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 XII** **BATES NO. AA002198 - 2400**

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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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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **SPECIAL MOTION OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' AMENDED COMPLAINT: ANTI-SLAPP** (HEARING REQUESTED)

Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred to collectively as VANNAH), hereby file this Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP (Special Motion).

This Special Motion is based upon the attached Memorandum of Points and Authorities, the Memorandum of Points and Authorities previously submitted and filed in support of the Special Motion to Dismiss Plaintiffs' Complaint, 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 Plaintiffs' 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, the Affidavit of Robert D. Vannah, Esq., the Affidavit of John B. Greene, Esq. (attached as Exhibits A & B, respectively), and any oral arguments 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ANTI-SLAPP

Anti-SLAPP statutes protect those who exercise their right to free speech, petition their government on an issue of concern, or try to resolve a conflict through use of the judiciary. The right to "petition the government for the redress of grievances" is a right guaranteed by the First Amendment ("the petition clause").[1] In the 1980s, two (2) law professors coined the phrase "Strategic Lawsuit Against Public Participation" or "SLAPP" to describe a growing trend of bringing a civil suit in response to an exercise of free speech or the right to petition.[2] Anti-SLAPP statutes arose to combat the growing trend. An Anti-SLAPP statute typically provides for early judicial intervention and equally early dismissal of a SLAPP lawsuit such as SIMON'S.

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

[2] *See*, George W. Pring and Penelope Canan, SLAPPS: Getting Sued for Speaking Out (Temple University Press 1996). Canan and Pring coined the term SLAPP. The book contains a SLAPP summary, reviews legislation, and

Nevada courts look to California law for guidance in interpreting Anti-SLAPP laws. *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (Nev. 2017). California courts have held that the anti-SLAPP law "provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." *Baral v. Schnitt*, 1 Cal.5th 376, 384, 205 Cal.Rptr.3d 475, 376 P.3d 604 (2016). These courts have held further that, by its plain language, the anti-SLAPP law reaches not only oral and written statements "made *before* a ... judicial proceeding," but also statements "made *in connection with* an issue under consideration or review by a ... judicial body." (*citing*, Cal.Civ.Code Section 425.16, subd. (e)(1) & (2), italics added.)

As construed by California courts, these categories can include "communication[s] preparatory to or in anticipation of litigation" (*Gotterba v. Travolta*, 228 Cal.App4th 35, 41, 175 Cal.Rptr.3d 47 (2014)) as well as "post judgment enforcement activities" (*Rusheen v. Cohen*, 37 Cal.4th 1048, 1048, 1063, 37 Cal.4th 1000, 1063, 39 Cal.Rptr. 516, 128 P.3d 713 (2006) (Accord, *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 210, 190 Cal.Rptr.3d 1 (2015) ["*all* communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP [law]" (italics added)].)

Here, SIMON wants to punish VANNAH and mutual clients, the Edgeworths, for filing a lawsuit in good faith to redress wrongs that were allegedly committed by SIMON. (*See*, a copy of SIMON'S Amended Complaint, which shall be referred to as SIMON'S SLAPP or SLAPP, and its eight (8) counts attached to this Special Motion as Exhibit D, of which five (5) are now directed towards VANNAH). The Edgeworths' Amended Complaint referenced above brought claims against SIMON for breach of contract, declaratory relief, breach of the implied covenant of good faith and fair dealing, and conversion. (*See*, a copy of the Edgeworths' Amended

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suggests a model bill.

Complaint attached to this Special Motion as Exhibit C). The Edgeworths' Amended Complaint was filed by VANNAH in good faith and was based, in part, on the acts of SIMON asserting a lien in an amount that constituted a contingency fee when he had an hourly fee agreement with the Edgeworths, then holding the Edgeworths' funds and refusing the return their funds to them for what now amounts to over two (2) years. (*Id.*; *see also*, Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached as Exhibits A & B; *see also*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A).

But let there be no doubt: If the Defendants here had not filed the Amended Complaint against SIMON in the underlying matter, the dismissal of which is presently on appeal, SIMON never would have filed his SLAPP in this matter. As the appellate record shows, the Edgeworths did not ask for any of this from SIMON; they simply wanted the contract for the payment of hourly fees honored and the balance of their settlement 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*. Since SIMON'S suit was brought in response to the legal use of the courts by Defendants here to redress wrongs, SIMON'S complaint is a SLAPP and must be dismissed under Nevada's Anti-SLAPP law.

The Nevada Anti-SLAPP statute shields those who make a protected communication. NRS 41.635-41.670. The act of filing a complaint to seek redress from a judicial body is a protected communication under the statute. (*See*, NRS 41.637(3)). Thus, when SIMON sued VANNAH in retaliation for asking Judge Tierra Jones to resolve a dispute with SIMON on behalf of the Edgeworths, VANNAH can file a special motion to dismiss under Nevada's Anti-

SLAPP statutes and interpretive laws.

Nevada and California courts grant Anti-SLAPP special motions in favor of attorneys who ask the Court to dismiss SLAPP complaints. *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian,* 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm,* 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished). Following that direction, VANNAH respectfully requests that this Court grant this Special Motion to Dismiss SIMON'S complaint, which is clearly a SLAPP.

II. FACTUAL BACKGROUND

The Edgeworths retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home they owned, which was under construction. (*See*, Appellants' Appendix AA, Vol. 2, p.000296, ll. 10 through 14; 000298:10-12; 000354-000355, attached to VANNAH'S Opposition to Plaintiffs' previously filed Emergency Motion to Preserve Evidence as Exhibit A). SIMON undertook this assignment on May 27, 2016. (*Id.*, at AA, Vol. 2, 000278:18-20; 000298:10-12; 000354.) He then began billing the Edgeworths $550 per hour for his work from that date to his last entry on January 8, 2018. (*Id.*, at 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 Eighth Judicial District Court as Case Number A-16-738444-C. (*Id.*, at AA, Vol. 2, 000296*).* In that action, the Edgeworths brought suit against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (*Id.*, at AA, Vol. 2, 000278:24-27; 000354).

Judge Tierra Jones conducted an evidentiary hearing over five days from August 27, 2018, through August 30, 2018, and concluded on September 18, 2018, to adjudicate SIMON'S attorney's lien. (*Id.*, at AA, Vol. 2, 000353-000375). The Court found that SIMON and the

Edgeworths had an implied agreement for attorney's fees. (*Id.*, at 000365-000366; 000374). However, the Edgeworths vigorously asserted that an oral fee agreement existed between SIMON and the Edgeworths for $550/hour for work performed by SIMON. (*Id*., at AA, Vols. 2 & 3, 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25; 512:1-20). In addition to the Edgeworths' testimony, SIMON'S invoices from May 27, 2016, through January 8, 2018, were all billed at $550 per hour for his time. (*Id*., at AA, Vols. 1 & 2, 000053-000267).

SIMON admitted that he *never* reduced the hourly fee agreement to writing; rather, the first written fee agreement he ever presented to the Edgeworths was on November 27, 2017—which was *days after* obtaining a settlement in principle for $6 million. (*Id*., at AA, Vol. 3, 000515-1:8-25). Regardless, SIMON and the Edgeworths performed the understood terms of the original oral fee agreement with exactness. (*Id*., at AA, Vol. 2, 000297:3-9; AA, Vol. 3, 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20*).* This was demonstrated when SIMON sent four (4) invoices to the Edgeworths over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September, 19, 2017. (*Id*., at AA, Vols. 1 & 2, 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20).

One can see that SIMON always billed for his time at the hourly rate of $550 per hour, and his two associates always billed at the rate of $275 per hour. (*Id*., at AA, Vols. 1 & 2, 000053-000267; 000374). It is undisputed the Edgeworths paid the invoices in full, and SIMON deposited the checks without returning any money. (*Id*., at AA, Vol. 2, 000356:14-16). And SIMON *did not express an interest* in May of 2016 in taking the property damage claim with a value of $500,000 on a contingency basis. (*Id*., at AA, Vol. 2, 000297:1-5).

SIMON thought that his attorney's fees would be recoverable as damages in the underlying flood litigation. (*Id*., at AA, Vol. 2, 000365-000366). As such, it was incumbent

upon him, as the attorney, to provide and serve computations of damages pursuant to NRCP 16.1 listing how much in the fees he'd charged. (*Id*., at *Id.*, 000365:24-26). At the deposition taken of Brian Edgeworth on September 27, 2017, he was asked what SIMON'S attorney's fees were to date, and, on the record, SIMON voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." (*Id*., at AA, Vol. 2, 000300:3-16; 000302-000304; 000365:27; 000366:1). That was less than two (2) months before the *crucial* meeting in his office where SIMON demanded that the fee agreement be modified to pay him a percentage of the Viking settlement. (*Id*., at 000300:3-16; 000302-000304).

Notwithstanding the existence of a fee agreement, a mutually understood pattern of invoices sent and paid for SIMON'S fees, and the Edgeworths' affidavits and testimony that an oral contract for fees paid at the hourly rate of $550 per hour had been reached in May of 2016, SIMON eventually wanted more than an hourly fee. (*Id*., at 000271-000304). On November 17, 2017, and only after the value of the case skyrocketed past $500,000 to over $6,000,000, SIMON demanded that the Edgeworths modify the fee contract so that he could recover a contingency fee dressed as a bonus. (*Id*., at AA, Vol. 2, 000298:3-17).

The Edgeworths initially understood that SIMON scheduled the meeting with the Edgeworths at SIMON'S office to discuss the flood litigation; instead, SIMON pressured his clients to modify the $550/hour fee agreement. (*Id*., at 000298:12-24). At that meeting, SIMON told the Edgeworths he wanted to be paid far more than $550.00 per hour and the $486,453.09 in fees and costs he'd received from the Edgeworths for the preceding eighteen (18) months. *Id*.

SIMON claimed that he was losing money and that it would be the right thing to do for the Edgeworths to agree to pay him basically 40% of the $6 million settlement with Viking. (*Id*., at AA, Vols. 2 & 3, 000299:13-22; 000270; 000275; 000515-1). At the close of that meeting, SIMON invited the Edgeworths to contact another attorney and verify that this was the way

things work. (*Id*., at AA, Vol. 3, 000000515-1, 000515-2, 000516:1-7, 000517:13-25). The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*See*, Exhibits A & B attached to this Special Motion).

Prior to that meeting, SIMON penned a letter to the Edgeworths on November 27, 2017 (Attached as Exhibit E). In SIMON'S own words, this is how he 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 were interpreted to 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*.; *See* also Exhibits A & B.) 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 continue to live, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*Id*.) The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*See*, Exhibits A & B attached to this Special Motion).

The Edgeworths refused to bow to SIMON'S pressure and demands for a fee bonus. (AA, Vol. 2, 000300:16-23). When the Edgeworths did not acquiesce to SIMON'S demands, SIMON refused to release the Edgeworths' settlement proceeds. *Id.* Instead, SIMON served two (2) attorney's liens: one (1) on November 30, 2017, and an Amended Lien on January 2, 2018. (*Id*., at 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 the Edgeworths had paid in full to SIMON for all his services and time from May 27, 2016, through September 19, 2017. (*Id*., at AA, Vol. 2, 000301:12-13). Simple math reveals that 40% (a contingency fee) of $6,000,000 is

$2,400,000. Similar math skills show that $486,453.09 plus $1,977,843.80 equals **$2,464,296.89**.

On January 4, 2018, VANNAH, on behalf of the Edgeworths, filed a complaint against SIMON, alleging claims for breach of contract, declaratory relief, and conversion. On March 15, 2018, VANNAH, on behalf of the Edgeworths, filed an amended complaint against SIMON, alleging claims for breach of contract, declaratory relief, conversion, and breach of the implied covenant of good faith and fair dealing. (*See*, Exhibit C). Several relevant paragraphs of the Amended Complaint are as follows:

(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 Eighth 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

(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.

(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.

(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 then 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.

(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.

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

(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 possibly 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. (**Emphasis** added.) (*Id*.)

As one can clearly see, there is nothing in the Edgeworths' Amended Complaint that alleges that SIMON "stole" the Edgeworths' money, as SIMON again erroneously alleges in Paragraph 21 of his SLAPP. (*Id*.) Put in the best possible light, that is a repeat of a false allegation by SIMON. A basis for the Edgeworths' claim for conversion against SIMON is that he knew or had every reason to know through his own statements and actions (the deposition of Brian Edgeworth; NRCP 16.1 disclosures and computation of damages; the amount of the super bill of $692,120, not a billable amount "that may well exceed $1,500,000" that SIMON stated to VANNAH in a letter dated December 7, 2017; etc.) that the largest amount of additional fees that SIMON could reasonably claim from the Edgeworths via an attorneys lien is **$692,120**. In other words, the Amended Complaint does not challenge SIMON'S right to assert a lien. Rather, it has always been about its **amount**, and SIMON'S persistent refusal to release the balance of the funds to the Edgeworths. (*See*, Exhibit C; see also Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

The plain reading of SIMON'S SLAPP clearly reveals that every Count/claim against VANNAH is directly related to VANNAH'S use of the courts—a judicial body—to bring and present claims for relief on behalf of clients—the Edgeworths—against SIMON, namely the claim for conversion. (*See*, Exhibit D.) There is no other reasonable interpretation of the basis for, or the content of, SIMON'S SLAPP. (*Id*.) Pursuant to Nevada law, a "Written or oral

statement made in direct connection with an issue under consideration by a…judicial body…" is a protected communication under Nevada's Anti-SLAPP statute. NRS 41.637(3). Furthermore, pursuant to NRS 41.650, "A person who engages in a good faith communication in furtherance of the right to petition…with an issue of public concern is *immune* from any civil action for claims based upon the communication." (Emphasis added.)

Therefore, VANNAH cannot be sued for following the law in petitioning a judicial body for relief afforded pursuant to well established Nevada law. *Id*. As a result, SIMON'S SLAPP must be dismissed.

III. ARGUMENTS

The Nevada Anti-SLAPP statute allows a defendant to file a special motion to dismiss claims based on protected communications that are made in good faith, such as asking this Court to dismiss SIMON'S complaint that is solely based and grounded in the Amended Complaint that VANNAH filed in good faith on behalf of the Edgeworths, asking a judicial body to grant certain relief and to make certain findings. NRS 41.660(1)(a). A special motion to dismiss first requires the defendant—VANNAH here—to establish by preponderance of the evidence that the plaintiffs' claim is based on a good faith communication made in furtherance of the right to petition the courts. NRS 41.660(3)(a). If the answer is yes, which it is here, then the burden shifts, and the plaintiff—SIMON here—must establish, by prima facie evidence, a likelihood of prevailing. NRS 41.665(2). If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted. *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished).

A plaintiff cannot establish a likelihood of prevailing if the claim is based upon a protected communication to a court, because the litigation privilege provides absolute immunity,

even for otherwise tortious or untrue claims. *Greenberg Taurig v. Frias Holding Co.*, 331 P.3d 901, 902 (Nev. 2014); and, *Blaurock v. Mattice Law Offices* 2015 WL 3540903 (Nev. App. 2015). Submission of a complaint, amended complaint, briefs, and arguments to a court/judicial body for adjudication to redress wrongs are all protected communications. And they're the whole nine (9) yards of SIMON'S SLAPP. Here, VANNAH cannot be sued by SIMON for following the law and making protected communications, written and oral, to the court. *NRS 41.650.*

A. SIMON'S COMPLAINT IS CLEARLY AND SOLELY FOUNDED ON PROTECTED COMMUNICATIONS TO A JUDICIAL BODY BY VANNAH.

Filing a complaint and an amended complaint by VANNAH in good faith on behalf of the Edgeworths to seek redress for wrong committed by SIMON pursuant to well-founded claims for relief are two examples of petitions to the judicial body, as well as issues of public concern. *See*, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). As such, the complaint and amended complaint that VANNAH filed on behalf of the Edgeworths qualify as protected communications pursuant to NRS 41.637(3), which states:

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> …
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law;
> …

SIMON'S SLAPP describes the use of VANNAH'S pleadings and the hearings ordered by the court to resolve disputes, including the lien adjudication that SIMON initiated, as the grounds for each of its eight (8) counts. However, only five (5) of the eight (8) counts are alleged against VANNAH. Here are some prime examples from SIMON'S SLAPP (Attached as

Exhibit D), with emphasis added in **bold**:

> 19. On January 4, 2018, Edgeworth's, through Defendant Lawyers, **sued** Simon, **alleging conversion**….
>
> 23. **During the course of the litigation**, Defendants, and each of them, filed false documents asserting blackmail, extortion and converting the Edgeworth's portion of the settlement proceeds.
>
> 25. **All filings for conversion** were done without probable cause or a good faith belief that there was an evidentiary basis.
>
> 35. The Edgeworth entities, through the Defendant attorneys, **initiated a complaint**….
>
> 36. The Edgeworth entities, through the Defendant attorneys, **maintained the**…**conversion claim when filing an amended complaint**….
>
> 41. The Edgeworths and the Defendant attorneys **advanced arguments in public documents**….
>
> 50. The Defendants…intended to harm…**by advancing arguments in public documents**…**filings**….
>
> 58. The Edgeworth's and the Defendant attorneys abused **the judicial process** when **initiating a proceeding and maintained the proceeding alleging conversion**….
>
> 67. Robert D. Vannah, Chtd., **had a duty**…to act diligently and competently **to represent** (sic) **valid claims to the court and to file pleadings before the court**…
>
> 103. Defendants, and each of them…intended to accomplish the unlawful objective of (i) **filing false claims**…to **defend wrongful institution of civil proceedings**…were committed several times **when filing the complaint, amended complaint, all briefs, 3 affidavits, oral arguments and supreme court filings**…. (*Id.*)

These are but a few of the numerous references in SIMON'S SLAPP that demonstrate the sole reason it was brought is because the Edgeworths, through their attorneys, VANNAH, had the temerity to bring well-recognized claims in good faith to seek redress from SIMON through a judicial body, then appeal some of the decisions to the Nevada Supreme Court when VANNAH determined, in good faith, the district court did not follow the law. (*Id*.) The use of a complaint, an amended complaint, briefs, and arguments are all protected communications of public concern under NRS 41.637, and the use of these devices serves as **the** basis for SIMON'S SLAPP. *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished).

To quote SIMON'S position from his earlier-filed Special Motion to Dismiss, "…you cannot be sued for following the law." Thus, VANNAH has satisfied their burden under NRS 41.660 & 41.665, and the burden now shifts to SIMON.

B. SIMON DOES NOT HAVE ANY LIKELIHOOD OF PREVAILING.

Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002). The privilege also applies to "conduct occurring during the litigation process." *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, "bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev.

56, 60, 657 P.2d 101, 104 (1983).

The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies "so long as [the statements] are in some way pertinent to the subject of controversy." *Id.* Moreover, the statements "need not be relevant in the traditional evidentiary sense, but need have only 'some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Id.* at 61, 657 P.2d at 104. Contrary to SIMON'S allegations in his SLAPP, there is vast evidentiary support for all of the allegations contained in the Amended Complaint. (*See*, Exhibit C; *see also*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

A plain reading of SIMON'S SLAPP reveals that the basis for *all* of SIMON'S Counts/claims are 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 D.) Since these written and oral communications and statements are "absolutely privileged," there is no set of facts…which would entitle SIMON to any relief, or to prevail. *See, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). VANNAH is also "immune from any civil liability for claims based upon the communication." NRS 41.650. Therefore, SIMON does not have any prima facie evidence to support any of his Counts/claims, including that for Wrongful Use of Civil Proceedings, upon which relief could ever be granted. Therefore, he cannot meet his burden under the law. NRS 41.660(3)(b).

In addition to the litigation privilege and statutory immunity mentioned above, there is also a complete lack of prima facie evidence to support SIMON'S claims for abuse of process and wrongful use of civil proceedings, as 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 in SIMON'S 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*. There is no dispute whatsoever that the prior action has not been terminated favorably or otherwise; it's on appeal to the Nevada Supreme Court with both sides appealing rulings made by the district court. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A; *see also*, Exhibits A & B.)

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 lacks sufficient factual and/or legal support to meet his burden on these counts, either. (NRS 41.660(3)(b)).

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 <u>after</u> the filing of a complaint to state a claim. *Id*. As indicated in the appellate record, <u>nothing</u> 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. *See*, *Laxalt*, 622 F. Supp. at 752. Since this count/claim is legally insufficient, SIMON cannot meet his burden under NRS 41.660(3)(b).

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 (not "fired" as alleged throughout SIMON'S SLAPP) by the Edgeworths (even though SIMON said in as many words in his November 27, 2017, letter that he'd quit if the Edgeworths didn't agree to pay him a fee bonus—Exhibit E), 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 (see Exhibit E, where SIMON threatened to quit if the Edgeworths didn't modify the fee contract), 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. (*Id*.)

That's $33,811.25 in fees that SIMON billed the Edgeworths for work he performed after SIMON erroneously alleges in his SLAPP he was "fired" by the Edgeworths. (*Id*.) That's also pretty good work if you can find it these days.

Since SIMON'S suit/complaint is inextricably linked to written and oral communications made by VANNAH (and the Edgeworths) in 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 show by prima facia evidence that he can prevail on 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). Therefore, SIMON again cannot meet his burden under NRS 41.660(3)(b).

As with SIMON'S other Counts/claims, the one 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 any 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 claim in Nevada, the plaintiff had and identified the contractual relationship that was allegedly interfered with by a defendant. (*Id*.) However, SIMON fails in his SLAPP to identify <u>any</u> actual prospective contractual relationship between SIMON and <u>any</u> third party. (Please see Exhibit D.) Instead, SIMON'S SLAPP speaks in generalities and is full of conjecture. (*Id*.) Who are the specific third parties and what are actual 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 claim/Count 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 NRS 41.635-.670. *See*, also *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; *see also*, Exhibits A & B). 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 communications and actions allegedly taken in the underlying judicial action by the Edgeworths and their attorneys, VANNAH, namely the filing of a complaint, an amended complaint, briefs, and in making arguments to Judge Jones. (*See*, Exhibit D).

The law is clear that VANNAH, as attorneys, does not owe a duty of care to SIMON, an adversary of a client, the Edgeworths, 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 Complaint shows that these claims are based on the breach of an alleged duty by VANNAH to SIMON in the filing of, and engaging in, litigation. (*See*, Exhibit D.) Neither the law discussed above nor common sense allow SIMON to make or maintain such Counts/claims. Since SIMON cannot maintain these claims as a matter of law pursuant to Nevada (and general) law, he cannot prevail. *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). Since SIMON cannot prevail, he cannot meet his burden under NRS 41.660(3)(b).

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 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; and, Exhibits A & B).

VANNAH also agrees that the allegations in the complaints represented a good faith understanding of the factual reality that the Edgeworths had lived 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 by that client at the hands of another, such as SIMON. *NRS 41-635-.670*. There is also nothing in Nevada law that makes it criminal or unlawful for an attorney to then file a complaint and/or amended complaint alleging various claims for relief, including conversion, when an adverse party, even an 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. NRS 41.635-.670. This is all part of the public record and was all done to seek a remedy that SIMON withheld—a large 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). And he's done so now for over two (2) years. (*Id*.) Neither the facts, nor the law, nor common sense support SIMON'S claim for civil conspiracy. Therefore, he cannot prevail. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008). Since this count/claim is legally and factually insufficient, SIMON cannot meet his burden under NRS 41.660(3)(b).

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. With all of his Counts/claims being legally and factually deficient in material respects, SIMON cannot meet his burden under NRS 41.660(3)(b).

B. VANNAH HAD AND HAS A GOOD FAITH BASIS TO FILE AND MAINTAIN THE EDGEWORTHS' CLAIMS AGAINST SIMON, INCLUDING CONVERSION.

SIMON is wrong, factually and legally, when he speaks of an "arrangement" that purportedly undermines the Edgeworths' claim for conversion. 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. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A). That was the fee contract. (*Id*.)

The Edgeworths reasonably expected that the fee 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 bonus, 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 over $1,977,843 in additional fees and costs, and refused to release the settlement funds to the Edgeworths, not even the funds that exceed the amount of SIMON'S own super bill, which totaled $692,120. (*Id*.)

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 above and beyond what SIMON billed for the work the court found that he performed and is entitled to receive following the adjudication proceedings. (*Id*.)

Even now, SIMON continues to exercise dominion and control of well over $1 million dollars of the Edgeworths' funds, an amount in which SIMON has 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.) That's on all fours with the Edgeworths' claims against SIMON here, and why SIMON'S SLAPP must be dismissed.

It's clear that, contrary to the allegations and arguments 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 an amount of the Edgeworths' money without a reasonable basis to do so. (*Id.*; *see also*, Exhibit C.) It doesn't require proof of theft or ill intent, as SIMON wants everyone to believe. *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). Rather, the conversion is SIMON'S 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).

As SIMON'S allegations in his SLAPP seems to suggest, are lawyers truly exempt from the laws governing conversion when we exercise unlawful dominion and control over an amount of money that we have no reasonable basis to lay a claim to? (*See*, Exhibit D.) What if a contingency fee agreement is actually drafted by the lawyer per NRPC 1.5(c), providing for a 40% fee, then the attorney asserts a lien for 50%? Or 60%? Or more? Or even 41%? Isn't that conversion under the law because the amount of the lien has no reasonable basis by any factual or legal measure, thus rising to, "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).

Some of the best evidence of the good faith nature of the conversion claim brought against SIMON by the Edgeworths through their attorneys, VANNAH, is the amount of SIMON'S superbill ($692,120) versus the amount of his Amended Lien ($1,977,843.80). (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) At the near conclusion and resolution of the flood litigation, and likely just prior to November 17, 2017 (since discovery was never allowed by Judge Jones before she dismissed the Amended Complaint, these facts couldn't be flushed out yet), SIMON firmly decided he wanted a contingency fee from the Edgeworths. (*Id*.) But SIMON failed, as the lawyer, to reduce any fee agreement to writing. (*Id*.) Thus, per the NRPC and the Decision and Order of Judge Jones Adjudicating the Lien, SIMON'S path to a contingency fee was factually and legally precluded. (*Id*.)

Even though the super bill 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 well over a million dollars of the Edgeworths' money to them. (*Id*.) That conduct by SIMON constitutes a good faith basis for VANNAH, on behalf of the Edgeworths, to bring a claim against SIMON for the 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).

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). Instead, SIMON still seeks a contingency fee despite failing to ever reduce the fee agreement to writing per NRPC 1.5(c), and despite the Decision and Order from Judge Jones stating, "…this is not a contingency fee case, and the Court is not awarding a contingency fee." (*Id*., at AA, Vol. 2 000353-000375, with specific emphasis on pages 000373-000374).

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. (NRPC 3.1).

As for the claim for breach of contract, the Edgeworths vigorously asserted that an oral fee agreement existed between SIMON and the Edgeworths for $550/hour for work performed by SIMON. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, specifically at Vols. 2 & 3, 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20). SIMON and the Edgeworths performed the understood terms of the fee agreement—the Contract—with exactness. (*Id*., at AA, Vol. 2, 000297:3-9; AA, Vol. 3, 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20). This was demonstrated when SIMON sent four (4) invoices to the Edgeworths over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September, 19, 2017, all billed at $550 per hour. (*Id*., at AA, Vols. 1 & 2 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20).

It is undisputed the Edgeworths paid the invoices in full, and SIMON deposited the

checks without returning any money. (*Id*., at AA, Vol. 2, 000356:14-16). In summary, the evidence clearly supports a good faith basis for VANNAH, on behalf of the Edgeworths, to bring and maintain a claim for breach of contract against SIMON. (*Id*., at AA, Vols. 1 & 2, 000053-000267; 000374.)

Similarly, VANNAH had and has a good faith basis, on behalf of the Edgeworths, to bring a claim against SIMON for his breach of the covenant of good faith and fair dealing. Some of the best evidence to support this claim is SIMON'S own drop-dead letter to the Edgeworths dated November 27, 2017, which threatened the Edgeworths with SIMON quitting if the Edgeworths wouldn't agree to amend the fee agreement and pay SIMON a fee bonus. (*See*, Exhibit E.) This letter shows that SIMON was unfaithful to the spirit of the Contract for fees, as the Edgeworths were left with two (2) awful options—acquiesce or litigate. This conduct constitutes a good faith basis to bring this claim against SIMON. *See*, NRS 104.1203; NRS 1304; NRS 104.1201(t); *Klein v. Freedom Strategic Partners*, LLC, 595 F. Supp. 2d 1152 (D. Nev. 2009).

Thus, we see that it is clear that SIMON cannot show by any measure of evidence a likelihood of prevailing on any of the Counts/claims of his SLAPP. Therefore, SIMON'S SLAPP must be dismissed.

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IV. CONCLUSION

SIMON'S suit is a SLAPP and must be dismissed under Nevada's Anti-SLAPP laws found in NRS sections 41.635-41.670.

DATED this 29th day of May, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

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Traditional Manner:
None

DATED this 29th day of May, 2020.

/s/Patricia A. Marr
An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **AFFIDAVIT OF ROBERT D. VANNAH, IN SUPPORT OF SPECIAL MOTION TO DISMISS: ANTI-SLAPP** Date of Hearing: Time of Hearing:

AFFIDAVIT OF ROBERT D. VANNAH, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, ROBERT D. VANNAH, being duly sworn, states:

1. I am the senior partner of Robert D. Vannah, Chtd., d/b/a Vannah & Vannah.

2. I received my J.D. from Loyola in Los Angeles in 1976. I became a licensed attorney in September of 1976, and have remained licensed to practice law since then. I have never been disciplined by the Nevada Bar Association.

3. In November of 2017, Mr. Brian Edgeworth called me and asked me for legal advice. He had a letter from Mr. Simon recommending that he seek independent legal counsel regarding legal fees. Since Mr. Simon asked him to seek independent counsel, I felt that there were no ethical concerns in my doing so.

4. I met with Mr. Edgeworth on November 29, 2017, in my office. John B. Greene, one of my associates, was also present. After reviewing documents, I concluded that on or about May 27, 2016, the Edgeworths retained Danny Simon to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by the Edgeworths. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that Mr. Simon's drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C, with a trial date of early 2018. A settlement in favor of the Edgeworths for a substantial amount of money was reached with Defendant Viking on November 15, 2017, and a lesser settlement with Defendant Lange was reached on December 1, 2017.

5. Near the beginning of the attorney-client relationship, the Edgeworths and Mr. Simon agreed that Mr. Simon would be paid for his services by the hour and at an hourly rate of $550. No other form or method of compensation such as a contingency fee or a hybrid was ever brought up at that time, let alone agreed to. Despite Mr. Simon serving as the attorney in this business relationship, and the one with the requisite

legal expertise, he never reduced the terms of the contract to writing in the form of a Fee Agreement for the Edgeworths to sign. However, that formality didn't matter to the parties as they each recognized what the terms of the contract were and performed them accordingly with exactness through September 19, 2017, a time spanning about eighteen (18) months.

6. For example, Mr. Simon sent four invoices to the Edgeworths that were dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017 (the Invoices). The amount of fees and costs Mr. Simon billed the Edgeworths in the Invoices totaled **$486,453.09**. Simple reading and math show that Mr. Simon billed for his time at the hourly rate of $550 per hour, and his two associates billed at the rate of $275 per hour. It's undisputed that the Edgeworths paid the Invoices in full to Mr. Simon, and that he deposited the checks without any questions and without returning any of the money.

7. As discovery in the underlying flood 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 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 and culminating the following November. On the 17th of that month, Mr. Simon scheduled an appointment for the Edgeworths to come to his office to discuss the flood litigation. Instead, the evidence determined that his only agenda item was to pressure the Edgeworths into modifying the terms of the contract.

8. At that meeting, the evidence determined that Mr. Simon told the Edgeworths that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd

received from the Edgeworths for the preceding eighteen (18) months. On November 27, 2017, Simon sent a letter to the Edgeworths. I read that letter and its attachments, such as a proposed settlement breakdown and a proposed retainer agreement. These documents set 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 the favorable settlement that was reached with the defendants in the flood litigation.

9. At that time, these additional "fees" were not based upon invoices submitted to the Edgeworths or for detailed work performed by Mr. Simon. The proposed fees and costs were in addition to the $486,453.09 that the Edgeworths had already paid to Mr. Simon pursuant to the fee contract, the invoices that Mr. Simon had presented to the Edgeworths, the evidence produced to defendants in the flood litigation, and the amounts set forth in the computations of damages disclosed by Mr. Simon in the flood litigation.

10. One reason given by Mr. Simon to modify the contract was he claimed he was losing money on the flood litigation. Another reason given by him was that he purportedly under billed the Edgeworths 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 Mr. Simon, he under billed in the flood litigation in an amount in excess of $1,000,000.00.

11. Mr. Simon concluded the letter of November 27, 2017, with these words: "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." I interpreted these words to clearly mean that if the Edgeworths didn't agree to sign a new retainer agreement that would give Mr. Simon

an additional $1,114,000 in fees, he would no longer agree to be their lawyer. Meaning he would quit, despite the looming reality that the litigation against the Lange defendant was set for trial early in 2018.

12. Mr. Simon doubled down on that position of under billing in a letter to Mr. Greene and me, dated December 7, 2017, where Mr. Simon claimed that the worked performed by him from the outset that has not been billed, "may well exceed $1.5M."

13. Despite Mr. Simon's requests and demands for the payment of more in fees, the Edgeworths refused to alter or amend the terms of the contract. When the Edgeworths refused to alter or amend the terms of the contract, Mr. Simon refused to agree to release the full amount of the Edgeworths' settlement proceeds to them. Instead, Mr. Simon served two attorney's liens and reformulated his billings to add entries and time that never saw the light of day in the flood litigation.

14. Even when Mr. Simon finally submitted his "new" invoices on January 24, 2018, they totaled $692,120 for "additional" services, and billed them at the contract rate of $550/$275 per hour. That's less than 1/2 of the amount that he'd written to Mr. Greene and me about six weeks earlier. Yet, despite the contract, 18 months of course of dealing, and the amount of the "new" invoice/super bill of $692,120, Mr. Simon's Amended Lien wrongfully exercised dominion and control to over $1,977,843 of the settlement proceeds, and he refused to release to the Edgeworths' funds in excess of the amount of Mr. Simon's own super bill.

15. 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. The claims of the Edgeworths against Mr.

Simon are for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing.

16. I, as the senior partner of the firm, made the decisions to file the pleadings with the claims made and thereafter, the arguments presented in briefs, in court, and all other judicial proceedings, including the pending appeal. These decisions were made after a thorough review of the law pertaining to these claims, and a good faith belief that all of the written and oral communications made to the court are accurate and well-founded in the law, and not done for any ulterior or improper motive.

17. To date, Mr. Simon hasn't filed an Answer to either of the Edgeworths' Complaints. Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the Complaint and another for the Amended Complaint), and two "Special" Motions to Dismiss: Anti-SLAPP.

18. Judge Tierra Jones held an evidentiary hearing on Mr. Simon's Motion to Adjudicate, and that hearing took place over five days. At the conclusion of the hearing, Judge Jones asked the parties to submit written closing arguments and written findings of fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss Anti-SLAPP. Mr. Simon's Motion to Dismiss was granted without any discovery allowed and with findings that clearly show that Judge Jones chose to believe Mr. Simon's account of several contested facts as opposed to the legal standard of accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as moot.

19. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a contingency fee case; 2.) an implied agreement for fees was in existence at the rate of $550 per hour for Mr. Simon and $275 per hour for his two associates; 3.) Mr. Simon was paid in full by the Edgeworths for his fees for services rendered from May of 2016 through September 19, 2017; 4.) Mr. Simon is entitled to $284,982.50 in fees at the hourly rate of $550 for Mr. Simon and $275 for his associates from September 19, 2017, through November 29, 2017; and, 5.) Mr. Simon is entitled to $200,000 in fees under quantum meruit from the date he was constructively discharged on November 30, 2017, until the case concluded in early January of 2018.

20. On October 29, 2018, Mr. Simon filed a Motion for Reconsideration and to Clarify, seeking to rehash his losses and to clarify whether the agreement for fees was an implied oral agreement versus an implied agreement. Of note, the parties agreed that the LDO incorrectly awarded additional costs to Mr. Simon, when the parties stipulated that no additional costs were owed. On October 31, 2018, I sent a letter to James R. Christensen, Esq., advising him that, despite arguable errors by Judge Jones in finding a constructive termination as of December 1, 2017, in dismissing the Edgeworths' Amended Complaint, and in awarding $200,000 in extra fees in quantum meruit when Mr. Simon had "only" billed $33,811.25 in fees for that time frame, the Edgeworths are willing to pay Mr. Simon the $484,982.50 in fees that Judge Jones awarded in the LDO...and call it a day. Mr. Simon never responded to that letter.

21. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as opposed to an implied agreement and a LDO that removed any award of costs to Mr.

Simon, as stipulated. On November 19, 2018, I sent yet another letter to Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as outlined earlier, the Edgeworths are still willing to pay Mr. Simon the **$484,982.50** in fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Mr. Simon didn't respond to that letter, either. Since Mr. Simon remained fixed and immovable in his quest for more in fees, and since a settlement couldn't be reached with one who won't communicate, the Edgeworths appealed the LDO and the Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete and we are waiting for further instruction and action from the Nevada Supreme Court.

22. Thereafter, Mr. Simon filed a Motion for Fees and Costs, seeking $262,099.48 in fees and $18,434.73 in costs. The Motion was vague as to whether the fees and costs he sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both. the Edgeworths argued that there wasn't and isn't any basis on the law for Mr. Simon to seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs associated with Will Kemp, Esq., and the vast majority of the fees associated with James R. Christensen, Esq., were incurred adjudicating Mr. Simon's lien in its exorbitant amount. In Mr. Simon's Reply, he limited his request for fees and costs allegedly incurred in seeking the dismissal of the Edgeworths' Complaint (original and amended), namely the claim for conversion.

23. On February 6, 2019, Judge Jones signed an order granting in part and denying in part Mr. Simon's Motion. The Court found that the conversion claim was not maintained upon reasonable grounds; that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the

purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were incurred to defend the lawsuit; and, awarded $50,000 in fees and $5,000 in costs.

24. In her ruling, Judge Jones seemed to adopt the position of Mr. Simon that conversion can't happen without some measure of actual theft or sole control. Yet, both are wrong, as Nevada law does not require theft of, or sole control of, another's property to rise to conversion. Rather, the law clearly states that 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).

25. Following my review of the facts, and knowing this to be the law in Nevada governing claims for conversion, I believed, and still believe, that Mr. Simon's intentional act of exerting dominion of any portion of the settlement proceeds that exceeds the amount of his own billings, including his super bill of $692,120, is inconsistent with his rights and in derogation to those of the Edgeworths. Therefore, I determined that Nevada law clearly supported a claim for conversion against Mr. Simon. And the act of conversion continues to this day, over two years after the settlement proceeds were received and eighteen (18) months since Mr. Simon's lien was adjudicated.

26. The evidence shows that Mr. Simon has no reasonable basis to make a claim for 40% of the Edgeworths' settlement proceeds. NRPC 1.5(c) requires that all contingency fee agreements be in writing with specific language and Mr. Simon waited until November 27, 2017, to present one to the Edgeworths, who rightfully declined to sign it. By then all of the risk that is generally associated with contingency fee agreements

was gone, as the lucrative Viking settlement had already been reached. Mr. Simon also acknowledged in his letter of November 27, 2017, that he didn't and can't have a contingency fee agreement. Judge Jones also told him and Ordered that he cannot have one, either. Yet, Mr. Simon still refuses to relinquish the control he has over the settlement funds, an amount that still closely resembles a 40% contingency fee when all payments and offered payments are factored in.

27. What if an attorney actually has a written 40% contingency fee agreement, then serves an attorney's lien for 50% of a settlement? Or 60%? Or more? And then what if that attorney won't budge from that amount? Do we then force the client to accept one of two awful options—either acquiesce or litigate? If the second option is selected, does that attorney get a free pass on a claim for conversion? Would the average citizen get that same free pass if that citizen exercised dominion and control over an amount of money owned by another in an amount that was unreasonable on the facts?

28. The sad irony here is that the Edgeworths wanted none of this. Instead they got all of this. Even if litigation wasn't filed, they still got over two years of litigation with the lien adjudication process, because Mr. Simon seems to have no interest in accepting anything less in fees than what he wants, which, according to his Amended Lien, is 40%. It's going to take intervention from the Nevada Supreme Court to unwind what is so tightly wound. With the Decisions and Orders presently on appeal, and with briefing now complete, a final decision could take years beyond the years that the Edgeworths have been forced to wait for their property to be given to them.

29. It did occur to me at that time that the Nevada Supreme Court may determine that, despite the unreasonable amount of an attorney's lien, an attorney cannot be sued if

the lien adjudicating process is utilized. Perhaps that day will come, or perhaps it won't. Until that day, clients still have the right to petition the courts to seek help to redress wrongs committed by others, even if that "other" is their attorney.

30. I am well aware of Anti-SLAPP laws and their central, important purpose. The Amended Complaint that I directed to be prepared and filed against Mr. Simon and his law firm was based on my good faith belief that the amount of his Amended Lien, coupled with the facts and evidence of this case, constituted conversion under Nevada law, as well as a breach of contract and breach of the covenant of good faith and fair dealing. Additionally, I believe that Mr. Simon knew, and still knows, that he had no reasonable basis to serve his Amended Lien in an amount that he calculated to be 40% of the settlements reached with the flood defendants. My belief on the existence of Mr. Simon's knowledge and awareness on this issue was gleaned through letters he prepared, pleadings in the flood litigation, his billings, the evidence, and the conclusions of Judge Jones. Yet, Mr. Simon still won't relinquish the dominion and control that he has been exercising since January of 2018.

31. These facts stand in stark contrast to the allegations made in the SLAPP of Mr. Simon. My law firm, my associate, and me, are all being sued for making, in good faith, written and oral communications in judicial proceedings on behalf of clients. Each of the claims for relief in the complaints that are being attacked by Mr. Simon in his SLAPP are supported by the facts, the evidence, and by Nevada law.

32. The documents that have been attached to this Special Motion as Exhibits, as well as Appellants Appendix that was attached in the Opposition to Mr. Simon's emergency motion, which is referenced and incorporated, are all true, authentic, and correct copies of the original documents. Regarding Exhibit "E" specifically, it was

referenced in the prior litigation and sworn testimony was offered that this letter, and its two exhibits, were prepared by Mr. Simon, were given to the Edgeworths on or near the date of the letter, and served as the basis for Mr. Simon's new fee proposal and his invitation for the Edgeworths to seek independent counsel on his proposed fees. All of the documents attached as Exhibits support the claims for relief brought by the Edgeworths and undermine the SLAPP of Mr. Simon.

33. Finally, at no point in time was anyone at my firm retained to counsel or to represent Mr. Simon in this matter, and neither Mr. Greene nor I, ever provided counsel or representation to Mr. Simon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

ROBERT D. VANNAH, ESQ.

SUBSCRIBED and SWORN TO before me
this 14th day of May, 2020.

NOTARY PUBLIC

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

EXHIBIT B

EXHIBIT B

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

DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **AFFIDAVIT OF JOHN B. GREENE, IN SUPPORT OF SPECIAL MOTION TO DISMISS: ANTI-SLAPP** Date of Hearing: Time of Hearing:

AFFIDAVIT OF JOHN B. GREENE, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, JOHN B. GREENE, ESQ., being duly sworn, states:

1. I am an associate of Robert D. Vannah, Chtd., d/b/a Vannah & Vannah.

2. I received my J.D. from the University of the Pacific, McGeorge School of Law in 1991. I became a licensed attorney in September of 1991, and have remained

licensed to practice law since then. I have never been disciplined by the Nevada Bar Association.

3. I have read the Affidavit of Robert D. Vannah and agree with the truthfulness and content of each paragraph, as we've discussed all of the facts and developments of this case since November 29, 2017.

4. Mr. Vannah and I met with Mr. Edgeworth on November 29, 2017, in Mr. Vannah's office. After reviewing documents, we concluded that on or about May 27, 2016, the Edgeworths retained Danny Simon to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by the Edgeworths. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that Mr. Simon's drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C, with a trial date of early 2018. A settlement in favor of the Edgeworths for a substantial amount of money was reached with Defendant Viking on November 15, 2017, and a lesser settlement with Defendant Lange was reached on December 1, 2017.

5. Near the beginning of the attorney-client relationship, the Edgeworths and Mr. Simon agreed that Mr. Simon would be paid for his services by the hour and at an hourly rate of $550. No other form or method of compensation such as a contingency fee or a hybrid was ever brought up at that time, let alone agreed to. Despite Mr. Simon serving as the attorney in this business relationship, and the one with the requisite legal expertise, he never reduced the terms of the contract to writing in the form of a Fee Agreement for the Edgeworths to sign. However, that formality didn't matter to

the parties as they each recognized what the terms of the contract were and performed them accordingly with exactness through September 19, 2017, a time spanning about eighteen (18) months.

6. For example, Mr. Simon sent four invoices to the Edgeworths that were dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017 (the Invoices). The amount of fees and costs Mr. Simon billed the Edgeworths in the Invoices totaled **$486,453.09**. Simple reading and math show that Mr. Simon billed for his time at the hourly rate of $550 per hour, and his two associates billed at the rate of $275 per hour. It's undisputed that the Edgeworths paid the Invoices in full to Mr. Simon, and that he deposited the checks without any questions and without returning any of the money.

7. As discovery in the underlying flood 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 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 and culminating the following November. On the 17th of that month, Mr. Simon scheduled an appointment for the Edgeworths to come to his office to discuss the flood litigation. Instead, the evidence determined that his only agenda item was to pressure the Edgeworths into modifying the terms of the contract.

8. At that meeting, the evidence determined that Mr. Simon told the Edgeworths that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from the Edgeworths for the preceding eighteen (18) months. On November 27, 2017, Simon sent a letter to the Edgeworths. I also read that letter and its

attachments, such as a proposed settlement breakdown and a proposed retainer agreement. These documents set 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 the favorable settlement that was reached with the defendants in the flood litigation. A true and authentic copy of that letter is attached as Exhibit E.

9. At that time, these additional "fees" were not based upon invoices submitted to the Edgeworths or for detailed work performed by Mr. Simon. The proposed fees and costs were in addition to the $486,453.09 that the Edgeworths had already paid to Mr. Simon pursuant to the fee contract, the invoices that Mr. Simon had presented to the Edgeworths, the evidence produced to defendants in the flood litigation, and the amounts set forth in the computations of damages disclosed by Mr. Simon in the flood litigation.

10. One reason given by Mr. Simon to modify the contract was he claimed he was losing money on the flood litigation. Another reason given by him was that he purportedly under billed the Edgeworths 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 Mr. Simon, he under billed in the flood litigation in an amount in excess of $1,000,000.00.

11. Mr. Simon concluded the letter of November 27, 2017, with these words: "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." These are Mr. Simon's words; he owns them and their meaning. I agree with Mr. Vannah and interpreted these words to clearly mean that if the Edgeworths didn't agree to sign a new retainer agreement that would give Mr.

Simon an additional $1,114,000 in fees, he would no longer agree to be their lawyer. Meaning he would quit, despite the looming reality that the litigation against the Lange defendant was set for trial early in 2018.

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14. Even when Mr. Simon finally submitted his "new" invoices on January 24, 2018, they totaled $692,120 for "additional" services, and billed them at the contract rate of $550/$275 per hour. That's less than 1/2 of the amount that he'd written to Mr. Vannah and me about six weeks earlier. Yet, despite the contract, 18 months of course of dealing, and the amount of the "new" invoice/super bill of $692,120, Mr. Simon's Amended Lien wrongfully exercised dominion and control to over $1,977,843 of the settlement proceeds, and he refused to release to the Edgeworths' funds in excess of the amount of Mr. Simon's own super bill.

15. 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. The claims of the Edgeworths against Mr.

Simon are for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing.

16. Before any of the claims were filed against Mr. Simon and his firm, I conducted research on each of the claims. After a thorough review of the law pertaining to these claims, I believed we had a good faith basis to make the claims. I also believe that all of the written and oral communications made to the court in all forums are accurate and well-founded in the law, and not done for any ulterior or improper motive.

17. To date, Mr. Simon hasn't filed an Answer to either of the Edgeworths' Complaints. Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the Complaint and another for the Amended Complaint), and two "Special" Motions to Dismiss: Anti-SLAPP.

18. Judge Tierra Jones held an evidentiary hearing on Mr. Simon's Motion to Adjudicate, and that hearing took place over five days. At the conclusion of the hearing, Judge Jones asked the parties to submit written closing arguments and written findings of fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss Anti-SLAPP. Mr. Simon's Motion to Dismiss was granted without any discovery allowed and with findings that clearly show that Judge Jones chose to believe Mr. Simon's account of several contested facts as opposed to the legal standard of accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as moot.

19. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a contingency fee case; 2.) an implied agreement for fees was in existence at the rate of

$550 per hour for Mr. Simon and $275 per hour for his two associates; 3.) Mr. Simon was paid in full by the Edgeworths for his fees for services rendered from May of 2016 through September 19, 2017; 4.) Mr. Simon is entitled to $284,982.50 in fees at the hourly rate of $550 for Mr. Simon and $275 for his associates from September 19, 2017, through November 29, 2017; and, 5.) Mr. Simon is entitled to $200,000 in fees under quantum meruit from the date he was constructively discharged on November 30, 2017, until the case concluded in early January of 2018.

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21. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as opposed to an implied agreement and a LDO that removed any award of costs to Mr. Simon, as stipulated. On November 19, 2018, Mr. Vannah sent yet another letter to Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as

outlined earlier, the Edgeworths are still willing to pay Mr. Simon the **$484,982.50** in fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Mr. Simon didn't respond to that letter, either. Since Mr. Simon remained fixed and immovable in his quest for more in fees, and since a settlement couldn't be reached with one who won't communicate, the Edgeworths appealed the LDO and the Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete and we are waiting for further instruction and action from the Nevada Supreme Court.

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23. On February 6, 2019, Judge Jones signed an order granting in part and denying in part Mr. Simon's Motion. The Court found that the conversion claim was not maintained upon reasonable grounds; that the purpose of the evidentiary hearing was primarily

for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were incurred to defend the lawsuit; and, awarded $50,000 in fees and $5,000 in costs.

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25. Following my review of the facts, and knowing this to be the law in Nevada governing claims for conversion, I also believed, and still believe, that Mr. Simon's intentional act of exerting dominion of any portion of the settlement proceeds that exceeds the amount of his own billings, including his super bill of $692,120, is inconsistent with his rights and in derogation to those of the Edgeworths. Therefore, it was determined that Nevada law clearly supported a good faith basis for a claim for conversion against Mr. Simon. And the act of conversion continues to this day, over two years after the settlement proceeds were received and eighteen (18) months since Mr. Simon's lien was adjudicated.

26. The evidence shows that Mr. Simon has no reasonable basis to make a claim for 40% of the Edgeworths' settlement proceeds. NRPC 1.5(c) requires that all contingency fee agreements be in writing with specific language and Mr. Simon waited until November 27, 2017, to present one to the Edgeworths, who rightfully declined to sign

it. By then all of the risk that is generally associated with contingency fee agreements was gone, as the lucrative Viking settlement had already been reached. Mr. Simon also acknowledged in his letter of November 27, 2017, which is Exhibit E, that he didn't and can't have a contingency fee agreement. Judge Jones also told him and Ordered that he cannot have one, either. Yet, Mr. Simon still refuses to relinquish the control he has over the settlement funds, an amount that still closely resembles a 40% contingency fee when all payments and offered payments are factored in.

27. Mr. Vannah asks a key set of questions in his Affidavit, which are: What if an attorney actually has a written 40% contingency fee agreement, then serves an attorney's lien for 50% of a settlement? Or 60%? Or more? And then what if that attorney won't budge from that amount? Do we then force the client to accept one of two awful options—either acquiesce or litigate? If the second option is selected, does that attorney get a free pass on a claim for conversion? Would the average citizen get that same free pass if that citizen exercised dominion and control over an amount of money owned by another in an amount that was unreasonable on the facts?

28. The sad irony here is that the Edgeworths wanted none of this. Instead they got all of this. Even if litigation wasn't filed, they still got over two years of litigation with the lien adjudication process, because Mr. Simon seems to have no interest in accepting anything less in fees than what he wants, which, according to his Amended Lien, is 40%. I agree that it's likely going to take intervention from the Nevada Supreme Court to unwind what is so tightly wound. With the Decisions and Orders presently on appeal, and with briefing now complete, a final decision could take years beyond the years that the Edgeworths have been forced to wait for their property to be given to them.

29. I, like Mr. Vannah, am well aware of Anti-SLAPP laws and their central, important purpose. The Amended Complaint that I prepared under Mr. Vannah's direction and filed against Mr. Simon and his law firm was based on my good faith belief that the amount of his Amended Lien, coupled with the facts and evidence of this case, constituted conversion under Nevada law, as well as a breach of contract and breach of the covenant of good faith and fair dealing. Additionally, I, like Mr. Vannah, believe that Mr. Simon knew, and still knows, that he had no reasonable basis to serve his Amended Lien in an amount that he calculated to be 40% of the settlements reached with the flood defendants. Our collective belief on the existence of Mr. Simon's knowledge and awareness on this issue was gleaned through letters he prepared, pleadings in the flood litigation, his billings, the evidence, and the conclusions of Judge Jones. Yet, Mr. Simon still won't relinquish the dominion and control that he has been exercising since January of 2018.

30. These facts stand in stark contrast to the allegations made in the SLAPP of Mr. Simon. I am being sued for making, in good faith, written and oral communications in judicial proceedings on behalf of clients. Each of the claims for relief in the complaints that are being attacked by Mr. Simon in his SLAPP are supported by the facts, the evidence, and by Nevada law.

31. The documents that have been attached to this Special Motion as Exhibits, as well as Appellants Appendix that was attached in the Opposition to Mr. Simon's emergency motion, which is referenced and incorporated, are all true, authentic, and correct copies of the original documents. Regarding Exhibit "E" specifically, it was referenced in the prior litigation and sworn testimony was offered that this letter, and its two exhibits, were prepared by Mr. Simon, were given to the Edgeworths on or

near the date of the letter, and served as the basis for Mr. Simon's new fee proposal and his invitation for the Edgeworths to seek independent counsel on his proposed fees. All of the documents attached as Exhibits support the claims for relief brought by the Edgeworths and undermine the SLAPP of Mr. Simon.

32. Finally, at no point in time was anyone at this firm retained to counsel or to represent Mr. Simon in this matter, and neither Mr. Vannah, nor I, ever provided counsel or representation to Mr. Simon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

JOHN B. GREENE, ESQ.

SUBSCRIBED and SWORN TO before me
this 14TH day of May, 2020.

NOTARY PUBLIC

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

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

EXHIBIT C

EXHIBIT C

ACOM
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Nevada Bar. No. 002503
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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.

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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

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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.

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. /bm (4279)

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EXHIBIT D

EXHIBIT D

ACOMP
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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**

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

Plaintiffs, by and through undersigned counsel, hereby allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation, was at all times relevant hereto a professional corporation duly licensed and authorized to conduct business in the County of Clark, state of Nevada and will hereinafter be referred to as ("Plaintiff" or "Mr. Simon," or "Simon" or "Law Office.")

/ / /

CHRISTIANSEN LAW OFFICES
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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

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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

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,

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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

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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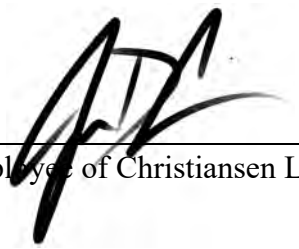
CERTIFICATE OF SERVICE

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.



An employee of Christiansen Law Offices

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EXHIBIT E

EXHIBIT E

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

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

November 27, 2017

Pursuant to your request, please find attached herewith the agreement I would like signed, as well as the proposed settlement breakdown, if a final settlement is reached with the Viking entities. The following is to merely clarify our relationship that has evolved during my representation so you are not confused with my position.

I helped you with your case and went above and beyond for you because I considered you close friends and treated you like family

As you know, when you first asked me to look at the case, I did not want to take it as I did not want to lose money. You already met with Mr. Marquis who wanted a 50k retainer and told you it would be a very expensive case. If Mr. Marquis did the work I did, I have no doubt his billing statements would reflect 2 million or more. I never asked you for a retainer and the initial work was merely helping you. As you know, you received excellent advice from the beginning to the end. It started out writing letters hoping to get Kinsale to pay your claim. They didn't. Then this resulted in us filing a lawsuit.

As the case progressed, it became apparent that this was going to be a hard fight against both Lange and Viking who never offered a single dollar until the recent mediations. The document production in this case was extremely voluminous as you know and caused my office to spend endless late night and weekend hours to push this case through the system and keep the current trial date.

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and 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

JMOT

Patricia Lee (8287)
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Attorney for Defendants Edgeworth Family Trust; Brian Edgeworth and Angela Edgeworth

DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, a professional corporation; DANIEL S. SIMON, Plaintiffs, v. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, individually and husband and wife, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT. NO.: XXIV **JOINDER OF EDGEWORTH FAMILY TRUST, and BRIAN AND ANGELA EDGEWORTH TO AMERICAN GRATING, LLC'S, and ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH'S MOTIONS TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

Defendants Edgeworth Family Trust, and Brian and Angela Edgeworth (collectively the "Edgeworths") hereby file this Joinder to Defendant American Grating LLC's Motion to Dismiss Plaintiffs' Amended Complaint filed on June 4, 2020 and Defendants Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D. Vannah, Chtd. D/B/A Vannah & Vannah's Motion to Dismiss Plaintiffs' Amended Complaint filed on May 29, 2020 and Special anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint filed on May 29, 2020.

This Joinder is based upon the Edgeworths' separately-filed Motion to Dismiss Plaintiffs' Amended Complaint and the separately filed Renewed Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint filed on behalf of the Edgeworths and American Grating, LLC, which the Edgeworths fully incorporate into this Joinder, the pleadings and papers on file herein, and any oral argument this Court may wish to entertain.

DATED this 5th day of June, 2020.

HUTCHISON & STEFFEN, PLLC

/s/ Patricia Lee

_____

Patricia Lee (8287)
Peccole Professional Park
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Las Vegas, NV 89145
Tel: (702) 385-2500
plee@hutchlegal.com

Attorney for Defendants Edgeworth Family Trust; Brian Edgeworth and Angela Edgeworth

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 5th day of June, 2020, I caused the document entitled **JOINDER OF EDGEWORTH FAMILY TRUST, and BRIAN AND ANGELA EDGEWORTH TO AMERICAN GRATING, LLC'S, and ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH'S MOTIONS TO DISMISS PLAINTIFFS' AMENDED COMPLAINT** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

[✓] to be electronically served through the Eighth Judicial District Court's electronic filing system pursuant to EDCR 8.02; and/or

[ ] to be hand-delivered;

to the attorneys/ parties listed below:

ALL PARTIES ON THE E-SERVICE LIST

/s/ Heather Bennett

An employee of Hutchison & Steffen, PLLC

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Nevada Bar No. 008846
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John B. Greene, Esq., and
Robert D. Vannah, Chtd., dba Vannah & Vannah

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

JOINDER OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO DEFENDANTS' MOTION TO DISMISS PLAINITIFFS' AMENDED COMPLAINT AND DEFENDANTS' RENEWED SPECIAL MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT: ANTI-SLAPP

Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred to collectively as VANNAH), hereby file this Joinder in and to the Motion to Dismiss Plaintiffs' Amended Complaint and the Renewed Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP, of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH, AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND

/ / /

WIFE.

DATED this 8th day of June, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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Renee M. Finch, Esq.
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Traditional Manner:
None

DATED this 8th day of June, 2020.

/s/Patricia A. Marr
An employee of the Patricia A. Marr, Ltd.

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Nevada Bar No. 13379
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DISTRICT COURT
CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **DEFENDANT AMERICAN GRATING, LLC'S AMENDED MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT (AMENDED)** **Hearing Date:** August 13, 2020 at 9:00am

COMES NOW, Defendant, AMERICAN GRATING, LLC, by and through counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES, LLP, and hereby respectfully submits this DEFENDANT AMERICAN GRATING LLC'S AMENDED MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT (AMENDED). This Amended Motion is filed in Compliance with the Court's Order Denying Defendant's Request to File

Papers in Excess of 30 Pages and replaces DEFENDANT AMERICAN GRATING LLC'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT AND FOR LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a) previously filed on June 4, 2020.

This Motion is based the attached Memorandum of Points and Authorities, the Memorandum of Points and Authorities set forth in American Grating'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, all of which Defendant American Grating LLC adopts and incorporates by this reference, and any oral argument this Court may wish to entertain.

DATED this 1st day of July, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch

Renee M. Finch, Esq.
Nevada Bar No. 13118
8945 W. Russell Road, Ste 300
Las Vegas, Nevada 89148
Attorneys for the Edgeworth Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant, American Grating, LLC [hereinafter referred to as "AMG"] filed its original Motion to Dismiss based upon Nevada's anti-SLAPP law ("AMG's Original Anti-SLAPP Motion") seeking dismissal of Plaintiffs' originally filed Complaint in this matter ("the Simon Complaint"). Approximately three (3) days after the filing of AMG's Original Anti-SLAPP Motion, Plaintiffs improperly filed their Amended Complaint ("the Amended Simon Complaint"). The Amended Simon Complaint should not be considered and should be stricken from the record and/or summarily dismissed as Plaintiffs filing of same was not allowable following the filing of AMG's Original Anti-SLAPP Motion, based upon the statutory history of Nevada's anti-SLAPP statute and persuasive precedent.

Even if this Court resolves to allow and/or consider the improperly filed Amended Simon Complaint, the claims/"Counts" presented therein are all fatally deficient and fail to state claims upon which Plaintiffs could potentially be granted relief, requiring dismissal of the Amended Simon Complaint as against AMG. All of the documents and statements presented within the Amended Simon Complaint which Plaintiffs' claim allegedly support their "Counts[,]" are protected and/or privileged speech either by way of their being said or filed in the context of the underlying litigation or being made in a place open to the public regarding an issue of public interest. As such, none of Plaintiffs' allegations can be properly asserted against AMG as same are all based upon speech protected by either the absolute litigation privilege or the privilege afforded to speech by NRS 41.637.

Further, even if the documents and statements pled by Plaintiffs as alleged support for the "Counts" forwarded within the Amended Simon Complaint were not privileged speech – which they conclusively are – Plaintiffs have wholly failed to plead facts sufficient to state their "Counts" in a manner demonstrating potential alleged entitlement to such relief. As such, Plaintiffs cannot properly be allowed to maintain their "Counts" against AMG (or any named Defendant in this action), requiring dismissal of the Amended Simon Complaint by way of granting of AMG's instant Motion, Based upon any of three (3) independent bases discussed in detail, the Amended Simon Complaint is wholly deficient and therefore must fail as a matter of law. AMG thus respectfully requests that this Court grant AMG's Motion to Dismiss the Amended Simon Complaint, as the Amended Simon Complaint was not allowed to be filed, is wholly based upon privileged speech and fails to state claims upon which relief could potentially be granted to Plaintiffs.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

For the sake of brevity, Defendant American Grating adopts and incorporates by reference the relevant factual and procedural history as outlined in the Edgeworth's Amended Special Anti-SLAPP Motion to Dismiss and Amended Renewed Anti-SLAPP Motion to Dismiss, filed contemporaneously with this Motion.

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A. The Simon Complaint and Amended Simon Complaint Containing Claims Against The Edgeworths

On December 23, 2019, while the appellate issues were still pending before the Nevada Supreme Court, and still having not released the Viking Settlement funds to the Edgeworths, Plaintiffs filed the SLAPP Complaint in this matter. The Simon Complaint improperly seeks damages against the Edgeworths and AMG. *See* The Simon Complaint, on-file herein. On April 20, 2020, Vannah filed a Motion to Dismiss the Simon Complaint pursuant to NRCP 12(b)(5). On May 14, 2020, the Edgeworths filed a Motion to Dismiss the Simon Complaint pursuant to NRCP 12(b)(5). On May 15, 2020, Vannah filed a Special Motion to Dismiss the Simon Complaint pursuant to Nevada's Anti-SLAPP statute found in NRS 41.637. On May 18, 2020, the Edgeworths filed a Special Motion to Dismiss the Simon Complaint pursuant to Nevada's Anti-SLAPP statute found in NRS 41.637.

On May 18, 2020, AMG responded to the Simon Complaint by filing AMG's Original Anti-SLAPP Motion, seeking relief from this Court under Nevada's Anti-SLAPP law. *See* AMG's Special Anti-SLAPP Motion to Dismiss, on-file herein. Following the filing of AMG's Original Anti-SLAPP Motion, as well as the filing of Anti-SLAPP Motions by Brian, Angela, the Trust and Vannah, joinders were filed by those parties to the other parties' Anti-SLAPP Motions. *See*, Joinders to Anti-SLAPP Motions, on-file herein.

Thereafter, on May 21, 2020, Plaintiffs' filed their Amended SLAPP Complaint in this matter, which clearly attempted, but failed, to address the deficiency in Plaintiffs' claims for relief as indicated within AMG's Original Anti-SLAPP Motion and which added approximately 16 new paragraphs and a considerable amount of newly claimed allegations. *See* Amended Simon Complaint, on-file herein. The Amended Simon Complaint was inappropriately filed after the filing of AMG's Original Anti-SLAPP Motion, as well as the several Special Anti-SLAPP Motions to Dismiss filed by Brian, Angela, the Trust and Vannah [the Defendants' several original Special Anti-SLAPP Motions to Dismiss will hereinafter collectively be referred to as the "Defendants' Original Anti-SLAPP Motions"]. *See* Vannah's Special anti-SLAPP Motion to Dismiss, dated May 15, 2020, on-file herein; *see also* Brian, Angela and the Trust's Special anti-SLAPP Motion to Dismiss, dated May 18, 2020, on-file herein.

B. Allegations Regarding Alleged Defamatory Statements

Plaintiffs base allegations within the Amended Simon Complaint on the lawsuit filed by the Edgeworths as well as alleged defamatory statements Plaintiffs claim the Edgeworths made against Simon. These statements were allegedly made to a mutual acquaintance Ruben Herrera, an attorney named Lisa Carteen, and Justice Miriam Shearing. These factual assertions are addressed herein.

Simon and the Edgeworths' paths crossed socially in several areas of the community. *See* Affidavit of Brian Edgeworth, attached hereto as **Exhibit A**. One such place was the Las Vegas Aces Volleyball Club (the "Club"), an organization Brian and Angela founded and sat on the board for. Brian and Angela's daughter played for the Club. *Id*. Simon's daughter also played for the Club. *See* Email String Between Simon and Ruben Herrera, attached hereto as **Exhibit B**. On or about November 30, 2017, and December 4, 2017, Simon contacted the Club Director and coach, Ruben Herrera ("Mr. Herrera"), informing that due to the issues between the Edgeworths and Simon, Simon and his wife were allegedly fearful of Brian and Angela, and as such, Simon's daughter could no longer play for the Club. *Id*.

On November 30, 2017, earlier that day, Vannah had contacted Simon regarding Plaintiffs' attempts to have Brian and Angela sign the Retainer Agreement and Settlement Breakdown. *See* **Exhibit A**. After receiving this, and before Brian talked to Mr. Herrera, Simon sent an email to Mr. Herrera that stated he had "on-going issues involving the Edgeworths" and requested that his daughter be released from her player's contract with the Club. *See* **Exhibit B**. Mr. Herrera responded that Simon's daughter could be released from her contract but did not concern himself with any issues Simon had with the Edgeworths. *Id*. On December 4, 2017, Simon sent a reply email to Mr. Herrera, where he implied that their family had to leave the gym to protect his child. *Id*.

On December 4, 2017, after receipt of Simon's reply email, Mr. Herrera called Brian and told him that Brian and Angela needed to be aware of the emails sent by Simon. *See* **Exhibit A**. Later that same day, Brian met Mr. Herrera at Ventano's Restaurant in Henderson, Nevada ("Ventano's") to discuss what Simon had disclosed to him. *Id*. Ventano's was open to the public at the time of the in-person meeting between Brian and Mr. Herrera. *Id*. During the meeting between Brian and Mr. Herrera at Ventano's on December 4, 2017, Brian told Mr. Herrera that the Edgeworths had paid

Simon nearly $500,000.00 over 18 months in fees and costs pursuant to the agreement to pay for Simon's legal services at a rate of $550 per hour, but when the settlement was offered on or about November 15, 2017, Simon demanded additional compensation for his legal work. *Id*. Brian described the contents of the November 27, 2017 letter and the demands contained therein. *Id*. Brian further told Mr. Herrera that the Edgeworths had refused Simon's offer and they had been forced to hire a lawyer to protect their monetary interest in the Viking Settlement. *Id*. No other information was expressed to Mr. Herrera about the relationship between Plaintiffs and the Edgeworths.[1] *Id*. All subsequent conversations between Mr. Herrera and Brian regarding the issue were specifically in regard to volleyball Club operations. *Id*. Angela never spoke with Mr. Herrera regarding this issue. *Id*. This was confirmed at the evidentiary hearing before Judge Jones on August 28, 2018, during which Plaintiffs' Counsel Jim Christiansen, Esq., questioned Brian about the discussions with Mr. Herrera. *See* Transcript of August 28, 2018, Evidentiary Hearing (Day 2), at 50:15-52:7, attached hereto as **Exhibit C**. Brian testified consistently with this account of his conversation with Mr. Herrera. *Id*. Angela also testified at the evidentiary hearing that she never spoke with Mr. Herrera regarding the dispute between the Edgeworths and Simon. *See* Transcript of September 19, 2018, Evidentiary Hearing (Day 5), at 134:3-6, attached hereto as **Exhibit D**.[2]

Plaintiffs claim that conversations Angela had with attorney Lisa Carteen allegedly amount to defamation. *See* Amended Simon Complaint, at, i*nter alia*, paragraphs 23 and 26, on-file herein. Angela's conversations with Ms. Carteen were either attorney-client privileged communications made in the context of anticipation of litigation or on-going litigation, and/or Angela's opinions regarding what had occurred and how same made her feel. *See* Declaration of Angela Edgeworth, attached hereto as **Exhibit E**. Ms. Carteen is an attorney licensed in the State of California who has

[1] AMG notes that Plaintiffs have identified Brian's use of the word "extort" within Brian's Affidavits as one of their overarching bases for their SLAPP suit. However, as will be demonstrated below, Brian did not use that word when speaking to Mr. Herrera, but only in Brian's Affidavits to concisely define his opinion of Simon's conduct and, as discussed in detailed herein, given that Brian's Affidavits at issue were filed with a judicial body, same are absolutely privileged. As such, Plaintiffs' have not and cannot demonstrate that Brian's statements to Mr. Herrera support any of their "Counts" and especially not Plaintiffs' "Count" for alleged defamation, requiring granting of AMG's (and the other named Defendants') Special anti-SLAPP Motion to Dismiss.

[2] Plaintiffs' cite to and rely upon Angela's testimony at 133:5-23 in the Amended Simon Complaint, which clearly does not present the entire story on the issue. Additionally, it appears that the citations to the record in the Simon Complaints are inconsistent with the official transcript.

represented various business interests of the Edgeworths since 2006. *Id*. Angela's conversation with Ms. Carteen about this matter occurred at a dinner at a sushi restaurant in Henderson, Nevada (which was open to the public at the time), where Brian and Angela met Ms. Carteen to discuss a number of business matters. *Id*. Due to their established relationship, Angela trusted Ms. Carteen's legal advice over many years, and sought her advice in anticipation of litigation regarding the dispute between the Edgeworths and Plaintiffs as a trusted legal counselor and friend. *Id*. While Angela did express to Ms. Carteen at the Henderson sushi restaurant that Angela felt like she was being extorted or blackmailed, such statements were purely Angela's opinion regarding how the situation and happenings with Simon made Angela feel. *Id*. Angela's statements to Ms. Carteen regarding the Edgeworths' dispute with Plaintiffs were made regarding issues anticipated to be placed into the consideration of a judicial body and/or which were then being considered by a judicial body, were made in a place open to the public regarding an issue of public interest and were comprised of nothing more than Angela's opinions as to what had occurred and how the occurrences made Angela feel. *Id*. As such, Angela's statements to Ms. Carteen regarding the dispute between the Edgeworths and Plaintiffs were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public interest. *Id*.

Plaintiffs also claim that conversations Angela had with Justice Miriam Shearing allegedly amount to defamation. *See* Amended Simon Complaint, at, i*nter alia*, paragraphs 23 and 26, on-file herein. Angela and Justice Shearing serve as Directors for a women's organization in Las Vegas. *Id.* Angela knew Justice Shearing to be a well-respected attorney and member of the judiciary, as well as that she had been the Chief Justice of the Nevada Supreme Court. *Id*. Angela's discussion with Justice Shearing about the dispute with Plaintiffs occurred on February 8, 2018, at a luncheon held at Lago at the Bellagio, put on by the women's' group they both served, during a special women's Forum held at the Las Vegas Strip. *Id*. During the luncheon, Angela expressed to Justice Shearing Angela's opinions regarding what had occurred between the Edgeworths and Plaintiffs, and how the occurrence had made her feel. *Id*. Angela asked Justice Shearing for legal advice regarding whether what

Plaintiffs had done was legally justified and whether the Edgeworths were legally justified in filing the Edgeworth Complaint. *Id*.

Angela's statements to Justice Shearing regarding the Edgeworths dispute with Plaintiffs were made regarding issues anticipated to be placed into the consideration of a judicial body and/or which were then being considered by a judicial body, were made in a place open to the public regarding an issue of public interest and were comprised of nothing more than Angela's opinions as to what had occurred and how same made Angela feel. *Id*. Angela's discussion with Justice Shearing was rooted in Justice Shearing's reputation and ability as an attorney and member of the judiciary in Nevada. *Id*. As such, Angela's statements to Ms. Carteen and Justice Shearing regarding the dispute between the Edgeworths and Plaintiffs were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public interest. *Id*. At the evidentiary hearing on August 28, 2018, Angela testified about her conversations with Ms. Carteen and Justice Shearing consistently with this account. *See* **Exhibit D** at 64:2-25; 65:5-10; 68:1-23; 77:14-22; 100:1-7, 18-22; 100:25-101:15; 131:3-134:1; *Id*. at 101:1-102:24; 103:8-15 and 126:2-127:17.

