN
DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Telephone (702) 364-1650
lawyers@simonlawlv.com
Attorneys for Plaintiffs

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.; Plaintiffs, vs. LANGE PLUMBING, L.L.C.; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X

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

determined.

The Law Office of Daniel S. Simon claims a lien for a reasonable fee for the services rendered by the Law Office of Daniel S. Simon on any settlement funds, plus outstanding court costs and out-of-pocket costs currently in the amount of $80,326.86 and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution. The above amount remains due, owing and unpaid, for which amount, plus interest at the legal rate, lien is claimed.

This lien, pursuant to N.R.S. 18.015(3), attaches 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.

Dated this 30th day of November, 2017.

THE LAW OFFICE OF DANIEL S. SIMON,
A PROFESSIONAL CORPORATION

DANIEL S. SIMON, ESQ.
Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
Nevada Bar No. 12207
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, Nevada 89101

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

DANIEL S. SIMON, being first duly sworn, deposes and says:

That he is the attorney who has at all times represented EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC., as counsel from May 1, 2016, until present, in its claims for damages resulting from the April 16, 2016, sprinkler failure that caused substantial damage to the Edgeworth residence located at 645 Saint Croix Street, Henderson, Nevada.

That he is owed for attorney's fees for a reasonable fee for the services which have been rendered for the client, plus outstanding court costs and out-of-pocket costs, currently in the amount of $80,326.86, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution of 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. That he has read the foregoing Notice of Attorney's Lien; knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

DANIEL S. SIMON

SUBSCRIBED AND SWORN
before me this 30 day of November, 2017

TRISHA TUTTLE
Notary Public State of Nevada
No. 08-8840-1
My Appt. Exp. June 19, 2018

Notary Public

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 30th 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.

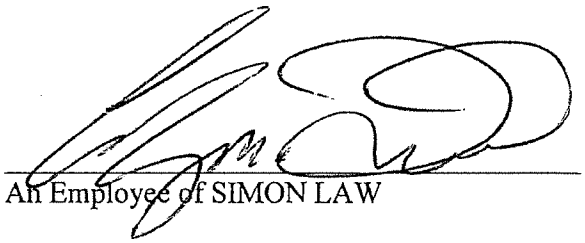
Angela Bullock
Kinsale Insurance Company
2221 Edward Holland Drive, Ste. 600
Richmond, VA 23230
Senior Claims Examiner for
Kinsale Insurance Company

An Employee of SIMON LAW

CERTIFICATE OF MAIL

I hereby certify that on this 1st day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Brian and Angela Edgeworth
645 Saint Croix Street
Henderson, Nevada 89012



An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

CERTIFICATE OF MAIL

I hereby certify that on this 15th day of December, 2017, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing NOTICE OF ATTORNEY'S LIEN on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

Bob Paine
Zurich North American Insurance Company
10 S. Riverside Plz.
Chicago, IL 60606
Claims Adjustor for
Zurich North American Insurance Company

Daniel Polsenberg, Esq.
Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

An Employee of SIMON LAW

SIMON LAW
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

Exhibit 10

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING ENTITIES" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and VIKING GROUP, INC. (the "VIKING ENTITIES") and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners,

employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. The VIKING ENTITIES will pay PLAINTFFS Six Million Dollars and Zero-Cents ($6,000,000) within 20 days of PLAINTIFFS' execution of this AGREEMENT, assuming resolution of the condition set out in § III.D below. The $6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING ENTITIES with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to the VIKING ENTITIES upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING ENTITIES (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the $6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the VIKING ENTITIES by Lange Plumbing, LLC. Alternatively, this condition would be satisfied in the event that Lange Plumbing, LLC voluntarily dismisses all claims with prejudice against the VIKING ENTITIES and executes a full release of all claims, known or unknown.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY

hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against the VIKING ENTITIES, by way of PLAINTIFFS Complaint and any amendments thereto.

V. MUTUAL RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge the VIKING ENTITIES and any of its affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. Reciprocally, in consideration of the settlement payment and promises described herein, the VIKING ENTITIES, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge PLAINTIFFS and any of PLAINTIFFs' affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.C. This AGREEMENT shall be effective as a bar to all claims, relatining to or arising from the INCIDENT or the SUBJECT ACTION, which PLAINTIFFS may

have against the VIKING ENTITIES, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

C. Reciprocally, this AGREEMENT shall be effective as a bar to all claims, relatining to or arising from the INCIDENT or the SUBJECT ACTION, which the VIKING ENTITIES may have against PLAITNIFFS, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, the VIKING ENTITIES and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

D. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and the VIKING ENTITIES and their related persons and entities.

E. PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and the VIKING ENTITIES each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify the VIKING ENTITIES and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

C. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

E. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

F. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES

hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

G. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel. For PLAINTIFFS, that independent attorney is Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah.

H. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

I. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

J. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this 1ST day of DECEMBER, 2017

BRIAN EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

DATED this 1 day of December, 2017

ANGELA EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this _____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

Exhibit 11

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

To:James R. Christensen <jim@jchristensenlaw.com>;

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? $4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.
>
> Happy Holidays!
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

---------- Forwarded message ----------
From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

> Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!
>
> <image001.jpg>

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
Fax: (702) 369-0104
jgreene@vannahlaw.com

From: Daniel Simon
Sent: Monday, December 18, 2017 11:03 AM
To: John Greene <jgreene@vannahlaw.com>
Cc: Daniel Simon <dan@simonlawlv.com>
Subject: Edgeworth v. Viking

I have received the settlement checks. Please have the client's come in to my office to sign so I can promptly put them in my trust account. Thanks!!

DANIEL S. SIMON
ATTORNEY AT LAW
SIMON LAW
810 South Casino Center Blvd.
Las Vegas, NV 89101
(P) 702.364.1650
(F) 702.364.1655
DAN@SIMONLAWLV.COM

Exhibit 12

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada

December 27, 2017

Via E-Mail

Robert D. Vannah
400 S. 7th Street
Las Vegas, NV 89101
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Bob:

I look forward to working with you to resolve whatever issues may exist concerning the disbursement of funds in the Edgeworth case. To that end, I suggest we avoid accusations or positions without substance.

This letter is in response to your email of December 26, 2017. I thought it best to provide a formal written response because of the number of issues raised.

Please consider the following time line:

- On Monday, December 18, 2017, Simon Law picked up two Zurich checks in the aggregate amount of $6,000,000.00. (Exhibit 1; copies of checks.)

- On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called Mr. Greene to arrange check endorsement. Mr. Simon left a message.

- On Monday, December 18, 2017, Mr. Greene returned the call and spoke to Mr. Simon. (Exhibit 2; confirming email string.)

- During the Monday call, Mr. Simon advised that he would be on a holiday trip and unavailable beginning Friday, December 22, 2017, until after the New Year. Mr. Simon asked that the clients endorse the checks prior to December 22nd. (Exhibit 2.)

- During the Monday call, Mr. Greene told Mr. Simon that the clients would not be available to sign checks until after the New Year. (Exhibit 2.)

- During the Monday call, Mr. Greene stated that he would contact Simon Law about scheduling endorsement. (Exhibit 2.)

- On Friday, December 22, 2017, the Simon family went on their holiday trip.

- On Saturday, December 23, 2017, at 10:45 p.m., an email was sent which indicated that delay in endorsement was not acceptable. The email also raised use of an escrow account as an alternative to the Simon Law trust account. (Exhibit 2.)

- On Tuesday, December 26, 2017, I responded by email and invited scheduling endorsement after the New Year, and discounted the escrow account option. (Exhibit 2.)

In response to your December 26, 2017 email, please consider the following:

1. The clients are available until Saturday. This is new information and it is different from the information provided by Mr. Greene. Regardless, Mr. Simon is out of town until after the New Year.

2. Loss of faith and trust. This is unfortunate, in light of the extraordinary result obtained by Mr. Simon on the client's behalf. However, Mr. Simon is still legally due a reasonable fee for the services rendered. NRS 18.015.

3. Steal the money. We should avoid hyperbole.

4. Time to determine undisputed amount. The time involved is a product of the immense amount of work involved in the subject case, which is clearly evident from the amazing monetary result, and the holidays. And, use of a lien is not "inconsistent with the attorney's professional responsibilities to the client." NRS 18.015(5).

5. Time to clear. The checks are not cashier's checks. (Exhibit 1.) Even a cashier's check of the size involved would be subject to a "large deposit item hold" per Regulation CC.

6. Interpleader. The interpleader option - deposit with the Court - was offered as an alternative to the Simon Law trust account, to address the loss of faith issue. The cost and time investment is also minimal.

7. Escrow alternative. Escrow does not owe the same duties and obligations as those that apply to an attorney and a trust account. Please compare, *Mark Properties v. National Title Co.*, 117 Nev. 941, 34 P.3d 587 (2001); with, Nev. Rule of Professional Conduct 1.15; SCR 78.5; etc. The safekeeping property duty is also typically seen as non-delegable.

   To protect everyone involved, the escrow would have to accept similar duties and obligations as would be owed by an attorney. That would be so far afield from the usual escrow obligations under *Mark*, that it is doubtful that an escrow could be arranged on shorter notice, if at all; and, such an escrow would probably come at great cost.

   We are not ruling out this option, we simply see it as un-obtainable. If you believe it is viable and wish to explore it further, please do so.

8. File suit ourselves. An independent action would be far more time consuming and expensive than interpleader. However, that is an option you will have to consider on your own.

9. Fiduciary duty. Simon Law is in compliance with all duties and obligations under the law. *See, e.g.*, NRS 18.015(5).

10. Client damages. I can see no discernable damage claim.

Please let me know if you are willing to discuss moving forward in a collaborative manner.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon
enclosures

C1-10269-I (07/16)

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

CLAIM NO.-SUB NO.	DATE ISSUED	ISSUING OFFICE	
9620221400-001	12/8/2017	HO	
POLICY NO.	DATE OF LOSS	ISSUED BY	PAYMENT SERVICE DATES
GLO-8250029-04	4/9/2016	8X	

INSURED

The Viking Corporation

NATURE OF PAYMENT

NO. 299 0007621

Settlement of all Fire sprinkler related claims

$ 288,572.00

TAX ID 880354871

VALID	PAY	KD	AMOUNT
PRDPD	60	CLM	$288,572.00

NON-NEGOTIABLE

THIS IS NOT A NEGOTIABLE INSTRUMENT

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

56-1544
441

NO. 299 0007621

CLAIM NO. 9620221400-001

CLAIM HANDLING OFFICE NO. 26

EXACTLY $288,572**** DOLLARS AND 00** CENTS

VOID AFTER 180 DAYS

DATE	AMOUNT
12/8/2017	$288,572.00

PAY TO THE ORDER OF Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgworth; American Grating, LLC; and the Law Office of Daniel Simon.

TO: JPMORGAN CHASE BANK, N.A.
COLUMBUS, OH

Christine K

⑈299000762 1⑈ ⑆044114543⑆ 528291201⑈

C1-10269-I (07/16)

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

CLAIM NO.-SUB NO.	DATE ISSUED	ISSUING OFFICE	
9260157452 -001	12/8/2017	HO	
POLICY NO.	DATE OF LOSS	ISSUED BY	PAYMENT SERVICE DATES
AUC-0144193-00	1/1/2016	8X	
INSURED	Viking Corporation		

NATURE OF PAYMENT

NO. 299 0007622

Settlement of all Fire sprinkler related claims

$ 5,711,428.00

TAX ID 880354871

VALID	PAY	KD	AMOUNT
UBRGP	60	CLM	$5,711,428.00

NON-NEGOTIABLE

THIS IS NOT A NEGOTIABLE INSTRUMENT

56-1544
441

ZURICH AMERICAN INSURANCE COMPANY

P.O. BOX 66946 CHICAGO, IL 60666-6946

NO. 299 0007622

CLAIM NO. 9260157452 -001

CLAIM HANDLING OFFICE NO. 26

EXACTLY $5,711,428**** DOLLARS AND 00** CENTS

VOID AFTER 180 DAYS

DATE	AMOUNT
12/8/2017	$5,711,428.00

PAY TO THE ORDER OF Edgeworth Family Trust and its Trustees Brian Edgeworth & Angela Edgworth; American Grating, LLC; and the Law Office of Daniel Simon.

TO: JPMORGAN CHASE BANK, N.A.
COLUMBUS, OH

⑈299000762 2⑈ ⑆044115443⑆ 528291201⑈

Re: Edgeworth v. Viking

Robert Vannah <rvannah@vannahlaw.com>

Tue 12/26/2017 12:18 PM

To:James R. Christensen <jim@jchristensenlaw.com>;

Cc:John Greene <jgreene@vannahlaw.com>; Daniel Simon <dan@simonlawlv.com>;

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad

On Dec 26, 2017, at 10:46 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Bob,
>
> Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.
>
> Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.
>
> Let's stay in touch this week and see if we can get something set up for after the New Year.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.

Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
Subject: Re: Edgeworth v. Viking

Are you agreeable to putting this into an escrow account? The client does not want this money placed into Danny Simon's account. How much money could be immediately released? $4,500,000? Waiting for any longer is not acceptable. I need to know right after Christmas.

Sent from my iPad

On Dec 19, 2017, at 2:36 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> Folks,
>
> Simon Law is working on the final bill. That process may take a week or two, depending on holiday staffing, etc.
>
> The checks can be endorsed and deposited into trust before or after the final bill is generated-the only impact might be on the time horizon regarding when funds are available for disbursement.
>
> If the clients are ok with adding in a week or so of potential delay, then Simon Law has no concerns. As a practical matter, if the clients are not available to endorse until after New Year, then the discussion is probably moot anyway.
>
> Any concerns, please let me know.
>
> Happy Holidays!
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Monday, December 18, 2017 1:59:02 PM
To: James R. Christensen
Subject: Fwd: Edgeworth v. Viking

Jim, Bob wanted you to see this, and I goofed on your email in the original mailing. John

---------- Forwarded message ----------
From: John Greene <jgreene@vannahlaw.com>
Date: Mon, Dec 18, 2017 at 1:56 PM
Subject: Re: Edgeworth v. Viking
To: Daniel Simon <dan@simonlawlv.com>
Cc: Robert Vannah <rvannah@vannahlaw.com>, jim@christensenlaw.com

Danny:

We'll be in touch regarding when the checks can be endorsed. In the meantime, we need to know exactly how much the clients are going to get from the amount to be deposited. In other words, you have mentioned that there is a disputed amount for your fee. You also mentioned in our conversation that you wanted the clients to endorse the settlement checks before an undisputed amount would be discussed or provided. The clients are entitled to know the exact amount that you are going to keep in your trust account until that issue is resolved. Please provide this information, either directly or through Jim. Thank you.

John

On Mon, Dec 18, 2017 at 1:14 PM, Daniel Simon <dan@simonlawlv.com> wrote:

> Thanks for returning my call. You advised that the clients were unable to execute the settlement checks until after the New Year. Obviously, we want to deposit the funds in the trust account to ensure the funds clear, which could take 7-10 days after I can deposit the checks. I am available all week this week, but will be out of the office starting this Friday until after the New Year. Please confirm how you would like to handle. Thanks!
>
> <image001.jpg>

--
John B. Greene, Esq.
VANNAH & VANNAH
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101
Phone: (702) 369-4161
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Las Vegas, Nevada 89101
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Fax: (702) 369-0104
jgreene@vannahlaw.com

From: Daniel Simon
Sent: Monday, December 18, 2017 11:03 AM
To: John Greene <jgreene@vannahlaw.com>
Cc: Daniel Simon <dan@simonlawlv.com>
Subject: Edgeworth v. Viking

I have received the settlement checks. Please have the client's come in to my office to sign so I can promptly put them in my trust account. Thanks!!