Within the Simon Complaints, Plaintiffs allege that the Edgeworth Complaints somehow form a basis for the instant lawsuit, despite the Edgeworth Complaints being privileged free speech protected by the absolute litigation privilege and/or statements made in anticipation of litigation to third-party attorneys and/or based upon statements made within an in-court filing which have been demonstrated not to support alleged defamation. *See* Amended Simon Complaint, on-file herein. Further, the Amended Simon Complaint is based upon the unsupported allegation that the Edgeworths did not have honest beliefs regarding the merits of the causes of actions brought within the Edgeworth Complaints. *Id*. at paragraph 26. Based upon this allegation, Plaintiffs allege in the Amended Simon Complaint that the Edgeworth Complaints should not be afforded the absolute litigation privilege and should not be protected as free speech under Nevada's Constitution. *Id*.

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III. ARGUMENT

A. Legal standard applicable to Motion to Dismiss

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).

"Nevada is a notice-pleading jurisdiction and thus, our courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984)). "However, a complaint must set forth sufficient facts to establish all necessary elements of a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief sought." *Johnson v. Travelers Ins. Co.*, 89 Nev. 467, 472, 515 P.2d 68, 71-72 (1973)). A complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief. *See Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "[I]f a pleader cannot allege definitely and in good faith the existence of an essential element of his claim, it is difficult to see why this basic deficiency should not be exposed at the point of minimum expenditure of time and money by the parties and the court." *Danning v. Lum's, Inc.*, 86 Nev. 868, 870 (1970).

The Amended Simon Complaint 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, as pled in the Complaint, Plaintiffs cannot prove any set of facts that would entitle them to any relief as a matter of law for the "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.

Additionally, these "Counts" / claims cannot succeed because they are firmly founded on things allegedly done by AMG **in the course of litigation and various judicial proceedings,**

together with the filing of pleadings, briefs, and other legal materials as described *supra*. 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 on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

B. The Amended Simon Complaint Is Improper And Cannot Be Considered

As a precursory matter, the Amended Simon Complaint is improper and cannot be considered by the Court. As this Court is aware, in addition to the Motions to Dismiss pursuant to 12(b)(5) filed by Vannah and the Edgeworths, on May 18, 2020, Vannah filed a Special Anti-SLAPP Motion to Dismiss Plaintiffs' Complaint. On May 20, 2020, the Edgeworths and AMG joined that motion. On May 20, 2020, the Edgeworths and AMG also filed individual Special Anti-SLAPP Motions to Dismiss Plaintiffs' Complaint. Plaintiffs filed an Amended Complaint on May 21, 2020. Pursuant to NRCP 15, the statutory history and purpose behind anti-SLAPP law and persuasive precedent, Plaintiffs did not have the right to file the Amended Simon Complaint following AMG, Brian, Angela, the Trust and Vannah's filing of their several Special anti-SLAPP Motions to Dismiss the Simon Complaint.

NRCP 15(A) regarding amendments of a complaint prior to trial, specifically states:

> (1) **Amending as a Matter of Course.** A party may amend its pleading once as a matter of course within:
> (A) 21 days after serving it; or
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days ***after service of a motion under Rule 12(b), (e), or (f)***, whichever is earlier.
> (2) **Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(Emphasis added). Here, the Edgeworths' and Vannah's Special Anti-SLAPP Motions to Dismiss were not brought pursuant to NRCP 12(b), (e) or (f), and, as such, it appears Plaintiffs were required to request leave of Court to file the Amended Simon Complaint. As Plaintiffs did not seek such leave from this Court, the Amended Simon Complaint should be stricken from the record in this matter and not considered. Further, the purpose behind Nevada's anti-SLAPP laws – expedient resolution of SLAPP suits without placing undue burden upon the defendant – also demonstrates that allowing an amendment to a complaint for which a Special anti-SLAPP Motion to Dismiss pursuant to NRS 41.637 would be contrary to same. [.]" *See*, Assembly Bill 485 (1997) and Senate Bill 286 (2013). Automatic dismissal of the Amended Simon Complaint is specifically supported by persuasive California precedent, *Salma v. Capon*, 161 Cal.Rptr.3d 873, 888-89 (Cal.App.1st, 2008), a jurisdiction to which this State looks to often for guidance when there is no Nevada law on point. *Eichacker v. Paul Revere Life Ins. Co.*, 354 F.3d 1142, 1145 (9th Cir. 2004) (quoting, *Mort v. United States,* 86 F.3d 890, 893 (9th Cir.1996)).[3]

Even if Plaintiffs had properly requested and been granted leave to file the Amended Simon Complaint and this Court resolves it will consider the rogue pleading, the Amended Simon Complaint still should be dismissed as a matter of law for the following reasons.

C. The Amended Simon Complaint Should be Dismissed Pursuant to NRCP 12(b)(5)

Plaintiffs assert eight "Counts" in the Amended Simon Complaint. While on its face it appears that only claims I, II, III, V, VI, VII and VIII are actually alleged against AMG, Plaintiffs' use of the undefined term "Defendants and each of them" within Count IV belies that Plaintiffs may have been including AMG within every Count, and thus each Count is addressed herein. Plaintiffs' allegations contained in Count IV do not appear to have been asserted against AMG, and arguments in this regard may be addressed more extensively by the accused parties. Plaintiffs' claims are either procedurally premature and/or there is no set of facts that Plaintiffs could prove that would entitle them 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).

[3] For the sake of brevity, AMG hereby incorporates by reference, as if fully reproduced herein, all legal precedent and argument regarding Plaintiffs' improper filing of the Amended Simon Complaint presented within the Edgeworths' Renewed Special Anti-SLAPP Motion to Dismiss the Amended Simon Complaint, filed contemporaneously with AMG's instant Motion to Dismiss. AMG reserves any and all rights and/or objections in this regard.

Plaintiffs fail to state claims upon which relief can be granted, and thus, their claims must be dismissed. A plain reading of the Amended Simon Complaint reveals that the primary basis for Plaintiffs' claims for alleged wrongful use of civil proceedings, defamation *per se* and business disparagement are ***pleadings filed*** and ***statements allegedly made*** by one or more of the defendants ***in the course of the underlying litigation and judicial proceedings***.

i. *The Speech In Question Is Uttered Or Published In The Course Of Judicial Proceedings And Is Therefore Absolutely Privileged, Rendering Those Who Made The Communications Immune From Civil Liability*

"It is a long-standing common law rule that communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 630 (2014). A communication can be protected under the litigation privilege even when no judicial proceeds have commenced if "(1) a judicial proceeding [is] contemplated in good faith and under serious consideration, and (2) the communication [is] related to the litigation." *Clark Cty. Sch. Dist.*, 125 Nev. at 383. "An absolute privilege bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 409 (2002), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224 (2008). "The purpose of the absolute privilege is to afford all persons the freedom to access the courts with assured freedom from liability for defamation where civil or criminal proceedings are seriously considered." *Clark Cty. Sch. Dist.*, 125 Nev. at 383. "Therefore, the absolute privilege affords parties the same protection from liability as those protections afforded to an attorney for defamatory statements made during, or in anticipation of, judicial proceedings." *Id.*

The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies "so long as [the statements] are in some way pertinent to the subject of controversy." *Id.* Moreover, the statements "need not be relevant in the traditional

evidentiary sense, but need have only 'some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Id*. at 61, 657 P.2d at 104. The Edgeworth Complaints sought redress for wrongs committed by another pursuant to well-founded claims for relief. Put simply, the Edgeworth Complaints are petitions to a judicial body. See, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian,* 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm,* 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished).

The essence of the Amended Simon Complaint alleges that the Edgeworths, including AMG, utilized the Clark County District Court system to disparage Simon and his business, thereby damaging their reputations and causing economic harm. However, this is a legal impossibility because the speech in question is absolutely privileged. *Id*. at 61, 657 P.2d at 104. In the instant case, as discussed previously, the Amended Simon Complaint alleges eight causes of action (identified as "Counts"). Every cause of action alleged against AMG is based in AMG's utilization of the civil litigation process. Because Simon recognizes through the Amended Simon Complaint that the damages he claims all stem from the lawsuit filed on January 4, 2018, Simon essentially concedes that the speech in question is uttered or published in the course of judicial proceedings and is therefore absolutely privileged, rendering those who made the communications immune from civil liability.

Further, Plaintiffs' newly included allegations regarding alleged statements to third parties by Brian and Angela regarding the dispute between the Edgeworth and Plaintiffs are wholly without merit when evaluated outside of the small vacuum of a universe in which Plaintiffs present same within the Amended Simon Complaint. Specifically, Plaintiffs' allegations that Brian and Angela's statements to Mr. Herrera are not protected speech are simply contrary to the factual scenario involved and the testified to statements actual made by Brian and Angela to Mr. Herrera.

The statements made by Brian to Mr. Herrera which are recounted within Brian's Declarations cited and relied upon by Plaintiffs as alleged support for the claims within their Amended Complaint, were privileged under NRS 41.637(4). The statements were "[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

[were] truthful or … made without knowledge of [their] falsehood." Brian met Mr. Herrera at a Ventano's – a restaurant open to the public, which was open for regular business on the day of the meeting – to discuss the dispute between the Edgeworths and Plaintiffs, an issue which Plaintiffs have admitted and/or conceded in filings with the Nevada Supreme Court is of public interest, and the statements made by Brian to Mr. Herrera at that meeting were nothing more than truthful and accurate recounting of what had occurred between the Edgeworths and Plaintiffs and Brian's opinion as to same. *See* **Exhibit A**; *see also* Plaintiffs' Motion for En Banc Review, dated January 28, 2020, attached hereto as **Exhibit F**.

The statements made by Brian to Mr. Herrera regarding the dispute between the Edgeworths and Plaintiffs were and are privileged, making Plaintiffs' reliance upon such statements as recounted by Brian within his Declarations misplaced and unable to support the claims forwarded within the Amended Simon Complaint. The Nevada Supreme Court has determined that the issue of attorney fees is protected as a matter of public interest. *Veterans in Politics Int'l, Inc. v. Willick*, 457 P.3d 970 (Nev. 2020). In the context of the entire view of what transpired regarding Simon, his daughter and Mr. Herrera, the entire situation was the result of Simon sending an email to Mr. Herrera imply some non-existent wrong-doing on the part of Brian and Angela, and specifically referencing the "on-going issues" between the parties, mere hours after Simon was first informed by Vannah of the formal dispute. Simon then sent a second email several days later, in response to an email in which Mr. Herrera specifically stated any issues between Simon and Brian and Angela were none of his concern and informing Simon that he would gladly grant all of Simon's request, wherein Simon intimates actual wrong-doing on the part of Brian and Angela which required him to protect his daughter by not allowing her to be present at the gym for volleyball practice.

Simon knew that Brian, Angela and Mr. Herrera were all on the board of the non-profit organization which runs the volleyball club and appears to have instigated the situation where he knew Mr. Herrera would have to speak with Brian and Angela regarding the alleged misconduct. This is exactly what happened; namely, as a result of Simon making false insinuations of some non-existent wrongdoing and/or threat by Brian and Angela which allegedly made Simon feel it was

unsafe to allow his daughter to attend volleyball practice, Mr. Herrera approached Brian regarding the issue, which in turn required Brian and Angela to have frank and honest conversations regarding the issue. Based upon this factual scenario, Plaintiffs are now asking this Court to find that Brian and Angela being forced to respond to false insulations of some non-existent wrongdoing and/or threat to Simon and/or his daughter was not protected speech. Adopting this position would specifically endorse curbing of the exercise of free speech in the context of responding to allegations of wrongdoing. This position is wholly in contravention of purpose behind Nevada's anti-SLAPP law and, as such, should not be countenanced by this Court.

Regardless, the testimony of both Brian and Angela at the evidentiary hearing before Judge Jones demonstrates that neither actually used any of the terms or phrases when speaking to Mr. Herrera, as presented by Plaintiffs to attempt to support their forwarded claims within the Amended Simon Complaint. *See* **Exhibit C** at 50:15-52:7 and **Exhibit D** at 98:2-23. When asked whether they used the specific or like terms "extortion[,]" "blackmail[,]" "theft" and/or "steal[,]" both Brian and Angela testified they did not use such words and/or did not even speak to Mr. Herrera regarding such things. *Id*. Both testified that any statements made were their opinion about what they felt was happening. *Id.* Further, Brian specifically testified that while he did not use any of the presented terms when actually speaking with Mr. Herrera, he used the term "extort" in his several Affidavits filed with the Court for the specific purpose of it accurately defining what he in good faith believed Simon's actions to be. *See* **Exhibit C** at 50:15-52:7. As such, the evidence as elicited by Plaintiffs' attorney at the evidentiary hearing does not and cannot support that the Edgeworths, including AMG, made any alleged non-privileged statements to Mr. Herrera that could support the claims forwarded within the Amended Simon Complaint.

Further, any statements made by Angela to Ms. Carteen and/or Justice Sheering were also privileged pursuant to NRS 41.637(3) and (4), as said statements were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public regarding an issue – as discussed in detail above – which Plaintiffs have already admitted and/or conceded is of public interest. *See* **Exhibit E**. These statements were made either in anticipation of litigation or in the

context of seeking legal guidance from friends who were also attorneys, and, for Ms. Carteen, she had already been retained to represent AMG, making those statements attorney-client privileged and privileged in the context of the underlying litigation. *Id*. As such, said statements were made regarding issues anticipated to be placed into the consideration of a judicial body and/or which were then being considered by a judicial body, were made a place open to the public regarding an issue of public interest and were comprised of nothing more than Angela's opinion of what had occurred and how same made Angela feel, making said statement absolutely privileged on many grounds. *Id*.; *see also*, NRS 41.637(3) and (4).

All of the statements relied upon by Plaintiffs within the Amended Simon Complaint are also privileged as same are opinions or claims made regarding an issue of public concern (as demonstrated above). *See, Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes."). Specifically, "[a] person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern **is immune from any civil action for claims based upon the communication**." NRS 41.650 (emphasis added). As such, the claims and/or opinions of the Edgeworths regarding the issue of public concern about the dispute between the Edgeworths and Plaintiffs is privileged speech which cannot support the Amended Simon Complaint, making the Amended Simon Complaint and inappropriate SLAPP suit which must be immediately dismissed against AMG and all named Defendants in this matter. *Id*.; *see also, Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.").

As the Edgeworths' (including AMG) written and oral communications and statements, which are the only basis set forth within the Amended Simon Complaint, upon which Plaintiffs alleged

entitlement to relief, are "absolutely privileged," there is no set of facts…which would entitle Plaintiffs to any relief, or to prevail. *See*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Therefore, Plaintiffs do not have any prima facie evidence to support these claims/counts upon which relief could ever be granted and thus cannot satisfy their burden under the law. NRS 41.660(3)(b).

ii. *Plaintiffs Claim for Wrongful Use of Civil Proceedings is Fatally Deficient and Must Fail*

Plaintiffs Claim for Wrongful Use of Civil Proceedings is Fatally Deficient and Must Fail as said Count is not a recognized tort claim in Nevada. Although many jurisdictions recognize this tort, **the State of Nevada does not**. *Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009 WL 2382765, at *2 (D. Nev. July 31, 2009). No Nevada court has ever recognized wrongful use of civil proceedings as a cause of action. *See Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009 WL 2382765, at *2 (D. Nev. July 31, 2009) ("Although many jurisdictions recognize [the tort of wrongful use of civil proceedings], the State of Nevada does not."). Similarly, no Nevada Court has articulated elements constituting such a claim. *See id.* Accordingly, **the claim is not cognizable under Nevada law**. *See id.* at *3. It must be noted that Plaintiffs specifically acknowledged and admitted that Nevada does not recognize claims for alleged wrongful use of civil proceedings, conclusively demonstrating that there simply no possibility Plaintiffs could ever prevail upon said unrecognized claim. *See* Plaintiffs' Opposition to Vannah's Original Motion to Dismiss, at 54, on-file herein.

Further, Nevada Rule of Professional Conduct 1.5(c)(5), requires that any contingency fee agreement warn that "a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process." The rule also clearly states that the tort of abuse of process is the potential remedy for a vexatious civil case, indicating that a claim for wrongful use of civil proceedings neither exists nor applies in this context. NRPC 1.5(c)(5). Further NRS 199.320, which assigns criminal liability to the intentional misuse of lawsuits to distress or harass a defendant, assigns no civil liability and does not imply that a tort for wrongful use of civil proceedings exists.

As a claim for alleged wrongful use of civil proceedings is not a recognized claim for which Plaintiffs could be granted relief under Nevada Law, as specifically acknowledged and admitted to by Plaintiffs, Plaintiffs' claim is fatally deficient and must fail.

iii. *Plaintiffs Claim for Intentional Interference with Prospective Economic Advantage is Fatally Deficient and Must Fail*

Plaintiffs claim for Intentional Interference with Prospective Economic Advantage ("IIPEA") against AMG is fatally deficient and must fail. In Nevada, "[l]iability for the tort of IIPEA requires proof of the following elements:

> (1) a prospective contractual relationship between the plaintiff and a third party;
> (2) knowledge by the defendant of the prospective relationship;
> (3) intent to harm the plaintiff by preventing the relationship;
> (4) the absence of privilege or justification by the defendant; and
> (5) actual harm to the plaintiff as a result of the defendant's conduct."

Wichinsky v. Mosa, 109 Nev. 84, 87-88, 847 P.2d 727, 729-30 (1993) (citing, *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987)). "Absent proof of each element of the tort of intentional interference with prospective economic advantage, the claim must fail." *Wichinsky* at 730. To establish this tort, a plaintiff "must show that the means used to divert the prospective advantage was unlawful, improper or was not fair and reasonable." *Custom Teleconnect, Inc. v. Int'l Tele–Servs., Inc.*, 254 F.Supp.2d 1173, 1181 (D.Nev.2003) (citing *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 591 P.2d 1135 (1979)); *see also, Las Vegas–Tonopah–Reno Stage Line, Inc., v. Gray Line Tours of S. Nev.*, 792 P.2d 386, n. 1 (Nev.1990) (emphasizing that "[i]mproper or illegal interference is crucial to the establishment of this tort").

Further, when the actions of the defendant are in protection of that defendant's own interests, such action is privileged and cannot support a claim for IIPEA. *See, Leavitt v. Leisure Sports Incorporated*, 103 Nev. 81, 88-89, 734 P.2d 1221, 1226 (1987) (citing, *Zoby v. American Fidelity Company*,242 F.2d 76, 79–80 (4th Cir.1957); *Bendix Corp. v. Adams*, 610 P.2d 24, 31 (Alaska 1980) "(these cases dealt with wrongful interference of contract which is a species of the broader tort of interference with prospective economic advantage.)"). Nevada adopted its test for IIPEA from California. *See, Leavitt*, 103 Nev. at 88, 734 P.2d at 1225. Under California law, a plaintiff must prove

"damages to the plaintiff proximately caused by the acts of the defendant." *Marsh v. Anesthesia Serv. Med. Grp., Inc.*, 132 Cal.Rptr.3d 660, 679–80 (Cal.Ct.App.2011). The defendant's conduct is the proximate cause of the plaintiff's harm only if the plaintiff would have been awarded the contract but for the defendant's interference. *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 958 (Cal.2003). The defendant's conduct must be a substantial factor in bringing about the plaintiff's injury. *Franklin v. Dynamic Details, Inc.*, 10 Cal.Rptr.3d 429, 441 (Cal.Ct.App.2004).

In order to demonstrate the intent element of a claim for IIPEA, Plaintiffs must demonstrate that AMG expressed a desire or knew it was a substantially certain that such action would interfere with Plaintiffs' business. *See, Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990). The Court in *Gray Line* specifically held as follows:

> The majority view is in accord with the Restatement (Second) of Torts § 766B(d) (1979), which states that "[t]he interference with the other's prospective contractual relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action." We adopt the view expressed by the Restatement (Second) of Torts and the majority of cases that have adopted this portion….

Id.

The United States Court of Appels for the Ninth Circuit has specifically held that a plaintiff's pleading of a defendant's general knowledge that the plaintiff entered into generalized business relationships is insufficient to support the knowledge element of a claim for alleged IIPEA. *See, Capital West Appraisals LLC v. Countrywide Financial Corp.*, 467 Fed.Appx. 738, 740 (9th Cir. 2012). In this regard, the Ninth Circuit specifically held in *Capital West* as follows:

> the SAC fails to plead Countrywide's knowledge of an economic relationship between Capitol West and a third party, a required element. *See Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 131 Cal.Rptr.2d 29, 63 P.3d 937, 950 (2003). The SAC merely states that Countrywide had knowledge of economic relationships between Capitol West and mortgage brokers and lenders without any further specific allegations. These conclusory statements are not entitled to the presumption of truth, and are insufficient to plead Countrywide's knowledge. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1951, 173 L.Ed.2d 868 (2009).

Id.

The several Nevada Supreme Court cases addressing an IIPEA cause of action do not involve the generalized referral business as pled by Plaintiffs; they instead involve parties negotiating with a defined third-party. *See, Leavitt v. Leisure Sports Incorporation* - dispute between shareholders and directors regarding the remnants of a failed business venture, 103 Nev. 81, 734 P.2d 1221 (1987); *Winchinsky v. Mosa* - dispute between business partners regarding the buy-out of one of the partners, 109 Nev. 84, 847 P.2d 727, (1993); *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 792 P.2d 386 (1990) - dispute between two businesses regarding the courtship of a third-party customer; and *Consolidated Generator-Nevada, Inc. v. Cummings Engine Co., Inc.* - dispute between the buyer and manufacturer of portable generators. 114 Nev. 1304, 971 P.2d 1251 (1998). All four (4) of these cases involved discreet, third-party customers whom the plaintiff complains the defendant interfered with. Accordingly, element 1 of a claim for IIPEA – "a prospective contractual relationship between the plaintiff and a third party" – is not present here based upon the allegations pled within the Amended Simon Complaint, demonstrating that on this basis alone, Plaintiffs claim for IIPEA against AMG is fatally deficient and must fail.

Plaintiffs' claim of IIPEA is also deficient because the Edgeworths' filing of the Edgeworth Complaints was conduct in the furtherance and protection of the Edgeworths' own interests – the Viking settlement funds – and, as such, the Edgeworths' actions were privileged and cannot support Plaintiffs' claim for alleged IIPEA. *See, Leavitt v. Leisure Sports Incorporated*, 103 Nev. 81, 88-89, 734 P.2d 1221, 1226 (1987) (citing, *Zoby v. American Fidelity Company*,242 F.2d 76, 79–80 (4th Cir.1957); *Bendix Corp. v. Adams*, 610 P.2d 24, 31 (Alaska 1980) "(these cases dealt with wrongful interference of contract which is a species of the broader tort of interference with prospective economic advantage.)").

Plaintiffs' claim of IIPEA is further deficient because Plaintiffs failed to and cannot demonstrate that the Edgeworths (including and especially AMG) had any knowledge of any specific business relationship or economic opportunity of Plaintiffs at the time of the filing of the Edgeworth Complaint or Amended Complaint. Plaintiffs' improper generalized allegations regarding unidentified business opportunities which were allegedly interfered with is wholly insufficient to

support a claim for IIPEA. Instead, binding Nevada precedent requires that the defendant have knowledge of the specific prospective relationship between defined and/or definable parties (one being the plaintiff) to potentially properly support a claim for alleged IIPEA. As Plaintiffs have not identified, and there is no evidence whatsoever of, any alleged specific prospective relationship of which the Edgeworths' allegedly had knowledge, Plaintiffs have no possibility of prevailing upon their claim for alleged IIPEA.

Plaintiffs have not and cannot demonstrate any alleged prospective relationship, nor have Plaintiffs demonstrated any alleged knowledge by AMG of such a prospective relationship. It therefore is a legal impossibility that Plaintiffs could ever potentially satisfy the intent element of a case for alleged IIPEA. Even if Plaintiffs had properly pled that AMG alleged had knowledge of an alleged specific prospective relationship – which, again, they failed to do – Plaintiffs still could not demonstrate the requisite intent element. Here, there is simply no evidence whatsoever that the Edgeworths' allegedly desired to interfere in any of Plaintiffs' business or that the Edgeworths' allegedly knew that the filing of the Edgeworth Complaint and Amended Complaint would allegedly certainly result in interference with any of Plaintiffs' business. *See, Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990). The Edgeworths specifically have stated that they wanted the money from the Viking settlement so they could move on.

Finally, Plaintiffs' claim of IIPEA is deficient because Plaintiffs have failed to demonstrate that the Edgeworths' actions were a significant factor in Plaintiffs' losing a wholly identified prospective relationship. Plaintiffs have not even alluded to a prospective relationship that was lost, let alone wholly identified one. As such, Plaintiffs' have failed to a state a claim for alleged IIPEA upon which relief could ever potentially be granted against AMG (or any of the named Defendants in this matter). For these reasons, Plaintiffs' claim for IIPEA is fatally deficient and must be dismissed as against AMG.

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iv. *Plaintiffs' Claim for Abuse of Process is Fatally Deficient and Must Fail*

Plaintiffs failed to state a claim for alleged Abuse of Process upon which relief could be granted to Plaintiffs. Abuse of process is a tortious cause of action arising from one party maliciously and deliberately misusing the courts and the law through an underlying legal action. "To support an abuse of process claim, a claimant must show '(1) an ulterior purpose by the [party abusing the process] other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.'" *Land Baron Inv. V. Bonnie Springs Family LP*, 131 Nev. 686, 697-98, 356 P.3d 511, 519 (2015) (quoting *LaMantia v. Redisi*, 118 Nev. 27, 31, 38 P.3d 877, 880 (2002)).The action for abuse of process hinges on the misuse of regularly issued process. *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9 (1972).

"Thus, the [abuse of process] claimant must provide facts, rather than conjecture, showing that the party intended to use the legal process to further an ulterior purpose. *Id*. at 698, 356 P.3d at 519; *LaMantia*, 118 Nev. at 31, 38 P.3d at 880 (holding that where the party presented only conjecture and no evidence that the opposing party actually intended to improperly use the legal process for a purpose other than to resolve the legal dispute, there was no abuse of process). "The utilized process must be judicial, as the tort protects the integrity of the court." *Land Baron Inv.*, at 697-98, 356 P.3d at 519 (citing *ComputerXpress, Inc. v. Jackson*, 93 Cal.App.4th 993, 113 Cal.Rptr.2d 625, 644 (2001); *Stolz v. Wong Commc'ns Ltd. P'ship*, 25 Cal.App.4th 1811, 31 Cal.Rptr.2d 229, 236 (1994)). "Furthermore, the tort requires a 'willful act,' and the majority of courts have held that merely filing a complaint and proceeding to properly litigate the case does not meet this requirement … [with which] we agree…." *Land Baron Inv.* at 698, 356 P.3d at 519-20 (citing, e.g., *Pomeroy v. Rizzo*, 182 P.3d 1125, 1128 (Alaska 2008); *Ramona Unified Sch. Dist. v. Tsiknas*, 135 Cal.App.4th 510, 37 Cal.Rptr.3d 381, 389 (2005); *Weststar Mortg. Corp. v. Jackson*,133 N.M. 114, 61 P.3d 823, 831 (2002); *Muro–Light v. Farley*, 95 A.D.3d 846, 944 N.Y.S.2d 571, 572 (2012); *Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wash.App. 665, 82 P.3d 1199, 1217 (2004)).

"The tort [of abuse of process] requires a 'willful act' that would not be 'proper in the regular conduct of the proceeding,' *Kovacs*, 106 Nev. at 59, 787 P.2d at 369, and filing a complaint does not meet this requirement." *Land Baron Inv.* at 698, 356 P.3d at 519-20. Instead, the complaining party must include some allegation of abusive measures taken after the filing of the complaint in order to state a claim. *Hampton v. Nustar Managment Financial Group, Dist. Court*, 2007 WL 119146 (D. Nev. Jan. 10, 2007); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Furthermore, maintaining a lawsuit for the purpose of continuing litigation as a lever to obtain a settlement is not an improper motive and would not demonstrate any ulterior purpose other than resolution or settlement of the suit which is an acceptable use of process. "Abuse of process will not lie for a civil action which inconveniences a defendant, or for one filed in expectation of settlement (a 'nuisance' suit)" because "[s]ettlement is included in the 'goals of proper process,' even though the suit is frivolous." *Rashidi v. Albright*, 818 F. Supp. 1354, 1359 (D. Nev. 1993); *Wilson v. Hayes*, 464 N.W. 2d 250, 267 (Iowa 1990). Likewise, the imposition of expenses arising from the defense of a lawsuit is an insufficient injury to sustain a claim for abuse of process. *Stroock & Stroock & Lavan v. Beltramini*, 157 A.D.2d 590, 591, 550 N.Y.S.2d 337, 338 (App Div. 1st Dept. 1990).

The second element's reference to a willful improper action cannot simply be the filing of a complaint. Rather, it must be a subsequent willful act such as "minimal settlement offers or huge batteries of motions filed solely for the purpose of coercing a settlement." *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (1985); *Kollodge v. State*, 757 P.2d 1024 (Alaska 1988) (explaining that the second element of the tort of abuse of process contemplates some overt act done in addition to the initiating of the suit). As explained in *Laxalt*:

> This is a severely strained interpretation of the Bull case. The Nevada court clearly indicated the attorney abused the process available to him by offering to settle the case for a minimal sum and by failing to present proper evidence at trial. It was the actions which the lawyer took (or failed to take) after the filing of the complaint which constituted the abuse of process, and not the filing of the complaint itself, which constituted the tort in the Bull court's estimation. Thus, Nevada follows the rule, as does an overwhelming majority of states, that the mere filing of the complaint is insufficient to establish the tort of abuse of process.

> It is clear that McClatchy has failed to state a claim for abuse of process under Nevada law. As seen above, Nevada courts have held that the filing of a complaint alone cannot constitute the willful act necessary for the tort to lie. This, however, is all that McClatchy has alleged. There is no allegation of abusive measures taken after the filing of the complaint, such as minimal settlement offers or huge batteries of motions filed solely for the purpose of coercing a settlement.

Id. (internal citations omitted). In fact, the California Supreme Court has observed that "the overwhelming majority" of states hold that "the mere **filing or maintenance of a lawsuit** – even for an improper purpose – is not a proper basis for an abuse of process action." *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.*, 728 P.2d 1202, 1209 (Cal. 1986) (**emphasis added**) (citations omitted). *See also*, *Trear v. Sills*, 82 Cal. Rptr. 2d 281, 293 (Cal. Ct. App. 1999) ("[T]he tort [of abuse of process] requires abuse of legal process, not just filing suit. Simply filing a lawsuit for an improper purpose is not abuse of process."). Prosser concurs with this view:

> Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.

Prosser and Keeton on the Law of Torts § 121, at 898 (footnote omitted). Thus, to survive a motion to dismiss, a party must plead a willful act taken by the defendant in addition to filing the complaint. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985).

As addressed *infra*, AMG filed its suit along with the Edgeworths, for a proper purpose. As such, Plaintiffs cannot establish that abusive measures were allegedly taken by AMG after the filing of the Edgeworth Complaints. The Simon Complaints are inextricably linked to written and oral communications made by the Edgeworths by and through their attorney Vannah in the underlying judicial action that is presently on appeal. Simply put, a matter that has been appealed, briefed and submitted to the Nevada Supreme Court, cannot be found to support a showing of alleged "additional abusive measure," as required to demonstrate a prima facie case for alleged abuse of process. Plaintiffs cannot then demonstrate by prima facia evidence that they can prevail on their claim for abuse of process. *See, LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002); *Laxalt v. McClatchy*, 622 F.

Supp. 737, 752 (D. Nev. 1985). Therefore, Plaintiffs again cannot meet their burden under NRS 41.660(3)(b).

The matter underlying the Amended Simon Complaint is a case where discovery never occurred. In fact, the Edgeworth Complaints were never answered by Simon, and the case was adjudicated and dismissed before any discovery was allowed to take place. It is impossible to state that a Complaint, to which no Answer was filed, and for which no discovery was conducted contained any semblance of "abusive measure," to formulate a basis for a claim of abuse of process. *See, Laxalt,* 622 F. Supp. At 752. In fact, Plaintiffs concede that the underlying case was resolved. Plaintiffs would like this Court to believe that the prosecution of the legitimate claims brought in the Edgeworth Complaint and the Edgeworth Amended Complaint amount to an alleged abusive measure. However, Plaintiffs have pled no factual allegations which demonstrate the Edgeworths' engagement in this lawful process was abusive, other than vague representations coupled with Plaintiffs' own conclusory statement that it is so. For these reasons, Plaintiffs' claim for Abuse of Process is fatally deficient and must fail.

v. *Plaintiffs' Claim for Negligent Hiring, Supervision and Retention Does Not Appear to be Asserted Against AMG*

Plaintiffs' allegations contained in Count IV (Negligent Hiring, Supervision, and Retention) do not appear to have been asserted against AMG, and arguments in this regard may be addressed more extensively by the accused parties.[4]

vi. *Plaintiffs' Claims for Alleged Defamation Per Se, Alleged Business Disparagement and Alleged Negligence are fatally deficient and must fail*

Plaintiffs' Claims for alleged Defamation Per Se, alleged Business Disparagement and alleged Negligence are all fatally deficient as pled in the Amended Simon Complaint and therefore fail as a matter of law to state claims upon which relief could potentially be granted. These claims overlap and, as such, will be addressed in tandem. In Nevada, the elements for a claim of defamation per se are:

1. False and defamatory statement by defendant concerning the plaintiff;

[4] Given the vague and ambiguous nature of the allegations within the Amended Simon Complaint and the apparent cutting and pasting of portions of same, such that the underlying allegations may be asserted against only Vannah, AMG specifically reserves any and all rights to potentially discuss Count IV of the Amended Simon Complaint within AMG's Reply to Plaintiffs' Opposition to this Motion, if any.

2. Unprivileged publication of the statement to third party;
3. Some level of fault amounting at least to negligence; and
4. Actual or presumed damages.

To constitute defamation per se, the statement must fall into one of four categories: "(1) that the plaintiff committed a crime; (2) that the plaintiff has contracted a loathsome disease; (3) that a woman is unchaste; or (4) the allegation must be one which would tend to injury the plaintiff in his or her trade, business, profession or office." *Nev. Indep. Broad. Corp.*, 99 Nev. 404, 409, 664 P.2d 337, 341 (1983). Additionally, the defamatory comments must imply a "habitual course of similar conduct, or the want of the qualities or skill that the public is reasonably entitled to expect." *See* Restatement (Second) of Torts §573 cmt. (1977).

Further, in Nevada, the elements for a claim of business disparagement are:

1. A false and disparaging statement that interferes with the plaintiff's business or are aimed at the business's goods or services;
2. The statement is not privileged;
3. The statement is made with malice; and
4. Proof of special damages.

Clark County School District v. Virtual Educ. Software, Inc., 125 Nev. 374, 213 P.3d 496 (Nev. 2009). Finally, Negligence lawsuits in Nevada require that plaintiffs prove four things:

1. The defendant had a duty of care;
2. The defendant breached this duty;
3. This breach caused the plaintiff's injuries
4. These injuries resulted in a financial loss

Turner v. Mandaly Sports Entm't, LLC, 124 Nev. 213, 180 P.3d 1172 (2008); *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 921 P.2d 928 (1996); *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4, 805 P.2d 589 (1991). Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances. NEVADA JURY INSTRUCTIONS 4.02; NEVADA JURY INSTRUCTIONS 4.03; BAJI 3.10.

It is a long-standing common law rule that communications made in the course of judicial proceedings, even if known to be false, are absolutely privileged, rendering those who made the communications immune from civil liability. *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983); *see also Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 630 (2014). This litigation

privilege bars Plaintiffs from alleging civil claims against AMG based on any statements or arguments made within the context of litigation, as said statements and/or arguments are absolutely privileged and immunized from civil liability. In alleging their defamation *per se* and business disparagement claims, Plaintiffs do allege that Brian and Angela, and by way of ownership AMG, made statements to third parties not in the context of the underlying litigation. However, as discussed in detail above, the allegations in this regard concern statements which were privileged as same were made in places open to the public regarding an issue Plaintiffs have affirmatively acknowledged is of public interest. *See,* NRS 41.637(4). Pursuant to Nevada's anti-SLAPP statute, the absolute litigation privilege's broad applicability extends beyond communications made during litigation to communications related to the litigation even when judicial proceedings have not commenced. Therefore, based on the litigation privilege alone Plaintiff's claims for alleged defamation *per se*, business disparagement and negligence must all be dismissed against AMG as a matter of law.

Notwithstanding the fact that Plaintiffs have failed to show that their claims have any merit, a claim of defamation and business disparagement cannot stand against a corporation such as AMG based upon the factual allegations as presented within the Amended Simon Complaint. "It is well settled … that a corporation, just as an individual, may be liable for defamation by its employees." Restatement, Agency 2d § 247; *Axton Fisher Tobacco Co. v. Evening Post Co.*, 1916, 169 Ky. 64, 183 S.W. 269, L.R.A. 1916E, 667; *Baker v. Atlantic Coast Line R. Co.*, 1939, 141 Fla. 184, 192 So. 606; *Hooper-Holmes Bureau v. Bunn*, 5 Cir. 1947, 161 F.2d 102, 104-105. Further, "if an agent is guilty of defamation, the principal is liable so long as the agent was apparently authorized to make the defamatory statement." *American Society of Mechanical Engineers v. Hydro Level Corporation*, 456 U.S. 556, 566, 102 S.Ct. 1935, 1942, 72 L.Ed.2d 330 (1982); Restatement (2d) of Agency, § 247 (1957). As such, "[a] master is [only] subject to liability from defamatory statements made by an agent acting within the scope of his authority." *Draper v. Hellman Commercial Trust & Savings Bank*, 203 Cal. 26, 263 P. 240 (1982); *Rosenberg v. J. C. Penney Co.*, 30 Cal.App.2d 609, 86 P.2d 696 (1939); Rest. 2d Agency, sec. 247.

Pursuant to these principles, a corporation can only potentially be liable for the proven defamatory statements of its agent when it is also proven that the agent was authorized to make the defamatory statement by the corporation and the agent made the defamatory statement within the scope of the agent's authority. In order to have any likelihood of surviving a motion to dismiss, Plaintiffs must have pled facts which could potentially demonstrate an agency relationship existed between AMG and Brian and/or Angela, that AMG authorized Brian and/or Angela to make the allegedly defamatory statement and that the allegedly defamatory statements were allegedly made within the scope of the authority granted to Brian and/or Angela by AMG. The Amended Simon Complaint wholly fails to plead facts that, even if taken as true, would demonstrate that an agency relationship existed between AMG and Brian and/or Angela, as the only statement regarding the relationship between Brian, Angela and AMG by Plaintiffs' is the bald, conclusory statement that Brian and Angela allegedly "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…." *See* The Amended Simon Complaint, at paragraph 5, on-file herein. He supports this with testimony that occurred during the evidentiary hearing from the lawsuit.

Nothing within the Amended Simon Complaint pleads facts that, even if taken as true, plausibly infer that AMG authorized anyone to do anything, let alone allegedly make a statement alleged as defamatory or business disparagement. Further, the use of the term "on behalf of" does not provide the required specificity to demonstrate that AMG allegedly authorized Brian and/or Angela to purportedly make alleged defamatory statements or statements of business disparagement, as the demonstration required is not solely that the agent allegedly took the action on the company's behalf, but that the agent undertook such action with the company's express authority and the agent made the alleged defamatory statement within the scope of the authority granted to it by the company.

Given that the Amended Simon Complaint wholly fails to plead facts which could be seen as coming anywhere close to potentially demonstrating the required elements for a claim of alleged defamation *per se* against AMG (the existence of an agency relationship, the company authorizing the employee to make the statement and the employee making that statement within the scope of the

company's granted authority), Plaintiffs simply have not stated claims for alleged defamation *per se* or business disparagement against AMG upon which Plaintiffs could be granted relief. Here, Plaintiffs have no possibility of succeeding upon their claim for alleged defamation *per se* against AMG, as alleged defamation against a company must be demonstrated through an agency relationship which Plaintiffs have wholly failed to establish through properly pled allegations. For these reasons, Plaintiff's claims for alleged defamation *per se* and business disparagement are fatally deficient and must fail, requiring dismissal of same.

vii. *Plaintiffs' Claim for Civil Conspiracy is Fatally Deficient and Must Fail*

Plaintiffs' last claim for relief is one for Civil Conspiracy against all defendants. This claim for Civil Conspiracy is legally and factually deficient and must fail. An actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303 (1983). "While the essence of the crime of conspiracy is the agreement, the essence of civil conspiracy is damages." *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). "The damages result from the tort underlying the conspiracy." *Id.* Here, put simply, Plaintiffs advance their civil conspiracy claim by asserting that Defendants allegedly conspired to harm them by filing the Edgeworth Complaints. *See* The Amended Simon Complaint at "Count" VIII, on-file herein..

Plaintiffs bear the burden of proving that the Edgeworth Complaints were allegedly filed with the intent to accomplish some unlawful objective for the purpose of harming another which resulted in damage. This claim is fatally deficient on many levels. First, as Vannah deftly explains in its motion to dismiss, and as is echoed in the Motion to Dismiss filed on behalf of the Edgeworths and AMG, no case law supports the assertion that the filing of a civil complaint constitutes an unlawful objective or act sufficient to give rise to a claim of civil conspiracy. *See* Vannah Mot. to Dismiss at 11–23, on file herein; *see also* Edgeworths' Mot. to Dismiss at 7, on file herein. Second, the Edgeworths' own testimony is that the lawsuit was filed to utilize the civil litigation system to adjudicate a dispute.

Plaintiffs fail to establish that there is any actionable or recognized "tort" upon which the alleged civil conspiracy claim is predicated. There is nothing in Nevada law that makes it criminal or unlawful for a client to meet with a lawyer to discuss 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 or had reason to know that he had no legal or equitable 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). Plaintiffs have failed to allege any facts that, even if taken as true, state a claim for alleged civil conspiracy upon which Plaintiffs could be granted relief. Given that the Edgeworth Complaints were not improper, the meeting of the Edgeworths and Vannah is no more a conspiracy than any client meeting with an attorney to discuss a legal matter, there are simply no facts presented within the Amended Simon Complaint which could ever support a claim for alleged civil conspiracy. Absent an alleged nefarious purpose for the lawsuit, which there is none in reality and none pled by Plaintiffs' within the Amended Simon Complaint, all that is left is an attorney meeting with his client to discuss a claim. This hardly qualifies for any of the elements of a claim for alleged civil conspiracy, and for these reasons, Plaintiff's claim for Civil Conspiracy is fatally deficient and must fail.

CONCLUSION

Based upon foregoing, pursuant to NRCP 12(b)(5), AMG respectfully requests that Plaintiffs' claims be dismissed in their entirety as a matter of law.

DATED this 1st day of July, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch

Renee M. Finch, Esq.
Nevada Bar No. 13118
Attorneys for Edgeworth Defendants

CERTIFICATE OF SERVICE

On this 1st day of July, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANT AMERICAN GRATING LLC'S AMENDED MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT (AMENDED)** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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DISTRICT COURT
CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 (AMENDED)** **Hearing Date:** August 13, 2020 at 9:00am

COMES NOW, Defendant, AMERICAN GRATING, LLC, by and through counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES, LLP, and hereby respectfully submits this SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 (AMENDED). This Amended Motion is filed in Compliance with the Court's Order Denying Defendant's Request to File Papers in Excess of 30 Pages and replaces SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-

SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 AND FOR LEAVE TO FILE MOTION IN EXCESS OF 30 PAGES PURSUANT TO EDCR 2.20(a) previously filed on May 18, 2020.

This Amended Special Motion is based upon the attached Memorandum of Points and Authorities, NRS sections 41.635-670, the pleadings and papers on file herein, the Affidavit of Brian Edgewood attached hereto and any oral argument which this Honorable Court may entertain at time of hearing on this matter.

DATED this 1st day of July, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Seeking to protect the exercise of fundamental speech rights against meritless and retaliatory suits, the Nevada State Legislature passed one of the strongest anti-SLAPP laws in the country in 2015. *See* NRS 41.635 et seq. A strategic lawsuit against public participation, known more commonly by its shortened name "SLAPP" is a meritless lawsuit that a plaintiff initiates to chill a defendant's freedom of speech and right to petition under the First Amendment. NRS 41.637. Thus, where a lawsuit such as this is brought against defendants for "communication made in direct connection with an issue of public interest, in a place open to the public or public forum," N.R.S. 41.637(4), Nevada's anti-SLAPP law permits defendants to bring a special motion to dismiss in response to which plaintiff must meet the heavy burden of showing that its case has merit, or risk paying significant fees. The

Anti-SLAPP statute was designed to protect against exactly the type of lawsuit now before this Court. Accordingly, and for the reasons discussed below, Defendants' First Amendment and other civil rights must be protected, and The Simon Complaint must be dismissed.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

A. The Edgeworths' Underlying Claim and Retention of Simon on an Hourly Fee Contract

This matter concerns Plaintiff Daniel S. Simon [hereinafter referred to as "Simon"] and The Law Office of Daniel S. Simon, P.C.'s [hereinafter collectively referred to with Simon as "Plaintiffs"] representation of the Edgeworths. *See* Declaration of Brian Edgeworth, attached hereto as **Exhibit A**. Plaintiffs' representation of the Edgeworths stems from a products liability issue. *See* Decision and Order on Motion to Adjudicate Liens, dated November 19, 2018, attached hereto as **Exhibit B**.

On April 10, 2016, a house the Edgeworths were building as a speculation home suffered a flood. *See* **Exhibit A**. In May of 2016, Simon agreed to send a few letters to the involved parties in hopes it could resolve the matter. *Id*. The matter was not resolved following the demand letters. *Id*. Simon and Brian discussed an hourly fee and entered into an implied-in-fact contract for legal services on an hourly basis at the exorbitant amount of $550.00 per hour to file a lawsuit to recover the incurred damages. *Id*. 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 VIkingSupplynet*, in case No. A-18-738444-C. *Id*. The Cost of repairs was approximately $500,000. *Id*.

B. Plaintiffs' Billing Practices and Attempt to Change the Fee Arrangement

During his representation of the Edgeworths, Simon presented the following bills to the Edgeworths for attorneys' fees and costs: (1) $42,564.95, in December 2016; (2) $46,620.69, of which $11,365.69 were costs, on May 3, 2017; (3) $142,081.20, of which $31,943.70 were costs, on August 16, 2017; and (4) $255,186.25, of which $71,555.00 were costs, on September 25, 2017. *See* **Exhibit B**. These bills were billed at the rate of $550.00 per hour. *Id.* After the first bill was sent, upon request, Simon provided Brian with the information on where to send a check. *See* **Exhibit A.** The Edgeworths paid Plaintiffs' first bill for legal service in full in a prompt and timely manner. *See* **Exhibit B**.

Plaintiffs accepted same by depositing the Edgeworths' check, and not returning the monies. *Id*. The legal services billed in this matter between May 27, 2016 and November 29, 2017 totaled $486,453.09, of which $367,606.25 were attorneys' fees and $118,846.84 were purported costs. *Id*. Per the in-fact hourly pay contract, the Edgeworths immediately paid all of Plaintiffs' legal bills and Plaintiffs accepted these payments by cashing the Edgeworths' checks. *Id*.

On or about the time period between May 3, 2017 and August 9, 2017, Brian identified information which made it apparent that a much larger potential damages award for the Edgeworths may be feasible. *See* **Exhibit A**. On August 9, 2017, Simon and Brian traveled to San Diego to meet with an expert. *Id*. As they were in the airport waiting for a return flight, they discussed the case, and had some discussions about changing the fee agreement from an hourly agreement to some form of hybrid including additional compensation for Simon over and above the hourly rate he was being paid. *Id*. No express fee agreement was reached during the discussion. *Id*. On August 22, 2017, Brian sent an email to Simon entitled "Contingency." *Id*. It stated that Brian was happy to continue to pay Simon an hourly rate, but if other damages were sought, they might want to explore a hybrid of hourly on the claim and then some other structure on other damages. *Id*. Simon never responded to Brian's email dated August 22, 2017. *Id.* Simon and Brian did not agree on any new structured fee agreement at that time. *Id*.

C. Settlement of the Edgeworths' Claim Against Viking and Plaintiffs' Continued Attempts to Modify the Fee Arrangement

Following two (2) mediations, on or about the afternoon of November 15, 2017, a settlement was reached between the Edgeworths and Viking in the amount of $6,000,000.00, when the parties accepted the mediator's proposal (hereinafter referred to as the "Viking Settlement"). *See* **Exhibit A**. On the morning of November 15, 2017, Brian sent an email to Simon asking for the final invoice. *Id.* Plaintiffs never responded to Brian's email requesting the final invoice so that same could be promptly paid, as had been the Edgeworths' conduct throughout the course of the underlying litigation regarding Plaintiffs' invoices. *Id*.

Just two (2) days later, on November 17, 2017, Simon summoned the Edgeworths to his office under the guise of discussing important business concerning the pending settlement. *Id.* In that

meeting, Simon spoke with the Edgeworths about modifying their fee agreement with him because Simon believed he was entitled to more than he had already been paid. *Id*. Throughout the lengthy meeting, Simon continued to make vague demands that the Edgeworths pay him more money from the Viking Settlement because Simon believed he was entitled to more than the hourly rate he had been charging the Edgeworths. *Id*. Simon claimed that the Edgeworths owed him more compensation for his work because a judge would automatically award him forty (40) percent of the Viking Settlement, so taking anything less was cheating himself. *Id*. Simon claimed that it was standard practice for the attorney to take a contingency fee, and it was only fair that he be compensated similarly for his alleged excellent legal prowess. *Id*.

Simon also told Brian and Angela that if they did not agree to the newly presented attorney's fee proposal, the Viking Settlement would fall apart because it required his signature and there were many terms to still be negotiated. *Id.* At the close of that meeting, Simon told the Edgeworths that they could even contact another attorney and verify that his proposed modification to the fee agreement was commonplace. *Id*. The Edgeworths did not agree to Simon's proposal. *Id*. After that meeting, Simon phoned Brian to tell him that he needed a swift answer because he was leaving for a trip to Peru. *Id.* In the following days, Simon placed numerous telephone calls to Brian and Angela asking to commit to the modified fee arrangement. *Id*. Knowing that he was still working under an hourly fee agreement, and there was no contingency or hybrid in place that would entitle him to the Viking settlement funds, without informing the Edgeworths or getting approval for same, Simon made it a requirement of the Viking Settlement that Simon and/or Plaintiffs' name be included on the settlement checks, making it impossible for the Edgeworths to deposit the settlement funds from the Viking Settlement without Simon's signature, even though he had no legal right to the funds. *Id*. The Edgeworths had promptly paid all of the bills for fees and costs with which they had been presented and there was no reason to believe that they would not do the same with any final bill presented to them. *Id.*

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D. Simon Retains Counsel to Represent Him on the Edgeworth Fee Dispute and the November 27, 2017 Letter

On November 27, 2017, Simon retained counsel regarding the "Edgeworth Fee Dispute," a dispute that notably did not exist at that time. *See* Billing Invoice from James Christensen, attached hereto as **Exhibit C**. That same day Simon sent correspondence to Brian and Angela regarding Simon's positions concerning the proposed modification to the Edgeworths' fee agreement that would entitle him to $1,500,000 in attorneys' fees, and $200,000 in costs. (the "November 27, 2017 Letter"). *See* Simon's Correspondence to Brian and Angela Edgeworth, dated November 27, 2017, attached hereto as **Exhibit D**. Within the November 27, 2017 Letter, Simon made broad sweeping claims regarding his efforts during litigation and settlement on the case and how they entitled him to compensation beyond an hourly rate. *Id*. Within his correspondence, Simon further indicated that the experts retained on the matter were retained only due to Simon's "contacts" and his "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." *See* **Exhibit D**.

Simon told the Edgeworths they had to sign the new Retainer Agreement and Settlement Breakdown enclosed within the November 27, 2017 Letter so that he could proceed to attempt to finalize the agreement. *Id*.; *see also* Retainer Agreement and Settlement Breakdown, as attached to the November 27, 2017 Letter, attached hereto as **Exhibit E**. Although the parties had agreed on the settlement, Simon represented that there was a lot of work left to be done on the settlement, including the language, which had to be very specific to protect everyone. *See* **Exhibit D**. He claimed that this language must be negotiated, and if that could not be achieved, there would be no settlement. *Id.* Despite having been paid hourly for his services, Simon went on to state that he had thought about it a lot, and the proposed fee arrangement was the lowest amount he could accept, and if the Edgeworths were not agreeable he could no longer "help them." *Id*. Simon concluded the letter by indicating to Brian and Angela that if they did not agree to the Retainer Agreement and Settlement Breakdown enclosed within the November 27, 2017 Letter, as offered therein (which would have entitled Plaintiffs to an additional approximately $1,200,000.00 in legal fees and costs), that Plaintiffs would no longer represent the Edgeworths in that matter. *Id*. at p. 5; *see also* Retainer Agreement and

Settlement Breakdown, as attached to the November 27, 2017 Letter, attached hereto as **Exhibit E**. The Edgeworths never agreed to accept Simon's new fee arrangement proposal, nor did they ever sign the Retainer Agreement or Settlement Breakdown. *See* **Exhibit A**.

E. Plaintiffs' Attorneys' Liens Against the Edgeworths' Viking Settlement and Retention of Vannah

Because an agreement could not be reached between Plaintiffs and the Edgeworths, Brian sought legal counsel regarding Simon's proposal to modify the fee agreement. *See* **Exhibit A**. On November 29, 2017, the Edgeworths engaged Robert Vannah, Esq. of Vannah & Vannah [hereinafter referred to collectively as "Vannah"] regarding Simon's continued persistence and threatening behavior. *See* **Exhibit B**. Thereafter, on 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 Settlement. *Id*. The letter notified Plaintiffs that Vannah was retained to assist them in the litigation with the Viking entities, and that they were to cooperate with Vannah in every regard concerning the litigation and settlement. *See* Letter from Brian Edgeworth to Simon, dated November 29, 2017, attached hereto as **Exhibit F**. Simon was informed by Vannah that the Edgeworths did not intend to agree nor sign the Retainer Agreement and Settlement Breakdown. *See* **Exhibit A**. Vannah also notified Simon at that time that the Edgeworths would sign the Viking settlement agreed in the form in which it currently stood. *Id*.; *see also* **Exhibit B**.

Knowing all this, on that same day, Simon filed a Notice of Attorney's Lien against the Edgeworths, claiming by supporting affidavit that $80,326.86 was allegedly outstanding and had not been paid by the Edgeworths [hereinafter referred to as the "Original Lien"]. *See* Notice of Attorney's Lien, dated November 30, 2017, attached hereto as **Exhibit G**. At the time Simon filed the Original Lien, the Edgeworths had paid all of Plaintiffs' invoiced bills and had not received an invoice from Plaintiffs regarding the allegedly outstanding amount, despite Brian asking for updated bills in writing on November 15, 2017. *See* **Exhibit A**.

On January 2, 2018, Plaintiffs filed a second Notice of Amended Attorney's Lien wherein Plaintiffs claimed outstanding costs of $76,535.93 and entitlement to a sum total of $2,345,450 in attorney's fees, less payments received in the sum of $367,606.25, for a net lien in the sum of

$1,977,843.80 in total attorneys' fees against the Viking Settlement [hereinafter referred to as the "Amended Lien"]. *See* Notice of Amended Attorney's Lien, dated January 2, 2018, attached hereto as **Exhibit H**; *see also* **Exhibit B**. At the time Simon filed the Amended Lien, the Edgeworths had specifically refused to enter into Simon's coercive Retainer Agreement and Settlement Breakdown. *See* **Exhibit A**. The Edgeworths had also paid all of Plaintiffs' bills that had been presented to them. *Id.*

F. The Special Trust Account Created to Hold the Funds

When the Viking settlement checks were received, the Edgeworths requested them so they could be deposited. *Id.* Simon instead demanded that the settlement checks be deposited in Plaintiffs' trust account and refused to allow the Edgeworths to deposit the settlement checks in the Edgeworths' personal account. *Id.* As a compromise, Vannah suggested that the checks could be held in Vannah's trust account, but that was not satisfactory to Simon. *Id.*

On January 8, 2018, a special trust account was opened to deposit and hold the Edgeworths' settlement funds [hereinafter referred to as the "Settlement Trust Account"]. *See* **Exhibit A**. This was made necessary by Simon requiring in the Viking Settlement that his name be on the settlement checks – an action undertaken without informing or receiving approval from the Edgeworths – and Simon thereafter demanding that the settlement checks be deposited in Plaintiffs' trust account. *Id.* The Settlement Trust Account requires that both Simon and Mr. Vannah provide a signature for any action to be taken. *Id.*

To date, from the $6,000,000 Viking Settlement funds, the Edgeworths have only received $3,950,561.27. *Id.* As of the date of this filing, Simon continues to exercise dominion and control over the Settlement Trust Account which contains the remaining funds from the Viking Settlement. *Id.* The fact that Simon's signature was required to access the funds permitted Simon to continue to exercise dominion and control over large portions of the Viking Settlement to the exclusion of the Edgeworths. Simon also receives the 1099-INT statements related to the Settlement Trust Account which he refuses to have sent directly to Brian, even though the account is registered under Brian's tax identification number. *Id.*

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G. The Filing of the Edgeworth Complaint and Edgeworth Amended Complaint

Because Plaintiffs were maintaining unlawful dominion and control over funds to which they were not entitled, on January 4, 2018, the Edgeworths – through Vannah as their legal representative – filed a Complaint against Plaintiffs in which the Edgeworths pled breach of contract, declaratory relief and conversion [hereinafter referred to as the "Edgeworth Complaint"]. *See* The Edgeworth Complaint, dated January 4, 2018, attached hereto as **Exhibit I**. On March 15, 2018, the Edgeworths – through Vannah as their legal representative – filed an Amended Complaint against Plaintiffs, adding a claim for breach of the covenant of good faith and fair dealing, which was not included in the Edgeworth Complaint [hereinafter referred to as the "Edgeworth Amended Complaint" and referred to collectively herein with the Edgeworth Complaint as the "Edgeworth Complaints"]. *See* The Edgeworths' Amended Complaint, dated March 15, 2018, attached hereto as **Exhibit J**. The factual basis within the Edgeworth Complaints are summarized as follows: Simon exercised dominion and control over the settlement funds from the Viking Settlement despite his knowledge he had no legal right or basis upon which to encumber the same through an attorney's lien. *Id*. at paragraphs 19-20, 26-27, 37, 41-43, 49-55; *see also* The Edgeworth Complaint, dated January 4, 2018, at paragraphs 19-20, 23, 25-27, 41-43, attached hereto as **Exhibit I**.

In response to the filing of the Edgeworth Complaint, Plaintiffs filed a Motion to Dismiss the Edgeworth Complaint and a Special anti-SLAPP Motion to Dismiss. *See* Plaintiffs' Motions to Dismiss the Edgeworth Complaint, on-file in Case No. A-16-73844-C. The Edgeworths' (including AMG), through their attorney Vannah, filed Oppositions to both of Plaintiffs' Motions to Dismiss the Edgeworth Complaint, with each of the Edgeworths' Oppositions including affidavits in support signed by Brian ("Brian's Affidavits"). *See* Affidavit of Brian Edgeworth, dated February 12, 2018, as appended as Exhibit 1 to the Edgeworths' Oppositions to Plaintiffs' Motion to Dismiss, attached hereto as **Exhibit K**; *see also* Affidavit of Brian Edgeworth, dated March 15, 2018, as appended as Exhibit 1 to the Edgeworths' Opposition to Plaintiffs' Special anti-SLAPP Motion to Dismiss, attached hereto as **Exhibit L**.

H. Plaintiffs' Continued Unlawful and Unethical Refusal to Release the Adjudicated Undisputed Amount of the Viking Settlement to the Edgeworths and the Detriment Same Has Caused to the Edgeworths

On January 24, 2018, Plaintiffs filed their Motion to Adjudicate Lien on an order shortening time, requesting that Judge Tierra Jones resolve the final amount of the attorney's lien filed by Simon. *See* Plaintiffs' Motion to Adjudicate Attorney Lien, dated January 24, 2018, attached hereto as **Exhibit M**. On November 19, 2018, Judge Jones granted Plaintiffs' Motion to Adjudicate Attorneys' Liens, finding that Plaintiffs were entitled to attorney's fees totaling $484,982.50, a number notably less than a quarter of the amount Simon had been claiming he was entitled to and was holding. *See* **Exhibit B**.

Simon's continued exercise of dominion and control over the Viking Settlement funds required the Edgeworths to seek judicial relief to attempt to force Simon to release the settlement funds specifically adjudicated as undisputed and rightfully the Edgeworths' property. *See* Plaintiffs' Motion for an Order Directing Simon to Release Plaintiffs' Funds, dated December 13, 2018, attached hereto as **Exhibit N**. Simon refused to release to the Edgeworths the now adjudicated undisputed amount of the Viking Settlement funds, which he had held hostage since December 2017. *See* **Exhibit A**. To date, Simon still has not agreed to release the adjudicated undisputed portion of the funds from the Viking Settlement to the Edgeworths. *Id*.

On April 9, 2018, Plaintiffs filed a Motion to Dismiss[1] the Edgeworth Amended Complaint. *See* Motion to Dismiss Plaintiffs' Amended Complaint, dated April 4, 2018, attached hereto as **Exhibit O**. Judge Jones held a five (5) day evidentiary hearing on five (5) separate dates between August 27, 2018 and September 18, 2018, regarding, Plaintiff's Motion to Adjudicate the Lien, and thereafter determined that the Edgeworths' claims should be dismissed. *See* Notice of Entry of Decision and Order on Motion to Dismiss NRCP 12(B)(5), dated October 24, 2018, attached hereto as **Exhibit P**.

Believing in good faith that this decision was made in error, on August 8, 2019, the Edgeworths filed an appeal challenging Judge Jones' Order Adjudicating the Lien. The appeal is

[1] AMG notes that Plaintiffs also filed a Special Motion to Dismiss the Edgeworths' Amended Complaint pursuant to Nevada's anti-SLAPP statutes on March 28, 2018, in matter number A-16-738444-C. However, that Motion was specifically denied as moot and, as such, and for the sake of brevity, no further presentation regarding same is presented herein.

currently pending before the Nevada Supreme Court. *See* Appellant's Opening Brief, dated August 9, 2019, attached hereto as **Exhibit Q**. Plaintiffs also filed a Petition for Writ of Prohibition or Mandamus with the Nevada Supreme Court on October 17, 2019, challenging the amount adjudicated by Judge Jones. *See* Nevada Supreme Court Docket Sheet for Case No. 7982, attached hereto as **Exhibit R**. The Writ is also currently pending resolution. *Id*.

I. The Simon Complaint and Plaintiffs' Improper and Unsupported Claims Against AMG

On December 23, 2019, while the appellate issues were still pending before the Nevada Supreme Court, and still having not released the Viking Settlement funds to the Edgeworths, Plaintiffs filed the SLAPP Complaint in this matter (the "Simon Complaint"). *See* The Simon Complaint, dated December 23, 2019, on-file herein. The Simon Complaint improperly seeks damages against the Edgeworths and specifically inappropriately against AMG. *Id*. The Simon Complaint alleges that the Edgeworth Complaints somehow form a basis for the instant lawsuit, despite the complaints being privileged free speech protected by the absolute litigation privilege. *Id*. Further, the Simon Complaint is based upon the wholly meritless and unsupported allegation that the Edgeworths did not have honest beliefs regarding the merits of the causes of actions brought within the Edgeworth Complaints. *Id*. at paragraph 26. Based upon this allegation, Plaintiffs allege in the Simon Complaint that the Edgeworth Complaints should not be afforded the absolute litigation privilege and should not be protected as free speech under Nevada's Constitution. *Id*. AMG responds as follows.

III. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS

In 1993, the Nevada legislature enacted statutory provisions to protect persons from being subject to retaliatory litigation involving various communications, commonly called the "anti-Strategic Lawsuits Against Public Participation" or "anti-SLAPP" statute. In 1997, the Legislature explained that SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs. 1997 Nev. Stat., Ch. 387, Preamble, at 1364 (preamble to bill enacting anti-SLAPP statute).

Nevada's anti-SLAPP statute provides that a person "who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection

with an issue of public concern is immune from any civil action for claims based upon the communication."[2] The statute "only protects citizens who petition the government from civil liability arising from good-faith communications" and "it bars claims from persons who seek to abuse other citizens' rights to petition their government, and it allows meritorious claims against citizens who do not petition the government in good faith."[3]

Under the statute, "if a person is sued based upon good faith communications in furtherance of the right to petition, the person against whom the action is brought may file a special motion to dismiss."[4] The Nevada anti-SLAPP statute requires courts to employ a two-step process in ruling on a special motion to dismiss. A "court first has to '[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon good faith communication in furtherance of the right to petition…in direct connection with an issue of public concern.'"[5] If the movant fails to satisfy this threshold burden, the Court must deny the motion.[6] "[I]f the defendant does not demonstrate this initial prong, the court should deny the anti-SLAPP motion and need not address the second step."[7]

If the moving party satisfies their initial burden, the court then determines whether the non-moving party "has demonstrated with prima facie evidence a probability of prevailing on the claim[.]"[8] N.R.S. 41.660's burden-shifting framework evolved in 2015 when the Legislature *decreased* the plaintiffs' burden of proof from "clear and convincing" to "*prima facie*" evidence.[9]

The Nevada Supreme Court found it appropriate to adopt California's recitation of the standard of review for a district court's denial or grant of an anti-SLAPP motion to dismiss as *de novo,* laid out in Park v. Board of Trustees of California State University.[10] The Nevada Supreme

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[2] NRS 41.650.
[3] John v. Douglas Cnty. Sch. Dist., 219 P.3d 1276, 1281 (Nev. 2009).
[4] Rebel Commc'ns, LLC, 2010 WL 2773530, at *2; NRS 41.660(1)(a).
[5] Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp., No. 2:14-cv-424, 2016 WL 4134523, at *3 (D. Nev. Aug. 2, 2016) (quoting NRS 41.660(3)(a)) (alterations in original).
[6] See Baharian-Mehr v. Smith, 189 Cal. App. 4th 265, 271-72 (Cal. Ct. App. 2010).
[7] Id.
[8] NRS 41.660(3)(b).
[9] 2015 Nev. Stat., ch. 428, § 13, at 2455.
[10] Coker v. Sassone, 2019 Nev. LEXIS 1.

Court repeatedly recognized the similarities between California's and Nevada's anti-SLAPP statutes, looking to California courts for guidance.[11]

> We review de novo the grant or denial of an anti- SLAPP motion. We exercise independent judgment in determining whether, based on our own review of the record, the challenged claims arise from protected activity. In addition to the pleadings, we may consider affidavits concerning the facts upon which liability is based. We do not, however, weigh the evidence, but accept plaintiff's submissions as true and consider only whether any contrary evidence from the defendant establishes its entitlement to prevail as a matter of law.[12]

Thus, "[a]lthough called a 'motion to dismiss,' anti-SLAPP motions are treated like motions for summary judgment."[13] Accordingly, "summary judgment standards apply."[14]

Summary judgment is appropriate when a review of the record viewed in a light most favorable to the nonmoving party reveals no triable issues of material fact and judgment is warranted as a matter of law.[15] The two substantive requirements for the entry of summary judgment are: (1) there must be no genuine issue of material fact; and (2) the moving party is entitled to judgment as a matter of law.[16]

"Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law."[17] Further, "[t]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."[18]

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[11] See, e.g., Patin v. Lee, 134 Nev., Adv, Op. 87, 429 P.3d 1248, 1250-51 (2018); Shapiro v. Welt, 133 Nev. at 40, 389 P.3d at 268 (adopting California's "guiding principles" to define "an issue of public interest" pursuant to N.R.S. §41.637(4)); John v. Douglas Cty, Sch. Dist., 125 Nev. at 752, 219 P.3d at 1281 (describing both states' anti-SLAPP statutes as "similar in purpose and language").

[12] Park v. Board of Trustees of California State University, 2 Cal. 5th 1057, 217 Cal. Rptr.3d 130 (Cal. 2017) (citations omitted).

[13] Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp., No. 2:14-CV-424 JCM (NJK), 2016 U.S. Dist. LEXIS 101028, at *6-7 (D. Nev. Aug. 2, 2016) (citing Davis v. Parks, 2014 Nev. Unpub. LEXIS 651, 2014 WL 1677659, at *7.

[14] Balestra-Leigh v. Balestra, No. 3:09-cv-551, 2010 WL 4280424, at *4 (D. Nev. Oct. 19, 2010).

[15] Scialabba v. Brandise Const. Co., Inc., 112 Nev. 965, 968; 921 P.2d 928 (1996).

[16] NRCP 56.

[17] Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005).

[18] Id. at 1031.

IV. DEFENDANT'S SPECIAL MOTION TO DISMISS SHOULD BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

Plaintiffs' claims forwarded against AMG within the Simon Complaint should be dismissed pursuant to Nevada's Anti-SLAPP statute and relevant case law. First, the speech in question is clearly covered by the First Amendment, as the communications at issue were made to a judicial body by AMG through their counsel Vannah. Second, Plaintiffs cannot and will not prevail on the claims alleged against AMG in the Simon Complaint. Finally, AMG unquestionably had – and continues to have – a good faith basis to file and maintain claims against Plaintiffs based on the factual allegations forwarded by the Edgeworths, including AMG, within the Edgeworth Complaints. Accordingly, as discussed in further detail below, dismissal of the Simon Complaint in its entirety as against AMG is appropriate.

It is apparent that Simon's objective in filing the Simon Complaint is to harass and punish the Edgeworths over a several year intensive fee dispute. Demonstrative of this theme is the timing of Simon's original retention of counsel. Specifically, on November 27, 2017, the same day that Simon sent the November 27, 2017 Letter to Brian and Angela, Simon also retained and met with his own counsel regarding the Edgeworths. *See* Billing Invoice from Christiansen, attached hereto as **Exhibit C**.

Thus, on the same day Simon attempted to coerce Brian and Angela into modifying the hourly-billed fee arrangement into an agreement that would have resulted in a windfall to Plaintiffs of nearly $1.2 million, Simon was also setting up a process by which he could seek redress from, harass and punish the Edgeworths if they did not agree to his demands. Simon knew, or should have known, that he had no legal or equitable basis to claim any portion of the Viking Settlement. Despite this knowledge, Simon retained Mr. Christiansen three (3) days prior to being informed that the Edgeworths were rejecting his offer to sign the Retainer Agreement and Settlement Breakdown. Further, Simon retained Mr. Christianson three (3) days prior to the Edgeworths' retention of Mr. Vannah. The record demonstrates that Simon was preparing for litigation well in advance of the Edgeworths' final decision regarding the Retainer Agreement and Settlement Breakdown. Thus, Simon's claim that he incurred damages as he was forced to retain an attorney to defend himself is

patently false. He had clearly retained counsel long before the Edgeworth Complaint was filed and served.

The Simon Complaint was clearly brought against the Edgeworths for the improper purposes Nevada's anti-SLAPP statute specifically seeks to protect against, and therefore it must be dismissed.

A. The Edgeworths Satisfy the First Prong of the Anti-SLAPP Analysis

i. *The Speech in Question, All Contained Within a Civil Lawsuit, Is Clearly Covered By The First Amendment As Communications To A Judicial Body and Falls Squarely Within Nevada's Anti-SLAPP Statute*

Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002). The privilege also applies to "conduct occurring during the litigation process." *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, "bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).

The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies "so long as [the statements] are in some way pertinent to the subject of controversy." *Id.* Moreover, the statements "need not be relevant in the traditional evidentiary sense, but need have only 'some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Id*. at 61, 657 P.2d at 104.

Imposing tort liability on the Edgeworths, including AMG, would be in contravention of Nevada's anti-SLAPP law. NRS 41.637(3), states, "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any [. . .] written or oral statement made in direct connection with an issue under consideration by a

legislative, executive or judicial body, or any other official proceeding authorized by law." The essence of the Simon Complaint is that the Edgeworths, including AMG, allegedly utilized the court system to disparage Simon's business, thereby damaging Simon's reputation and causing economic harm.

AMG, in conjunction with the Edgeworths, by and through their attorney of record Vannah, filed the Edgeworth Complaints, to seek redress for wrongs committed by Simon pursuant to well-founded claims for relief available under Nevada Law. The Edgeworth Complaints are both petitions to a judicial body. See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished). As such, the Edgeworth Complaints qualify as, and are, protected communications pursuant to NRS 41.637(3).

In the instant case, the Simon Complaint alleges eight causes of action (identified as "Counts"): (I) Wrongful Use of Civil Proceedings – All Defendants; (II) Malicious Prosecution – All Defendants; (III) Abuse of Process – All Defendants; (IV) Negligent Hiring, Supervision, and Retention; (V) Defamation Per Se; (VI) Business Disparagement; (VII) Negligence; (VIII) Civil Conspiracy. Every cause of action alleged against AMG is based in AMG's legitimate and protected utilization of the civil litigation process. Because Simon recognizes through the Simon Complaint that the damages he claims all stem from the lawsuit filed on January 4, 2018, Simon essentially concedes that the speech in question – all of which is contained within a civil lawsuit – is clearly absolutely privileged as protected free speech under the First Amendment as communications to a judicial body.

The use of a complaint, an amended complaint, briefs, testimony, and arguments are all protected communications under NRS 41.637. The use of these protected communications serves as **the** basis for The Simon Complaint, thereby satisfying the first prong of the Anti-SLAPP statute analysis because they fall squarely within the Anti-SLAPP statute provisions.

In further support of the fact that this suit is prime for dismissal under Nevada's Anti-SLAPP statute, Plaintiffs have admitted that no contingency fee arrangement or agreement ever existed

between Plaintiffs and the Edgeworths. Simon based his wrongful and continued dominion and control over the Viking Settlement funds on a self-serving assertion that he assumed he would be fairly compensated at the end of the case in violation of NRPC 1.5, which required an agreement of this type to be in writing. Simon made this assertion after being paid $368,588.70 over the course of 18 months and having incurred no risk, as the Edgeworths covered the incurred litigation costs of $114,864.39 in their entirety.

The Edgeworths attempted to negotiate with Plaintiffs themselves for the Viking Settlement funds to be released when they were received, but those negotiations proved fruitless. The Edgeworths then enlisted the assistance of an attorney to help with discussions to attempt to convince Plaintiffs to release the Viking Settlement funds; those discussions also proved to be fruitless. When the efforts of the attorney to negotiate this matter outside of court were fruitless, the Edgeworths were forced to file a civil complaint, asking the Court to assist them in obtaining the funds from the Viking Settlement they were rightfully due under the law.

In the underlying proceedings, Judge Jones adjudicated an additional $484,982.50 was owed to Plaintiffs. Of note is that this is significantly less than the amount Simon had been claiming he was entitled to and was based solely upon an hourly fee arrangement. Following that adjudication, the Edgeworths offered to pay Plaintiffs the amount awarded to Plaintiffs by Judge Jones in exchange for Simon's agreement to release the remaining Viking Settlement funds. Despite this communication, Plaintiffs continued to maintain that they were owed more money than was adjudicated by Judge Jones, and they continued to maintain wrongful dominion and control over the funds. The Edgeworths had no choice but to enlist the help of the Court to resolve this dispute. However, rather than accepting almost $1 million in compensation for fees and costs, exactly as he had promised in his correspondence dated November 27, 2017, Simon brought this SLAPP suit purely to intimidate and punish the Edgeworths for not the Retainer Agreement and Settlement Breakdown following the settlement resolution of the Viking matter.

Contrary to Plaintiffs' allegations, there is vast evidentiary support for all of the facts contained in the Edgeworth Complaints. To quote Plaintiffs' position from an earlier-filed Special

Motion to Dismiss, "…you cannot be sued for following the law." The Edgeworths, including AMG, did nothing more than follow the law by properly utilizing the court system available to adjudicate a dispute between the parties. Thus, AMG has satisfied its burden under NRS 41.660 & 41.665, and the burden now shifts to Plaintiffs.

B. Plaintiffs Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis Because They Cannot Demonstrate a Probability of Prevailing on Their Claim

Plaintiffs asserted eight causes of action in their Complaint. While on its face it appears that only Counts I, II, III and VIII are actually alleged against AMG, Plaintiffs' use of the defined term "Defendants and each of them" within each count belies that Plaintiffs may have been including AMG within every Count, and thus each Count is addressed herein. Plaintiffs' allegations contained in Counts V, IV and VII do not appear to have been asserted against AMG, and while briefly addressed here, arguments in this regard may be addressed more extensively by the accused parties.[19]

Plaintiffs' claims are either procedurally premature and/or there is no set of facts that Plaintiffs could prove that would entitle them 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). Plaintiffs cannot show that they have a probability of prevailing on their claims and, thus, their claims must be dismissed. A plain reading of the Simon Complaint reveals that the primary basis for Plaintiffs' claims for alleged wrongful use of civil proceedings, defamation *per se* and business disparagement are ***pleadings filed*** and ***statements allegedly made*** by one or more of the defendants ***in the course of the underlying litigation and judicial proceedings***. *See* The Simon Complaint, generally, on-file herein.

As the Edgeworths' (including AMG) written and oral communications and statements, which are the only basis set forth within the Simon Complaint upon which Plaintiffs allege entitlement to relief, are "absolutely privileged," there is no set of facts…which would entitle Plaintiffs to any relief, or to prevail. *See, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672

[19] Given the vague and ambiguous nature of the allegations within the Simon Complaint and the apparent cutting and pasting of portions of same, such that the underlying allegations may be asserted against only two (2) of the Edgeworth parties and other parts of the same count then indicated other Edgeworth parties, AMG specifically reserves any and all rights to potentially discuss Counts IV, V and VII of the Simon Complaint within AMG's Reply to Plaintiffs' Opposition to this Motion, if any.

(2008). Therefore, Plaintiffs do not have any prima facie evidence to support the counts upon which relief could ever be granted and thus cannot satisfy their burden under the law. NRS 41.660(3)(b).

i. *Plaintiffs Cannot Make a Prima Facie Case for Wrongful Use of Civil Proceedings*

Plaintiffs cannot establish a prima facie case for Count I (Wrongful use of Civil Proceedings) as, same is not a recognized tort cause of action in this State. Although many jurisdictions recognize this tort, **the State of Nevada does not**. *Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009 WL 2382765, at *2 (D. Nev. July 31, 2009). Nevada Rule of Professional Conduct 1.5(c)(5), requires that any contingency fee agreement warn that "a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process." The rule also clearly states that the tort of abuse of process is the potential remedy for a vexatious civil case, indicating that a claim for wrongful use of civil proceedings neither exists nor applies in this context. NRPC 1.5(c)(5). Further NRS 199.320, which assigns criminal liability to the intentional misuse of lawsuits to distress or harass a defendant, assigns no civil liability and does not imply that a tort for wrongful use of civil proceedings exists. Because a claim for wrongful use of civil proceedings is not a recognized claim for which Plaintiffs could be granted relief under Nevada Law, Plaintiffs' have no probability of prevailing upon their claim in Count I (Wrongful Use of Civil Proceedings), requiring that same be dismissed as against AMG.

ii. *Plaintiffs Cannot Make a Prima Facie Case for Malicious Prosecution*

Plaintiffs cannot establish a prima facia case for Count II (Malicious Prosecution) against AMG. Malicious prosecution is a common law intentional tort aimed at actors, whether private or governmental, which commence or institute, or cause to be commenced or instituted, unwarranted or unjustified legal proceedings against a defendant. In Nevada, the elements for a claim of malicious prosecution are:

1. Filing of ***criminal action***;
2. Lack of probable cause to commence prior action;
3. Malice;
4. Favorable termination of prior the action; and
5. Causation and damages.

LaMantia v. Redisi, 38 P.3d 877 (2002); *Dutt v. Kremp*, 111 Nev. 57 (1995); *Chapman v. City of Reno*, 85 Nev. 365 (1969), ***emphasis added***. A malicious prosecution claim requires that the defendant initiated, procured the institution of, or actively participated in the continuation of a ***criminal proceeding*** against the plaintiff. *LaMantia*, 118 Nev. 30, 38 P.3d 879–80. The facts of this case show that neither AMG, Vannah, or the Edgeworths initiated or procured the institution of a criminal proceeding against Plaintiffs. Therefore, as a matter of law, Plaintiffs cannot assert a malicious prosecution claim against AMG.

iii. *Plaintiffs Cannot Make a Prima Facie Case for Abuse of Process*

In Nevada, the term "malicious prosecution[,]" which denotes the wrongful initiation of criminal proceedings, is distinguished from the "malicious use of process" which denotes the wrongful initiation of civil proceedings. Here, not only does Plaintiffs' claim for alleged Malicious Prosecution fail as a matter of law, Plaintiffs also cannot establish a prima facie case for Count III (Abuse of Process) against AMG.

Abuse of process is a tortious cause of action arising from one party maliciously and deliberately misusing the courts and the law through an underlying legal action. This is to be distinguished from malicious prosecution in that it is aimed at the use and misuse of legal process for illegitimate purposes, regardless of the merit of the underlying claim. An abuse of process claim in Nevada has two fundamental elements: (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the regular conduct of a proceeding. *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). The action for abuse of process hinges on the misuse of regularly issued process. *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9 (1972).

The mere filing of a complaint itself is insufficient to establish the tort of abuse of process. *Hampton v. Nustar Managment Financial Group, Dist. Court*, 2007 WL 119146 (D. Nev. Jan. 10, 2007); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Instead, the complaining party must include some allegation of abusive measures taken after the filing of the complaint in order to state a claim. *Id.*

Furthermore, maintaining a lawsuit for the purpose of continuing litigation as a lever to obtain a settlement is not an improper motive and would not demonstrate any ulterior purpose other than resolution or settlement of the suit which is an acceptable use of process. "Abuse of process will not lie for a civil action which inconveniences a defendant, or for one filed in expectation of settlement (a 'nuisance' suit)" because "[s]ettlement is included in the 'goals of proper process,' even though the suit is frivolous." *Rashidi v. Albright*, 818 F. Supp. 1354, 1359 (D. Nev. 1993); *Wilson v. Hayes*, 464 N.W. 2d 250, 267 (Iowa 1990). Likewise, the imposition of expenses arising from the defense of a lawsuit is an insufficient injury to sustain a claim for abuse of process. *Stroock & Stroock & Lavan v. Beltramini*, 157 A.D.2d 590, 591, 550 N.Y.S.2d 337, 338 (App Div. 1st Dept. 1990).

The second element's reference to a willful improper action cannot simply be the filing of a complaint. Rather, it must be a subsequent willful act such as "minimal settlement offers or huge batteries of motions filed solely for the purpose of coercing a settlement." *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (1985); *Kollodge v. State*, 757 P.2d 1024 (Alaska 1988) (explaining that the second element of the tort of abuse of process contemplates some overt act done in addition to the initiating of the suit). As explained in *Laxalt*:

> This is a severely strained interpretation of the Bull case. The Nevada court clearly indicated the attorney abused the process available to him by offering to settle the case for a minimal sum and by failing to present proper evidence at trial. It was the actions which the lawyer took (or failed to take) after the filing of the complaint which constituted the abuse of process, and not the filing of the complaint itself, which constituted the tort in the Bull court's estimation. Thus, Nevada follows the rule, as does an overwhelming majority of states, that the mere filing of the complaint is insufficient to establish the tort of abuse of process.
>
> It is clear that McClatchy has failed to state a claim for abuse of process under Nevada law. As seen above, Nevada courts have held that the filing of a complaint alone cannot constitute the willful act necessary for the tort to lie. This, however, is all that McClatchy has alleged. There is no allegation of abusive measures taken after the filing of the complaint, such as minimal settlement offers or huge batteries of motions filed solely for the purpose of coercing a settlement.

Id. (internal citations omitted). In fact, the California Supreme Court has observed that "the overwhelming majority" of states hold that "**the mere filing or maintenance of a lawsuit** – even for

an improper purpose – **is not a proper basis for an abuse of process action**." *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.*, 728 P.2d 1202, 1209 (Cal. 1986) (citations omitted). *See also, Trear v. Sills*, 82 Cal. Rptr. 2d 281, 293 (Cal. Ct. App. 1999) ("[T]he tort [of abuse of process] requires abuse of legal process, not just filing suit. Simply filing a lawsuit for an improper purpose is not abuse of process."). Prosser concurs with this view:

> Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.

Prosser and Keeton on the Law of Torts § 121, at 898 (footnote omitted). Thus, to survive a motion to dismiss, a party must plead a willful act taken by the defendant in addition to filing the complaint. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985).

As addressed *infra*, AMG filed its suit along with the Edgeworths, for a proper purpose. As such, Plaintiffs cannot establish that alleged abusive measures were taken by AMG after the filing of the Edgeworth Complaints. The Simon Complaint is inextricably linked to written and oral communications made by the Edgeworths within the confines of the underlying judicial action that is presently on appeal. Simply put, a matter that has been appealed, briefed and submitted to the Nevada Supreme Court, cannot be found to support a showing of alleged "additional abusive measure," as required to demonstrate a prima facie case for alleged abuse of process, and thus Plaintiffs cannot prevail on their claim for abuse of process. See, *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Therefore, Plaintiffs again cannot meet their burden under NRS 41.660(3)(b).

The matter underlying the Simon Complaint is a case where discovery never occurred. In fact, the Edgeworth Complaint and the Edgeworth Amended Complaint were never answered by Simon, and the case was adjudicated and dismissed **before any discovery was allowed to take place**. It is impossible to state that a Complaint, to which no Answer was filed, and for which no discovery was conducted contained any semblance of "abusive measure," to formulate a basis for a claim of abuse of process. See, *Laxalt*, 622 F. Supp. at 752. Plaintiffs would like this Court to believe that

the prosecution of the legitimate claims brought in the Edgeworth Complaints amount to an alleged abusive measure. However, Plaintiffs have pled no factual allegations which demonstrate the Edgeworths' engagement in this lawful process was allegedly abusive, other than vague representations coupled with Plaintiffs' own conclusory statement that it is so. Therefore, Plaintiffs' cannot demonstrate that they have any probability of prevailing upon their claim for alleged abuse of process, requiring said Count be dismissed as against AMG pursuant to NRS 41.660(3)(b).

iv. *Plaintiffs Cannot Make a Prima Facie Case Against AMG for Negligent Hiring, Supervision and Retention*

Plaintiffs' fourth claim alleges Negligent Hiring, Supervision, and Retention. However, Plaintiffs cannot establish a prima facie case against AMG for Negligent Hiring, Supervision, and Retention, requiring that that Count be dismissed as against AMG. In Nevada, the elements of a claim for negligent hiring, retention, and supervision are:

1. Employer had a duty to protect plaintiff from harm resulting from its employment of the tortfeasor;
2. Employer breached that duty by hiring, retaining, failing to train, supervise, or discipline the tortfeasor;
3. Proximate cause; and
4. Causation and damages.

Nurse v. U.S., 226 F.3d 99 (9th Cir. 2000); *Blanck v. Hager*, 360 F. Supp. 2d 137, 157 (2005); *Goodrich and Pennington Mortgage Fund, Inc. v. RJ Woolard, Inc.*, 120 Nev. 777 (2004); *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226-27, 925 P.2d 175, 1181 (1996); *Harrigan v. City of Reno*, 86 Nev. 678, 475 P.2d 94 (Nev. 1970); *Amen v. Mercedes Cty. Title Co.*, 58 Cal. 2d 528 (1962); *Rianda v. Sand Benito Title Guar. Co.*, 35 Cal. 2d 170 (1950).

Words can be both the greatest weapon, and the greatest source of misunderstanding. In the Simon Complaint, it appears that this claim was brought against Robert D. Vannah, Chtd. However, a careful reading of the Simon Complaint indicates that Plaintiffs, whether intentionally or unintentionally, have at least partially asserted this claim against Defendants and each of them. *See* Simon Complaint, at ¶ 62, on file herein. Plaintiffs fail to allege any of the elements for a claim of negligent hiring, supervision, and retention against AMG, aside from perhaps an attempt to assert that Defendants, and each of them, should be subject to an award for punitive damages should Plaintiffs

establish this claim. This logic has no basis in Nevada law, and therefore should not be countenanced by this Court. As to AMG, because Plaintiffs failed to assert ANY of the elements of this claim against AMG directly, Plaintiffs clearly cannot establish a prima facie case of alleged negligent hiring, supervision, and retention against AMG, requiring that Count be dismissed as against AMG.

v. *Plaintiffs Cannot Make a Prima Facie Case Against AMG for Defamation Per Se OR Business Disparagement OR Negligence*

Plaintiffs next assert Count V for alleged Defamation Per Se, Count VI for alleged Business Disparagement, and Count VII for alleged Negligence; however, Plaintiffs cannot establish prima facie cases for any of these claims as against AMG. In Nevada, the elements for a claim of defamation per se are:

1. False and defamatory statement by defendant concerning the plaintiff;
2. Unprivileged publication of the statement to third party;
3. Some level of fault amounting at least to negligence; and
4. Actual or presumed damages.

To constitute defamation per se, the statement must fall into one of four categories: "(1) that the plaintiff committed a crime; (2) that the plaintiff has contracted a loathsome disease; (3) that a woman is unchaste; or (4) the allegation must be one which would tend to injury the plaintiff in his or her trade, business, profession or office." *Nev. Indep. Broad. Corp.*, 99 Nev. 404, 409, 664 P.2d 337, 341 (1983). Additionally, the defamatory comments must imply a "habitual course of similar conduct, or the want of the qualities or skill that the public is reasonably entitled to expect." *See* Restatement (Second) of Torts §573 cmt. (1977).

Further, in Nevada, the elements for a claim of business disparagement are:

1. A false and disparaging statement that interferes with the plaintiff's business or are aimed at the business's goods or services;
2. The statement is not privileged;
3. The statement is made with malice; and
4. Proof of special damages.

Clark County School District v. Virtual Educ. Software, Inc., 125 Nev. 374, 213 P.3d 496 (Nev. 2009). Finally, Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances. Negligence lawsuits in Nevada require that plaintiffs prove four things:

1. The defendant had a duty of care;
2. The defendant breached this duty;
3. This breach caused the plaintiff's injuries
4. These injuries resulted in a financial loss

Turner v. Mandaly Sports Entm't, LLC, 124 Nev. 213, 180 P.3d 1172 (2008); *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 921 P.2d 928 (1996); *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4, 805 P.2d 589 (1991).

Again, in the Simon Complaint, it appears that these claims were brought against Brian Edgeworth and Angela Edgeworth. However, a careful reading of the Simon Complaint indicates that Plaintiffs, whether intentionally or unintentionally, have at least partially asserted these claims against "Defendants and each of them" in paragraphs 66, 69, 70, 71, and 79 of the Simon Complaint, potentially implicating AMG. *See* The Simon Complaint, at ¶ 62, on file herein. While unlike the claim above wherein Plaintiffs attempt to implicate that all Defendants, including AMG, are allegedly liable for punitive damages under that claim, based on the action of other parties, here, it appears as though Plaintiffs are attempting to imply that AMG allegedly committed Defamation Per Se.

"It is a long-standing common law rule that communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 630 (2014). A communication can be protected under the litigation privilege even when no judicial proceeds have commenced if "(1) a judicial proceeding [is] contemplated in good faith and under serious consideration, and (2) the communication [is] related to the litigation." *Clark Cty. Sch. Dist.*, 125 Nev. at 383. "An absolute privilege bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 409 (2002), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224 (2008). "The purpose of the absolute privilege is to afford all persons the freedom to access the courts with assured freedom from liability for defamation where civil or criminal proceedings are seriously considered." *Clark Cty. Sch. Dist.*, 125 Nev. at 383.

"Therefore, the absolute privilege affords parties the same protection from liability as those protections afforded to an attorney for defamatory statements made during, or in anticipation of, judicial proceedings." *Id.*

This litigation privilege bars Plaintiffs from alleging civil claims against AMG based on any statements or arguments made within the context of litigation, as said statements and/or arguments are absolutely privileged and immunized from civil liability. In alleging their defamation *per se* claim, Plaintiffs do allege that "[t]he Edgeworth's [sic] repeated these statements to individuals independent of the litigation." Simon Complaint at ¶66. Here, there are no factual allegations throughout the Simon Complaint that support this bald assertion. Moreover, the absolute litigation privilege's broad applicability extends beyond communications made during litigation to communications related to the litigation even when judicial proceedings have not commenced. Therefore, based on the litigation privilege alone Plaintiff's claims for defamation *per se*, business disparagement, and negligence must all be dismissed as a matter of law as against AMG.

Notwithstanding the fact that Plaintiffs have failed to show that their claims have any merit, a claim of defamation cannot stand against a corporation such as AMG based upon the factual allegations as presented within the Simon Complaint. "It is well settled … that a corporation, just as an individual, may be liable for defamation by its employees." Restatement, Agency 2d § 247; *Axton Fisher Tobacco Co. v. Evening Post Co.*, 1916, 169 Ky. 64, 183 S.W. 269, L.R.A. 1916E, 667; *Baker v. Atlantic Coast Line R. Co.*, 1939, 141 Fla. 184, 192 So. 606; *Hooper-Holmes Bureau v. Bunn*, 5 Cir. 1947, 161 F.2d 102, 104-105.

Further, ""if an agent is guilty of defamation, the principal is liable so long as the agent was apparently authorized to make the defamatory statement." *American Society of Mechanical Engineers v. Hydro Level Corporation*, 456 U.S. 556, 566, 102 S.Ct. 1935, 1942, 72 L.Ed.2d 330 (1982); Restatement (2d) of Agency, § 247 (1957). As such, "[a] master is [only] subject to liability from defamatory statements made by an agent acting within the scope of his authority." *Draper v. Hellman Commercial Trust & Savings Bank*, 203 Cal. 26, 263 P. 240 (1982); *Rosenberg v. J. C. Penney Co.*, 30 Cal.App.2d 609, 86 P.2d 696 (1939); Rest. 2d Agency, sec. 247.

It follows that a corporation can only potentially be liable for the proven defamatory statements of its agent when it is also proven that the agent was authorized to make the defamatory statement by the corporation and the agent made the defamatory statement within the scope of the agent's authority. In order to have any likelihood of surviving a motion to dismiss, Plaintiffs must have pled facts which could potentially demonstrate an agency relationship existed between AMG and Brian and/or Angela, that AMG authorized Brian and/or Angela to make the allegedly defamatory statement and that the allegedly defamatory statements were allegedly made within the scope of the authority granted to Brian and/or Angela by AMG.

The Simon Complaint wholly fails to plead facts that, even if taken as true, would demonstrate that an agency relationship existed between AMG and Brian and/or Angela, as the only mention of any party other than Brian and Angela within Plaintiffs' count for alleged defamation *per se* are bald, conclusory statements regarding the undefined catchall term "Defendants" and that Brian and Angela allegedly made the allegedly defamatory statements on behalf of the "Edgeworth entities[,]" defined as Brian, Angela, the Trust and AMG. See The Simon Complaint, at ¶ 4, 69-71, on-file herein.

As a beginning point, nothing within the Simon Complaint pleads facts that, even if taken as true, plausibly infer that AMG authorized anyone to do anything, let alone allegedly make an allegedly defamatory statement. Further, the use of the term "on behalf of" does not provide the required specificity to demonstrate that AMG allegedly authorized Brian and/or Angela to purportedly make alleged defamatory statements, as the demonstration required is not solely that the agent allegedly took the action on the company's behalf, but that the agent undertook such action with the company's express authority and the agent made the alleged defamatory statement within the scope of the authority granted to it by the company.

Given that the Simon Complaint wholly fails to plead facts which could be seen as coming anywhere close to potentially demonstrating the required elements for a claim of defamation *per se* against AMG (the existence of an agency relationship, the company authorizing the employee to make the statement and the employee making that statement within the scope of the company's granted authority), Plaintiffs simply have no possibility of success on their claim for alleged

defamation *per se* against AMG. As Plaintiffs have no possibility of succeeding upon their claim for alleged defamation *per se* against AMG, as alleged defamation against a company must be demonstrated through an agency relationship which Plaintiffs have wholly failed to establish through properly pled allegations, The Simon Complaint must be dismissed against AMG regarding said claim.

vi. *Plaintiffs Cannot Make a Prima Facie Case for Civil Conspiracy*

Plaintiffs cannot make a prima facie case for Count VIII (Civil Conspiracy) as said claim is factually and legally defective. "An actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303 (1983). "While the essence of the crime of conspiracy is the agreement, the essence of civil conspiracy is damages." *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). "The damages result from the tort underlying the conspiracy." *Id.* Here, Simon advances his civil conspiracy claim by asserting that "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." Simon Complaint at ¶89.

As Vannah deftly explains in its motion to dismiss, and is echoed in the Motion to Dismiss filed on behalf of the Edgeworths and AMG, no case law supports the assertion that the filing of a civil complaint constitutes an unlawful objective or act sufficient to give rise to a claim of civil conspiracy. *See* Vannah Mot. to Dismiss at 11–23, on file herein; *see also* Edgeworths Mot. to Dismiss at 7, on file herein. To the contrary, established law shows that filing of a complaint, even if such a filing was allegedly made for an ulterior purpose, does not constitute a tort. *See, Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998). Plaintiffs fail to establish that there is any actionable or recognized "tort" upon which the civil conspiracy claim is predicated. Thus, the civil conspiracy claim must itself fail as a matter of law.

In summation, none of Plaintiffs' allegations brought against AMG "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 occurred, others still by

the clear absence of any duty owed or remedy afforded, and all are protected by Nevada's Anti-SLAPP laws. With all counts/claims being legally and factually deficient in material respects, Plaintiffs cannot meet their burden pursuant to NRS 41.660(3)(b), requiring that the Simon Complaint be dismissed in its entirety as against AMG.

C. AMG, Along with Brian, Angela and The Trust, Unquestionably Had A Good Faith Basis To File And Maintain Claims Against Plaintiffs

AMG had, and continues to have, a good faith basis upon which it relied upon in setting forth the claims presented within the Edgeworth Complaints. NRS 41.637(3) defines a good faith communication in the context of Nevada's anti-SLAPP statutes, and specifically states, in pertinent part, as follows:

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> […]
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law.

AMG had a good faith basis to bring claims against Plaintiffs through the Edgeworth Complaint filed January 4, 2018, and the Amended Complaint filed March 15, 2018. Plaintiffs have admitted that no contingency fee arrangement or agreement existed during their representation of the Edgeworths. Through their attorney Vannah, on November 30, 2017, the Edgeworths specifically and unequivocally ***rejected*** Plaintiffs' offer to enter into the Retainer Agreement and Settlement Breakdown, as proposed to the Edgeworths within the November 27, 2017 Letter. As such, at no time did the parties actually enter into an agreement whereby Plaintiffs would in any manner allegedly be entitled to any percentage of the Viking Settlement.

Given the Edgeworths' clear and unequivocal rejection of Plaintiffs' offer to enter into the Retainer Agreement and Settlement Breakdown, Simon knew – or should have known – that no new fee agreement had been created whereby Plaintiffs had any legal right to file an attorney's lien claiming entitlement to a percentage of the Viking Settlement.

Furthermore, Simon bases his continued wrongful dominion and control over the Viking Settlement funds on a self-serving assertion that he would be "fairly compensated" at the end of the

case. It is simply unfathomable that Simon continues to refuse to release the Viking Settlement funds despite judicial determination of the same and when Plaintiffs have already been offered compensation in the amount of $971,435.59.

The allegations contained within the Simon Complaint are based solely upon documents filed with a Court of this State and for which Plaintiffs have wholly failed to demonstrate the Edgeworths brought absent good faith. Furthermore, as it specifically concerns AMG, the Simon Complaint simply does not demonstrate that AMG allegedly made knowingly false statements within court documents.

As is demonstrated extensively herein, the claims and allegations forwarded within the Edgeworth Complaints were made in good faith and in direct connection with an issue under consideration by the court. The Simon Complaint cannot be allowed to move forward against AMG or any other defendant named therein.

CONCLUSION

Plaintiffs brought this lawsuit against AMG, the Edgeworths, and Vannah in direct contravention of Nevada's anti-SLAPP statute. AMG therefore respectfully requests that this Court grant its Special Motion to Dismiss Plaintiffs' Complaint, pursuant to Nevada's anti-SLAPP statute, and dismiss The Simon Complaint as to AMG with prejudice, as such relief is specifically warranted and required pursuant to law and equity.

DATED this 1st day of July, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch
Renee M. Finch, Esq.
Nevada Bar No. 13118
Attorneys for Defendant American Grating, LLC

CERTIFICATE OF SERVICE

On this 1st day of July, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **AMENDED SPECIAL MOTION OF AMERICAN GRATING, LLC ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 (AMENDED)** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC RENEWED SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 (AMENDED)** **Hearing Date:** August 13, 2020 at 9:00am

COMES NOW, Defendants, BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, by and through their counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES, LLP, and hereby respectfully submit this BRIAN EDGEWORTH, ANGELA EDGEWORTH,

EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC RENEWED SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 (AMENDED). This motion serves to replace Renewed Special Motion Of Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust And American Grating, LLC Anti-Slapp Motion To Dismiss Pursuant To NRS 41.637 And For Leave To File Motion In Excess Of 30 Pages Pursuant To EDCR 2.20(a), previously filed on June 4, 2020.

This Special Motion is based upon the attached Memorandum of Points and Authorities, NRS sections 41.635-670, the pleadings and papers on file herein, the Declarations of Brian Edgewood and Angela Edgeworth attached hereto, and any oral argument which this Honorable Court may entertain at time of hearing on this matter.

DATED this 1st day of July, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch

Renee M. Finch, Esq.
Nevada Bar No. 13118
Attorneys for Defendants Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A strategic lawsuit against public participation, known more commonly by its shortened name "SLAPP" is a meritless lawsuit that a plaintiff initiates to chill a defendant's freedom of speech and right to petition under the First Amendment. Based upon the statutory history of Nevada's anti-SLAPP statute and persuasive precedent, the Amended Simon Complaint should not be considered and should be stricken from the record and/or summarily dismissed, and, instead, this Court should only consider the allegations as forwarded within the Simon Complaint in its resolution of the Edgeworths' Original Anti-SLAPP Motions and/or the instant Motion. The Anti-SLAPP statute was designed to protect against exactly the type of lawsuit now before this Court. Accordingly, and for the reasons discussed below, the Edgeworths' First Amendment and other civil rights must be protected, and the Simon Complaints must be dismissed with prejudice.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

For the sake of brevity, the Edgeworths adopt and incorporate by reference the statement of facts – including any and all exhibits attached thereto, which are also attached as exhibits hereto, with any and all newly attached exhibits hereto specifically indicated – as contained in, indicated in and attached to Defendant American Grating, LLCs Motion To Dismiss Plaintiffs' Amended Complaint (Amended) and Special Motion Of American Grating, LLC Anti-Slapp Motion To Dismiss Pursuant To NRS 41.637 (Amended) contemporaneously filed on July 1, 2020. Although the Edgeworths believe that the Amended Simon Complaint was improperly filed and therefore should not be considered, out of an abundance of caution, the Edgeworths present their Renewed Special Anti-SLAPP Motion to Dismiss, responding as follows.

III. THE AMENDED SIMON COMPLAINT IS IMPROPER AND CANNOT BE CONSIDERED

Pursuant to NRCP 15, the statutory history and purpose behind anti-SLAPP law and persuasive precedent, Plaintiffs did not have the right to file the Amended Simon Complaint following the filing of Defendants' Original Anti-SLAPP Motions. NRCP 15(A) allows amendment of a Complaint ***after service of a motion under Rule 12(b), (e), or (f)***, whichever is earlier. The Rule further states that any other amendments require leave of the Court. NRCP 15(A)(2). (Emphasis added). Here, although Defendants filed Motions to Dismiss pursuant to 12(b)(5), Defendants also filed Anti-SLAPP Motions to Dismiss thereby precluding amendment of the Complaint without leave of the Court. Plaintiffs did not seek such leave from this Court, and therefore the Amended Simon Complaint should be stricken from the record in this matter and not considered.

Even if Plaintiffs had properly requested leave to file the Amended Simon Complaint, amendment of a complaint after the filing of a special anti-SLAPP motion to dismiss is specifically in contravention of the purpose and history of Nevada's anti-SLAPP law and should therefore not be permitted. The plain language of Nevada's Anti-SLAPP statute does not provide Plaintiffs with the right to file an amended complaint following the filing of Defendants' Original Anti-SLAPP Motions. *See,* NRS 41.660. This amendment is also not allowable pursuant to persuasive precedent from a jurisdiction this State looks to for guidance when there is no binding authority on point from this State's appellate courts.

In 1997, the Nevada Legislature explained the purpose behind anti-SLAPP suits, by stating that SLAPP suits, while typically dismissed, were "often not [dismissed] before the defendant is put to great expense, harassment and interruption of their productive activities[.]" *See*, Assembly Bill 485 (1997), at pages 2-3. The procedure set forth in the statute for disposal of SLAPP suits was also stated to be for the purpose of disposing of such SLAPP suits "in an expedited manner[.]" *Id*. at 8. Further, upon the filing of a Special anti-SLAPP Motion to Dismiss, discovery was immediately to be stayed pending disposition of the special motion. *Id*. Another stated purpose behind Nevada's anti-SLAPP legislation was "to protect the communication and the right to petition, yet not allow the protection to become meaningless by having a drawn-out court battle." *Id*. at 9.

In 2013 protection of immunity within Nevada's anti-SLAPP law was specifically broadened. Public comment on the amendments, accepted by the legislature, stated that the 2013 amendment specifically contemplated and approved of Nevada law being made "like California[.]" *Id*. at 12. "'Where Nevada law is lacking, its courts have looked to the law of other jurisdictions, particularly California, for guidance.'" *Eichacker v. Paul Revere Life Ins. Co.*, 354 F.3d 1142, 1145 (9th Cir. 2004) (quoting, *Mort v. United States,* 86 F.3d 890, 893 (9th Cir.1996)).

California's anti-SLAPP statute, which has the same stated purpose as Nevada's anti-SLAPP statute specifically prohibits filing of an amended complaint in response to an Anti-SLAPP Motion to Dismiss. In California, after a defendant files an anti-SLAPP suit motion, the appellate courts have held that the ***plaintiff does not have the right to file an amended complaint***. *See*, *Salma v. Capon*, 161 Cal.Rptr.3d 873, 888-89 (Cal.App.1st, 2008) (***emphasis added***) (extending the holdings of caselaw which prohibited amending of a complaint following a judicial finding of the first prong of the anti-SLAPP framework test, as stated in *Simmons v. Allstate*, 92 Cal.App.4th, 1068, 1074 (Cal.App.3rd, 2001), *Roberts v. County Bar Ass'n*, 105 Cal.App.4th 604, 612-613 (Cal.App.2nd, 2002) and *Nevellier v. Sletten*, 106 Cal.App.4th 763, 773 (Cal.App.1st, 2003)).

In *Salma*, the Court held that *Simmons*, *supra*, 92 Cal.App.4th 1068, supported "***automatic dismissal of the amended claims***. *Salma v. Capon*, 161 Cal.Rptr.3d 873, 888-89 (Cal.App.1st, 2008). The *Salma* Court, extending the holding of *Simmons*, specifically recounted that "[a]llowing a SLAPP

plaintiff leave to amend the complaint once the court finds the prima facie showing has been met ***would completely undermine the statute by providing the pleader a ready escape from [California's anti-SLAPP statute's] quick dismissal remedy***. *Salma*, 161 Cal.Rptr.3d at 888-89 (quoting *Simmons*, 92 Cal.App.4th at 1073) (***emphasis added***); *c.f.*, *Verizon Del., Inc. v. Covad Commc'ns*, 377 F.3d 1081, 1091 (9th Cir. 2004).

Allowing the Amended Simon Complaint to stand in this matter would be wholly in contravention of the stated purposes behind Nevada's anti-SLAPP statutes and would improperly allow Plaintiffs a second opportunity to disguise the vexatious nature of their SLAPP Complaint. The Edgeworths respectfully request that this Court strike the Amended Simon Complaint from the record in this case and only consider the Simon Complaint in this Court's resolution of the Edgeworths' Original Anti-SLAPP Motions, as well as in its resolution of the Special Anti-SLAPP Motions to Dismiss filed by Vannah. In the event that this Court does not strike the Amended Simon Complaint as a rogue pleading, it should be dismissed under Nevada's Anti-SLAPP laws for the following reasons.

IV. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS

For the sake of brevity, the Edgeworths adopt and incorporate by reference the legal standard for Anti-SLAPP Motions as set forth in Defendant American Grating, LLCs Motion To Dismiss Plaintiffs' Amended Complaint (Amended) and Special Motion Of American Grating, LLC Anti-Slapp Motion To Dismiss Pursuant To NRS 41.637 (Amended) contemporaneously filed on July 1, 2020.

V. THE EDGEWORTHS' RENEWED SPECIAL ANTI-SLAPP MOTION TO DISMISS SHOULD BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

Plaintiffs' claims forwarded against the Edgeworths within the Amended Simon Complaint should be dismissed pursuant to Nevada's Anti-SLAPP statute and relevant case law. First, the speech in question regarding any and all documents filed during the course of litigation or stated during a judicial hearing is clearly covered by the First Amendment, as the communications at issue were: (1) made to a judicial body by the Edgeworths through their counsel Vannah, Brian or Angela; (2) were made in anticipation of litigation or regarding on-going litigation to attorneys; (3) were made in places open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is an issue of public interest; and/or (4) were nothing more than opinions regarding the issues which arose between the

Edgeworths and Plaintiffs. Second, Plaintiffs cannot and will not prevail on the claims alleged against the Edgeworths in the Amended Simon Complaint. Finally, the Edgeworths unquestionably had – and continue to have – a good faith basis to have filed and maintained claims against Plaintiffs based on the factual allegations forwarded by the Edgeworths within the Edgeworth Complaints. Accordingly, as discussed in further detail below, dismissal of the Amended Simon Complaint in its entirety as against the Edgeworths is appropriate.

It is apparent that Plaintiffs' objective in filing the Simon Complaints is to harass and punish the Edgeworths over a multi-million-dollar fee dispute. Demonstrative of this theme is the timing of Simon's original retention of counsel. Specifically, on November 27, 2017, the same day that Simon sent the November 27, 2017 Letter to Brian and Angela, Simon also retained and met with his own counsel regarding the "Edgeworth Fee Dispute." *See* **Exhibit C**. Notably, at that time, there was not a dispute between the parties about the fee because the Edgeworths believed Simon had been paid in full for all submitted invoices and had not yet been provided the final invoice, despite Brian requesting same. *See* **Exhibit A**.

The record demonstrates that Simon was preparing for litigation in advance of the Edgeworths' final decision regarding the newly proposed fee arrangement as set forth within the Retainer Agreement and Settlement Breakdown. On the same day Simon attempted to pressure Brian and Angela into signing the Retainer Agreement and Settlement Breakdown, which would have resulted in a windfall to Plaintiffs of nearly $1.2 million, Simon was also setting up a process by which he could seek redress from, harass and punish the Edgeworths if they did not agree to his demands. Simon knew, or should have known, that he had no legal or equitable basis to claim any portion of the Viking Settlement because his hourly bills to the Edgeworths had been paid, and no contingency or hybrid fee agreement had been reached. Despite this knowledge, Simon retained James Christensen prior to sending the November 27, 2017 Letter, three (3) days prior to being informed that the Edgeworths were rejecting his offer to enter into the Retainer Agreement and Settlement Breakdown, and three (3) days prior to the Edgeworths' retention of Mr. Vannah. Thus, Simon's claim that he incurred damages because he was *forced to retain an attorney*

to defend himself is patently false. He had clearly retained counsel long before the Edgeworth Complaint was filed and served.

The Simon Complaints were both brought against the Edgeworths for the improper purposes Nevada's anti-SLAPP statute specifically seeks to protect against, and, as such, the Edgeworths respectfully request that this Court grant their instant Motion as such relief is specifically warranted pursuant to Nevada's Anti-SLAPP statute.

A. The Edgeworths Satisfy the First Prong of the Anti-SLAPP Analysis

In the instant case, as discussed previously, the Amended Simon Complaint alleges eight causes of action (identified as "Counts"): (I) Wrongful Use of Civil Proceedings – All Defendants; (II) Intentional Interference With Prospective Economic Advantage – All Defendants; (III) Abuse of Process – All Defendants; (IV) Negligent Hiring, Supervision, and Retention – The Defendant Attorneys; (V) Defamation Per Se – The Edgeworths; (VI) Business Disparagement – The Edgeworths; (VII) Negligence – The Edgeworths; (VIII) Civil Conspiracy – All Defendants. Within the defined terms the "Edgeworths" is defined as the Edgeworths. *See* Simon Amended Complaint, at ¶ 4.

Every cause of action alleged against the Edgeworths is based upon the Edgeworths' utilization of the civil litigation process, discussions had with attorneys regarding same, statements made in places open to the public regarding an issue of public interest and/or mere statements of opinion; none of which can support the claims forwarded within the Amended Simon Complaint. Simon recognizes through the Amended Simon Complaint that the damages he claims ***all*** stem from the Edgeworth Complaint lawsuit filed on January 4, 2018, or statements made by Brian and Angela which cannot support said claims, essentially conceding that the speech in question is absolutely privileged as protected free speech under the First Amendment.

Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002). The privilege also applies to "conduct occurring during the litigation process." *Bullivant Houser Bailey PC v. Eighth*

Judicial Dist. Court of State ex rel. Cnty of Clark, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, "bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).

The privilege, which ***even protects an individual from liability for statements made with knowledge of falsity and malice***, applies "so long as [the statements] are in some way pertinent to the subject of controversy." *Id.* Moreover, the statements "need not be relevant in the traditional evidentiary sense, but ***need have only 'some relation to the proceeding***; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Id*. at 61, 657 P.2d at 104. Further, "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes." *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020).

Imposing tort liability on the Edgeworths, including AMG, would be in contravention of Nevada's anti-SLAPP law. NRS 41.637(3), states, "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any [. . .] written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law." The essence of the Simon Complaints is that the Edgeworths allegedly utilized the Clark County District Court system to allegedly disparage Simon and his business, thereby allegedly damaging their reputations and allegedly causing economic harm. This assertion is patently false. As demonstrated *supra*, the Edgeworths had a good faith basis for bringing their claims against Plaintiffs.

i. *The Speech Contained in a Lawsuit and Protected by the First Amendment*

The Edgeworths have addressed the Simon Complaint in previously filed Motions to Dismiss pursuant to NRCP 12(b)(5) and Special Anti-SLAPP Motions to Dismiss pursuant to NRS 41.637. As

such, the Edgeworths specifically adopt and incorporate by this reference any and all arguments made within those Motions regarding the Simon Complaint, as if fully presented herein.

The Edgeworths filed their Complaint against Plaintiffs on January 4, 2018, and later filed an Amended Complaint on March 15, 2018, to seek redress for wrongs committed by another pursuant to well-founded claims for relief. By definition, the Edgeworth Complaints are petitions to a judicial body. See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished). As such, the Edgeworth Complaints qualify as, and are, protected communications pursuant to NRS 41.637(3).

The use of a complaint, an amended complaint, briefs, and arguments are all protected communications under NRS 41.637. The use of these protected communications serves as the one of the main basis for the Amended Simon Complaint, which in and of itself satisfies the first prong of the Anti-SLAPP statute analysis because said communications fall squarely within the Anti-SLAPP statute provisions.

ii. *Statements Made by Brian and Angela are Opinion, Made in a Setting Open to the Public, and a Matter of Public Concern*

Plaintiffs' newly included allegations regarding alleged statements to third parties by Brian and Angela concerning the issues between the Edgeworths and Plaintiffs are wholly without merit when evaluated outside of the small vacuum of a universe as presented by Plaintiffs within the Amended Simon Complaint. Specifically, Plaintiffs' allegations that Brian's statements to Mr. Herrera are not protected speech are simply contrary to the factual scenario involved and the testified to statements actually made by Brian to Mr. Herrera.

The statements made by Brian to Mr. Herrera which are recounted within Brian's Affidavits, cited and relied upon by Plaintiffs as alleged support for their SLAPP claims, are privileged on several independent grounds, the first of which is under NRS 41.637(4), as said statements were "[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 [were] truthful or … made without knowledge of [their] falsehood." Brian met Mr. Herrera at a Ventano's – a restaurant open to the public, which was open for regular business on

the day of the meeting – to discuss the issue between the Edgeworths and Plaintiffs. *See* **Exhibit A**. In their filings with the Nevada Supreme Court requesting *En Banc* review of Plaintiffs' Writ, Plaintiffs admitted and concede that the matter underlying the issue between the Edgeworths and Plaintiffs is one of such public interest that it required a panel of seven (7) Justices to consider it. *See* Plaintiffs' Motion for En Banc Review, dated January 28, 2020, attached hereto as **Exhibit S**.

Further, there is no doubt the issue involved in the underlying litigation between Plaintiffs and the Edgeworths are of the utmost public importance, as same specifically affects the interest of anyone who retains counsel for legal representation, as well as all attorneys, as same affects the practice of law, how it is perceived by the public and an attorney's ability to lawfully institute an attorney's lien in justified circumstances. Issues concerning attorneys and their representation of clients have very recently been confirmed by the Nevada Supreme Court as being issues of public interest, as that Court recently held "statements criticizing attorney's courtroom conduct **and practices [are] directly connected with issue of public interest**." See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020) (emphasis added). The issue of an attorney changing the fee agreement, attempting to assert entitlement to a percentage of a settlement, and failing to have an agreement in writing reflecting same when filing an attorney's lien against proceed of a client's settlement is of interest to the public who may seek attorney services at some time, and attorneys who have requirements under the rules of professional conduct for how fee agreements must be handled.

Simon himself initiated conversation with Mr. Herrera in an email where he implied some non-existent wrong-doing on the part of Brian and Angela, and specifically referencing the "on-going issues" between the parties, mere hours after Simon was first informed by Vannah of the formal dispute. *See* Email String Between Simon and Ruben Herrera, attached hereto as **Exhibit T**. Simon intimated actual wrong-doing on the part of Brian and Angela which required him to protect his daughter by not allowing her to be present at the gym for volleyball practice. *Id*. Simon knew that Brian, Angela and Mr. Herrera were all on the board of the non-profit organization which runs the volleyball club and appears to have instigated the situation where he knew Mr. Herrera would have to speak with Brian and Angela regarding the alleged misconduct. This is exactly what happened; namely, as a result of Simon making

false insinuations of some non-existent wrongdoing and/or threat by Brian and Angela which allegedly made Simon feel it was unsafe to allow his daughter to attend volleyball practice, Mr. Herrera approached Brian regarding the issue, which in turn required Brian to have frank and honest conversations regarding the issue with Mr. Herrera.

Brian testified at the evidentiary hearing that he did not use the words "extortion[,]" "blackmail[,]" "theft" and/or "steal[,]" when talking to Mr. Herrera. *See* Transcript of August 28, 2018, Evidentiary Hearing (Day 2), attached hereto as **Exhibit U**. Brian specifically testified that he used the term "extort" in his several Affidavits filed with the Court for the specific purpose of it accurately defining his ***perception and opinion*** of Simon's actions. *Id.* As such, the evidence does not and cannot support that the Edgeworths, made any statements to Mr. Herrera that could support the claims forwarded within the Amended Simon Complaint.

Brian statements were opinions of his perceptions of what had occurred between Plaintiffs and the Edgeworths which have been specifically held to be privileged. *Id.*; *see also*, *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.").

Plaintiffs are now asking this Court to find that Brian being forced to respond to false insinuations of some non-existent wrongdoing and/or threat to Simon and/or his daughter was not protected speech. Adopting this position would specifically endorse curbing of the exercise of free speech in the context of responding to allegations of wrongdoing. This position is wholly in contravention of purpose behind Nevada's anti-SLAPP law and, as such, should not be countenanced by this Court.

Plaintiff also claims statements made by Angela to Ms. Carteen and Justice Shearing are not protected. However, any statements made by Angela to Ms. Carteen and/or Justice Sheering were also privileged pursuant to NRS 41.637(3) and (4). First these statements were made in the context of the underlying litigation. Second, the statements were opinions. Third, the statements were made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public

interest. *See See* Transcript of September 19, 2018, Evidentiary Hearing (Day 5), at 134:3-6, attached hereto as **Exhibit V**; *Id.*; *see also*, NRS 41.637(3) and (4); *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes."). Under all of these scenarios the statements are protected under NRS 41.637(3) and (4).

In addition to the other protections they receive, statements to Ms. Carteen could be protected by attorney client privilege. Ms. Carteen represented the Edgeworths on business and personal matters for many years. She had also become a friend during that time, but any statements made to her regarding legal matters are protected by attorney-client privilege. *Id.*

All of the statements relied upon by Plaintiffs within the Amended Simon Complaint are also privileged as same are opinions or claims made regarding an issue of public concern (as demonstrated above). *See*, *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d at 1064. Specifically, "[a] person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern **is immune from any civil action for claims based upon the communication**." NRS 41.650 (emphasis added). Here, the opinions of the Edgeworths are protected speech and cannot support the allegations made within the Amended Simon Complaint. Because it contains only unsupported claims, the Amended Simon Complaint is an inappropriate SLAPP suit which must be immediately dismissed against the Edgeworths and all other named Defendants in this matter. *Id.*; *See*, *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d at 1064.

iii. *A Valid Legal Claim for Conversion Does not Amount to Defamation*

Plaintiffs claim that the Edgeworths committed Defamation *per se* by making a valid legal claim for conversion in the Edgeworth Complaints. Plaintiffs have clearly made a concerted effort to distort Nevada law regarding a claim for conversion, by attempting to argue that conversion requires physical theft and/or physical taking by Simon. *See* Simon Complaints, on-file herein; *see also* **Exhibits M, N and S**. Plaintiffs are the only party in this matter that have ever utilized the words "stole[,]" "stolen[,]"

and "theft[.]" *See* **Exhibit I, J, U and V**. In reality, as discussed in detail below, a claim for conversion in Nevada does not require a physical taking, stealing or theft, making Plaintiffs' arguments in this regard wholly without merit and a clear attempt to the confuse the issue, which appears to have been successful in the underlying litigation.

In further support of the fact that this suit is prime for dismissal under Nevada's Anti-SLAPP statute, Plaintiffs have admitted that no contingency fee arrangement or agreement ever existed between Plaintiffs and the Edgeworths. Simon based his wrongful and continued dominion and control over the Viking Settlement funds on a self-serving assertion that he assumed he would be fairly compensated at the end of the case, in violation of NRPC 1.5, which required an agreement of this type to be in writing.

After the Viking Settlement was reached, the Edgeworths requested the funds be given to them and indicated that they would resolve fees and costs when the final bill was sent as with all prior bills for fees and costs. Unbeknownst to the Edgeworths, Simon changed the terms of the agreement to add his name to the settlement checks and refused to allow the funds to be deposited into any existing account because he claimed he was entitled to a portion of them, despite having no agreement that would support this claim. When the checks were received, the Edgeworths were forced to allow the settlement funds to be deposited in a special Settlement Trust Account that required Simon's signature to withdraw from it. Since that time, Simon has refused to provide his signature to release that portion of the settlement funds which represent the amount he proposed for additional fees in the Retainer Agreement and Settlement Breakdown. Simon exercised, and continues to exercise, dominion and control over the funds by his actions. Once the settlement funds were deposited in the Settlement Trust Account, Plaintiffs released only a portion of them, and withheld more than two (2) million dollars of the settlement funds in a trust account only able to be accessed with the signatures of both Vannah and Simon.[1]

The Edgeworths were forced to enlist the assistance of an attorney to help with discussions to attempt to convince Plaintiffs to release the Viking Settlement funds in full when they were received. Unfortunately, those discussions proved to be fruitless. When the efforts of the attorney to negotiate this matter outside of court were fruitless, the Edgeworths were forced to file a civil complaint on January 4,

[1] It should be noted that Vannah has never refused to sign for the funds to be released from the trust account. Simon's refusal to sign for the release of the funds he is not entitled to is the basis for the conversion claim made against him.

2018, asking the Court to assist them in obtaining the funds from the Viking Settlement they were rightfully due.

In the underlying proceedings, Judge Jones adjudicated an additional $484,982.50 was owed to Plaintiffs. Following that adjudication, the Edgeworths offered to pay Plaintiffs the amount awarded to Plaintiffs by the Court in exchange for Simon's agreement to release the remaining Viking Settlement funds. Despite this communication, Plaintiffs continued to maintain that they were owed more money than was adjudicated by the Court. Eleven (11) months after adjudication and after an Order to Show Cause was issued, Plaintiffs filed a Writ asking the Nevada Supreme Court to review Judge Jones' Order on the lien adjudication. As the Writ is pending resolution, Plaintiffs continue to maintain wrongful dominion and control over the Viking Settlement funds. While the issue of the lien adjudication and dismissal of the underlying suit was pending before the Nevada Supreme Court, Simon did exactly as he had promised in his correspondence dated November 27, 2017, and brought this SLAPP suit purely to intimidate and punish the Edgeworths for not signing the Retainer Agreement and Settlement Breakdown under threat as set forth by Simon within the November 27, 2017 Letter. *See* **Exhibits D and E**.

Contrary to Plaintiffs' allegations, there is vast evidentiary support for all of the facts forwarded within the Edgeworth Complaints. To quote Plaintiffs' position from an earlier-filed Special Motion to Dismiss, "…you cannot be sued for following the law." The Edgeworths did nothing more than follow the law by properly utilizing the court system available to adjudicate a dispute between the parties. Thus, the Edgeworths have satisfied their burden under NRS 41.660 & 41.665, and Plaintiffs' SLAPP Complaint should be dismissed as a matter of law against the Edgeworths.

B. Plaintiffs Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis Because They Cannot Demonstrate a Probability of Prevailing on Their Claim

Plaintiffs assert eight "Counts" within the Amended Simon Complaint. Plaintiffs' claims are either procedurally premature and/or there is no set of facts that Plaintiffs could prove that would entitle them 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). Plaintiffs cannot show that they have a probability of prevailing on their claims and, thus, their claims must be dismissed. A plain reading of the Amended Simon Complaint reveals that the primary basis for Plaintiffs' claims for alleged wrongful use of civil proceedings, defamation *per se* and

business disparagement are ***pleadings filed*** and ***statements allegedly made*** by one or more of the defendants ***in the course of the underlying litigation and judicial proceedings and/or which were in regard to a matter of public interest and/or concern in a place open to the public and/or were merely opinions***. *See* The Amended Simon Complaint, generally, on-file herein. There is no set of facts which would entitle Plaintiffs to any relief, or to prevail. *See, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Therefore, Plaintiffs do not have any prima facie evidence to support these claims/counts upon which relief could ever be granted and thus cannot satisfy their burden under the law. NRS 41.660(3)(b).

i. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Wrongful Use of Civil Proceedings*

The Edgeworths adopt and incorporate by reference argument made regarding this cause of action ["Count"] made within Defendant American Grating, LLCs Motion To Dismiss Plaintiffs' Amended Complaint (Amended) and Special Motion Of American Grating, LLC Anti-Slapp Motion To Dismiss Pursuant To NRS 41.637 (Amended) contemporaneously filed on July 1, 2020. In short, because a claim for wrongful use of civil proceedings is not a recognized claim for which Plaintiffs could be granted relief under Nevada Law, Plaintiffs' have no probability of prevailing upon their claim in Count I, requiring that same be dismissed as against the Edgeworths.

ii. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Intentional Interference with Prospective Economic Advantage*

Plaintiffs cannot establish a prima facia case for "Count" II, Intentional Interference with Prospective Economic Advantage, against the Edgeworths. In Nevada, "[l]iability for the tort of intentional interference with prospective economic advantage ("IIPEA") requires proof of the following elements:

> (1) a prospective contractual relationship between the plaintiff and a third party;
> (2) knowledge by the defendant of the prospective relationship;
> (3) intent to harm the plaintiff by preventing the relationship;
> (4) the absence of privilege or justification by the defendant; and
> (5) actual harm to the plaintiff as a result of the defendant's conduct."

Wichinsky v. Mosa, 109 Nev. 84, 87-88, 847 P.2d 727, 729-30 (1993) (citing, *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987)). "Absent proof of each element of the tort of intentional interference with prospective economic advantage, the claim must fail." *Wichinsky* at 730. To establish this tort, a plaintiff "must show that the means used to divert the prospective advantage was unlawful, improper or was not fair and reasonable." *Custom Teleconnect, Inc. v. Int'l Tele–Servs., Inc.*, 254 F.Supp.2d 1173, 1181 (D.Nev.2003) (citing *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 591 P.2d 1135 (1979)); *see also*, *Las Vegas–Tonopah–Reno Stage Line, Inc., v. Gray Line Tours of S. Nev.*, 792 P.2d 386, n. 1 (Nev.1990) (emphasizing that "[i]mproper or illegal interference is crucial to the establishment of this tort").

Further, when the actions of the defendant are in protection of that defendant's own interests, such action is privileged and cannot support a claim for IIPEA. *See*, *Leavitt v. Leisure Sports Incorporated*, 103 Nev. 81, 88-89, 734 P.2d 1221, 1226 (1987) (citing, *Zoby v. American Fidelity Company*, 242 F.2d 76, 79–80 (4th Cir.1957); *Bendix Corp. v. Adams*, 610 P.2d 24, 31 (Alaska 1980).

Much like persuasive authority which indicates Plaintiffs were not entitled to file an Amended Complaint after the filing of an Anti-SLAPP Motion to Dismiss, Nevada adopted its test for IIPEA from California. *See*, *Leavitt*, 103 Nev. at 88, 734 P.2d at 1225. Under California law, a plaintiff must prove "damages to the plaintiff proximately caused by the acts of the defendant." *Marsh v. Anesthesia Serv. Med. Grp., Inc.*, 132 Cal.Rptr.3d 660, 679–80 (Cal.Ct.App.2011). The defendant's conduct is the proximate cause of the plaintiff's harm only if the plaintiff would have been awarded the contract but for the defendant's interference. *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 958 (Cal.2003). The defendant's conduct must be a substantial factor in bringing about the plaintiff's injury. *Franklin v. Dynamic Details, Inc.*, 10 Cal.Rptr.3d 429, 441 (Cal.Ct.App.2004).

In order to demonstrate the intent element of a claim for IIPEA, Plaintiffs must demonstrate that AMG expressed a desire or knew it was a substantially certain that such action would interfere with Plaintiffs' business. *See*, *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990). The Court in *Gray Line* specifically held "[t]he interference with the other's prospective contractual relation is intentional if the actor desires to

bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action." Nevada has adopted same. *Id*. The United States Court of Appels for the Ninth Circuit has specifically held that a plaintiff's pleading of a defendant's general knowledge that the plaintiff entered into generalized business relationships is insufficient to support the knowledge element of a claim for alleged IIPEA. *See, Capital West Appraisals LLC v. Countrywide Financial Corp.*, 467 Fed.Appx. 738, 740 (9th Cir. 2012).

None of the Nevada Supreme Court cases addressing an IIPEA cause of action involve the generalized referral business as pled by Plaintiffs; they instead involve parties negotiating with a defined third-party. *See, Leavitt v. Leisure Sports Incorporation* - dispute between shareholders and directors regarding the remnants of a failed business venture, 103 Nev. 81, 734 P.2d 1221 (1987); *Winchinsky v. Mosa* - dispute between business partners regarding the buy-out of one of the partners, 109 Nev. 84, 847 P.2d 727, (1993); *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada,* 106 Nev. 283, 792 P.2d 386 (1990) - dispute between two businesses regarding the courtship of a third-party customer; and *Consolidated Generator-Nevada, Inc. v. Cummings Engine Co., Inc.* - dispute between the buyer and manufacturer of portable generators. 114 Nev. 1304, 971 P.2d 1251 (1998). All four (4) of these cases involved specific, third-party customers whom the plaintiff complains the defendant interfered with. Accordingly, element 1 of a claim for IIPEA – "a prospective contractual relationship between the plaintiff and a third party" – is not present here as pled within the Amended Simon Complaint, demonstrating that on this basis alone, Plaintiffs have no possibility of prevailing on their claim for alleged IIPEA.

Further, Plaintiffs' have no probability of prevailing upon their claim for alleged IIPEA because the Edgeworths' filing of the Edgeworth Complaints was conduct in the furtherance and protection of the Edgeworths' own interests – the Viking settlement funds – and, as such, the Edgeworths' actions were privileged. *See, Leavitt v. Leisure Sports Incorporated*, 103 Nev. 81, 88-89, 734 P.2d 1221, 1226 (1987) (citing, *Zoby v. American Fidelity Company*,242 F.2d 76, 79–80 (4th Cir.1957); *Bendix Corp. v. Adams*, 610 P.2d 24, 31 (Alaska 1980).

Plaintiffs' also have no possibility of prevailing upon their claim for alleged IIPEA because they cannot demonstrate that the Edgeworths had any knowledge of any specific business relationship or economic opportunity of Plaintiffs' at the time of the filing of the Edgeworth Complaints that was later interrupted. Plaintiffs' generalized allegations regarding unidentified business opportunities which were allegedly interfered with ***are wholly insufficient*** to support a claim for IIPEA. Binding Nevada precedent requires that the defendant have knowledge of the specific prospective relationship between defined and/or definable parties (one being the plaintiff) to potentially properly support a claim for alleged IIPEA. Plaintiffs have not identified, and there is no evidence whatsoever of, any alleged specific prospective relationship of which the Edgeworths' allegedly had knowledge. For these reasons, Plaintiffs have no possibility of prevailing upon their claim for alleged IIPEA.

Plaintiffs have not and cannot demonstrate any alleged prospective relationship, nor have Plaintiffs demonstrated any alleged knowledge by the Edgeworths of such a prospective relationship, making it simply an impossibility that Plaintiffs could ever potentially satisfy the intent element of a prima facie case for alleged IIPEA. Even if Plaintiffs had properly pled that the Edgeworths allegedly had knowledge of an alleged specific prospective relationship they still could not prove the requisite intent. There is simply ***no evidence whatsoever that the Edgeworths' desired to interfere in any of Plaintiffs' business*** or that the Edgeworths' knew that the filing of the Edgeworth Complaints would "certainly result in interference with any of Plaintiffs' business." *See, Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990). In fact, the Edgeworths specifically and simply wanted the money from the Viking settlement so they could ***move on*** from Plaintiffs.

Lastly, Plaintiffs have not and cannot demonstrate that the Edgeworths' actions were a significant factor in Plaintiffs' allegedly losing the wholly identified prospective relationship, so there is no possibility that Plaintiffs could ever potentially prevail upon their claim for alleged IIPEA against the Edgeworths (or any of the named Defendants in this matter), requiring that said Count be dismissed as against the Edgeworths pursuant to NRS 41.660(3)(b).

iii. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Abuse of Process*

Plaintiffs would like this Court to believe that the prosecution of the legitimate claims forwarded within the Edgeworth Complaints amount to an alleged abusive measure. However, aside from their self-serving, yet unsupported claims, Plaintiffs have pled no factual allegations which demonstrate the Edgeworths' engagement in this lawful process was abusive. The Edgeworths adopt and incorporate by reference argument made regarding this cause of action ["Count"] made within the Amended Anti-Slapp Motion to Dismiss the Simon Complaint filed contemporaneously with this motion. Plaintiffs' cannot demonstrate that they have any probability of prevailing upon their claim for alleged abuse of process, requiring said Count be dismissed as against the Edgeworths pursuant to NRS 41.660(3)(b).

iv. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Negligent Hiring, Supervision and Retention*

Plaintiffs' fourth claim alleges Negligent Hiring, Supervision, and Retention. It appears that this "Count" is only actually alleged against Vannah. However, Plaintiffs' use of the undefined general phrase "Defendants, and each of them" within paragraph 70 of the Amended Simon Complaint has made it necessary for the Edgeworths to respond to the allegations within Count IV.

Plaintiffs cannot establish a prima facie case against the Edgeworths for Negligent Hiring, Supervision, and Retention, requiring that that Count be dismissed as against the Edgeworths. In Nevada, the elements of a claim for negligent hiring, retention, and supervision are:

1. Employer had a duty to protect plaintiff from harm resulting from its employment of the tortfeasor;
2. Employer breached that duty by hiring, retaining, failing to train, supervise, or discipline the tortfeasor;
3. Proximate cause; and
4. Causation and damages.

Nurse v. U.S., 226 F.3d 99 (9th Cir. 2000); *Blanck v. Hager*, 360 F. Supp. 2d 137, 157 (2005); *Goodrich and Pennington Mortgage Fund, Inc. v. RJ Woolard, Inc.*, 120 Nev. 777 (2004); *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226-27, 925 P.2d 175, 1181 (1996); *Harrigan v. City of Reno*, 86 Nev. 678, 475 P.2d 94 (Nev. 1970); *Amen v. Mercedes Cty. Title Co.*, 58 Cal. 2d 528 (1962); *Rianda v. Sand Benito Title Guar. Co.*, 35 Cal. 2d 170 (1950).

Plaintiffs fail to allege any of the elements for a claim of alleged negligent hiring, supervision, and retention against the Edgeworths, aside from perhaps an attempt to assert that "Defendants, and each of them," should allegedly be subject to an award for punitive damages should Plaintiffs establish this claim. This logic has no basis in Nevada law and, therefore, should not be countenanced by this Court. As to the Edgeworths, because Plaintiffs failed to assert ANY of the elements of this claim against the Edgeworth Defendants, Plaintiffs clearly cannot establish a prima facie case of alleged negligent hiring, supervision, and retention against the Edgeworths, requiring that Count be dismissed as against the Edgeworths.

v. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Defamation Per Se, Business Disparagement or Negligence*

Plaintiffs next assert "Count" V for Defamation Per Se, "Count" VI for Business Disparagement, and "Count" VII for Negligence; however, Plaintiffs cannot establish prima facie cases for any of these claims as against the Edgeworth Defendants. These three "Counts" are based on statements made during and related to the litigation of the Edgeworth Complaints.

First, litigation privilege bars Plaintiffs from alleging civil claims against the Edgeworths based on any statements or arguments made within the context of litigation, as said statements and/or arguments are absolutely privileged and immunized from civil liability. "It is a long-standing common law rule that communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). In alleging their defamation *per se* claim, Plaintiffs allege that Brian and Angela, and by way of ownership AMG and the Trust, made statements to third parties not in the context of the underlying litigation. *See* The Amended Simon Complaint, on-file herein. As discussed *supra,* these communications were absolutely privileged and cannot be the basis for a claim for Defamation *per se*. *See*, NRS 41.637(4). Pursuant to Nevada's anti-SLAPP statute, the absolute litigation privilege's broad applicability extends beyond communications made during litigation to communications related to the litigation even when judicial proceedings have not commenced. Based on the litigation privilege alone Plaintiffs' claims for

defamation *per se*, business disparagement, and negligence must all be dismissed as a matter of law as against the Edgeworths.

Within the Amended Simon Complaint Plaintiffs newly included allegations that statements made by Brian to Mr. Herrera, and by Angela to Ms. Carteen and Justice Shearing are also alleged bases for claims of defamation *per se*, business disparagement, and negligence. This claim is unsupported. The statements made by Brian to Mr. Herrera which are recounted within Brian's Affidavits cited and relied upon by Plaintiffs as alleged support for their SLAPP claims, were privileged on several grounds, the first being under NRS 41.637(4), as said statements were "[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 [were] truthful or … made without knowledge of [their] falsehood." Brian met Mr. Herrera at a Ventano's – a restaurant open to the public, which was open for regular business on the day of the meeting – to discuss the dispute between the Edgeworths and Plaintiffs. *See* **Exhibit A**. In their filings with the Nevada Supreme Court requesting *En Banc* review of Plaintiffs' Writ, Plaintiffs concede that the matter is one of such public interest that it requires a panel of seven (7) Justices to consider it. *See* **Exhibit S**.

Further, there is no doubt the issue involved in the underlying litigation between Plaintiffs and the Edgeworths are of the utmost public importance, as same specifically affects the interest of anyone who retains counsel for legal representation, as well as all attorneys, as same affects the practice of law, how it is perceived by the public and an attorney's ability to lawfully institute an attorney's lien in justified circumstances. Issues concerning attorneys and their representation of clients has very recently been confirmed by the Nevada Supreme Court as being issues of public interest, as that Court recently held "statements criticizing attorney's courtroom conduct **and practices [are] directly connected with issue of public interest**." See, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020) (emphasis added).

The conversation between Brian and Mr. Herrera was in response to an email sent by Simon to Mr. Herrera indicating that there was a dispute between Simon and the Edgeworths. *See* **Exhibits A and T**. Simon initiated contact with Mr. Herrera and offered disparaging comments about the Edgeworths and his relationship with them. The statements made by Brian to Mr. Herrera at that meeting were a

truthful and accurate recounting of what had occurred between the Edgeworths and Plaintiffs. *See* **Exhibit A**. As such, the statements made by Brian to Mr. Herrera regarding the dispute between the Edgeworths and Plaintiffs were and are privileged, making Plaintiffs' reliance upon such statements misplaced and unable to support the claims forwarded within the Amended Simon Complaint.

Brian testified at the evidentiary hearing that he never actually used any of the terms or phrases "extortion[,]" "blackmail[,]" "theft" and/or "steal[,]" when speaking to Mr. Herrera, as presented by Plaintiffs to attempt to support their forwarded claims within the Amended Simon Complaint. *See* **Exhibit U**. The testimony elicited at the evidentiary hearing does not and cannot support the claims forwarded within the Amended Simon Complaint.

Brian's statements were also opinions of his perceptions of what had occurred between Plaintiffs and the Edgeworths, which have been specifically held to be privileged. *See, Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.").

Plaintiffs are now asking this Court to find that Brian being forced to respond to false insinuations of some non-existent wrongdoing and/or threat to Simon was not protected speech. Adopting this position would specifically endorse curbing of the exercise of free speech in the context of responding to allegations of wrongdoing. This position is wholly in contravention of the purpose behind Nevada's anti-SLAPP law and, as such, should not be countenanced by this Court.

Statements made by Angela to Ms. Carteen and/or Justice Sheering were also privileged pursuant to NRS 41.637(3) and (4), as said statements were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public regarding an issue – as discussed in detail above – which Plaintiffs have already admitted and/or conceded is of public interest. *See* Declaration of Angela Edgeworth, attached hereto as **Exhibit W**. These statements were made either in anticipation of litigation or in the context of seeking legal guidance from friends who were also attorneys, and, for Ms. Carteen, she had already been retained to represent AMG, making those statement attorney-client

privileged and privileged in the context of the underlying litigation. *Id*. As such, said statements were made regarding issues anticipated to be placed into the consideration of a judicial body and/or which were then being considered by a judicial body, were made at places open to the public regarding an issue of public interest and were comprised of nothing more than Angela's opinion of what had occurred and how same made Angela feel, making said statement absolutely privileged on many grounds. *Id*.; *see also*, NRS 41.637(3) and (4); *Abrams*, 136 Nev. Ad. Op. 9, 458 P.3d at 1064.

As demonstrated *supra*, all of the statements relied upon by Plaintiffs within the Amended Simon Complaint are privileged. NRS 41.650 is clear that a person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern **is immune from any civil action for claims based upon the communication**." NRS 41.650 (emphasis added). As such, the claims and/or opinions of the Edgeworths regarding the dispute between the Edgeworths and Plaintiffs cannot support Plaintiffs' claims for alleged defamation, business disparagement and negligence as forwarded within the Amended Simon Complaint, requiring dismissal of same against the Edgeworths and all named Defendants in this matter.

To the extent that Plaintiffs base these three "Counts" on an allegation that the Edgeworths accused Simon of stealing from them, despite Plaintiffs continued statements otherwise, Plaintiffs are the only party in this matter that have ever utilized the words "stole[,]" "stolen[,]" and "theft[.]" Plaintiffs have clearly made a concerted effort to distort Nevada law regarding a claim for conversion, by attempting to argue that same required a stealing, theft and/or physical taking by Simon. *See* Simon Complaints, on-file herein; *see also* **Exhibits M, O and S**. In reality, as discussed *supra*, a claim for conversion in Nevada does not require a physical taking, stealing or theft, making Plaintiffs' arguments in this regard wholly without merit and a clear attempt to the confuse the issue, which appears to have been successful in the underlying litigation. The Edgeworths, therefore, again implore this Court to see Plaintiffs' arguments in this regard for what they are really worth – nothing.

Notwithstanding the fact that Plaintiffs have failed to show that their claims have any merit, a claim of defamation, business disparagement, and negligence cannot stand against a corporation such as AMG or an entity such as the Trust, based upon the factual allegations as presented within the Amended

Simon Complaint. "It is well settled … that a corporation, just as an individual, may be liable for defamation by its employees." Restatement, Agency 2d § 247; *Axton Fisher Tobacco Co. v. Evening Post Co.*, 1916, 169 Ky. 64, 183 S.W. 269, L.R.A. 1916E, 667; *Baker v. Atlantic Coast Line R. Co.*, 1939, 141 Fla. 184, 192 So. 606; *Hooper-Holmes Bureau v. Bunn*, 5 Cir. 1947, 161 F.2d 102, 104-105.

Further, "if an agent is guilty of defamation, ***the principal is liable so long as the agent was apparently authorized to make the defamatory statement***." *American Society of Mechanical Engineers v. Hydro Level Corporation*, 456 U.S. 556, 566, 102 S.Ct. 1935, 1942, 72 L.Ed.2d 330 (1982); Restatement (2d) of Agency, § 247 (1957). A master is [only] subject to liability from defamatory statements made by an agent acting within the scope of his authority." *Draper v. Hellman Commercial Trust & Savings Bank*, 203 Cal. 26, 263 P. 240 (1982); *Rosenberg v. J. C. Penney Co*., 30 Cal.App.2d 609, 86 P.2d 696 (1939); Rest. 2d Agency, sec. 247.

Pursuant to these principles, ***a corporation or trust can only be liable for the proven defamatory statements of its agent when it is also proven that the agent was authorized to make the defamatory statement by the corporation and the agent made the defamatory statement within the scope of the agent's authority***. In order to have any likelihood of surviving a motion to dismiss, Plaintiffs must have pled facts which could potentially demonstrate an agency relationship existed between AMG, the Trust and Brian and/or Angela, AND that AMG and/or the Trust authorized Brian and/or Angela to make the allegedly defamatory statement AND that the allegedly defamatory statements were allegedly made within the scope of the authority granted to Brian and/or Angela by AMG and/or the Trust. Plaintiffs have failed to do so.

Plaintiff's claim in the Amended Simon Complaint that "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…." is bald and conclusory at best, and completely lacking any factual support at worst. *See* The Amended Simon Complaint, at paragraph 5, on-file herein. Nothing within the Amended Simon Complaint pleads facts that, even if taken as true, plausibly infers that AMG or the Trust authorized anyone to do anything, let alone allegedly make defamatory statements. The use of the term "on behalf of" does not provide the required specificity to meet this burden. Without an agency

relationship properly alleged in the Amended Simon Complaints, Plaintiffs' claims for alleged Defamation *per se*, Business Disparagement, and Negligence against AMG have no probability whatsoever of prevailing against AMG or the Trust. Therefore, Plaintiffs cannot make a prima facie case for Defamation *per se*, Business Disparagement, and Negligence, requiring those "Counts" to be dismissed as against the Edgeworth Defendants.

vi. *Plaintiffs Cannot Make a Prima Facie Case for Civil Conspiracy*

Plaintiffs cannot make a prima facie case for civil conspiracy against the Edgeworths. "Count" VIII, Civil Conspiracy, is factually and legally defective as well. The Edgeworths adopt and incorporate by reference argument made regarding this cause of action ["Count"] made within the Special Motion Of American Grating, LLC Anti-Slapp Motion To Dismiss Pursuant To NRS 41.637 (Amended) filed contemporaneously with this motion. In short, none of Plaintiffs' allegations brought against the Edgeworths "rise to the level of a plausible or cognizable claim for relief. With all counts/claims being legally and factually deficient in material respects, Plaintiffs cannot meet their burden pursuant to NRS 41.660(3)(b), requiring that the Amended Simon Complaint be dismissed in its entirety as against the Edgeworths.