DANIEL S. SIMON
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DAN@SIMONLAWLV.COM

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 XI** **BATES NO. AA002043 - 2197**

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Rosa Solis-Rainey, Bar No. 7921
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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

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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
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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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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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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
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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
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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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2020-09-24	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
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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 *Simon* 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

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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
2020-05-14	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

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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 *Simon* I	XXI	AA004255 – 4271

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2020-11-03	Notice of Appeal (Edgeworths)	XXI	AA004252 – 4254
2020-11-02	Notice of Appeal (Vannah)	XXI	AA004250 – 4251
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
2020-10-27	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

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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 Mots. 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

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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

Exhibit 13

ATLN
DANIEL S. SIMON, ESQ.
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC.; Plaintiffs, vs. LANGE PLUMBING, L.L.C.; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X

NOTICE OF AMENDED 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 total lien, in the amount of $2,345,450.00, less payments made 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

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rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office of Daniel S. Simon in the sum of $76,535.93, which remains outstanding.

The Law Office of Daniel S. Simon claims a lien in the above amount, which is a reasonable fee for the services rendered by the Law Office of Daniel S. Simon on any settlement funds, plus outstanding court costs and out-of-pocket costs currently in the amount of $76,535.93, and which are continuing to accrue, as advanced by the Law Office of Daniel S. Simon in an amount to be determined upon final resolution. The above amount remains due, owing and unpaid, for which amount, plus interest at the legal rate, lien is claimed.

This lien, pursuant to N.R.S. 18.015(3), attaches 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.

Dated this 2nd day of January, 2018.

THE LAW OFFICE OF DANIEL S. SIMON,
A PROFESSIONAL CORPORATION

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Nevada Bar No. 4750
ASHLEY M. FERREL, ESQ.
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CERTIFICATE OF E-SERVICE & U.S. MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 2nd 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
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Attorney for Defendant
Lange Plumbing, LLC

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
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Attorney for Third Party Defendant
Giberti Construction, LLC

Janet C. Pancoast, Esq.
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Attorney for Defendant
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

Randolph P.Sinnott, Esq.
SINNOTT, PUEBLA, CAMPAGNE
& CURET, APLC
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Senior Claims Examiner for
Kinsale Insurance Company

An Employee of SIMON LAW

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CERTIFICATE OF U.S. MAIL

I hereby certify that on this 2nd 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

Edgeworth Family Trust
645 Saint Croix Street
Henderson, Nevada 89012

Bob Paine
Zurich North American Insurance Company
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Chicago, IL 60606
Claims Adjustor for
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Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

An Employee of SIMON LAW

Exhibit 14

COMP
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JOHN B. GREENE, ESQ.
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, d/b/a SIMON LAW; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: Department 14 **COMPLAINT**

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Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants, complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON (SIMON) is an attorney licensed to practice law in the State of Nevada and doing business as SIMON LAW.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

> [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

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6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of $550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled $486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages.

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11. SIMON was aware that PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by PLAINTIFFS accrued interest.

12. As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017, and thereafter blossomed from one of mere property damage to one of significant and additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the CONTRACT. In short, SIMON wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However, neither PLAINTIFFS nor SIMON agreed on any terms.

13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. The proposed fees and costs were in addition to the $486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in the LITIGATION.

14. A reason given by SIMON to modify the CONTRACT was that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees

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and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following the flooding event.

16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS paid. There is nothing in the computation of damages signed by and served by SIMON to reflect fees and costs other than those contained in his invoices that were presented to and paid by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let alone those in excess of $1,000,000.00.

17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr. Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week."

18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide

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PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept $550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

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26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of $15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of $15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, $550.00 per hour for SIMON'S legal services performed in the LITIGATION.

33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, $550.00 per hour for a total of $486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

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35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at $550.00 per hour; since SIMON billed, and PLAINTIFFS paid, $550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

39. Pursuant to the CONTRACT, SIMON agreed to be paid $550.00 per hour for his services, nothing more.

40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or before September 27, 2017, had already been produced to the defendants.

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41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

42. Despite SIMON'S knowledge that he has billed for and been paid in full for his services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd produced all of his billings through September of 2017, SIMON has refused to agree to either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFFS' property rights.

44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of $15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of $15,000;
3. Punitive damages in an amount in excess of $15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;

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5. Costs of suit; and,

6. For such other and further relief as the Court may deem appropriate.

DATED this 3 day of January, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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Exhibit 15

ACOM
ROBERT D. VANNAH, ESQ.
Nevada Bar. No. 002503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
VANNAH & VANNAH
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101
Telephone: (702) 369-4161
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jgreene@vannahlaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XIV Consolidated with CASE NO.: A-16-738444-C DEPT. NO.: X **AMENDED COMPLAINT**

Plaintiffs EDGEWORTH FAMILY TRUST (EFT) and AMERICAN GRATING, LLC (AGL), by and through their undersigned counsel, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of **VANNAH & VANNAH**, and for their causes of action against Defendants, complain and allege as follows:

1. At all times relevant to the events in this action, EFT is a legal entity organized under the laws of Nevada. Additionally, at all times relevant to the events in this action, AGL is a domestic limited liability company organized under the laws of Nevada. At times, EFT and AGL are referred to as PLAINTIFFS.

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2. PLAINTIFFS are informed, believe, and thereon allege that Defendant DANIEL S. SIMON is an attorney licensed to practice law in the State of Nevada. Upon further information and belief, PLAINTIFFS are informed, believe, and thereon allege that Defendant THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, is a domestic professional corporation licensed and doing business in Clark County, Nevada. At times, Defendants shall be referred to as SIMON.

3. The true names of DOES I through X, their citizenship and capacities, whether individual, corporate, associate, partnership or otherwise, are unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names. PLAINTIFFS are informed, believe, and thereon allege that each of the Defendants, designated as DOES I through X, are or may be, legally responsible for the events referred to in this action, and caused damages to PLAINTIFFS, as herein alleged, and PLAINTIFFS will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

4. That the true names and capacities of Defendants named herein as ROE CORPORATIONS I through X, inclusive, are unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names. PLAINTIFF are informed, believe, and thereon allege that each of the Defendants designated herein as a ROE CORPORATION Defendant is responsible for the events and happenings referred to and proximately caused damages to PLAINTIFFS as alleged herein. PLAINTIFFS ask leave of the Court to amend the Complaint to insert the true names and capacities of ROE CORPORATIONS I through X, inclusive, when the same have been ascertained, and to join such Defendants in this action.

5. DOES I through V are Defendants and/or employers of Defendants who may be liable for Defendant's negligence pursuant to N.R.S. 41.130, which states:

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> [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

6. Specifically, PLAINTIFFS allege that one or more of the DOE Defendants was and is liable to PLAINTIFFS for the damages they sustained by SIMON'S breach of the contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

7. ROE CORPORATIONS I through V are entities or other business entities that participated in SIMON'S breach of the oral contract for services and the conversion of PLAINTIFFS personal property, as herein alleged.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C (the LITIGATION), with a trial date of January 8, 2018. A settlement in favor of PLAINTIFFS for a substantial amount of money was reached with defendants prior to the trial date.

9. At the outset of the attorney-client relationship, PLAINTIFFS and SIMON orally agreed that SIMON would be paid for his services at an hourly rate of $550 and that fees and costs would be paid as they were incurred (the CONTRACT). The terms of the CONTRACT were never reduced to writing.

10. Pursuant to the CONTRACT, SIMON sent invoices to PLAINTIFFS on December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed PLAINTIFFS totaled $486,453.09. PLAINTIFFS paid the invoices in full to SIMON. SIMON also submitted an invoice to PLAINTIFFS in October of 2017 in the amount of

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$72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to PLAINTIFFS, despite a request to do so. It is unknown to PLAINTIFFS whether SIMON ever disclosed the final invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages.

11. SIMON was aware that PLAINTIFFS were required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that the loans secured by PLAINTIFFS accrued interest.

12. As discovery in the underlying LITIGATION neared its conclusion in the late fall of 2017, and thereafter blossomed from one of mere property damage to one of significant and additional value, SIMON approached PLAINTIFFS with a desire to modify the terms of the CONTRACT. In short, SIMON wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from PLAINTIFFS over the previous eighteen (18) months. However, neither PLAINTIFFS nor SIMON agreed on any terms.

13. On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. The proposed fees and costs were in addition to the $486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in the LITIGATION.

14. A reason given by SIMON to modify the CONTRACT was that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given by SIMON was that he felt his work now had greater value than the $550.00 per hour that

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was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to PLAINTIFFS for their signatures.

15. Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following the flooding event.

16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS paid. There is nothing in the computation of damages signed by and served by SIMON to reflect fees and costs other than those contained in his invoices that were presented to and paid by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let alone those in excess of $1,000,000.00.

17. Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr. Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week."

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18. Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.

19. When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused, and continues to refuse, to agree to release the full amount of the settlement proceeds to PLAINTIFFS. Additionally, SIMON refused, and continues to refuse, to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds.

20. PLAINTIFFS have made several demands to SIMON to comply with the CONTRACT, to provide PLAINTIFFS with a number that reflects the undisputed amount of the settlement proceeds, and/or to agree to provide PLAINTIFFS settlement proceeds to them. To date, SIMON has refused.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

21. PLAINTIFFS repeat and reallege each allegation set forth in paragraphs 1 through 20 of this Complaint, as though the same were fully set forth herein.

22. PLAINTIFFS and SIMON have a CONTRACT. A material term of the CONTRACT is that SIMON agreed to accept $550.00 per hour for his services rendered. An additional material term of the CONTRACT is that PLAINTIFFS agreed to pay SIMON'S invoices as they were submitted. An implied provision of the CONTRACT is that SIMON owed, and continues to owe, a fiduciary duty to PLAINTIFFS to act in accordance with PLAINTIFFS best interests.

23. PLAINTIFFS and SIMON never contemplated, or agreed in the CONTRACT, that SIMON would have any claim to any portion of the settlement proceeds from the LITIGATION.

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24. PLAINTIFFS paid in full and on time all of SIMON'S invoices that he submitted pursuant to the CONTRACT.

25. SIMON'S demand for additional compensation other than what was agreed to in the CONTRACT, and than what was disclosed to the defendants in the LITIGATION, in exchange for PLAINTIFFS to receive their settlement proceeds is a material breach of the CONTRACT.

26. SIMON'S refusal to agree to release all of the settlement proceeds from the LITIGATION to PLAINTIFFS is a breach of his fiduciary duty and a material breach of the CONTRACT.

27. SIMON'S refusal to provide PLAINTIFFS with either a number that reflects the undisputed amount of the settlement proceeds that PLAINTIFFS are entitled to receive or a definite timeline as to when PLAINTIFFS can receive either the undisputed number or their proceeds is a breach of his fiduciary duty and a material breach of the CONTRACT.

28. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred compensatory and/or expectation damages, in an amount in excess of $15,000.00.

29. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS incurred foreseeable consequential and incidental damages, in an amount in excess of $15,000.00.

30. As a result of SIMON'S material breach of the CONTRACT, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

31. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 30, as set forth herein.

32. PLAINTIFFS orally agreed to pay, and SIMON orally agreed to receive, $550.00 per hour for SIMON'S legal services performed in the LITIGATION.

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33. Pursuant to four invoices, SIMON billed, and PLAINTIFFS paid, $550.00 per hour for a total of $486,453.09, for SIMON'S services in the LITIGATION.

34. Neither PLAINTIFFS nor SIMON ever agreed, either orally or in writing, to alter or amend any of the terms of the CONTRACT.

35. The only evidence that SIMON produced in the LITIGATION concerning his fees are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS, which PLAINTIFFS paid in full.

36. SIMON admitted in the LITIGATION that the full amount of his fees incurred in the LITIGATION was produced in updated form on or before September 27, 2017. The full amount of his fees, as produced, are the amounts set forth in the invoices that SIMON presented to PLAINTIFFS and that PLAINTIFFS paid in full.

37. Since PLAINTIFFS and SIMON entered into a CONTRACT; since the CONTRACT provided for attorneys' fees to be paid at $550.00 per hour; since SIMON billed, and PLAINTIFFS paid, $550.00 per hour for SIMON'S services in the LITIGATION; since SIMON admitted that all of the bills for his services were produced in the LITIGATION; and, since the CONTRACT has never been altered or amended by PLAINTIFFS, PLAINTIFFS are entitled to declaratory judgment setting forth the terms of the CONTRACT as alleged herein, that the CONTRACT has been fully satisfied by PLAINTIFFS, that SIMON is in material breach of the CONTRACT, and that PLAINTIFFS are entitled to the full amount of the settlement proceeds.

THIRD CLAIM FOR RELIEF

(Conversion)

38. PLAINTIFFS repeat and reallege each allegation and statement set forth in Paragraphs 1 through 37, as set forth herein.

39. Pursuant to the CONTRACT, SIMON agreed to be paid $550.00 per hour for his services, nothing more.

40. SIMON admitted in the LITIGATION that all of his fees and costs incurred on or before September 27, 2017, had already been produced to the defendants.

41. The defendants in the LITIGATION settled with PLAINTIFFS for a considerable sum. The settlement proceeds from the LITIGATION are the sole property of PLAINTIFFS.

42. Despite SIMON'S knowledge that he has billed for and been paid in full for his services pursuant to the CONTRACT, that PLAINTIFFS were compelled to take out loans to pay for SIMON'S fees and costs, that he admitted in court proceedings in the LITIGATION that he'd produced all of his billings through September of 2017, SIMON has refused to agree to either release all of the settlement proceeds to PLAINTIFFS or to provide a timeline when an undisputed amount of the settlement proceeds would be identified and paid to PLAINTIFFS.

43. SIMON'S retention of PLAINTIFFS' property is done intentionally with a conscious disregard of, and contempt for, PLAINTIFFS' property rights.

44. SIMON'S intentional and conscious disregard for the rights of PLAINTIFFS rises to the level of oppression, fraud, and malice, and that SIMON has also subjected PLAINTIFFS to cruel, and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property, PLAINTIFFS have been required to retain an attorney to represent their interests. As a result, PLAINTIFFS are entitled to recover attorneys' fees and costs.

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FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. PLAINTIFFS repeat and reallege each and every statement set forth in Paragraphs 1 through 45, as though the same were fully set forth herein.

47. In every contract in Nevada, including the CONTRACT, there is an implied covenant and obligation of good faith and fair dealing.

48. The work performed by SIMON under the CONTRACT was billed to PLAINTIFFS in several invoices, totaling $486,453.09. Each invoice prepared and produced by SIMON prior to October of 2017 was reviewed and paid in full by PLAINTIFFS within days of receipt.

49. Thereafter, when the underlying LITIGATION with the Viking defendant had settled, SIMON demanded that PLAINTIFFS pay to SIMON what is in essence a bonus of over a million dollars, based not upon the terms of the CONTRACT, but upon SIMON'S unilateral belief that he was entitled to the bonus based upon the amount of the Viking settlement.

50. Thereafter, SIMON produced a super bill where he added billings to existing invoices that had already been paid in full and created additional billings for work allegedly occurring after the LITIGATION had essentially resolved. The amount of the super bill is $692,120, including a single entry for over 135 hours for reviewing unspecified emails.

51. If PLAINTIFFS had either been aware or made aware during the LITIGATION that SIMON had some secret unexpressed thought or plan that the invoices were merely partial invoices, PLAINTIFFS would have been in a reasonable position to evaluate whether they wanted to continue using SIMON as their attorney.

52. When SIMON failed to reduce the CONTRACT to writing, and to remove all ambiguities that he claims now exist, including, but not limited to, how his fee was to be

determined, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

53. When SIMON executed his secret plan and went back and added substantial time to his invoices that had already been billed and paid in full, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

54. When SIMON demanded a bonus based upon the amount of the settlement with the Viking defendant, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

55. When SIMON asserted a lien on PLAINTIFFS property, he knowingly did so in an amount that was far in excess of any amount of fees that he had billed from the date of the previously paid invoice to the date of the service of the lien, that he could bill for the work performed, that he actually billed, or that he could possible claim under the CONTRACT. In doing so, SIMON failed to deal fairly and in good faith with PLAINTIFFS. As a result, SIMON breached the implied covenant of good faith and fair dealing.

56. As a result of SIMON'S breach of the implied covenant of good faith and fair dealing, PLAINTIFFS are entitled to damages for SIMON denying PLAINTIFFS to the full access to, and possession of, their property. PLAINTIFFS are also entitled to consequential damages, including attorney's fees, and emotional distress, incurred as a result of SIMON'S breach of the implied covenant of good faith and fair dealing, in an amount in excess of $15,000.00.

57. SIMON'S past and ongoing denial to PLAINTIFFS of their property is done with a conscious disregard for the rights of PLAINTIFFS that rises to the level of oppression, fraud, or malice, and that SIMON subjected PLAINTIFFS to cruel and unjust, hardship. PLAINTIFFS are therefore entitled to punitive damages, in an amount in excess of $15,000.00.

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50. PLAINTIFFS have been compelled to retain an attorney to represent their interests in this matter. As a result, PLAINTIFFS are entitled to an award of reasonable attorneys fees and costs.

PRAYER FOR RELIEF

Wherefore, PLAINTIFFS pray for relief and judgment against Defendants as follows:

1. Compensatory and/or expectation damages in an amount in excess of $15,000;
2. Consequential and/or incidental damages, including attorney fees, in an amount in excess of $15,000;
3. Punitive damages in an amount in excess of $15,000;
4. Interest from the time of service of this Complaint, as allowed by N.R.S. 17.130;
5. Costs of suit; and,
6. For such other and further relief as the Court may deem appropriate.

DATED this 15 day of March, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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Exhibit 16

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee

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was ever brought up at that time, let alone ever agreed to.

7. SIMON never reduced the terms of our fee agreement to writing. However, that formality didn't matter to us, as we each recognized what the terms of the agreement were and performed them accordingly. For example, SIMON billed us at an hourly rate of $550, his associate billed us at $275 per hour, costs incurred were billed to us, and I paid SIMON all of the invoices in full in less than one week from the date they were received.

8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in those invoices totaled $486,453.09. There were hundreds of entries in these invoices. The hourly rate that SIMON billed us in all of his invoices was at $550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of approximately $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I don't know whether SIMON ever disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages. I do know, however, that when SIMON produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018, for an additional $692,120 in fees, his hourly rate for all of his work was billed out at our agreed to rate of $550.

9. From the beginning of his representation of us, SIMON was aware that I was required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that these loans accrued interest. It's not something for SIMON to gloat over or question my business sense about, as I was doing what I had to do to with the options available to me. On that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

10. Plus, SIMON didn't express an interest in taking what amounted to a property

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damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

11. Please understand that I was incredibly involved in this litigation in every respect. Regrettably, it was and has been my life for nearly two years. While I don't discount some of the good work SIMON performed, I was the one who dug through the thousands of documents and found the trail that led to the discovery that Viking had a bad history with these sprinklers, and that there was evidence of a cover up. I was the one who located the prior case involving Viking and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's insurer), and from fire marshals, etc. I was also the one who did the research and made the calls to the scores of people who'd had hundreds of problems with these sprinklers and who had knowledge that Viking had tried to cover this up for years. This was the work product that caused this case to grow into the one that it did.

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email

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was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

15. Following that meeting, SIMON would not let the issue alone, and he was relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never agreed on any terms to alter, modify, or amend our fee agreement.

16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. We were stunned to receive this letter. At that time, these additional "fees" were not based upon invoices submitted to us or detailed work performed. The proposed fees and costs were in

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addition to the $486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the invoices that SIMON had presented to us, the evidence that we understand SIMON produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages that SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

17. A reason given by SIMON to modify the fee agreement was that he claims he under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. We were again stunned to learn of SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to us for our signatures. This, too, came with a high-pressure approach by SIMON. This new approach also came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly $500,000 from us. He said that "any judge" and "the bar" would give him the contingency agreement that he now wanted, that he was now demanding he get, and the fee that he said he was now entitled to receive.

18. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to

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be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe until the claims against defendant Viking were resolved. How can that be? All of our claims against Viking and Lange were set to go to trial in February of this year.

19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be billing more hours that he hadn't yet written down, or that additional invoices for fees or costs would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS before he could determine the amount of his fee. At that time, I felt I had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the LITIGATION.

20. Despite SIMON'S requests and demands on us for the payment of more in fees, we refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and time that he'd never previously produced to us and that never saw the light of day in the LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was

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nothing short of stealing what was ours.

21. When SIMON refused to release the full amount of the settlement proceeds to us without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable alterative available to us was to file a complaint for damages against SIMON.

22. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to have the settlement funds deposited like they were, as SIMON flatly refused to give us what was ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

23. In Motions filed in another matter, SIMON makes light of the facts that we haven't fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've already had to pay to get someone else up to speed. Plus, we've already paid nearly $500,000 to SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION were, for all intents and purposes, resolved. Since we've already paid him for this work to resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

24. Please understand that we've paid SIMON in full every penny of every invoice that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall. I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the LITIGATION.

25. I also feel that it's remarkable and so wrong that an attorney can agree to receive an hourly rate of $550 an hour, get paid $550 an hour to the tune of nearly $500,000 for a period of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless

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we agree to pay him a bonus that ranges between $692,000 to $1.9 million dollars.

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls. SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit

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from the charity are minors, an accusation of this severity. from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into. I politely sent SIMON an email on December 5. 2017. telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this. as the email. which he denied ever sending. was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON. though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

27. We did not cause the Complaint or the Amended Complaint to be filed against SIMON or his business entities to prevent him from participating in any public forum. We also didn't bring a lawsuit to prevent SIMON from being paid what we agreed that he should be paid under the CONTRACT.

28. I ask this Court to deny SIMON'S anti-SLAPP Motion and give us the right to

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present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

Subscribed and Sworn to before me
this 15 day of March 2018, by BRIAN EDGEWORTH.

Notary Public in and for said County and State

DANA FARSTAD
Notary Public State of Nevada
No. 13-10367-1
My Appt. Exp. March 21, 2021

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Exhibit 17

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
MONDAY, AUGUST 27, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

damages. Is that what you mean?

Q Yep.

A Yes, they're expenses.

Q And so everybody -- because you get involved in these cases, you forget maybe some things aren't super clear when you start, but you had about $500,000 in hard cost damage to your house, and then some future hard card cost damage that you needed to repair, correct?

A Yeah. It was between 3 and 8. You know, there was a lot of different estimates, but that's fair.

Q And then ultimately, you had several hundred thousand dollars' worth of interest you owed?

A Highly likely over two years, yes.

Q And those future damages, like replacing your kitchen cabinets?

A Yes.

Q Have you replaced those kitchen cabinets?

A Yes. We've paid -- well, no. They haven't replaced them. They've been paid to make them. They haven't come back to put them in.

Q So a line item of damages that you collected for haven't been replaced yet?

A No.

Q They're on their way, but just not yet?

A I don't know. I haven't called the guy.

Q All right.

A They better be on their way.

Q And as of June 5th, not even the scope of Mr. Simon's representation has been determined, because he doesn't know if he's supposed -- you don't know if he's going to write your loan agreements or you should have somebody else?

A Correct.

Q Was in flux?

A Correct.

MR. CHRISTIANSEN: And Exhibit 80, Mr. Greene. Bate stamps 3425 and 6.

BY MR. CHRISTIANSEN:

Q And so we're clear, did you get a bill in June for Mr. Simon's work in May?

A June of 2016, sir?

Q Yes, sir.

A No.

Q Did you get a bill in July for Mr. Simon's work in May or June?

A No.

Q Did you get a bill in August for May, June or July?

A No.

Q September?

A No.

Q October?

A No.

Q December?
A Yes.
Q And December of 2016 is the first time you saw a bill with the number 550 on it. It's the first bill you saw, correct?
A Yes. Correct.
Q Seven months after he started representing you?
A Correct.
Q And can we agree that that bill did not contain all of Mr. Simon's time?
A I think it was pretty generous.
Q I don't understand that answer, sir.
A I think it encompassed all his time and there was blocks that looked generous, the amount of time.
THE COURT: What do you mean by generous, sir?
THE WITNESS: I mean, like sometimes a lawyer will write a letter and say it took them two hours, where I could pound it out on typewriter in 15 minutes. The two hours seems generous. It seems aggressive.
THE COURT: So, when you say generous, you mean generous in like he's exaggerating the time, you thought?
THE WITNESS: Well, it's typical on lawyer's bills, they bill in their favor. They bill blocks, and it's a generous amount of time.
THE COURT: So, you're saying the amount was more than the work he did?
THE WITNESS: I'm not contesting that at all. He -- I was just

asking -- answering his question. He said did I --

THE COURT: Right. But I don't know what you mean --

THE WITNESS: Oh.

THE COURT: -- by generous. I don't know what you're -- I mean, are you saying that the amount that you paid was more than the work that was done?

THE WITNESS: I think the number of hours on the bill was generous. It's fair. It's a fair amount --

MR. VANNAH: She doesn't understand --

THE WITNESS: -- to do the work that was done.

MR. VANNAH: -- what you mean by generous.

THE COURT: Yeah. Is it fair or --

MR. VANNAH: Is he being charitable to you --

THE WITNESS: It's fair.

THE COURT: -- generous?

MR. VANNAH: -- that he doesn't --

THE WITNESS: It was not charitable in my favor. It was likely on the -- skewing on the side towards Mr. Simon's favor for the hours --

THE COURT: Okay.

THE WITNESS: -- but I'm not contesting that.

THE COURT: No. I understand that, but when you say that --

THE WITNESS: Oh, I'm sorry.

THE COURT: -- I need to understand exactly what you're saying. And then you turn around and say fair. I don't know which one

you mean. Okay, Mr. Christensen. Sorry, I was just --

MR. CHRISTIANSEN: That's okay, Your Honor.

THE COURT: -- for the Court's clarification.

MR. CHRISTIANSEN: I didn't understand, either.

THE COURT: Okay.

MR. CHRISTIANSEN: So that's why I asked.

BY MR. CHRISTIANSEN:

Q I -- in the Mark Katz email --

A Uh-huh.

Q -- you're talking about starting to borrow money. Is that as I understand it, Mr. Edgeworth?

A Correct.

Q You say you want to do it by Friday, 350,000 plus however much I need to pay legal fees during the insurance company's delays.

A Correct.

Q You didn't know how much you were going to have to pay?

A No idea.

Q You didn't write a rate, correct?

A A rate of interest?

Q A rate of hours, per hour what you were going to pay?

A Oh, no.

Q And insurance company delays, that reflects again sort of this state of in flux the case was in. Simon's trying to get insurance companies to step in and do the right thing. They don't, so he's gotta sue. Then he sort of tells you, hey, maybe the lawyers will get involved,

and they'll get their insurance companies to do the right thing. That's what you meant when you said insurance company delays?

A No. At this point, he hadn't sued. At that point --

Q No.

A -- insure --

Q I'm aware of this. This was before he filed suit, but --

A Correct. Yes.

Q -- it just -- this just reflects the relationship is in flux, correct?

A Yeah. Represents that the insurance companies just aren't paying. They're delaying the payment of the claim --

Q Got it.

A -- that inevitably, they'll have to pay.

Q Well, not inevitably. If you prevail on the lawsuit, they have to pay. Insurance companies -- I bet you I can even get Mr. Vannah to agree they don't pay most of the time, unless he makes them.

MR. VANNAH: No, I -- Your Honor, would you -- I don't want you to think I'm rude. I just want to go to the bathroom. I didn't want to interrupt anything.

THE COURT: Okay.

MR. CHRISTIANSEN: Is -- this maybe is a good time?

THE COURT: This is a good time, Mr. Vannah. I'm glad you brought that up. We sometimes get caught up in not doing it. All right. So, we'll be at recess about 15 minutes.

MR. GREENE: Thank you, Your Honor.

THE COURT: So, we'll come back at a quarter to.

MR. VANNAH: Thank you, Your Honor.

[Recess at 2:36 p.m., recommencing at 2:47 p.m.]

THE COURT: A-738444, Edgeworth Family Trust; American Grating v. Daniel Simon, doing business as Simon Law.

Mr. Christiansen, you may resume.

MR. CHRISTIANSEN: Thank you, Your Honor.

BY MR. CHRISTIANSEN:

Q Mr. Edgeworth, I want to direct your attention back to the affidavit you signed February the 2nd of this year. And it was signed and attached as an exhibit to briefs dealing with the attorney's lien that Mr. Simon filed in your Edgeworth v. Viking case; does that sound familiar to you?

A The attorney's briefs, whoa. That's --

Q It was attached to something Mr. Vannah and Mr. Greene filed on your behalf --

A Okay.

Q -- arguing -- we've argued about a bunch of different things, but relative to the lien.

A Okay.

Q Make sense?

A Okay.

Q All right. So, I can make sure I show you Mr. Greene's 16, the day, sir, is the 2nd of February, this is the one you and I were talking about; is that right?

A It's the 2nd of February, correct, yes.

Did I read that correctly?

A Yes, you did.

Q And then -- so just from the first two sentences, as of August 22nd, 2017, you never had a structured discussion about going after punitives, correct?

A Correct.

Q No terms had been reached, correct?

A Correct.

Q Then you go on to say, obviously, that could not have been done earlier, since -- I think again that's just a typo -- who would have thought this case would meet the hurdle of punitives at the start?

Did I read that correctly?

A Correct.

Q So, in addition to saying this is your first, or this is a stab at a constructive discussion about punitives, you concede from that sentence, that way back in May of 2016, at the outset of the litigation there was no way to contemplate the case being punitive in nature?

A Correct.

Q So no terms could have been reached?

A Correct.

Q Then you go down to say, I could also swing hourly for the whole case (unless if I'm off what this is going cost). I would likely borrow another 450,000 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.

Did I read that accurately, sir?

A Yes, you did.

Q Doubt we will get Kinsale, that's one of the insurance companies --

A That's Lange's insurance.