C. The Edgeworths Unquestionably Had A Good Faith Basis To File And Maintain Claims Against Plaintiffs

The Edgeworths had, and continue to have, a good faith basis upon which they relied in setting forth the claims presented within the Edgeworth Complaints. NRS 41.637(3) defines a good faith communication in the context of Nevada's anti-SLAPP statutes as communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, meaning any written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law." NRS 41.637(3). Simon began exercising dominion and control over the Viking Settlement funds prior to the filing of the Edgeworth Complaint on January 4, 2018 (as discussed below), by way of: (1) making it a requirement of the Viking Settlement that Simon's and/or his law firm's name be included upon the settlement checks, without informing or getting approval for same from the Edgeworths; (2) refusing to allow the Edgeworths to deposit the settlement checks in the Edgeworths' bank account or Vannah's trust account, by

withholding his signature from the settlement checks and demanding that the settlement checks be deposited in Plaintiffs' trust account; and (3) filing the Amended Lien on January 2, 2018, with no factual support for his claim to the funds. *See* **Exhibit A**. All of Simon's acts in this regard were – or were in good faith believed to be by the Edgeworths – distinct acts of dominion wrongfully exerted over the Edgeworth's personal property in denial of, or inconsistent with, the Edgeworths' title or rights therein or in derogation, exclusion, or defiance of such title or rights. *Id*.

The Edgeworths had a good faith basis to bring claims against Plaintiffs through the Edgeworth Complaints. Plaintiffs have admitted that no fee arrangement or agreement which would have entitled Plaintiffs to any portion and/or percentage of the Viking Settlement funds ever existed during their representation of the Edgeworths. The Edgeworths specifically and unequivocally ***rejected*** Plaintiffs' offer to enter into the Retainer Agreement and Settlement Breakdown, as proposed to the Edgeworths within Simon's November 27, 2017 Letter. Plaintiff was only ever entitled to payment for his work at the agreed upon hourly rate. At no time did the parties actually enter into an agreement whereby Plaintiffs would in any manner be entitled to any percentage whatsoever of the Viking Settlement. Brian expressly indicated that he would pay any outstanding fees for work performed at agreed to hourly rate. *Id*. Given the Edgeworths' clear and unequivocal rejection of Plaintiffs' offer to enter into the Retainer Agreement and Settlement Breakdown, Simon knew – or should have known – that no new fee agreement had been created giving him any legal right to file an attorney's lien on the Viking Settlement via the never executed Retainer Agreement and Settlement Breakdown.

The Edgeworths also had a good faith belief for the claims forwarded within the Edgeworth Complaints based upon the dispute over the legitimacy of whether the Amended Lien was lawful. Specifically, the Edgeworths believed that Simon knew or should have known that he had no basis to claim attorney's fees beyond the outstanding amount of what Plaintiffs had billed on the matter at the agreed upon hourly rate. This position was clearly contested by Plaintiffs, and thereby a genuine dispute arose between the Edgeworths and Plaintiffs regarding the reasonable amount of fees which may be owed to Plaintiffs. The genuine dispute between the Edgeworths and Plaintiffs regarding the Amended Lien could not be informally resolved between the parties.

The Edgeworths had a good faith belief that Simon's actions amounted to the tort of conversion. Simon unilaterally imposed the requirement that his and/or his law firm's name be placed upon the Viking settlement checks without informing or receiving approval for such action from the Edgeworths. *Id*. Simon refused to allow the Edgeworths to access all of the funds from the Viking Settlement upon receipt of the settlement checks in December 2017. *Id*. Simon filed an Amended Lien in an amount that was impossibly greater than any compensation he could have been due under the hourly agreement for the legal services he had provided to the Edgeworths. *Id*. All of these actions were unlawful exertions of dominion and control over the Edgeworths' personal property, to the exclusion and detriment of the Edgeworths, which by definition is the tort of conversion.

Under Nevada law, the tort of 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*, 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) (overruled on other grounds by *Dean Witter Reynolds*, 116 Nev. 606, 5 P.3d 1043 (2000). 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*.

The Court in *Bader* specifically approved of a definition of conversion wherein a physical taking of personal property is not a required element of a conversion claim and the asserting of an unfounded lien supports a claim for conversion, stating:

> 1 Conversion exists where one exerts wrongful dominion over another's personal property or wrongful interference with the owner's dominion. The act constituting "conversion" must be an intentional act, but it does not require wrongful intent and is not excused by care, good faith, or lack of knowledge. **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**.

Bader, 96 Nev. at 356-57 and n.1, 609 P.2d at 317 and n.1 (emphasis added).

Plaintiffs assert that the Edgeworths could not have a good faith basis for bringing the Edgeworth Complaints because it was an impossibility for Simon to have physically taken the money out of the Settlement Trust Account. This is an egregious misstatement of the law regarding conversion. A physical

taking of the Viking Settlement funds by Simon is not a required showing for a conversion claim. Plaintiffs likely present this position because they are aware that Simon did exert unlawful dominion over the Viking Settlement funds by: (1) unilaterally making it a requirement of the Viking Settlement that Simon's and/or his law firm's name be placed upon the Viking Settlement checks, without informing or receiving approval for such action from the Edgeworths; (2) refusing to allow the Edgeworths to deposit the settlement checks in the Edgeworths' bank account or Vannah's trust account in or about December 2017; and (3) asserting the unfounded Amended Lien on January 2, 2018, to which Simon knew or should have known Plaintiffs had no legal or equitable right when said Amended Lien was filed, because the Edgeworths unequivocally rejected Plaintiffs' offer to enter into the Retainer Agreement and Settlement Breakdown, as Plaintiffs had already been paid $368,588.70 in fees over the course of 18 months and had incurred no risk as the Edgeworths covered the incurred litigation costs of $114,864.39 in their entirety and Brian's request for any and all outstanding fees and costs had gone unanswered by Plaintiffs.

Again, and to be clear, Simon began exercising dominion and control over the Viking Settlement funds prior to the filing of the Edgeworth Complaint on January 4, 2018, by way of: (1) in or around the end of November 2017 or beginning of December 2017, making it a requirement of the Viking settlement that Simon's and/or his law firm's name be included upon the settlement checks, without informing or getting approval for same from the Edgeworths; (2) in or about December 2017, after the settlement checks were made available to Simon between December 8 and 12, 2017, refusing to allow the Edgeworths to deposit the settlement checks in the Edgeworths' bank account or Vannah's trust account, by withholding his signature from the settlement checks, and demanding that the settlement checks be deposited in Plaintiffs' trust account; and (3) filing the Amended Lien on January 2, 2018. All of Simon's acts in this regard were – or were in good faith believed to be by the Edgeworths – distinct acts of dominion wrongfully exerted over the Edgeworth's personal property in denial of, or inconsistent with, the Edgeworths' title or rights therein or in derogation, exclusion, or defiance of such title or rights.

Given that the Edgeworths truly believed that Simon was exerting, and continues to exert, unlawful dominion and control over the Viking Settlement funds due to, *inter alia*, the genuine dispute between the Edgeworths and Plaintiffs regarding the legitimacy of whether the Amended Lien was lawful,

the Edgeworths had a good faith basis to bring the Edgeworth Complaints, and specifically their claims for conversion. The Edgeworths have a well-founded belief that Plaintiffs' Amended Lien for $1,977,843.80 was an improper lien against the Viking Settlement funds and that Plaintiffs' filing of the Amended Lien caused actual interference with the Edgeworths' ownership rights of possession of said funds.

Furthermore, Simon bases his wrongful dominion and control over the Viking Settlement funds on a self-serving assertion that the Edgeworths allegedly "refused to speak to Simon about a fair fee and instead stopped talking to him and hired other counsel". *See* The Amended Simon Complaint at paragraph 15, on-file herein. It is simply unfathomable that Simon continues to refuse to release the remaining portion of the Viking Settlement funds despite judicial determination of the same and when Plaintiffs have already been paid and offered compensation in the total amount of $971,435.59.

The allegations contained within the Amended Simon Complaint are improperly based upon privileged documents either filed with a Court of this State or statements of opinion made regarding an issue Plaintiffs have admitted and/or conceded is of public interest at a place open to the public, and for which Plaintiffs have wholly failed to demonstrate the Edgeworths brought or made absent good faith. *See* The Simon Complaint, dated December 23, 2019, on-file herein. As such, the Amended Simon Complaint simply does not demonstrate that the Edgeworths allegedly made knowingly false statements within court documents or to third parties.

As is demonstrated extensively herein, the claims and allegations forwarded within the Edgeworth Complaints were made in good faith and any and all documents and statements relied upon by Plaintiffs within the Amended Simon Complaint are privileged as same were made in anticipation of litigation, were in direct connection with an issue under consideration by the court in the underlying action, were regarding an issue of public concern at a place open to the public and/or were opinions which cannot support the claims at issue. Therefore, the Amended Simon Complaint cannot be allowed to move forward against the Edgeworths, or any other Defendant named therein.

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CONCLUSION

Plaintiffs brought this lawsuit against the Edgeworths and Vannah in direct contravention of Nevada's anti-SLAPP statute. The Amended Simon Complaint is a rogue document which Plaintiffs were specifically prohibited from filing and, the Edgeworths respectfully request that this Court strike and/or dismiss the Amended Simon Complaint without consideration. The Edgeworths further request that the Court grant AMG's Anti-SLAPP Motion to Dismiss, pursuant to Nevada's anti-SLAPP statute, and dismiss the Simon Complaint as to the Edgeworths with prejudice. Should this Court decide to allow and consider the Amended Simon Complaint, the Edgeworths respectfully request that this Court grant the instant Special Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint with prejudice.

DATED this 1st day of July, 2020.

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/s/ Renee M. Finch

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CERTIFICATE OF SERVICE

On this 1st day of July, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC RENEWED SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637 (AMENDED)** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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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 XIII** **BATES NO. AA002401 - 2624**

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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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2020-07-01	Edgeworth Defs.' Renewed Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.	XII	AA002370 – 2400
2020-07-02	Order Granting in Part, and Denying in Part Pls.' Mot. for Leave to Supp. Pls.' Opp'n to Mot. to Associate Lisa Carteen, Esq. and to Preclude Her Review of Case Materials on OST	XIII	AA002401 – 2409
2020-07-09	Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Joinder to American Grating LLC's Mot. s. to Dismiss Pls.' Complaint and Am. Complaint	XIII	AA002410 – 2412
2020-07-15	Pls.' Opp'n to American Grating LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XIII	AA002413 – 2435
2020-07-15	Pls.' Opp'n to Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002436 – 2464
2020-07-15	Pls.' Opp'n to Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC's Renewed Special Mot. to Dismiss Pursuant to NRS 41.637 Anti-SLAPP	XIII	AA002465 – 2491

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-15	Pls.' Opp'n to Defs.' Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Initial Complaint	XIII	AA002492 – 2519
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002520 – 2549
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XIII	AA002550 – 2572
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Initial Complaint; Anti-SLAPP	XIII	AA002573 – 2593
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Initial Complaint, and Mot. in the Alternative For a More Definite Statement	XIII	AA002594 – 2624
2020-07-23	Edgworth Family Trust, Brian Edgeworth, Angela Edgeworth, and American Grating, LLC's Reply ISO Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	XIV	AA002625 – 2655
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	XIV	AA002656 – 2709
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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
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to the Vannah Defs.' Mot. to Dismiss Pls.' Complaint	XIV	AA002800 – 2872

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2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XV	AA002876 – 2878
2020-08-13	Minute Order ordering refiling of all MTDs.	XV	AA002878A-B
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-08-26	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XV	AA002983 – 3056
2020-08-27	Appendix to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 1	XVI	AA003057 – 3290
2020-08-27	Appendix to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 2	XVII	AA003291 – 3488
2020-08-27	Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVII	AA003489 – 3522
2020-09-10	Pls.' Opp'n to Edgeworth Defs.' Special Anti-SLAPP Mot. To Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVIII	AA003523 – 3553
2020-09-10	Pls.' Opp'n to Vannah Defs.' 12(b)(5) Mot. to Dismiss Pls.' Am. Complaint	XVIII	AA003554 – 3584

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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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2020-09-24	Appendix to Edgeworth Defs.' Reply in Support of Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 Volume 2	XIX	AA003797 – 3993
2020-09-24	Edgeworth Defs.' Reply iso Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XX	AA003994 – 4024
2020-09-24	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Mot. to Dismiss Pls.' Am. Complaint	XX	AA004025 – 4102
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175
2020-09-25	Vannah Defs.' Joinder to Edgeworth Defs.' Reply re Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004176 – 4177
2020-09-25	Edgeworth Defs.' Joinder to Vannah Defs.' Reply ISO Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XX	AA004178 – 4180
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2020-10-01	Transcript of Videotaped Hearing on All Pending Mots. to Dismiss	XX	AA004184 – 4222
2020-10-27	Notice of Entry of Order Denying Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint and Order re same	XXI	AA004223 – 4231

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-10-27	Notice of Entry of Order Denying the Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 and Order re same	XXI	AA004232 – 4240
2020-10-27	Notice Of Entry of Order Denying Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP and Order re same	XXI	AA004241 – 4249
2020-11-02	Notice of Appeal (Vannah)	XXI	AA004250 – 4251
2020-11-03	Notice of Appeal (Edgeworths)	XXI	AA004252 – 4254
2021-04-13	Nevada Supreme Court Clerk Judgment in *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

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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
2020-10-27	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
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2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
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ORDR

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Attorney for Defendants Edgeworth Family Trust; Brian Edgeworth and Angela Edgeworth

DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, a professional corporation; DANIEL S. SIMON, Plaintiffs, v. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, individually and husband and wife, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT. NO.: XXIV **ORDER GRANTING IN PART, AND DENYING IN PART PLAINTIFFS' MOTION FOR LEAVE TO SUPPLEMENT PLAINTIFFS' OPPOSITION TO MOTION TO ASSOCIATE LISA CARTEEN, ESQ., AND TO PRECLUDE HER REVIEW OF CASE MATERIALS ON ORDER SHORTENING TIME**

Plaintiffs' Motion for Leave to Supplement Plaintiffs' Opposition to Motion to Associate Counsel or in the Alternative, Motion to Disqualify Lisa Carteen, Esq., and to Preclude her Review of Case Materials on Order Shortening Time and Defendants' Edgeworth Family Trust (the "Motion"), and Brian Edgeworth and Angela Edgeworths' (collectively, the "Edgeworth Defendants") countermotion for Attorneys' Fees, came before this Court for oral arguments on

shortened time on June 11, 2020. Peter Christiansen and Kendelee Works of Christiansen Law Offices were present for the Plaintiffs, the Law Office of Daniel S. Simon, P.C. and Daniel S. Simon; Patricia Lee with the firm of Hutchison & Steffen, PLLC appeared on behalf of the Edgeworth Defendants; Christine Atwood of Messner Reeves, LLP appeared on behalf of Defendant, American Grating, LLC; and Patricia Marr of Patricia Marr, Ltd. appeared on behalf of Defendants Robert Vannah, Esq., John Greene, Esq. and Robert D. Vannah, CHTD.

After having read the written submissions by Plaintiffs and the Edgeworth Defendants, and having considered the oral arguments made during the June 11, 2020, the Court hereby GRANTS Plaintiffs' Motion in part and DENIES Plaintiffs' Motion in part accordingly:

IT IS HEREBY ORDERED that Plaintiffs' Motion is GRANTED to the limited extent that it seeks to supplement the existing Opposition previously filed by Plaintiffs on May 7, 2020.

IT IS FURTHER ORDERED that Plaintiffs refrain from adding any new or additional arguments or law that was not already presented in its Motion filed on June 3, 2020, and instead, is ordered to pare the Motion down to address only those issues and arguments relevant to opposing the *pro hac vice* appearance of attorney Lisa Carteen;

IT IS FURTHER ORDERED that Plaintiff's Motion presented in the alternative, *i.e.* "Plaintiff's Motion to Disqualify Lisa Carteen, Esq." is hereby DENIED as premature, without prejudice;

IT IS FURTHER ODERED that Plaintiff's Motion presented in the alternative, *i.e.* Plaintiff's Motion to "Preclude [Lisa Carteen's] Review of Case Materials," is hereby DENIED as premature, without prejudice;

IT IS FURTHER ODERED that the pared down supplemental Opposition shall be filed and served by no later than June 18, 2020;

IT IS FURTHER ODERED that the Edgeworth Defendants' Reply in Support of their Motion to Associate Counsel shall be filed and served by no later than June 25, 2020;

/ / /

IT IS FURTHER ORDERED that the previously scheduled in-chambers hearing on the Edgeworth Defendants' Motion to Associate Counsel set for June 25, 2020 is hereby CONTINUED to the Court's July 2, 2020 in-chambers calendar.

IT IS ORDERED that the Edgeworth Defendants' Countermotion for attorneys' fees is DENIED.

As all parties to the action were present at the June 11, 2020 hearing, the Court and the parties undertook some "housekeeping" matters with respect to the outstanding dispositive motions filed by the Defendants, and each of them. In an effort to streamline and consolidate all extant dispositive motions into one hearing date, the Court hereby amends the existing briefing schedules and hearings accordingly:

IT IS HEREBY ORDERED that all hearings previously associated with the Motions to Dismiss and the Anti-SLAPP based Special Motions to Dismiss filed by the Defendants, and each of them, are hereby CONSOLIDATED and CONTINUED to occur on August 13, 2020 at 9:00 am;

The Court further indicated that with respect to the outstanding dispositive motions, it would not allow any party to file a brief in excess of the applicable 30 page limit and would be denying all motions for such leave. Accordingly, IT IS FURTHER HEREBY ORDERED any and all oppositions to the Defendants' filed Motions to Dismiss and Anti-SLAPP based Special Motions to Dismiss shall be 30 pages or less and filed and served by no later than July 15, 2020;

IT IS FURTHER HEREBY ORDERED that all replies in support of Defendants' Motion to Dismiss and Anti-SLAPP based Special Motions to Dismiss shall be filed and served by no later than July 23, 2020;

/ / /

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/ / /

IT IS FUTHER HEREBY ORDERED that no Party shall be permitted to file any additional papers, supplements, erratas, requests or the like, to the Court, related to, concerning or otherwise addressing Defendants' Motions to Dismiss and Anti-SLAPP based Special Motions to Dismiss after July 23, 2020;

Dated this 2nd day of July, 2020

IT IS SO ORDERED THIS ____ day of July, 2020.

HONORABLE JUDGE JIM CROCKETT

45A 9DF 1656 B5CE
Jim Crockett

Respectfully Submitted by:

HUTCHISON & STEFFEN, PLLC

/s/ Patricia Lee

Patricia Lee (8287)
Ramez A. Ghally (15225)
Peccole Professional Park
10080 West Alta Drive, Suite 200
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plee@hutchlegal.com
rghally@hutchlegal.com

Attorney for Defendants Edgeworth Family Trust; Brian Edgeworth and Angela Edgeworth

Approved as to form and content:

DATED this 1st day of July, 2020.

CHRISTIANSEN LAW OFFICES

/s/ Kendelee Works

Peter S. Christiansen (5254)
Kendelee L. Works (9611)
810 South Casino Center Blvd., Suite 104
Las Vegas, NV 89101

Attorneys for Plaintiffs

DATED this 1st day of July, 2020.

PATRICIA A. MARR, LTD.

/s/ Patricia Marr

Patricia A. Marr (8846)
2470 St. Rose Pkwy., Ste. 110
Henderson, NV 89074

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

DATED this 1st day of July, 2020.

MESSNER REEVES, LLP

/s/ Christine Atwood

M. Caleb Meyer, Esq. (13379)
Renee M. Finch (13118)
Christine L. Atwood (14162)
8945 W. Russel Road, Ste. 300
Las Vegas, NV 89148

Attorneys for Defendant American Grating, LLC

From: Kendelee Works <kworks@christiansenlaw.com>
Sent: Wednesday, July 01, 2020 3:52 PM
To: patricia@marrlawlv.com
Cc: Christine L. Atwood; Renee Finch; Peter S. Christiansen; Patricia Lee; Heather Bennett
Subject: Re: CLO rev to Proposed Order re Plaintiff's Motion to Supplement (002).docx

Mine as well.

On Jul 1, 2020, at 3:45 PM, Patricia Marr <patricia@marrlawlv.com> wrote:

Dear Ms. Lee:

You have my permission to affix my electronic signature to the Order.

Very truly yours,

Patricia A. Marr, Esq.
PATRICIA A. MARR, LTD.
2470 St. Rose Parkway, Ste. 110
Henderson, Nevada 89074
(702) 353-4225 (telephone)
(702) 912-0088 (facsimile)
patricia@marrlawlv.com

> On Wednesday, July 1, 2020, 08:58:33 AM PDT, Patricia Lee <plee@hutchlegal.com> wrote:
>
> All: I have incorporated Kendelee's proposed changes to the Order on Plaintiff's Motion to Supplement and am attaching the same hereto for your consideration. If anyone else has any additional proposed changes, please let me know. Otherwise, please respond with an email affirmatively granting our firm permission to submit the same with your electronic signatures. Thanks.

From: Christine L. Atwood <CAtwood@messner.com>
Sent: Wednesday, July 01, 2020 9:13 AM
To: Patricia Lee
Cc: Heather Bennett
Subject: RE: CLO rev to Proposed Order re Plaintiff's Motion to Supplement (002).docx

Approved as to form and content.

Christine L. Atwood
Attorney

Messner Reeves LLP
8945 W. Russell Road | Suite 300
Las Vegas, NV 89148
702.363.5100 *main* | 702.363.5101 *fax*
catwood@messner.com
messner.com

From: Patricia Lee <PLee@hutchlegal.com>
Sent: Wednesday, July 1, 2020 8:58 AM
To: Kendelee Works <kworks@christiansenlaw.com>; Christine L. Atwood <CAtwood@messner.com>; Renee Finch <rfinch@messner.com>; patricia@marrlawlv.com; Peter S. Christiansen <pete@christiansenlaw.com>
Cc: Heather Bennett <hshepherd@hutchlegal.com>
Subject: CLO rev to Proposed Order re Plaintiff's Motion to Supplement (002).docx

All: I have incorporated Kendelee's proposed changes to the Order on Plaintiff's Motion to Supplement and am attaching the same hereto for your consideration. If anyone else has any additional proposed changes, please let me know. Otherwise, please respond with an email affirmatively granting our firm permission to submit the same with your electronic signatures. Thanks.

Best regards,

Patricia Lee
Partner
HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Law Office of Daniel S Simon, Plaintiff(s) vs. Edgeworth Family Trust, Defendant(s)	CASE NO: A-19-807433-C DEPT. NO. Department 24

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/2/2020

Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Kendelee Leascher Works	kworks@christiansenlaw.com
R. Todd Terry	tterry@christiansenlaw.com
Keely Perdue	keely@christiansenlaw.com
Jonathan Crain	jcrain@christiansenlaw.com
Renee Finch	rfinch@messner.com
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, a professional corporation; DANIEL S. SIMON, Plaintiffs, v. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, individually and husband and wife, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT. NO.: XXIV **JOINDER OF EDGEWORTH FAMILY TRUST, and BRIAN AND ANGELA EDGEWORTH TO AMERICAN GRATING, LLC'S, AMENDED MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT AND AMENDED COMPLAINT**

Defendants Edgeworth Family Trust, and Brian and Angela Edgeworth (collectively the "Edgeworths") hereby file this Joinder to Defendant American Grating LLC's Amended Motion to Dismiss Plaintiffs' Amended Complaint filed on July 1, 2020 and Amended Special Anti-SLAPP Motion to Dismiss filed on July 1, 2020.

This Joinder is based upon the Edgeworths' separately-filed Motion to Dismiss Plaintiffs' Amended Complaint and the separately filed Amended Renewed Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint filed on behalf of the Edgeworths and American Grating, LLC, which the Edgeworths fully incorporate into this Joinder, the pleadings and papers on file herein, and any oral argument this Court may wish to entertain.

DATED this 9th day of July, 2020.

HUTCHISON & STEFFEN, PLLC

/s/ Patricia Lee

_____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 9th day of July, 2020, I caused the document entitled **JOINDER OF EDGEWORTH FAMILY TRUST, and BRIAN AND ANGELA EDGEWORTH TO AMERICAN GRATING, LLC'S, AMENDED MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT AND AMENDED COMPLAINT** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

[✓] to be electronically served through the Eighth Judicial District Court's electronic filing system pursuant to EDCR 8.02; and/or

[ ] to be hand-delivered;

to the attorneys/ parties listed below:

ALL PARTIES ON THE E-SERVICE LIST

/s/ Heather Bennett

An employee of Hutchison & Steffen, PLLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, 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: AUGUST 13, 2020
HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION TO SPECIAL MOTION OF AMERICAN GRATING LLC, EDGEWORTH FAMILY TRUST, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' INITIAL COMPLAINT: ANTI-SLAPP

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The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the American Grating, LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Motion to Dismiss Plaintiffs' Initial Complaint: Anti-SLAPP. [1]

[1]This Opposition is filed in response to Defendants Edgeworth Family Trust, Brian Edgeworth and Angela

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.

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, including American Grating, LLC, and Edgeworth Family Trust, the named Plaintiffs in the frivolous complaint.[2] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

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

Edgeworth's Special Motion to Dismiss Pursuant to NRS 41.637, filed on May 18, 2020, Defendant American Grating LLC's Anti-SLAPP Motion to Dismiss Pursuant to NRS 41.637 (Amended), filed on July 1, 2020 and all Joinders thereto.

[2] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a motion to dismiss. However, in a Special Motion to Dismiss: Anti-SLAPP, if the Court gets to the second prong of the analysis set forth in NRS 41.660, the burden shifts to the Plaintiff to show with "prima facie evidence a probability of prevailing on the claim." The Court is to analyze its decision pursuant to a summary judgement standard. Accordingly, this Court should consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case that Plaintiffs rely on as prima facie evidence to support their probability of prevailing on their claims. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto and should be considered to rebut Defendants' misrepresentations.

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Judge Jones made this same finding in dismissing the Edgeworths' baseless conversion claim after conducting a five-day evidentiary hearing and ultimately found that the Edgeworths' conversion allegations did not have a good faith basis in law or fact. *See*, ¶33 of Simon Amended Complaint. 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.

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 should not 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 Vannah/Edgeworth team filed an appeal, which challenges the impact and use of the factual findings by the 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). Not surprisingly, the instant Motion broadly asserts that Defendants at all time acted in good faith and thus, they should be afforded blanket protection across the board.

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See, Edgeworth Defendants' Motion to Dismiss Amended Complaint: Anti-SLAPP at 29:5-6. That assertion of good faith is contrary to the undisputed facts and judicial findings in the underlying litigation.

Indeed, Defendants all undermine their own assertions when they offer their own affirmative explanation for the purported basis for the initial complaint against Simon. Specifically, Vannah, in a sworn affidavit, 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." *See*, Vannah's Affidavit at 5:24-27, attached as **Exhibit A** to Vannah's Anti-SLAPP Motion. Edgeworth repeats this false statement. *See*, Brian Edgeworth's Affidavit at 10:14-20, attached as **Exhibit A** to AG's Anti-SLAPP Motion. Vannah and Edgeworth both knew the proceeds had not even been received when the initial lawsuit was filed on January 4, 2018. Defendants' purported version of events was presented to the court in the underlying litigation and squarely rejected.

Angela Edgeworth, who ratified her conduct on behalf of American Grating and the family trust openly admitted the real reason for the conversion complaint was to punish Simon personally. *See*, September 18, 2018 Transcript at 145:10-21, attached hereto as **Exhibit 8.** This party admission is corroborated by the fact that Mr. Simon was named personally despite the lien being filed solely by the Law Office of Daniel S. Simon, A Professional Corporation. This is also corroborated by the Vannah email stating that although his clients were fearful Simon would steal the money, he does not have that belief. *See*, Email, attached hereto as **Exhibit 20.** Then, one week later a conversion claim was filed before the money was ever received. This admission of malice and ulterior purpose, along with the judicial findings of Judge Jones establishes a prima facie case precluding Anti-SLAPP protection.

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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. Mr. Simon was admittedly owed substantial attorneys fees and timely filed a lawful attorney lien under Nevada law. *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Significantly, Defendants never challenged the enforceability of Simon's lien at the evidentiary hearing. In short, Defendants knew the allegation that Simon exercised ***wrongful*** control of the subject funds was a legal impossibility.[3]

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. *See*, August 30, 2018 Transcript at 96:19-97:1, attached hereto as **Exhibit 7.** The few bills generated over the course of intense litigation totaled $365,006.25 in attorneys fees through September 19, 2017. Vannah and Edgeworth invented the express oral contract in order to challenge Simon's true reasonable fees. In the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee contract. They are still asserting this falsehood. *See*, Vannah Affidavit at 9:23-

[3] 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.

10:7, attached as **Exhibit A** to Vannah Anti-Slapp Motion. Edgeworth also still asserts this notion. *See*, Brian Edgeworth Affidavit at 14:4-7, attached as **Exhibit A** to AG Anti-SLAPP Motion. However, their lack of good faith in presenting this theme is Edgeworth's new counsel abandoned this theme, likely realizing it is actionable because it is not true. The flat fee agreement was presented at the request of Edgeworth so the parties could finally determine the reasonable value of Simon's services. This could only be done at the end of the case.

Also significant, the Edgeworths never had any recoverable damages because the settlement money was and is safekept in trust. *Kasdan, supra.* Meanwhile, the Edgeworths continue to earn interest on the entire sum, including the amount due to 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 20.** On January 8, 2018, the settlement checks were deposited. *See*, ¶20 of Simon Amended Complaint. 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. *See*, ¶21 of Simon Amended Complaint. Still, the amended conversion complaint, which Defendants filed in March, 2018, maintained the same fabricated conversion allegations. *See*, ¶22 of Simon Amended Complaint. 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.

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. The Edgeworth/Vannah team never attacked the lien amount. The Court found as a matter of law that the lien was proper. *See*, **Exhibit 2** at 7:1-7. This is also a final order on the issue. In complete

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ignorance of Judge Jones order, the new attorneys for American Grating, on behalf of its principles, the Edgeworths, assert the lien was not proper and unethical, repeating these assertions throughout their initial brief, then omitted these assertions in later briefing, likely, because Simon pointed out that the unethical lawyer theme was exhaustively pursued and rejected by the District Court.

Defendants also attempt to confuse the application of the litigation privilege with Anti-SLAPP protections. The Anti-SLAPP statutes require the communication to be true or made without knowledge of the its falsehood. American Grating and the Edgeworths seek Anti-SLAPP protection for having made knowingly false statements, and then cite to litigation privilege cases in hopes the court will gloss over the distinction. Litigation privilege statements do not apply to the conduct of the parties, and the statements for Anti-SLAPP protection have to be true.

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 attorney 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. Inventing stories and making up facts do not make them true. This Court should not permit Defendants to use the litigation privilege or Anti SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

FACTUAL BACKGROUND

A. REASON FOR THE NOVEMBER 27, 2017 LETTER

Mr. Simon met with the Edgeworths on November 17, 2017. During the meeting, Simon discussed the many motions and the evidentiary hearing on calendar, the risks and benefits of

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settling with the manufacturer, the pending claims against Lange Plumbing, the trial date, and that it was also time to discuss a fair fee. *See*, August 29, 2018 Transcript at 215:7-24, attached hereto as **Exhibit 6.** The clients left the office after stating they would discuss the fee issue among themselves and let Mr. Simon know their position. Mr. Simon discussed the issue with Mr. Edgeworth later on that same evening and Mr. Edgeworth was acting quite different. He was very cagey and changed his demeanor from his prior close working relationship with Mr. Simon over the last year and half, which was also contrary to their close friendship. *See*, **Exhibit 6** at 7:23-8:7. He acknowledged that it was not just a straight hourly case and we would work out a fair fee. Mr. Edgeworth then asked for something in writing to consider so a fair fee could be worked out. *See*, **Exhibit 6** at 7:14-8:7. Instead of suggesting a fair fee from their perspective, they started to become unavailable, unlike the 24/7 calls and emails during the case. It was apparent to Simon that the Edgeworths were acting different to avoid paying. Simon began preparing a letter, and in an effort to determine the amount that was fair to the clients, Simon asked Edgeworth for a breakdown of what he believed were his out of pocket expenses. Mr. Edgeworth forwarded an email to Mr. Simon on November 21, 2017 solely for this purpose. *See*, November 21, 2017 Email, attached hereto as **Exhibit 38.** When Mr. Simon returned home from his vacation, he forwarded the Edgeworths the proposed fee with a detailed letter. *See*, November 27, 2018 Letter, proposed Retainer Agreement and proposed Settlement Breakdown, attached hereto as **Exhibit 39.** This was the entire reason for the letter so that the close friends who Simon helped when others would not, could work out a fair fee for the reasonable value of services. Mr. Simon offered to receive $1.5 million and reduced this amount by crediting all payments already received. *Id.* Other considerations outlined in the letter were that Edgeworths only wanted the mediator proposal to be $5 million and Simon got $6.1 million. *Id*. Edgeworth avers he would have walked

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away from mediation at $4.5 million as the settlement agreement. *See*, Brian Edgeworth Affidavit at 5:4-6, attached to Initial AG Motions to Dismiss as **Exhibit A**. The story about extortion stemming from the letter they requested was also rejected by the District Court as it did not make any sense. The Edgeworths alleged Simon's threats in the letter made them scared. This was equally rejected as they have a long list of lawyers at their fingertips, including their business lawyer Mark Katz and many others, and also hired Vannah immediately to avoid paying. Mrs. Edgeworth's newest affidavit of June 4, 2020 now suggests she was counseled by Lisa Carteen at this time making her prior in-court testimony completely false and even more incredible. *See,* Angela Edgeworth Affidavit, attached as **Exhibit W** to AG Initial motion to Dismiss: Anti-SLAPP.

They also have raised a new red herring argument that Simon sought advice from Jim Christensen. *See*, AG Initial Motion to Dismiss Anti-SLAPP at 6:2-4.This was also discussed at the evidentiary hearing and is nothing new. Of course Simon would seek advice to ensure he was complying with all of his duties and obligations when dealing with unreasonable and litigious clients who changed their attitude toward Simon almost immediately when it was time to pay for the services rendered. Given the unusual circumstances to continue to protect the interests of clients who sued him and hired Vannah to threaten him if he withdraws certainly warrants Mr. Christensen's involvement from the outset. Edgeworth called Simon day and night for a year and half, then suddenly he refused to speak to Simon. Nothing is more de-valued than attorneys' services already rendered. The greed of the Edgeworths is quite apparent when they made baseless accusations of theft, and sought an order Simon was already paid in full as part of their lawsuit so Simon would get nothing. Frankly, it is even more despicable that the Vannah attorneys participated in this scheme and viciously pursued the false claims with wild accusations.

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1. The checks sent by the Edgeworths and deposited

The impact of the checks sent by the Edgeworths in the underlying case was ruled on by Judge Jones. *See*, **Exhibit 2** at pp13-14. Unless the Nevada Supreme Court weighs in, the impact of the checks has been resolved. The acceptance of the checks was found to have created an implied contract, which Defendants terminated, which left The Law Offices of Daniel Simon with a valid and enforceable lien claim for unpaid fees and advanced costs, which Judge Jones adjudicated. *Id.* This is the end of story on this issue and Defendants do not get to re-write history as this portion of the case is closed! Similarly, in Defendants self-serving affidavits they are attempting to re-litigate the entire case already decided by Judge Jones. The Defendants cannot invite this Court to reach contrary factual findings. This is what finality and fact/issue preclusion is all about.

Similarly, to the extent that they are challenging the lien itself, they are equally foreclosed because they did not challenge Judge Jones finding that the lien was valid and perfected even on appeal. *See*, Appellate record generally, attached to Vannah's Motions to Dismiss. The excessive amount argument goes to validity and was not properly raised or supported in front of Judge Jones. It is not enough that they may have alluded to an argument of excessiveness in a pleading somewhere, the Court took evidence and made factual findings and conclusions of law. Again, Judge Jones findings cannot be overturned unless her finding/conclusions were an abuse of discretion. Not finding excessiveness when Edgeworth provided no evidence or effective argument of excessiveness; and, when Will Kemp testified Mr. Simon's lien was a bit low, is a decision made on substantial evidence and is therefore within her discretion.

B. ALL DEFENDANTS FACTS AND ACCUSATIONS IGNORE THE FINAL DISTRICT COURT ORDERS.

In their briefs, Defendants, through their new lawyers, repeatedly assert Simon's lien is

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not valid and Simon is unethical. *See*, Edgeworth Defendant Motion to Dismiss Initial Complaint: Anti-SLAPP at 10:1-2. Particularly, in American Grating's initial brief, it states that Plaintiffs' Continued Unlawful and Unethical Refusal to Release the Adjudicated Undisputed Amount of the Viking Settlement to the Edgeworths Detriment... *Id*. Additionally, in the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee contract. They are still asserting this falsehood in their new affidavits. *See*, Vannah Affidavit at 9:23-10:7, attached as **Exhibit A** to Vannah Anti-Slapp Motion. Edgeworth also still asserts this notion. *See*, Brian Edgeworth Affidavit at 14:4-7, attached as **Exhibit A** to AG Anti-SLAPP Motion. However, in an astonishing admission, the Edgeworth initial special motion to dismiss finally admits to this fraudulent scheme when acknowledging a contingency fee was never sought, but only a flat fee. *See*, Edgeworth Motion to Dismiss: Anti-SLAPP (filed by Patricia Lee) at 6:10-11;7:8-9. This should not be a real surprise since a simple review of the documents confirm Simon never tried to get them to signing a contingency fee agreement. Regardless, it is finally an admission that the Edgeworth's alleged unethical contingency narrative was absolutely false, which confirms their fraud upon the court. Those falsities have been repeated in all of Defendants' filings, including the most recent affidavits seeking dismissal. Given the continued abusive conduct repeatedly accusing Simon of unethical conduct based on a false premise further supports the abuse of process claims and lack of good faith communication to the court. Plaintiffs urge this Court to disregard the affidavits as unreliable as they are riddled with the same falsehoods already presented at the Evidentiary hearing, carefully considered and rejected by the District Court.

The Defendants, through Brian Edgeworth, also continue to advance the false arguments that the purported contingent fee agreement would modify an express oral contract. The district

court also rejected this version of events in the underlying litigation and this finding is a final order. To be clear, there was not a contract to modify and Simon never asked for a contingency fee. The Edgeworths requested the November 27, 2017 letter and proposed agreement for a flat fee representing the reasonable value of services because there was not a contract. Notably, Brian Edgeworth conceded a contract could not have been entered into earlier because the dynamics of the case were fluid and the highly successful outcome could not have been anticipated earlier on. *See*, August 27, 2018 Transcript at 160:14-20, attached hereto as **Exhibit 4;** *See also*, ¶13 of Simon Complaint. In the 2,000 emails generated between Simon and Edgeworth there is not a single email suggesting that there was an agreement for an hourly case only.

Perhaps Defendants' strategy is the more they repeat these falsehoods, someone may believe it. This narrative has been rejected by the Court and their continued presentation of these facts are in stark contrast to Judge Jones' order, which confirmed as a matter of law, that Simon did not convert the settlement funds; the lien was lawful; Simon did not do anything unethical; and only followed the law precisely. This conclusion was also reached by David Clark, Esq. *See*, Declaration of David Clark attached hereto as **Exhibit 10**. His opinion was never challenged by the Edgeworth/Vannah team. When Simon pointed this out to the Defense, the new lawyers omitted the unethical attacks in later briefing, likely, because they realized they are false and actionable.

C. DEFENDANT'S BAD FAITH BEFORE AND AFTER THE MALICIOUS LAWSUIT CONSTITUTES ABUSE OF PROCESS FOR AN IMPROPER PURPOSE.

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Amended Complaint pursuant to NRCP 12(b)(5).

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Additionally, 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 Simon 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. 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, and openly admitted to their malice.

D. <u>THE UNPRIVILEGED DEFAMATORY STATEMENTS OF ANGELA AND BRIAN EDGEWORTH WERE ADOPTED BY ALL DEFENDANTS, INCLUDING THE VANNAH ATTORNEYS</u>

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

Additionally, filing an attorney lien is not blackmail or extortion or theft. Defendants were well aware of the falsity of the statements when repeatedly made. Angel Edgeworth admitted to all of these false statements in court. 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 8** at 133:5-23.

These admissions alone establish all elements for Simon's claims against all Defendants, and preclude the application of NRS 41.660. These communications have always been false. 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 Simon 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). Their new affidavits attempting to qualify their statements as opinions or feelings does not provide a basis to dismiss these claims. At a minimum, this is a question of fact for the jury.

The Vannah lawyers cannot separate their conduct from the Edgeworths when they 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. This is likely why this theme has now been abandoned.

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1. Simon's Damages are Caused by the Harm of the Malicious Conduct of All Defendants.

The Edgeworths, in their initial Anti-SLAPP motion to dismiss, incorrectly argues that "[t]he Simon complaint recognizes that the damages he claims all stem from the lawsuit filed on January 4, 2018." *See,* Edgeworth Initial Anti-SLAPP Motion at 5:2-5. This is not true and certainly not the end of the story. The damages were caused from the abuses of the process, as well as the defamation per se to parties outside the litigation. It is not the mere filing of the complaint, but all of the ongoing abuses and malicious conduct attacking the integrity and moral character of Simon, as well as the relentless pursuit of the frivolous claims through false testimony that caused the damages.

2. The New Affidavits to Support the Instant Motion Confirm Their False Testimony

Angela Edgeworth did not present an affidavit for this Court to the initial motion to dismiss based an Anti-SLAPP, but did provide one to the motions addressing the Amended Complaint. Brian Edgeworth presented an affidavit as part of the American Grating Anti-SLAPP Motion. Vannah and Greene presented their own affidavits in the Vannah Anti-SLAPP Motion. 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, ***ex post facto***, ad hoc rescue arguments that the lien was too much. Telling, they abandoned their criminal lawyer theme of theft, extortion and blackmail. This alone, is an admission of bad faith and all of these communications were always false. This new lien argument regarding whether the amended lien was lawful, does not save or advance their position. The lien and amount was always justified and all the funds remain disputed based on their own conduct when appealing the decision to the Supreme Court. *See*, **Exhibit 2**. Their

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emotional appeal to the Court that they never asked for any of this, but only wanted their contract honored is disingenuous. There was never a contract to honor. The lien dispute could have been resolved with a one-day hearing. Instead, Simon had to defend the wild false accusations at the hearing and hire experts to dispel the unethical conduct falsehoods. Protracted litigation to harm Simon was part of their devised plan. *See,* Declaration of James Christensen, Esq., attached hereto as **Exhibit 11.** When filing the frivolous complaint, they sought full blown discovery and a jury trial, contrary to their new position that they only wanted an expedited resolution. Their calculated efforts to provide false testimony to publish a smear campaign under the perceived protections of the litigation privilege extends well beyond the mere desire to be paid.

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. *See,* November 27, 2017 Letter, attached hereto as **Exhibit 38;** *See also*, August 30, 2018 Transcript at 9:14-10:5, attached hereto as **Exhibit 7.** 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." *See,* **Exhibit 2** at 21:15-16. 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. *See*, **Exhibit 2** at 7:15-16. Finally, Simon never approached Edgeworth to change anything. This is yet a new falsehood. The new affidavits also confirm the false testimony presented to Judge Jones.

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

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agreed upon sometime around May 27, 2016 at a Starbucks. *See*, **Exhibit 4** at 81:5-15. 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. *See*, Brian Edgeworth Affidavit, attached as **Exhibit A** to American Grating Motion to Dismiss Anti-SLAPP. 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 demonstrates how incredible all Defendants are and why Anti-SLAPP should not apply to this case. Their statements in their SLAPP suit for conversion were always false. They have yet to ever explain why they sought relief that Simon was already "paid in full," or the real reason given by Angela Edgeworth for filing the conversion lawsuit. *See*, **Exhibit 8** at 145:17-21.

III.

ARGUMENT

Simon incorporates by reference this section contained in Simon's Opposition to Edgeworths' Motion to Dismiss Amended Complaint: Anti-SLAPP.

A. STANDARD FOR SPECIAL MOTION TO DISMISS: ANTI-SLAPP

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint: Anti-SLAPP.

B. SIMON HAS ESTABLISHED A PRIMA FACIE CASE

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Amended Complaint: Anti-SLAPP.

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1. Plaintiffs Have Sufficiently Pled All of Their Allegations Against American Grating, LLC.

Defendant American Grating is liable through its principals' conduct, i.e., Defendants Brian and Angela Edgeworth. Notably, Defendants Brian and Angela Edgeworth were not named plaintiffs in the suit against Simon. Defendant American Grating (and Defendant Edgeworth Family Trust) were the plaintiffs that sued Simon for conversion. *See,* Conversion Complaint, attached hereto as **Exhibit 16**. This relationship has been pled properly in Simon's Complaint. Further, Simon has pled that Defendant American Grating has ratified all of Brian and Angela Edgeworth's conduct. This was already admitted by Edgeworth. *See*, **Exhibit 8** at 168:18-169:11**.** Both Brian Edgeworth and Angela Edgeworth testified at the Evidentiary Hearing as principles of American Grating. *See*, **Exhibit 4** at 38:10-19; *See also*, **Exhibit 8** at 51:25-52:9. They confirmed their defamatory statements of blackmail and extortion were to support their lawsuit and benefit American Grating and the Edgeworth Family Trust.

Nevertheless, Defendant American Grating now contends that Simon has not pled sufficient facts to hold it liable for Brian and Angela Edgeworth's conduct. *See*, American Grating's Motion to Dismiss Plaintiffs' Initial Complaint: Anti-SLAPP at 26:14-16. Clearly, Defendant American Grating makes this allegation while completely ignoring the facts of the case. Simon represented American Grating for the underlying products liability and property damage case. Brian and Angela Edgeworth were never named parties. Instead, they acted and participated in the underlying case as the officers (and agents) of American Grating. They then did the same when retaining Vannah to sue Simon for conversion – on behalf of American Grating. Brian Edgeworth provided multiple affidavits supporting American Grating's oppositions to Simon's motions to dismiss pursuant to NRCP 12(b)(5) and for Anti-SLAPP relief – the same affidavits that contain Brian Edgeworth's defamatory statements to third parties and

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conduct. *See*, Brian Edgeworth's Affidavits, attached hereto as **Exhibits 13, 14** and **15**, respectively. The simple reality is that Brian and Angela Edgeworth are American Grating. This fact is further revealed in Brian Edgeworth's affidavit when he attests in his conversation with Ruben Herrera that "I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me." *See*, **Exhibit 15** at 8:17-20. Brian Edgeworth's affidavits show that he considers himself to be the same as American Grating. The settlement proceeds in dispute were being paid to American Grating and Edgeworth Family Trust, which Mr. and Mrs. Edgeworth both signed on behalf of at the bank to deposit the money in the special trust account.

Finally, Simon's Complaint properly pleads sufficient facts that comport with Nevada's agency laws holding American Grating liable for Brian and Angela Edgeworth's conduct because that conduct was for the intended benefit to American Grating. The Supreme Court's analysis of when to impute a director or officer's conduct upon the corporation in *Kahn v. Dodds* (*In re AMERCO Derivative Litig.*), 127 Nev. 196, 214-15, 252 P.3d 681, 695-96 (2011) is instructive:

> "Under basic corporate agency law, the actions of corporate agents are imputed to the corporation. *Strohecker v. Mut. B. & L. Assn*., 55 Nev. 350, 355, 34 P.2d 1076, 1077 (1934). In *Strohecker,* we noted that 'A corporation can acquire knowledge or receive notice only through its officers and agents, and hence the rule holding a principal, in case of a natural person, bound by notice to his agent is particularly applicable to corporations, the general rule being that the corporation is affected with constructive knowledge, regardless of its actual knowledge, of all the material facts of which its officer or agent receives notice or acquires knowledge while acting in the course of his employment and within the scope of his authority, and the corporation is charged with such knowledge even though the officer or agent does not in fact communicate his knowledge to the corporation.' *Id.* (internal quotations omitted).
>
> The rationale for imputing an agent's acts to the corporation is to encourage corporate managers to carefully select and monitor those who are acting on the corporation's behalf. In re American Intern. Group, Inc., 965 A.2d at 825 n.237. However, if an agent is acting on his own behalf, the agent's acts will not be imputed to the corporation. Keyworth v. Nevada Packard Co., 43 Nev. 428, 439, 186 P. 1110, 1113 (1920). This exception is

> known as the "adverse interest" exception and, although we recognized the exception in Keyworth, we have not previously set forth its proper application. We do so now.
>
> We now hold that the agent's actions must be completely and totally adverse to the corporation to invoke the exception. *See Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 938 N.E.2d 941, 952, 912 N.Y.S.2d 512 (N.Y. 2010). Requiring total abandonment of the corporation's interest renders the exception very narrow. 'This rule avoids ambiguity where there is a benefit to both the insider and the corporation, and reserves this most narrow of exceptions for those cases—outright theft or looting or embezzlement—where the insider's misconduct benefits only himself or a third party.' Id. If the agent's wrongdoing benefits the corporation in any way, the exception does not apply. Id. ('Where the agent is perpetrating a fraud that will benefit his principal, th[e] rationale [of not imputing the agent's acts] does not make sense.'); *see also American Intern. Group*, 965 A.2d at 824 (holding that the adverse interest exception only applies when the agent acts completely for his own purpose). Simply because an agent has a conflict of interest or is acting mostly for his own self-interest will not invoke the exception. *American Intern. Group*, 965 A.2d at 824.(Emphasis added).

See also, Nevada Nat'l Bank v. Gold Star Meat Co., 89 Nev. 427, 431, 514 P.2d 651, 654 (1973) (Courts have consistently held principal responsible to third parties for misconduct of agent committed within the scope of agent's authority, even though principal is completely innocent and has received no benefit from the transaction); *Dezzani v. Kern & Assocs*., 134 Nev. Adv. Rep 9, *11, 412 P.3d 56, 61 (2018) (Agency law typically creates liability for a principal for the conduct of his agent that is within the scope of the agent's authority).

Thus, American Grating's attempt to claim that somehow Brian and Angela Edgeworth did not have authority to sue Simon for conversion in bad faith and then defame Simon during that process is ludicrous as Brian and Angela Edgeworth are the only persons who can determine any officer or agent's scope of authority for American Grating. *See,* Nevada Secretary of State Business Entity Information for American Grating, LLC, listing only Brian and Angela Edgeworth as its officers, attached hereto as **Exhibit 42.** In their affidavits, the admit they both equally own American Grating and there are no other owners. The suggestion that American

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Grating cannot be sued for the acts of their principals acting on its behalf is contrary to Nevada law and should be summarily dismissed.

C. ALL DEFENDANTS ARE LIABLE FOR ALL CAUSES OF ACTION PLED IN THE COMPLAINT

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

D. THE LITIGATION PRIVILEGE DOES NOT APPLY TO THE FACTS OF THIS CASE

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Amended Complaint pursuant to NRCP 12(b)(5).

IV.

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 have also presented, under oath testimony directly disputing the self-serving false

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facts presented in the new affidavits in support of their Motions. Finally, the order Judge Jones and the party admissions deprives Defendants of the protections sought. Therefore, Plaintiffs respectfully request this Court DENY American Grating and the Edgeworth Defendants' Motions in their entirety, or alternatively, allow discovery pending a final ruling.

Dated this 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
KENDELEE L. WORKS, ESQ.
Attorneys for Plaintiffs

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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 15th day of July, 2020 I caused the foregoing document entitled ***PLAINTIFFS' OPPOSITION TO SPECIAL MOTION OF AMERICAN GRATING LLC, EDGEWORTH FAMILY TRUST, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' INITIAL COMPLAINT: ANTI-SLAPP*** 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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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: AUGUST 13, 2020
HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Edgeworth Defendants' Motion to Dismiss Plaintiffs' Amended Complaint.[1]

[1] This Opposition is filed in response to Defendants Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Motion to Dismiss Plaintiffs' Amended Complaint, filed on June 4, 2020, Defendant American Grating LLC's Amended Motion to Dismiss Plaintiffs' Amended Complaint (Amended), filed on July 1, 2020 and all Joinders thereto.

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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.

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 need look no further than the judicial findings of the Honorable Tierra Jones when she awarded fees against all Defendants, including the Edgeworth entities for having filed and maintained the frivolous conversion claim in bad faith.[2] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' 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 conducted a five-day evidentiary hearing and ultimately found the conversion allegations did not have a good faith basis in law or fact. *See*, ¶33 of Simon Amended Complaint. Judge Jones

[2] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a Rule 12(b)(5) motion to dismiss. However, the Nevada Supreme Court has long held that the court may take into account matters of public record, orders, items present in the record of the case, any exhibits attached to the complaint and any documents incorporated by reference into the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1992). Accordingly, this Court may consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case. Further, NRCP 12(d) provides if, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto.

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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. Moreover, victorious litigants are permitted to pursue claims when they have been abused by false allegations and frivolous complaints, including the attorneys who pursue such claims. *Bull v. McCuskey,* 96 Nev. 706, 615 P.2d 957 (1980).

Judge Jones' findings alone confirm the Defendants cannot meet their burden to show by a preponderance that their conduct was in good faith. 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. Although the decision is on appeal, 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 litigation privilege does not protect frivolous lawsuits because it is the conduct that is actionable, not just statements. When conducting the litigation privilege analysis, this Court must first assess whether Defendants acted in good faith when filing the subject Edgeworth Complaint and subsequent filings. Not surprisingly, the instant Motion broadly asserts that Defendants at all time acted in good faith and thus, they should be afforded blanket protection

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across the board. That assertion of good faith is contrary to the undisputed facts and judicial findings in the underlying litigation.

Indeed, Defendants all undermine their own assertions when they offer their own affirmative explanations for the purported basis for the initial Edgeworth Complaint against Simon. Specifically, Vannah, in a sworn affidavit, 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." *See*, Vannah's Affidavit at 5:24-27, attached as **Exhibit A** to Vannah's Renewed Anti-SLAPP Motion. Edgeworth repeats this false statement. *See*, Brian Edgeworth's Affidavit at 10:14-20, attached as **Exhibit A** to AG's Initial Anti-SLAPP Motion. Vannah and Edgeworth both knew the proceeds had not even been received when the initial lawsuit was filed on January 4, 2018, therefore, no justiciable claim existed.

Defendants also offered other false and ever evolving justifications: (2) Simon would not give a lien amount; (3) The full proceeds were the Edgeworths; and (4) Simon was paid in full. Contrary to these false explanations, Simon gave a specific lien amount prior to the lawsuit and all Defendant's admitted Simon was always owed money. Defendants' purported version of events were presented to the District Court in the underlying litigation and squarely rejected. However, Angela Edgeworth, who ratified her conduct on behalf of American Grating and the Edgeworth Family Trust, openly admitted the real reason for the conversion Edgeworth Complaint, was to punish Simon personally. *See*, September 18, 2018 Transcript at 145:10-21, attached hereto as **Exhibit 8**. This party admission is corroborated by the fact that Mr. Simon was named personally despite the lien being filed solely by the Law Office of Daniel S. Simon, A Professional Corporation. The Edgeworths also baselessly sought punitive damages for the mere

act of filing an attorney lien. This admission of malice and ulterior purpose, along with the judicial findings of Judge Jones confirms the lack of good faith required to benefit from the litigation privilege and separately establishes a prima facie case precluding Anti-SLAPP protection. The Vannah attorneys adopted the testimony of their clients as to the real reasons for filing the Edgeworth conversion Complaint, and are equally liable.

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 met Mr. Simon at the bank to sign the settlement checks and the lawsuit was filed before the settlement checks were even deposited. *See,* Simon Amended Complaint at ¶ ¶ 19, 20. Mr. Simon was admittedly owed substantial attorney's fees and filed a lawful attorney lien before receiving the settlement checks. Significantly, Defendants never challenged the enforceability of Simon's lien at the evidentiary hearing. In short, Defendants knew the allegation that Simon exercised ***wrongful*** control of the subject funds was a legal impossibility.[3] Defendants intentionally omit the essential word **"WRONGFUL"** in the majority of their briefing. This word is a necessary element of conversion. Filing a lawful attorney lien pursuant to a Nevada statute is ***not unlawful or wrongful*** and this intentional omission to this court should not be overlooked.

The conversion claim is so outrageous that the National Trial Lawyer Association was compelled to voice their position on the issue. Robert Eglet, Esq., current president of the NTLA,

[3] 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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filed an Amicus Curie Brief in support of Judge Jones' dismissal of the conversion claim. *See*, Amicus Curie brief attached as **Exhibit 35**. This brief echoed the undeniable fact that a lawyer who follows the law by filing a lawful attorney lien and places the funds in a protected account cannot be sued for conversion. One cannot violate the law by following the law enacted by the legislature.

Mr. and Mrs. Simon were close family friends with the Edgeworths and Mr. Simon treated them like family. *See*, August 29, 2018 Testimony at 207:15-20, attached hereto as **Exhibit 6**. The Edgeworth's paid a minimal amount for attorney's fees during the hotly contested case with a world-wide manufacturer. All Defendants knew that Simon does not typically work on an hourly fee basis 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 attorney's fees through September 19, 2017.

Vannah and Edgeworth used the few bills generated for the ECC productions and paid by Edgeworth to invent the story that an express oral contract existed in order to challenge Simon's true reasonable fees. This was never a straight hourly billing case and the Edgeworths know it. In the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee contract. However, in an astonishing admission, the Edgeworth's new legal team finally admits to this fraudulent scheme when acknowledging that Simon never sought a contingency fee, but rather a flat fee. *See*, Edgeworth Initial Motion to Dismiss: Anti-SLAPP (filed by Patricia Lee) at 6:10-11;7:8-9. The flat fee agreement was presented at the request of Edgeworth so the parties could finally determine the reasonable value of Simon's services. This could only be done at the end of the case. The Edgeworths refused to provide a response to the proposed fee and fired off a conversion

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lawsuit for ulterior purposes. They used the litigation privilege as a shield to their intentional smear campaign. Notably, the Edgeworths never posted any reviews about Simon, the accused thief, because they knew the litigation privilege would not cover the false and defamatory statements.

The District Court uncovered the falsehoods and flatly rejected the Edgeworth story of an express oral contract. *See*, Lien Decision and Order at p.7, attached hereto as **Exhibit 2;** *See also*, ¶32 of Simon Amended Complaint. The Edgeworths and Vannah know the value of services were well over $2 million, yet they continued with their scheme to pursue frivolous claims of theft, extortion and blackmail 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. *Kasdan, supra.* Meanwhile, the Edgeworths continue to earn interest on the entire sum, including the amount due to 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 20.** On January 8, 2018, the settlement checks were deposited. *See*, ¶20 of Simon Amended Complaint. 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. *See*, ¶21 of Simon Amended Complaint. Still, the Edgeworth Amended Conversion Complaint, which Defendants filed in March, 2018, maintained the same fabricated conversion allegations. *See*, ¶22 of Simon Amended Complaint.

Defendants continued to further those false accusations with affidavits claiming extortion, blackmail and theft - all for the filing of an attorney's lien. These wild, unsupported and blatantly false allegations are glaringly absent in their moving papers. Perhaps the new lawyers understand

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advancing false positions repeatedly is an abuse of process. Notably, it is the conduct of the Defendants during the litigation that allows liability against all of them for abuse of process and the other claims in Plaintiffs amended complaint. Litigation privilege only protects statements made in good faith and does not protect the abusive conduct narrowly detailed in the amended complaint.

All Defendants here seek refuge under Anti-SLAPP statutes and litigation privilege. 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. Inventing stories and making up facts do not make them true. Defendants cannot engage in abusive conduct to relentlessly pursue frivolous claims aimed to punish a lawyer for filing a lawful attorney lien. This Court should not permit Defendants to use the litigation privilege or Anti-SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

FACTUAL BACKGROUND

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim. The Edgeworths admit they were made whole when they received their share of almost $4 million. *See*, ¶21 of Simon Amended Complaint. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment. The Edgeworths stopped talking to Mr. Simon and fired him immediately, instead 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 Simon Amended Complaint. 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 for merely filing a lawful enforceable

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attorney lien. On January 4, 2018, the Edgeworths and the Vannah firm filed a lawsuit alleging conversion of the settlement money. *See*, ¶19 of Simon Amended Complaint. The frivolous conversion lawsuit asked the court to find Simon was "paid in full" and asserted the settlement proceeds were solely the Edgeworth's (Edgeworth Complaint at 8:6-8, attached hereto as **Exhibit 16**; Edgeworth Amended Complaint at 8:21-9:21 attached hereto as **Exhibit 17**), which is in stark contrast to the sworn testimony of Edgeworth, who confirmed he **"always knew he owed Simon money,"** (*See*, **Exhibit 4** at 178:20-25)

A. THE EDGEWORTHS ARE NOT VICTIMS

The Vannah/Edgeworth team also attempt to appeal to the emotion of the Court stating that Edgeworths did not ask for any of this from Simon; they simply wanted the contract honored and their funds given to them. This is disingenuous. There was never an express contract to honor in the first instance. The implied contract was used to advance the scheme to avoid paying a fair fee and in any event, was terminated by the Edgeworths. Thereafter, Simon filed a proper lien. The frivolous Edgeworth Complaint alleges the full proceeds belong to the Edgeworths. *See*, Edgeworth Complaint at 8:10-18, attached hereto as **Exhibit 16.** This is false. It also alleges Simon was paid in full. *See*, February 2, 2018 Affidavit at 6:10-11 attached as **Exhibit 13;** *See also*, February 12, 2018 Affidavit **Exhibit 14** at 7:11-12; *See also*, March 15, 2018 Affidavit **Exhibit 15** at 7:16-17. It also asserts conversion, which is another false statement. They filed the lawsuit to avoid lien adjudication and to punish, not to determine a fee in the expedited adjudication process. *See,* ¶¶58, 59, 60, 61 of Simon Amended Complaint. Plaintiffs were required to respond to the frivolous lawsuit, which the Edgeworths brought – not Simon. The Edgeworths are simply not victims as they have been incredibly portraying. After all, they have admittedly been made more than whole with the receipt of nearly $4 million (for a $500,000

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property damage claim). Their greed and the relentless quest to avoid paying their attorney (who was their close family friend helping them when others would not), speaks volumes about their character. The Vannah attorneys were happy to oblige while billing $925 an hour with an endless well of money sitting in a protected account.

As discussed in detail below, the principles of American Grating, Mr. and Mrs. Edgeworth, through their agents, 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 Simon Amended Complaint. Angela Edgeworth and Brian Edgeworth admitted, under oath, they repeated these false and defamatory statements to third persons outside the litigation and openly admitted to filing the conversion claim for the ulterior purpose of punishing Mr. Simon personally and his firm. *See*, **Exhibit 8** at 145:10-21**;** *See also*, ¶¶76,77,78 of Simon Amended Complaint. These admissions confirm the false statements and lack of good faith basis necessary to seek protection of the litigation privilege or the Anti-SLAPP protections under Nevada law. It also establishes the malice and ulterior purpose establishing liability for abuse of process, defamation, Wrongful Use of Civil Proceedings, as well as civil conspiracy.

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B. <u>DEFENDANTS' BAD FAITH BEFORE AND AFTER THE MALICIOUS LAWSUIT CONSTITUTES ABUSE OF PROCESS FOR AN IMPROPER PURPOSE.</u>

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

1. <u>The Vannah/Edgeworth Team Acted with Malice for an Ulterior Purpose.</u>

Abuse of process is established if the Vannah/Edgeworth team initiated and maintained the conversion claim with malice for an ulterior purpose. Angela Edgeworth admitted under oath

the improper purpose of their claims, which was adopted by the Vannah attorneys. Angela Edgeworth testified under oath and confirmed the frivolous conversion theft claim was brought out of ill-will and hostility to punish Mr. Simon:

> 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 8** at 145:10-21; *See also*, ¶¶27,75,76,77,78,85,86,87 of Simon Amended Complaint.

There is no mistake about their malice and 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*, ¶¶75,76,77,78,85,86,87 of Simon Amended Complaint. These statements, under oath, confirm the real reason for the conversion claims pursued by the Edgeworth/Vannah team. 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 Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

See, **Exhibit 1;** *See also*, ¶¶33 of Simon 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

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approved and ratified the conduct of these entities. *See*, **Exhibit 8** at 168:18-169:11. She also testified that she adopted all testimony of her husband. *See*, **Exhibit 8** at 108:1-12.

III.

ARGUMENT

A. APPLICABLE LAW

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

B. STANDARD FOR MOTION FOR FAILURE TO STATE A CLAIM

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

C. THE FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS

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 Edgeworths that have the burden to show by a preponderance their conduct was made in good faith. In an attempt to do so, Defendants now offer new affidavits repeating the same false assertions the District Court already rejected after days of evidentiary hearing testimony. In short, Defendants cannot meet the burden of a preponderance to apply the litigation privilege.

Simply, a frivolous complaint riddled with false allegations known to the parties at the time they filed the multiple documents is not protected by the litigation privilege, particularly here where the Edgeworths admit the reason for the filings was to punish Simon. Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team. *See*, **Exhibit 1**. Certainly, Defendants cannot genuinely suggest they

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acted in good faith when they suggested and entered into an agreement to deposit the settlement funds to earn the client 100% interest; and then surreptitiously filed a conversion/theft claim before the money was even deposited.

D. PLAINTIFFS HAVE PROPERLY PLEAD ALL CAUSES OF ACTIONS IN THE AMENDED COMPLAINT

1. All Defendants are Liable for Abuse of Process

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); 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

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purpose" includes any improper motive underlying the issuance of legal process. *Dutt v. Kremp*, 108 Nev. 1076, 844 P.2d 786, 790 (Nev. 1992). The primary ulterior purpose here was to refuse payment of attorney's fees admittedly owed and subject Mr. Simon to harsh punishment. Mr. Simon incurred substantial expenses in excess of $300,000 to defend the frivolous abuses, as well as harm to his reputation to friends, colleagues and the general public causing damage and loss to his business and ultimately him and his family. 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 and malice is proven. *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252,259, 92 P.3d 882, 889 (App. 2004).

Here, Edgeworth and the Vannah attorneys invented a story of an express oral contract for an hourly rate only to refuse payment of the reasonable value of Mr. Simon's services. They also fabricated a story of theft, extortion and blackmail in an effort to secure a court order that Simon was already paid in full. Their conduct was also aimed to destroy Mr. Simon's practice, another ulterior purpose. They sued him personally to punish him. *See,* **Exhibit 8** at 145:10-21. They also sought to avoid lien adjudication and intentionally cause substantial expense to defend the frivolous claims. This is also another 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. It is the conduct or lack of conduct that controls the analysis. If the litigation privilege applies to the facts of this case, it would abolish all claims for abuse of process.

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Further, Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

Still to this day, Defendants cite to 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 undisputed money. Simon has properly plead the Abuse of Process claims based on Defendants' on-going abusive conduct long after the mere filing of the Edgeworth frivolous conversion Complaint.

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 when no justiciable claim ever existed. The only basis offered to the Court was the cavalier statement from Mr. Vannah that "He thought it was a good theory." *See*, **Exhibit 30** at 34:20-24. Greene could never provide authority. *See*, Jim Christensen Declaration, attached hereto as **Exhibit 11**. Even now they cannot find a single case across the entire country. 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 as admitted by Mrs. Edgeworth.

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 in order to prevail on a conversion claim. The Edgeworths have never claimed to have anything more than a right to payment based upon a purported contract. However, an alleged contractual right to possession is not enough, without more, to support a conversion claim as a matter of law:

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> "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. The Vannah/Edgeworth team knew the fabricated conversion claim was an impossibility yet still chose to accuse Simon of theft, extortion and blackmail, while at the same time seeking an order that Simon was "paid in full," and asking Judge Jones for full blown discovery and a jury trial to avoid lien adjudication. This wreaks of bad faith and the admissions already made during the lien adjudication proceedings confirm it all.

Such bad faith conduct and motives preclude application of the litigation privilege and Anti-SLAPP. When viewing the malicious emails and testimony under oath, confirming the ulterior purpose of "punishment," the reasonable conclusion is that all Defendants never contemplated and certainly did not maintain the conversion claim in good faith under serious consideration and the litigation cannot be applied. *Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (2014). Thus, when taking these facts in the light most favorable to Plaintiffs, the motion to dismiss should be denied.

2. <u>Intentional Interference with Prospective Economic Advantage is Properly Pled</u>

A claim for Intentional Interference with prospective Economic Advantage is established when:

> (1) a prospective contractual relationship between Clarke and a third party;
> (2) knowledge by defendant of the prospective relationship;
> (3) intent to harm plaintiff by preventing the relationship;
> (4) the absence of privilege or justification by defendant; and
> (5) actual harm to plaintiff as a result of defendant's conduct.

See, Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727 (1993).

Defendants contend that Plaintiffs have failed to plead specific prospective contractual relationships with third parties for their Intentional Interference with Prospective Economic

Advantage cause of action. The cases cited by Defendants to support their position are appeals from verdicts or summary judgment decisions and do not analyze the motion to dismiss standard as required here. Defendants fail to do so because the Nevada Supreme Court has clearly stated that this cause of action falls within the liberal pleading requirements of NRCP 8(a) and not the more specific particularity required by NRCP 9(b) as held in *Kahn v. Dodds (In re AMERCO Derivative Litg.),* 127 Nev. 196, 222-23, 252 P.3d 681, 699 (2011).

Furthermore, Plaintiffs properly allege that "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." *See*, ¶ 48 of Simon Amended Complaint. Plaintiffs further allege that "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." *Id*. at ¶ 49. The Edgeworths admitted under oath they knew that Simon was a personal injury lawyer. *See*, **Exhibit 8** at 15:17-19. They are highly educated people understanding the effects their wild accusations would have on Simon's practice. Consequently, they were well aware the false defamatory statements would have a devastating impact on his livelihood. This is why they did it while assuming the litigation privilege would shield them from a later suit. Nevada law does not provide such protection nor should it.

Nevada courts have found that allegations of the loss of prospective clients is sufficient when pleading intentional interference with prospective economic advantage. *See, Barket v. Clarke*, 2012 U.S. Dist. LEXIS 88097, *8-10, 2012 WL 2499359 (D. Nev. June 26, 2012). In *Clarke*, the Court found that Clarke sufficiently pled an intentional interference with prospective economic advantage claim, when he alleged that he had prospective contractual relationships with

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existing and prospective clients and when he claimed that Barket knew of Clarke's relationships. *Id.*

The Defendants are well aware that Simon's prospective clients would be deterred from retaining an attorney accused of the most egregious conduct that a lawyer could commit -extorting millions from a client. Therefore, even absent discovery, the Simon Plaintiffs have already established a prima facie case for this claim and have properly pled same *See*, ¶¶48, 49 of Simon Amended Complaint. Nevertheless, if this Court is inclined to grant Defendants' Motion regarding the IIEPA cause of action, then Plaintiffs respectfully request leave to amend pursuant to NRCP 15(a)(2) as may be necessary, but urges the court to allow discovery.

3. Wrongful Use of Civil Proceedings is Properly Pled

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

4. Defamation Per Se is Properly Pled

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 8** at 168:18-169:11. She also testified that she adopted all testimony of her husband. *See*, **Exhibit 8** at 108:1-12. In her June 4, 2020 affidavit, Angela Edgeworth reconfirmed her adoption of all of his false testimony. See, Angela Edgeworth's Affidavit attached as **Exhibit W** to Edgeworths' Renewed Anti-SLAPP Motion. 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 8** at 133:5-15; *See also*, ¶¶27,75,76,77,78,85,86,87 of Simon Amended Complaint. At the time the defamatory statements were made, these individuals did not have a

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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 8** at 133:5-23; *See also*, ¶¶23,77,87 of Simon Amended Complaint,

These admissions alone establish all elements for Simon's claims against all Defendants, and preclude the application of the litigation privilege or NRS 41.660. 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*, ¶¶23,77,87 of Simon 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, **Exhibit 15** at 8:17-20.

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Significantly, Mr. Herrera has no interest in the proceedings and these defamatory statements are not protected by the litigation privilege. *Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (2014). 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). Therefore, Plaintiff's properly plead this claim in the Amended complaint.

5. Business Disparagement is Properly Pled

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

6. Civil Conspiracy was 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).

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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; 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, WUCP, IIPEA, negligence 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 Edgeworths 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 and bill against the endless well of disputed money held in trust.

The Edgeworth's also benefitted from wrongful conduct, which is properly pled. *See*, Simon Amended Complaint. 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, and that filing and attorney lien is not extortion or blackmail.

7. <u>Negligence is Properly Pled</u>

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

8. <u>The Litigation Privilege Does Not Apply to the Facts of this Case.</u>

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).

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). 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 cited a footnote, *and* 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)

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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 Simon Complaint and Amended 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. The facts of this case fall squarely within the very situation courts refuse to allow application of the litigation privilege. Undeniably, the testimony of the Edgeworths admit this lack of good faith and ulterior purpose.

The differing reasons now given for the filing of the initial Edgeworth Complaint solidifies Defendants lack of good faith. The initial reason given by Defendants was the Edgeworth Complaint was filed when Simon would not release the funds that were solely the Edgeworths and they feared Simon would steal the money. *See*, December 28, 2017 Email, attached hereto as **Exhibit 20.** Since Simon never had the money when the initial lawsuit was filed, this is an absolute falsehood.

The reason then changed to Simon did not give a specific amount, and after realizing a specific amount was provided in the amended lien filed on January 2, 2018, two days before the initial conversion lawsuit, their reason later morphed into the amount Simon gave was too big. *See*, Robert Vannah Affidavit at 5:15-21, attached as **Exhibit A** to Vannah's Motion to Dismiss Amended Complaint: Anti-SLAPP; *See also*, Brian Edgeworth Affidavit at 11:22-12:3, attached as **Exhibit A** to AG Motion to Dismiss Amended Complaint: Anti-SLAPP. These ever-changing

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reasons were conclusively proven false. The initial conversion complaint states that a lien amount was not provided. *See*, Edgeworth Complaint at 5:28-6:3, attached hereto as **Exhibit 16**.