Q Thank you. To settle for enough to really finance this. Did I read that correctly?

A Correct.

Q So in other words, that's you saying, I doubt we can get the insurance companies to settle for enough to finance me [Brian], going and borrowing more money to keep paying for this case hourly?

A Incorrect.

Q I would have to pay the first 750,000 or so back to Collin and Margaret, and why would Kinsale sell it for 1 MM, when their exposure is only 1 MM. 1 MM means a million, I assume?

A Yes, it is.

Q Did I read that all correctly?

A Correct.

Q And this is the email you wrote after the case had blossomed and one of the Defendants had offered a considerable sum of money, right?

A This is not written after the case had -- or after the Defendants had offered a considerable sum of money.

Q That's what you wrote in your affidavit, so I'm just asking you, is that your testimony?

A That's not what I wrote in my affidavit.
Q All right.
A It's commas, beside each of those four events.
Q Do you know what a register of actions is, sir?
A No.
Q That's like all of us can look on it and see what was done in a case and --
A Oh, I know what it is then, yeah --
MR. CHRISTIANSEN: It's Exhibit 63, Mr. Greene.
THE WITNESS: -- I have that link, yeah.
BY MR. CHRISTIANSEN:
Q And in your case, do you know how many entries are in the register of actions?
A A lot.
Q Who made all those entries? Whose work culminated in those entries, yours or Danny Simon's?
A Danny Simon filed them.
Q Danny Simon's works, what took this case in March for a million bucks, that you were willing to settle the whole thing for, to November in six, fair?
A His filings in court?
Q This case turned from a property damage claim to a punitive damage case, correct?
A I don't think we ever got a punitive damage case, no. There was potential, though.

Q Do you think Zurich paid 11, 12 times your property damage, because there's some like emotional distress attached to property damage?

A Zurich didn't pay 11 or 12 times my property damage, sir?

Q Zurich paid 6 million, right?

A Zurich paid $6 million, correct.

Q And your estimation of your property damage, all these documents I've been showing you, is about 500 grand, before you start adding in interest and things of that nature?

A Correct.

Q Right. You know, I know you're not a lawyer, that there's no emotional distress claim attaching to a property damage case, correct?

A Correct.

Q All right. And so, the difference between your hard costs and what you got reflects Danny Simon changing the nature of the claim, correct?

A I guess we disagree on why the parties settled, because my answer would be incorrect.

Q Okay. Well, we're going to have a lawyer from one of the parties come tell us why they settled. But they settled when there was a pending motion to strike their answer, correct?

A Correct.

Q They settled after Her Honor excluded one of their experts, because Danny Simon wrote a motion to exclude it, correct?

A Correct.

Q And they settled because there was a real risk their insured, Viking, would be hit with a punitive damage award, which is non-insurable, correct?

A I don't know that that's correct.

Q What don't you know was correct?

A You just said -- you said they settled because their insured was going to -- I don't know that that's correct. That's not my opinion on why they settled at all.

Q All right. One day after, just one day after your contingency email, I've got it somewhere, you did another email to Mr. Simon, with the spreadsheet of your view of the value of your case; do you remember that?

MR. CHRISTIANSEN: That's exhibit, Mr. Greene, 28, Bate stamp 400.

BY MR. CHRISTIANSEN:

Q August 23rd, Brian Edgeworth to Danny Simon?

A Yes.

Q Did this email, like two-thirds of these other emails, is after-hours; is that right, Mr. Edgeworth?

A I don't know if they're two-thirds after hours or not.

Q Did you write emails at all times of the day or night to Danny Simon?

A Yes. I would write emails at all times --

Q Did you call --

A -- day and night.

Q -- on a cell phone on all times day and night?
A Not all times, but, yes, after --
Q Weekends?
A -- business hours, definitely.
Q And what you say here is, we may be past the point of no return. What you mean by that is this case might have to go to trial, right?
A I don't know that that's what I meant, but --
Q The costs have added up so high I doubt they'll settle anyway -- I doubt they settle anyway, I apologize. This does not even include upgraded -- updated --
A Updated.
Q -- legal and experts, any of my time wasted, et cetera. I already owe Collin and Margaret over 85,000 now -- 850,000 now?
A Correct.
Q So you don't, at the time you author this, have a bill, or even an understanding of what the updated legal and expert fees are, correct?
A It's on the sheet, sir.
Q This does not even include updated, legal and experts. Okay. This is written August 23rd, the last legal cost you've got is July 31st. So, my question is -- the answer is, yes, you don't update to the day of the --
A Oh 31 to 23, correct.
Q And here you value your case, the one that you valued to a million bucks in March, at 3 million bucks, 3,078,000, right?

A I would agree if you use a different term than value. My damages, or costs at that point were this.

Q Right. And the biggest line item is the million-five stigma damage, Danny's book and brother-in-law found you, right?

A Correct.

Q Then you're pestering Mr. Simon during this time to give you -- pester is pejorative, I don't mean it that way, you're being proactive with Mr. Simon to give you bills during this timeframe, right?

A Yes, I was.

Q Because you knew that you could add the bills to your damages, and potentially recover those bills under the contract claim against Lange, right?

A That's not the reason I was being aggressive, but I agree with part of your statement, just not the first half of your question, that that was the reason I was being aggressive, asking for bills.

Q Reflective of that is the August 29, 2017 email from -- it looks like you must have sent it. It says, your office still not has cashed $170,000 check. And that's in like the subject line. And then Mr. Simon answers you back, I've been too busy with the Edgeworth case, fair?

A Correct.

Q You had your first mediation scheduled in this case October the 10th; is that right?

A I think it's the 20th, sir.

Q October the 20th?

A I think so. I could be wrong.

Q I think it's the 10th. If it's not the 10th Mr. Greene can correct me when I get done.

A The second one was November 10th?

Q That's accurate?

A Yes.

Q Okay. So, in anticipation of your first mediation had there been any monies offered, leading up to the mediation by any of the Defendants?

A No, I don't think so.

Q And going up to your first mediation you wrote Mr. Simon an email that talked about -- I'll just -- settlement tolerance for mediation.

MR. CHRISTIANSEN: Sorry, John, that's Exhibit 34.

THE COURT: Did you say 34, Mr. Christiansen?

MR. CHRISTIANSEN: It is. I can't read the little tiny numbers for the Bate stamp -- 408, Bate stamp 408.

THE CLERK: 406.

MR. CHRISTIANSEN: 406, sorry.

BY MR. CHRISTIANSEN:

Q Is this --

MR. CHRISTIANSEN: -- and it's 407, too, John.

BY MR. CHRISTIANSEN:

Q Look like one of your spreadsheets, sir?

A Yeah. Simon asked for this to be made, correct?

Q This is leading into mediation number one?

A Correct.

Q And you have sort of three columns, what's non-negotiable, in your view?

A Correct.

Q All right. And what's negotiable, or I think you say, limited tolerance for negotiation?

A Correct.

Q All right. Like the stigma damage, that's negotiable?

A Limited tolerance for negotiation, correct.

Q Trapped capital interest. That's a line item I've not seen before in any of your calculations. Is that something you created?

A Craig Marquis told us that we could claim that.

Q But you figured how much it was?

A Correct. Yes, I did.

Q And this is the first time it makes its way into one of your line items of damages?

A Correct. Or maybe not, but I'd have to look at all the spreadsheets that were made.

Q Prejudgment interest?

A Correct.

Q Well, what do you think you get 268,000 for in prejudgment interest?

A Well, if you prevail in a case -- if you prevail at the end of court you'll get judgment on -- you'll get judgment -- interest on the judgment amount --

Q Judgment exceeding --

A -- for the amount that --
Q -- half of your $500,000 property claim?
A What judgment? You're confusing me with the question.
Q Sure. Your property claim you told me is a $500,000 property claim, and you think you're going to get 270 grand in interest?
A If it's just simple math, sir. It says the assumptions over here, and then you just take the number, and it's just math from it.
Q See the first bill, it says legal bills? The first line, sorry.
A Yes.
Q That 518,000, that's not all attorney's fees, right; that's fees and costs lumped together?
A I think so.
Q And then do you see your comment out there to the right?
A Likely more comment.
Q So you authored this, you had no idea what was coming?
A Correct.
Q And you had no structured discussions with Danny about pursuing a punitive claim, correct?
A You asked two questions. Correct, I had no idea how many more hourly bills would be coming, and correct, we still hadn't had a structured conversation about how to convert into a punitive agreement, correct.
Q And the total -- I'm sorry, Mr. Edgeworth, I didn't ask you one I had. The total of your damages with the negotiable and non-negotiable items is just under 3.8 million?

A Other than the line items that are --

THE COURT: Under the line items what?

THE WITNESS: And the two on the side which may, or may not be able to be claimed, yes. See the two I said -- they destroyed the building reputation and, you know, nothing in here for the -- all the thousands of hours that have been wasted, so, yes.

BY MR. CHRISTIANSEN:

Q And at the very bottom here you write, I'm more interested in what we could get Kinsale to pay and still have a claim large enough against Viking. That's what you wanted to get -- Kinsale is, as you were told, is the Lange Plumbing insurance company?

A Insurance carrier.

Q So you wanted to get at Kinsale and try to settle them first?

A Correct. The same with that email you put up three or four ago, it's roughly saying the same thing. Let's get Kinsale to settle, because it's in their interest for me to pursue the claim against Viking; and they're not doing it at all. And then we use that money so that I don't have to take more loans. They're the weaker link of the two in the negotiation.

Q Right. You saw that from a business standpoint?

A Yes.

Q All right. It turns out you were wrong, right?

A Correct.

Q Mr. Simon was right, you were wrong?

A Mr. Simon didn't rebut that.

Q You wanted to go hard at Lange. Lange gave you, pursuant to advice by a different --

A This is --

Q -- office?

A -- not a mediation, a one-day mediation --

THE COURT: Okay, sir. You have to let him finish --

THE WITNESS: Oh, sorry. I'm sorry.

THE COURT: -- asking the question. Only one of you can talk --

THE WITNESS: I'm sorry --

THE COURT: -- at a time.

THE WITNESS: -- I haven't done this.

THE COURT: Okay. You need to let him finish. I told him the same thing earlier. It applies to you too. Mr. Christiansen?

MR. CHRISTIANSEN: Thank you, Your Honor.

BY MR. CHRISTIANSEN:

Q All right. How much did -- was offered at the October -- I think it's October 10, it you're right, it's October 20th -- what was offered at that mediation?

A I think very little. I think Viking -- I don't even remember. I think Lange said 25 grand. I'm not sure if Viking said anything, or -- I don't remember.

Q Okay. So nominal?

A Nominal, that's one, correct.

Q All right. Do you know what happened from a lawyer

standpoint, and a courtroom standpoint, between October and November, at the second mediation?

A Do I know --

Q Do you know what Danny did, or his office did?

A I know some of the things they did, yes.

Q And when you went to the November mediation, the case as it pertained to Viking resolved, right?

A Yeah. A week later, the mediation -- the mediator settlement you mean?

Q Yeah.

A Yes.

Q So we're clear on the mediator settlement -- let's just back up, we'll get you the -- in this case you provided an affidavit --

MR. CHRISTIANSEN: -- John, I 'm not sure which one, this is your group, it's in your list; 9, I think.

[Parties confer]

THE CLERK: Exhibit 9.

BY MR. CHRISTIANSEN:

Q You wrote an affidavit dated July 25th, 2017, and it's one of the exhibits I'm sure Mr. Greene will talk to you about. Do you remember authoring that?

A Yes.

MR. GREENE: Hey, Pete, that's not an affidavit, that's an email.

MR. CHRISTIANSEN: I apologize, an email.

BY MR. CHRISTIANSEN:

Q Just chronologically, that's all I want to question you about now, is what you wrote, it looks like items you were able to locate, or you thought were of some importance, and you wanted Danny and his office to look at, correct?

A Correct. I was passing on information.

Q Right. And that information came to you 15 days earlier from Ashley Ferrel, who sent you a Dropbox link, from the data doc?

A No, sir.

Q No?

A The email actually tells where that information would come from.

Q All right. Well, just help me this way --

A Okay.

Q -- Ashley's email is dated --

A Okay.

Q -- 15 days earlier than your email?

A Correct.

Q In Ms. Ferrel's email she provides a Dropbox link --

A Correct.

Q -- to the data dump that Viking, in the summer of 2017 finally gave up after a protective order was litigated in the litigation?

A Yeah. I think the data dump that they referenced, could come a little later when you dump like seven or 8,000, but the first two or 3,000 were in the --

Q And this is in Exhibit 80, as well. This is that same day, Danny tells Ashley to send to the experts and to Brian, the Dropbox link, and Ashley says to Danny, holy crap two words, punitive damages.

Did I read that correctly?

A You read it correctly, yes.

Q And at the mediation in November, the one that was successful getting you $6 million for your property damage claim, do you remember having a disagreement with Mr. Simon about what the mediator's proposal should be?

A I believe that was the next day or after, yes.

Q Right. You wanted the mediator to propose $5 million, right?

A Correct.

Q Danny said, no, let's make him force -- propose 6?

A Correct.

Q And the case settled for 6?

A Correct.

Q So between Danny's brother, the mediator's proposal, he made you two and a half million bucks, right?

A Not true. I wanted the 5 million for a different reason, but --

Q You wanted 5 more than 6; is that your testimony?

A No, it's not my testimony.

Q All right.

A I said I wanted the 5 in the agreement for a very specific reason.

Q For example, you had all kinds of ideas in this case, and

before the first mediation you wrote, let's go hard at Lange, right out the gate and ignore Viking. Lange doesn't settle until after Viking pays you 6 million, right?

A Correct.

Q Then after the November 10th mediation --

MR. CHRISTIANSEN: -- Exhibit 36, Mr. Greene, Bate 409.

BY MR. CHRISTIANSEN:

Q Danny said, I want authority to tell the mediator to propose 6. You said he should have proposed 5, but you agreed he could do 6, and then Viking paid 6?

A No. The mediator -- this is the day after that -- the mediator put the 6 down. The arguments was over how long the two parties got to respond to him. There was something on the docket that made the date, it shouldn't be two weeks or whatever, it should be November 15th. They discussed that. We left, and I'm like I wish you would have proposed 5, to see if they'd bite, and then this is -- I agree, he should have proposed 5.

Q But Mr. Simon got you 6, based on his expertise?

A The settlement was offered at 6, correct.

Q And that was Danny's suggestion --

A It was Floyd --

Q -- not yours?

A -- Hill, actually. There's a mediator guy --

Q Yeah. I know all about the mediators. You wanted 5, Danny told him 6, he proposed 6, and they accepted 6; all true?

A I didn't want 5, I wanted 5 in the proposal, that's correct.

Q All right. Now, let's fast forward, I'm going to leave some of this here, and try to get you through the timeline, Mr. Edgeworth, before the end of today. And your last estimate was October the 5th, and your case was worth, in your view, $3,764,000 and change. The case settles, on or near November the 10th, right, within about a week?

A About, yeah.

Q Like when I say settle so I'm being technical with you, the figure was agreed to? The mediator's proposal was accepted?

A November 15th.

Q And after that you went to Mr. Simon's office and had a meeting. On the day he had court he had to come see Judge Jones, and do some things in your case?

A Yeah. He texted me.

Q And you brought your wife?

A Correct. Well, I didn't bring her, she came.

Q Well, your wife was in attendance with you?

A Correct, yes.

Q And this is the meeting that you felt threatened?

A Definitely.

Q Intimidated?

A Definitely.

Q Blackmailed?

A Definitely.

Q Extorted?

A Definitely.
Q How big are you?
A 6' 4".
Q How much do you weigh?
A Two-eighty.
Q Danny goes about a buck-forty soaking wet, maybe with nickels in his pocket. He was extorting and blackmailing you?
A Definitely.
Q He threatened to beat you up?
A I didn't say that.
Q Because you write a letter, an email to him saying, you threatened me, why did you treat me like that?
A No.
Q Did you tell him in the meeting, you're threatening us, stop it, you're scaring me?
A I didn't say I was scared, sir.
Q And at the meeting Danny is trying to come to terms with what you told me had never been -- terms have never been come to, which is the value of his services for a punitive damage award, correct?
A I'm not really sure what he was trying to do. He kept saying, I want this, I want that. He said, very many things, but he never defined them all.
Q All right.
A It was a very unstructured conversation.
Q And you told the Court that he tried to force you to sign

something, but you don't have it?

A He didn't give us anything to leave with, that's correct.

Q All right. The next thing we have in writing, Mr. Edgeworth, is an email from you, November 21, 2017.

THE COURT: What exhibit is this, Mr. Christiansen?

MR. CHRISTIANSEN: 39, Your Honor. Bate stamp 413, Mr. Greene, I'm sorry.

BY MR. CHRISTIANSEN:

Q Did I get those dates right, Mr. Edgeworth?

A I'm sorry?

Q November 21st --

A November 21st, 2017, it says.

Q Right. And as of November 21st, 2017, you got legal bills, counsel, experts, et cetera, for 501,000, right, and change, I'm sorry?

A Correct.

Q And then you agree that there are legal bills not billed yet?

A Correct.

Q That's left open?

A Correct.

Q So as of November 21st, 2017, you know you own Danny Simon money?

A Well, actually as of the date of his last bill.

Q When you wrote this email you knew you owed Danny money?

A Correct.

Exhibit 18

Electronically Filed
11/19/2018 2:24 PM
Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan Corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5; and, ROE entities 6 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10;

Defendants.

DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)

AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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.,

dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet with an expert. As they were in the airport waiting for a return flight, they discussed the case, and had some discussion about payments and financials. No express fee agreement was reached during the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency." It reads as follows:

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. Exhibit 8). The total of this invoice was $42,564.95 and was billed at a "reduced" rate of $550 per hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and costs through April 4, 2017 for a total of $46,620.69, and was billed at a "reduced" rate of $550 per hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and costs through July 28, 2017 totaling of $142,080.20. (Def. Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate of $550 per hour totaling $104,021.20; and services of Ashley Ferrel Esq. for a "reduced" rate of $275 per hour totaling $37,959.00. Id. This invoice was paid by the Edgeworths on August 16, 2017.

10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount of $255,186.25 for attorney's fees and costs; with $191,317.50 being calculated at a "reduced" rate of $550 per hour for Daniel Simon Esq., $60,981.25 being calculated at a "reduced" rate of $275 per hour for Ashley Ferrel Esq., and $2,887.50 being calculated at a "reduced" rate of $275 per hour for Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September 25, 2017.

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

12. Between June 2016 and December 2017, there was a tremendous amount of work done in the litigation of this case. There were several motions and oppositions filed, several depositions taken, and several hearings held in the case.

13. On the evening of November 15, 2017, the Edgeworth's settled their claims against the Viking Corporation ("Viking").

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send

[1] $265,677.50 in attorney's fees for the services of Daniel Simon; $99,041.25 for the services of Ashley Ferrel; and $2,887.50 for the services of Benjamin Miller.

Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to come to his office to discuss the litigation.

16. On November 27, 2017, Simon sent a letter with an attached retainer agreement, stating that the fee for legal services would be $1,500,000 for services rendered to date. (Plaintiff's Exhibit 4).

17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah & Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all communications with Mr. Simon.

18. On the morning of November 30, 2017, Simon received a letter advising him that the Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities, et.al. The letter read as follows:

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc."

(Def. Exhibit 43).

19. On the same morning, Simon received, through the Vannah Law Firm, the Edgeworth's consent to settle their claims against Lange Plumbing LLC for $25,000.

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of $2,345,450, less payments made in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80. This lien includes court costs and 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

express agreement of $550 an hour; and that the agreement for $550 an hour was made at the outset of the case. Mr. Simon alleges that he worked on the case always believing he would receive the reasonable value of his services when the case concluded. There is a dispute over the reasonable fee due to the Law Office of Danny Simon.

22. The parties agree that an express written contract was never formed.

23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against Lange Plumbing LLC for $100,000.

24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case number A-18-767242-C.

25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate Lien with an attached invoice for legal services rendered. The amount of the invoice was $692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

CONCLUSION OF LAW

Breach of Contract

The First Claim for Relief of the Amended Complaint alleges breach of an express oral contract to pay the law office $550 an hour for the work of Mr. Simon. The Amended Complaint alleges an oral contract was formed on or about May 1, 2016. After the Evidentiary Hearing, the Court finds that there was no express contract formed, and only an implied contract. As such, a claim for breach of contract does not exist and must be dismissed as a matter of law.

Declaratory Relief

The Plaintiff's Second Claim for Relief is Declaratory Relief to determine whether a contract existed, that there was a breach of contract, and that the Plaintiffs are entitled to the full amount of the settlement proceeds. The Court finds that there was no express agreement for compensation, so there cannot be a breach of the agreement. The Plaintiffs are not entitled to the full amount of the

settlement proceeds as the Court has adjudicated the lien and ordered the appropriate distribution of the settlement proceeds, in the Decision and Order on Motion to Adjudicate Lien. As such, a claim for declaratory relief must be dismissed as a matter of law.

Conversion

The Third Claim for Relief is for conversion based on the fact that the Edgeworths believed that the settlement proceeds were solely theirs and Simon asserting an attorney's lien constitutes a claim for conversion. In the Amended Complaint, Plaintiffs allege "The settlement proceeds from the litigation are the sole property of the Plaintiffs." Amended Complaint, P. 9, Para. 41.

Mr. Simon followed the law and was required to deposit the disputed money in a trust account. This is confirmed by David Clark, Esq. in his declaration, which remains undisputed. Mr. Simon never exercised exclusive control over the proceeds and never used the money for his personal use. The money was placed in a separate account controlled equally by the Edgeworth's own counsel, Mr. Vannah. This account was set up at the request of Mr. Vannah.

When the Complaint was filed on January 4, 2018, Mr. Simon was not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust account. They were finally deposited on January 8, 2018 and cleared a week later. Since the Court adjudicated the lien and found that the Law Office of Daniel Simon is entitled to a portion of the settlement proceeds, this claim must be dismissed as a matter of law.

Breach of the Implied Covenant of Good Faith and Fair Dealing

The Fourth Claim for Relief alleges a Breach of the Implied Covenant of Good Faith and Fair Dealing based on the time sheets submitted by Mr. Simon on January 24, 2018. Since no express contract existed for compensation and there was not a breach of a contract for compensation, the cause of action for the breach of the covenant of good faith and fair dealing also fails as a matter of law and must be dismissed.

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

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 19

Fwd: Edgeworth

James R. Christensen

Tue 1/9/2018 4:30 PM

Sent Items

To:Daniel Simon <dan@danielsimonlaw.com>;

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Robert Vannah <rvannah@vannahlaw.com>
Date: 1/9/18 3:32 PM (GMT-08:00)
To: "James R. Christensen" <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>
Subject: Re: Edgeworth

I guess he could move to withdraw. However, that doesn't seem in his best interests. I'm pretty sure that you see what would happen if our client has to spend lots more money bringing someone else up to speed. So, it's up to him. Our client hasn't terminated him. We want this fee matter resolved by a Judge and jury.

Sent from my iPad

On Jan 9, 2018, at 3:21 PM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> John,
>
> That is factually correct. However, Mr. Simon was served today. You must have understood that act could have impact.
>
> The Lange status is that Mr. Simon made changes to the proposed closing documents last week. The ball is currently in defense attorney's court.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Tuesday, January 9, 2018 10:23:56 AM
To: James R. Christensen
Cc: rvannah@vannahlaw.com
Subject: Re: Edgeworth

Jim:

I believe that Danny is still the attorney of record in that litigation. He settled the case, but we're just waiting on a release and the check.

John

On Tue, Jan 9, 2018 at 9:57 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> John,
>
> I need to look into the propriety of Danny wrapping up Lange-after he has been sued and served. I will need to read the complaint.
>
> I have a full schedule today and tomorrow, but will try to get to this as soon as I can.
>
> Jim
>
> James R. Christensen
> Law Office of James R. Christensen PC
> 601 S. 6th St.
> Las Vegas NV 89101
> (702) 272-0406

From: John Greene <jgreene@vannahlaw.com>
Sent: Tuesday, January 9, 2018 9:50:49 AM
To: James R. Christensen
Cc: rvannah@vannahlaw.com
Subject: Re: Edgeworth

Jim:

Is there an update that Danny can provide on the Lange settlement? The clients would like to get everything wrapped up as soon as possible. Thank you.

John

On Tue, Jan 9, 2018 at 9:12 AM, James R. Christensen <jim@jchristensenlaw.com> wrote:

> John,
>
> Thanks for the call. I am authorized to accept service.
>
> As I mentioned during the call, I anticipate an hourly bill will be completed next week prior to funds clearing. I suggest you wait until receipt & review of the hourly bill. We may be able to avoid unnecessary litigation costs and expenses.

Jim

James R. Christensen
Law Office of James R. Christensen PC
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Las Vegas NV 89101
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--
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Exhibit 20

Electronically Filed
2/20/2018 3:49 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

to -- I don't really work at 550 an hour, I'm much greater than that. $550 an hour to me is dog food. It's dog crap. It's nothing. So why don't you give me a big bonus. You ought to pay me a percentage of what I've done in the case because I did a great job.

Now, nobody's going to quarrel that it wasn't a great result. There's certainly some quall as to why the result was done, my client was very, very involved in this case, but I don't want to get into all of that and I'm certainly not criticizing Mr. Simon for anything he did, other than on the billing situation.

At that time Mr. Simon said well, I don't know if I can even continue in this case and wrap this case up unless we reach an agreement that you're going to pay me some sort of percentage, you know, I want a contingency fee and I want you guys to agree to sign that. My client said no, we're not doing that. You didn't take the risk. I've paid you hourly, I've paid you over a half a million dollars. I'm willing to continue finishing up paying you hourly.

So, Mr. Simon said well, that's not going to work, I want a contingency fee. They came to us, we got involved, we had a conversation with all of us, and at that point in time everybody agreed, he cannot have a contingency fee in this case because there's nothing in writing. You don't even have an oral agreement, much less in writing.

So what happened is -- and this is an amazing part, Judge -- and not at the time that Mr. Simon goes to one of the depositions, we quoted that, the other side said to him how much are fees in this case, have they actually been paid. And Mr. -- and that's the point of that. Mr.

Simon then pipes up and says listen, I've given that to you over and over and over again, you guys know what our fees are.

I have supplied that to you over and over and over again and you know what the fees are and those were the fees that he gave them were the amount that my clients had paid over the year and a half. And he said these are the fees that have been generated and paid. So he's admitting right there that, you know, this is the fee, you guys have got it.

As the case got better and better and better, Mr. Simon had buyer's remorse, you know, I probably could have taken this on a contingency fee. Gee, that would have been great because 40 percent of six million dollars is 2.4 million and I only got half a million dollars by billing at $550 an hour and I'm worth more than that; I'm a better lawyer than that. That's what he's saying.

So he said to -- so you guys need to pay me a contingency fee until that didn't work out so he then said well, you know, I didn't really bill all my time. All that time I billed that you paid -- by the way that's an accord and satisfaction, I sent you a bill, you pay the bill. And this happened like five or six invoices. Here's the bill, bill's paid. Here's the bill, bill's paid. Detailed time.

So Mr. Simon has actually gone back all that time and he has actually now added time. Added other tasks that he did and increased the amount of the time to the tune of what, almost a half a million dollars or so. An additional over hourly over that period of time. And then he went and he got Mr. Kemp, who is a great lawyer, who said well, you know what, a reasonable fee in this case, if there is no contract would be

40 percent, that's 2.4 million dollars, it doesn't take a genius to make that calculation.

So really, under this market value what should happen is Mr. Simon should get 2.4 million dollars, a contingency fee, even though he didn't have one and even though that would violate the State Bar rules, he actually should in essence get a contingency fee and give my client credit for the half million dollars he's already paid. That's what this is about.

When we realized that this wasn't going to resolve, I mean, we're not doing that -- we're not agreeably going to do that because there's an agreement already in place, we filed a simple lawsuit in saying that we want a declaratory relief action; somebody to hear the facts, let us do discovery, have a jury, and have a determination made as to what was the agreement. That's number one.

And number two, it's our position that by and is fact intensive, we believe that the jury is going to see and Trier of Fact would see that Mr. Simon used this opportunity to tie up the money to try to put pressure on the clients to agree to something that he hadn't agreed to and there never had been an agreement to.

So based on that we argue that that's a conversion and we think that's a factually intensive issue. None -- we don't expect -- it's not a summary judgment motion on that today, just that's the thinking that we use when we came up with that theory and we think it's a good theory.

So what I don't -- and, Your Honor, I have no problem with you

being the judge and I have no problem with the other judge being the judge, that's never been an issue in the case. What we do have a problem with is -- and I don't understand and maybe Mr. Christensen can clear that up. He's saying well, we can go ahead and have you take this case and make a ruling without a jury; that you can go through here and have a hearing and make a decision on what the fee should be. And then we can have the jury make a decision as to what the fee should be, but the problem is if you make a decision on what the fee should be that's issue preclusion on the whole thing and it ends up with being a preclusion.

So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts, we'd like to hear the jury hear Mr. Simon get up and say to him $550 an hour is dog meat, you know, he can't make a living on that and I would never bill at such a cheap rate and he's much greater than that. And I'd like to hear the jury hear that, people making $12 an hour hear that kind of a conversation that Mr. Simon is apparently going to testify to.

So there -- so bottom line, we get right down -- I -- so what we're asking, it's -- what we'd like you to do -- this case over. The underlying case with the sprinkler system and the flooding of the house, it's over. In re has nothing to do with determining what the fee should be. The fee -- whole issue is based on what was the agreement. I don't know much about the underlying case and I'm not having a problem understanding the fee dispute. This is a fee dispute.

We're just -- and if you want to hear it -- I don't think there's

anything to preclude you, but I don't think that there's commonality of all this -- all this commonality that they're talking about. The underlying case about a broken sprinkler head, flooding, what's the value of the house, all those disputes they had going on. That's got nothing to do with the fee dispute. And --

THE COURT: But you would agree, Mr. Vannah, that's it's the underlying case with the sprinkler flooding the house, who's responsible, the defective parts, that's how you get to the settlement that leads us to the fee dispute.

MR. VANNAH: You did that, but the settlement's over.

THE COURT: Right, but it --

MR. VANNAH: It's a done deal.

THE COURT: But the fee dispute --

MR. VANNAH: I mean, we're not --

THE COURT: -- is about the settlement.