The allegation that the lien amount was excessive is also contrary to Vannah's invitation to lien the biggest amount Simon thought he could recover. The lien was supported by Will Kemp and never challenged at the hearing. *See*, Will Kemp Declaration, attached hereto as **Exhibit 9.** The amended lien contains a specific amount, which was done at the request of Edgeworth and Vannah. This amount is for the reasonable value of services. It does not request a contingency percentage and was less than 40%. However, Angela Edgeworth left no doubt about the real reason why the Edgeworth Complaint was filed, which was to "punish" Simon. *See*, **Exhibit 8** at 145:10-21. Therefore, since Defendants acts and/or statements in the complaint and subsequent filings have always been false, and Defendants have failed to meet their burden that their filings were done in good faith, the litigation privilege is not available.

The Edgeworths rely on *Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 383, 213 P.3d 496, 502 (2009) to assert that the litigation privilege should be applied in this matter. *See*, AG Motion to Dismiss Plaintiffs Amended Complaint at 9:16-21. The Edgeworths likely do so because the Nevada Supreme Court in *Clark County* concluded that the litigation privilege can be extended to non-lawyers' statements that were made in anticipation of judicial proceedings, which would arguably include Brian and Angela Edgeworth's statements. *Id.* (the absolute privilege affords parties the same protection from liability as those protections afforded to an attorney). However, when analyzing the litigation privilege to this case, the Edgeworths ignore several critical points of the Supreme Court's analysis in *Clark County*: "The purpose of the absolute privilege is to afford all persons the freedom to access the courts with assured freedom from liability for defamation **where civil or criminal proceedings are *seriously***

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***considered.*"** *Id.* (emphasis added). The Edgeworths gloss over this language and attempt to focus on the actual defamatory statements themselves while ignoring Simon's allegations that all Defendants did not act in good faith – i.e., seriously consider their actions -- when suing Simon for conversion. "[W]here a judicial proceeding has commenced or is, **in good faith, under serious consideration,** we determine no need to limit the absolute privilege to communications made by attorneys." *Id.* (citations omitted) (emphasis added). Here, Plaintiffs Complaint has sufficiently pled that Defendants did not act in good faith when asserting their conversion claim against Simon, and Defendants should not be permitted to use the privilege "as a cloak to provide immunity for defamation." *See* Restatement (Second) of Torts, § 587, cmt. e (1977). Finally, although properly pled, Simon has demonstrated through party admissions and admissible evidence the lack of good faith. The additional arguments offered in support of their good faith actually speaks volumes about their bad faith.

The Edgeworths also rely on *Leavitt v. Leisure Sports Inc*., 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987), in claiming that Simon's IIEPA claim should be dismissed, especially when stating the holding in *Leavitt* provides a privilege for the Edgeworth's actions in filing suit against Simon for conversion. First, the Edgeworth's reliance on *Leavitt* is misplaced for a privilege protecting its conduct because the Court stated that a "[privilege] ***can*** exist when the defendant acts to protect his own interest." *Id*. However, this is only a defense to the elements and will be for the jury to decide and is not the same as the litigation privilege. Whether the Edgeworth's conduct actually does create a privilege defense pursuant to *Leavitt* is for a jury to decide. The lack of good faith analysis to apply the litigation privilege to statements only still controls. More so, while the Edgeworth's arguments have no bearing on the present motion in determining

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whether the IIEPA cause of action was sufficiently pled pursuant to NRCP 8 and is not grounds for dismissal pursuant to NRCP 12(b)(5).

The Edgeworths now incredibly suggest other red herring reasons having no bearing on the real reason already given by Angela Edgeworth, which actually speaks volumes about their bad faith. The new reason never before given was that Simon wanted his name on the check. This is procedurally necessary to deposit the checks and to distribute the client's undisputed portion. Simon was admittedly owed $68,000 in costs and substantial fees they were not willing to pay. Simon's name on the check does not provide a basis for a conversion complaint. Another irrelevant ad hoc rescue reason is Simon would not deposit the money into Vannah's account. First, Vannah never made such a request and the many communications between Vannah and Jim Christensen confirm this falsehood. It is irrelevant if the money was deposited in Simon's account as this is the equivalent of interpleading the funds with the court. *See e.g., Golightly & Vannah*, 132 Nev. 416, 418 (2016). Vannah knows this, which means so did Edgeworth. This is also not a basis for a conversion claim.

Although the Edgeworths allegedly feared Simon would steal the money, this basis for conversion was entirely eliminated when Simon opened up the special trust account agreed to by the Vannah/Edgeworth team. One cannot sue for conversion merely based on an alleged fear without more, especially, when their attorney did not have that same concern– he didn't believe Simon would steal the money. *See,* **Exhibit 20**. 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. This was one week before filing of the Edgeworth conversion claim. The money was finally received 12 days after the Edgeworth conversion Complaint. Curiously, Defendants have never told this Court that their statements regarding extortion, blackmail and theft were true

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or alternatively, they did not know they were false as required for their affidavits to support the instant motions. This also screams an admission of their falsehoods.

Conversion was always a factual and legal impossibility. 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 the Edgeworth frivolous Complaints to fall within the purview 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 Simon's 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 faith and, therefore, was not entitled to the litigation privilege at that juncture). Therefore, Defendants' Motions should be denied.

IV.

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

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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 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
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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 15th day of July, 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' AMENDED COMPLAINT*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

An employee of Christiansen Law Offices

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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: AUGUST 13, 2020
HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION TO RENEWED SPECIAL MOTION OF BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC MOTION TO DISMISS PURSUANT TO NRS 41.637 ANTI- SLAPP

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Edgeworth Defendants' Renewed Special Motion Anti-SLAPP to Dismiss 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.

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, and their communications were equally not made in good faith. In analyzing the lack of good faith, this Court needs to look no further than the judicial findings of Judge Jones when she awarded fees against all Defendants, including the Edgeworth entities for having filed and maintained the frivolous conversion claim in bad faith.[1] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

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

The Honorable Tierra Jones conducted a five-day evidentiary hearing and ultimately found that the Edgeworth entities conversion allegations did not have a good faith basis in law or

[1] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a motion to dismiss. However, in a Special Motion to Dismiss: Anti-SLAPP, if the Court gets to the second prong of the analysis set forth in NRS 41.660, the burden shifts to the Plaintiff to show with "prima facie evidence a probability of prevailing on the claim." The Court is to analyze its decision pursuant to a summary judgement standard. Accordingly, this Court should consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case that Plaintiffs rely on as prima facie evidence to support their probability of prevailing on their claims. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto and should be considered to rebut Defendants' misrepresentations.

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fact. *See*, ¶33 of Simon Amended Complaint. 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. Defendants also ignore that victorious litigants are permitted to pursue claims when they have been abused by false allegations and frivolous complaints, including the attorneys who pursue such claims. *Bull v. McCuskey,* 96 Nev. 706, 615 P.2d 957 (1980).

These findings alone confirm the Defendants cannot meet their burden to show by a preponderance that their conduct was in good faith. 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 Vannah/Edgeworth team filed an appeal, which challenges the impact and use of the factual findings by the 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)).

Anti-SLAPP does not protect frivolous lawsuits. When conducting the Anti-SLAPP and litigation privilege analysis, this Court must first assess whether Defendants acted in good faith when filing the subject Edgeworth Complaint and subsequent filings. Not surprisingly, the instant

motion broadly asserts that Defendants at all time acted in good faith and thus, they should be afforded blanket protection across the board. *See,* Edgeworth Defendants' Motion to Dismiss Amended Complaint: Anti-SLAPP at 25:16-18. That assertion of good faith is contrary to the undisputed facts and judicial findings in the underlying litigation.

Indeed, Defendants all undermine their own assertions when they offer their own affirmative explanations for the purported basis for the initial Edgeworth Complaint against Simon. Specifically, Vannah, in a sworn affidavit, 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." *See*, Vannah's Affidavit at 5:24-27, attached as **Exhibit A** to Vannah's Renewed Anti-SLAPP Motion. Edgeworth repeats this false statement. *See*, Brian Edgeworth's Affidavit at 10:14-20, attached as **Exhibit A** to AG's Initial Anti-SLAPP Motion. Vannah and Edgeworth both knew the proceeds had not even been received when the initial lawsuit was filed on January 4, 2018, therefore, no justiciable claim existed. Other changing reasons were: (2) Simon would not give a lien amount; (3) The full proceeds were the Edgeworths; and (4) Simon was paid in full. Contrary to these false explanations, Simon gave a specific lien amount prior to the lawsuit and all Defendants admit Simon was always owed money. Defendants' purported version of events were presented to the court in the underlying litigation and squarely rejected and were also contrary to the real reason.

Angela Edgeworth, who ratified her conduct on behalf of American Grating and the Edgeworth Family Trust, openly admitted the reason for the conversion Edgeworth Complaint was to punish Simon personally. *See*, September 18, 2018 Transcript at 145:10-21, attached hereto as **Exhibit 8**. This party admission is corroborated by the fact that Mr. Simon was named personally despite the lien being filed solely by the Law Office of Daniel S. Simon, A Professional

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Corporation and they sought punitive damages for filing an attorney lien. This admission of malice and ulterior purpose, along with the judicial findings of Judge Jones confirms the lack of good faith necessary to apply the litigation privilege and separately establishes a prima facie case precluding Anti-SLAPP protection. The Vannah attorneys adopted the testimony of their clients as to the real reasons for filing the Edgeworth conversion Complaint, and are equally liable.

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 met Mr. Simon at the bank to sign the settlement checks and the lawsuit was filed before the settlement checks were even deposited. *See,* Simon Amended Complaint at ¶ ¶ 19, 20. Mr. Simon was admittedly owed substantial attorney's fees and filed a lawful attorney lien under Nevada law, prior to going to the bank, and receiving the settlement checks. *See*, NRS 18.015; *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Significantly, Defendants never challenged the enforceability of Simon's lien at the evidentiary hearing. In short, Defendants knew the allegation that Simon exercised ***wrongful*** control of the subject funds was a legal impossibility.[2] Defendant's intentionally omit the essential word **"WRONGFUL"** in the majority of their briefing. This word is a necessary element of conversion. Filing a lawful attorney lien pursuant to a Nevada statute is ***not unlawful*** and their intentional omission to mislead this court should not be overlooked.

[2] 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 conversion claim is so outrageous that the National Trial Lawyer Association was compelled to voice their position on the issue. Robert Eglet, Esq., current president of the NTLA, filed an Amicus Curie Brief in support of Judge Jones position dismissing the conversion claim. *See*, Amicus Curie brief, attached hereto as **Exhibit 35**. This brief echoed the undeniable fact that a lawyer who follows the law by filing a lawful attorney lien and places the funds in a protected account cannot be sued for conversion. One cannot violate the law by following the law enacted by the legislature.

Mr. and Mrs. Simon were close family friends and Mr. Simon treated them like family. *See*, August 29, 2018 Transcript at 207:15-20, attached hereto as **Exhibit 6**. The Edgeworths paid a minimal amount for attorney's 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. *See,* August 30, 2018 Transcript at 118:23-119:1, attached hereto as **Exhibit 7.** Simon and Edgeworth did not have an express agreement for fees and costs. *Id*. Simon created bills for calculation of damages to be produced against the plumber only as part of the construction contract. *See,* **Exhibit 6** at 208:16-21. All Defendants knew that Simon does not generally work on an hourly fee basis 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 attorney's fees through September 19, 2017. Vannah and Edgeworth used the few bills generated for the ECC production and paid by Edgeworth to invent the story that an express oral contract existed in order to challenge Simon's true reasonable fees. This was never a straight hourly billing case and the Edgeworths know it. In the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee

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contract. However, in an astonishing admission, the Edgeworth's new legal team finally admits to this fraudulent scheme when acknowledging that Simon never sought a contingency fee, but rather a flat fee. *See*, Edgeworth Initial Motion to Dismiss: Anti-SLAPP (filed by Patricia Lee) at 6:10-11;7:8-9. The flat fee agreement was presented at the request of Edgeworth so the parties could finally determine the reasonable value of Simon's services. This could only be done at the end of the case.

On January 8, 2018, the settlement checks were deposited. *See*, ¶20 of Simon Amended Complaint. 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. *See*, ¶21 of Simon Amended Complaint. Still, the Edgeworth Amended Conversion Complaint, which Defendants filed in March, 2018, maintained the same fabricated conversion allegations. *See*, ¶22 of Simon Amended Complaint. 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. Perhaps the new lawyers understand advancing false positions repeatedly is an abuse of process. Notably, it is the conduct of the Defendants during the litigation that allows liability against all of them for abuse of process and the other claims in Plaintiffs amended complaint. Litigation privilege only protects statements made in good faith and does not protect conduct.

Defendants also attempt to confuse the application of the litigation privilege with Anti-SLAPP protections. The Anti-SLAPP statutes require the communication to be true or made without knowledge of the its falsehood. The Vannah attorneys and the Edgeworth team all seek Anti-SLAPP protection for having made knowingly false statements, and then cite to the litigation privilege cases in hopes the court will gloss over the distinction.

Defendants newest procedural argument to delay the proceedings suggests that the Simon Amended Complaint cannot be filed after the filing of the Anti-SLAPP motions to dismiss without leave of Court. *See*, Edgeworth Defendants Motion to Dismiss Amended Complaint: Anti-SLAPP at pp.3-5. This form over substance argument is based on California law and does not consider the recent amendments pursuant to NRCP 15(a)(1)(B) made in March, 2019, that allows for an Amended Complaint to be filed without leave of court within 21 days of their responsive pleading. Plaintiff submits that NRCP 15 controls and there is no Nevada authority that precludes the application of NRCP 15. However, if this Court believes this is a concern, Plaintiffs seek an order, ***nunc pro tunc***, granting leave to file an Amended Complaint after the initial Anti-SLAPP motions were filed.

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 attorney 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. Inventing stories and making up facts do not make them true. Defendant's cannot engage in abusive conduct to relentlessly pursue frivolous claims aimed to punish a lawyer for filing a lawful attorney lien. This Court should not permit Defendants to use the litigation privilege or Anti SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

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II.

FACTUAL BACKGROUND

A. ONLY THE DISPUTED FUNDS ARE SAFEKEPT PENDING APPEAL

The Edgeworths have received the total value of all undisputed funds immediately after the settlement checks cleared the bank. Only the disputed funds are held in the special trust account. In December, 2018, Defendant filed a motion to release the funds over and above the adjudication order. Judge Jones 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 Edgeworth/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. As previously stated, this issue goes directly to the enforceability of the lien, which was never attacked by the Edgeworth/Vannah team. The District Court made a finding of a proper lien as a matter of law. This is also a final order on the issue.

Simon also filed a Writ of Mandamus complaining that the District Court did not properly apply Quantum Meruit. If the Supreme Court remands the Quantum Meruit issue, the District Court has an opportunity to award the full amount of the lien. Simply, Defendants arguments are completely contrary to Judge Jones' findings of fact, orders and their own conduct, and therefore, should be disregarded.

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B. THE UNPRIVILEGED DEFAMATORY STATEMENTS OF ANGELA AND BRIAN EDGEWORTH WERE ADOPTED BY ALL DEFENDANTS, INCLUDING THE VANNAH ATTORNEYS

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

1. The New Desperate Interpretation of Anti-SLAPP Law.

The Edgeworth/Vannah team advance the bizarre position that they can defame anyone they want as long as the defamation occurred in a restaurant or at a fundraiser. *See,* Edgeworth Defendants' Motion to Dismiss Amended Complaint: Anti-SLAPP at 9:27-10:1. The statements they made to third parties are false no matter where they are made and simply because a statement to a third person is made in a public place, it is still defamation. Since the statement is false, NRS 41.660 does not apply. This desperate interpretation of NRS 41.660 does not save their position or excuse their conduct. False statements are not afforded Anti-SLAPP protection regardless of where they are made. Their conduct throughout the proceedings is still abuse of process and defamation and all Defendants should have to answer for their intent to harm and punish Simon and his firm. Accusing a lawyer of stealing millions from a clients settlement is the most egregious allegation to be made against a lawyer. Sadly, these outrageous statements are repeatedly made by seasoned lawyers knowing how false they are and by whom Simon perceived as his close family friends that he helped through a difficult case obtaining an amazing result.

2. The Edgeworths' New Ad Hoc Rescue Argument That the Admitted Defamation was an Opinion in a Public Place.

This new unfounded argument does not save them from their own admissions. There is nothing contained in NRS 41.660 that allows a person to defame someone to third persons not interested in the litigation. *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014). For NRS 41.660 to even apply to any case, the statements must be truthful or made without knowledge of

the falsehood. The Defendants can never meet this burden. The new non-sensical position by the Edgeworths is that the anti-SLAPP somehow saves their defamatory statements because they were made in a restaurant. *See,* Edgeworth Defendants' Motion to Dismiss Amended Complaint: Anti-SLAPP at 9:27-10:1. If the statement is not true, it does not matter that it was made in a park, restaurant, or a movie theatre. It is defamatory because it is not true. The false statements were made to persons outside of the litigation, which is defamation. This is already confirmed by their own admissions.

The Edgeworths also now suggest they are excused because their defamatory statements are opinions. *See,* Edgeworth Defendants' Motion to Dismiss Amended Complaint: Anti-SLAPP at 11:12-17. This is not true. Mr. Edgeworth's affidavit telling the volleyball coach is stated as a fact. *See*, Brian Edgeworth's February 12, 2018 Affidavit at 8:11-15, attached hereto as **Exhibit 14.** It was put in an affidavit and filed with the Court to persuade the Court not to dismiss the conversion claim. His statement is not qualified as an opinion. Why would opinions be put in the affidavit as fact? Regardless, the Supreme Court of Nevada has also confirmed that defamation is actionable when a person states an opinion that Plaintiff is a thief if the statement is made in such a way as to imply the existence of information which would prove plaintiff to be a thief. *Nevada Indep. Broadcating Corp. v. Allen, 99 Nev. 404, 664 P.2d 337, 342 (1983)* (Opinion which gives rise to inference that the source has based the opinion on underlying, undisclosed defamatory facts.) The statements of theft, conversion and blackmail are easily verifiable facts and Edgeworth never asserted them as their opinion. After all, they had several seasoned lawyers, Mr. Vannah and Mr. Greene, advising them when preparing their affidavits and testimony for court. *See,* **Exhibit 4** 49:14-18. These statements were presented to the court as facts to persuade the court to cast Simon as a bad unethical lawyer not deserving of a fee for the work already

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performed. The verifiable facts would not be advanced by these very respected lawyers unless there existed some evidentiary basis and certainly implied the existence of information to prove their wild defamatory statements. *Also see Cohen v. Hansen, 2015 U.S. Dist. LEXIS 74468, 19-21 (D. Nev. June 9, 2015*) (expressions of opinion may suggest 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); *Wynn v. Smith 117 Nev. 6, 16 P.3d 424, 431 (Nev. 2001*) (the statement I think he must be an alcoholic is actionable because a jury might find that it implied that the speaker knew undisclosed facts justifying his opinion.) Restatement (Second Torts, s556, see also *Gordon v. Dalrymple, No. 3:07-CV-00085-LRH-RAM, 2008 U.S. Dist. LEXIS 51863, 2008 WL 2782914, at 4(D. Nev. July 8, 2008)* ("Any statement which presupposes defamatory facts unknown to the interpreter is defamatory.")

The new Angela Edgeworth affidavit trying to turn her defamatory statements into attorney privileged communications with Ms. Carteen, is opposite her under oath testimony. *See,* Angela Edgeworth Affidavit attached as **Exhibit W** to Edgeworth Anti-SLAPP Motion. The new affidavit should be disregarded since she confirmed at the evidentiary hearing Ms. Carteen was not her lawyer when she defamed Mr. Simon. *See,* Hearing Transcript, dated September 18, 2018 at 133:5-23, attached hereto as **Exhibit 8**. Finally, whether a statement is opinion vs. fact is a question for the jury and is not a basis to dismiss this claim on a motion to dismiss. *Fink v. Oshins*, 118 Nev. 428 (2002).

3. <u>Angela Edgeworth New Affidavit dated June 4, 2020</u>

Mrs. Edgeworth's June 4, 2020 affidavit is completely opposite her testimony at the evidentiary hearing. *See,* Angela Edgeworth Affidavit attached as **Exhibit W** to Edgeworth Anti-SLAPP Motion. Mrs. Edgeworth now attempts to make Lisa Carteen her lawyer instead of her

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friend to avoid liability for defamation. *Id*. The self-serving affidavit also undermines the false narrative that they were scared to get Mr. Simon's November 27, 2017 letter. *Id*. She now admits (if you can believe any of it), that she was counseled by Carteen prior to Vannah. *Id.* She had lawyers advising her how to avoid paying the reasonable fees and Carteen's involvement as a lawyer was hidden at the evidentiary hearing. Her involvement is now even more suspect. Was Carteen involved in creating the false affidavits? Was she speaking with Vannah and participating in the smear campaign? Regardless, Angela Edgeworth testimony is completely false for the purpose of this motion and should be disregarded. When she told the false stories of extortion and blackmail to Carteen, was it as a friend or lawyer? It cannot be both because she was asked point blank the statements were made to her as a friend, **and not as her lawyer.** The Vannah/Edgeworth affidavits are merely attempts to re-litigate the facts already decided by the Court and try and change their prior testimony which confirms liability and lack of good faith. They should be disregarded and treated with little weight, if any.

4. Simon Never Sought a Bonus

The Edgeworth/Vannah team also invented the new story that Simon sought a bonus only after a significant offer was made. 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*, **Exhibit 13** at 3:4-10; *See also*, **Exhibit 14** at 3:1-3**.** Mr. Greene advances the same argument in his affidavit to this Court. *See*, Greene Affidavit, attached as **Exhibit B** to Vannah's Renewed Anti-SLAPP Motion. This affidavit also confirms the Vannah attorneys are adopting the false testimony of the Edgeworths as their own when putting it in their own affidavits. This testimony by Greene and Vannah is also contrary to the District Court orders. 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 by Brian Edgeworth. Also, "bonus" is a word created and used solely by Vannah and Edgeworth. *See*, **Exhibit 4** at 180:25-181:11. The Defendants have never been able to explain why they sought relief that Simon has already been "paid in full," when they all admitted they always knew they owed him money. The Edgeworths' assertions, through the Vannah attorneys, follow a long and winding road.

5. Simon Never Sought a Contingency Fee

Most tellingly is Vannah's sworn testimony that Simon presented a contingency fee agreement to Edgeworth on November 17, 2017. *See* Vannah Affidavit at 9:23-27, attached as **Exhibit A** to Vannah's Anti-SLAPP Motion. A simple review of the documents confirms this statement is false. *See,* November 27, 2017 Letter, attached hereto as **Exhibit 38;** *See also*, **Exhibit 7** at 9:14-10:5. Mr. Vannah knows what a contingency fee agreement looks like, and he knows Simon never sent them a contingency fee retainer agreement. Similar to inventing an express oral contract to avoid paying fees, they invented the contingency fee story to call Simon unethical. The District Court stated in her ruling that this is not a contingency fee case, presumably to put an end to the false assertion being repeated ad nauseum. *See,* Exhibit 2 at 21:15-16. 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 math for Simon's proposed fee in November 2017 equals 25%, not 40%. *See*, **Exhibit 38**. Simon's lien did not request a contingency fee or a percentage and the proposed agreement and November 27, 2017 letter requested by the Edgeworths does not request a contingency fee or a percentage. *Id.*

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In the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee contract. They are still asserting this falsehood. *See*, Vannah Affidavit at 9:23-10:7, attached as **Exhibit A** to Vannah Anti-SLAPP Motion. Edgeworth also still asserts this notion. *See*, Brian Edgeworth Affidavit at 14:4-7, attached as **Exhibit A** to AG Initial Anti-SLAPP Motion. However, in an astonishing admission, the Edgeworth special motion to dismiss finally admits to this fraudulent scheme when acknowledging a contingency fee was never sought, but only a flat fee. *See*, Edgeworth Initial Special Motion to Dismiss: Anti-SLAPP (filed by Patria Lee) at 6:10-11;7:8-9. Finally, the Edgeworths admit the alleged contingency assertion was a false narrative, which confirms their fraud upon the court. Those falsities have been repeated in all of Defendants' filings, including the most recent affidavits seeking dismissal. Given these recent admissions, this Court should not rely on the statements in the affidavits. The false statements also conclusively deprive Defendants of Anti-SLAPP protection.

The Defendants, through Brian Edgeworth, also continue to advance the false arguments that the purported contingent fee agreement would modify an express oral contract. Brian Edgeworth affidavit asserts facts completely opposite Judge Jones ruling. The district court rejected this version of events in the underlying litigation. To be clear, there was not a contract to modify and Simon never asked for a contingency fee or a percentage. A proposed agreement for a flat fee representing the reasonable value of services is not a contingency fee. Notably, Brian Edgeworth conceded a contract could not have been entered into earlier because the dynamics of the case were fluid and the highly successful outcome could not have been anticipated earlier on. *See*, **Exhibit 4** at 160:14-20**;** *See also*, ¶13 of Simon Amended Complaint

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The Vannah lawyers are continuing with these same false assertions in their initial briefing to the Court. This ongoing unethical argument repeated throughout the briefs is contrary to the District Courts Decision and Order. *See*, **Exhibit 2.** This is also contrary to Vannah's statements to the Court that we do not criticize any work Mr. Simon did. *See*, February 6, 2018 Transcript at 32:5-9, attached hereto as **Exhibit 30.** The false statements were known to all Defendants at the time they were made foreclosing Anti-SLAPP protections. The new lawyers for Edgeworth were following these same false assertions in their initial briefing to the Court, but then changed course in later briefing.

6. Simon Never Sought to Modify a Contract

The story to modify an existing contract also failed. The Court found no express contract existed, therefore, there was nothing to modify. *See*, **Exhibit 2** at 7:15-16. Finally, Simon never approached Edgeworth to change anything. This is a new falsehood mentioned for the first time. Edgeworth acknowledged at the airport if another firm had the case, the bills would be three times and he knew the bills were not the full fee. *See,* **Exhibit 6** at 205:6-206:3. Shortly after, Edgeworth sent the unsolicited August 22 contingency email to Simon. *See*, **Exhibit 5** at 154:12-23. This email confirms no agreement existed, but discussions were ongoing and the only time a fair fee could be determined was at the end of the case. *See,* **Exhibit 7** at 96:19-97:1.

III.

ARGUMENT

Defendants assert the claims are barred by Nevada's Anti-SLAPP statute. It suggests that false statements can be made and they still get Anti-SLAPP protection. This is not true. 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

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is made without knowledge of its falsehood." Defendants' egregious misconduct in knowingly filing false claims is not entitled to such protections. Defendants, not Simon, must first make a showing that the filing of the complaint and the 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. The affidavits do not state that they believe their statements were true, likely because they know the falsity of the statements. Therefore, their affidavits do not provide the basis to apply Anti-SLAPP protection.

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 Edgeworths. 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 Edgeworth. 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 always false when giving a third version about its formation. In his August 22, 2017 email to Simon labeled contingency, he acknowledged there was not a contract. *See*, 8/22/17 Contingency Email, attached hereto as **Exhibit 22**. This was also the opinion of Will Kemp, Esq. and the District Court did not find that there was an express contract. Edgeworth also knew his statements were false when testifying that his August, 2017 email was sent after a significant offer was made. *See*, **Exhibit 13** at 3:4-10; *See also*, **Exhibit 14** at 3:1-3**.** This under oath statement was eventually abandoned when proven false when Simon showed the first offer was not until late October, 2017. *See*, **Exhibit 4** at 130:7-131:15. Incredibly, Mr. Greene adopted this same false statement in his

affidavit to this court attempting to present his good faith and truthfulness. *See*, John Greene Affidavit at 6:3-8, attached as **Exhibit B** to Vannah's Anti-SLAPP Motion. Vannah also falsely states Simon presented the Edgeworths with a contingency fee agreement. *See*, Robert Vannah Affidavit at 6:5-9, attached as **Exhibit A** to Vannah's Anti-SLAPP Motion. These statements in the affidavits are blatantly false and should not be relied upon when analyzing NRS 41.660.

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. A strategic lawsuit against public participation, known more commonly by its shortened name "SLAPP" is a meritless lawsuit that a plaintiff initiates to chill a defendant's freedom of speech and right to petition under the First Amendment. NRS 41.637. The Edgeworth frivolous conversion lawsuit squarely meets the definition of SLAPP confirming Simon was always protected by NRS 41.660. Filing an attorney's lien is a protected activity. *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016). The conversion lawsuit was initiated to chill Simon's right to petition the court to adjudicate his lien for attorneys' fees admittedly owed. The District Court did not rule on Simon's motion as moot when she dismissed the conversion lawsuit pursuant to NRCP 12(b)(5) as meritless and found it was brought in bad faith issuing sanctions.

Defendants never met the "preponderance" evidentiary threshold when Judge Jones made her findings based on the same evidence from the same parties. Therefore, since Judge Jones dismissed the Edgeworth conversion Complaint noting the bad faith, the Defendants cannot meet the "preponderance" evidentiary threshold required in this Motion. Even if this Court is inclined to accept Defendants' version that was already rejected by the District Court in the underlying

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matter, the Simon Plaintiffs have clearly made a prima facie case, which also denies the Defendants of the Anti-SLAPP protection.

Defendants also ignore NRCP 12(d) allowing a Court to consider evidence as part of a motion to dismiss pursuant to NRCP 12(b)(5). They argue they were deprived of discovery and Judge Jones refused to accept their allegations as true. Judge Jones allowed an extended hearing to call any witness and take as much time as needed to present their claims. The Judge heard all of their evidence and dismissed their claims based on substantial evidence.

A. STANDARD FOR SPECIAL MOTION TO DISMISS: ANTI-SLAPP

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."

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B. <u>THE FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS</u>

In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), 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."

Judge Jones 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 NRS 41.660. 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. *See*, **Exhibit 1**.

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. Simon did not **<u>wrongfully</u>** control the funds. Simon never touched the funds. Simon only filed a lawful attorney lien. The lien was always supported by substantial evidence. The lack of good faith is demonstrated by the mere fact Vannah/Edgeworth never challenged the enforceability 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. Mr. Simon was not paid in full and did not steal, extort or blackmail anyone. The changing reasons for the Edgeworth Complaint does not equate to good faith. Asserting ***<u>ex-post facto,</u>*** new conversion theories long after the evidentiary hearing does not rescue the lack of good faith and knowing falsehoods when the Edgeworth Complaints were filed and maintained. Judge Jones ordered the funds remain in the

account after Edgeworths appealed to the Supreme Court. All Defendants do not meet the first prong by a preponderance of the evidence regardless of their self-serving affidavits and their Motions should be denied.

C. SIMON HAS ESTABLISHED A PRIMA FACIE CASE

However, if this Court determines that the Defendants somehow made an initial showing as to the first prong, the burden shifts to the Plaintiffs 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 Plaintiffs show a probability of prevailing on the claim, the Anti-SLAPP Motion is denied. The summary judgement standard analysis gives the Simon Plaintiffs all reasonable inferences in their favor when analyzing this issue.

In the present case, the prima facie case is established merely by the judicial finding of bad faith when dismissing the Edgeworth 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 blatantly 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, under oath, and correctly asserted in Simon's Complaint and Amended Complaint. *See,* **Exhibit 8** at 145:10-21; *See also,* Simon Amended Complaint at ¶ ¶ 24,26,27, 59, 60, 61, 103 and 104.

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 4** at 178:20-25; *See also,* **Exhibit 5** 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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All Defendants knew the falsity of their claims and now abandon their statements of theft, blackmail and extortion to support conversion, which were always false. We know the falsehoods of theft were the reason for conversion because the initial emails within weeks of the initial Edgeworth conversion Complaint allege fear that Simon will steal the money *See***, Exhibit 27.** The bad faith is further established when Vannah confirmed he did not believe theft was an issue. *See*, December 28, 2017 email, attached hereto as **Exhibit 20**. 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 Nevada Supreme Court reversed the District Court dismissal of the complaint based on Anti -Slapp finding Delucchi and Hollis presented sufficient evidence to create a genuine issue of material fact.

Importantly, the *Delucchi* Court held:

> **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. (emphasis added)

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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 Jones is the prima facie evidence needed to defeat the Anti-SLAPP Motion. Plaintiffs submit this Court does not get to the second prong of the analysis, but if it does there is a plethora of admissible evidence to support denial of the Defendants motion consistent with *Delucchi*.

Since Angela Edgeworth admitted to the real purpose of filing the Edgeworth Complaint (punishment), and this reason was adopted by the Vannah attorneys, the lack of good faith is admitted, and they never filed the conversion with the good faith belief they could ever prevail. *See*, **Exhibit 8** at 145:10-21. 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 the Edgeworth frivolous 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 Edgeworth 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 faith the money was stolen at the time of his initial Complaint. He cannot do this. He never testified to this actual theft, which 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 20.** This was one week before filing the Edgeworth conversion claim. The money was finally received 12 days after the Edgeworth conversion

Complaint. Curiously, Defendants have never told this Court that they didn't know their statements regarding extortion, blackmail and theft were false.

Finally, the Simon Plaintiffs 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). Specifically, Plaintiffs seek discovery about what the Defendants knew or did not know when filing the initial Edgeworth complaint and/or subsequent pleadings. The Vannah attorneys aver they did substantial research prior to filing the initial Edgeworth Complaint in support of their good faith basis. However, they have not provided any evidence of this research, or even a relevant case through today. Discovery surrounding their research, including the specific research and the research trails is crucial to determine the asserted good faith by the Vannah Attorneys. Plaintiffs also seek discovery about what the Edgeworth Defendants told Rueben Herrera, Justice Miriam Shearing and attorney Lisa Carteen. The new Edgeworth affidavits attached to their Renewed Special Motion to Dismiss: Anti-SLAPP specifically address what they assert was told to these witnesses and their depositions are crucial to determine exactly what was said to these witnesses. Their new affidavits stating what was told to these witnesses is completely opposite of their in court and under oath testimony. Additional discovery surrounding the email communications, text communications as to what they knew, their plan and on-going abuses is also needed to address the core issue of good faith at the time the initial Edgeworth Complaint and subsequent filings were made. All Defendants are in exclusive possession of this information and thus far have refused to allow imaging of their portable devices to preserve this evidence. This discovery is specifically requested if the Court is not inclined to deny the motions outright. *See,* Declaration of Peter S. Christiansen, Esq., attached hereto as **Exhibit 12.**

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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. Since the Defendants continue to argue the litigation privilege in their Anti-SLAPP Motions to Dismiss, Simon is compelled to address these arguments again.

IV.

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 have also presented, under oath testimony directly disputing the self-serving false

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facts presented in the new affidavits in support of their Motions. Finally, the order Judge Jones and the party admissions deprives Defendants of the protections sought. Therefore, Plaintiffs respectfully request this Court DENY American Grating and the Edgeworth Defendants' Motions in their entirety, or alternatively allow discovery pending the final order on the Motion.

Dated this 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
KENDELEE L. WORKS, ESQ.
Attorneys for Plaintiffs

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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 15th day of July, 2020 I caused the foregoing document entitled ***PLAINTIFFS' OPPOSITION TO RENEWED SPECIAL MOTION OF BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC MOTION TO DISMISS PURSUANT TO NRS 41.637 ANTI-SLAPP*** 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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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: AUGUST 13, 2020
HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH'S MOTION TO DISMISS PLAINTIFFS' INITIAL COMPLAINT

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The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to Defendants' Motion to Dismiss Plaintiffs' Initial Complaint. [1]

[1] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a Rule 12(b)(5) motion to dismiss. However, the Nevada Supreme Court has long held that the court may take into account matters of public record, orders, items present in the record of the case, any exhibits attached to the complaint and any documents incorporated by reference into the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842,

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.

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 Edgeworth's for Defendants having filed and maintained the frivolous conversion claim in bad faith. The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' 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

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847 (1992). Accordingly, this Court may consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case. Further, NRCP 12(d) provides if, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto.

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and provides the basis for this Court to easily conclude that the Edgeworths 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 merely seeks a broad, over inclusive order dismissing all claims. *See*, Edgeworths Motion to Dismiss Initial Complaint, at 8:2-13. 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 the Edgeworths, confirm the Defamation for Per Se and Business Disparagement Claims when they both 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. *See, Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (2014). This tortious conduct also supports the civil conspiracy. *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,

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709, 615 P.2d 957, 960 (1980). When the allegations in Plaintiffs' Complaint and Amended 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. *See*, ¶33 of Simon Amended Complaint. 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 on behalf of their clients. *Bull v. McCuskey*, supra.

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 8.** 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.

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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.

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.

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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 serious 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 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.

III.

FACTUAL BACKGROUND

A. THE UNDERLYING CASE

Simon Law represented the Edgeworth entities in the underlying case *Edgeworth Family Trust and American Grating, LLC vs. Lange Plumbing, LLC and The Viking Corporation* (and related entities) for claims resulting from a defective sprinkler head prematurely activating and flooding a single family residence being constructed by Edgeworth that caused approximately

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$500,000.00 in property damage. *See*, ¶12 of Simon Complaint. Mr. Simon and Edgeworth never entered into a formal written agreement for Mr. Simon's representation. *Id*. The reason a written agreement was not entered into is that this case started out as a favor for his longstanding friend who did not want to pay other counsel. Edgeworth could not find any other lawyer to take the case without charging him significant sums, so he called Mr. Simon for a favor. *See*, May 27, 2016 Email, attached hereto as **Exhibit 21**. The only other lawyer able to handle the matter wanted a $50,000 retainer that Mr. Edgeworth did not want to pay. *Id.* Mr. Simon commenced the representation in hopes of sending a few letters and triggering coverage so the sprinkler installer, Lange Plumbing, would take over the case pursuant to the construction contract requiring them to enforce the warranty for the defective sprinkler against the manufacturer, Viking, et al. *See*, August 29, 2018 Transcript at 203:5-18, attached hereto as **Exhibit 6**. At the outset of helping the Edgeworths, Mr. Simon did not intend on heavily litigating the case as the substantial time and expense necessary was not feasible for his small firm. Mr. Simon communicated that he did not want the case, but was asked to continue. *See*, May 27, 2016 Email, attached hereto as **Exhibit 21**. Unfortunately, Mr. Simon did continue to help his friends with the full understanding that they would work out what would be a fair fee at the end of the case. *See,* August 30, 2018 Transcript at 96:19-97:1, attached as **Exhibit 7.** The insurance denied all of Edgeworths 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. Mr. Simon, as a close friend provided options to Edgeworth to help him 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*, **Exhibit 7** at 182:25-183:17. Mr. Simon did not ask for a retainer,

advanced costs in the sum of $200,000 that was periodically reimbursed throughout the case. Mr. Simon did not even create a bill until six months after a lawsuit was filed. A bill was only created initially for the upcoming early case conference to show special damages as attorney's fees and costs were an item of recovery allowed under the Lange Plumbing's contract. *See*, August 29, 2018 Transcript at 208:12-209:3, attached hereto as **Exhibit 6**. The case continued to morph into a complex, contentious and time-consuming products liability, construction defect and contract case. *See*, ¶14 of Simon Complaint. Only a few other bills were generated as time permitted over the next 10 months. This was not a pure hourly case; otherwise, these bills would have been billed regularly every 30 days, with all time included, which would have amounted in the range of $1.5-$2.5 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.

The bills generated for the case against Lange Plumbing contained partial time for attorneys fees and an itemization of costs to be reimbursed. As the case changed, the focus was on the manufacturer and consumed Mr. Simon's small office. *See*, ¶14 of Simon Complaint; *See, also*, **Exhibit 7** at 44:14-45:11. Edgeworth was also a demanding client abusing the time of everyone in the office day, night, weekends and holidays. Edgeworth did pay the bills, which were nominal for the work being done, and Simon deposited the checks to get reimbursed for the costs advanced and to defray some of the time his office was devoting to the case. However, it was never the understanding that these bills were the full fee to be paid, as that needed to be worked out at the end of the case depending on the result. If the result was great, Simon should get paid his full reasonable value. If the outcome was not great then Simon would lose helping a

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friend. *See,* **Exhibit 7** at 118:23-119:1; 120:3-6. It is not unethical or unfair to pay the reasonable value of a lawyer's services, which is the entire concept of the equitable doctrine of Quantum Meruit. A client is never harmed by paying the reasonable value of the services already performed.

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 the unique nature of the property damage claim and extent of legal services and costs required to achieve a great result. *See*, ¶14 of Simon Complaint. In August of 2017, Mr. Simon and Edgeworth agreed that the flood case dramatically changed and had discussions about an express fee agreement based on a hybrid of hourly and contingency fees. *See*, Contingency Email, attached hereto as **Exhibit 22.** 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; 136:14-137:4, attached hereto as **Exhibit 4.** 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 4** at 160:14-20. Due to their friendship, **and only their friendship**, did Mr. Simon continue 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 Simon Complaint. He treated the Edgeworths like family - taking their case when others would not absent the payment of a large retainer. *See*, May 27, 2016 email. Attached hereto as **Exhibit 21.** Mr. Simon never asked for a retainer (even for costs) and advanced $200,000 in costs that were periodically reimbursed. This was done only because of the close trusting relationship he

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felt he had with the Edgeworths. Angela Edgeworth considered Mrs. Simon one of her closest friends. *See*, **Exhibit 6** at 213:7-13. 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.

After performing amazing work, securing a substantial amount of money, the Edgeworths did not want to work out what was fair for the work performed. Notably, whatever fee that could have been worked out at the end of the Viking case, could have been recovered under the construction contract with the Lange Plumbing. *See,* **Exhibit 6** at 208:16-21. The Edgeworths elected to waive this valuable claim on the advice of the Vannah attorneys, which was completely opposite of Mr. Simon. *See*, Consent to Settle, attached hereto as **Exhibit 36.** Instead, the Edgeworths stopped all direct communications with Mr. Simon and his office entirely, secured new counsel, fired him and falsely sued him for stealing. *See*, ¶16 of Simon Complaint. Even worse, the Edgeworths, through their lawyers, commenced a smear campaign making wild false accusations in its pleadings accusing Mr. Simon of extortion, stealing, dishonestly, and unethical conduct. These unsupported wild allegations are part of the Edgeworths devised plan, and were communicated to third persons not connected to the litigation. This strategy is despicable and the conduct alleged against Simon really describes the conduct of the Edgeworths solely as an attempt to avoid paying a reasonable fee to Mr. Simon. Sadly, Mr. Simon and his firm were taken advantage of by whom he believed to be close family friends and wishes in retrospect that things were done differently. Mr. Simon and his staff complied with all ethical duties in securing and finalizing the settlement even after he was fired and falsely accused. The District Court

commended Simon in the performance of his duties under the unusual circumstances. *See*, Amended Decision and Order on 12(b)(5) at 7:10-11, attached hereto as **Exhibit 3.**

B. THE UNPRIVILEGED DEFAMATORY STATEMENTS OF ANGELA AND BRIAN EDGEWORTH WERE ADOPTED BY ALL DEFENDANTS, INCLUDING THE VANNAH ATTORNEYS

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. *See, Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (2014). Both Edgeworths admit to all of it in their under-oath testimony.

Angela Edgeworth 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 8** at 168:18-169:11. She also testified that she adopted all testimony of her husband. *Id.* 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. *Id.* at 133:5-15; *See also*, ¶¶24,26,27,59,60,61,75,76,77,78,85,86,87,103,104 of Simon Amended Complaint. 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?

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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 8** at 133:5-23. (emphasis added)

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, supra.* 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 Simon Amended Complaint. Specifically, Mr. Edgeworth stated he told persons outside the litigation, 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 15.**

Edgeworth admits to his defamation to the volleyball coach in his sworn affidavit. *Id*. Mr. Herrera did not have any interest in the proceedings. 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 Simon Amended Complaint. *See also*, **Exhibit 15** at 8:17-20. 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 Edgeworths now go to great lengths to explain away their defamatory statements to third parties not having a significant interest in the proceedings. The Edgeworths desperately suggest Simon instigated an issue with the volleyball coach forcing him to defame Simon. The reality is that Edgeworth owns the gym and controls the coach. Simon's daughter had a serious knee condition and given the fallout with the Edgeworths, Simon sent an email to the coach requesting he release her from the team. The coach did not respond to Simon, so a follow up email was sent. *See*, Email attached as **Exhibit B** to AG Motion to Dismiss Amended Complaint. There is nothing in the email suggesting wrongdoing on the part of Edgeworth and this is yet another attempt to spin facts to portray themselves as victims. This is not the case.

The new sworn affidavit of Brian Edgeworth now states he never used the word "extortion" to Mr. Herrera which completely contradicts his prior affidavits that he was "forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars" from him. *See*, **Exhibit 15** at 8:17-21. This has been the Edgeworths' pattern throughout litigation. They state a fact when it best serves them and later deny it when it hurts them. Realizing his statements to Mr. Herrera is defamation per se, he now denies it to avoid liability. Similarly, his wife confirmed her defamation to Ms. Carteen, and now tries to avoid liability by suggesting she was her lawyer. The Edgeworth conversion complaint was always based on lies, attacks and denials. Now, they want this Court to believe everything they say at face value regardless of the evidence confirming these falsehoods.

They also offer an alternative rescue argument that they felt extorted. They have very seasoned attorneys that should have reassured them that regardless of how they felt, filing an attorney lien for attorneys fees and costs admittedly owed is not extortion, blackmail, theft or conversion.

1. Unsupported Defenses

Another example of their unsupported assertions is in their moving papers when the Edgeworths 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 8** at 145:10-21. The lien is not unrightful as confirmed by Judge Jones.

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

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

Plaintiffs attempted to avoid filing an opposition to the instant motion based on the Amended complaint filed on May 21, 2020. *See*, June 5, 2020 Email from Kendelee Works to Defendants, attached hereto as **Exhibit 37**. The Edgeworth Defendants refused to stipulate to withdraw the instant motion based solely on the premise that once an Anti-SLAPP motion is filed, an Amended Complaint cannot be filed without leave of Court. *Id; See also,* American Grating's Motion to Dismiss Amended Complaint at 10:12-11:16.

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This form over substance argument is based on California law and does not consider the recent amendments pursuant to NRCP 15(a)(1)(B) in March 2019, that allows for an Amended Complaint to be filed without leave of court within 21 days of their responsive pleading. They argue that an Anti-SLAPP Motion is not enumerated in the rule. There is also nothing to preclude it. This is a conflict of law issue having no substantive bearing on the outcome of the instant motions. Plaintiff submits that NRCP 15 controls and there is no Nevada authority that precludes the application of NRCP 15, when an Anti-SLAPP Motion is filed. However, if this Court believes this is a concern, Plaintiffs seek an order, *nunc pro tunc*, granting leave to file an Amended Complaint after the initial Anti-SLAPP motions were filed.

In regard to the Edgeworth Defendants Motions, 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. Plaintiffs will address the Anti-SLAPP arguments in the opposition to the special motion to dismiss filed by Defendants based on Anti-SLAPP. 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 and 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. PLAINTIFFS HAVE PROPERLY PLEAD ALL CAUSES OF ACTIONS IN THE AMENDED COMPLAINT

1. 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.

2. Plaintiffs' Claims Are Ripe for Adjudication

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

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3. All Defendants, including the Edgeworth Entities are liable for Abuse of Process

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

Additionally, 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 at 6:5-12. Defendants cite *Laxalt v. McClatchy*, 622 F.Supp. 737, 751 (1985), which only concerned a bare bones initial complaint. Here, Simon has narrowly detailed the abusive conduct before and after the initial complaint, which continues through today. Although Defendants want to include the amended complaint as an initial complaint to avoid liability, the amended complaint is an independent 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 it was filed. Their Amended Complaint was filed while an Anti-SLAPP motion was pending. Regardless, Defendants have not cited any authority that amended complaints are treated the same as the initial complaint for purposes of abusive conduct. The abusive conduct is set forth in the oppositions, affidavits, amended complaint, motions filed, participating in an evidentiary hearing, emails, 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. Mr. Greene's refusal to communicate any authority and his complete defiance of Judge Jones orders when continuing to argue conversion to her after she already dismissed the claim is abusive. The false affidavits of Edgeworth and publishing these statements to the community, along with threatening emails and inventing stories to refuse attorneys fees owed is more than enough. Seeking court orders that Simon was paid in

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full when he was owed substantial sums for work already performed is despicable. The amended complaint filed by Simon describes substantial abusive measures after the mere filing of the complaint. *See,* Simon Amended Complaint at ¶ ¶ 57-65.

4. Wrongful Use of Civil Proceedings is Properly Pled

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

5. 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, extortion and blackmail to third parties that had no interest in the proceedings. *See*, **Exhibit 14** at 8:11-15; *See also*, **Exhibit 8** at 133:5-23. 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 Edgeworths adopted each other's statements and ratified their own conduct on the part of the Edgeworth Family Trust and American Grating, LLC. 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.

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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 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* Simon Amended Complaint, at ¶ ¶ 66-7. Simon never stole the settlement money. Simon never extorted

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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 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. The public would easily presume that the seasoned lawyers pursuing these wild accusations would have a factual and legal basis.

a. 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. Simon's damages do not all stem from judicial statements as argued by Defendants.

6. 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 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).

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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. The conduct of all Defendants 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.

7. <u>Civil Conspiracy is Properly Pled</u>

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, 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 Edgeworths 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

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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,* Simon 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 by Judge Jones, and all 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)

8. <u>Negligence is Properly Pled</u>

The Edgeworths asserts that Simon has not pled facts sufficient to hold it liable under a negligence cause of action but improperly relies upon the litigation privilege as its defense without addressing how the Complaint fails to plead negligence sufficiently against the Edgeworth entities.

As stated in the Edgeworths' Motion, "Negligence is the failure to exercise the degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances." *See*, American Grating's Motion to Dismiss at 26:20-21 (citing Nevada Jury Instructions 4.02 and 4.03; and BAJI 3.10). An ordinarily and careful person (or corporation)

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would not sue Simon for conversion in bad faith and then defame Simon in order to punish him instead of paying him the reasonable fees he was owed. The Edgeworths breached their duty when choosing to act in bad faith and harm Simon via the improper and meritless conversion claim along with the related defamatory statements by its officers. These statements are not protected by the litigation privilege and only go to prove the Edgeworth entities conduct, which, at the minimum, was negligent toward Simon, thus resulting in damages – all of which is plead in the Complaint. *See*, ¶¶66, 67, 68, 69,70 of Simon Complaint.

Therefore, the Edgeworths, recognizing its litigation privilege and Anti-SLAPP defenses may fail, asserts that its agents, Brian and Angela Edgeworth, did not have authority to make the defamatory statements on behalf of American Grating. Thus, American Grating cannot be held liable for Brian and Angela Edgeworth's conduct. This argument has no merit whatsoever when one analyzes the facts of this case as addressed in Plaintiffs' Opposition to the Edgeworth's Initial Anti-SLAPP Motion.

9. <u>The Litigation Privilege Does Not Apply Because Defendants Did Not Contemplate the Conversion Claim Against Plaintiffs in Good Faith.</u>

Simon incorporates by reference this section contained in Simon's Opposition to the Edgeworth Defendants' Motion to Dismiss Amended Complaint pursuant to NRCP 12(b)(5).

Additionally, the Edgeworths 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.

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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.

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, which was admitted by a party. Success on the Conversion claim was a legal impossibility and Defendants never had a good faith basis to assert that claim, which they continue to pursue.

a. <u>The litigation privilege does not apply to 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 and is limited to this context. 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 concerns statements and does not equally apply to the claims for Abuse of Process and Civil Conspiracy based on those tortious acts. *Bull v. McCuskey, Supra.* The defamation and business disparagement fall outside of the privilege when they were communications to third persons outside the litigation.

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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 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
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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 15th day of July, 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' INITIAL COMPLAINT*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

An employee of Christiansen Law Offices

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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: AUGUST 13, 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' AMENDED COMPLAINT

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Vannah Defendants' Motion to Dismiss Plaintiffs' Amended Complaint.

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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.

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 findings of Judge Jones when she awarded fees against all Defendants, including the Edgeworth entities for having filed and maintained the frivolous conversion claim in bad faith.[1] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

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

The Honorable Tierra Jones conducted a five-day evidentiary hearing and ultimately found that the Edgeworth entities conversion allegations did not have a good faith basis in law or fact. *See*, August 27, 2018 Testimony at 180:25-181:11, attached hereto as **Exhibit 4.** Judge Jones

[1] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a Rule 12(b)(5) motion to dismiss. However, the Nevada Supreme Court has long held that the court may take into account matters of public record, orders, items present in the record of the case, any exhibits attached to the complaint and any documents incorporated by reference into the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1992). Accordingly, this Court may consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case. Further, NRCP 12(d) provides if, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto.

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dismissed the conversion claim and awarded Simon attorney's fees and costs for having to defend against the baseless cause of action. The findings of Judge Jones alone confirm the Defendants cannot meet their burden to show by a preponderance that their conduct was in good faith. This appeal is a final order have and should have preclusive effect as to the lack of good faith. "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)). Significantly, the new affidavits seeking dismissal contain the same facts already presented in the underlying litigation and rejected by Judge Jones. This is equally false testimony since the District Court has already found these same facts from the same parties can never be established. Simply, 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. 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).

The litigation privilege does not apply to the judicial process unless it involves a complaint contemplated in good faith under serious consideration of prevailing on that claim. When conducting the litigation privilege analysis, this Court must first assess whether Defendants acted in good faith when filing the subject Edgeworth Complaint and subsequent filings. Not surprisingly, the instant motion broadly asserts that Defendants at all time acted in good faith and thus, they should be afforded blanket protection across the board. See, Vannah Motion to Dismiss

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Amended Complaint at 13:13-17. That assertion of good faith is contrary to the undisputed facts and judicial findings in the underlying litigation.

Indeed, Defendants all undermine their own assertions when they offer their own affirmative explanations for the purported basis for the initial Edgeworth Complaint against Simon. Specifically, Vannah, in a sworn affidavit, 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." *See*, Vannah's Affidavit at 5:24-27, attached as **Exhibit A** to Vannah's Renewed Anti-SLAPP Motion. Edgeworth repeats this false statement. *See*, Brian Edgeworth's Affidavit at 10:14-20, attached as **Exhibit A** to AG's Initial Anti-SLAPP Motion. Vannah and Edgeworth both knew the proceeds had not even been received from the settling Defendants when the initial lawsuit was filed on January 4, 2018, therefore, no justiciable claim existed. On January 8, 2018, four days after the lawsuit, they all met Simon at the bank to deposit the money. Other changing reasons were: (2) Simon would not give a lien amount (despite the fact the lien filed two days earlier had a specific amount); (3) The full proceeds were the Edgeworth's (despite their admissions Simon was always owed attorney's fees and 68k in costs when the initial complaint was filed); or (4) Simon was paid in full (contrary to their admission Simon was always owed money). Defendants' purported version of events were presented to the court in the underlying litigation and squarely rejected and were also contrary to the real reason given by Angela Edgeworth.

Angela Edgeworth, who ratified her conduct on behalf of American Grating and the Edgeworth Family Trust, openly admitted the reason for the conversion Edgeworth Complaint was to punish Simon personally. *See*, September 18, 2018 Testimony at145:10-21, attached hereto as **Exhibit 8.** This party admission is corroborated by the fact that Mr. Simon was named

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personally despite the lien being filed solely by the Law Office of Daniel S. Simon, A Professional Corporation. This admission of malice and ulterior purpose, along with the judicial findings of Judge Jones confirms the lack of good faith necessary to apply the litigation privilege and separately establishes a prima facie case precluding Anti-SLAPP protection. The Vannah attorneys adopted the testimony of their clients as to the real reasons for filing the Edgeworth conversion Complaint and have never rebuked this testimony.

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. *See,* Simon Amended Complaint at ¶ ¶ 19, 20. Mr. Simon was admittedly owed substantial attorney's fees and costs, and filed a lawful attorney lien under Nevada law, prior to going to the bank, and receiving the settlement checks. *See*, NRS 18.015; *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Significantly, Defendants never challenged the enforceability of Simon's lien at the evidentiary hearing and the lien amount was invited by the Vannah/Edgworth team. In short, Defendants knew the allegation that Simon exercised ***wrongful*** control of the subject funds was a legal impossibility.[2] Defendant's

[2] 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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intentionally omit the essential word **"WRONGFUL"** in the majority of their briefing. This word is a necessary element of conversion. Filing a lawful attorney lien pursuant to a Nevada statute is not ***wrongful*** and their intentional omission should not be overlooked.

The conversion claim is so outrageous that the National Trial Lawyers Association was compelled to voice their position on the issue. Robert Eglet, Esq., current president of the NTLA, filed an Amicus Curie Brief in support of Judge Jones position dismissing the conversion claim as frivolous. *See*, Amicus Curie Brief, attached hereto as **Exhibit 35.** This brief echoed the undeniable fact that a lawyer who follows the law by filing a lawful attorney lien and places the disputed funds in a protected account cannot be sued for conversion. One cannot violate the law by precisely following the law enacted by the legislature.

The Edgeworths paid a minimal amount for attorney's 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). The Edgeworths were close family friends. *See*, August 29, 2018 Testimony at 207:15-20, attached hereto as **Exhibit 6.** This is why Mr. Simon agreed to help them and determine a fair fee at the end of the case. *See,* August 30, 2018 Testimony at 118:23-119:1, attached hereto as **Exhibit 7.** Simon and Edgeworth did not have an express agreement for fees and costs. *Id*. Simon created bills for calculation of damages to be produced against the plumber only as part of the construction contract. *See,* **Exhibit 6** at 208:16-21. Vannah and Edgeworth saw an opportunity and used these bills when inventing the story of an express oral contract in order to challenge Simon's true reasonable fees. In the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee contract. They are still asserting this falsehood. *See*, Vannah Affidavit at 9:23-10:7, attached as **Exhibit A** to Vannah Anti-SLAPP Motion. Edgeworth

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also still asserts this notion. *See*, Brian Edgeworth Affidavit at 14:4-7, attached as **Exhibit A** to AG Initial Anti-SLAPP Motion. However, in an astonishing admission, the Edgeworth's new counsel concedes Simon never sought a contingency fee. The flat fee agreement was presented at the request of Edgeworth so the parties could finally determine the reasonable value of Simon's services. This could only be done at the end of the case. The District Court uncovered the falsehood and flatly rejected the Edgeworth story of an express oral contract and rejected the unethical lawyer theme.

Also significant, the Edgeworth's never had any recoverable damages because the settlement money was and is safekept in trust. *Kasdan, supra.* Meanwhile, the Edgeworth's continue to earn interest on the entire sum, including the amount due to 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 20.** Vannah cannot enter into an agreement and then surreptitiously sue Simon suggesting he acted in good faith.

Mr. Vannah boldly asserts that it is permissible to sue a lawyer for conversion under the facts of this case for filing a lawful attorney lien. However, Mr. Vannah has yet to provide any authority to support this position. So far, nobody agrees with this position. However, others who have extensively examined the facts of this case disagree with the Vannah/Edgeworth team. Particularly, the Honorable Judge Jones, Robert Eglet, Esq., on behalf of the National Trial Lawyers Association, William Kemp, Esq. and David Clark, Esq. have presented their independent positions relative to the facts of this case and squarely reject the Vannah Attorneys lone assertions. This is likely the reason the Vannah/Edgeworth team never presented any experts to dispute Will Kemp or David Clark. Mr. Christensen, Esq. has also weighed in on the matter. *See,* Declaration of James Christensen, attached hereto as **Exhibit 11.**

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II.

FACTUAL BACKGROUND

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim. The Edgeworths admit they were made whole when they received their share of almost $4 million. *See*, ¶21 of Simon Amended Complaint. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment. The Edgeworths 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 Simon Amended Complaint. 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 for merely filing a lawful enforceable attorney lien. On January 4, 2018, the Edgeworths and the Vannah firm filed a lawsuit alleging conversion of the settlement money. *See*, ¶19 of Simon Amended Complaint. The frivolous conversion lawsuit asked the court to find Simon was "paid in full" and asserted the settlement proceeds were solely the Edgeworth's (Edgeworth Complaint at 8:6-8, attached hereto as **Exhibit 16**; Edgeworth Amended Complaint at 8:21-9:21 attached hereto as **Exhibit 17**), which is in stark contrast to the sworn testimony of Edgeworth, who confirmed he **"always knew he owed Simon money,"** (*See*, **Exhibit 4** 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 …….
>
> THE COURT: ……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.

See, August 28, 2018 Transcript at 36:1-37:3, attached hereto as **Exhibit 5.** *See*, ¶¶19,20 of Simon Amended Complaint.

A. DEFENDANTS' BAD FAITH BEFORE AND AFTER THE MALICIOUS LAWSUIT CONSTITUTES ABUSE OF 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 Edgeworth Complaint. The Edgeworth/Vannah team argue in their renewed motions that they did nothing more than follow the law to properly utilize the court system to adjudicate a dispute between the parties. *See,* Vannah Renewed Anti-SLAPP Motion at p.14. This disingenuous argument is completely contrary to the arguments already made to the District Court. The Vannah/Edgeworth team argued for full blown discovery and a jury trial to avoid the lien adjudication based on the conversion claim, which is contrary to the expedited lien adjudication process that was already being utilized to resolve the attorney's fees admittedly owed pursuant to NRS 18.015. Since they had no criticism of Simon's performance, they needed a cause of action to circumvent lien adjudication and the frivolous conversion claim was what they tried to use for this ulterior purpose. This benefitted Vannah and Greene who were both charging $925 an hour secured by the special trust account holding $2 million. Their continuing false statements to justify the filing of the frivolous Edgeworth Complaints also solidifies their bad faith. They assert the reasons for the initial Edgeworth Complaint were: (1) negotiations with Simon failed. This is false; (2) Simon exercises dominion and control over the funds. This is false; (3) Simon wouldn't give an exact amount for the lien. This is false; (4) Simon's lien amount was

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too big. This is false; and (5) Simon was paid in full and 100% of the funds were the Edgeworth's. This is false. Simply, all explanations attempting to justify their abusive conduct, ***ex post facto***, are complete falsehoods and are contrary to the real reason admitted by Angela Edgeworth – **to punish Simon.** All Defendants do not address this undeniable ulterior purpose for filing the conversion complaint. *See*, September 18, 2018 Transcript at 145:17-21, attached hereto as **Exhibit 8.**

1. The Amount of the Lien is a New Ad Hoc Rescue Argument Contrary to the District Court's Findings

The new desperate ad hoc rescue argument alleges the lien is unreasonable on its face and this is now the reason for conversion and Defendants suddenly became silent with the blackmail, extortion and theft assertions. This is an admission that the prior criminal accusations were false. Regardless, this new lien amount argument is equally false, which is confirmed by the fact that the conversion claim in the initial Edgeworth 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. *See*, Edgeworth Complaint at 5:26-6:3, attached hereto as **Exhibit 16**. This new argument is also contrary to the undisputed facts that no money was received from the settling Defendants when the conversion lawsuit was filed and no justiciable claim ever existed. Certainly, no **wrongful** act of dominion or control could have been exercised. Thereafter, the multiple attempts to keep the conversion claim alive with false affidavits of blackmail, theft and extortion were rejected by Judge Jones.

Equally meritless is the argument the lien was unreasonable in its amount leading up to the adjudication hearing, which is a challenge to the lien itself. However, they are equally foreclosed because they did not challenge Judge Jones finding that the lien was valid and perfected even on appeal. *See*, Appellate record generally, attached to Vannah's Motions to

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Dismiss. The excessive amount argument goes to validity and was not properly raised or supported in front of Judge Jones. It is not enough that they may have alluded to an argument of excessiveness in a pleading somewhere, the Court took evidence and made factual findings and conclusions of law. Again, Judge Jones findings cannot be overturned unless her finding/conclusions were an abuse of discretion. Not finding excessiveness when Edgeworth provided no evidence or effective argument of excessiveness; and, when Will Kemp testified Mr. Simon's lien was a bit low, is a decision made on substantial evidence and is therefore within her discretion. The Edgeworth/Vannah team did not argue against the Court's 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, the size of the file, and the undeniably fantastic result. 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,* ¶31 of Simon Amended Complaint. This is also a final order on the issue and the lien amount cannot be re-litigated. This is what finality/issue preclusion is all about.

Vannah/Edgeworth team now incredibly argue the superbill of $692,000 of unbilled work supports the conclusion the lien is too high. Vannah did not have the superbill until after the January 4, 2018 conversion complaint and was not a basis for the claim. The superbill was merely an itemization re-created by Simon to show the court the substantial work performed in support of Quantum Meruit as testified to by Will Kemp. *See*, August 29, 2018 Transcript at 112:16-20, attached hereto as **Exhibit 6.** This bill only includes work tied to a tangible event and does not include substantial work that could not be recovered. *Id.* at 113: 8-12. This bill was merely one

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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. This work also demonstrates that this case was never a straight hourly case and the greed of the Edgeworths to go to great lengths to refuse payment to their close friend and attorney who did an amazing job for them is despicable. This unbilled work only benefitted the clients through the process as the focus was on the manufacturer not the plumber, which was the sole purpose for the limited billing during the litigation.

Instead, the Edgeworths' argument before the District Court was only that the lien conflicted with the alleged express oral contract. However, the alleged oral contract was found to have never existed, the implied contract based on the limited bills was found to be terminated, and any argument is waived because Mr. Vannah invited Simon's lien. *See,* Lien Decision and Order, attached hereto as **Exhibit 2.** 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 and is substantial evidence supporting the validity and amount of the lien. Presently, 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>The Vannah/Edgeworth Threats</u>

When the Edgeworth's stop talking to Simon on November 29, 2017, Vannah threatened Simon with increased damages if Simon withdrew. *See,* January 9, 2018 Email, attached hereto as **Exhibit 29.** 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. *Id.* Vannah repeated the sentiment in Court on February 6, 2018. *See*, February 6, 2018 Transcript at 35:22-24, attached hereto as **Exhibit 30.** However, Edgeworth/Vannah continue to advance inconsistent arguments.

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They argued to the Supreme Court that the work Simon was doing at that time was ministerial and not worthy of payment. 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. *See*, Brian Edgeworth February 12, 2018 Affidavit at 3:1-3, attached hereto as **Exhibit 14.** 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 to modify the alleged contract was sought by Simon in August, 2017 after a significant offer was made. *See,* Brian Edgeworth February 2, 2018 Affidavit at 3:4-10, attached hereto as **Exhibit 13.** 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 was proven absolutely false. *See*, **Exhibit 4** at 130:7-131:15. 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. *See*, **Exhibit 4** at 180:25-181:11. Simon wanting a contingency fee was a story solely fabricated by Vannah and Edgeworth. Simon never stated anywhere that he wanted a bonus or a contingency fee. The express oral contract was a story created by the Vanna/Edgeworth team and rejected by the Court. All Simon ever wanted was a reasonable fee for the work actually performed.

Long after Judge Jones told Vannah, Greene and Edgeworth that their conversion claim was frivolous, they openly admitted to their ill-will toward Simon when Vannah sent his threatening email to continually attack Simon without a basis. *See*, January 9, 2020 Email, attached hereto as **Exhibit 32.** Vannah, on behalf of the Edgeworth entities, including American

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Grating, confirms it is his personal intent to continue 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.

Even more telling is the Vannah attorneys' statements to the court. 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 30** at 34:20-24; *See,* ¶22 of Complaint. These statements further corroborate the transparent motives to harm Simon and is contrary to their baseless assertion of good faith. *See,* ¶25 of Complaint. When refusing to provide any authority, Mr. Greene told Mr. Christensen as his basis, we just stand by our complaint. *See*, **Exhibit 11**. If the litigation privilege applies in this case, it is hard to realize any set of facts that the privilege would not apply. The contemplated in good faith requirement means something and it is intended to deter bad faith litigation, which is quite evident in this case.

III.

ARGUMENT

A. APPLICABLE LAW

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

B. STANDARD FOR MOTION FOR FAILURE TO STATE A CLAIM

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5). Additionally, the cases cited by Vannah are merely offered for the standard of the law, not as authority based on applying the facts to this specific case. They cite: *Vacation Village, Inc. v. Hitachi Am. Ltd*., 110

Nev. 481 (1994); *Edgar v. Wagner*, 101 Nev. 226 (1988); *Stokmeier v. Nev. Dept of Corr. Psychological Review Panel*, 124 Nev. 313 (2008). For example, *Vacation Village; Edgar*; and *Stokmeier* don't factually apply to this case but simply set out the standard for considering motions to dismiss. These cases support the Plaintiffs because they all say that all factual allegations in the complaint must be accepted as true pursuant to NRCP 12(b)(5).

C. PLAINTIFFS HAVE PROPERLY PLEAD ALL CAUSES OF ACTIONS IN THE AMENDED COMPLAINT

Simon incorporates by reference this section contained in Simon's Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5).

1. Intentional Interference with Prospective Economic Advantage is Properly Pled

A claim for Intentional Interference with prospective Economic Advantage is established when:

(1) a prospective contractual relationship between Clarke and a third party;
(2) knowledge by defendant of the prospective relationship;
(3) intent to harm plaintiff by preventing the relationship;
(4) the absence of privilege or justification by defendant; and
(5) actual harm to plaintiff as a result of defendant's conduct.

See, Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727 (1993).

Defendants contend that Plaintiffs have failed to plead specific prospective contractual relationships with third parties for their Intentional Interference with Prospective Economic Advantage cause of action. The cases cited by Defendants to support their position are appeals from verdicts or summary judgment decisions and do not analyze the motion to dismiss standard as required here. Defendants fail to do so because the Nevada Supreme Court has clearly stated that this cause of action falls within the liberal pleading requirements of NRCP 8(a) and not the more specific particularity required by NRCP 9(b) as held in *Kahn v. Dodds (In re AMERCO Derivative Litg.),* 127 Nev. 196, 222-23, 252 P.3d 681, 699 (2011).

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Furthermore, Plaintiffs have properly pled that they lost prospective contractual relationships as a result of Defendants' conduct. Plaintiffs allege that "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." *See*, ¶ 48 of Simon Amended Complaint. Plaintiffs further allege that "[t]he 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." *Id*. at ¶ 49. Nevada courts have found that allegations of the loss of prospective clients is sufficient when pleading intentional interference with prospective economic advantage. *See, Barket v. Clarke*, 2012 U.S. Dist. LEXIS 88097, *8-10, 2012 WL 2499359 (D. Nev. June 26, 2012). Therefore, the Simon Plaintiffs have already established a prima facie case for this claim. Nevertheless, if this Court is inclined to grant Defendants' Motion regarding the IIEPA cause of action, then Plaintiffs respectfully request leave to amend pursuant to NRCP 15(a)(2).

2. <u>Negligence Hiring, Supervision and Retention is Properly Pled</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 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. The Vannah Attorneys filed and disseminated publicly the false information. Simon does not have to be a client to be harmed. *See Bull v. McCuskey, Supra.*

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Defendants' continued pursuit of the conversion 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 significant damage and harm. These party admissions substantiate a prima facie case of abuse of process, negligence, negligent supervision and retention and civil conspiracy to harm Simon and deprive the Defendants with the benefit of the litigation privilege. The Vannah & Vannah firm failed to supervise and avoid the wrongful conduct. It is not permissible for a firm to turn a blind eye to wrongful conduct merely because it benefits by receiving $925 per hour. Vannah and Greene, at all times were acting in the course and scope of their employment or agency relationship with Vannah & Vannah, Chtd and the firm is liable for all of their conduct. *See*, ¶ 68 of Simon Amended Complaint.. The firm also ratified this conduct. *See*, ¶ 71 of Simon Amended Complaint.

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

The Vannah Defendants argue they were not Simon's lawyer, were not in privity of contract, and cannot be sued for their acts in representing the Edgeworth's. This is not true. Simon's claims do not involve the Vannah attorney's malpractice as that will be left to Edgeworth. Mr. Simon is pursuing claims against the Vannah attorneys for their own independent conduct. 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 non-client when a non-lawyer would be in similar circumstances." Restatement (Third) of the Law

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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.

> 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. *See*, December 28, 2017 Email, attached hereto as **Exhibit 20.** On January 4, 2018, Vannah/Edgeworth sued Simon for conversion. The Vannah/Edgeworth team presented these false criminal accusations 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 Vannah lawyers prepared and filed the false affidavits to defend dismissal of the conversion claims. *See,* ¶¶23 of Simon Complaint. They are well aware that filing an attorney lien is not theft, blackmail or extortion and know Mr. Simon was not paid in full. In the Vannah attorneys moving papers, they attempt to distance themselves from the false statements they have repeatedly advanced – theft, extortion and blackmail. Unfortunately, it is too late. The lack of good faith is clear when Vannah, Greene and the Edgeworth's all stated in Court - we always knew we owed Simon Money. *See*, August 27, 2018 Transcript at 178:20-25, attached hereto as **Exhibit 4**. Simon always had an interest in the disputed funds, never controlled the funds and conversion has always been a legal impossibility. *See*, ¶22 of Simon 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. The unethical dishonest lawyer theme still continues in their moving papers and supporting affidavits and still remains false. *See*, **Exhibit 11**; *See also*, **Exhibit 31**. Mr. Christensen requested many times that they correct their mistake in filing the conversion claim. They refused to conform, confirming it was no mistake, but rather intentional to carry out their devised plan,

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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 Vannah attorneys have never rebuked the real reason for the conversion theft claim as admitted to by Angela Edgeworth, which was to punish Simon. This party admission coupled with Judge Jones order clearly demonstrates that Plaintiffs properly pled all causes of action and the litigation privilege does not apply.

E. 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 also concede this duty. See, Vannah motion to Dismiss Amended Complaint at 21:16-18.

The Vannah Defendants did not have a good faith evidentiary basis to assert the conversion claim against Simon, much less continue to maintain it – 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 20.** 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. *See*, **Exhibit 8** at 146:1-148:22. Vannah/Edgeworth refused to respond to multiple inquiries by Mr. Christensen for the basis of the conversion claim. *See*, **Exhibit 11**. The Vannah attorneys recently re-confirmed their malicious conduct in their email in January, 2020.

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See, January 9, 2020 Email, attached hereto as **Exhibit 32.** They don't know what to call the cause of action if it exists, but the Vannah attorneys personally intend to punish Simon. *Id.*

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. They also knew Simon was not paid in full. The Vannah attorneys prepared the affidavits and presented the false testimony to desperately keep the conversion claim alive. They prepared and filed the conversion complaint seeking relief Simon was "paid in full." Now, they provide false testimony for the basis of the initial complaint when Vannah states in his affidavit: "when Simon continued to exercise control of the funds. *See*, Vannah Affidavit at 5:24-26, attached as **Exhibit A** to Vannah Anti-SLAPP Motion. Therefore, when filing the complaint alleging conversion, the Vannah/Edgeworth team did not have a good faith belief in the merits and the communications making the basis for conversion have always been false.