MR. VANNAH: That's going to be a ten-minute discussion with the jury. Hey, this is what happened; it was a settlement.

So the question is, is what -- were the fee reasonable -- I mean, there was an agreement on the fee. I don't think -- it boggles my mind that we've even gotten -- we're even discussing this because when a lawyer sends for a year and a half a detailed billings at a detailed rate and the client pays it for a year and a half and suddenly say well, we never had a fee agreement, that's really difficult at best. That's almost summary judgment for us.

I mean, here's the bill, here's the check, and there's no

Exhibit 21

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, do hereby swear, under penalty of perjury, that the assertions of this Affidavit are true and correct:

1. I am over the age of twenty-one, and a resident of Clark County, Nevada.

2. I have lived and breathed this matter since April of 2016 through the present date, and I have personal knowledge of the matters stated herein.

3. On or about May 27, 2016, I, on behalf of PLAINTIFFS, retained SIMON to represent our interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS.

4. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that SIMON drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. We were forced to litigate to get the defendants to do the right thing and pay the damages

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive $550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over $7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of $550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

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7. SIMON never reduced the terms of our fee agreement to writing. However, that formality didn't matter to us, as we each recognized what the terms of the agreement were and performed them accordingly. For example, SIMON billed us at an hourly rate of $550, his associate billed us at $275 per hour, costs incurred were billed to us, and I paid SIMON all of the invoices in full in less than one week from the date they were received.

8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017. The amount of fees and costs SIMON billed us in those invoices totaled $486,453.09. There were hundreds of entries in these invoices. The hourly rate that SIMON billed us in all of his invoices was at $550 per hour. I paid the invoices in full to SIMON. He also submitted an invoice to us on November 10, 2017, in the amount of approximately $72,000. However, SIMON withdrew the invoice and failed to resubmit the invoice to us, despite an email request from me to do so. I don't know whether SIMON ever disclosed that "final" invoice to the defendants in the LITIGATION or whether he added those fees and costs to the mandated computation of damages. I do know, however, that when SIMON produced his "new" invoices to us (in a Motion) for the first time on or about January 24, 2018, for an additional $692,120 in fees, his hourly rate for all of his work was billed out at our agreed to rate of $550.

9. From the beginning of his representation of us, SIMON was aware that I was required to secure loans to pay SIMON'S fees and costs in the LITIGATION. SIMON was also aware that these loans accrued interest. It's not something for SIMON to gloat over or question my business sense about, as I was doing what I had to do to with the options available to me. On that note, SIMON knew that I could not get traditional loans to pay SIMON'S fees and costs.

10. Plus, SIMON didn't express an interest in taking what amounted to a property damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in

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the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

11. Please understand that I was incredibly involved in this litigation in every respect. Regrettably, it was and has been my life for nearly two years. While I don't discount some of the good work SIMON performed, I was the one who dug through the thousands of documents and found the trail that led to the discovery that Viking had a bad history with these sprinklers, and that there was evidence of a cover up. I was the one who located the prior case involving Viking and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's insurer), and from fire marshals, etc. I was also the one who did the research and made the calls to the scores of people who'd had hundreds of problems with these sprinklers and who had knowledge that Viking had tried to cover this up for years. This was the work product that caused this case to grow into the one that it did.

12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an expert. This was around the time that the value of the case had blossomed from one of property damage of approximately $500,000 to one of significant and additional value due to the conduct of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for the first time broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him that I'd be open to discussing this further, but that our interests and risks needed to be aligned. Weeks then passed without SIMON mentioning the subject again.

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that

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if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

14. SIMON scheduled an appointment for my wife and I to come to his office to discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to a $6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from us for the preceding eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had been completely extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for us to agree to his proposed modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable. We really felt that we were being blackmailed by SIMON, who was basically saying "agree to this or else."

15. Following that meeting, SIMON would not let the issue alone, and he was relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never agreed on any terms to alter, modify, or amend our fee agreement.

16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. We were stunned to receive this letter. At that time, these additional "fees" were not based upon invoices submitted to us or detailed work performed. The proposed fees and costs were in addition to the $486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the invoices that SIMON had presented to us, the evidence that we understand SIMON produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages that

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SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep and review, or the reasons.

17. A reason given by SIMON to modify the fee agreement was that he claims he under billed us on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. We were again stunned to learn of SIMON'S reasoning. According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00. An additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to us for our signatures. This, too, came with a high-pressure approach by SIMON. This new approach also came with threats to withdraw and to drop the case, all of this after he'd billed and received nearly $500,000 from us. He said that "any judge" and "the bar" would give him the contingency agreement that he now wanted, that he was now demanding he get, and the fee that he said he was now entitled to receive.

18. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to be presented at trial. SIMON now claims that our damages against defendant Lange were not ripe until the claims against defendant Viking were resolved. How can that be? All of our claims against Viking and Lange were set to go to trial in February of this year.

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19. On September 27, 2017, I sat for a deposition. Lange's attorney asked specific questions of me regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. Not only do I remember what transpired, I've since reviewed the transcript, as well. At page 271 of that deposition, a question was asked of me as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." At no point did SIMON inform Lange's attorney that he'd either be billing more hours that he hadn't yet written down, or that additional invoices for fees or costs would be forthcoming, or that he was waiting to see how much Viking paid to PLAINTIFFS before he could determine the amount of his fee. At that time, I felt I had reason to believe SIMON that he'd done everything necessary to protect PLAINTIFFS claims for damages in the LITIGATION.

20. Despite SIMON'S requests and demands on us for the payment of more in fees, we refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and time that he'd never previously produced to us and that never saw the light of day in the LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was nothing short of stealing what was ours.

21. When SIMON refused to release the full amount of the settlement proceeds to us without us paying him millions of dollars in the form of a bonus, we felt that the only reasonable alterative available to us was to file a complaint for damages against SIMON.

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22. Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to us. I did not have a choice to agree to have the settlement funds deposited like they were, as SIMON flatly refused to give us what was ours. In short, we were forced to litigate with SIMON to get what is ours released to us.

23. In Motions filed in another matter, SIMON makes light of the facts that we haven't fired him, and that we are allowing him to continue working to wrap up the LITIGATION. We're not thrilled to have to keep him as an attorney. But, we don't want to pay more than we've already had to pay to get someone else up to speed. Plus, we've already paid nearly $500,000 to SIMON, and his change of heart on his fee only came about when the claims in the LITIGATION were, for all intents and purposes, resolved. Since we've already paid him for this work to resolve the LITIGATION, can't he at least finish what he's been retained and paid for?

24. Please understand that we've paid SIMON in full every penny of every invoice that he's ever submitted to us. I even asked him to send me the invoice that he withdrew last fall. I feel that it's incredibly unfair and wrong that SIMON can now claim a lien for fees that no one ever agreed to pay or to receive, or that SIMON can claim a lien for fees that he'd either refused to bill, or failed to bill, but definitely never provided to us or produced to the defendants in the LITIGATION.

25. I also feel that it's remarkable and so wrong that an attorney can agree to receive an hourly rate of $550 an hour, get paid $550 an hour to the tune of nearly $500,000 for a period of time in excess of eighteen months, then hold PLAINTIFFS settlement proceeds hostage unless we agree to pay him a bonus that ranges between $692,000 to $1.9 million dollars.

26. SIMON in his motion, and in open court, made claims that he was effectively fired from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to stop contacting us was a result of his despicable actions of December 4, 2017, when he made false

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accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls, SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit from the charity are minors, an accusation of this severity, from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he

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needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON, though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

27. I ask this Court to deny SIMON'S Motion and give us the right to present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

Subscribed and Sworn to before me
this 12 day of February 2018.

Notary Public in and for said County and State

JESSIE CHURCH
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 11-5015-1
My Appt. Expires Jan. 9, 2021

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Exhibit 22

JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan corporation; and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-16-738444-C DEPT. NO.: X **PLAINTIFFS' MOTION FOR AN ORDER DIRECTING SIMON TO RELEASE PLAINTIFFS' FUNDS**
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT. NO.: XXIX

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Plaintiffs EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC (Plaintiffs), by and through their attorneys of record, ROBERT D. VANNAH, ESQ., and JOHN B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

This Motion is based upon the attached Memorandum of Points and Authorities; the pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and, any oral argument this Court may wish to entertain.

DATED this 13th day of December, 2018.

VANNAH & VANNAH

Signing For

ROBERT D. VANNAH, ESQ.

Bar No: 14530

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I.

SUMMARY

The facts of this matter are well known to this Court. The path to this intricate knowledge was gained by, but not limited to, having listened to five days of comprehensive testimony; by having reviewed the totality of the evidence presented; by having read hundreds of pages of pre and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an amended attorneys lien with a net lien in the sum of $1,977,843.80. On January 24, 2018, SIMON filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.

This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a

fee of $550 per hour between SIMON and the Edgeworths, and once SIMON started billing the Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths constructively discharged SIMON as their attorney on November 29, 2017, when they ceased following his advice and refused to communicate with him. The Court then found SIMON was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates, up and until the last billing of September 19, 2017.

For the period between September 19, 2017 and November 29, 2017, the Court held SIMON was entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. Further, the Court decided that for the period after November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the services his office rendered in quantum meruit: an amount the Court determined to be $200,000. Accordingly, SIMON is owed a total amount of $484,982.50 in fees—taken from the net lien in the sum of $1,977,843.80—pursuant to this Court's Order adjudicating the attorneys lien.

The Edgeworths have expressed a willingness, in writing, to accept the Court's rulings on all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the trust account. The same cannot be said for SIMON: even after this Court's Order was issued, SIMON has refused to release the balance of the funds held in trust: a sum of $1,492,861.30. The Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their $1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their money—money to which they are legally entitled. Simon's unreasonable, inappropriate withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment, which is untoward—not to mention unconstitutional.

PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to release to Plaintiff the remainder of the funds SIMON is withholding in trust.

II.

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ARGUMENTS

A. SIMON'S WITHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14th Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Piphus*, 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 & Treust 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. Piphus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14th Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for *a creditor's lawyer* to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that **this prejudgment garnishment** violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*

Further, Nevada law mandates certain procedures must be followed before a garnishment takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the 14th Amendment and Supreme Court precedent, Nevada law includes multiple due process protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS 31.260; See also *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must obtain a writ of garnishment from the court—which may only issue at the same time or after the order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be served in the same manner as a summons in a civil action. *Frank Settelmeyer & Sons, Inc.,* 197 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the garnishee be given a fair hearing: "if the garnishment is contested, the matter must be tried and judgment rendered, in a manner similar to civil cases." Id. at 1056. Providing further protection still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP 3A(a) and (b)(1). *Id.*

Here, SIMON is holding in trust a huge sum of money: $1,977,843.80 despite this Court's Order stating that he is entitled *only* to $484,982.50. He has effectively seized, garnished, Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS Chapter 31 whatsoever.

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Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that the money be withheld. Au contraire, after listening to five days of comprehensive testimony, reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is entitled to the $1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—withheld Plaintiffs' money and still continues to do so.

SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg. 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1")(See also, Email dated December 26, 2018, 12:18 p.m., attached hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's words were not only just a description of client's feelings at the time, but a foreshadowing of S SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two weeks now.

Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is wholly unconstitutional under United States Supreme Court precedent. His actions are tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach* court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds

without any opportunity to be heard and without the opportunity to tender any defense—is an unconstitutional violation of Due Process.

SIMON'S behavior in this case is similar to—but more abusive than—the procedures permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon's purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court to retain the funds, yet he has flatly refused to release Plaintiffs' money. And in terms of its overt deprivation of due process rights, SIMON'S behavior goes much, much further than the statute in *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee before garnishment procedures were to be initiated.

Here, SIMON has shown nothing but disdain for Plaintiffs' due process rights: SIMON did not follow any of Nevada's garnishment requirements or comply with Nevada statutory garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment. Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object to the withholding of money, and has not been given a hearing to address his objections to SIMON'S behavior. His outright refusal to release the remaining funds held in trust is wholly inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he answers to no one. But he does need to answer to this Court—and as such, it is the aim of this Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is legally entitled.

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B. THIS COURT HAS JURISDICTION TO ADJUDICATE THIS ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S MONEY PENDING APPEAL

A Nevada court that presided over a client's underlying action has jurisdiction to adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a retaining lien has been asserted by the attorney and the client asks the court to determine the value of the attorney's services in order to post adequate or substitute security in order to recover the file; or if the client otherwise consents. See *Argentena Consol. Min. Co. v. Jolley Urga*, 216 P. 3d 779 (2009).

Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018 Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid out findings with respect to the entitlements of all parties. SIMON'S lien rights have been exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his lien adjudication rights are *finished.*

For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the interim*—between service of the action and a trial on the suit—this Court should strike down SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance

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of the Court's November 19, 2018 Order and the final resolution of this matter on appeal. Plaintiffs should not be deprived of his money for months and months—perhaps even years—especially where SIMON'S withholding of these funds is inapposite in light of the Court's substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.

C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018 ORDER, WHICH IS CLEAR AND UNABMBIGUOUS.

The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon is $484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the full $1,977,843.80 in trust. SIMON'S withholding of $1,492,861.30 from Plaintiffs is in direct contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's Order, the Court must take remedial action and issue an Order for the release of the remainder of the funds to Plaintiffs that SIMON is withholding in trust.

It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs respectfully request that this Court issue an Order for the release of Plaintiffs' funds.

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III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13th day of December, 2018.

VANNAH & VANNAH

Bar No: 14530

Signing 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

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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.	CASE NO.: A-18-767242-C DEPT NO.: XXVI **Consolidated with** CASE NO.: A-16-738444-C DEPT NO.: X
EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	**DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

This case came on for an evidentiary hearing August 27-30, 2018 and concluded on September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in

Hon. Tierra Jones
DISTRICT COURT JUDGE
DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

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., dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately $500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange") in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet with an expert. As they were in the airport waiting for a return flight, they discussed the case, and had some discussion about payments and financials. No express fee agreement was reached during the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency." It reads as follows:

> We never really had a structured discussion about how this might be done.
> I am more that happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc.
> Obviously that could not have been doen earlier snce who would have thougth this case would meet the hurdle of punitives at the start.
> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
> I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Def. Exhibit 27).

7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks. This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def. Exhibit 8). The total of this invoice was $42,564.95 and was billed at a "reduced" rate of $550 per hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and costs through April 4, 2017 for a total of $46,620.69, and was billed at a "reduced" rate of $550 per

hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no indication on the first two invoices if the services were those of Mr. Simon or his associates; but the bills indicated an hourly rate of $550.00 per hour.

9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and costs through July 28, 2017 totaling of $142,080.20. (Def. Exhibit 10). This bill identified services of Daniel Simon Esq. for a "reduced" rate of $550 per hour totaling $104,021.20; and services of Ashley Ferrel Esq. for a "reduced" rate of $275 per hour totaling $37,959.00. Id. This invoice was paid by the Edgeworths on August 16, 2017.

10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount of $255,186.25 for attorney's fees and costs; with $191,317.50 being calculated at a "reduced" rate of $550 per hour for Daniel Simon Esq., $60,981.25 being calculated at a "reduced" rate of $275 per hour for Ashley Ferrel Esq., and $2,887.50 being calculated at a "reduced" rate of $275 per hour for Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September 25, 2017.

11. The amount of attorney's fees in the four (4) invoices was $367,606.25, and $118,846.84 in costs; for a total of $486,453.09.[1] These monies were paid to Daniel Simon Esq. and never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and costs to Simon. They made Simon aware of this fact.

12. Between June 2016 and December 2017, there was a tremendous amount of work done in the litigation of this case. There were several motions and oppositions filed, several depositions taken, and several hearings held in the case.

13. On the evening of November 15, 2017, the Edgeworth's received the first settlement offer for their claims against the Viking Corporation ("Viking"). However, the claims were not settled until on or about December 1, 2017.

14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the

[1] $265,677.50 in attorney's fees for the services of Daniel Simon; $99,041.25 for the services of Ashley Ferrel; and $2,887.50 for the services of Benjamin Miller.

open invoice. The email stated: "I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then did not leave with me. Could someone in your office send Peter (copied here) any invoices that are unpaid please?" (Def. Exhibit 38).

15. On November 17, 2017, Simon scheduled an appointment for the Edgeworths to come to his office to discuss the litigation.

16. On November 27, 2017, Simon sent a letter with an attached retainer agreement, stating that the fee for legal services would be $1,500,000 for services rendered to date. (Plaintiff's Exhibit 4).

17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah & Vannah and signed a retainer agreement. (Def. Exhibit 90). On this date, they ceased all communications with Mr. Simon.

18. On the morning of November 30, 2017, Simon received a letter advising him that the Edgeworths had retained the Vannah Law Firm to assist in the litigation with the Viking entities, et.al. The letter read as follows:

> "Please let this letter serve to advise you that I've retained Robert D. Vannah, Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation with the Viking entities, et.al. I'm instructing you to cooperate with them in every regard concerning the litigation and any settlement. I'm also instructing you to give them complete access to the file and allow them to review whatever documents they request to review. Finally, I direct you to allow them to participate without limitation in any proceeding concerning our case, whether it be at depositions, court hearings, discussions, etc."

(Def. Exhibit 43).

19. On the same morning, Simon received, through the Vannah Law Firm, the Edgeworth's consent to settle their claims against Lange Plumbing LLC for $25,000.

20. Also on this date, the Law Office of Danny Simon filed an attorney's lien for the reasonable value of its services pursuant to NRS 18.015. (Def. Exhibit 3). On January 2, 2018, the Law Office filed an amended attorney's lien for the sum of $2,345,450, less payments made in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80. This lien includes court costs and

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 express agreement of $550 an hour; and that the agreement for $550 an hour was made at the outset of the case. Mr. Simon alleges that he worked on the case always believing he would receive the reasonable value of his services when the case concluded. There is a dispute over the reasonable fee due to the Law Office of Danny Simon.

22. The parties agree that an express written contract was never formed.

23. On December 7, 2017, the Edgeworths signed a Consent to Settle their claims against Lange Plumbing LLC for $100,000.

24. On January 4, 2018, the Edgeworth Family Trust filed a lawsuit against Simon in Edgeworth Family Trust; American Grating LLC vs. Daniel S. Simon, the Law Office of Daniel S. Simon, a Professional Corporation, case number A-18-767242-C.

25. On January 24, 2018, the Law Office of Danny Simon filed a Motion to Adjudicate Lien with an attached invoice for legal services rendered. The amount of the invoice was $692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

CONCLUSION OF LAW

The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The Court

An attorney may obtain payment for work on a case by use of an attorney lien. Here, the Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-738444-C under NRS 18.015.

NRS 18.015(1)(a) states:

> 1. An attorney at law shall have a lien:
> (a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

Nev. Rev. Stat. 18.015.

The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C, complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was perfected before settlement funds generated from A-16-738444-C of $6,100,000.00 were deposited, thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly & Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien is enforceable in form.

The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C. Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication under NRS 18.015, thus the Court must adjudicate the lien.

Fee Agreement

It is undisputed that no express written fee agreement was formed. The Court finds that there was no express oral fee agreement formed between the parties. An express oral agreement is formed when all important terms are agreed upon. *See,* Loma Linda University v. Eckenweiler, 469 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were not agreed upon and when the parties contemplated a written agreement*). The Court finds that the payment terms are essential to the formation of an express oral contract to provide legal services on an hourly basis.

Here, the testimony from the evidentiary hearing does not indicate, with any degree of certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon, regarding punitive damages and a possible contingency fee, indicate that no express oral fee agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August 22, 2017 email, titled "Contingency," he writes:

> "We never really had a structured discussion about how this might be done. I am more than happy to keep paying hourly but if we are going for punitive we should probably explore a hybrid of hourly on the claim and then some other structure that incents both of us to win an go after the appeal that these scumbags will file etc. Obviously that could not have been done earlier snce who would have thought this case would meet the hurdle of punitives at the start. I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450K from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell. I doubt we will get Kinsale to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?"

(Def. Exhibit 27).

It is undisputed that when the flood issue arose, all parties were under the impression that Simon would be helping out the Edgeworths, as a favor.

The Court finds that an implied fee agreement was formed between the parties on December 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at $550 per hour, and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was created with a fee of $275 per hour for Simon's associates. Simon testified that he never told the Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger coverage". When Simon repeatedly billed the Edgeworths at $550 per hour for his services, and $275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied fee agreement was formed between the parties. The implied fee agreement was for $550 per hour for the services of Daniel Simon Esq. and $275 per hour for the services of his associates.

Constructive Discharge

Constructive discharge of an attorney may occur under several circumstances, such as:

- 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

into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def. Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly identified as the firm that solely advised the clients about the settlement. The actual language in the settlement agreement, for the Viking claims, states:

> PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this AGREEMENT and their release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

Id.

Also, Simon was not present for the signing of these settlement documents and never explained any of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and Vannah and received them back with the signatures of the Edgeworths.

Further, the Edgeworths did not personally speak with Simon after November 25, 2017. Though there were email communications between the Edgeworths and Simon, they did not verbally speak to him and were not seeking legal advice from him. In an email dated December 5, 2017, Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim 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

and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim. The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr. Simon never signed off on any of the releases for the Lange settlement.

Further demonstrating a constructive discharge of Simon is the email from Robert Vannah Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4, 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating, LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that doesn't seem in his best interests." (Def. Exhibit 53).

The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that was attached to the letter), and that Simon continued to work on the case after the November 29, 2017 date. The court further recognizes that it is always a client's decision of whether or not to accept a settlement offer. However the issue is constructive discharge and nothing about the fact that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys on the fee agreement, not the claims against Viking or Lange. His clients were not communicating with him, making it impossible to advise them on pending legal issues, such as the settlements with Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing

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Simon from effectively representing the clients. The Court finds that Danny Simon was constructively discharged by the Edgeworths on November 29, 2017.

Adjudication of the Lien and Determination of the Law Office Fee

NRS 18.015 states:

1. An attorney at law shall have a lien:

(a) Upon any claim, demand or cause of action, including any claim for unliquidated 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.

(b) In any civil action, upon any file or other property properly left in the possession of the attorney by a client.

2. A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.

3. An attorney perfects a lien described in subsection 1 by serving notice in writing, in person or by certified mail, return receipt requested, upon his or 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.

4. A lien pursuant to:

(a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action; and

(b) Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including, without limitation, copies of the attorney's file if the original documents 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.

Nev. Rev. Stat. 18.015.

NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms are applied. Here, there was no express contract for the fee amount, however there was an implied contract when Simon began to bill the Edgeworths for fees in the amount of $550 per hour for his services, and $275 per hour for the services of his associates. This contract was in effect until November 29, 2017, when he was constructively discharged from representing the Edgeworths. After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is due a reasonable fee- that is, quantum meruit.

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was $550 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was created with a fee of $275 per hour for the services of Simon's associates. This implied contract was created when invoices were sent to the Edgeworths, and they paid the invoices.

The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as to how much of a reduction was being taken, and that the invoices did not need to be paid. There is no indication that the Edgeworths knew about the amount of the reduction and acknowledged that the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the bills to give credibility to his actual damages, above his property damage loss. However, as the lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund the money, or memorialize this or any understanding in writing.

Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP 16.1 disclosures and computation of damages; and these amounts include the four invoices that were paid in full and there was never any indication given that anything less than all the fees had been produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees

had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law Office retained the payments, indicating an implied contract was formed between the parties. The Court find that the Law Office of Daniel Simon should be paid under the implied contract until the date they were constructively discharged, November 29, 2017.

Amount of Fees Owed Under Implied Contract

The Edgeworths were billed, and paid for services through September 19, 2017. There is some testimony that an invoice was requested for services after that date, but there is no evidence that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for fees was formed, the Court must now determine what amount of fees and costs are owed from September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted billings, the attached lien, and all other evidence provided regarding the services provided during this time.

At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back and attempted to create a bill for work that had been done over a year before. She testified that they added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every email that was read and responded to. She testified that the dates were not exact, they just used the dates for which the documents were filed, and not necessarily the dates in which the work was performed. Further, there are billed items included in the "super bill" that was not previously billed to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing

indicated that there were no phone calls included in the billings that were submitted to the Edgeworths.

This attempt to recreate billing and supplement/increase previously billed work makes it unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed between the actual work and the billing. The court reviewed the billings of the "super bill" in comparison to the previous bills and determined that it was necessary to discount the items that had not been previously billed for; such as text messages, reviews with the court reporter, and reviewing, downloading, and saving documents because the Court is uncertain of the accuracy of the "super bill."

Simon argues that he has no billing software in his office and that he has never billed a client on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths, in this case, were billed hourly because the Lange contract had a provision for attorney's fees; however, as the Court previously found, when the Edgeworths paid the invoices it was not made clear to them that the billings were only for the Lange contract and that they did not need to be paid. Also, there was no indication on the invoices that the work was only for the Lange claims, and not the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without emails or calls, understanding that those items may be billed separately; but again the evidence does not demonstrate that this information was relayed to the Edgeworths as the bills were being paid. This argument does not persuade the court of the accuracy of the "super bill".

The amount of attorney's fees and costs for the period beginning in June of 2016 to December 2, 2016 is $42,564.95. This amount is based upon the invoice from December 2, 2016 which appears to indicate that it began with the initial meeting with the client, leading the court to determine that this is the beginning of the relationship. This invoice also states it is for attorney's fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This amount has already been paid by the Edgeworths on December 16, 2016.[2]

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[2]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.[3]

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.[4] 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.[5] 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.[6]

The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

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[3] There are no billings from July 28 to July 30, 2017.
[4] There are no billings for October 8th, October 28-29, and November 5th.
[5] There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19, November 21, and November 23-26.
[6] There is no billing from September 19, 2017 to November 5, 2017.

or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid by the Edgeworths, so the implied fee agreement applies to their work as well.

The Court finds that the total amount owed to the Law Office of Daniel Simon for the period of September 19, 2018 to November 29, 2017 is $284,982.50.

Costs Owed

The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing, LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought reimbursement for advances costs of $71,594.93. The amount sought for advanced cots was later changed to $68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

Quantum Meruit

When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g.* Golightly v. Gassner, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing,* Gordon v. Stewart, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*); and, Cooke v. Gove, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on November 29, 2017. The constructive discharge terminated the implied contract for fees. William Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion of the Law Office's work on this case.

In determining the amount of fees to be awarded under quantum meruit, the Court has wide discretion on the method of calculation of attorney fee, to be "tempered only by reason and fairness". Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the reasonableness of the fee under the Brunzell factors. Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the Court notes that the majority of the work in this case was complete before the date of the constructive discharge, and the Court is applying the Brunzell factors for the period commencing after the constructive discharge.

In considering the Brunzell factors, the Court looks at all of the evidence presented in the case, the testimony at the evidentiary hearing, and the litigation involved in the case.

1. *Quality of the Advocate*

Brunzell expands on the "qualities of the advocate" factor and mentions such items as training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr. Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr. Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's work product and results are exceptional.

2. *The Character of the Work to be Done*

The character of the work done in this case is complex. There were multiple parties,

multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the gamut from product liability to negligence. The many issues involved manufacturing, engineering, fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp testified that the quality and quantity of the work was exceptional for a products liability case against a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a substantial factor in achieving the exceptional results.

3. The Work Actually Performed

Mr. Simon was aggressive in litigating this case. In addition to filing several motions, numerous court appearances, and deposition; his office uncovered several other activations, that caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the other activations being uncovered and the result that was achieved in this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions and the litigation that allowed this case to develop into a $6 million settlement. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case.

4. The Result Obtained

The result was impressive. This began as a $500,000 insurance claim and ended up settling for over $6,000,000. Mr. Simon was also able to recover an additional $100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a $6 million settlement with a $500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they

were made more than whole with the settlement with the Viking entities.

In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a) which states:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, 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;

(3) Whether the client is liable for expenses regardless of outcome;
(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and
(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.
Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for the Edgeworths, the character of the work was complex, the work actually performed was extremely significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell factors justify a reasonable fee under NRPC 1.5. However, the Court must also consider the fact that the evidence suggests that the basis or rate of the fee and expenses for which the client will be responsible were never communicated to the client, within a reasonable time after commencing the representation. Further, this is not a contingent fee case, and the Court is not awarding a contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of $200,000, from November 30, 2017 to the conclusion of this case.

CONCLUSION

The Court finds that the Law Office of Daniel Simon properly filed and perfected the charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further finds that there was an implied agreement for a fee of $550 per hour between Mr. Simon and the Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr. Simon as their attorney, when they ceased following his advice and refused to communicate with

him about their litigation. The Court further finds that Mr. Simon was compensated at the implied agreement rate of $550 per hour for his services, and $275 per hour for his associates; up and until the last billing of September 19, 2017. For the period from September 19, 2017 to November 29, 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of $550 an hour, and $275 an hour for his associates, for a total amount of $284,982.50. For the period after November 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being constructively discharged, under quantum meruit, in an amount of $200,000.

ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is $484,982.50.

IT IS SO ORDERED this 19 day of November, 2018.

DISTRICT COURT JUDGE

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

Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

Bob,

Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.

Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.

Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

From: Robert Vannah <rvannah@vannahlaw.com>
Sent: Saturday, December 23, 2017 10:10:45 PM
To: James R. Christensen
Cc: John Greene; Daniel Simon
[Quoted text hidden]

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com> Tue, Dec 26, 2017 at 12:18 PM
To: "James R. Christensen" <jim@jchristensenlaw.com>
Cc: John Greene <jgreene@vannahlaw.com>, Daniel Simon <dan@simonlawlv.com>

The clients are available until Saturday. However, they have lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account. Quite frankly, they are fearful that he will steal the money. Also, they are very disappointed that it's going to take weeks for Mr. Simon to determine what he thinks is the undisputed amount. Also, please keep in mind that this is a cashiers check for the majority of the funds, so why is it going to take so long to clear those funds? What is an interpleader going to do? If we can agree on placing the money in an interest-bearing escrow account with a qualified escrow company, we can get the checks signed and deposited. There can be a provision that no money will be distributed to anyone until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter, but until then the undisputed amount could be distributed. I am trying to get this thing resolved without violation of any fiduciary duties that Mr. Simon owes to the client, and, it would make sense to do it this way. Rather than filing an interpleader action, we are probably just going to file suit ourselves and have the courts determine what is appropriate here. I really would like to minimize the damage to the clients, and I think there is a fiduciary duty to do that.