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,* Simon 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 punish Simon sums up his lack of good faith, and malice to punish Simon personally. His on-going attacks that Simon is unethical when making up the contingency fee argument is reprehensible. Presenting these facts in his affidavit as true, when Judge Jones has already entered an order that they have not been established is equally

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reprehensible. 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 and 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 does not have a 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.

On December 13, 2018, Mr. Greene filed a motion to release the funds asserting conversion. *See*, **Exhibit 33.** Mr. Simon's counsel requested Mr. Greene to refrain from asserting conversion (theft). *See*, **Exhibit 31.** 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 their plan to continue with the smear campaign.

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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 all briefs asserting same 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.

F. THE LITIGATION PRIVLEGE DOES NOT APPLY TO THE FACTS OF THIS CASE.

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.**"

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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). 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 cited a footnote, *and* 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 Simon Complaint and Amended 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. The facts of this case falls squarely within the very situation courts refuse to allow

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application of the litigation privilege. Undeniably, the testimony of the Edgeworths admit this lack of good faith and ulterior purpose. *See*, **Exhibit 8** at 145:10-2.

The differing reasons now given for the filing of the initial Edgeworth Complaint solidifies Defendants lack of good faith. The initial reason given by Defendants was the Edgeworth Complaint was filed when Simon would not release the funds that were solely the Edgeworths and they feared Simon would steal the money. *See*, December 28, 2017 Email, attached hereto as **Exhibit 20.** Since Simon never had the money when the initial lawsuit was filed, this is an absolute falsehood. Simon filed an initial lien on November 30, 2017, requesting the reasonable value of the services rendered pursuant to NRS 18.015 (1). *See*, Notice of Attorney Lien, attached hereto as **Exhibit 18**. The reason then changed to Simon did not give a specific amount, and after realizing a specific amount was provided in the amended lien filed on January 2, 2018, two days before the initial conversion lawsuit, their reason later morphed into the amount Simon gave was too big. *See*, Robert Vannah Affidavit at 5:15-21, attached as **Exhibit A** to Vannah's Motion to Dismiss Amended Complaint: Anti-SLAPP; *See also*, Brian Edgeworth Affidavit at 11:22-12:3, attached as **Exhibit A** to AG Motion to Dismiss Amended Complaint: Anti-SLAPP. These ever-changing reasons were conclusively proven false. The amount was supported by Will Kemp and never challenged. *See*, Will Kemp Declaration, attached hereto as **Exhibit 9.** However, Angela Edgeworth left no doubt about the real reason why the Edgeworth Complaint was filed, which was to "punish" Simon. *See*, **Exhibit 8** at 145:10-21. Therefore, since Defendants acts and/or statements in the complaint and subsequent filings have always been false, and Defendants have failed to meet their burden that their filings were done in good faith, the litigation privilege is not available.

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Although the clients only feared Simon would steal the money, this basis for conversion was entirely eliminated when Simon opened up 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. Vannah's lack of good faith about conversion is his own email – he didn't believe Simon would steal the money. *See,* **Exhibit 20.** This was one week before filing the Edgeworth conversion claim. The money was finally received 12 days after the Edgeworth conversion Complaint. Curiously, Defendants have never told this Court that they didn't know their statements regarding extortion, blackmail and theft were false or that they were true as required for their affidavits to support the instant motions. This also screams an admission of their falsehoods.

Conversion was always a factual and legal impossibility. 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 the Edgeworth frivolous Complaints to fall within the purview of the litigation privilege.

Vannah cites *Fink v. Oshins*, 118 Nev. 428 (2002), in support of dismissal of all their claims based on litigation privilege. *Fink* concerned the application of the litigation privilege to defamatory statements made in the context of judicial proceedings. The *Fink* court did not analyze the requirement of "good faith contemplated in serious consideration of the claim," and is not applicable. *Fink* also did not address statements or acts in connection with abusive litigation conduct or the filing of frivolous claims; and therefore, does not provide authority for Defendants. In *Fink*, Oshins had told the client that Fink, a trustee of the client's trust that he was trying to conceal her dead husband's assets. These statements were also made to third persons. The client

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had Fink removed as trustee and Fink sued Oshins for defamation for Oshins' statements to the client and to other individuals. The Supreme Court discussed the absolute privilege confirming the scope of the privilege does have limits. When the defamatory communication is made before a judicial proceeding is initiated, it will be cloaked with immunity only if the communication is made 'in contemplation of initiation' of the proceeding. In other words, at the time the defamatory communication is made, the proceeding must be contemplated in good faith and under serious consideration. The *Fink* case does not provide authority for the analysis in the instant case since the claims asserted in *Fink* were for defamation only and concerned judicial statements. It did not concern abusive litigation conduct or the lack of good faith established by filing and maintaining a frivolous claim. It does, however, confirm the defamation claims of Simon can clearly proceed against the statements made to third parties.

The Vannah attorneys also cite *Greenberg Traurig v. Frias Holding Co.,* 130 Nev. 627, 331 P.3d 901 (2014), for dismissal of everything. *See*, Vannah Motion to Dismiss Amended Complaint at 3:3-8. However, *Greenberg* is unavailing and confirms the privilege is not absolute. *Greenberg* involved an attorney malpractice case that the Federal Court referred to the Nevada Supreme Court to certify a question for attorneys engaged in wrongful conduct. *Greenberg* confirmed attorneys are not immune and its ruling is limited to a lawyers malpractice as an exception to the litigation privilege and does not apply to the facts of this case. It did not concern abusive litigation conduct or the lack of good faith established by filing and maintaining a frivolous claim that was filed and maintained for an ulterior purpose to punish a lawyer. For merely fling a lawful attorney lien.

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

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faith and the Court should easily make that finding now. The application of the litigation privilege is a question of law to be decided by the Court. *Fink v. Oshins, supra.* 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 Simon's 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 faith and, therefore, was not entitled to the litigation privilege at that juncture). Therefore, Defendants' Motion should be denied.

Simply, filing a lawful attorney lien is not conversion. This is why Robert Eglet, Esq. on behalf of the National Trial Lawyers Association filed their Amicus Brief to put this frivolous notion to an end before it harms other lawyers well beyond Mr. Simon and his firm. *See*, Amicus Brief, attached hereto as **Exhibit 35.** Mr. Kemp and Mr. Clark have fully analyzed this case and also disagree with the Vannah/Edgeworth team. *See*, Kemp and Clark Declarations, attached hereto as **Exhibits 9** and **10,** respectively. Judge Jones also disagrees. The Vannah/Edgeworth team are alone when asserting conversion on the basis "we just think it is a good theory," without any applicable authority or probable cause to bring such an egregious claim.

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IV.

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, or alternatively allow Plaintiffs to amend to correct any deficiencies noted by the Court.

Dated this 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
KENDELEE L. WORKS, ESQ.
Attorneys for Plaintiffs

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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 15th day of July, 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' AMENDED COMPLAINT*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

An employee of Christiansen Law Offices

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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: AUGUST 13, 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' AMENDED COMPLAINT: ANTI-SLAPP

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Vannah Defendants' Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP.

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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.

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 all Defendants, including the Edgeworth entities for having filed and maintained the frivolous conversion claim in bad faith. [1] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

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

The Honorable Tierra Jones conducted a five-day evidentiary hearing and ultimately found that the Edgeworth entities conversion allegations did not have a good faith basis in law or fact. *See*, ¶33 of Simon Amended Complaint. Judge Jones dismissed the conversion claim and

[1] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a motion to dismiss. However, in a Special Motion to Dismiss: Anti-SLAPP, if the Court gets to the second prong of the analysis set forth in NRS 41.660, the burden shifts to the Plaintiff to show with "prima facie evidence a probability of prevailing on the claim." The Court is to analyze its decision pursuant to a summary judgement standard. Accordingly, this Court should consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case that Plaintiffs rely on as prima facie evidence to support their probability of prevailing on their claims. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto and should be considered to rebut Defendants' misrepresentations.

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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. 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).

These findings alone confirm the Defendants cannot meet their burden to show by a preponderance that their conduct was in good faith. 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 Vannah/Edgeworth team filed an appeal, which challenges the impact and use of the factual findings by the 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)).

Anti-SLAPP does not protect frivolous lawsuits. When conducting the Anti-SLAPP and litigation privilege analysis, this Court must first assess whether Defendants acted in good faith when filing the subject Edgeworth Complaint and subsequent filings. Not surprisingly, the instant Motion broadly asserts that Defendants at all time acted in good faith and thus, they should be

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afforded blanket protection across the board. *See*, Vannah Motion to Dismiss Amended Complaint: Anti-SLAPP at 25:16-17. That assertion of good faith is contrary to the undisputed facts and judicial findings in the underlying litigation.

Indeed, Defendants all undermine their own assertions when they offer their own affirmative explanations for the purported basis for the initial Edgeworth Complaint against Simon. Specifically, Vannah, in a sworn affidavit, 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." *See*, Vannah's Affidavit at 5:24-27, attached as **Exhibit A** to Vannah's Renewed Anti-SLAPP Motion. Edgeworth repeats this false statement. *See*, Brian Edgeworth's Affidavit at 10:14-20, attached as **Exhibit A** to AG's Initial Anti-SLAPP Motion. Vannah and Edgeworth both knew the proceeds had not even been received when the initial lawsuit was filed on January 4, 2018, therefore, no justiciable claim existed. Other changing reasons were: (2) Simon would not give a lien amount; (3) The Full proceeds were the Edgeworths; (4) Simon was paid in full. Contrary to these false explanations, Simon gave a lien amount and all Defendants admitted Simon was always owed money. Defendants' purported version of events were presented to the court in the underlying litigation and squarely rejected and were also contrary to the real reason.

Angela Edgeworth, who ratified her conduct on behalf of American Grating and the Edgeworth Family Trust, openly admitted the reason for the conversion Edgeworth Complaint was to punish Simon personally. *See*, September 18, 2018 Transcript at 145:10-21, attached hereto as **Exhibit 8.** This party admission is corroborated by the fact that Mr. Simon was named personally, despite the lien being filed solely by the Law Office of Daniel S. Simon, A Professional Corporation. This admission of malice and ulterior purpose, along with the judicial

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findings of Judge Jones confirms the lack of good faith necessary to apply the litigation privilege and separately establishes a prima facie case precluding Anti-SLAPP protection. The Vannah attorneys adopted the testimony of their clients as to the real reasons for filing the Edgeworth conversion Complaint.

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. *See,* **Exhibit 4** at 178:20-25; *See also,* **Exhibit 5** at 36:1-37:3. 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. *See,* Amended Complaint at ¶ ¶ 19, 20. Mr. Simon was admittedly owed substantial attorney's fees and filed a lawful attorney lien under Nevada law, prior to going to the bank, and receiving the settlement checks. *See*, NRS 18.015; *See also*, District Court's Order Adjudicating Lien, attached hereto as **Exhibit 2.** Significantly, Defendants never challenged the enforceability of Simon's lien at the evidentiary hearing. In short, Defendants knew the allegation that Simon exercised ***wrongful*** control of the subject funds was a legal impossibility.[2] Defendant's intentionally omit the essential word **"WRONGFUL"** in the majority of their briefing. This word is a necessary element of conversion. Filing a lawful attorney lien pursuant to a Nevada statute is not unlawful and their intentional omission should not be overlooked.

[2] 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 conversion claim is so outrageous that the National Trial Lawyer Association was compelled to voice their position on the issue. Robert Eglet, Esq., current president of the NTLA, filed an Amicus Curie Brief in support of Judge Jones position dismissing the conversion claim. *See*, Amicus Curie brief, attached hereto as **Exhibit 35**. This brief echoed the undeniable fact that a lawyer who follows the law by filing a lawful attorney lien and places the funds in a protected account cannot be sued for conversion. One cannot violate the law by following the law enacted by the legislature.

The Edgeworths paid a minimal amount for attorney's 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. *See,* August 30, 2018 Transcript at 118:23-119:1, attached hereto as **Exhibit 7.** 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 generally work on an hourly fee basis 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 attorney's fees through September 19, 2017. Vannah and Edgeworth invented the express oral contract in order to challenge Simon's true reasonable fees. This was never a straight hourly billing case and the Edgeworths know it. In the last two and half years, the Edgeworth/Vannah team have been calling Simon unethical because he allegedly tried to force the Edgeworths into a contingency fee contract. They are still asserting this falsehood. *See*, Vannah Affidavit at 9:23-10:7, attached as **Exhibit A** to Vannah Anti-SLAPP Motion. Edgeworth also still asserts this notion. *See*, Brian Edgeworth Affidavit at 14:4-7, attached as **Exhibit A** to AG Initial Anti-SLAPP Motion.

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However, in an astonishing admission, the Edgeworth's initial Special Motion to Dismiss: Anti-SLAPP finally admits to this fraudulent scheme when acknowledging that Simon never sought a contingency fee, but rather a flat fee. *See*, Edgeworth Initial Motion to Dismiss: Anti-SLAPP (filed by Patricia Lee) at 6:10-11;7:8-9. The flat fee agreement was presented at the request of Edgeworth so the parties could finally determine the reasonable value of Simon's services. This could only be done at the end of the case.

The District Court uncovered the falsehood and flatly rejected the Edgeworth story of an express oral contract. *See*, Lien Decision and Order at p.7, attached hereto as **Exhibit 2;** *See also*, ¶32 of Simon Amended Complaint. The Edgeworths and Vannah know the value of services were well over $2 million, yet continued with their 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. *Kasdan, supra.* Meanwhile, the Edgeworths continue to earn interest on the entire sum, including the amount due to 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 20.** On January 8, 2018, the settlement checks were deposited. *See*, ¶20 of Simon Amended Complaint. 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. *See*, ¶21 of Simon Amended Complaint. Still, the Edgeworth Amended Conversion Complaint, which Defendants filed in March, 2018, maintained the same fabricated conversion allegations. *See*, ¶22 of Simon Amended Complaint. 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. Perhaps the new lawyers understand advancing false positions repeatedly is an abuse of process.

Defendants also attempt to confuse the application of the litigation privilege with Anti-SLAPP protections. The Anti-SLAPP statutes require the communication to be true or made without knowledge of the its falsehood. The Vannah attorneys and the Edgeworth team all seek Anti-SLAPP protection for having made knowingly false statements, and then cite to the litigation privilege cases in hopes the court will gloss over the distinction.

Defendants newest procedural argument to delay the proceedings suggests that the Simon Amended Complaint cannot be filed after the filing of the Anti-SLAPP motions to dismiss without leave of Court. *See*, Edgeworth Defendants Motion to Dismiss Amended Complaint: Anti-SLAPP at pp.3-5. This form over substance argument is based on California law and does not consider the recent amendments pursuant to NRCP 15(a)(1)(B), that allows for an Amended Complaint to be filed without leave of court within 21 days of their responsive pleading. Plaintiff submits that NRCP 15 controls and there is no Nevada authority that precludes the application of NRCP 15. However, if this Court believes this is a concern, Plaintiffs seek an order, ***nunc pro tunc***, granting leave to file an Amended Complaint after the initial Anti-SLAPP motions were filed.

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 attorney 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. Inventing stories and making up facts do not make them true. This

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Court should not permit Defendants to use the litigation privilege or Anti SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

FACTUAL BACKGROUND

Mr. Simon was fired toward the end of the case when the Edgeworths hired Mr. Vannah and Mr. Greene. *See*, ¶16 of Simon Amended Complaint. Notably, there was not an express written contract with the client and when a lawyer is fired, NRS 18.015 allows for a lawyer to recover the reasonable value of his services. This was what was stated in the initial lien filed by the Law Office Of Daniel Simon on November 30, 2017. Simon did not ask or a contingency or a percentage. *See also*, attorney lien filed on November 30, 2017, attached hereto as **Exhibit 18** The District Court found Simon was fired on November 29, 2017. *See*, Lien Decision and Order at 9:6-7, attached hereto as **Exhibit 2;** *See also*, ¶16 of Simon 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. *See*, **Exhibit 9**. This evidence confirming the true value of services also remains undisputed. Instead, Mr. Vannah and the Edgeworths 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 Simon 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**

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24. They repeat the lack of credibility in their own affidavits when stating "Judge Jones chose to believe Simon." *See*, Brian Edgeworth Affidavit at 11:12-13, attached as **Exhibit A** to Edgeworth Anti-SLAPP Motion. 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 the Vannah attorneys ever challenged - likely because the evidence supported the amount of the lien. *Id*.

Will Kemp reviewed the case and opined the reasonable value of services owed to Simon was $2,440,000. *See*, Will Kemp Declaration, attached hereto as **Exhibit 9.** The Vannah attorneys and the Edgeworths were provided Will Kemp's opinion as to the value of the lien on February 5, 2018, yet they filed the Amended Complaint on March 15, 2018 repeating the same conversion allegations and seeking relief, Simon was pain in full. *See*, Edgeworth Amended Complaint, attached hereto as **Exhibit 17**. 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. How can Vannah invite 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 or he filed the case in good faith under serious consideration of the conversion claim? The lien amount, as now alleged, was not the basis for the Edgeworth conversion complaint as confirmed by the fact that Defendants did not even challenge the enforceability of the lien at the evidentiary hearing and a simple review of the initial complaint confirms the amount of the lien was not the basis for the conversion claim. The District Court ruled the lien was proper and the ongoing arguments that the lien was too high has already been decided and should not be reconsidered by this court. Simply, this issue has been decided and is now closed.

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The only basis from Vannah for the conversion claim throughout the underlying case was "He thought it was a good theory." *See*, February 6, 2018 Transcript at 34:20-24, attached hereto as **Exhibit 30**; *See also,* ¶22 of Simon Complaint. 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."). Mr. Vannah never requested that it be deposited in his trust account and this is a new falsehood. There are many emails back and forth on the trust account issue between Vannah, Greene and Jim Christensen, none of which, discusses a request to put the money in the Vannah trust account. Even if Simon refused, it has nothing to do with the basis for a conversion claim. Equally disingenuous for the new ad hoc rescue argument that the conversion complaint was filed because of the specific amount in the amended lien. It is difficult to follow the logic for this argument. The initial conversion complaint does not allege the amount of the lien is too high as a basis. For conversion, in fact, it alleges an amount is not provided and they want a specific amount. *See*, Edgeworth Conversion Complaint at 5:26-6:3, attached hereto as **Exhibit 16**. The specific amount in the amended lien does not assert a contingency fee and the amount does not equal 40%. *See*, Amended Lien, attached hereto as **Exhibit 19**. It is less than 40% and only states an amount representing the reasonable value of Mr. Simon's services supported by substantial evidence, including Mr. Kemp. Most importantly, the Vannah/Edgeworth team never challenged the enforceability of the lien as to the amount and therefore, it was not a basis for the conversion complaint. Although they did argue the attorney

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fees owed to Mr. Simon should be lower than what was in the lien, this is not the same as filing a conversion claim based on a lien being too high as that solely goes to enforceability of the lien, which again, was not challenged. The District Court's findings and order is final on this issue and cannot be re-litigated, ***ex post facto***, to rescue their conduct.

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 8** at 145:10-21**;** *See also*, ¶¶66,67,68 of Simon 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, as all of these statements were always a complete falsehood and were the basis to advance the conversion claim in attempt to also recover punitive damages against Simon.

A. SIMON FOLLOWED THE LAW AND IS IN FULL COMPLIANCE WITH ALL ETHICAL RULES, ALL DEFENDANTS' STATEMENTS ARE FALSE AND THIS WAS INVENTED AS PART OF THEIR SCHEME

The Vannah attorneys equally participated and created the baseless allegations of unethical conduct, which was part of their devised plan. 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.

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Simon followed the exact course mandated by the Rules of Professional Conduct. Plaintiffs followed the law and placed the settlement money into a joint trust account with all interest accruing to Edgeworth. *See*, ¶20 of Simon Amended 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 of 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 10.** The District Court noted in its decision and order that Vannah and Edgeworth never disputed Mr. Clark's opinion, and also stated Simon should be commended for his efforts after termination. *See*, Amended Decision and Order on 12(b)(5) at 7:10-11, attached hereto as **Exhibit 3.**

Contrary to the arguments proffered to the Court, Mr. Vannah presented a letter to the Bank consenting to the handling of the funds. *See*, **Exhibit 23**. 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 a duty to safekeep the disputed funds. The funds remain disputed because the Edgeworth/Vannah team appealed the decision and the District Court entered an order that the funds remain in the account and not be disbursed pending appeal. The Vannah/Edgeworth team relentlessly pursued the unethical lawyer scheme to the public in bad faith, which is now confirmed when the new Edgeworth team abandoned the majority of these arguments in their renewed briefing, likely because they know it is actionable.

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B. 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. *See,* ¶24 of Simon Amended Complaint. 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 3;** *See also*, ¶32 of Simon Amended 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*, ¶33 of Simon 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, the Vannah/Edgeworth team 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.

1. Unsupported Defenses

Vannah and Greene, on behalf of their principals, American Grating and the Edgeworths, base their conclusory statements on the premise they researched the law supporting the claims. In their affidavits they only cite *Evans v. Dean Witter Reynolds, Inc*., 116 Nev. 598, 606, 5 P.3d

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1043, 1048 (2000) as a basis. *See*, Vannah Affidavit at 9:3-10, attached as **Exhibit A** to Vannah Anti-SLAPP Motion; *See also*, Greene Affidavit at 9:4-12, attached as **Exhibit B** to Vannah Anti-SLAPP Motion. This case was cited for the first time on appeal and does not provide support and is an admission of their lack of good faith. The Vannah attorneys have never provided any authority allowing them to sue an attorney for conversion for merely filing an attorney lien. In *Evans v. Dean Whitter Reynolds, Inc., 116 Nev. 598 (2000),* the lawyer actually controlled the money by forging his aunt's name and putting the money in his own personal 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. If this is the research the Defendants relied on, Simon's claims are conclusively established, along with the malice and bad faith.

III.

ARGUMENT

Defendants assert the claims are barred by Nevada's Anti-SLAPP statute. The Vannah brief incorrectly applies the litigation privilege as the standard for Anti-SLAPP. It suggests that false statements can be made and they still get Anti-SLAPP protection. This is not true. 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." Defendants' egregious misconduct in knowingly filing false claims is not entitled to such protections. Defendants, not Simon, must first make a showing that the filing of the complaint and the 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.

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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 Edgeworths. 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 the Edgeworths. 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 always false when giving yet a third version about how the made-up contract was formed. 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 late October, 2017. Incredibly, Mr. Greene adopted this same false statement in his affidavit to this court attempting to present his good faith and truthfulness. *See*, John Greene Affidavit at 6:3-8, attached as **Exhibit B** to Vannah's Anti-SLAPP Motion. Vannah also falsely states Simon presented the Edgeworths with a contingency fee agreement. *See*, Robert Vannah Affidavit at 6:5-9, attached as **Exhibit A** to Vannah's Anti-SLAPP Motion. These statements in the affidavits are blatantly false and should not be relied upon when analyzing NRS 41.660. All factual assertions in their affidavits were already presented and rejected by Judge Jones. These facts asserted as true were already found to have never been legally established. Defendants cannot re-write the story and requests this Court to make factual findings inconsistent with the findings of Judge Jones. This is the entire basis for issue preclusion and finality.

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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. A strategic lawsuit against public participation, known more commonly by its shortened name "SLAPP" is a meritless lawsuit that a plaintiff initiates to chill a defendant's freedom of speech and right to petition under the First Amendment. NRS 41.637. The Edgeworth frivolous conversion lawsuit squarely meets the definition of SLAPP confirming Simon was always protected by NRS 41.660. Filing an attorney's lien is a protected activity. *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016). The conversion lawsuit was initiated to chill Simon's right to petition the court to adjudicate his lien for attorneys' fees admittedly owed. The District Court did not rule on Simon's motion and treated it as moot when she dismissed the conversion lawsuit pursuant to NRCP 12(b)(5) as meritless and found it was brought in bad faith issuing sanctions.

Defendants never met the "preponderance" evidentiary threshold when Judge Jones made her findings based on the same evidence from the same parties. Therefore, since Judge Jones dismissed the Edgeworth conversion Complaint noting the bad faith, the defendants cannot meet the "preponderance" evidentiary threshold required in this motion. 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.

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A. STANDARD FOR SPECIAL MOTION TO DISMISS: ANTI-SLAPP

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."

B. THE FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS

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 Edgeworths that have the burden to show by a preponderance their conduct was truthful or made without the knowledge of its falsehood. In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), 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."

Judge Jones 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 NRS 41.660. 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. *See*, Order regarding Attorneys Fees and Costs, attached hereto as **Exhibit 1**.

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. Simon was not paid in full as alleged. Simon did not blackmail them. Simon did not **wrongfully** control the funds. Simon never touched the funds. Simon only filed a lawful attorney lien. The lien was always supported by substantial evidence. The lack of good faith is demonstrated by the mere fact Vannah/Edgeworth never challenged the enforceability of the lien, never disputed Will Kemp or David Clark or that the lien was somehow improper because they agreed and invited the biggest number as the undisputed amount. Mr. Simon was not paid in full and did not steal, extort or blackmail anyone. The changing reasons for the initial Edgeworth Complaint does not equate to good faith and actually underscores their bad faith. Asserting ***ex-post facto,*** new conversion theories long after the evidentiary hearing does not rescue the lack of good faith and falsehoods when the Edgeworth Complaints were filed and maintained. Judge Jones ordered the funds remain in the account after Edgeworths appealed to the Supreme Court. All Defendants do not meet the first prong by a

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preponderance of the evidence regardless of their self-serving affidavits and the Renewed Motion should be denied.

C. SIMON HAS ESTABLISHED A PRIMA FACIE CASE

The recent case of *Delucchi v. Songer*, 133 Nev. Adv. Rep. 42, 396 P.3d 826 (2017), also supports denial of Defendants' Motion. 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. (emphasis added)

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 conversion complaints to fall within the purview of NRS 41.660. It is not surprising Defendants briefing and affidavits ignore the admission of Angela Edgeworth as to the real reason the Complaint was filed.

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 faith 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. *See*, **Exhibit 27.** 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. *Id.* 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.

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IV.

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 have also presented, under oath testimony directly disputing the self-serving false facts presented in the new affidavits in support of their Renewed Motions. Finally, the order Judge Jones and the party admissions deprives Defendants of the protections sought. Therefore, Plaintiffs respectfully request this Court DENY the Vannah Defendants' Renewed Special Motion to Dismiss: Anti-SLAPP in its entirety, or alternatively, allow the requested discovery pending a final ruling.

Dated this 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
KENDELEE L. WORKS, ESQ.
Attorneys for Plaintiffs

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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 15th day of July, 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' AMENDED COMPLAINT: ANTI-SLAPP*** 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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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: AUGUST 13, 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' INITIAL COMPLAINT: ANTI-SLAPP

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Vannah Defendants' Special Motion to Dismiss Plaintiffs' Initial Complaint: 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants are not entitled to the benefit of immunity under the litigation privilege or Anti-SLAPP statutes as their conversion SLAPP suit was not a good faith communication. 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. [1] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' 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. *See*, ¶33 of Simon Amended Complaint. These findings alone confirm the Defendants

[1] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a motion to dismiss. However, in a Special Motion to Dismiss: Anti-SLAPP, if the Court gets to the second prong of the analysis set forth in NRS 41.660, the burden shifts to the Plaintiff to show with "prima facie evidence a probability of prevailing on the claim." The Court is to analyze its decision pursuant to a summary judgement standard. Accordingly, this Court should consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case that Plaintiffs rely on as prima facie evidence to support their probability of prevailing on their claims. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto and should be considered to rebut Defendants' misrepresentations.

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cannot meet their burden to show by a preponderance that their conduct was in good faith and also means their SLAPP suit did not contain good faith communications. 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' lack of good faith. While the Vannah/Edgeworth team filed an appeal which challenges the impact and use of the factual findings by the 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 not protect frivolous lawsuits. It is the Defendants conduct and false statements 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. *See,* Vannah Motion to Dismiss Initial Complaint: Anti-SLAPP at 24:3-4. However, the Defendants' affidavits do not aver their statements were true or made without knowledge of their falsity, likely because they know their communications are false. All of the Defendants' Motions undermine their own assertions of good faith communications when they affirmatively explain why the initial conversion 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 attached as **Exhibit A** to Vannah's Special Motion to Dismiss Anti-SLAPP at 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 and Mr. Simon did not exercise control over any part of the funds. These same false 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. *See*, ¶33 of Simon Amended Complaint. This means the factual statements were false and could never be legally established. 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. *See,* **Exhibit 4** at 178:20-25; *See also,*

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Exhibit 5 at 36:1-37:3. 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. *See,* Simon Amended Complaint at ¶ ¶ 19, 20. 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 over the subject funds was a legal impossibility.[2]

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. *See,* August 30, 2018 Transcript at 118:23-119:1, attached hereto as **Exhibit 7.** Simon created minimal 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 September 19, 2017. 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 they continued with their plan to pursue frivolous claims of theft to avoid paying the reasonable fees (among other improper purposes).

[2] 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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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 20.** On January 8, 2018, the settlement checks were deposited. *See*, ¶20 of Simon Amended Complaint. 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. *See*, ¶21 of Simon Amended Complaint. Still, the amended conversion complaint, which Defendants filed in March, 2018, maintained the same fabricated conversion allegations. *See*, ¶22 of Simon Amended Complaint. 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 and confirms their lack of good faith.

Defendants newest ad hoc rescue argument of an excessive amount of the lien 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 Edgeworth/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, as the amount of the lien is not identified as a basis for conversion. *See*, Conversion Complaint, attached hereto as **Exhibit 16**.

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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 communications 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 attorney lien, which the court adjudicated in his favor. In stark contrast, a district court has already concluded Defendants did not act in good faith, and undeniably the statements made in support of conversion were patently false. 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 privilege or Anti SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

FACTUAL BACKGROUND

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim. The Edgeworths admit they were made whole when they received their share of almost $4 million. *See*, ¶21 of Simon Amended Complaint; *See also*, **Exhibit 4** at 69:14-21. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment.

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The Edgeworth's, through Vannah refused to sign the settlement checks to put in the trust account of the Law Office of Daniel Simon, A professional Corporation. The basis for their refusal was that they were fearful Simon would steal the money. *See*, **Exhibit 27**. Vannah confirmed he did not believe Simon would steal the money. *See*, **Exhibit 20**. Vannah proposed and Simon agreed to put the money in a special trust account with Vannah equally controlling the account as a signor with all interest going to the client, even Simon's share. This was done so eliminate the fear of theft by Simon. Mr. Vannah and Greene also confirmed the terms of the agreement with Simon to place the amount of the lien in special trust account to the Honorably Tiara Jones. Specifically, Vannah represented to the Court that he agreed to have Mr. Simon place the ***biggest number he could recover in the trust account***. *See*, **Exhibit 5** at 146: 17-147:4. Specifically, Mr. Vannah stated the agreement to the Court, as follows:

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, September 18, 2018 Transcript at 146: 17-147:4, attached hereto as **Exhibit 8**.

As part of this agreement, Simon proceeded to work with Bank of Nevada and promptly signed all documents to open the account. Vannah was also communicating with the bank to sign the documents. *See*, **Exhibit 20**. Vannah and Greene were sending letters to the bank during this time. *See*, **Exhibit 23**. The Banker scheduled a time for all parties to meet at the bank to finally

deposit the settlement checks. The parties met on January 8, 2018. The checks were given to the banker who deposited the checks that finally cleared on January 16, 2018. *See*, Deposit Receipt and Hold, attached hereto as **Exhibit 40**. Simon was served with the conversion complaint on January 9, 2018. On January 4, 2018, the Edgeworths and the Vannah firm surreptitiously filed a lawsuit alleging conversion of the settlement money. *See*, ¶19 of Simon Amended Complaint. How can the Vannah/Edgeworth team suggest the conversion claim was filed in good faith under serious consideration to prevail when Vannah himself confirmed he did not believe Simon would steal the money and when all parties were at the bank when the checks were endorsed and deposited? The frivolous conversion lawsuit was also based on false facts when it asked the court to find Simon was "paid in full" and asserted the settlement proceeds were solely the Edgeworth's (Edgeworth Complaint at 8:6-8, attached hereto as **Exhibit 16**; Edgeworth Amended Complaint at 8:21-9:21 attached hereto as **Exhibit 17**), which is in stark contrast to the sworn testimony of Edgeworth, who confirmed he **"always knew he owed Simon money,"** (*See*, **Exhibit 4** at 178:20-25), along with Vannah's representation's to the Court. *See,* August 28, 2018 Transcript at 36:1-37:3, attached hereto as **Exhibit 5.** *See*, ¶¶19,20 of Simon Amended Complaint. Undeniably, the admissions by Vannah, Greene and Edgworth confirm the falsity. The conversion complaint also stated that a lien amount has not been given as a basis. *See,* Edgeworth Complaint at 5:26-6:3, attached hereto as **Exhibit 16.** Although NRS 18.015 does not require a specific amount in the lien, Simon did amend the lien and provided a specific amount on January 2, 2018. *See*, Amended Lien, attached hereto as **Exhibit 19.** This new lien amount was provided at the request of Vannah/Edgeworth and was consistent with the agreement with Vannah. *See*, **Exhibit 5** at 146: 17-147:4. Notwithstanding the false statements in the complaint, the Vannah/Edgeworth team continued to make up more false facts to further support their frivolous conversion claim.

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A. THE UNPRIVILEGED DEFAMATORY STATEMENTS OF ANGELA AND BRIAN EDGEWORTH WERE ADOPTED BY ALL DEFENDANTS, INCLUDING THE VANNAH ATTORNEYS

In the Vannah attorneys moving papers, they attempt to distance themselves from the false statements they have repeatedly advanced – theft, extortion and blackmail. However, they are equally involved. The Vannah Attorneys prepared three separate affidavits signed by Brian Edgeworth containing false facts to defend dismissal of the conversion claims in response to the motions to dismiss filed by Simon. *See,* ¶¶23 of Simon Complaint; *See also*, Brian Edgeworth Affidavits, attached hereto as **Exhibits 13, 14** and **15**, respectively. The Vannah attorneys 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 owed Simon Money. *See*, **Exhibit 4** 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 Simon Complaint. 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, likely because they have always known the statements were false. 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, and for a Court to even initially apply NRS 41.660, the statements must be true or made without knowledge of the falsity. *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, 389 P.3d 262, 268 (2017). This is a burden Defendants can never meet.

Vannah and Greene base their conclusory statements of good faith to file the case on the premise they researched the law supporting the claims. In their affidavits they only 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. Notably, the *Evans* case was cited for the first time in their appellate briefs and was not the authority relied upon when filing the initial conversion claim. This is another false premise for the conversion claim. The more the Vannah/Edgeworth team tries to justify their wrongful conduct, they only solidify their false communications depriving them of protection.

B. 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 that the client believes Simon is going to steal money, yet Vannah admits he does not believe this is the case. *See*, **Exhibit 20.** 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. Vannah now changes course suggesting it wasn't theft, just that the amount was excessive. This is not true, and should be the end of the lack of good faith analysis. The emails referencing 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 under oath, and the same statements made in the affidavits of Brian Edgeworth presented to the court and are the same reasons adopted by the Vannah attorneys at the evidentiary hearing. The Vannah/Edgeworth team cannot now pretend their admissions do not exist.

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 Simon Complaint. Since they knew the money was not stolen and Vannah stated in an email, he 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*,

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¶¶49,50,51,52,53,89,90 of Simon Complaint. They relentlessly continued with this plan aimed to harm Simon while greatly benefiting each Defendant with substantial renumeration.

The Vannah Attorney's participation was then confirmed in Vannah's email to Jim Christensen on January 9, 2020 seeking to punish Simon. *See*, Email attached hereto as **Exhibit 32**. 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 Simon Complaint. Simon could have easily interpleaded the funds with the Court pending the dispute. 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? Simply, the conversion complaint has never been a justiciable claim amounting to a good faith communication.

III.

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 communications were made in good faith and the statements were truthful or made without the knowledge that they are false – these are burdens Defendants can never meet. NRS 41.660. *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017). Therefore, this court should not apply NRS 41.660 at all and deny Defendants motion. Otherwise, it would be difficult to appreciate any set of facts that would prevent the application of NRS 41.660, which would then virtually abolish claims for abuse of process.

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A. STANDARD FOR SPECIAL MOTION TO DISMISS: ANTI-SLAPP

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."

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 that 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 always false when giving yet a third version as to how the contract was formed. *See,* Brian Edgeworth's Affidavit attached as **Exhibit A** to AG Anti-SLAPP Motion. These versions had to change when emails sent by Simon rebuked their false story. *See*, **Exhibit 21**. 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 proven false when Simon showed the first offer was not until October, 2017. *See,* **Exhibit 7** at 152:17-22. The new Angela Edgeworth affidavit also confirms that all of their testimony may have been false when she states Lisa Carteen was her lawyer to protect her defamatory statements as attorney client privilege, which is in stark contrast to her under oath testimony at the evidentiary hearing that she was only talking to Carteen as her good friend. *See*, **Exhibit 8** at 133:5-23. It cannot be both.

Additionally, *Shapiro v. Welt*, makes is clear that protection cannot be afforded to Defendants, if the controversy is to be used as ammunition in a private controversy. In *Shapiro*, the Court states "a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." The statements by Vannah/Edgeworth team 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. 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 assert his conversion claim is protected. NRS 41.660 does not afford protection to a party 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 when admitting all along they always knew they owed him for his services already rendered.

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Moreover, Defendants can never meet the threshold that the statements were made truthfully or without the knowledge of its falsehood. Defendants leap over the mounds of evidence showing the falsehoods asking this Court to take its word that they are truthful. However, truthfulness is an absolute requirement that cannot be ignored. The facts presented as true by Defendants were already determined as untrue by Judge Jones when she did not believe the Vannah/ Edgeworth changing versions. 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. Simon has also provided mounds of admissible evidence disputing Defendants' version. 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 4** at 178:20-25; *See also,* **Exhibit 5** at 36:1-37:3. They also had actual knowledge that a special bank account was opened to protect the funds. *Id.* Vannah invited the biggest number of potential recovery that was further supported by Will Kemp. *See*, **Exhibit 8** at 146:17-148:22.

. Consequently, Defendants' attempt to shield themselves with the protections of NRS 41.660 is without legal merit as they do not meet any element of the requirements for such protection. Simon has a plethora of evidence already secured to establish a prima facie case. Therefore, even if this Court finds that the initial requirements of the first prong 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, attached hereto as **Exhibit 3.** As demonstrated below, Nevada law precludes dismissal of the Plaintiffs claims at this stage of the proceedings.

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B. SIMON HAS ESTABLISHED A PRIMA FACIE CASE

The recent case of *Delucchi v. Songer*, 133 Nev. Adv. Rep. 42, 396 P.3d 826 (2017), also supports denial of Defendants' Motion. 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. (emphasis added)

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 Jones is the prima facie evidence needed to defeat the Anti-SLAPP motion. While Plaintiffs

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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. Significantly, all of Defendants briefing refuses to address the admission of Angela Edgeworth's testimony, binding all Defendants as to the malice and ulterior purpose. 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 conversion 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 faith 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. *See*, **Exhibit 27.** This was always an impossibility. Angela Edgeworth also confirmed she filed the lawsuit to punish Simon for stealing her money. *See*, **Exhibit 8** at 145:17-21. Vannah's lack of good faith about conversion is his own email – he didn't believe Simon would steal the money. *Id.* This was one week before filing the conversion claim. The money was finally received 12 days after the conversion complaint. Significantly, for purposes of this Motion, Defendants have never told this Court that they didn't know their statements regarding extortion and blackmail were false. *See*, **Exhibit 8** at 133:5-23.

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).

Accusing Simon of the serious crimes of extortion, blackmail and theft is the most egregious allegation that can be levied against an attorney and the gist of the sting of the false story is outrageous, despicable and should never be protected by any statute that was only enacted to protect good faith communications that are true, not false statements made in litigation to punish a lawyer for following the law.

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, as well as the conduct of the parties. The Defamation claims were supported by publication to third parties not interested in the proceedings. *Fink v. Oshins*, 118 Nev. 428 (2002); *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014).

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Finally, the Plaintiffs 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). *See,* Declaration of Peter S. Christiansen, attached hereto as **Exhibit 12,** narrowly detailing the discovery sought.

Even more concerning is that the Vannah attorneys always knew that 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. If they did not know this at the outset of their frivolous lawsuit then became well aware of this fact when Simon filed his special motion to dismiss based on Anti-SLAPP on March 2, 2018. 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.

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IV.

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, or alternatively, allow the requested discovery pending a final ruling.

Dated this 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
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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 15th day of July, 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' INITIAL COMPLAINT: ANTI-SLAPP*** 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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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: AUGUST 13, 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' INITIAL COMPLAINT, AND MOTION IN THEALTERNATIVE FOR A MORE DEFINITE STATEMENT

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to Defendants' Motion to Dismiss Plaintiffs' Initial Complaint and Motion in the Alternative for a More Definite Statement.

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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.

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 in good faith, the underlying conversion claim against Plaintiffs. In analyzing the lack of good faith, this Court need 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.[1] The Court stated:

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' 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

[1] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a Rule 12(b)(5) motion to dismiss. However, the Nevada Supreme Court has long held that the court may take into account matters of public record, orders, items present in the record of the case, any exhibits attached to the complaint and any documents incorporated by reference into the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1992). Accordingly, this Court may consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case. Further, NRCP 12(d) provides if, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto.

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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 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). In short, Defendants knew the allegation that Simon exercised wrongful control of the subject funds was a legal impossibility but they pursued it anyway.[2]

Moreover, in this case, it is not merely the act of filing the frivolous lawsuit that gives rise to liability, but the ongoing abusive conduct engaged in by all Defendants. Even today, Defendants continue to attack Mr. Simon's professional and moral character by 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 Plaintiffs' complaints are properly

[2] 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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pled. Plaintiffs' allegations are substantiated by the prior judicial determinations and party admissions, which undeniably demonstrate Defendants did not act in good faith in contemplating a conversion claim. No party should ever 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.

FACTUAL BACKGROUND

A. THE UNDERLYING CASE

Simon Law represented the Edgeworth entities in the underlying case *Edgeworth Family Trust and American Grating, LLC vs. Lange Plumbing, LLC and The Viking Corporation* (and related entities) for claims resulting from a defective sprinkler head prematurely activating and flooding a single family residence being constructed by Edgeworth that caused approximately $500,000.00 in property damage. *See*, ¶12 of Simon Complaint. Mr. Simon and Edgeworth never entered into a formal written agreement regarding Mr. Simon's representation. *Id*. The parties did not enter into any written agreement at the outset because Mr. Simon's representation started out as a favor to his longstanding friend, who did not want to pay other counsel. Edgeworth could not find any other lawyer to take the case without charging him significant retainer fees, so he called Mr. Simon for a favor. *See*, May 27, 2016 Email, attached hereto as **Exhibit 21**. Mr. Simon commenced the representation in hopes of sending a few letters and triggering coverage so the sprinkler installer, Lange Plumbing, would take over the case pursuant to the construction contract requiring them to enforce the warranty for the defective sprinkler against the manufacturer, Viking, et al. *See*, August 29, 2018 Transcript at 203:5-18, attached hereto as **Exhibit 6**. Mr. Simon continued to help his friends longer than anticipated but with the full understanding that

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they would work out what would be a fair fee at the end of the case. *See,* August 30, 2018 Transcript at 96:19-97:1, attached as **Exhibit 7.** The case continued to morph into a complex, contentious and time-consuming products liability, construction defect and contract case. *See*, ¶14 of Simon Complaint.

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 the unique nature of the property damage claim and extent of legal services and costs required to achieve a great result. *See*, ¶14 of Simon Complaint. In August of 2017, Mr. Simon and Edgeworth agreed the flood case had dramatically changed and engaged in discussions about an express fee agreement based on a hybrid of hourly and contingency fees. *See*, Contingency Email, attached hereto as **Exhibit 22.** 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; 136:14-137:4, attached hereto as **Exhibit 4.** Edgeworth also admitted that a written fee agreement could not have been reached earlier because the manner in which case changed in discovery could not have been anticipated at the outset. *See*, **Exhibit 4** at 160:14-20. Due to the friendship, **and only the friendship**, Mr. Simon continued with the case under this arrangement.

After Simon achieved exceptional results giving rise to a substantial settlement, the Edgeworths did not want to work out what was fair for the work performed. Instead, the Edgeworths stopped all direct communications with Mr. Simon and his office entirely, secured new counsel, fired him and falsely sued him for stealing. *See*, ¶16 of Simon Complaint. Even worse, the Edgeworths, through their lawyers, commenced a smear campaign making wildly false claims accusing Mr. Simon of extortion, stealing, dishonesty, and unethical conduct. These

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unsupported allegations are part of the Vannah/Edgeworth intentional plan, and were communicated to third persons not connected to the litigation. Sadly, Mr. Simon and his firm were taken advantage of by those he believed to be close family friends. *See*, August 29, 2018 Transcript at 213:7-13, attached hereto as **Exhibit 6.** Simon wishes, in retrospect, things were done differently. *Id*. Mr. Simon and his staff complied with all ethical duties in securing and finalizing the settlement even after he was fired and falsely accused. The District Court commended Simon in the performance of his duties under the unusual circumstances. *See*, Amended Decision and Order on 12(b)(5) at 7:10-11, attached hereto as **Exhibit 3.**

1. Events *Prior* to the January 4, 2018 Conversion Filing

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 25;** *See also*, ¶16 of Simon Amended Complaint. On November 30, 2019, the attorney lien was served. *See*, Attorney Lien, attached hereto as **Exhibit 18;** *See also*, ¶17 of Simon Amended Complaint. On December 1, 2017 Vannah signs the release for settlement of $6 million. *See*, Viking Release, attached hereto as **Exhibit 26;** *See also*, ¶18 of Simon Amended Complaint. On December 18, 2017, Mr. Simon picked up the settlement checks and notified Vannah's office to have clients endorse the checks in order to deposit into the trust account. *See*, **Exhibit 27**, p.4. Clients became unavailable and refused to sign. On December 26, 2017, Vannah sent an email stating, **"clients are fearful Simon will steal money."** *See*, December 26, 2017 email, attached hereto as **Exhibit 27.** On December 27, 2017, Mr. Simon's lawyer, Jim Christensen, sent a letter with specific timelines and a request to avoid hyperbole and false accusations, offering to instead work collaboratively toward resolution. *See*, December 27, 2017 Letter, attached hereto as **Exhibit 28.**

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On December 28, 2017, Vannah responded, "…**he did not believe Simon would steal money, he was simply relaying his client's statements."** *See*, **Exhibit 20**. (emphasis added) Later that day, Vannah proposed and Mr. Simon agreed, to a single purpose trust account with both Mr. Simon and Mr. Vannah as signors. The clients receive all interest from the 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 19.** *See*, ¶18 of Simon Amended Complaint. 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,* Edgeworth Complaint, attached hereto as **Exhibit 16;** *See also*, ¶19 of Simon Amended 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 20.** Defendants' conversion claim was undeniably based on purported theft given that Vannah suggested his clients fear Simon would steal as the primary reason for the new special bank account, and the later Edgeworth sworn testimony admitting to the relentless pursuit of theft, extortion and blackmail. *See*, **Exhibit 27.**

2. <u>The Events *After* the January 4, 2018 Conversion Filing</u>

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 Simon Amended Complaint. On January 9, 2018, Simon was served with the Vannah Complaint for conversion. *See*, ¶21 of Simon Amended Complaint. When the Edgeworth Complaint was served, the Edgeworths, Greene and Vannah had ***<u>actual knowledge</u>*** that the funds were sitting in the protected account.

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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 4** at 178:20-25. Yet, Defendants filed the frivolous Edgeworth Complaint falsely claiming that Simon was already "paid in full." *See*, **Exhibit 16** at 8:6-8; *See,* ¶¶58,59,60,61 of Simon Amended Complaint. The affidavits of Brian Edgeworth, repeated the known fallacy that Simon was already "paid in full." *See*, February 2, 2018 Affidavit at 6:10-11 attached as **Exhibit 13;** *See also*, February 12, 2018 Affidavit **Exhibit 14** at 7:11-12; *See also*, March 15, 2018 Affidavit **Exhibit 15** at 7:16-17.These contradictory false statements in the Edgeworth Complaint, the affidavits and many briefs, confirm that the litigation privilege and Anti-SLAPP is not available. Simply, Defendants' conduct wreaks of bad faith.

On January 9, 2018, after serving Simon with the conversion lawsuit, Vannah threatened that if Simon formally withdrew, bad things would happen. *See*, January 9, 2018 Email attached hereto as **Exhibit 29;** *See also,* ¶21 of Simon Amended Complaint. Greene intentionally ignored Mr. James Christensen's efforts to focus on resolving the money owed to Mr. Simon. Instead, Greene continued to maliciously pursue the theft claims (presumably at the direction of Vannah and the clients). Mr. James Christensen repeatedly asked for the legal or factual basis for the theft claim. None could be given. *See*, James Christensen Declaration, attached as **Exhibit 11.** Even the Judge asked for the basis and Vannah responded in open Court, **"we just think it is a good theory"** *See*, **Exhibit 30** at 34:20-24; *See,* ¶22 of Simon Amended Complaint. At this same hearing, Vannah also confirmed this was merely a dispute over money and Defendants had no criticism of Simon's work. *See*, **Exhibit 30** at 32:5-9. These statements underscore Defendants' transparent motives to harm Simon and further negate any assertion of good faith. *See,* ¶25 of Simon Amended Complaint.

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3. The Vannah Attorneys Were Well Aware that the Conversion Claim was Frivolous

Due to the Edgeworth/ Vannah conversion complaints, Simon filed two separate motions to dismiss. One of which was pursuant to NRCP 12(b)(5) on January 29, 2018 and one of which, was based on Anti-SLAPP on March 2, 2018. Vannah, Greene and the Edgeworths, were all made aware of the facts and law as to why the conversion theft claim was frivolous. *See,* ¶ 22 of Simon 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 Simon Amended Complaint. In the affidavits, he asserts theft, blackmail, and extortion of millions of dollars which Edgeworth told his volleyball coach. Edgeworth continued to falsely asserted Simon has been "paid in full." *Id. See*, **Exhibit 13** at 3:22-23. *See*, ¶22 of Simon Amended Complaint. Specifically, Edgeworth stated in his affidavit, 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, **Exhibit 15** at 8:17-20.

Continuing to advance conversion in their Oppositions and affidavits to the court is additional abusive conduct supporting abuse of process. This is completely opposite of Edgeworths' 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 8** at 133:5-23. *See*, ¶77 of Simon Amended Complaint. This is

more egregious conduct after the initial Edgeworth Complaint was filed. There is no mistake about the malice of the Edgeworths, Vannah and Greene. However, it gets worse.

The bad faith motives are further substantiated by Vannah and Greene filing the Amended Edgeworth Complaint without leave of court on March 15, 2018, re-asserting the conversion/theft and punitive damage claims. *See*, Edgeworth Amended Complaint, attached hereto as **Exhibit 17;** *See also*, ¶22 of Simon Amended Complaint. This was filed after Simon filed his motions to dismiss. Since the Edgeworths already received the undisputed portion of the money immediately after the funds cleared the bank and the disputed money was safe kept in the protected joint account for two months, the new Edgeworth Amended Complaint underscores the transparent malicious motives of Vannah, Greene and the Edgeworths.

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; and (6) Avoiding lien adjudication and to delay the proceedings. *See*, ¶¶22,23,24,25,26,58,59, 103 of Simon Amended Complaint.

Abuse of process is established if the Vannah/Edgeworth team initiated and maintained the conversion claim with malice for an ulterior purpose. This was already admitted to by Angela Edgeworth and adopted by the Vannah attorneys. Angela Edgeworth confirmed the frivolous

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conversion theft claim was filed for an ulterior purpose out of ill-will and hostility to punish Mr. Simon for stealing their money 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 8** at 145:10-21 (emphasis added) ; *See also*, ¶¶27,75,76,77,78,85,86,87 of Simon Amended Complaint. Notably, all of the Defendants motions are silent as to the real reason that the conversion complaint was filed hoping this Court will simply gloss over this damning party admission.

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*, Notice of Attorney Lien, attached hereto as **Exhibit 18**; *See also*, Notice of Amended Attorney Lien, attached hereto as **Exhibit 19**. The Vannah attorneys greatly benefit from a prolonged litigious case. Both Vannah and Greene are paid $925 an hour with an endless well to bill against as almost 2 million is safekept in the special trust account. *See*, Fee Agreement, attached hereto as **Exhibit 41**. They have great incentive to advance false narratives to vexatiously attack Simon. This strategy was also likely to 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 several improper purposes, and openly admitted to their malice. The lack of authority and probable cause for the conversion claim highlights such malice. The Vannah

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attorneys adopted the false testimony of Edgeworths despite always knowing that filing a lawful attorney lien is not conversion, extortion or blackmail. The Vannah attorneys have yet to rebuke these false statements or the real reason for filing the conversion claim as admitted to by Angela Edgeworth. Simply, they are now in too deep to abandon the conversion claim and have made a conscious and deliberate decision to continually attack Mr. Simon and his firm.

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 31.** 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 32.** 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, on behalf of the Edgeworth entities, including American Grating, 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 email from Vannah only corroborates the malice and bad faith conduct starting in December 2017 and continuing through today. This further confirms the cons piracy to devise a plan to harm Mr. Simon as outlined in

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detail below. *See,* ¶¶103,104, 105, 106 of Simon Amended Complaint. This conduct is also consistent with the abusive measures from the outset and long after the initial Edgeworth Complaint, and also confirms their long list of abusing the process, which under the facts of this case, is not protected by Anti-SLAPP or the litigation privilege. The bully litigation tactics of the Vannah attorneys shooting from the hip without any authority must stop, especially when it is aimed to cause harm to others. Adding to the list of malicious abusive conduct toward Mr. Simon is the Vannah/Edgeworth team's fabricated story of unethical conduct.

Mr. Simon did not do anything wrong or unethical and only followed the law precisely pursuant to NRS 18.015 as confirmed by David Clark, Esq. *See*, **Exhibit 10.** Mr. Clark, former State Bar Counsel reviewed the case extensively and detailed in his declaration why Mr. Simon did not do anything unethical and only followed the law precisely. Vannah and Greene were given Mr. Clark's report at the beginning of the case and they never disputed his opinion. Judge Jones confirmed the findings of Mr. Clark's conclusions that Mr. Simon did not do anything unethical and actually should be commended.

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 District Court treated Simon's special motion to dismiss based on Anti-SLAPP as moot when she dismissed the case pursuant to NRCP 12(b)(5). Despite the Districts Court's order, the Defendants continued with their devised plan.

4. <u>Continuing Malice</u>

On December 13, 2018, Vannah and Greene filed a motion to direct Simon to release the disputed funds over and above the adjudication order - again accusing Simon of theft. *See,* Motion

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to Release Funds at 6:7-9, attached hereto as **Exhibit 33.** Ignoring the District Court's findings in October, 2018 and continuing to argue conversion is yet more egregious conduct. On December 31, 2018, Mr. James Christensen sent a letter again asking Vannah and Greene to stop the false accusations of theft and conversion, pointing out that the motion for an order to release funds repeats the conversion claim. *See*, December 31, 2018 Letter, attached hereto as **Exhibit 34.** This motion was denied since the Vannah/Edgeworth team had already appealed the adjudication order to the Nevada Supreme Court. The Vannah/Edgeworth team continue to argue theft/conversion and maintain the unethical lawyer theme in all of their briefing, including the briefs to the Nevada Supreme Court. They also advance the same false arguments to this court. Defendants' conduct extends well beyond the mere filing of the complaint. *See,* ¶¶35,36,37,38,39,40, 41, 42 of Amended Complaint.

5. <u>Vannah/Edgeworths' Narrative was Not Credible and Rejected by the District Court</u>

The facts averred to in the affidavits by all Defendants were already ruled on by Judge Jones. *See*, **Exhibit 2** at pp13-14. In regard to the earlier checks deposited by Simon during the case, unless the Nevada Supreme Court weighs in, the impact of the checks has been resolved. The acceptance of the checks was found to have created an implied contract, which Defendants terminated, thereby leaving The Law Offices of Daniel Simon with a valid and enforceable lien claim for unpaid fees and advanced costs, which Judge Jones adjudicated. *Id.* This is the end of story on this issue and Defendants do not get to re-write history as this portion of the case is closed. Similarly, Defendants self-serving affidavits attempt to re-litigate the entire case already decided by Judge Jones is closed and Defendants cannot invite this Court to reach contrary factual findings. This is what finality and fact/issue preclusion is all about.

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Similarly, to the extent they are challenging the lien itself, Defendants are equally foreclosed because they did not challenge Judge Jones' finding that the lien was valid and perfected even on appeal. *See*, Appellate record generally, attached to Vannah's Motions to Dismiss. The excessive amount argument goes to validity and was not properly raised or supported in front of Judge Jones. It is not enough that they may have alluded to an argument of excessiveness in a pleading somewhere, the Court took evidence and made factual findings and conclusions of law. Again, Judge Jones findings cannot be overturned unless her finding/conclusions were an abuse of discretion. Not finding excessiveness when Edgeworth provided no evidence or effective argument of excessiveness; and, when Will Kemp testified Mr. Simon's lien was a bit low, is a decision made on substantial evidence and is therefore within her discretion.

III.

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 FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS

The Vannah/Edgeworth frivolous conversion Complaint and subsequent filings were not made in good faith to pursue claims under serious consideration, and their attempt to assert facts now justifying their wrongful conduct fails. It is the Vannah Attorneys and Edgeworths that have the burden to show by a preponderance their conduct was made in good faith. The District Court already rejected these same factual assertions contained in the new affidavits to support the instant

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motion, and therefore, Defendants cannot meet the burden of a preponderance to apply the litigation privilege. Simply, filing a frivolous conversion claim to punish a lawyer for filing a lawful attorney lien is not good faith litigation, especially when the real reason is admitted in sworn testimony by a party, which was to punish Simon. Defendants want to skip over this conclusive evidence in making their overbroad arguments for dismissal. Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team. *See*, **Exhibit 1**.

D. PLAINTIFFS HAVE PROPERLY PLED ALL CAUSES OF ACTIONS IN THE AMENDED COMPLAINT

1. 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.

2. 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.)

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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).

3. All Defendants, including the Vannah attorneys are liable for Abuse of Process.

Even if this Court was inclined to apply the litigation privilege 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, which is based on Defendants' conduct. 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); 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

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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 fabricated an express oral contract for an hourly rate only to refuse payment and invented a conversion claim to assert theft, blackmail and extortion. The conversion claim was yet another false basis to refuse payment of attorney fees admittedly owed and to punish Simon as admitted by Edgeworth. All of these acts have been adopted and advanced 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 for stealing their money. *See*, September 18, 2018 Transcript at 145:10-21, attached hereto as **Exhibit 8**. They also sought to avoid lien adjudication and intentionally cause substantial expense to defend the frivolous claims. This is also another 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. Even if this court applied the litigation privilege for the judicial statements, the abuse of process claims still proceed for the conduct of the parties. 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. It is the conduct and/or lack of conduct that controls the analysis.

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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.

Here, the Vannah/Edgeworth team invented a story of blackmail, extortion and theft and 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 and Amended Complaint that Defendants have filed and maintained the conversion claim for the ulterior purpose of punishing Simon and injuring his business and reputation. The Court also can look to what the Vannah attorneys and Edgeworths did not do to establish the frivolous conversion claim.

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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 when no justiciable claim ever existed. The only basis offered to the Court was the cavalier statement from Vannah that **"He thought it was a good theory."** *See*, **Exhibit 11** at 34:20-24. Simon never had the money, much less deposited it into his own bank account. The ongoing and repeated false accusations that Simon is a thief extorting millions from a client is the epitome of abusive conduct allowing the abuse of process claims to proceed. *Bull v. McCuskey, Supra.*

The fact that Defendants never provided any expert or lay evidence at the five-day evidentiary hearing is further proof of their ulterior purpose. They did not challenge Will Kemp, Esq. or David Clark, Esq., and did not challenge the enforceability of the lien. They never provided any evidence that an actual conversion occurred. Moreover, the Edgeworth/Vannah team could never provide any authority for conversion, which remains glaringly absent. 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.

Defendants also wrongfully cite *Evans v. Dean Whitter Reynolds, Inc., 116 Nev. 598 (2000).* In *Evans*, the attorney actually controlled the money by forging his aunt's name and put the money in his own personal account. No such facts exist in this case and the Vannah attorneys are well aware that the *Evans* case does not support their conversion claims, yet this is the only case they cite in their self-serving affidavits as the basis for the conversion claim. Significantly, this case was cited for the first time by the Vannah/Edgeworth team in their appellate briefs to the Supreme Court. The lack of authority continued throughout the entire case when Mr. Christensen repeatedly requested the conversion authority, but none could be given. *See*, Declaration from James Christensen, Esq. attached hereto as **Exhibit 11.**

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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). Defendants in their renewed briefing heavily rely on *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d.314, 317 (1980), a case never cited in the underlying case. This case also does not remotely relate to the instant matter as it involves a rancher that branded someone else's cattle after he defaulted on a purchase contract. In *Bader*, branding cattle as his own when he did not pay for it was conversion. Unlike *Bader*, Simon immediately released all undisputed funds of $4 million for a $500,000 property damage claim. Vannah asserts the jury instruction in *Bader* as controlling, which stated as follows: "Conversion exists where one exerts **wrongful** dominion over another's personal property or **wrongful** interference with the owner's dominion…." *Id*., at 357, fn. 1. The Vannah attorneys fail to analyze the *Bader* jury instruction with the present facts because doing so actually supports Plaintiffs' position.

Unlike *Bader*, who did not have a legal right to continue to hold the cattle after failing to perform his obligations under the contract, Plaintiffs always had an interest in the proceeds. All Defendants always knew Simon was owed substantial fees. Plaintiffs' claim was justified and the lien was properly founded upon NRS 18.015. As much as Defendants want to create a new ad hoc rescue argument over the amount of the lien, they skip over the undeniable fact that Plaintiffs were legally within their rights to assert an attorney lien – a lien that has already been approved by a fellow district court. Simon never had exclusive control of the money, always had an interest and never did a ***wrongful*** act to deprive them of the undisputed money. Merely because Defendant did not like the filing of the lawful lien does not give them a basis to file a frivolous claim and defame Simon to the community. Defendants did not challenge the enforceability of the lien as to the amount at the adjudication hearing, and the amount of the lien was not the basis for the

conversion complaint. Alluding to the amount in some documents is not enough. The amount had to be challenged as to its validity at the hearing if this was their true legitimate basis. The ability to assert the lien pursuant to Nevada law is not ***wrongful*** and has always defeated the conversion claim from the outset. The Vannah Attorneys have always known this undeniable fact, especially given the dialogue with Mr. Christensen. *See*, Declaration of James Christensen, attached hereto as **Exhibit 11**. Simon has properly pled the Abuse of Process claims based on Defendants' on-going abusive conduct long after the mere filing of the Edgeworth Complaint.

4. Wrongful Use of Civil Proceedings is Properly Pled

If this Court allows this claim to proceed, the Simon Plaintiffs have already met each and every element. As set out in the Restatement (Second) of Torts, § 674 (1977):

> One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if:
>
> (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and
> (b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought.

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, §674 (1977). 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.

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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 with the frivolous conversion complaint and delay the Court decision is yet another basis to established liability. Here, the Edgeworth/Vannah team brought the claim to delay expedited lien adjudication and increase the cost of litigation when asking Judge Jones for full blown discovery and a jury trial aimed to cost Simon substantial expenses, as well as to punish him out of their ill-will.

Defendants assert that this claim is not recognized in Nevada. *See*, American Grating Motion to Dismiss Amended Complaint at 17:7-9. 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)

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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. Judicial resources are becoming scarcer and more valuable, which supports recognizing the claim for the wrongful use of civil proceedings.

In this case, 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. *See*, **Exhibit 1**. 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. *Bradshaw v. State Farm Mut. Auto. Ins. Co.*, supra. The District Court dismissed the Edgeworths' Complaints 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. The District Court's finding is sufficient to meet the "final determination" prong. 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' lack of probable cause. Therefore, the Simon Plaintiffs have already established a prima facie case for this claim. Since the Supreme Court has not expressly rejected this claim, this Court should make its own determination, so this claim can be formally recognized by Nevada.

5. <u>Defamation Per Se is Properly Pled</u>

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. On May 21, 2020, Plaintiffs filed an amended

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complaint. Since the specific statements to third parties have yet to be verified under oath, and this court has not made a ruling on the application of the litigation privilege, Plaintiffs omitted the Vannah attorneys from these specific causes of actions until such time as the litigation privilege is determined. However, they are clearly on notice that upon learning the new statements that Plaintiff believes that have been published, or a ruling that the litigation privilege does not apply, then Plaintiffs will move this Court to Amend the Complaint to include this cause of action against the Vannah Defendants once again.

Notwithstanding the Amended Complaint, Simon submits they have properly pled the defamation claims against all Defendants in that regard. *See* Simon Complaint, at ¶ ¶ 66-73. 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 proceedings 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. Certainly, the Vannah Attorneys would not advance such serious allegations against Simon unless they had the existence of facts to support same.

Moreover, the claim relates to the Vannah attorneys when they conspired with the Edgeworths 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).

Plaintiffs, at a minimum, request discovery on these issues. *See*, Declaration of Peter Christiansen, attached hereto as **Exhibit 12.**

6. <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.

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 Edgeworths, and they definitely had no probable cause for asserting conversion against him. He did not engage in any criminal conduct and to say he did is disparaging. The Defendants' statements were proffered to

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injure Simon and all Defendants knew the statements were false at the time they were made. The Vannah Attorneys confirmed their malice in Mr. Vannah's email to Mr. Chirstensen. *See*, January 9, 2020 Email, attached hereto as **Exhibit 32**. 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 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.

As the claim relates to the Vannah attorneys, they conspired with the Edgeworths 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 that the court apply this cause of action equally to the Vannah attorneys.

7. <u>Civil Conspiracy is Properly Pled</u>

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

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(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).

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 Edgeworths and the Vannah Attorneys 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,* Simon 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.

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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 other's 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.

IV.

CONCLUSION

Based on the foregoing discussion, dismissal is improper. 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 causes of action, especially when taking the 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 15th day of July, 2020.

CHRISTIANSEN LAW OFFICES

By _____
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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 15th day of July, 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' INITIAL COMPLAINT, AND MOTION IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT*** 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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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 XIV** **BATES NO. AA002625 - 2872**

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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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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-807433-C

DEPT. NO. 24

REPLY IN SUPPORT OF BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC'S SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637

Hearing Date: August 13, 2020 at 9:00am

COMES NOW, Defendants, BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, by and through their counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES, LLP, and Patricia Lee, Esq., of HUTCHISON & STEFFEN, PLLC, and hereby respectfully submit this REPLY IN SUPPORT OF BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC'S SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637.

This Reply is based upon the attached Memorandum of Points and Authorities, NRS sections 41.635-670, the pleadings and papers on file herein, the Affidavit of Brian Edgewood attached hereto and any oral argument which this Honorable Court may entertain at time of hearing on this matter.

DATED this 23rd day of July, 2020.

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/s/ Renee M. Finch
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' Opposition to Defendants Brian Edgeworth ("Brian"), Angela Edgeworth ("Angela"), The Edgeworth Family Trust (the "Trust") and American Grading, LLC's ("AMG") [hereinafter Brian, Angela, the Trust and AMG will be collectively referred to as the "Edgeworths"] Special Anti-SLAPP Motion to Dismiss Plaintiff's Initial Complaint fails to demonstrate that the Edgeworths are not entitled to the relief requested therein. Instead, Plaintiffs inappropriately attempt to sway this Court by alleging the Edgeworths are the bad actors here, when Plaintiff Danny Simon ("Simon") continues to distort facts and reality to claim the Edgeworths allegedly had no basis for their conversion claim when Simon continued – and continues to this day – to exercise unlawful and wrongful dominion and control over funds from the Edgeworths' settlement with Viking, to which neither Simon nor his firm, The Law Office

of Daniel S. Simon, P.C. [hereinafter collectively referred to with Plaintiff Simon as "Plaintiffs"], have ever had any legal right.

Demonstrating the continuing attempts by Plaintiffs to confuse the issues is the fact that while recognizing that this Court must apply a summary judgment standard to resolution of the Edgeworths' Anti-SLAPP Motions, Plaintiffs repeatedly make unsupported statements without citations or inappropriately cite to Plaintiffs' Complaint within their Opposition which they claim are allegedly undisputed facts. Given Simon's continually stated expertise, Plaintiffs knew, or should have known, that purported facts not supported by citation or supported by citation to a party's own complaint cannot be properly considered when resolving a motion under a summary judgment standard, as each fact claimed to be undisputed must be supported by the factual record (not allegations forwarded in a Complaint) or affidavit. *See* NRCP 56.

As such, none of the allegedly undisputed facts within Plaintiffs' Opposition which are not supported by citation, nor those purported facts which cite to Plaintiffs' Complaint, may be properly considered in this Court's resolution of the Edgeworths' Anti-SLAPP Motions, leaving Plaintiffs without the ability to support their arguments, as same are mostly – if not completely – based upon Plaintiffs' unsupported or inappropriately cited purported factual statements. When evaluating the actual record in this matter, Plaintiffs simply cannot demonstrate that their Complaint is anything other than an unlawful SLAPP suit which must be dismissed.

Further, Plaintiffs' Opposition wholly fails to demonstrate that: (1) the speech at issue, as pled within Plaintiffs' Complaint, is not protected by the absolute litigation privilege and Nevada's anti-SLAPP statute; (2) Plaintiffs' allegedly have any possibility of prevailing upon their several "Counts" as pled within Plaintiffs' Complaint; or (3) the Edgeworths' did not have a good faith basis upon which they brought the Edgeworth Complaints.

Specifically, Simon's actions in utilizing the legal system by filing attorney's liens to become adverse to his clients (the Edgeworths) while he was still the Edgeworths' attorney and after refusing to

provide the Edgeworths with a final invoice as requested by Brian on several occasions, demonstrates the wrongfulness of Plaintiffs' exercise of dominion and control over the Viking Settlement funds or, in legal terms, the tort of conversion as defined under Nevada law.

As such, Plaintiffs' Opposition wholly fails to demonstrate that the Edgeworths' Anti-SLAPP Motion does not fulfill the three (3) prongs of Nevada's anti-SLAPP jurisprudence. Therefore, the Edgeworths respectfully request that this Honorable Court grant their Special Anti-SLAPP Motion to Dismiss, as Plaintiffs' Complaint cannot properly be allowed to move forward pursuant to Nevada's Anti-SLAPP laws, as codified within NRS 41.635-670.

II. REBUTTAL TO PLAINTIFFS' PURPORTED FACTUAL STATEMENTS

As a beginning note for this rebuttal to Plaintiffs' purported factual statements within Plaintiffs' Opposition, as discussed in detail in Section III of this Reply, any and all of Plaintiffs' purported facts which have no citation to the record or cite to nothing more than Plaintiffs' Complaints, cannot properly be considered under the motion for summary judgment standard which Plaintiffs even admit this Court should employ to resolve the Edgeworths' Special Anti-SLAPP Motion to Dismiss Plaintiffs' Initial Complaint ("the Edgeworths' Anti-SLAPP Motions"). As such, any and all facts presented within the Edgeworths' Anti-SLAPP Motion for which Plaintiffs failed to present facts supported by the record or to which they present facts supported by only citation to one of their Complaints, should be seen as undisputed for the purpose of resolution of the Edgeworths' Anti-SLAPP Motion. Therefore, this rebuttal will only address those purported facts which have citations to the record, whether in the Section of Plaintiffs' Opposition entitled "INTRODUCTION" or "FACTUAL BACKGROUND[.]" *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 2-17, on-file herein. First, Plaintiffs contend that the theories forwarded by Defendants regarding Simon's unlawful exercise of dominion and control over the Viking Settlement funds are allegedly inconsistent. *Id*. at 4:4-15. However, there is simply nothing inconsistent between the statements of undisputed facts made within Brian's Affidavit attached to the Edgeworths' Anti-SLAPP Motion and Mr. Vannah's Affidavit attached to Vannah's Anti-SLAPP Motion to Dismiss Plaintiffs' Initial Complaint. S*ee* Affidavit of Brian Edgeworth, as attached to the Edgeworths' Anti-SLAPP Motion, attached hereto as **Exhibit A**; *see also* Affidavit of Robert Vannah, Esq., as attached

to Vannah's Anti-SLAPP Motion, attached hereto as **Exhibit B**. In fact, a cursory review of the affidavits demonstrates that all named Defendants have stated the same theory regarding Simon's wrongful exercise of dominion and control over the Viking Settlement funds; namely, that upon Simon's wrongful exercise of dominion and control, the Edgeworths – through Vannah as their counsel – filed the Edgeworth Complaints in order to seek redress for Simon's conduct, for which a good faith belief exists under the actual law for conversion in Nevada. *Id*.