Sent from my iPad
[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com> Tue, Dec 26, 2017 at 12:26 PM

[redacted]

Exhibit 3

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

Gmail by Google

Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com> Wed, Oct 31, 2018 at 4:18 PM
To: Jessie Romero <Jromero@vannahlaw.com>

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number **(702) 369-4161, Ext. 302**:

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Wednesday, October 31, 2018 at 04:18 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-10-31 Edgeworth .pdf	Success

Exhibit 4

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

Gmail by Google

Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com> Mon, Nov 19, 2018 at 3:44 PM
To: Jessie Romero <Jromero@vannahlaw.com>

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number **(702) 369-4161, Ext. 302:**

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Monday, November 19, 2018 at 03:43 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-11-19 Letter to Christensen .pdf	Success

Exhibit 23

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada

December 31, 2018

Via E-Serve

Robert D. Vannah
400 S. 7th Street
Las Vegas, NV 89101
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Mr. Vannah:

In December of 2017, I wrote to you and explained that Mr. Simon was willing to work collaboratively to resolve the attorney lien. I also advised that accusations of theft and conversion were counterproductive. The offer to work collaboratively was impliedly rejected when your office filed and served a complaint against Mr. Simon alleging conversion.

Plaintiffs' motion for an order directing Simon to release funds repeats the conversion accusation. (*See, e.g.*, Mot., at 6:7-9.)

Accusing Mr. Simon of illegality and conversion - without basis - does not promote a collaborative discussion and resolution of the lien issue, and/or disposition of the trust account during appeal.

If you would like to begin a collaborative dialogue, please contact me.

I look forward to hearing from you.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon

Exhibit 24

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
601 S. 6th Street
Las Vegas, Nevada 89101
(702) 272-0406
(702) 272-0415 fax
jim@christensenlaw.com
Attorney for Simon

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION; a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES I through 5 and ROE entities 6 through 10; Defendants.	CASE NO.: A738444 DEPT NO.: X **DECLARATION OF WILL KEMP, ESQ.**

1. I have been a licensed attorney in the State of Nevada since September, 1978. I have litigated high profile products liability cases in Nevada and around the country. I have presented arguments before all the courts in the state of Nevada, as well as the First, Third and Ninth Circuit Court of Appeals and the United States Supreme Court. I have been an AV Preeminent Lawyer by Martindale Hubbell since the 1980's, which is the highest AV rating for competency and ethics. I have also been named as a Super Lawyer, named in the Mountain States Top 10, selected in the Legal Elite of Nevada Business Magazine and selected as Nevada Trial Lawyer of the year in 2012.

I have served on multiple steering committees, including but not limited to Plaintiffs' Legal Committee, MGM Multi-District Fire Litigation, 1980-1987, (the seminal mass tort case in Nevada) Plaintiffs' Steering Committee and Plaintiffs' Trial Counsel, San Juan Dupont Plaza Multi-District Fire Litigation, 1987-98, Plaintiffs' Steering Committee, Peachtree 25th Fire Litigation, 1991-94, Plaintiffs' Steering Committee and Executive Committee in Castano Tobacco Litigation, 1993-2010, Orthopedic Bone Screw Products Liability Litigation, 1994-1998, Plaintiff's Management Committee, Fen/Phen

Diet Drug Litigation, 1998-2003 (the largest pharmaceutical settlement in history--$25 Billion plus), Plaintiffs' Steering Committee, Baycol Products Liability Litigation, 2002-07, Minnesota Syngenta Litigation State Court Committee (2016-____) ($1.3 Billion settlement pending). I was the Liaison Counsel for Plaintiffs and lead attorney on the product liability committee of Plaintiffs' Legal Committee in the MGM Fire Litigation. I have tried numerous complex product liability cases, including the San Juan Dupont Plaza Multi-District Fire Litigation (15 ½ month product liability case against 200 Defendants resulting in plaintiffs' verdict). I was also lead counsel on the largest product liability verdict in the history of Nevada: $505 Million verdict in Chanin v. Teva in 2010 (defective propofol packaging theory).

2. In connection with many of the foregoing cases, I have presented the work effort of our firm to multiple state and federal courts in fee presentations. In addition, I was on the Fee Committee in the Castano Tobacco Litigation and decided on the allocation of a $1.3 Billion fee among 57 law firms based upon their relative efforts in that landmark litigation.

3. In my practice, I have represented both plaintiffs and defendants in all types of litigation, including negligence cases and product liability. I am personally familiar with the efforts required to both prosecute and defend serious cases in general, including hotly contested product liability litigation against a worldwide manufacturer.

4. I have been retained by the Law Office of Daniel Simon (hereinafter LODS) to review the case of Edgeworth Family Trust and American Grating v. Lange Plumbing and the Viking entities, hereinafter "The Edgeworth Matter." In preparing my opinion, I have reviewed the register of actions; the e-service filings, pleadings, motions, the relevant court orders; voluminous e-mails, the list of depositions taken, notices of depositions, extensions of discovery in other LODS cases and expert reports. I have a qualified understanding of the work performed on this case and the results achieved.

5. I am also aware of the billing statements produced to the client in this case and the payments that were made for these billing statements.

6. Before the mediation that occurred on November 10, 2017, LODS filed numerous motions that effectively forced the Viking entities to settle this matter prior to any rulings on the pending motions. At the time of mediation, the Trial Judge, the Honorable Tierra Jones had already set

an evidentiary hearing to occur in December 2017 in order to determine whether Viking's answer should be stricken for discovery abuses or other sanctions. Notably, the motion for to Strike Answer was filed on September 29, 2017, after Mr. Edgeworth commented in the August 22, 2017 email set forth below that no one expected "this case would meet the hurdle of punitives" and proposed a hybrid "that incents" LODS to vigorously pursue punitives. The Trial was set for February 5, 2018. The Motion to Strike Answer was obviously one of the key threats that coerced the settlement.

7. At the same time, LODS also had pending motions for summary judgment against Lange Plumbing. Lange Plumbing had cross-claims against the Viking entities.

8. The case was worked up with many experts consisting of several engineering experts, an appraiser to establish damages, litigation loan experts to justify non-recourse interest on loans and a fraud expert. The defense hired many experts that needed to be rebutted.

9. The document production was voluminous and consisted of more that 100,000 pages, there was substantial motion work and the emails with the client show continuous communication to an extent that is relatively unusual. This close communication with the client on a daily (if not more) basis obviously took much attention from LODS but appears to have been productive in multiple ways.

10. I have reviewed the email dated November 21, 2017, that Mr. Edgeworth sent to Mr. Simon setting forth damage elements. The amounts discussed in that email that I would consider to be "hard" damages were $512,636 paid for repairs to the damaged house, $24,117 (repairs owed) and $194,489 (still to repair). This totals $731,242 of "hard" damages. The other damages items such as "stigma" for $1,520,000 and the interest of $285,104 are what I would consider "soft" damages. In evaluating the value of a case, many attorneys give more credence to "hard" damages.

11. I have also reviewed the email dated August 22, 2017 from Mr. Edgeworth to Mr Simon wherein Mr. Edgeworth states as follows:

> **We never really had a structured discussion about how this might be done.** I am more that happy to keep paying hourly but **if we are going for punitive we should probably explore a hybrid** of hourly on the claim and then **some other structure that incents both of us** to win an[d] go after the appeal that these scumbags will file etc.
>
> **Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.**
>
> I could also swing hourly for the whole case (unless I am off what this is going to cost).

> I would likely borrow another $450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
>
> I doubt we will get Kinsale [the insurer for Lange Plumbing] to settle for enough to really finance this since I would have to pay the first $750,000 or so back to Colin and Margaret and why would Kinsale settle for $1MM when their exposure is only $1MM?

(Bold added) The August 22, 2017 email is significant for several reasons. First, as discussed in more detail, the settlement had to have included at least $3.3 Million of punitive damages and more likely $4 or $5 Million of punitive damages because the $6.1 Million settlement is $5,368,580 above the "hard" damages of $731,420.00 and $2,272,855 above the total damages of $3,827,147 (as set forth in the November 21, 2017 email). It should be noted that the $3,827,147 figure includes $1,520,000 for "stigma" to the house damages (of which there is not strong legal support). Under any view, the settlement included millions of dollars of punitive damages. It is unprecedented to get that much in punitive damages in a case of this nature where only property damage is involved. Indeed, some courts would hold that a 5 to 1 ratio ($5 Million punitive to $1M compensatory) is unconstitutionally excessive.

12. The second reason that the August 22, 2017 email is significant is that, Mr. Edgeworth acknowledges that he does not believe that the parties have a fee agreement ("We never really had a structured discussion about how this might be done.") and then proposed "a hybrid" fee arrangement "if we are going for punitive." Not only did Mr. Edgewroth and LODS "go for punitive" after August 22, 2017, they got millions of dollars in punitives. Mr. Edgeworth also explains why a fee agreement to pursue the punitives could not be made earlier ("Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.") Given the volume of the emails between Mr. Edgeworth and LODS between this August 22, 2017 and the mediation, it appears that a herculean (and successful) effort was made to "go for punitive."

13. The third reason that the August 22, 2017 email is significant is that Mr. Edgeworth expresses the firm opinion therein that the only way to obtain satisfactory resolution of his claim is to succeed at trial and then succeed on appeal: "some other structure that incents both of us to win [at trial] and go after the appeal that these scumbag [Defendants] will file..." Mr. Edgeworth is obviously a very sophisticated client (based on a review of his emails to LODS) and his general

expectation that the usual course to an adequate recovery would be years of litigation and success at trial and appeal is consistent with what could typically occur. This will be referred to later as "Edgeworth's expected result."

14. I have been informed and believe that, at the mediation on November 10th, 2017, the parties could not reach a settlement. Viking offered $2.5 Million. The Mediator, Floyd Hale, requested to send a mediator proposal for $5 million. LODS only agreed to a mediator proposal of $6 million. Subsequently, on November 15, 2017, Viking accepted the $6 million proposal, subject to a determination of a good faith settlement extinguishing the claims Lange Plumbing has against Viking and a confidentiality provision. Later, LODS was able to negotiate better terms, including a mutual release and omitting the confidentiality provision.

15. I am familiar with NRPC 1.5, and the Brunzell Factors that control Nevada law. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 455 P.2d 31, 33 (Nev. 1969) ("From a study of the authorities it would appear such factors may be classified under four general headings (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.") I am also familiar with the detailed analysis of the Lodestar approach for determining a reasonable attorney fee in the absence of a contract with the client. I have also argued fee dispute issues at the First Circuit Court of Appeals. See In re Thirteen Appeals Arising Out of the San Juan Dupont Hotel Fire Litigation, 56 F.3d 295, 307 (1st Cir. 1995) (approving the percentage of fund method for mass tort cases instead of the lodestar technique); In re Nineteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation (1st Cir. 1992).

16. An attorney who does not have a signed contract with a client is entitled to receive a reasonable attorneys fee for the value of his/her services. There are many factors to consider in determining the value of an attorneys services. To determine reasonableness, Nevada state courts rely heavily on the "Brunzell factors." The state court decisions applying the Brunzell factors suggest that

the analysis focuses primarily on the quantity, quality of work and advocacy rather than the hourly rate. NRCP 1.5 lists eight non-exclusive factors to consider. One of the primary factors is the fees "customarily charged in the locality for similar legal services."

17. The Edgeworth matter involved one house that was heavily damaged by flooding due to a defective sprinkler. This type of case, i.e., one client with property damage, is not attractive to most experienced product liability litigators for several reasons. First, the amount of energy involved in litigating a complex product case usually requires multiple clients (or at a minimum serious personal injury) to justify the time expended to obtain an award. Second, product liability is a legal concept that is not familiar to many jurors (and even some judges). This creates an element of uncertainty in predicting liability outcomes that is greater than most garden variety negligence cases. Third, property damage typically does not invoke sympathy with jurors needed to drive a punitive award. Fourth, no experienced litigator will take a case wherein punitive damages are the primary damages element because punitive damages are rarely awarded and paid even less often.

18. For these reasons, despite expertise in both product liability and construction defect litigation, our office probably would have not have taken this case for the reasons outlined above. If we had taken the case, the minimum contingent fee would have been 40% and more likely 45%. A settlement of $6.1 Million in a complex product liability case with no personal injury or death and only $731,242 in "hard costs" is truly remarkable.

19. When reviewing the Edgeworth matter to determine a reasonable fee, the analysis must start with the fourth Brunzell factor; the result achieved. As set forth in Paragraph 13 above, Mr. Edgeworth, a sophisticated client, expressed the opinion on August 2, 2017, that it would take a trial and appeal to get "Edgeworth's expected result." Given how involved Mr. Edgeworth was with the case (including minute details) and that he is a very sophisticated client, his belief in this regard would normally be correct. Indeed, most lawyers would agree that it would take years to even get the "hard costs." But instead of getting "Edgeworth's expected result" after years of litigation, LODS got a truly extraordinary result in less than 3 months after the date of the August 2, 2017 email. LODS secured a six million, one hundred thousand dollar ($6,100,000) settlement for a complex products liability case where the "hard" damages were only $791,242.00. The total claimed past "hard" and "soft" damages

involved, excluding attorney's fees, experts fees and costs were approximately $1.5 million dollars. Getting millions of dollars of punitives in a settlement in a case of this nature is remarkable. For these reasons, the fourth Brunzell factor (result) overwhelmingly favors a large fee.

20. The quality and quantity of the work (the third Brunzell factors) were exceptional for a products liability case against a worldwide manufacturer that is very experienced in litigating cases. LODS had to advocate against several highly experienced law firms for Viking, including local and out of state counsel. In this regard, the Motion to Strike Answer filed on September 29, 2017 is of utmost significance.

21. LODS retained multiple experts to secure the necessary opinions to prove the case. It also creatively advocated to pursue unique damages claims (e.g., the "stigma" damages) and to prosecute a fraud claim and file many motions that most lawyers would not have done. LODS also secured rulings that most firms handling this case would not have achieved. The continued aggressive representation prosecuting the case was a substantial factor in achieving the exceptional results. This (especially the Motion to Strike Answer and impending evidentiary hearing) is the second Brunzell factor.

22. I am familiar with the size of the LODS firm and the amount of work performed would have significantly impaired LODS from simultaneously working on other cases. Our firm has over a dozen litigators and a long track record of successful litigation and we often find it difficult to support a "hot" products case (i.e., one requiring the full time attention of several lawyers). It is very impressive that a small firm made the sacrifice to do so.

23. LODS does not represent clients on an hourly basis and the fee customarily charged in the locality for similar legal services should be substantial in light of the work actually performed, the LODS lost opportunities to work on other cases and the ultimate amazing result achieved. Absent a contract, LODS is entitled to a reasonable fee customarily charged in the community based on the services performed.

24. When evaluating the novelty and difficulty of the questions presented; the adversarial nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved

given the total amount of the settlement compared to the "hard" damages involved, the reasonable value of the services performed in the Edgeworth matter by LODS, in my opinion, would be in the sum of $2,440,000. This evaluation is reasonable under the Brunzell factors.

25. I make this Declaration under penalty of perjury.

Dated this 31st day of January, 2018.

Will Kemp, Esq.