As Plaintiffs did not actually provide this Court with what was inconsistent, merely stating so is not sufficient to make the fact undisputed. *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 4:4-15, on-file herein. Therefore, the factual statements regarding Simon's conduct constituting an unlawful exercise of dominion and control over the Viking Settlement funds – as presented within the Edgeworths' Anti-SLAPP Motion and Brian's Affidavit attached thereto – should be considered undisputed for purposes of this Court's resolution of the Edgeworths' Anti-SLAPP Motion. *See* The Edgeworths' Anti-SLAPP Motion, dated July 2, 2020, on-file herein; *see also* **Exhibit A**. Plaintiffs' continued mischaracterization of testimony also does not support their contention that the facts as presented within the Edgeworths' Anti-SLAPP Motion are disputed. *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 4:17-28, on-file herein.[1] Contrary to Plaintiffs' opinion regarding Angela's testimony about the Edgeworth Complaints, Angela did not testify that the only, sole purpose in bringing suit against Plaintiffs for Simon's conversion of the Viking Settlement funds was to punish Simon, but instead was to seek redress from Plaintiffs for wrongfully controlling the settlement funds

[1] The Edgeworths note that the version of Transcript from day 5 of the hearing before Judge Jones as attached as Exhibit 8 to Plaintiffs' master appendix is not the document indicated by the coversheet to said Exhibit. *See* Exhibit 8 to Plaintiffs' Master Appendix, at Bates numbers 00885-01074, on-file herein. Instead, a review of the cover page (which is for the certified copy of the transcript) demonstrates the transcript presented thereafter (which is the uncertified, reporter's copy from JD, Reporting, Inc.) are not consistent. *Id*. It appears that Plaintiffs may have purposefully placed the cover sheet for the certified copy of the transcript upon the uncertified transcript in another inappropriate attempt to mischaracterize evidence and mislead this Court, as the testimony cited by Plaintiffs from the uncertified copy of the transcript is not found within the certified copy. *Id*.; *see also* ***Certified*** Transcript of September 19, 2018, Evidentiary Hearing (Day 5), at 140:18-21, 141:5-6, 142:21-23, attached hereto as **Exhibit C**; *see also* Excerpts from Plaintiffs' Exhibit 8 and the Edgeworths' Exhibit C, attached hereto as **Exhibit D**. As such, it appears Plaintiffs have again inappropriately attempt to twist and skew evidence by apparently attempting to pass the uncertified transcript off as the certified transcript, which may implicate issues of candor to this Court and/or NRCP 11. *Id*. The Edgeworths respectfully request that this Court not simply gloss over this issue but, instead, evaluate whether Plaintiffs' conduct in this regard may be potentially sanctionable. The Edgeworths hereby object to Plaintiffs' Exhibit 8 and request that said Exhibit be stricken from the record in this matter and/or not considered by this Court, as Exhibit 8 is not an accurate depiction of the testimony presented to Judge Jones. The Edgeworths also specifically reserve any and all rights and/or objections regarding all issues presented within this footnote.

AND to punish Simon for his unlawful conduct. *See* Transcript of September 19, 2018, Evidentiary Hearing (Day 5), at 140:18-21, 141:5-6, 142:21-23, attached hereto as **Exhibit C**. In fact in this regard, to demonstrate that the purpose of the lawsuit was to seek redress to get the remainder of the Viking Settlement funds **AND** to punish Simon for his unlawful conduct, Angela testified as follows:

> Q All right. And once you were made whole or about the same time you were made whole, you sued Mr. Simon rather than pay him, correct?
> A No.
> …
> Q You accused him of converting your money, correct?
> A Yes.
> …
> Q And you wanted money to punish him for stealing your money, converting it, correct?
> A Yes.

Id.

As will be discussed in detail herein, the Edgeworths always admitted that they owed some amount to Plaintiffs for the work performed on the underlying matter between September 2017 – when the last provided invoice was paid – and the finalizing of the settlement. *See* **Exhibit A**. It is also undisputed that Brian requested that Plaintiffs provide him with the final invoice several times and Plaintiffs refused and/or withheld the invoice. *Id*. Further, nothing within Brian's Affidavit – albeit poorly claimed by Plaintiffs – evidenced that there was any invention of anything and, instead, the supported legal theories presented within the Edgeworth Complaints are not here in dispute, no matter how many times Plaintiffs attempt to inject elements (such as a physical taking, a theft and exclusive control) into a claim for conversion in Nevada. *Id*.; *see also*, Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 5-6, on-file herein; *see also* The Edgeworth Complaints, dated January 4, 2018 and March 15, 2018, respectively, attached hereto as **Exhibit E**. Further, the money being kept in the special trust account does not – as Plaintiffs again poorly attempt to assert – demonstrate that the Edgeworths allegedly had no recoverable damages and certainly the email attached to Plaintiffs' Opposition, which does nothing more than identify the interest the account earns, would belong to the Edgeworths in no way creates a genuine issue of material fact as to damages. *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 6 and Exhibit 20 attached thereto, on-file herein.

Additionally, Plaintiffs have also misconstrued the ruling of Judge Jones regarding the Attorney's Liens. *Id*. at 6-7. Specifically, the ruling of Judge Jones was not that Plaintiffs had any entitlement to the Viking Settlement funds but, instead, that the lien based upon the hourly fee arrangement was proper. *See* Decision and Order on Motion to Adjudicate Liens, dated November 19, 2018, attached hereto as **Exhibit F**. Therefore, the undisputed facts of this matter are not that Plaintiffs were legally entitled to file the Amended Lien, as forwarded by Plaintiffs. *Id*. Further, Plaintiffs' citation to page 215, lines 7-24, of the August 29, 2018, hearing transcript regarding the meeting with Simon is misplaced. *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 7-8 and Exhibit 6 attached thereto, on-file herein. Plaintiffs said nothing of the sort. This is also true for Plaintiffs' citation to page 7 line 23 to page 8 line 7 and to page 7 line 14 through page 8 line 7, as nothing described in said testimony is even remotely related to Plaintiffs' contentions regarding same. *Id*. As such, these purported facts cannot properly be considered by this Court.

Plaintiffs' proffered explanation for the November 27, 2017 Letter is also not persuasive or supported by the undisputed evidence. *Id*. at 8. Specifically, the email from Brian to Simon dated November 21, 2017, in no way demonstrates that same was allegedly requested by Simon, nor that Simon utilized the email to attempt to determine an alleged "fair fee" to be worked out with the Edgeworths. *Id*. at 8 and Exhibit 38. Instead, the undisputed evidence demonstrates that not only did Simon not take Brian's email into consideration – as the November 27, 2017 Letter indicates that the Edgeworths would allegedly be made whole by a sum of $3 Million, when Brian's November 21, 2017, email clearly indicates his out of pocket costs of nearly $4 Million, which did not then take into account Brian's time on the case or the Edgeworths' lost profits – but Simon then unilaterally imposed a figure for attorney's fees upon the Edgeworths that would all but guarantee the Edgeworths would not be made whole. *Id*.; *see also*, Simon's Correspondence to Brian and Angela Edgeworth, dated November 27, 2017, attached hereto as **Exhibit G**; *see also* Retainer Agreement and Settlement Breakdown, as attached to the November 27, 2017 Letter, attached hereto as **Exhibit H**.

Plaintiffs' reliance upon Judge Jones' findings regarding the checks sent by the Edgeworths to pay Plaintiffs' invoices demonstrates that it is undisputed that Plaintiffs never had the right to seek any

portion of the Viking Settlement, as a contract for an hourly fee arrangement was created on December 2, 2016 – nearly two (2) years prior to the filing of the Attorney's Liens. *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 10 and Exhibit 2 attached thereto, on-file herein. Plaintiffs' continued mischaracterization of the facts of this matter can be easily seen by way of Plaintiffs' statements regarding Brian's testimony concerning the forming of the hourly fee contract almost immediately following Plaintiffs' stating that Judge Jones' ruling regarding same is allegedly conclusive. *Id*. at 10 and Exhibit 2, and 12 and Exhibit 4 at 160:14-20. The Edgeworths urge this Court to see through and put an end to Plaintiffs' theme of mischaracterizing facts to fit Plaintiffs' narrative, even if the facts do not in actuality support the narrative. Plaintiffs mischaracterize Judge Jones' resolution of the issue allegedly makes the matter closed Plaintiffs again make statements, much of which has no citation to the record or the citation is improperly to Plaintiffs' Complaint, that Judge Jones now allegedly rejected that there was only an hourly fee arrangement, when Plaintiffs not one (1) page early state that Judge Jones' ruling that there was only an hourly fee arrangement was allegedly conclusive of all issues. *Id*. at 10 and Exhibit 2, and 12:9-14. Plaintiffs' credibility continues to diminish based upon their own inconsistent statements. *Id*.

III. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS

Plaintiffs' Opposition concedes that this Court's resolution of the Edgeworths' Anti-SLAPP Motion is under a summary judgment standard. "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law."[2] Further, "[t]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."[3]

To properly support contentions within a motion under a summary judgment standard, NRCP 56(c)(1)(A) states:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

[2] Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005).
[3] Id. at 1031.

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]

Further, when, as here, a party does not comply with NRCP 56(c)(1)(A), NRCP 56(e) is controlling, and states:

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
> (1) give an opportunity to properly support or address the fact;
> (2) consider the fact undisputed for purposes of the motion;
> (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or
> (4) issue any other appropriate order.

Here, Plaintiffs have had two (2) separate opportunities to file their Opposition and still failed to support many of their purported, alleged "facts" with citation to the record (other than their own Complaint, which is inappropriate) or affidavit. As such, the Edgeworths respectfully request that this Court not consider any of Plaintiffs' unsupported facts or those facts alleged to be supported by way of Plaintiffs' Complaints in the resolution of the Edgeworths' Anti-SLAPP Motion. Plaintiffs attempt to create a material question of fact by making countless unsupported factual assertions. Of note to this case, in an attempt to force this Court to dispose of the Edgeworths' Anti-SLAPP Motion, the following unsupported assertions found in Plaintiffs' Opposition, attempt to turn the Edgeworths' ***supported*** facts into disputed issues of fact:

> Instead of suggesting a fair fee from their perspective, they started to become unavailable, unlike the 24/7 calls and emails during the case. It was apparent to Simon that the Edgeworths were acting different to avoid paying. Simon began preparing a letter, and in an effort to determine the amount that was fair to the clients, Simon asked Edgeworth for a breakdown of what he believed were his out of pocket expenses.[4]
> …
> This was the entire reason for the letter so that the close friends who Simon helped when others would not, could work out a fair fee for the reasonable value of services.[5]
> …
> The story about extortion stemming from the letter they requested was also rejected by the District Court as it did not make any sense. The Edgeworths alleged Simon's threats in the letter made them scared. This was equally rejected as they have a long list of lawyers at their fingertips, including

[4] *See* Plaintiffs' Opposition, at 8:12-17.
[5] *Id*. at 8:22-24.

> their business lawyer Mark Katz and many others, and also hired Vannah immediately to avoid paying.[6]
> …
> Unless the Nevada Supreme Court weighs in, the impact of the checks has been resolved…. his is the end of story on this issue and Defendants do not get to re-write history as this portion of the case is closed! Similarly, in Defendants self-serving affidavits they are attempting to re-litigate the entire case already decided by Judge Jones. The Defendants cannot invite this Court to reach contrary factual findings. This is what finality and fact/issue preclusion is all about.[7]
> …
> Additionally, 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 Simon 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. 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, and openly admitted to their malice.[8]
> …
> These communications have always been false. 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 Simon Complaint**.[9]

These are just a few of the countless instances where Plaintiffs elect to cite to their own Complaint rather than some credible location within the record or to an affidavit to support their factual contentions, requiring that same not be considered and that the Edgeworths' factual contentions, which are supported, be taken as undisputed for purposes of resolution of the Edgeworths' Anti-SLAPP Motions. The above examples are directly related to the purported argument made within Plaintiffs' Opposition, which is now demonstrated to be unsupported by any evidence, let alone allegedly ***undisputed*** evidence. Plaintiffs have failed to demonstrate that the Edgeworths' speech was not allegedly good faith communications made within the context of a judicial proceeding, that Plaintiffs have any ability to prevail upon their alleged "Counts[,]" nor that the Edgeworths allegedly did not have a good faith basis for bringing and maintaining

[6] *Id*. at 9:2-7.
[7] *Id*. at 10:3-4 and 10:8:13.
[8] *Id*. at 13:1-13. (Emphasis added).
[9] *Id*. at 14:8-13. (Emphasis added).

their conversion claim against Plaintiffs following Simon's wrongful exercise of dominion and control over the Viking Settlement funds. Disregarding Plaintiffs continued attempts to distort facts to confuse issues, and focusing on the undisputed facts at issue in this matter under Nevada's Ant-SLAPP laws, Plaintiffs' Complaint is nothing more than a SLAPP suit which must be dismissed in its entirety.

IV. PLAINTIFFS' OPPOSITION FAILS TO DEMONSTRATE THAT THE EDGEWORTHS' ANTI-SLAPP MOTION TO DISMISS SHOULD NOT BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

A. Plaintiffs' Opposition Fails to Present Undisputed Evidence To Rebut The Edgeworths' Satisfaction of the First Prong of the Anti-SLAPP Analysis

Plaintiffs continue to attempt to demonstrate that the Edgeworths allegedly made false statements regarding payment by mischaracterizing facts and testimony. *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 13-15, on-file herein. However, for this version of the Edgeworths' Anti-SLAPP Motion, Plaintiffs cannot properly rely upon the inadequate, generalized statements made to third parties as pled, because the specific statements at issue were not properly pled within the Initial Simon Complaint. As such, any reference to statements made by the Edgeworths to Mr. Herrera, Ms. Carteen or Justice Shearing should not be considered in this Court's resolution of the Edgeworths' Anti-SLAPP Motion to Dismiss Plaintiffs' Initial Complaint. Plaintiffs continually argue that the Edgeworths allege that Simon was paid in full ***and*** that the Edgeworths admitted that they still owed Plaintiffs payment for services rendered. While Plaintiffs' assertions appear to be contradictory, this is nothing more than a red herring to distract from the issues at hand. The Edgeworths' statement(s) that Plaintiffs had been paid in full, was in relation to payment in full of the invoices actually submitted to the Edgeworths. This was clearly outlined within the Edgeworths' Anti-SLAPP Motions, and was not a false statement. The Edgeworths' statement(s) regarding Plaintiffs being owed payment was in reference to the final invoice for services after September 19, 2017, and the fact Brian repeatedly requested the final invoice for work performed and Plaintiffs refused to provide same and ignored Brian's requests. As such, the Edgeworths' statements that Plaintiffs had been paid in full, and the statement that the Edgeworths knew that some amount was still owed to Plaintiffs are not contradictory at all. This is just another attempt by Plaintiffs to confuse the Court and distract from the issues at hand.

Next, *Shapiro v. Welt*'s adoption of California law stating that one (1) of the factors for a court to look at when determining if speech should be afforded anti-SLAPP protection is whether "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[,]" does not allegedly demonstrate that the Edgeworths' speech should not be afforded anti-SLAPP protection. 133 Nev. 35, 39-40, 389 P.3d 262, 268 (2017) (citing *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F.Supp.2d 957, 968 (N.D. Cal. 2013), *aff'd*, 609 Fed.Appx. 497 (9th Cir. 2015)). Instead, as the Edgeworths have demonstrated extensively, their speech was either made in the course of a judicial proceeding, made to attorneys for the purpose of legal advice or were made to address Simon's statements to Mr. Herrera that included false intimation of wrongdoing on the part of the Edgeworths. The ***undisputed*** facts demonstrate that: (1) the statements made by Brian to Mr. Herrera which are recounted within Brian's Affidavits, cited and relied upon by Plaintiffs as alleged support for their SLAPP claims, are privileged on several independent grounds, the first of which is under NRS 41.637(4); these said statements were "[c]ommunication[s] made in direct connection with an issue of public interest in a place open to the public or in a public forum, which [were] truthful or … made without knowledge of [their] falsehood[,]" Brian met Mr. Herrera at a Ventano's – a restaurant open to the public, which was open for regular business on the day of the meeting – to discuss the issue between the Edgeworths and Plaintiffs; [*see* Exhibit A, attached to the Edgeworths' Renewed Anti-SLAPP Motion]; (2) in their filings with the Nevada Supreme Court requesting *En Banc* review of Plaintiffs' Writ, Plaintiffs admitted and concede that the matter underlying the issue between the Edgeworths and Plaintiffs is one of such public interest that it required a panel of seven [7] Justices to consider it; [s*ee* Plaintiffs' Motion for En Banc Review, dated January 28, 2020, attached as Exhibit S to the Edgeworths' Renewed Anti-SLAPP Motion]; (3) Brian testified at the evidentiary hearing that he did not use the words "extortion[,]" "blackmail[,]" "theft" and/or "steal[,]" when talking to Mr. Herrera; [s*ee* Transcript of August 28, 2018, Evidentiary Hearing (Day 2), attached as Exhibit U to the Edgeworths' Renewed Anti-SLAPP Motion]; (4) Brian specifically testified that he used the term "extort" in his several Affidavits filed with the Court for the specific purpose of it accurately defining his ***perception and opinion*** of Simon's actions; [*Id*]; (5) Brian's statements were opinions of his perceptions of what

had occurred between Plaintiffs and the Edgeworths which have been specifically held to be privileged; [*Id*]; (6) any statements made by Angela to Ms. Carteen and/or Justice Sheering were also privileged pursuant to NRS 41.637(3) and (4) as said statements were made in the context of the underlying litigation, were opinions and were made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public interest; [*See* Transcript of September 19, 2018, Evidentiary Hearing (Day 5), at 64:2-25; 65:5-10; 68:1-23; 77:14-22; 100:1-7, 18-22; 100:25-101:15; 101:1-102:24; 103:8-15; 126:2-127:17; 131:3-134:1, attached as Exhibit V to the Edgeworths' Renewed Anti-SLAPP Motion]; (7) Angela's statements to Ms. Carteen were nothing more than statements of opinion regarding how Angela felt regarding the dispute with Simon and could be protected by attorney client privilege as Ms. Carteen represented the Edgeworths on business and personal matters for many years who had also become a friend during that time, but any statements made to her regarding legal matters are protected by attorney-client privilege [*Id*.]. Developing a friendship with an attorney who has handled business and personal matters over more than 20 years is a natural progression, and legal representation and friendship are by no means mutually exclusive. When properly disregarding Plaintiffs' unsupported purported facts, the ***undisputed facts***, show that the speech in question is protected by the litigation privilege and should be afforded anti-SLAPP protection.

Plaintiffs further state that the Edgeworths allegedly "leap over the mounds of evidence" which allegedly demonstrate allegedly false statements, but then Plaintiffs provide no citation to such evidence, making this generalized, bald assertion nothing more than conjecture. *See* Plaintiffs' Opposition to Vannah's Initial Anti-SLAPP Motion at 15, on-file herein. Just because Plaintiffs plead something in a complaint does not make it true, and Plaintiffs continued reliance on this position and theme should not be tolerated by this Court. Plaintiffs again bring their argument around to the red herring that the Edgeworths always knew something was owed to Plaintiffs for services performed. *Id*. Again, this is simply not demonstrative of anything other than the fact the Edgeworths knew work had been performed after payment of the September 19, 2017, invoice and, despite requesting that Plaintiffs provide him with the final invoice several times, Plaintiffs never provided same to Brian to allow him the opportunity to pay the final invoice and, instead, filed the several attorney's liens in bad faith, knowing that he was to be

paid under the hourly agreement. It is simply disingenuous for Plaintiffs to claim that they had a good faith, lawful basis upon which to file the attorney's liens when they did not provide the Edgeworths with the requested final invoice, nor allow the Edgeworths' the opportunity to pay the final invoice as same was never provided, prior to Plaintiffs' filing of the attorney's liens. Plaintiffs have again attempted to skip steps in the analysis, based upon unsupported factual statements within the Opposition, in an attempt to argue that the filing of an attorney's lien cannot be unlawful or amount to conversion. *See* Plaintiff's Opposition to the Edgeworths' Initial Anti-SLAPP Motion, at 14, on-file herein. Plaintiffs concede that this Court is required to take the undisputed situation as a whole. Following this argument, it becomes clear that: (1) Simon refused to provide the Edgeworths with the final invoice following it being clear that the settlement amount was for significantly more than originally believed [*see* Exhibit A attached to the Edgeworths' Anti-SLAPP Motion]; (2) that Simon withheld the final invoice as he knew the Edgeworths had paid all other invoices promptly, and once the invoice was paid, Simon would have a much more difficult time trying to justify an attorney's lien [*id*.]; (3) that, without providing a final invoice, Simon then sent the November 27, 2017 Letter, demanding that the Edgeworths sign the Retainer Agreement and Settlement Breakdown or Simon would no longer be able to help the Edgeworths with finalizing the Viking Settlement [*see* **Exhibits G and H**]; and (4) still without providing a final invoice, when the Edgeworths refused to sign the Retainer Agreement and Settlement Breakdown, Simon filed the several attorney's liens, for which he had never provided an invoice or allowed the Edgeworths an opportunity to pay [*see* Exhibits G and H attached to the Edgeworths' Anti-SLAPP Motion].

The undisputed facts of this matter demonstrate that not only was the speech at issue made in good faith based upon the conduct of Simon, but said speech is afforded protection under the absolute litigation privilege and Nevada's anti-SLAPP law, as the Edgeworths filed the Edgeworth Complaints and made statements of opinion regarding an issue of public importance [the instituting of an attorney's lien prior to allowing the client an opportunity to pay for said service and when claiming an amount of a client's settlement to which that attorney has no legal right], made in places open to the public. NRS 41.637(3) and (4); *see also, Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 714, 57 P.3d 82,

87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes."). It must also be noted that Plaintiffs' continued attempts to impose some alleged requirement of a physical taking or exclusive control for a claim of conversion in Nevada is wholly without merit and should not be tolerated by this Court. Throughout all of their Oppositions, Plaintiffs continue to utilize the phrase "conversion theft claims" which is simply a creation of Plaintiffs invented to confuse the issues and has no actual legal meaning. Further, Plaintiffs' citation to California caselaw regarding exclusive control is misplaced, as, while Nevada will look to California ***when no Nevada law is on point***, here, Nevada law regarding a claim for conversion is plentiful and defined. *See* Plaintiffs' Opposition to the Edgeworths' Initial Anti-SLAPP Motion, at 5, on-file herein.

Under Nevada law, the tort of 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*, 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) (overruled on other grounds by *Dean Witter Reynolds*, 116 Nev. 606, 5 P.3d 1043 (2000) (emphasis added). 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*. As such, there is simply no requirement of exclusive control or a physical taking in Nevada to assert a viable claim for conversion; meaning, that Plaintiff's continued narrative that there was no taking or exclusive control by Simon of the Viking Settlement funds is simply not a justifiable argument under the law of the tort of conversion in Nevada. This is simply another attempt by Plaintiffs to muddy the waters which should be overlooked by this Court. *See*, *Bader*, 96 Nev. at 356-57 and n.1, 609 P.2d at 317 and n.1 (stating "**[c]onversion 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**.") (emphasis added)). Therefore, the Edgeworths' statements within the Edgeworth Complaints were never knowingly false, as the Edgeworths had a good faith belief that – under Nevada law for the tort of

conversion – Simon was exercising wrongful dominion and control over the Viking Settlement funds, to which the Edgeworths believed Simon had no legal right. As such, all of the statements made regarding Simon's conduct within the Edgeworth Complaints are protected by the absolute litigation privilege and, thus, cannot properly be the basis of the claims forwarded within Plaintiffs' Complaint. Plaintiffs' Complaint must therefore be dismissed pursuant to Nevada's Anti-SLAPP law, as the undisputed evidence demonstrates that the Edgeworths' statements regarding the underlying controversy were all protected speech which are all afforded protection under the absolute litigation privilege and Nevada's anti-SLAPP law. The Edgeworths, thus, respectfully request that this Court grant their Anti-SLAPP Motion to effectuate the protections of such free speech afforded to Nevadans under Nevada's Anti-SLAPP law.

B. Plaintiffs Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis Because They Cannot Demonstrate a Probability of Prevailing on Their Claim

Plaintiffs' Opposition incorporates by reference the section entitled "SIMON HAS ESTABLISHED A PRIMA FACIE CASE" from Plaintiffs' Opposition to the Edgeworths' Renewed Special Anti-SLAPP Motion to Dismiss Plaintiffs' improperly filed Amended Complaint. *See* Plaintiffs' Opposition to the Edgeworths' Initial Anti-SLAPP Motion, at 17, on-file herein. Within that section, however, Plaintiffs do not analyze the specific claims brought within Plaintiffs' original Complaint, but, instead, improperly present generalized arguments which are not sufficient to demonstrate that the undisputed evidence allegedly demonstrates that Plaintiffs will allegedly prevail upon their claims. Based upon this basis alone, the Edgeworths' Anti-SLAPP Motion should be granted. Even if this Court is to consider Plaintiffs' argument sufficient – a point not conceded by the Edgeworths – the arguments presented therein are insufficient to demonstrate that Plaintiffs have allegedly satisfied their burden of proof. Instead, the arguments are insufficient in that regard, requiring the granting of the Edgeworths' Anti-SLAPP Motion. Plaintiffs continue to provide no legal authority for their proposition that Judge Jones' findings are prima facie evidence of alleged bad faith. This includes their assertion that it is automatically bad faith when a claim for punitive damages is brought to punish someone who the plaintiff believed has wronged them by their unlawful conduct. This red herring proposition should not be countenanced by this Court. *See* Plaintiffs' Opposition to the Edgeworths' Renewed Anti-SLAPP Motion, at 21, on-file herein. It further appears that Plaintiffs have misconstrued the difference between the second

and third prongs of Nevada's anti-SLAPP jurisprudence, as Plaintiffs merely provide argument regarding statements made during the underlying litigation, and do not properly analyze whether Plaintiffs have any alleged possibility of prevailing upon the claims presented within Plaintiffs' Complaint. *Id*. at 21-25. This misstep leaves Plaintiffs without any actual or incorporated argument this Court can consider within their motion practice in opposition to argument presented by the Edgeworths that there is no possibility of prevailing on the specific "Claims" alleged within Plaintiffs' Complaint. This lack of Opposition presented by Plaintiffs thereby requires an order granting the Edgeworths' Initial Anti-SLAPP Motion. *See*, EDCR 2.20(e) and (i).

Plaintiffs' forwarded arguments are nothing more than the ringing of the same faulty bell regarding conversion and what they claim that the Edgeworths allegedly knew, and what their purpose was when the Edgeworth Complaints were filed. As discussed in detail above, Plaintiffs' position that the Edgeworths allegedly knew that Simon could not convert the Viking Settlement funds is nothing more than a red herring which should not be tolerated by this Court, especially in light of the presented elements of a claim for conversion under Nevada law, which in no way requires a physical taking or exclusive control. Plaintiffs' assertion of a version of events does not simply make it true just because they want it to be so. As such, none of the statements made by the Edgeworths, which are alleged to be the support underlying Plaintiffs' SLAPP Complaint, actually have any ability to support same, requiring granting of the Edgeworths' Anti-SLAPP Motion. Plaintiffs continue to provide no legal authority for their proposition that when one of several purposes for bringing a lawsuit is to punish someone who you believed has wronged you for their unlawful conduct allegedly demonstrates bad faith and, as such, this red herring proposition should not be countenanced by this court. In fact, Nevada has a specific vehicle for seeking to punish those who commit unlawful acts of certain types; namely, punitive damages and, in fact, Plaintiffs are well aware of this as they plead alleged entitlement to punitive damages within Plaintiffs' Complaint, making Plaintiffs' continued narrative regarding alleged improper purpose for the filing of the Edgeworth Complaints wholly disingenuous.

Additionally, Plaintiffs' reliance upon *Delucchi v. Songer*, 133 Nev. 290, 396 P.3d 826 (2017), is misplaced, as, here no triable issue of fact exists based upon the erroneous rulings of Judge Jones, and

same does not carte blanche demonstrate that Plaintiffs have allegedly made a prima facie case of evidence for all of their claims without any further discussion regarding same. Specifically, in *Delucchi*, the speech at issue was a report issued by Songer which was created based upon a commission and contract with a third-party of an incident concerning two paramedics stopping to help civilians who later lodged a complaint against the paramedics, which prompted an internal investigation, which was the basis under which Songer created his report. 133 Nev. at 291-92, 396 P.3d at 828. Based upon Songer's report, the paramedics were fired and their union contested the terminations through administrative – not judicial – proceedings, which required arbitration. *Id*. Due to the status of whether the report was made in connection with an issue under consideration by an executive or judicial body, the Nevada Supreme Court held that, given the testimony presented at the administrative – and not judicial – arbitration, which called into question whether Songer had made misrepresentations in his report that led to the termination of the parademinc s, that the paramedics had presented undisputed facts to defeat Songer's Anti-SLAPP Motion. *Id*. at 300, 396 P.3d at 833-34. Here, however, unlike *Delucchi*, the undisputed evidence does not demonstrate that anything was said by the Edgeworths in any context which was not made regarding an issue then being considered by a judicial body or that was made regarding a matter of public importance in a place open to the public. As such, the facts of *Delucchi* are simply not analogous to the undisputed facts as presented here and, especially so, as all of the statements Plaintiffs attempt to utilize were made after the institution of the Edgeworth Complaints and were either made to attorneys and/or were was made regarding a matter of public importance in a place open to the public, affording same protection under Nevada's Anti-SLAPP law, as specifically held by the Court in *Delucchi*. *Id*. at 297-99 , 396 P.3d at 831-33 (holding "we conclude that a defendant's conduct constitutes 'good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern' if it falls within one of the four categories enumerated in NRS 41.637 and 'is truthful or is made without knowledge of its falsehood.'"). Plaintiffs attempt to utilize *Delucchi* for the singular, mischaracterized, proposition that because – in completely different circumstances – the Nevada Supreme Court allowed a SLAPP plaintiff to defeat an anti-SLAPP motion based upon the findings of an administrative arbitrator

to demonstrate that the Edgeworths' Anti-SLAPP Motion must be dismissed. This assertion is wholly misplaced and should not be considered by this Court.

Plaintiffs make a request to conduct discovery prior to a decision being rendered on the Anti-SLAPP Motions to Dismiss. However, this Court has been provided everything it needs to resolve the Edgeworths' Anti-SLAPP Motion in the Edgeworths favor and no additional discovery is required. Plaintiffs appear to have made this request only to delay the inevitable as they have identified no area of discovery that would be appropriate. They have yet again provided nothing but red herrings regarding allegedly needed discovery on issues that are clear and require no further explanation. Specifically, Brain's testimony regarding what he said to Mr. Herrera from Brian's email, Brian's Affidavit, Angela's Affidavit, and the testimony from the lien adjudication hearing where this issue was explored in depth, and the fact that no other witnesses have been pled as being told anything in Plaintiffs' Complaint, demonstrate there is simply no need for discovery on the claims actually asserted by Plaintiffs in their initial Complaint, and that there is no need for additional discovery on why the Edgeworth Complaints were filed. The affidavits already provided to this Court demonstrate that the Edgeworths – depending upon advice of their counsel Vannah – believed that Simon had no legal right to any portion of the Viking Settlement funds and, as such, Simon's actions in unilaterally requiring his name to be on the settlement checks, filing of the Amended Lien, refusing to allow the Edgeworths to deposit the settlement checks in either the Edgeworths' account or Vannah's trust account, requiring that the funds be placed in a special account that required Simon's signature for withdrawal and refusing to release all of the Viking Settlement funds to the Edgeworths was a ***wrongful exercise of dominion and control*** over the Edgeworths' property, a proper underlying basis for the conversion claims within the Edgeworth Complaints.

There is simply no basis under which additional discovery to determine whether Plaintiffs have any potential possibility of prevailing on their claims would be necessary, as it has been clearly established by undisputed evidence – unopposed by Plaintiffs within their Opposition – that there simply is no possibility of Plaintiffs' prevailing upon their claims, as all statements at issue are either protected by the absolute litigation privilege and/or Nevada's anti-SLAPP law, requiring that the Edgeworths' Anti-SLAPP Motion be granted without the need for additional discovery.

i. *Plaintiffs Failed To Demonstrate They Properly Pled Allegations Against AMG*

Plaintiffs' argument that they properly pled allegations against AMG is also without merit. *See* Plaintiffs' Opposition to the Edgeworths' Initial Anti-SLAPP Motion, at 18-21, on-file herein. In a misplaced attempt to support their meritless argument, Plaintiffs present general law regarding agency and do not address the specific legal authority and precedent presented by the Edgeworths within their Anti-SLAPP Motion regarding what must be pled in an agency situation regarding defamation and business disparagement. *Id*. at 19-20. As such, none of the generalized case law provides Plaintiffs with any basis to rebut that when pleading claims based in defamation or business disparagement against the agent of a company, a plaintiff must allege that ***the agent was authorized to make the defamatory statement by the corporation and the agent made the defamatory statement within the scope of the agent's authority***. *Draper v. Hellman Commercial Trust & Savings Bank*, 203 Cal. 26, 263 P. 240 (1982); *Rosenberg v. J. C. Penney Co*., 30 Cal.App.2d 609, 86 P.2d 696 (1939); Rest. 2d Agency, sec. 247. Plaintiffs simply fail to allege this. Plaintiffs' continued mischaracterization of the Edgeworths' arguments regarding AMG again lead Plaintiffs to misunderstand same, as the argument presented by the Edgeworths was that because there is no allegations within Plaintiffs' Complaint that Brian and Angela were allegedly authorized by AMG to make such statements, nor that the statements made were allegedly within the scope of said authority, Plaintiff simply has no potential possibility of prevailing upon its claims for defamation per se, business disparagement and negligence. The presenting of generalized agency authority which is not as specific to Plaintiffs' Counts, nor appropriately applied, as the legal authority presented within the Edgeworths' Anti-SLAPP Motion simply fails to demonstrate any alleged possibility of prevailing upon Plaintiffs' alleged, deficient "Counts" of defamation per se, business disparagement or negligence, requiring that the Edgeworths' Anti-SLAPP Motion be granted in its entirety, but especially as to those "Counts" as presented and pled within Plaintiffs' Complaint.

ii. *Plaintiffs Failed To Properly Incorporate By Reference Argument In Opposition To The Edgeworths' Argument Regarding Each "Count"*

The section of Plaintiffs' Opposition entitled "ALL DEFENDANTS ARE LIABIE FOR ALL CAUSES OF ACTION PLED IN THE COMPLAINT" is allegedly incorporated by reference from the purported section with the same title within Plaintiffs' Opposition to Vannah's Motion to Dismiss Initial

Complaint pursuant to NRCP 12(b)(5). *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion, at 21, on-file herein. However, a cursory review of Plaintiffs' Opposition to Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5) demonstrates no such section with the same title is presented therein. *See* Plaintiffs' Opposition to the Vannah's Motion to Dismiss Initial Complaint pursuant to NRCP 12(b)(5), in its entirety, on-file herein. As such, Plaintiffs' have incorporated nothing by way of reference within Section III(C) of Plaintiffs' Opposition and, as headings of briefs are not argument supported by legal authority, Plaintiffs have presented nothing to this Court in Opposition of the Edgeworths' arguments that Plaintiffs cannot prevail upon the claims presented within Plaintiffs' Complaint and, as such, pursuant to EDCR 2.20(e) and (i), such failure allow this Court to take the Edgeworths' argument in this regarding as uncontested and/or unopposed and see said failure as a consent by Plaintiffs to the granting of the Edgeworths' Anti-SLAPP Motions.

Even if this Court resolves to consider each of Plaintiffs' claims for relief individually, Plaintiffs have failed to demonstrate they have any probability of prevailing on each of their claims, requiring that the Edgeworths' Anti-SLAPP Motions be granted. In regard to Plaintiffs' claims within their initial Complaint, Plaintiffs' only presented argument is within their Opposition to the Edgeworths' Initial Motion to Dismiss pursuant to NRCP 12(b)(5). *See* Plaintiff's Opposition to the Edgeworths' Motion to Dismiss Plaintiffs' Initial Complaint Pursuant to NRCP 12(b)(5), at 16-25, on-file herein. The Edgeworths maintain that Plaintiffs have failed to properly incorporate these arguments into their Opposition to the Edgeworths' Anti-SLAPP Motion. This is including but not limited to arguments regarding the wrong legal standard to be applied, or complete failure to address an argument altogether. Plaintiffs have altogether failed to present legal argument in opposition to the Edgeworths' Motion. The Edgeworths' Anti-SLAPP Motion must be viewed as unopposed because to the second prong of the anti-SLAPP test was not properly addressed and Plaintiffs have essentially consented to the granting of the Edgeworths' Anti-SLAPP Motion in doing so. Without waiving this assertion that The Edgeworths' motion is unopposed and therefore must be granted, The Edgeworths reserve any and all rights and/or objections to Plaintiffs' undocumented objections. However, out of an abundance of caution, the Edgeworths present argument regarding same below.

iii. *Plaintiffs Cannot Make a Prima Facie Case for Wrongful Use of Civil Proceedings*

Plaintiffs fail to present argument in opposition to the Edgeworths' argument that wrongful use of civil proceedings is not a recognized claim in Nevada and, as such, Plaintiffs' have consented to the granting of the Edgeworths' Motion in regard to said claim. *See* Plaintiffs' Opposition to Vannah's Motion to Dismiss Initial Complaint Pursuant to NRCP 12(b)(5), at 23-25, on-file herein. This is confirmed by Plaintiffs beginning their section on this claim by stating that if this court allows this claim to proceed, and the fact all legal authority cited by Plaintiffs within that section are either from treatises or extra-jurisdictional caselaw. Plaintiffs recitation of extra-jurisdictional caselaw and treatises and a bare assertion that the court would likely recognize this cause of action in this set of facts and circumstances simply do not make the claim one that is recognized under Nevada law. In fact, as stated within the Edgeworths' Anti-SLAPP Motion – and to which Plaintiffs present no argument in opposition – although many jurisdictions recognize this tort, **the State of Nevada does not**. *Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009 WL 2382765, at *2 (D. Nev. July 31, 2009).

Regardless, even if this claim was recognized in Nevada – which it clearly is not – Plaintiff could never demonstrate a prima facie case for same, as Plaintiffs have specifically admitted that any alleged damages came from only Plaintiffs' Counts sounding in alleged abuse of process and alleged defamation per se. Specifically, within their Opposition, Plaintiffs' state as follows: "[t]he damages were caused from the abuses of the process, as well as the defamation per se to parties outside the litigation." *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion to Dismiss Initial Complaint, at 15:6-7, on-file herein. Plaintiffs admit they have no alleged damages as a result of any other claims, making it an impossibility that Plaintiffs could ever establish a prima facie showing for, or that Plaintiffs have any possibility of prevailing upon, their alleged wrongful use of civil proceedings claim. Plaintiff have not and cannot demonstrate that they have any possibility of prevailing upon their claim for alleged wrongful use of civil proceedings, requiring that the Edgeworths' Anti-SLAPP Motion be granted as to this claim.

iv. *Plaintiffs Cannot Make a Prima Facie Case for Malicious Prosecution*

Plaintiffs' Opposition fails to present any argument in opposition of the Edgeworths' argument that a claim for malicious prosecution cannot be properly brought against the Edgeworths as this is not a criminal proceeding. *See* Plaintiffs' Opposition to Vannah's Motion to Dismiss Initial Complaint

Pursuant to NRCP 12(b)(5), at 17, on-file herein. In fact, Plaintiffs acknowledge that, pursuant to *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002), Plaintiffs cannot properly bring a claim for alleged malicious prosecution against the Edgeworths and, as such, Plaintiffs removed this claim for their improperly filed Amended Complaint. Regardless, even if this claim was recognized in Nevada – which it clearly is not – Plaintiff could never demonstrate a prima facie case for same, as Plaintiffs have specifically admitted that any alleged damages came from only Plaintiffs' Counts sounding in alleged abuse of process and alleged defamation per se. Specifically, within their Opposition, Plaintiffs' state as follows: "[t]he damages were caused from the abuses of the process, as well as the defamation per se to parties outside the litigation." *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion to Dismiss Initial Complaint, at 15:6-7, on-file herein. Plaintiffs admit they have no alleged damages as a result of any other claims, making it an impossibility that Plaintiffs could ever establish a prima facie showing for, or that Plaintiffs have any possibility of prevailing upon, their alleged malicious prosecution claim. Plaintiffs have consented they have no possibility of prevailing upon their claim for alleged malicious prosecution, requiring same be dismissed and the Edgeworths' Anti-SLAPP Motions be granted as to this Count.

v. *Plaintiffs Cannot Make a Prima Facie Case for Abuse of Process, Defamation Per Se, Business Disparagement, Negligence*

The Edgeworths incorporate by way of this reference these Sections as presented within their Reply in Support of the Edgeworths' Renewed Special Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint, as if fully reproduced herein.

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i. *Plaintiffs Cannot Make a Prima Facie Case Against AMG for Negligent Hiring, Supervision and Retention*

Plaintiffs' Opposition wholly fails to present any argument whatsoever regarding Plaintiff's claim for alleged negligent hiring, supervision and retention as against the Edgeworths, other than Plaintiffs meritless statement that the claim is allegedly not premature given the status of the underlying matter currently on appeal before the Nevada Supreme Court. *See* Plaintiffs' Opposition to Vannah's Motion to Dismiss Initial Complaint Pursuant to NRCP 12(b)(5), at 17-18, on-file herein. As such, Plaintiffs' failure

to present argument supported by legal authority regarding their claim for alleged negligent hiring, etc., is a consent by Plaintiffs to the granting of the Edgeworths' motions regarding this claim. *See*, EDCR 2.20(e) and (i).

Regardless, even if this claim was recognized in Nevada – which it clearly is not – Plaintiff could never demonstrate a prima facie case for same, as Plaintiffs have specifically admitted that any alleged damages came from only Plaintiffs' Counts sounding in alleged abuse of process and alleged defamation per se. Specifically, within their Opposition, Plaintiffs' state as follows: "[t]he damages were caused from the abuses of the process, as well as the defamation per se to parties outside the litigation." *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion to Dismiss Initial Complaint, at 15:6-7, on-file herein. As such, Plaintiffs admit they have no alleged damages as a result of any other claims, making it an impossibility that Plaintiffs could ever establish a prima facie showing for, or that Plaintiffs have any possibility of prevailing upon, their alleged negligent hiring, supervision and retention claim.

ii. *Plaintiffs Cannot Make a Prima Facie Case for Civil Conspiracy*

Plaintiffs' arguments regarding their Count for alleged civil conspiracy likewise fails to demonstrate that Plaintiffs have any possibly of prevailing upon said claim. *See* Plaintiffs' Opposition to Vannah's Motion to Dismiss Initial Complaint Pursuant to NRCP 12(b)(5), at 28-30, on-file herein. As an initial matter, the Edgeworths note that due to Plaintiffs' incorporating this section by way of reference to their Opposition to Vannah's Initial Motion to Dismiss for failure to state a claim upon which relief could be granted, Plaintiffs failed to present argument based upon the correct standard of review (motion for summary judgment) or based upon the second prong of Nevada's anti-SLAPP test (a probability of prevailing on the claim). *Id*. As such, and again pursuant to EDCR 2.20(e) and (i), Plaintiffs have actually failed to present argument supported by legal authority regarding that their claim for alleged civil conspiracy satisfies the actual legal standards under which this Court must evaluate same, requiring that same not be considered and the Edgeworths' Anti-SLAPP Motion be summarily granted as unopposed and/or uncontested in regards to these two Counts.

Further, even under the caselaw as presented by Plaintiffs within their Opposition, Plaintiffs have not and cannot demonstrate any alleged genuine issue of material fact regarding the elements of a claim

for alleged civil conspiracy. Specifically, according to Plaintiffs, in Nevada, a claim for alleged civil conspiracy is established when: (1) the defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming the plaintiff; and (2) the 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).

As discussed in detail herein, the undisputed evidence simply does not demonstrate that the Edgeworths allegedly entered into any agreement with anyone to allegedly accomplish an unlawful objective with the alleged intent of harming Plaintiffs. This is conclusively demonstrated by the fact Plaintiffs cite to no portion of the actual record – outside of their inappropriate citation to their improperly filed Amended Complaint – to attempt to support their claimed arguments regarding alleged civil conspiracy. As such, under NRCP 56, Plaintiffs have wholly failed to present anything which could properly be considered in opposition to the Edgeworths' arguments regarding alleged civil conspiracy, requiring that Plaintiffs' claim in this regard be summarily dismissed as unopposed and/or uncontested.

Plaintiffs' continued unsupported narrative regarding some alleged scheme or plan to allegedly hurt Plaintiffs is again inappropriately based upon nothing more than speculation and conjecture. *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1032 (2005) (quoting *Bulbman, Inc. v. Nevada Bell,* 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)) (stating, in the context of evaluating a motion under the summary judgment standard, "[t]he nonmoving party 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'"). The undisputed facts of this matter simply do not support any alleged plan or scheme whatsoever, let alone one to allegedly harm Plaintiffs. Instead, and as discussed several times herein, the undisputed facts demonstrate that the Edgeworths – relying upon advice from their counsel, Vannah – filed the Edgeworth Complaints to seek redress for their good faith belief that Simon had converted the Viking Settlement funds and, as such, there was simply no plan to accomplish any alleged unlawful objective, as the filing of the Edgeworth Complaints was a lawful actions and nothing therein can be properly seen as allegedly attempting to harm Plaintiffs.

Plaintiffs could never demonstrate a prima facie case for alleged civil conspiracy, as Plaintiffs have specifically admitted that any alleged damages came from only Plaintiffs' Counts sounding in

alleged abuse of process and alleged defamation per se. Specifically, within their Opposition, Plaintiffs' state as follows: "[t]he damages were caused from the abuses of the process, as well as the defamation per se to parties outside the litigation." *See* Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion to Dismiss Initial Complaint, at 15:6-7, on-file herein. Plaintiffs admit they have no alleged damages as a result of any other claims, making it an impossibility that Plaintiffs could ever establish a prima facie showing for, or that Plaintiffs have any possibility of prevailing upon, their civil conspiracy claim.

As Plaintiffs have not and cannot demonstrate that, based upon the undisputed evidence, they have any potential to prevail upon their Count for alleged civil conspiracy, they cannot satisfy the second prong of Nevada's anti-SLAPP test, requiring that said claims be dismissed as a matter of law.

C. The Litigation Privilege Is Applicable And Demonstrates The Edgeworths Had A Good Faith Basis Upon Which They Brought The Edgeworth Complaints

Plaintiffs' contention, incorporated by reference within their Opposition, that the litigation privilege is not applicable here is wholly without merit and in no way demonstrates that the Edgeworths did not have a food faith basis upon which they filed the Edgeworth Complaints. *See* Plaintiff's Opposition to the Edgeworths' Motion to Dismiss Plaintiffs' Amended Complaint, at 21-27, on-file herein. Plaintiffs' reliance upon *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), is misplaced for several reasons. First, while Plaintiffs for once have correctly stated the proposition of law set forth within *Jacobs*, that matter dealt with statements made to the media, for which the Court indicates no State has held places the statement within the absolute litigation privilege. *Id*. at 414-15, 325 P.3d at 1286. The statements here were not made to the media and, as such, the holding that the absolute litigation privilege did not apply to the statements involved in *Jacobs* has no applicability to the statements purportedly pled within Plaintiffs' Complaint, as there is no allegation that any of those statements were made to the media.

Further, *Jacobs* actually supports the Edgeworths' arguments regarding statements made to Mr. Herrera following Simon's emails which implicated some alleged wrongdoing on the part of the Edgeworths. Specifically, regarding the common law conditional privilege of replying to defamatory statements against a person, the Court stated as follows:

> The common law conditional privilege of reply "grants those who are attacked with defamatory statements a limited right to reply." *State v. Eighth Judicial Dist. Court (Anzalone),* 118 Nev. 140, 149, 42 P.3d 233, 239 (2002). To illustrate the conditional privilege of reply, this court has

> previously explained that " '[i]f I am attacked in a newspaper, I may write to that paper to rebut the charges, and I may at the same time retort upon my assailant, when such retort is a necessary part of my defense, or fairly arises out of the charges he has made against me.'" *Id.* at 149, 42 P.3d at 239 (quoting *Foretich v. Capital Cities/ABC, Inc.,* 37 F.3d 1541, 1559 (4th Cir.1994)). This privilege is not absolute, however. It may be lost "if the reply: (1) includes substantial defamatory matter that is irrelevant or non-responsive to the initial statement; (2) includes substantial defamatory material that is disproportionate to the initial statement; (3) is excessively publicized; or (4) is made with malice in the sense of actual spite or ill will." *Anzalone,* 118 Nev. at 149–50, 42 P.3d at 239.
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> The conditional privilege's application is generally a question of law for the court. *Anzalone,* 118 Nev. at 149, 42 P.3d at 239 (citing *Lubin v. Kunin,* 117 Nev. 107, 115, 17 P.3d 422, 428 (2001)). Although Adelson argued that the conditional privilege of reply applied to his statement, the district court specifically declined to ***418** consider these arguments. The factual record has not yet been developed, and we decline to address the applicability of the conditional privilege for the first time on appeal. *See Lubin,*117 Nev. at 115, 17 P.3d at 428 (declining to determine whether a conditional privilege applied because, at the motion to dismiss stage, the defendants had not yet "alleged the privilege by answer, let alone established facts to show that the privilege applies").

Id. at 417-18, 325 P.3d at 1288.

As has been discussed in detail, the statements of opinion made to Mr. Herrera by Brian were in response to Simon's emails which implicated some alleged wrongdoing on the part of the Edgeworths being the reason Simon no longer allegedly felt safe allowing his daughter to be on the volleyball team. *See* Email String Between Simon and Ruben Herrera, attached hereto as **Exhibit I**. Therefore, the conditional privilege for Brian to reply was implicated and, as Brian testified and as is undisputed from his affidavit, he merely recounted for Mr. Herrera what had occurred in his opinion, the conditional privilege of reply is applicable to Brian's statements. As such, Brian's statements to Mr. Herrera were privileged and Plaintiffs cannot properly be allowed to base any part of their Complaint upon same, requiring the granting of the Edgeworths' Anti-SLAPP Motion.

Plaintiffs' reliance upon extra-jurisdictional authority and treatises when there is Nevada law directly on point is misplaced and said extra-jurisdictional authority and treatises should not be considered. *See* Plaintiff's Opposition to the Edgeworths' Motion to Dismiss Plaintiffs' Amended Complaint, at 23-24, on-file herein. Based upon Nevada binding authority, the absolutely litigation privilege applies to all statements presented as alleged support for the claims forwarded within Plaintiffs' Complaint and, as all

statements are protected absolutely, Plaintiffs' Complaint is a SLAPP suit which must be dismissed pursuant to Nevada's anti-SLAPP laws.

Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002). The privilege also applies to "conduct occurring during the litigation process." *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, "bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).

The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies "so long as [the statements] are in some way pertinent to the subject of controversy." *Id.* Moreover, the statements "need not be relevant in the traditional evidentiary sense, but need have only 'some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Id*. at 61, 657 P.2d at 104.

Plaintiffs concede in their Opposition that "[i]n 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." *Jacobs* at 413, 325 P.3d at 1285 (citing *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc. (VESI),* 125 Nev. 374, 383, 213 P.3d 496, 503 (2009)). Further, as recognized by Plaintiffs within their Opposition, "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." *Id.* Further, and again as recognized by Plaintiffs within their Opposition, "[w]hen 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." *Id.*

Here, the statements at issue were either parts of the Edgeworth Complaints, which were certainly judicially filed documents and related to the underlying litigation, or were made after in regards to litigation seriously under consideration or already filed, and were pertinent to the subject controversy at issue within the Edgeworth Complaints Further the Edgeworth Complaints were contemplated in good faith, as the Edgeworths had a good faith belief that Simon was wrongfully exercising dominion and control over the Viking Settlement funds, as discussed in detail herein. Plaintiffs' contention that the facts of this matter allegedly fall within the exception to the absolute litigation privilege is wholly without merit. Specifically, the *Jacobs* Court does recognize there is an exception to the absolute litigation privilege stating, "[b]ut we have also recognized that 'an 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.'" *Jacobs* at 413, 325 P.3d at 1285 (citing *Fink,* 118 Nev. at 436, 49 P.3d at 645–46). This exception is inapplicable in the instant circumstances.

As an initial, and what should be obvious point, the exception expressed by the Nevada Supreme Court in *Jacobs* ***applies to attorneys, not to lay persons***. *Id*. The exception is not applicable to the Edgeworths, who are not attorneys. Even if the exception were applicable to the non-attorney Edgeworths – which it is not – Plaintiffs cannot demonstrate that the exception here applies, as: (1) Simon made Mr. Herrera interested by way of Simon's emails, and the privilege of conditional reply is applicable to Brian's statements to Mr. Herrera; (2) Ms. Carteen has been the Edgeworths' attorney for many years and, as such, Ms. Carteen would have been and was interested in the judicial proceedings already instituted, as the Viking Settlement funds implicated her long-time clients' financial position which she had been protected for many years; and (3) Justice Shearing, as a member of Nevada's judiciary and legal community, is and was certainly significantly interested in the resolution of the already filed litigation and how same would impact this State's legal community and judiciary, and how same would impact her long-time friend and co-philanthropist.

There is simply no argument made within Plaintiffs' Opposition that could possibly demonstrate that the absolute litigation privilege, pursuant to binding Nevada authority, is not applicable in this case. The Edgeworths have clearly demonstrated that they had a good faith basis to bring the Edgeworth Complaints and that the litigation privilege applies to protect any and all statements made within or regarding same. Therefore, the Edgeworths respectfully request that this Court grant their Anti-SLAPP Motion to Dismiss as same is required under Nevada's anti-SLAPP law and to protect their freedom of speech upon which Plaintiffs are seeking to infringe by way of their SLAPP Complaint, which must be dismissed in its entirety.

CONCLUSION

Plaintiffs brought this lawsuit against AMG, the Edgeworths, and Vannah in direct contravention of Nevada's anti-SLAPP statute. The Edgeworths therefore respectfully requests that this Court grant its Special Motion to Dismiss Plaintiffs' Complaint, pursuant to Nevada's anti-SLAPP statutes, and dismiss The Simon Complaint as to AMG, as such relief is specifically warranted and required pursuant to law and equity.

DATED this 23rd day of July, 2020.

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CERTIFICATE OF SERVICE

On this 23rd day of July, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **REPLY IN SUPPORT OF BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC'S SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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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 **REPLY OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO PLAINTIFFS' OPPOSITION TO VANNAH'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT: ANTI-SLAPP** (HEARING REQUESTED) Date of Hearing: August 13, 2020 Time of Hearing: 9:00 a.m.

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 Reply to the Opposition of Plaintiffs' DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (SIMON) to VANNAH'S Special Motion to Dismiss Plaintiffs' Complaint: Anti-SLAPP (Special Motion).

This Reply is based upon the attached Memorandum of Points and Authorities, the Memorandum of Points and Authorities previously submitted and filed in support of the Special

Motion to Dismiss Plaintiffs' Complaint, 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 Plaintiffs' 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, the Affidavit of Robert D. Vannah, Esq., the Affidavit of John B. Greene, Esq. (attached to the Special Motion as Exhibits A & B, respectively), and any oral arguments this Court may wish to entertain.

DATED this 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

To date, SIMON has filed a retaliatory Complaint (SLAPP) that is a SLAPP; an unnecessary Emergency Motion to Preserve Evidence on an OST that, on its face, didn't address or raise any emergent facts or circumstances; and, an Amended Complaint. The Amended Complaint raises five (5) Counts/claims against VANNAH. 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.

SIMON'S Amended Complaint was filed within days after VANNAH filed a Motion to Dismiss and a Special Motion to Dismiss: Anti-SLAPP. In turn, SIMON has filed an initial Opposition to the Motion to Dismiss, with seventy-three (73) pages of arguments; an initial Opposition to the Special Motion to Dismiss: Anti-SLAPP, with another sixty-one (61) pages

of arguments; a shortened Opposition to the Motion to Dismiss (with thirty (30) pages of content); and, a shortened Opposition to the Special Motion to Dismiss: Anti-SLAPP (Twenty-two (22) more pages), each with additional arguments and authority.

In response to the filing by SIMON of his Amended Complaint, and in an abundance of caution, VANNAH filed a Motion to Dismiss SIMON'S Amended Complaint and a Special Motion to Dismiss SIMON'S Amended Complaint: Anti-SLAPP. Depending on whether this Court entertains the anticipated arguments of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE (the Edgeworths) that it is impermissible for SIMON to file an amended complaint while a Special Motion to Dismiss: Anti-SLAPP, is pending, then VANNAH'S Special Motion either remains relevant and actionable or is rendered moot by the subsequent filing by SIMON of the Amended Complaint.

Either way, SIMON'S plethora of unnecessary and voluminous filings is needlessly adding to the increasing costs of this litigation, factors this Court should consider under NRS 41.670(1).

II. ARGUMENT

A. VANNAH CORRECTLY APPLIED NEVADA LAW IN BRINGING AND MAINTAINING THE CLAIM FOR CONVERSION ON BEHALF OF THE EDGEWORTHS, WHILE SIMON DID NOT.

SIMON'S eighty-three (83) total pages of Opposition are ineffective and fail to counter the arguments and law raised in VANNAH'S Special Motion to dismiss all of the Counts/claims brought against them by SIMON. Rather, it is abundantly clear that *all* of SIMON'S arguments hinge on the unfounded assertion that there wasn't a good faith basis for the Edgeworths' claim for conversion under Nevada law. (*Id.*) He said as much scores of times in his Opposition. (*Id.*)

In doing so, at page 10, he cites two cases from California, namely *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir. Cal. 2003), and *Beheshti v. Bartley*, 2009 WL 5149862 (Calif. 1st Dist., C.A. 2009 (unpublished) to argue that the element of exclusive control is necessary for the Edgeworths' claim for conversion to have merit. (*Id*.) Why would SIMON cite caselaw from California that is contrary to the law of conversion that has been on the books in Nevada for over sixty-two (62) years?

Under Nevada law, "conversion is a distinct act of dominion and control 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.) That's exactly what SIMON has done here when he asserted his liens in amounts that he knew he had no reasonable basis to assert. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

SIMON knew he couldn't charge or collect a contingency fee without the written fee

agreement that he'd failed to draft or obtain. (*Id*.) SIMON knew that the additional work he performed at his full hourly rate of $550 was never going to exceed the amount of his super bill of $692,120, yet he still continued to assert an amended lien in the amount of $1,977,843.80. (*Id*.) In short, the amount of the amended lien was "unlawful", as it's in an amount that is unsupported by the facts, including those created by, and known by, SIMON in the underlying matter. (*Id*.)

As argued in the Special Motion, even now, SIMON continues to exercise dominion and control via an amended lien 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. See, *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). And that serves as a basis for the claims for relief against SIMON.

It's clear that, contrary to SIMON'S assertions, 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, a manual taking, 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. (*Id*.; and, please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Since VANNAH followed the law as set forth in *Evans, Wantz*, and *Bader* in bringing claims for conversion on behalf of the Edgeworths against SIMON, VANNAH clearly had and has a solid, law and fact-based basis to bring and maintain this claim. (*Id*.) Since VANNAH

clearly had and has a solid, law and fact-based basis to bring and maintain the claim for conversion under Nevada law, the basis for all of SIMON'S Counts/claims for relief clearly brought against VANNAH (Wrongful Use of Civil Proceedings; Intentional Interference with Prospective Economic Advantage; Abuse of Process; Negligent Hiring, Supervision, and Retention; and, Civil Conspiracy) must be dismissed since, "…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).

B. NEITHER CLAIM PRECLUSION NOR ISSUE PRECLUSION HAVE ANY APPLICATION TO THE MOTION OR TO THIS MATTER.

As argued in the Special Motion, the claim for conversion was brought and maintained in good faith in accordance with Nevada law. SIMON is incorrect that claim preclusion has any bearing in this matter, as discussed in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) and its predecessors. As clearly discussed in *Five Star*, and in all of the cases discussed in *Five Star*, for either claim preclusion or issue preclusion to be triggered and applied, two lawsuits must have been filed by the offending party, one after the other after the initial suit was dismissed or adjudicated on the merits, with both suits seeking the same or similar relief. (*Id*.)

In *Five Star*, two sets of counsel on two separate occasions failed to appear for pretrial calendar calls, resulting in dismissal of the initial complaint on the merits pursuant to EDCR 2.69(c). (*Id*.) Thereafter, the second set of counsel filed a new (second) complaint based on the same contract, or basic facts. (*Id*.) A motion was then brought to get the new, or second, suit dismissed on the basis of claim preclusion. (*Id*.) The court agreed that since the first suit was dismissed on the merits under EDCR 2.69(c), the new, or second, suit was barred by the doctrine of claim preclusion. (*Id*.) Those were the facts and that was the law. (*Id*.)

Here, neither the facts nor the law jive with *Five Star,* or any on the cases cited therein. The Edgeworths did not file a new suit, as was done in *Five Star* (and all cases cited therein), after an initial complaint was dismissed on the merits. Rather, the Edgeworths appealed the wrongful dismissal of their Amended Complaint. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Thus, there isn't the necessary tangible second filing—the necessary condition precedent—by the Edgeworths for the doctrine of claim preclusion to apply. Also, since the Decision and Order dismissing the Amended Complaint is on appeal, there isn't a final judgment, as there was in *Five Star*. (*Id*.) These are critical distinctions that preclude any application of the doctrine of claim preclusion under *Five Star*. *Five Star Capital Corp. v. Ruby,* 124 Nev. 1048, 194 P.3d 709 (2008). If there was a temptation to expand *Five Star* well beyond its intended boundaries here, public policy reasons and common sense should halt any such step backwards.

As argued throughout the Motion and the papers and pleadings on file, the facts are clear that SIMON'S own words and deeds throughout this long ordeal demonstrate that he knew that he had no reasonable basis to claim a lien in an amount that is striking similar to a 40% contingency fee of the Edgeworths' settlement. He stated as much in his letter of November 27, 2017; he admitted as much at the evidentiary hearing to adjudicate his lien; and, *his* hourly super bill totaled $692,120, not 40%, etc. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Also, the law did not and does not support the findings of Judge Jones, who erroneously believed that physical possession of the settlement proceeds by SIMON was a necessary element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to

VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require physical possession of the settlement proceeds by SIMON for a claim for conversion to be brought and maintained by the Edgeworths. *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).

Instead, under Nevada law, "conversion is a distinct act of dominion and control 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." *Id*. Additionally, under Nevada law, "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." (*Bader, at 356*)(Emphasis added.) That's exactly what SIMON has done here when he asserted (and continues to assert) his liens in amounts that he knew he had no reasonable basis to assert. And that's why the factual and legal basis for the Decision and Order of Judge Jones is fundamentally incorrect and on appeal. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Finally, the court in *Five Star* held that claim preclusion *may* be applied, thus bestowing discretion to the judge on whether to extinguish a second, or new, suit. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Since neither the facts nor the law support the consideration of claim preclusion here, since Judge Jones was clearly wrong in the application of the facts to the law of conversion, and since the Orders are not deemed final, being on appeal, there isn't a factual or legal basis to either consider or expand claim preclusion to this matter or Special Motion.

C. SIMON DOES NOT HAVE ANY LIKELIHOOD OF PREVAILING, AS SIMON'S COMPLAINT IS CLEARLY AND SOLELY FOUNDED ON GOOD FAITH COMMUNICATIONS MADE TO A JUDICIAL BODY BY VANNAH.

Contrary to SIMON'S assertion, filing a complaint and an amended complaint by VANNAH in good faith on behalf of the Edgeworths to seek redress for wrong committed by SIMON pursuant to well-founded claims for relief are two examples of petitions to the judicial body, as well as issues of public concern. *See*, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian,* 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). There is nothing in SIMON'S Opposition that refutes this as the law in Nevada. As such, the complaint and amended complaint that VANNAH filed on behalf of the Edgeworths qualify as protected communications pursuant to NRS 41.637(3), which states:

> "'Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> …
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law;"
> …

A plain reading of SIMON'S SLAPP reveals that the basis for *all* of SIMON'S Counts/claims are 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 D to the Special Motion.) Namely, SIMON continues to wrongly assert that there wasn't a good faith basis for VANNAH to bring the claim for conversion on behalf of the Edgeworths.

Even if the Nevada Supreme Court eventually determines that either the laws governing conversion don't apply to attorneys who assert liens, regardless of the amount or the facts, or that VANNAH'S interpretation of the law of conversion is incorrect, the plain language of the caselaw cited above is ample evidence that VANNAH'S interpretation of the law was done in good faith, based in truth, and done without any knowledge of falsehood. NRS 41.637(3); *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). (*See also*, the Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached to the Special Motion as Exhibits A & B, respectively.)

As discussed throughout the papers and pleadings before this Court, the facts of SIMON'S conduct in asserting his amended lien in the amount that he did when he knew and had every reason to know that he had no factual or legal basis amounts to conversion under well-established 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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). (Please also see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Furthermore, as discussed above, the doctrine of claim preclusion has no application to this matter, as **none** of the necessary prerequisites of *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) and its predecessors, have been met. Therefore, VANNAH has presented sufficient evidence to show that their communications to in the underlying matter were true, or were made without knowledge of falsehood. (*Id*.); please also see the Affidavits of Robert D. Vannah, and John B. Greene, attached to the Special Motion as Exhibits A & B.) As a result, VANNAH has met their burden on the first prong of Anti-SLAPP analysis to establish by preponderance of the evidence that SIMON'S claim is based on a good faith communication made in furtherance of the right to petition the courts. NRS 41.660(3)(a).

The burden then shifted to SIMON, who failed to establish, by prima facie evidence, a likelihood of prevailing. NRS 41.665(2). If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted. *Abrams v. Sanson,* 136 Nev. Adv.

Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). Here, SIMON did not meet his burden as there isn't a set of facts, or a body of law, that supports any of the Counts/claims in his Complaint.

Here, all of SIMON'S Counts/claims in his Complaint are based on written and oral communications and statements that are "absolutely privileged." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *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); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

Since all of the Counts/claims in SIMON'S Complaint are based on written and oral communications and statements that are "absolutely privileged", there is no set of facts…which would entitle SIMON to any relief, or to prevail. *See*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). VANNAH is also "immune from any civil liability for claims based upon the communication." (*Id*.); *see also, NRS 41.650.* Therefore, SIMON does not have any prima facie evidence to support any of the Counts/claims in his Amended Complaint upon which relief could ever be granted. Therefore, SIMON cannot meet his burden under the law. NRS 41.660(3)(b).

Since all of SIMON'S Counts/claims are clearly barred by the litigation privilege, immune from civil liability under NRS 41.650, are based on true statements, or made without knowledge of falsehood, and are justified by the good faith basis to bring the claims and

arguments that VANNAH brought and made on behalf of the Edgeworths, all Counts/claims in SIMON'S Complaint must be dismissed as a matter of law pursuant to NRS 41.635-670. *See, also, 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). With all of his Counts/claims being legally and factually deficient in material respects, SIMON cannot meet his burden under NRS 41.660(3)(b).

As a result, VANNAH'S Special Motion must be granted.

D. THE BALANCE OF SIMON'S ARGUMENTS ARE EITHER: 1.) BELIED BY THE FACTS; 2.) UNSUPPORTED BY THE RECORD; 3.) COUNTER TO THE LAW; AND, AMONG OTHER THINGS, 4.) OPPOSITE OF SIMON'S PRIOR POSITIONS.

For what it's worth, SIMON was never fired by anyone, let alone the Edgeworths, he never withdrew, and VANNAH did not substitute in his place. (Please see Appellants' Appendix, Vol 2, 000363:15-17, namely Judge Jones' Decision and Order on Motion to Adjudicate Lien attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Rather, as Exhibit E to the Special Motion makes very clear, SIMON said he'd quit if the Edgeworths didn't sign a document paying SIMON over $1.1 million dollars. (*Id*.) For SIMON to allege and repeatedly state in his Opposition that he was "fired" is false and does a disservice to the integrity of these proceedings.

SIMON states without citing any legal authority the VANNAH adopted allegedly defamatory statements allegedly made by the Edgeworths. EDCR 2.20(e) requires "…an opposition thereto, together with a memorandum of points *and authorities* why the motion…should be denied." (*Id*., emphasis added.) In failing to include any legal *authority* in his Opposition in support of this argument, SIMON has given this Court the liberty to construe this material omission "…as an admission that the motion…is meritorious and a consent to granting the same." (*Id*.) The VANNAH Defendants are attorneys, not an adoption agency of

arguments or otherwise. (NRPC 1.2.)

The Edgeworths' Amended Complaint (attached to VANNAH'S Special Motion Exhibit C) alleges that SIMON committed the tort of conversion, not a criminal act of any sort. (*Id*.) In SIMON'S Opposition on numerous occasions, he uses the words "blackmail, extortion, and theft." As argued in the Special Motion at page 27, "theft" is SIMON'S take on conversion, not that of VANNAH or that of Nevada law. There are no allegations in the Edgeworths' Amended Complaint that SIMON committed theft, extortion or blackmail, or a criminal act, though VANNAH acknowledges that the Edgeworths were initially concerned with theft when SIMON proposed to deposit the settlement funds into his account. Yet, what SIMON fails to ever acknowledge in any pleading is what he said in writing to the Edgeworths, SIMON'S clients, in his letter dated November 27, 2017. (Attached as Exhibit E to the Special Motion.)

In SIMON'S own words, this is how he 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 were interpreted to 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*.; *See also,* Exhibits A & B attached to the Special Motion.) 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 continue to live, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*Id*.) The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*See,* Exhibits A & B attached to VANNAH'S Special Motion to Dismiss: Anti-

SLAPP).

SIMON'S threat to quit may mean nothing to him now, or back then, but SIMON'S words had and have meaning. On the one hand, he giveth by stating in the top paragraph on page 4 of Exhibit E, "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." (*Id*.) Then, just a page later, SIMON taketh away when he threatens to quit if the Edgeworths won't agree to pay SIMON another $1,114,000 in fees ($1.5 million, minus fees and costs paid to date at the hourly rate of $550 per hour). (*Id*.)

Isn't the noun of "extortion" defined as the practice of obtaining something, especially money, through force or threats? A reasonable and learned recipient of Exhibit E could easily reach that exact conclusion, do so in good faith, believe the statements are true, and do so without knowledge of any falsehood. NRS 41.637(3).

SIMON fails in his effort to make himself a victim in his Opposition beginning at page 11. He's not the victim; the Edgeworths are, and that reality is supported by the extensive record on appeal. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) For example, in an initial filing, Mr. Edgeworth submitted an affidavit. (*Id*., Vol. 2, at 000296-000301.) In that affidavit in paragraph 22, Mr. Edgeworth testified as follows:

> "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." (*Id*.)

Judge Jones recognized this fact in the Decision and Order on Motion to Adjudicate Lien,

paragraph 14, where she acknowledged that Mr. Edgeworth sent an email to SIMON on November 15, 2017, asking him to send the open invoice that was previously given to Mr. Edgeworth at a mediation, yet withdrew. (*Id.*, at Vol. 2, 000356-000357.) Of particular emphasis is the following quote from Mr. Edgeworth to SIMON: "Could someone in your office send Peter (copied here) any invoices that are unpaid please?" (*Id.*, at 000357.)

In paying each of the four (4) invoices in full, and in asking for a fifth that SIMON withdrew, the logical conclusion is that the Edgeworths had every reasonable basis to assert that SIMON had been paid in full, do so in good faith, believe the statements are true, and do so without knowledge of any falsehood. (*Id.*) In failing to present that fifth invoice when asked to do so, in failing to reduce any fee agreement to writing—despite being the lawyer in the relationship—as required by the Rules (NRPC 1.5), in agreeing in that November 27, 2017, letter that an hourly agreement ("arrangement") existed, and, in failing to serve a lien in an amount that had any basis to factual or legal reality, SIMON committed the tort of conversion under Nevada law. Conversion, being an intentional tort, has a remedy of punitive damages. Punitive damages are designed to punish the wrong-doer. Those are the facts and that is the law.

It is difficult to make sense of SIMON'S arguments beginning at page 14 where he apparently refers to his lien adjudication process as a "private controversy between the Edgeworths and Simon…." When that proverbial shoe was on the other foot, SIMON argued to Judge Jones in a Special Motion to Dismiss: Anti-SLAPP, that "The Nevada Anti-SLAPP statute allows a defendant to file a special motion to dismiss claims based on protected communications; such as, asking this Court to resolve a fee dispute by lien adjudication." (Please see excerpts of SIMON'S Special Motion to Dismiss: Anti-SLAPP, at page 15:7-10, attached to this Reply as Exhibit A.)

He stated further that, "Using an attorney charging lien pursuant to a statute is a petition

to the judiciary for relief." (*Id*., at 16:13-14.) Further examples of SIMON'S actual beliefs on whether a lien adjudication is proper for determination under Nevada's Anti-SLAPP laws are found at 18:16-22, 25; 19:1-9; 20:11-13. That's how SIMON really believes about lien adjudication procedures and their application to Anti-SLAPP laws. (*Id*.) In seeking that SLAPP relief, SIMON admitted that his lien is "…an issue of public concern…." NRS 41.637(3). So, how can he credibly call it a private matter now?

Furthermore, it's nonsensical for SIMON to state or imply at pages 14-15, or to lean on *Shapiro v. Welt*, 133 Nev.Adv.Op. 6, *9-10, 389 P.3d 262, 268 (2017) for support that SIMON'S lien adjudication process is a private matter, or that VANNAH is liable under any theory for statements made that SIMON feels are false. As stated above, SIMON is on the very substantial record that his lien adjudication is a matter of public concern. Plus, anything that VANNAH said and did before and in the underlying matter are absolutely privileged, rendering those who made the communications immune from civil liability." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

Regardless, VANNAH'S statements in paper, pleadings, and in court hearings that SIMON committed the tort of conversion are well-grounded in fact and law, did so in good faith, believed the statements are true, and did so without knowledge of any falsehood. Therefore, SIMON'S assertions to the contrary are without any measure of merit.

Without citing any facts or the record, SIMON, at pages 16-17 wrongly stated the purpose and the outcome of the five-day evidentiary hearing. That hearing was about SIMON'S lien to adjudicate and how much Judge Jones was going to award him. How do we know this?

At a hearing on February 20, 2018, James R. Christensen, Esq., told the court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit B, at p. 13:5-6.) He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute…the Court can take evidence…or set an evidentiary hearing…This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.)

Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing…Let's get this done…But there's nothing to stop that lien adjudication at this time." (Id., at 14:8-12.) The court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018. (Please see Excerpts from Transcript attached as Exhibit C, at p. 15:18-19.)

At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to Dismiss (*Id*.) and ordered that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary Hearing on the dates as Follows: 05-29-18 1:00 a.m., 5-30-18 at 10:30 a.m., and 5-31-18 at 9:00 a.m." (Please see minutes of the court attached as Exhibit D.) The evidentiary hearing for SIMON'S Motion to Adjudicate Lien was a proceeding that the Court deemed "…very, very important…." (*See,* Exhibit B, at p. 2:19-20.)

How did Judge Jones view that issues to be resolved at the evidentiary hearing on SIMON'S Motion to Adjudicate Lien? Attached to this Reply as Exhibit E are excerpts from the transcript of the evidentiary hearing. On the first day of the evidentiary hearing, Judge Jones stated at page 4, lines 13-14: "Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case…." At page 14:15-17, the Court further stated: "So, this is the motion to – in regards to the adjudicating the lien. The motion was filed

by you Mr. Christensen. Are you ready to call your first witness?"

Mr. Christensen then stated to the Court as follows, at page 18:18-24: "Secondly, this is a lien adjudication hearing. This is not an opening statement. We don't have a jury. This is being presented to the Court in order for the Court to have a full understanding of the facts…There's really no rules governing what you can say or can't say in an introductory statement to a court in an adjudicatory – in a adjudication hearing." At page 20, lines 17-19, after Mr. Greene was working to establish the background of Mrs. Edgeworth, the court stated: "Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies *to what's owed to Mr. Simon and the legal work that he did*." (*Id*., emphasis added.)

After an explanation as to why this line of questions was relevant, the court added the following at page 21:2-13: "…I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me…*I'm here to make a call about the legal work that was done by Mr. Simon, and what is owed to him. That is the only thig I am here to pass judgment on*." (*Id*., emphasis added.) The court added further at page 21:12-13: "*I'm just here to decide* what is going to be done with what's owed to them, *what's owed to Mr. Simon*, who needs to get paid." (*Id*., emphasis added.)

What did SIMON believe back then (when the matter was much fresher in his mind) regarding the basis was of the evidentiary hearing on his motion to adjudicate his lien? At page 39:4-6, Mr. Christiansen, SIMON'S attorney, both then and now, and the one who signed the Opposition, stated and objected as follows: "It still has absolutely no relevance as to what money of the 1.9 million dollars in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, *that's the issue*." (*Id*., emphasis added.)

The court's response was consistent with prior rulings and is as follows (at page 40:3-5): "…as I previously explained, I'm not here to judge anyone. *I'm here to get to the bottom of*

what is owed, what's been paid, what hasn't been paid, and what people are owed." (Id., emphasis added.) It is clear to any reader of the record that the purpose of the evidentiary hearing was SIMON'S motion to adjudicate his lien, not the issue raised in this collateral argument by SIMON. (*Id*.) Thus, we see that the amount owed was the issue, not anything else. (*Id*.) It can't get any clearer than that.

There is no authority cited by SIMON that would suggest, let alone require, this Court to be bound by the ruling of another district court judge when that ruling runs contrary to well-established Nevada law. Furthermore, as argued above, the purpose of the evidentiary hearing to adjudicate SIMON'S line was as follows (Exhibit E, at page 40:3-5): "…as I previously explained, I'm not here to judge anyone. *I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed*." (*Id*., emphasis added.)

SIMON'S final, yet ongoing, efforts to morph a claim for conversion into his narrative of theft, blackmail, and extortion at pages 17-19, must fail. While SIMON believes that conversion requires theft, exclusive possession, and the like, Nevada law clearly does not require any of those elements to assert and prove a claim for conversion. *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). To the contrary, SIMON asserting a lien in an unfounded amount which causes actual interference with the Edgeworths' property rights is sufficient to satisfy Nevada law. *Bader*, at FN 1.

Citing *Rosen v. Tarkanian*, 135 Nev.Adv.Op. 53 (2017), isn't the Balm of Gilead for SIMON, either. The *Rosen* case is one based on alleged defamatory statements made by Rosen in political advertisements against Tarkanian. While Tarkanian apparently parsed words from the ads to show untruthfulness, the Court proclaimed that the "gist" of the statements was key to the equation. *Id*. The Court held that all Rosen had to do to meet her burden under the first

prong of NRS 41.660(3) was to show, by a preponderance of the evidence, "that the statements were true or made without knowledge of their falsity." (*Id*.)

Here, SIMON has not alleged, or sufficiently alleged, that VANNAH made any defamatory statements about SIMON. (See SIMON'S Complaint.) In fact, in subsequent filings (of many), SIMON has admitted that these claims are admittedly not made against VANNAH, though they might be in the future. (*Id*.) How does a party even reply to that logic? Suffice it to say that these claims have not been made against VANNAH, either with the SLAPP or the Amended SLAPP. (*Id*.) (See SIMON'S Amended Complaint and Opposition to VANNAH's Motion to Dismiss Amended Complaint.) Therefore, *Rosen* does not apply to any of SIMON'S claims against VANNAH.

As a result, VANNAH'S Special Motion must be granted.

III. CONCLUSION.

VANNAH has presented sufficient evidence to show that their communications in the underlying matter were made in good faith, were true, or were made without knowledge of falsehood. As a result, VANNAH has met their burden on the first prong of the Anti-SLAPP analysis to establish by preponderance of the evidence that SIMON'S claim is based on a good faith communication made in furtherance of the right to petition the courts. NRS 41.660(3)(a).

With the burden shifted to SIMON, he was required to establish, by prima facie evidence, a likelihood of prevailing. NRS 41.665(2). He failed, as SIMON cannot meet his burden since there isn't a set of facts, or a body of law, that supports any of the Counts/claims in his Complaint, as the basis for <u>all</u> 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**.

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). Since SIMON'S Complaint is a SLAPP, VANNAH'S Special Motion to Dismiss: Anti-SLAPP must be granted.

DATED this 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

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Traditional Manner:
None

DATED this 23rd day of July, 2020.

/s/Patricia A. Marr
An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

MTD

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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

SPECIAL MOTION TO DISMISS THE AMENDED COMPLAINT: ANTI-SLAPP

Date of Hearing:
Time of Hearing:

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.

CONSOLIDATED WITH

Case No.: A-18-767242-C
Dept. No.: 26

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

DATED this 10th day of May, 2018.

/s/ James R. Christensen
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

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

DATED this 10th day of May 2018.

/s/ James R. Christensen
JAMES CHRISTENSEN, ESQ.
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Attorney for Daniel S. Simon

On February 6, 2018, Mr. Vannah acknowledged in open court that this was a fee dispute case. To quote Mr. Vannah: "This is a fee dispute."[28] The law office agrees. Adjudication of the attorney lien is the Legislature approved method to resolve a fee dispute. The law office cannot be sued for following the law.

IV. Argument

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

A special motion to dismiss first requires the defendant to establish by preponderance of the evidence that the plaintiffs' claim is based on a protected communication. NRS 41.665. If yes, then the burden shifts, and the plaintiff must establish, by clear and convincing evidence, a likelihood of prevailing. NRS 41.665. If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted.

---

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

[28] Exhibit 15, transcript at page 35 line 24.

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

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

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

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> ...
> ...
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or,
> ...

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

> 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The litigation privilege is absolute and applies to any communication uttered or published in a judicial proceeding. *Greenberg,* 331 P.3d at 902.[29] Further:

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

Blaurock, 2015 WL 3540903.

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

[29] The sole recognized exception is in the context of a legal malpractice claim, which is not presented here.

V. CONCLUSION

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

DATED this 10th day of May, 2018.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

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

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN

EXHIBIT B

EXHIBIT B

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-16-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ.
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

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

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

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

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

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

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

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

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

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

Mister --

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: Me too.

MR. CHRISTENSEN: And --

MR. VANNAH: About 40 years.

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

THE COURT: Okay --

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

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

EXHIBIT C

EXHIBIT C

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC,. Defendant.	CASE NO. A-16-738444-C DEPT. NO. X (CONSOLIDATED WITH: CASE NO. A-18-767242-C)

And related matter/cases.

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

FOR THE PLAINTIFF: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

FOR THE DEFENDANT: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

THE COURT: Okay.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you, counsel.

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

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

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

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

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

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

THE COURT: Not the new one.

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

THE COURT: Yeah.

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: No. No, Your Honor.

THE COURT: Okay.

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

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

MR. VANNAH: Right.

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

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

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

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

MR. CHRISTENSEN: That's correct.

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

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

MR. VANNAH: Well --

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

EXHIBIT D

EXHIBIT D

EVENTS & ORDERS OF THE COURT

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

Minutes
04/03/2018 9:30 AM
- APPEARANCES CONTINUED: Robert Vannah, and Robert Greene, present. Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp; Order Shortening Time....Status Check: Settlement Conference...Defendant Daniel S. Simon's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint Following arguments by counsel, COURT ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp, DENIED. COURT FURTHER ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, Set for Evidentiary Hearing on the dates as Follows: 05-29-18 11:00 a.m., 05-30-18, at 10:30 a.m., and 5-31-18 at 9:00 a.m. Court notes is will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/29/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties Present
Return to Register of Actions

EXHIBIT E

EXHIBIT E

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

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

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

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

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

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

MR. VANNAH: Yes, Your Honor.

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

MR. VANNAH: We are, Your Honor.

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

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

THE COURT: It's okay. Me either.

[Pause]

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

THE COURT: Okay.

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

quote from the email. And that was in May of 2016. And from then on, the case progressed until it was filed in June, and then when it became active really in late 2016 through 2017 before Your Honor.

So, we are here because, of course, there was a very large settlement. Mr. Simon got a result, and there's a dispute over the fees. So, the first question we have is whether there was an expressed contract to the fees or expressed contract regarding the retention. We all know, and we all agree, there was no expressed written contract. It started off as a friends and family matter. Mr. Simon probably wasn't even going to send them a bill if he could have triggered adjusters

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

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

Q What affect, Angela, do you remember that this flood litigation had on you and your family?

MR. CHRISTIANSEN: Objection, relevance.

THE COURT: Mr. Greene?

MR. GREENE: It has relevance, as she's going to be

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. CHRISTENSEN: No, Judge. They ended my examination of Mr. Edgeworth. I asked a question, and I intended to go into a slew of things he and his wife had talked about. Mr. Vannah asserted the privilege that I couldn't talk to him about it. I sat down. Mr. Vannah has that right. That was the end of it. They're judicially estopped from now unwinding that assertion.

THE COURT: Well, I mean, she can testify to something she has independent knowledge of, but she can't testify to something he told her because you guys have invoked that privilege. And this is about the volleyball. Wasn't this about -- I'm sorry; I forgot what the question was you asked. Wasn't this about him doing some volley -- the volleyball place?

MR. GREENE: It's about charitable backgrounds, talking about her background at this particular point.

THE COURT: Okay.

MR. GREENE: So --

THE COURT: Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies to what's owed to Mr. Simon and the legal work that he did.

MR. GREENE: Well, I understand that, Your Honor. But they spent time and volumes and words in their briefs for lack of a better word, sliming the Edgeworths. Calling them dishonest, that they don't pay their bills, that they're -- that they can't be trusted. Most assuredly their charitable background, their giving, their conduct towards others is certainly relevant to help unwind some of that stain that the defense put

on.

THE COURT: Well, let me -- I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging them based on whether or not they gave money to Three Square. I'm here to make a call about the legal work that was done by Mr. Simon and what is owed to him. That is the only thing I am here to pass judgment on.

I'm not here to pass judgment on who's passing out canned goods at Three Square. I'm doing it every other week in all reality, but that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of fact. I'm not a jury. I'm not here to discuss things that are outside the legal realm. I'm just here to decide what is going to be done with what's owed to them, what's owed to Mr. Simon, who needs to get paid.

DIRECT EXAMINATION CONTINUED

BY MR. GREENE:

Q Angela.

A Yes.

Q When did you come to know the Simons?

A I met Alaina (phonetic) when my daughter was in preschool and we've known them for quite a long time. Alaina helped me a lot when my father passed away. She was a good friend, and I considered her to be one of my closest friends. We took family vacations together and you know, our kids knew each other since preschool.

Q Did you ever at that time gain an understanding as to what her husband Danny did for a living?

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. GREENE: Wow. He's right, it's not a personal injury case at a 40 percent fee. He's dead right about that. It is, you know --

THE COURT: Hold on. One minute, I think that's where we're all -- but I think we have -- we need to limit this hearing, because I think the reason that we're in Day 5 is because there have been no limits on this hearing, this three-day hearing that now we're in Day 5.

The question was what effect did this have on her.

MR. GREENE: On the family, and it's a broad question.

THE COURT: It's a broad -- well, she can talk about the financial aspects of that, because as I previously explained, I'm not here to judge anyone. I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed. She can talk about the financial effects of how this affected her family.

MR. GREENE: Okay.

BY MR. GREENE:

Q What financial effects did this litigation have on you and your family?

A It was very stressful. It was a very stressful time for us.

THE COURT: And you said -- I'm sorry, Mr. Greene, I don't mean to cut you off either, but we kind of moved on. And I'm sorry, I never know when you are done with one section.

You said you had concerns that the billing was exaggerated. Are these concerns that you have now or are these concerns that you had when you guys received, because I thought Mr. Greene was talking about the four original bills. Did you have concerns when you received those four original bills, or are these concerns you have after the January 2018 bill?

THE WITNESS: I had concerns back then, Your Honor.

THE COURT: Did you express those to Mr. Simon?

THE WITNESS: No.

THE COURT: Okay.

And I'm sorry, Mr. Greene.

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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 **REPLY OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO PLAINTIFFS' OPPOSITION TO VANNAH'S SPECIAL MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT: ANTI-SLAPP** (HEARING REQUESTED) Date of Hearing: August 13, 2020 Time of Hearing: 9:00 a.m.

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 Reply to the Opposition of Plaintiffs' DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (SIMON) to VANNAH'S Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP (Special Motion).

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

Memorandum of Points and Authorities previously submitted and filed in support of the Special Motion to Dismiss Plaintiffs' Complaint, 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 Plaintiffs' 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, the Affidavit of Robert D. Vannah, Esq., the Affidavit of John B. Greene, Esq. (attached to the Special Motion as Exhibits A & B, respectively), and any oral arguments this Court may wish to entertain.

DATED this 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

To date, SIMON has filed a retaliatory Complaint (SLAPP) that is a SLAPP; an unnecessary Emergency Motion to Preserve Evidence on an OST that, on its face, didn't address or raise any emergent facts or circumstances; and, an Amended Complaint. The Amended Complaint raises five (5) Counts/claims against VANNAH. 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. SIMON'S Amended Complaint was filed within days after VANNAH filed a Motion to Dismiss SIMON'S initial complaint, and a Special Motion to Dismiss SIMON'S Complaint: Anti-SLAPP.

In response to the filing by SIMON of his Amended Complaint, and in an abundance of caution, VANNAH filed a Motion to Dismiss SIMON'S Amended Complaint and this Special Motion to Dismiss SIMON'S Amended Complaint: Anti-SLAPP. Depending on whether this Court entertains the anticipated arguments of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE (the Edgeworths) that it is impermissible for SIMON to file an amended complaint while a Special Motion to Dismiss: Anti-SLAPP, is pending, then VANNAH'S Special Motion to Dismiss Plaintiffs' Complaint: Anti-SLAPP either remains relevant and actionable, or is rendered moot by the subsequent filing of the Amended Complaint and thus covered by this subsequent filing of the Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP.

Either way, SIMON'S plethora of unnecessary and voluminous filings is needlessly adding to the increasing costs of this litigation, factors this Court should consider under NRS 41.670(1).

II. ARGUMENT

A. VANNAH CORRECTLY APPLIED NEVADA LAW IN BRINGING AND MAINTAINING THE CLAIM FOR CONVERSION ON BEHALF OF THE EDGEWORTHS, WHILE SIMON DID NOT.

SIMON'S Opposition is ineffective and fails to counter the arguments raised and the law cited in VANNAH'S Special Motion to dismiss all of the Counts/claims brought against them in SIMON'S Amended Complaint. Rather, it remains abundantly clear that *all* of SIMON'S arguments hinge on the unfounded assertion that there wasn't a basis, good faith or otherwise, for the Edgeworths' claim for conversion under Nevada law. (*Id*.) He said as much scores of times in his Opposition. (*Id*.)

In doing so, SIMON cites two cases from California, namely *Kasdan, Simonds,*

McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery), 317 F.3d 1064 (9th Cir. Cal. 2003), and *Beheshti v. Bartley*, 2009 WL 5149862 (Calif. 1st Dist., C.A. 2009 (unpublished) to argue that the element of exclusive control is necessary for the Edgeworths' claim for conversion to have merit. (*Id*.) Why would SIMON cite caselaw from California that is contrary to the law of conversion that has been present on the books in Nevada for over 62 years, and when there are at least three cases in Nevada that lay out the key elements of conversion under Nevada law, including one with strikingly clear guidance to our facts?

Under Nevada law, "conversion is a distinct act of dominion and control 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.) That's exactly what SIMON has done here when he asserted his liens in amounts that he knew he had no reasonable basis to assert. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

SIMON knew he couldn't charge or collect a contingency fee without the written fee

agreement that he'd failed to draft or obtain. (*Id*.) SIMON knew that the additional work he performed at his full hourly rate of $550 was never going to exceed the amount of his super bill of $692,120, yet he still continued to assert an amended lien in the amount of $1,977,843.80. (*Id*.) In short, the amount of the amended lien was "unlawful", as it's in an amount that is unsupported by the facts, including those created by, and known by, SIMON in the underlying matter. (*Id*.)

As argued in the Special Motion, even now, SIMON continues to exercise dominion and control via an amended lien 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. See, *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). And that serves as a basis for the claims for relief against SIMON.

It's clear that, contrary to SIMON'S assertions, 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, a manual taking, 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. (*Id*.; and, please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Since VANNAH followed the law as set forth in *Evans, Wantz*, and *Bader* in bringing claims for conversion on behalf of the Edgeworths against SIMON, VANNAH clearly had and has a solid, law and fact-based, good faith, true, and without knowledge of any falsehood basis

to bring and maintain this claim. (*Id*.) Since VANNAH clearly had and has a solid, law and fact-based basis to bring and maintain the claim for conversion under Nevada law, the basis for all of SIMON'S Counts/claims for relief clearly brought against VANNAH (Wrongful Use of Civil Proceedings; Intentional Interference with Prospective Economic Advantage; Abuse of Process; Negligent Hiring, Supervision, and Retention; and, Civil Conspiracy) must be dismissed since, "…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).

B. NEITHER CLAIM PRECLUSION NOR ISSUE PRECLUSION HAVE ANY APPLICATION TO THE SPECIAL MOTION OR TO THIS MATTER.

As argued in the Special Motion, the claim for conversion was brought and maintained in good faith in accordance with Nevada law. SIMON is incorrect that claim preclusion has any bearing in this matter, as discussed in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008), and its predecessors. As clearly discussed in *Five Star*, and in all of the cases discussed in *Five Star*, for claim preclusion to be triggered and applied, two lawsuits must have been filed by the offending party, one after the other and after the initial suit was dismissed or adjudicated on the merits, with both suits seeking the same or similar relief. (*Id*.)

In *Five Star*, two sets of counsel on two separate occasions failed to appear for pretrial calendar calls, resulting in dismissal of the initial complaint on the merits pursuant to EDCR 2.69(c). (*Id*.) Thereafter, the second set of counsel filed a new (second) suit based on the same contract, or basic facts. (*Id*.) A motion was then brought to get the new, or second, suit dismissed on the basis of claim preclusion. (*Id*.) The court agreed that since the first suit was dismissed on the merits under EDCR 2.69(c), the new, or second, suit was barred by the doctrine of claim preclusion. (*Id*.) Those were the facts and that was the law. (*Id*.)

Here, neither the facts nor the law jive with *Five Star*. The Edgeworths did not file a new suit, as was done in *Five Star*, after an initial suit was dismissed on the merits. Rather, the Edgeworths appealed the wrongful dismissal of their Amended Complaint. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Thus, there isn't the necessary tangible second filing—the necessary condition precedent—by the Edgeworths for the doctrine of claim preclusion to apply. Also, since the Decision and Order dismissing the Amended Complaint is on appeal, there isn't a final judgment, as there was in *Five Star*. (*Id*.) These are critical distinctions that preclude any application of the doctrine of claim preclusion under *Five Star*. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). If there was a temptation to expand *Five Star* well beyond its intended boundaries here, public policy reasons and common sense should halt any such step backwards.

As argued throughout the Motion and the papers and pleadings on file, the facts are clear that SIMON'S own words and deeds throughout this long ordeal demonstrate that he knew that he had no reasonable basis to claim a lien in an amount that is striking similar to a 40% contingency fee of the Edgeworths' settlement. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) SIMON stated as much in his letter of November 27, 2017; he admitted as much at the evidentiary hearing to adjudicate his lien; and, *his* hourly super bill totaled $692,120, not 40%, etc. (*Id*.)

Also, the law did not and does not support the findings of Judge Jones, who erroneously believed that physical possession of the settlement proceeds by SIMON was a necessary element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve

Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require physical possession of the settlement proceeds by SIMON for a claim for conversion to be brought and maintained by the Edgeworths. *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).

Instead, under Nevada law, "conversion is a distinct act of dominion and control 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." *Id*. Additionally, under Nevada law, "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." (*Bader,* at 356)(Emphasis added.) That's exactly what SIMON has done here when he asserted (and continues to assert) his liens in amounts that he knew he had no reasonable basis to assert. And that's why the factual and legal basis for the Decision and Order of Judge Jones is fundamentally incorrect and on appeal. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Finally, the court in *Five Star* held that claim preclusion *may* be applied, thus bestowing discretion to the judge on whether to extinguish a second, or new, suit. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Since neither the facts nor the law support the consideration of claim preclusion here, since Judge Jones was clearly wrong in the application of the facts to the law of conversion, and since the Orders are not deemed final, being on appeal, there isn't a factual or legal basis to either consider or expand claim preclusion to this matter or Special Motion.

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C. SIMON DOES NOT HAVE ANY LIKELIHOOD OF PREVAILING, AS SIMON'S COMPLAINT IS CLEARLY AND SOLELY FOUNDED ON GOOD FAITH COMMUNICATIONS MADE TO A JUDICIAL BODY BY VANNAH.

Contrary to SIMON'S assertion, filing a complaint and an amended complaint by VANNAH in good faith on behalf of the Edgeworths to seek redress for wrong committed by SIMON pursuant to well-founded claims for relief are two examples of petitions to the judicial body, as well as issues of public concern. *See*, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian,* 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). There is nothing in SIMON'S Opposition that refutes this as the law in Nevada. As such, the complaint and amended complaint that VANNAH filed on behalf of the Edgeworths qualify as protected communications pursuant to NRS 41.637(3), which states:

> "'Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> …
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law;"
> …

A plain reading of SIMON'S SLAPP reveals that the basis for *all* of SIMON'S Counts/claims are 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 D.) Namely, SIMON continues to wrongly assert that there wasn't a good faith basis for VANNAH to bring the claim for conversion on behalf of the Edgeworths.

As discussed throughout the papers and pleadings before this Court, the facts of SIMON'S conduct in asserting his amended lien in the amount that he did when he knew and had every reason to know that he had no factual or legal basis amounts to conversion under well-established 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)); and, *Bader v. Cerri*, 96 Nev.

352, 356, 609 P.2d 314, 317 (1980). (Please also see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Even if the Nevada Supreme Court eventually determines that either the laws governing conversion don't apply to attorneys who assert liens, regardless of the amount or the facts, or that VANNAH'S interpretation of the law of conversion is incorrect, the plain language of the caselaw cited above is ample evidence that VANNAH'S interpretation of the law was done in good faith, based in truth, and done without any knowledge of falsehood. NRS 41.637(3); *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). (See also the Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached to the Special Motion as Exhibits A & B, respectively.)

Furthermore, as discussed above, the doctrine of claim preclusion has no application to this matter, as **none** of the necessary prerequisites of *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) and its predecessors, have been met. Therefore, VANNAH has presented sufficient evidence to show that their communications to in the underlying matter were true, or were made without knowledge of falsehood. (*Id.*; please also see the Affidavits of Robert D. Vannah, and John B. Greene, attached to the Special Motion as Exhibits A & B.) As a result, VANNAH has met their burden on the first prong of Anti-SLAPP analysis to establish by preponderance of the evidence that SIMON'S claim is based on a good faith communication made in furtherance of the right to petition the courts. NRS 41.660(3)(a).

The burden then shifted to SIMON, who failed to establish, by prima facie evidence, a likelihood of prevailing. NRS 41.665(2). If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted. *Abrams v. Sanson,* 136 Nev. Adv.

Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). Here, SIMON did not meet his burden as there isn't a set of facts, or a body of law, that supports any of the Counts/claims in his Amended Complaint.

Here, all of SIMON'S Counts/claims in his Amended Complaint are based on written and oral communications and statements that are "absolutely privileged." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *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); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

Since all of the Counts/claims in SIMON'S Amended Complaint are based on written and oral communications and statements that are "absolutely privileged", there is no set of facts…which would entitle SIMON to any relief, or to prevail. *See, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). VANNAH is also "immune from any civil liability for claims based upon the communication." *Id*.; *see also, NRS 41.650.* Therefore, SIMON does not have any prima facie evidence to support any of the Counts/claims in his Amended Complaint upon which relief could ever be granted. Therefore, SIMON cannot meet his burden under the law. NRS 41.660(3)(b).

Since all of SIMON'S Counts/claims are clearly barred by the litigation privilege, immune from civil liability under NRS 41.650, are based on true statements, or made without knowledge of falsehood, and are justified by the good faith basis to bring the claims and

arguments that VANNAH brought and made on behalf of the Edgeworths, all Counts/claims in SIMON'S Amended Complaint must be dismissed as a matter of law pursuant to NRS 41.635-670. *See also, 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). With all of his Counts/claims being legally and factually deficient in material respects, SIMON cannot meet his burden under NRS 41.660(3)(b).

As a result, VANNAH'S Special Motion must be granted.

III. CONCLUSION

VANNAH has presented sufficient evidence to show that their communications in the underlying matter were true, or were made without knowledge of falsehood. As a result, VANNAH has met their burden on the first prong of Anti-SLAPP analysis to establish by preponderance of the evidence that SIMON'S claim is based on a good faith communication made in furtherance of the right to petition the courts. NRS 41.660(3)(a).

With the burden shifted to SIMON, he was required to establish, by prima facie evidence, a likelihood of prevailing. NRS 41.665(2). He failed, as SIMON did not and cannot meet his burden, since there isn't a set of facts, or a body of law, that supports any of the Counts/claims in his Amended Complaint, as 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**.

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). Since SIMON'S Amended Complaint is a SLAPP, VANNAH'S

Special Motion to Dismiss: Anti-SLAPP must be granted.

DATED this 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

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None

DATED this 23rd day of July, 2020.

/s/Patricia A. Marr
An employee of the Patricia A. Marr, Ltd.

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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 **REPLY TO PLAINTIFFS' OPPOSITION TO THE 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: August 13, 2020 Time of Hearing: 9:00 a.m.

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 Reply to Plaintiffs DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (collectively referred to as SIMON) to VANNAH'S Motion to Dismiss Plaintiffs' Amended Complaint.

This Reply is based upon the attached Memorandum of Points and Authorities, the Memorandum of Points and Authorities set forth in VANNAH'S Motion to Dismiss Plaintiffs'

Amended Complaint, the Memorandum of Points and Authorities set forth in VANNAH'S Motion to Dismiss Plaintiffs' (original) Complaint, NRCP 12(b)(5), NRS Sections 41.635-670, EDCR 2.20(e), Nevada Rules of Professional Conduct (NRPC) 1.2 and 1.5, 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 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

I. PREFATORY STATEMENT

To date as it pertains to VANNAH, SIMON has filed a retaliatory Complaint that is a SLAPP; an unnecessary Emergency Motion to Preserve Evidence on an OST that, on its face, didn't address or raise any emergent facts or circumstances; and, an Amended Complaint that is also a SLAPP. The original Complaint raised perhaps eight (8) Counts/claims against VANNAH, while the Amended Complaint raises "merely" five (5) Counts/claims against VANNAH. 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. SIMON'S Amended Complaint was filed within days after VANNAH filed a Motion to Dismiss and a Special Motion to Dismiss: Anti-SLAPP.

In turn, SIMON has filed an initial Opposition to the Motion to Dismiss, with seventy-three (73) pages of arguments; an initial Opposition to the Special Motion to Dismiss: Anti-SLAPP, with another sixty-one (61) pages of arguments; a shortened Opposition to the Motion to Dismiss (with thirty (30) pages of content); and, a shortened Opposition to the Special Motion to Dismiss: Anti-SLAPP (22 more pages), each with additional arguments and authority. Added to that running count, SIMON has also filed twenty-nine (29) pages of Opposition to VANNAH'S Motion to Dismiss the Amended Complaint and twenty-two (22) pages of Opposition to VANNAH'S Special Motion to Dismiss the Amended Complaint: Anti-SLAPP.

In response to the filing by SIMON of his Amended Complaint, and in an abundance of caution, VANNAH filed a Motion to Dismiss SIMON'S Amended Complaint and a Special Motion to Dismiss SIMON'S Amended Complaint: Anti-SLAPP. Depending on whether this Court entertains the anticipated arguments of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE (the Edgeworths) that it is impermissible for SIMON to file an amended complaint while a Special Motion to Dismiss: Anti-SLAPP, is pending, then the Motion to Dismiss SIMON'S Complaint either remains relevant and actionable, or is rendered moot by the subsequent filing of the Amended Complaint and thus covered by this subsequent filing of the Motion to Dismiss Plaintiffs' Amended Complaint.

Either way, SIMON'S plethora of unnecessary, duplicitous, and voluminous filings is needlessly adding to the increasing allocations of time and costs in this litigation.

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/ / /

II. ARGUMENT

A. VANNAH CORRECTLY APPLIED NEVADA LAW IN BRINGING AND MAINTAINING THE CLAIM FOR CONVERSION ON BEHALF OF THE EDGEWORTHS, WHILE SIMON DID NOT.

SIMON'S Opposition is ineffective and fails to counter the arguments raised and law cited in VANNAH'S Motion to Dismiss SIMON'S Amended Complaint all of the Counts/claims brought against them. Rather, it remains abundantly clear that *all* of SIMON'S arguments hinge on the unfounded assertion that there wasn't a basis, good faith or otherwise, for the Edgeworths' claim for conversion under Nevada law. (*Id*.) SIMON said as much repeatedly in his Opposition. (*Id*.)

In doing so, SIMON cites two California cases for the inapplicable proposition that exclusive control is an element of conversion in Nevada, namely *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery*), 317 F.3d 1064 (9th Cir. Cal. 2003); and, *Beheshiti v. Bartley,* 2009 WL 5149862 (Calif. 1st Dist., C.A., 2009 (unpublished). Why would SIMON cite inapplicable California law when there are at least three cases in Nevada that lay out the key elements of conversion under Nevada law, including one with strikingly clear guidance to our facts?

Under Nevada law, "conversion is a distinct act of dominion and control 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.) That's exactly what SIMON has done here when he asserted his liens in amounts that he knew he had no reasonable basis to assert. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) SIMON knew he couldn't charge or collect a contingency fee without the written fee agreement that he'd failed to draft or obtain. (*Id*.) SIMON knew that the additional work he performed at his full hourly rate of $550 was never going to exceed the amount of his super bill of $692,120, yet he still continued to assert an amended lien in the amount of $1,977,843.80. (*Id*.)

In short, the amount of the amended lien was "unlawful", as it's in an amount that is unsupported by the facts, including those created by, and known by, SIMON in the underlying matter. (*Id*.) As argued in the Motion, even now, SIMON continues to exercise dominion and control via an amended lien 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. See, *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). And that serves as a basis for the claims for relief against SIMON.

It's clear that, contrary to SIMON'S assertions, 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, a manual taking, 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. (*Id.*; and, please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

While it is true that the National Trial Lawyers Association filed an Amicus Curie Brief, there is nothing in its content that states or implies that it was done because the conversion claim was deemed "outrageous" or that they were "compelled to voice their opinion." (See Brief attached to SIMON'S Opposition as Exhibit 35.) That's SIMON'S narrative, stated without authority or citation.

Hypothetically, even if VANNAH'S reading of and interpretation of Nevada law of the tort of conversion is deemed incorrect by the Nevada Supreme Court, it's still based on a good faith interpretation of the law. (Please see Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached to the Motion as Exhibits A & B, respectively.) In short, it doesn't change the necessary outcome, which is to grant the Motion.

Since VANNAH followed the law as set forth in *Evans, Wantz*, and *Bader* in bringing claims for conversion on behalf of the Edgeworths against SIMON, VANNAH clearly had and has a solid, law and fact-based basis to bring and maintain this claim. (*Id.*) Since VANNAH clearly had and has a solid, law and fact-based basis to bring and maintain the claim for conversion under Nevada law, the basis for all of SIMON'S Counts/claims for relief clearly brought against VANNAH (Wrongful Use of Civil Proceedings; Intentional Interference with Prospective Economic Advantage; Abuse of Process; Negligent Hiring, Supervision, and Retention; and, Civil Conspiracy) must be dismissed since, "…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).

B. ALL OF SIMON'S COUNTS/CLAIMS ARE SOLELY FOUNDED ON PROTECTED COMMUNICATIONS ALLEGEDLY SAID AND DONE BY VANNAH IN THE COURSE OF LITIGATION AND IN VARIOUS JUDICIAL PROCEEDINGS. THEREFORE, VANNAH'S COMMUNICATIONS ARE ALL PROTECTED BY THE TIME-HONORED AND ABSOLUTE LITIGATION PRIVILEGE, RENDERING VANNAH IMMUNE FROM ALL CIVIL LIABILITY.

As argued in the Motion, 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**. (Please see SIMON'S Amended Complaint attached to the Motion as 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." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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); see also *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980). Contrary to SIMON'S assertions, 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). It is clear that the litigation privilege as set forth in these controlling cases is *absolute*, not qualified as SIMON asserts in his Opposition.

Since all of SIMON'S allegations against VANNAH are based solely on VANNAH'S communications made **in the course of litigation** and during various judicial proceedings,

together with the filing of pleadings, briefs, and other legal materials, the time-honored and absolute litigation privilege applies, regardless of what VANNAH allegedly said or did in these proceedings. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

With that said, VANNAH, on behalf of the Edgeworths, has asserted from the outset that the facts support the claims which were brought. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Furthermore, the law pertaining to the claim for conversion provides for the remedies, as well. The law in Nevada pertaining to the tort of conversion supports the specific remedies sought in the underlying matter. *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).

SIMON is completely incorrect when he states in his Opposition that VANNAH got anything wrong in the application of the absolute litigation privilege, that the cases VANNAH cited are inapplicable, and/or that the litigation privilege is qualified by some good faith requirement for things said or done in the course of litigation and during various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials. See, *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

On that note, SIMON is also wrong to state that either *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), and/or *Herzog v. "a" Co*., 138 Cal. App. 3d 656, 188 Cal. Rptr. 155 (Cal. Ct. App. 4th Dist. 1982), requires some "good faith" test to determine whether the absolute litigation privilege applies to VANNAH'S communications made **in the course of litigation** and during various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials. (*Id*.) These cases say nothing to minimize the time-honored and absolute litigation privilege for *the* conduct alleged by SIMON against VANNAH in the Amended Complaint. (*Id*.). There isn't any such language or directive in either case to support anything that SIMON is asserting. (*Id*.)

In *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), it is undisputed that Mr. Adelson gave a press release to the Wall Street Journal, a third party, concerning Mr. Jacobs. (*Id*.) Mr. Jacobs then amended his complaint to bring a claim for defamation per se against Mr. Adelson. (*Id*.) The court in *Jacobs* reiterated that the absolute litigation privilege applies to communications made in the course of litigation, such as all of the communications SIMON alleged against VANNAH. (*Id*.) The *Jacobs* court was very clear in its ongoing mandate that, "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." *Jacobs*, 130 Nev. at 412-413, 325 P.3d at 1285-1286 (2014).

The conceptual dilemma confronting the court in *Jacob*s was how far the absolute litigation privilege should apply when one makes what is alleged to be a defamatory statement to a disinterested third party such as a reporter for the Wall Street Journal in a setting that is outside of the courtroom. *Jacobs*, 130 Nev. at 412-413, 325 P.3d at 1285-1286. In addressing that novel issue, the court in *Jacobs* stated, "This court has not previously addressed whether the absolute privilege applies when the media is the recipient of the statement. We have, however, recognized that communications are not sufficiently related to judicial proceedings when they are made to someone without an interest in the outcome." (*Id*., citing *Fink,* 118 Nev. At 436, 49 P.3d 645-46.) The court declined to automatically extend the absolute litigation privilege in that setting. *Jacobs*, 130 Nev. at 415, 325 P.3d at 1287. That's neither what happened here nor the type of communications that SIMON has alleged against VANNAH. (Please see Exhibit A to the Motion.)

While VANNAH trusts that the misstatement of the law by SIMON regarding the absolute litigation privilege afforded to VANNAH here was merely a mistake or a misunderstanding, it remains a clear misstatement nonetheless. Here, since VANNAH'S communications as alleged by SIMON were all made in the course of litigation and during various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials, they are "are absolutely privileged" and VANNAH "is immune from civil liability." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

SIMON is also in error to repeatedly lean for support on *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980). The court in *Bull* makes a series of statements that eviscerates SIMON'S use of this case, yet supports the arguments of VANNAH. The court reiterated the rule that, "As a general proposition an attorney at law is absolutely privileged to publish defamatory matter concerning another…in which he participates as counsel, if it has some relation to the proceeding. (*Id*. at 711-12.) It stated further: "The privilege rest upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to obtain justice for their clients." (*Id*., at 712.)

The court went on to state: "Attorney Bull's comments may be understood to pertain to either Dr. McCuskey's competence or his credibility, and therefore, are privileged." (*Id*.) Finally, the court stated: "Although the denigrating comments of attorney Bull regarding Dr. McCuskey were privileged, *and alone would not supply a basis for liability in damages*, it does not follow that an attorney may so conduct himself without fear of discipline." (*Id*., emphasis added.) The discipline referred to by the court in *Bull* was before the State Bar, not a judge or jury of one's peers. (*Id*.)

Therefore, the law in Nevada is crystal clear in its mandate that all of the allegations SIMON made against VANNAH, even if they're factually correct (which VANNAH disputes), SIMON'S Counts/claims are barred by the absolute litigation privilege, as they clearly all pertain to 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*.; see

also SIMON'S Amended Complaint attached to the Motion as Exhibit A.)

Finally, when the proverbial shoe was on the other foot, SIMON argued to Judge Jones in a Special Motion to Dismiss: Anti-SLAPP, that "The litigation privilege is absolute and applies to any communication uttered or published in a judicial proceeding." (Please see excerpts of SIMON'S Special Motion to Dismiss: Anti-SLAPP, at page 21, attached to this Reply as Exhibit A.) Any means any. SIMON stated further that "The use of an attorney lien when there is a fee dispute is (a) protected communication and is absolutely privileged. As a matter of law, the law office is immune, and the Edgeworths cannot prevail." (*Id*.) This conceptual shift from SIMON on such a pivotal issue such as the absolute litigation privilege that *he* has now raised is akin to the John Kerry moment from March of 2004, where he famously told a crowd at Marshall University: "I actually did vote for the $87 billion, before I voted against it."

Regardless, VANNAH is clearly entitled to the full benefits of the time-honored and absolute litigation privilege as to *all* of the allegations contained in SIMON'S Amended Complaint, and the immunity from all civil litigation that goes along with it. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *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); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

As a result, SIMON'S Amended Complaint must be dismissed.

C. NEITHER CLAIM PRECLUSION NOR ISSUE PRECLUSION HAVE ANY APPLICATION TO THE MOTION OR TO THIS MATTER

As argued in the Motion, the claim for conversion was brought and maintained in good

faith in accordance with well-established Nevada law. SIMON is incorrect that claim preclusion has any bearing in this matter, as discussed in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) and its predecessors. The Court in *Five Star*, and in all of the cases discussed in *Five Star*, stated that for either claim preclusion or issue preclusion to be triggered and applied—the procedural equivalent of a condition precedent—two lawsuits must have been filed by the offending party, one after the other and after the initial suit was dismissed or adjudicated on the merits, with both suits seeking the same or similar relief. (*Id*.)

In *Five Star*, two sets of counsel on two separate occasions failed to appear for final pretrial calendar calls, resulting in dismissal of the initial complaint on the merits pursuant to EDCR 2.69(c). (*Id*.) Thereafter, the second set of counsel filed a new (second) complaint based on the same contract, or same basic facts. (*Id*.) A motion for summary judgment was then brought to get the new, or second, suit dismissed on the basis of claim preclusion. (*Id*.) The court agreed that since the first suit was dismissed on the merits under EDCR 2.69(c), the new, or second, suit was barred by the doctrine of claim preclusion. (*Id*.) Those were the facts and that was the law. (*Id*.)

Here, neither the facts nor the law jive with *Five Star,* or any on the cases cited therein. The Edgeworths did not file a new suit, as was done in *Five Star* (and all cases cited therein), after an initial complaint was dismissed on the merits. Rather, the Edgeworths appealed the wrongful dismissal of their Amended Complaint. Thus, there isn't the necessary tangible second filing—the necessary condition precedent—by the Edgeworths for the doctrine of claim preclusion to apply. Also, since the Decision and Order dismissing the Amended Complaint is on appeal, there isn't a final judgment, as there was in *Five Star*. (*Id*.) These are critical distinctions that preclude any application of the doctrine of claim preclusion under *Five Star*. (*Id*.) If there was a temptation to expand *Five Star* well beyond its intended boundaries here,

public policy reasons and common sense should halt any such step backwards.

As argued throughout the Motion and the papers and pleadings on file, the facts are clear that SIMON'S own words and deeds throughout this long ordeal demonstrate that he knew that he had no reasonable basis to claim a lien in an amount that is striking similar to a 40% contingency fee of the Edgeworths' settlement. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) He stated as much in his letter of November 27, 2017; he admitted as much at the evidentiary hearing to adjudicate his lien; and, *his* hourly super bill totaled $692,120, not 40%, etc. (*Id*.)

Also, the law did not and does not support the findings of Judge Jones, who erroneously believed that physical possession of the settlement proceeds by SIMON was a necessary element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require physical possession of the settlement proceeds by SIMON for a claim for conversion to be brought and maintained by the Edgeworths. *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)

Instead, under Nevada law, "conversion is a distinct act of dominion and control 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." *Id*. Additionally, under Nevada law, "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." (*Bader, at 356*)(Emphasis added.) That's

exactly what SIMON has done here when he asserted (and continues to assert) his liens in amounts that he knew he had no reasonable basis to assert. And that's why the factual and legal basis for the Decision and Order of Judge Jones is fundamentally incorrect and on appeal. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Finally, the court in *Five Star* held that claim preclusion *may* be applied, thus bestowing discretion to the judge on whether to extinguish a second, or new, suit. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Since neither the facts nor the law support the consideration of claim preclusion here, since Judge Jones was clearly wrong in the application of the facts to the law of conversion, and since the Orders are not deemed final, being on appeal, there isn't a factual or legal basis to either consider or expand claim preclusion to this matter or Motion.

D. THE BALANCE OF SIMON'S ARGUMENTS ARE EITHER: 1.) BELIED BY THE FACTS; 2.) UNSUPPORTED BY THE RECORD; 3.) COUNTER TO THE LAW; AND, AMONG OTHER THINGS, 4.) OPPOSITE OF SIMON'S PRIOR POSITIONS

For what it's worth, SIMON was never fired by anyone, let alone the Edgeworths, he never withdrew, and VANNAH did not substitute in his place. (Please see Appellants' Appendix, Vol 2, 000363:15-17, namely Judge Jones' Decision and Order on Motion to Adjudicate Lien attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) For SIMON to allege and repeatedly state in his Opposition that he was "fired" is false and does a disservice to the integrity of these proceedings.

SIMON also states without citing any legal authority the VANNAH adopted allegedly defamatory statements allegedly made by the Edgeworths. EDCR 2.20(e) requires "…an opposition thereto, together with a memorandum of points *and authorities* why the

motion…should be denied." (Id., emphasis added.) In failing to include any legal *authority* in his Opposition in support of this argument, SIMON has given this Court the liberty to construe this material omission "…as an admission that the motion…is meritorious and a consent to granting the same." (*Id*.) The VANNAH Defendants are attorneys and advocates, not an adoption agency of arguments or otherwise. (NRPC 1.2.)

Even if VANNAH adopted something from someone, as alleged by SIMON, all of SIMON'S allegations against VANNAH directly relate to 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*.; see also SIMON'S Amended Complaint attached to the Motion as Exhibit A.) Therefore, VANNAH "is immune from civil liability" for any statements allegedly adopted. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

In a disservice to the facts, SIMON argues that VANNAH didn't contest the amount of SIMON'S liens. In Appellants' Appendix, Vol. 2, at 000353-000375, attached as Exhibit A to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A., the Notice of Appeal of the Decision and Order of Judge Jones on the Motion to Adjudicate Lien indicates the exact opposite. In appealing the D&O on Motion to Adjudicate Attorneys Lien, the findings of Judge Jones were clearly challenged, which included the finding of the amount of the lien. (*Id*., at 000353-000374.)

The Edgeworths' Amended Complaint (attached to VANNAH'S Special Motion to Dismiss: Anti-SLAPP as Exhibit C) alleges that SIMON committed the tort of conversion.

(*Id*.) In SIMON'S Opposition, he uses the words "blackmail, extortion, and theft." There are no allegations in the Edgeworths' Amended Complaint that SIMON committed theft, extortion or blackmail, though VANNAH acknowledges that the Edgeworths were initially concerned with theft when SIMON proposed to deposit the settlement funds into his account. (*Id*.) Yet, what SIMON fails to ever acknowledge in any pleading is what he said in writing to the Edgeworths, SIMON'S clients, in his letter dated November 27, 2017 (attached to VANNAH'S Special Motion to Dismiss: Anti-SLAPP, as Exhibit E).

In SIMON'S own words, this is how he 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 were interpreted to 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*.; *See* also Exhibits A & B attached to the Special Motion.) 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 continue to live, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*Id*.) The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*See*, Exhibits A & B attached to VANNAH'S Special Motion to Dismiss: Anti-SLAPP).

SIMON'S threat to quit may mean nothing to him now, or back then, but SIMON'S words had and have meaning. On the one hand, he giveth by stating in the top paragraph on page 4, "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." (*Id*., emphasis added.) Then, just a page later, SIMON taketh away when he threatens to **quit** if the Edgeworths won't agree to pay SIMON another $1,114,000 in fees ($1.5 million, minus fees and costs paid to date at the hourly rate of $550 per hour). (*Id*.) Isn't the noun of "extortion" defined as the practice of obtaining something, especially money, through force or threats? A reasonable recipient of Exhibit E (to the Motion) could easily reach that exact conclusion, and do so in good faith.

Again, even if VANNAH adopted SIMON'S narrative and actually used the words, extortion, blackmail, theft, or the insults raised in the *Bull* case (which VANNAH denies), all of these statements directly relate to 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*.; see also SIMON'S Amended Complaint attached to the Motion as Exhibit A.) Therefore, VANNAH "is immune from civil liability" for any statements allegedly made. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

SIMON blames VANNAH of ill will in the refusal to withdraw the claim for conversion, or to provide the explicit basis for the claim for conversion, thus exacerbating the injuries and damages in this matter, including fees. However, as argued in VANNAH'S Opposition to SIMON'S Emergency Motion, in four Motions to Dismiss, two being Special Motions, and what will soon be four Replies, the facts that make up the basis for the Edgeworths' Amended Complaint (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A; and Exhibit C to VANNAH'S Special Motion to Dismiss Amended Complaint: Anti-

SLAPP), as well as well-established Nevada law, provide a good faith basis to bring and maintain the claim for conversion against SIMON. *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).

Frankly, it is very odd for SIMON to openly complain in his Opposition at page 14 that an opposing counsel wronged him somehow in failing to provide a list of authorities and basis for the claims being brought. SIMON failed to cite any authority in his Opposition that would have demonstrated that VANNAH was under some obligation to do so. Of course, there isn't any such obligation or requirement in litigation, or SIMON would have cited to it. Rather, what SIMON'S counsel was asking Mr. Vannah for was a favor, and it wasn't granted. Refusing a favor isn't actionable, either, or SIMON would have cited to that authority, too.

On that topic, as one can clearly read in Exhibit B to VANNAH'S Opposition to SIMON'S Emergency Motion, on October 31, 2018, SIMON received the first of two letters from VANNAH agreeing not seek any appeal and to pay the fees to SIMON that were awarded in the Decision and Order Adjudicating Lien in exchange for SIMON agreeing to release the balance of the Edgeworth's funds. (See Exhibit 2.) It's the functional equivalent of a "stand down" order. (*Id*.) A second, identical letter was sent on November 19, 2018. (*Id*.) As the affidavit of Mr. Vannah states, SIMON refused to respond to either letter, thus causing the appeals to be filed. (Please see Exhibit A to VANNAH'S Special Motion to Dismiss: Anti-SLAPP.) These two letters were sent and received over one year *before* SIMON asked VANNAH to withdraw the claims for conversion. (*Id*.) Thus, we see that it is SIMON'S actions and inactions that continue to cause the fees and costs to accumulate *in two cases* at an astounding rate.

SIMON asserts it was wrong to sue him personally, yet he did the same here, suing

everyone personally—Mr. Vannah, Mr. Greene, Mr. Edgeworth, and Mrs. Edgeworth. Where's the logic in that argument when SIMON'S actions here are directly to the contrary? In any event, it seems elementary to state the obvious, but lawyers, not legal entities such as law firms or law corporations, are the primary focus of the Nevada Rules of Professional Conduct. When was the first or the last time the Nevada Lawyer published a Supreme Court opinion that reprimanded or disciplined a law firm as opposed to *the* lawyer who performed (or didn't perform) the acts that triggered the reprimand or discipline?

SIMON is wrong that VANNAH owes an independent duty to SIMON. The basis for this argument from SIMON is his consistent, though thoroughly unfounded, position on the merits of the conversion claim. As argued above, Nevada law, with *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980) right on point, provides the Edgeworths with a claim for conversion when SIMON asserted his amended lien in its unprecedented amount under the facts and circumstance as are present here. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) SIMON also continues to be misguided in his reliance on *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980) for any help, as it reiterates the absolute litigation privilege afforded to VANNAH here, not the leap to liability and damages that SIMON wrongly asserts throughout his Opposition. (*Id*.)

It belies all common sense and the evidence for SIMON to assert that the amount of his lien was never contented by the Defendants at the hearing to adjudicate the amount of SIMON'S lien! That hearing was about SIMON'S lien to adjudicate and how much Judge Jones was going to award him. How do we know this? At a hearing on February 20, 2018, James R. Christensen, Esq., told the court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit B, at

p. 13:5-6.)

He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute…the Court can take evidence…or set an evidentiary hearing…This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing…Let's get this done…But there's nothing to stop that lien adjudication at this time." (Id., at 14:8-12.) The court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018. (Please see Excerpts from Transcript attached as Exhibit C, at p. 15:18-19.)

At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to Dismiss and ordered that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary Hearing on the dates as Follows: 05-29-18 1:00 a.m., 5-30-18 at 10:30 a.m., and 5-31-18 at 9:00 a.m." (Please see minutes of the court attached as Exhibit D.) What hearing was the court referring to? The evidentiary hearing for SIMON'S Motion to Adjudicate Lien, a proceeding that this Court deemed "…very, very important…." (See Exhibit B, at p. 2:19-20.) The court also ordered the parties to submit briefs prior to the hearing.

On that note, how much ink did SIMON devote in his Brief re: Evidentiary Hearing to discuss the merits of PLAINTIFFS' Amended Complaint and whether or not it should be dismissed pursuant to NRCP 12(b)(5)? Absolutely none. (Please see SIMON'S Brief re: Evidentiary Hearing, attached as Exhibit E.) Rather, every argument made focused solely on reasons for SIMON to get either a contingency fee via quantum meruit, or another $692,120 in fees from his super bill. (*Id.*)

How did Judge Jones view that issues to be resolved at the evidentiary hearing on

SIMON'S Motion to Adjudicate Lien? Attached to this Reply as Exhibit F are excerpts from the transcript of the evidentiary hearing. On the first day of the evidentiary hearing, Judge Jones stated at page 4, lines 13-14: "Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case…." At page 14:15-17, the Court further stated: "So, this is the motion to – in regards to the adjudicating the lien. The motion was filed by you Mr. Christensen. Are you ready to call your first witness?"

Mr. Christensen then stated to the Court as follows, at page 18:18-24: "Secondly, this is a lien adjudication hearing. This is not an opening statement. We don't have a jury. This is being presented to the Court in order for the Court to have a full understanding of the facts…There's really no rules governing what you can say or can't say in an introductory statement to a court in an adjudicatory – in a adjudication hearing."

On day #5, and at page 20, lines 17-19, while Mr. Greene was working to establish the background of Mrs. Edgeworth, the court stated: "Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies *to what's owed to Mr. Simon and the legal work that he did*." (*Id*., emphasis added.)

After an explanation as to why this line of questions was relevant, the court added the following at page 21:2-13: "…I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me…*I'm here to make a call about the legal work that was done by Mr. Simon, and what is owed to him. That is the only thing I am here to pass judgment on*." (*Id*., emphasis added.) The court added further at page 21:12-13: "*I'm just here to decide* what is going to be done with what's owed to them, *what's owed to Mr. Simon*, who needs to get paid." (*Id*., emphasis added.)

What did SIMON believe back then (when the matter was much fresher in his mind) regarding the basis was of the evidentiary hearing on his motion to adjudicate his lien? At page

39:4-6, Mr. Christiansen, SIMON'S attorney, stated and objected as follows: "It still has absolutely no relevance as to what money of the 1.9 million dollars in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, *that's the issue*." (*Id*., emphasis added.) Mr. Christiansen went further in an objection by stating: "Judge, this isn't a personal injury case, *this is an adjudication of an attorney's lien*…." (Id., emphasis added.)

The court's response was consistent with prior rulings and is as follows (at page 40:3-5): "…as I previously explained, I'm not here to judge anyone. *I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed*." (Id., emphasis added.) It is clear to any reader of the record that the purpose of the evidentiary hearing was SIMON'S motion to adjudicate his lien, not the issue raised in this collateral argument by SIMON. (*Id*.) It can't get any clearer that the amount of the lien was all that concerned the judge over the five days of hearings. (Please see Exhibit F.)

III. CONCLUSION.

The basis for all of SIMON'S allegations in the Amended Complaint 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**. (Please see SIMON'S Amended Complaint attached to the Motion as Exhibit A.) As such, all of the Counts/claims are barred by the time-honored and absolute litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *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); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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.) See also, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished); *Baral v. Schnitt*, 1 Cal.5th 376, 384, 205 Cal.Rptr.3d 475, 376 P.3d 604 (2016); *Gotterba v. Travolta*, 228 Cal.App. 4th 35, 41, 175 Cal.Rptr.3d 47 (2014); *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1048, 1063, 37 Cal.4th 1000, 1063, 39 Cal.Rptr. 516, 128 P.3d 713 (2006); and, *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 210, 190 Cal.Rptr.3d 1 (2015). Since SIMON filed his Complaint to punish the VANNAH and the Edgeworths for using the judiciary to resolve a legal dispute, SIMON'S Amended Complaint, which is a SLAPP, must be dismissed.

In addition to the preceding fatal defects, 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). Since these Counts/claims are 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 Counts/claims must be dismissed.

SIMON'S Count/claim 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). As discussed in page 16 of the Motion, 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. *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). Rather than meeting that high burden, the facts alleged in SIMON'S Count/claim (as are all of the claims/counts in SIMON'S SLAPP) mere "might have beens" as opposed to actual facts. (Please see Exhibit A to the Motion.) However, SIMON fails in his SLAPP to identify <u>any</u> actual prospective contractual relationship between SIMON and <u>any</u> third party. (Please 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 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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

The basis for SIMON'S allegations contained in Count IV (Negligent Hiring, Supervision, and Retention) and Count VIII (Civil Conspiracy) are also based exclusively on privileged and protected communications that are immune from civil liability *and* unsupported by the alleged facts. Furthermore, they 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). The policy that supports the law is set forth in *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980), which states: "The privilege rest upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to obtain justice for their clients." *Id*., at 712.

SIMON'S Count/claim of civil conspiracy are also based exclusively on privileged and protected communications that are immune from civil liability. Plus, they are unsupported by the facts and fail 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; see also NRPC 1.2.) In furtherance of the role as attorney under the Rules, 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. (See, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) These acts are not criminal or unlawful. Rather, they 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 and case law.

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. (Please 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, and NRPC 1.2.) There is no legal authority or rule that SIMON can cite that could possibly deem that these legal, customary, and protected actions and communications as criminal or improper under the law, thus failing to 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." All 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).

Since SIMON'S Counts/claims are all based on communications that 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. SIMON 'S Amended Complaint and Opposition failed to present any set of allegations or facts that would entitle him to relief. (*Id*.) 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. As a result, SIMON'S Amended Complaint must be dismissed.

DATED this 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
_____
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

Peter S. Christiansen, Esq.
CHRISTIANSEN LAW OFFICES
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Traditional Manner:
None

DATED this 23rd day of July, 2020.

/s/Patricia A. Marr
_____
An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

MTD

James R. Christensen Esq.
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Attorney for SIMON

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

SPECIAL MOTION TO DISMISS THE AMENDED COMPLAINT: ANTI-SLAPP

Date of Hearing:
Time of Hearing:

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.

CONSOLIDATED WITH

Case No.: A-18-767242-C
Dept. No.: 26

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

DATED this 10th day of May, 2018.

/s/ James R. Christensen
James R. Christensen Esq.
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

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

DATED this 10th day of May 2018.

/s/ James R. Christensen
JAMES CHRISTENSEN, ESQ.
Nevada Bar No. 3861
601 S. 6th Street
Las Vegas, NV 89101
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jim@jchristensenlaw.com
Attorney for Daniel S. Simon

On February 6, 2018, Mr. Vannah acknowledged in open court that this was a fee dispute case. To quote Mr. Vannah: "This is a fee dispute."[28] The law office agrees. Adjudication of the attorney lien is the Legislature approved method to resolve a fee dispute. The law office cannot be sued for following the law.

IV. Argument

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

A special motion to dismiss first requires the defendant to establish by preponderance of the evidence that the plaintiffs' claim is based on a protected communication. NRS 41.665. If yes, then the burden shifts, and the plaintiff must establish, by clear and convincing evidence, a likelihood of prevailing. NRS 41.665. If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted.

---

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

[28] Exhibit 15, transcript at page 35 line 24.

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

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

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

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> ...
> ...
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or,
> ...

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

> 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The litigation privilege is absolute and applies to any communication uttered or published in a judicial proceeding. *Greenberg,* 331 P.3d at 902.[29] Further:

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

Blaurock, 2015 WL 3540903.

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

[29] The sole recognized exception is in the context of a legal malpractice claim, which is not presented here.

V. CONCLUSION

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

DATED this 10th day of May, 2018.

/s/ James R. Christensen

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Attorney for SIMON

CERTIFICATE OF SERVICE

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

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN

EXHIBIT B

EXHIBIT B

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-16-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ.
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

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

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

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

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

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

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

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

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

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

Mister --

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: Me too.

MR. CHRISTENSEN: And --

MR. VANNAH: About 40 years.

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

THE COURT: Okay --

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

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

EXHIBIT C

EXHIBIT C

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC,. Defendant.	CASE NO. A-16-738444-C DEPT. NO. X (CONSOLIDATED WITH: CASE NO. A-18-767242-C)

And related matter/cases.

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

FOR THE PLAINTIFF: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

FOR THE DEFENDANT: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

THE COURT: Okay.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you, counsel.

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

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

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

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

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

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

THE COURT: Not the new one.

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

THE COURT: Yeah.

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: No. No, Your Honor.

THE COURT: Okay.

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

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

MR. VANNAH: Right.

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

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

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

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

MR. CHRISTENSEN: That's correct.

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

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

MR. VANNAH: Well --

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

EXHIBIT D

EXHIBIT D

EVENTS & ORDERS OF THE COURT

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

Minutes
04/03/2018 9:30 AM
- APPEARANCES CONTINUED: Robert Vannah, and Robert Greene, present. Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp; Order Shortening Time....Status Check: Settlement Conference...Defendant Daniel S. Simon's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint Following arguments by counsel, COURT ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp, DENIED. COURT FURTHER ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, Set for Evidentiary Hearing on the dates as Follows: 05-29-18 11:00 a.m., 05-30-18, at 10:30 a.m., and 5-31-18 at 9:00 a.m. Court notes is will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/29/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties Present
Return to Register of Actions

EXHIBIT E

EXHIBIT E

BRF
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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5 and ROE entities 6 through 10; Defendants.	Case No.: A-18-767242-C Dept No.: 26 Consolidated with Case No.: A-16-738444-C Dept No.: 10 **DEFENDANTS' BRIEF RE: EVIDENTIARY HEARING**
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.	Date of Hearing: 5.29.18 Time of Hearing: 11:00 A.M.

I. PREFACE

This brief is submitted for the evidentiary hearing being held by the Court to adjudicate the Law Office attorney lien pursuant to NRS 18.015. This brief is limited primarily to adjudication issues.

II. INTRODUCTION

The Edgeworth and Simon families were close friends for many years. When a flood occurred in a speculation home being built by Brian Edgeworth, Brian turned to his friend Daniel Simon for help. Mr. Simon agreed to help, and worked for his friend without a fee agreement.

The flood was caused by a defective fire sprinkler built by Viking and installed by Lange. Mr. Simon filed a case against Viking and Lange.

The entire law office worked for Brian Edgeworth; and, Mr. Simon obtained an amazing result. Mr. Simon recovered over $6M ($6,000,000.00) in a case with a property damage cost of repair of about five hundred thousand, and on a home with a total build budget of about 3.3M.

Shortly prior to trial, after Viking made a $6M settlement offer, Brian Edgeworth ended communication with the Law Office, stopped taking litigation advice from Mr. Simon, and hired the Vannah firm to sue the Law Office. In so doing, Mr. Edgeworth constructively discharged Mr. Simon from any alleged fee agreement; and, took the advice of Mr. Vannah over Mr. Simon when Mr.

Edgeworth abandoned a valuable contract based claim against Lange for attorney fees spent in pursuit of Viking.

This Court is tasked with settling the amount of the outstanding fee owed the Law Office for its excellent work. As detailed below, whether the Court uses the *quantum meruit* analysis suggested by the Law Office or the hourly rate of $550.00 an hour preferred by Edgeworth, the outstanding fee owed is substantial.

III. THE LAW OFFICE IS DUE A SUBSTANTIAL FEE

This Court will necessarily find that the Law Office is due a substantial fee. As the two main arguments go; either, the Law Office is due a reasonable fee under *quantum meruit*, or the Law Office is due $550.00 an hour for unpaid work.

A. The weight of the evidence establishes that there was an implied-in-fact contract with a missing attorney fee term.

A charging lien is a "creature of statute". *Argentina Consolidated Mining, v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009). NRS 18.015(2) states that the attorney can recover the contract rate; or, if no contract rate, then a "reasonable fee"-that is, *quantum meruit*:

> 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.

In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme Court found:

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

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

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

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

NRS 18.015(2) follows basic Nevada contract law. If there is an express (written or oral) contract, then the contract terms are applied. If there is an implied in fact contract - that is, a contract implied by conduct; then, *quantum meruit* is used to determine the missing payment term. *See, e.g., Certified Fire Protection v. Precision Construction*, 283 P.3d 250, 256 (Nev. 2012).

1. <u>There is no express written agreement</u>.

The parties agree that there is no express written agreement.

2. There is no express oral agreement.

To have an enforceable express oral contract, all terms must be agreed upon. *See*, e.g., *Loma Linda University v. Eckenweiler*, 469 P.2d 54, 56 (1970). The weight of the evidence does not support a finding that the attorney fee was agreed upon by the parties. For example:

Edgeworth claims the following:

- An oral contract to work for $550.00 per hour was formed on May 1, 2016. (Complaint and Amended Complaint at ¶8 & 9.)

OR

- An oral contract to work for $550.00 per hour was formed on May 27, 2016. (Brian Edgeworth affidavit of 2.2.2018, at ¶3, 5 & 6.)

However:

- On May 27, 2016, Mr. Simon agreed to "send a few letters". (Ex. 1; 5.27.16 email string.) The contemporaneous email does not support an oral fee agreement for $550.00 an hour. Rather the email reflects a friends and family arrangement.
- In December of 2016, the first law office bill was sent. Bills are sent monthly on hourly cases. Hourly lawyers do not wait six months to send their first bill.

- The billings sent were incomplete and did not reflect all work performed. Mr. Edgeworth is a sophisticated business person with experience with hourly attorneys. Mr. Edgeworth was aware the bills were incomplete.
- On August 22, 2017, Mr. Edgeworth admitted no express oral agreement had been reached on the amount of the fee. Mr. Edgeworth wrote:

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

(Ex. 2, 8.22.2017 email.)

If there was an agreement to pay Mr. Simon $550.00 an hour in place, the above statements would not have been made by Mr. Edgeworth. Instead, Mr. Edgeworth's own words confirm that his friend was not fully billing the case to ease the strain on Mr. Edgeworth, and because of an expectation of a fee based on results and not time. Mr. Simon does contingency fee work, he is comfortable sharing risk on a case.

The Edgeworth claims do not survive the weight of the evidence.

3. There was an implied-in-fact contract, with a missing fee term.

There was an implied-in-fact contract between the Law Office and the Edgeworths. The parties agree the Law Office performed excellent legal work, obtained an amazing result, and the work was not done for free.

The weight of the evidence establishes that the Law Office fee was not agreed upon. (*See, e.g.*, Ex. 1 & 2.) Under the lien statute and Nevada contract law, when there is a missing payment term in an implied-in-fact contract, *quantum meruit*-that is, a reasonable fee, is used to determine what is owed. NRS 18.015(2); and, *Certified Fire Protection*, 283 P.3d at 256.

4. The contract analysis is moot, because the Edgeworths' constructively discharged the Law Office.

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 the client); *citing*, *Gordon v. Stewart*, 324 P.3d 234 (1958)(attorney paid in *quantum merit* 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).

In this case, the clients constructively discharged the Law Office:

- The clients stopped all communication with the Law Office-even though vital legal decisions had to be made.
- The clients did not follow the advice of the Law Office on the Lange attorney fee claim; and, abandoned a certain contract claim worth over one million dollars.
- The clients accused Mr. Simon of an intent to steal six million dollars.
- The clients' new lawyer accused the Law Office of billing fraud.
- The clients' new lawyer threatened an increased damage claim unless the Law Office continued to work for the client, despite being sued.
- The client has not paid the Law Office any amount for undisputed time.
- The clients sued the Law Office.
- The clients sued the Law Office for conversion before there were any funds to convert.
- The clients filed two complaints against the Law Office, seek a jury trial and want punitive damages.

In *Rosenberg v. Calderon Automation*, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986), a lawyer provided services to the client without a contract. As the case was ready to be resolved the client did not want to pay the lawyer because there

was no contract. The client stopped all communication with the lawyer. The Ohio Appellate Court found that the client refusal to communicate with their lawyer was a constructive termination of services; and, that the lawyer was due compensation by *quantum meruit*.

Constructive termination can occur in other ways. In *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court found constructive termination of a lawyer when the client placed "counsel in a position that precluded effective representation and thereby constructively discharged his counsel or (2) through his obstructionist behavior, dilatory conduct, or bad faith, the defendant de facto waived counsel."

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

Suit between an agent and a principal is 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.

When a client stops talking to their lawyer, threatens their lawyer, sues their lawyer, refuses to pay their lawyer, and hires a new lawyer, there has been a constructive discharge of the lawyer by the client.

B. The Outstanding Fee Owed to the Law Office.

The Law Office did excellent work and obtained an amazing result. The Law Office is due a fee. The Law Office submits it is due a reasonable fee under *quantum meruit*. The Edgeworths argue that the Law Office should be paid $550.00 an hour. Under either scenario, the Law Office is due a substantial fee.

1. Reasonable Fee under *Quantum Meruit*.

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

The *Brunzell* factors are:

1. The qualities of the advocate;

2. The character of the work to be done;

3. The work actually performed; and,

4. The result obtained.

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

The Declaration of William Kemp is attached at Exhibit 3. Mr. Kemp is one of the top product liability attorneys in the United States. Mr. Kemp is also very experienced in the determination of the reasonable fee of an attorney in a product liability case. In his Declaration, Mr. Kemp describes his experience in detail, including his work on the determination of a reasonable attorney fee. Mr. Kemp then reviews and applies the *Brunzell* factors to find a reasonable fee for the Law Office for the amazing work performed on behalf of the Edgeworths. Mr. Kemp reaches a reasonable attorney fee value of $2,440,000.00.

Mr. Kemp used the market approach (fair market value) to calculate the reasonable fee. The fair market value, or market price, is an accepted method to calculate a fee. Restatement Third, The Law Governing Lawyers, §39.

The Law Office seeks a reasonable fee of $1,977,843.80 as stated in the Amended Lien of January 2, 2018. The Law Office number is net of $367,606.25 already paid. The Law Office seeks a total fee below the market rate set by Mr. Kemp.

2. The hourly rate.

The Law Office provided comprehensive billings which documented all work, including previously unbilled work and work performed since the last Edgeworth payment.

The hours were provided for several reasons. First, Courts can be critical of attorneys-even those with a written contingency fee agreement-that seek fees without providing a time record. *See, e.g., Golightly*, 281 P.3d 1176. Second, the comprehensive bill provides a record of the time spent and work done on the file, which is helpful for the Court. Third, the Law Office is aware that the Court may choose to calculate the fee due on an hourly basis. While the Law Office believes the facts call for a reasonable fee following the analysis of Mr. Kemp, the Law Office is not going to ignore the alternate possibility. Fourth, the time record provides additional evidence of constructive discharge-in that, the record supports the value of the contract claim against Lange which the Edgeworths abandoned against the advice of Mr. Simon.

Lastly, the hours submitted demonstrate the amount of risk Mr. Simon shared with the clients. As explained by Mr. Edgeworth in his August 2017 email, if Brian Edgeworth paid an hourly for the "whole case", he would need to take out more loans and/or sell a house to pay the Law Office. (Ex. 2.) (Mr. Edgeworth is a knowledgeable person, he understood that paying hourly for the whole case could cost more than an additional $450,000.00. Ex. 2.) The Law Office did not force Mr. Edgeworth to sell a house or his Bitcoin. Instead, the Law Office took a milder approach for Mr. Simon's friend, and balanced the utility of demonstrating fees with the goal of easing financial strain on Brian Edgeworth.

All hours should be considered. The previous billings were plainly incomplete, which was known to Mr. Edgeworth as many calls/emails and meetings with the Law Office were not previously billed; and, because he did not have to take out more loans or sell Bitcoin to pay the bills. And, until the Viking case settled, the number of hours and final amount of the attorney fee claim against Lange was unknown.

There is no estoppel or other argument which prevents the submission and payment of a complete bill for services in this case. Mr. Edgeworth clearly understands that money is owed, but has made the decision not to pay his lawyer. Mr. Edgeworth explicitly understood that an hourly rate for the whole case would cost considerably more than what he had already paid (Ex. 2).

Of course, the rate of $550.00 an hour was used for illustrative purposes. If the Court decides to apply *quantum meruit*, and calculate a reasonable fee using an hourly approach, the Court is not limited to $550.00 an hour. Using $550.00 an hour (for Mr. Simon), the outstanding fee due the Law Office is $692,120.00. However, considering the result, a higher rate of $700-800 an hour is more than reasonable, if the Court chooses to use an hourly approach.

IV. CONCLUSION

The Law Office did exemplary work. Mr. Simon and the Law Firm committed all their time and effort to bringing home a fantastic result for the Edgeworth family. The Law Office is due a reasonable fee for its work.

DATED this 18th day of May, 2018.

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EXHIBIT F

EXHIBIT F

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

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

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

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

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

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

MR. VANNAH: Yes, Your Honor.

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

MR. VANNAH: We are, Your Honor.

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

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

THE COURT: It's okay. Me either.

[Pause]

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

THE COURT: Okay.

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

quote from the email. And that was in May of 2016. And from then on, the case progressed until it was filed in June, and then when it became active really in late 2016 through 2017 before Your Honor.

So, we are here because, of course, there was a very large settlement. Mr. Simon got a result, and there's a dispute over the fees. So, the first question we have is whether there was an expressed contract to the fees or expressed contract regarding the retention. We all know, and we all agree, there was no expressed written contract. It started off as a friends and family matter. Mr. Simon probably wasn't even going to send them a bill if he could have triggered adjusters

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

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

Q What affect, Angela, do you remember that this flood litigation had on you and your family?

MR. CHRISTIANSEN: Objection, relevance.

THE COURT: Mr. Greene?

MR. GREENE: It has relevance, as she's going to be

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. CHRISTENSEN: No, Judge. They ended my examination of Mr. Edgeworth. I asked a question, and I intended to go into a slew of things he and his wife had talked about. Mr. Vannah asserted the privilege that I couldn't talk to him about it. I sat down. Mr. Vannah has that right. That was the end of it. They're judicially estopped from now unwinding that assertion.

THE COURT: Well, I mean, she can testify to something she has independent knowledge of, but she can't testify to something he told her because you guys have invoked that privilege. And this is about the volleyball. Wasn't this about -- I'm sorry; I forgot what the question was you asked. Wasn't this about him doing some volley -- the volleyball place?

MR. GREENE: It's about charitable backgrounds, talking about her background at this particular point.

THE COURT: Okay.

MR. GREENE: So --

THE COURT: Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies to what's owed to Mr. Simon and the legal work that he did.

MR. GREENE: Well, I understand that, Your Honor. But they spent time and volumes and words in their briefs for lack of a better word, sliming the Edgeworths. Calling them dishonest, that they don't pay their bills, that they're -- that they can't be trusted. Most assuredly their charitable background, their giving, their conduct towards others is certainly relevant to help unwind some of that stain that the defense put

on.

THE COURT: Well, let me -- I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging them based on whether or not they gave money to Three Square. I'm here to make a call about the legal work that was done by Mr. Simon and what is owed to him. That is the only thing I am here to pass judgment on.

I'm not here to pass judgment on who's passing out canned goods at Three Square. I'm doing it every other week in all reality, but that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of fact. I'm not a jury. I'm not here to discuss things that are outside the legal realm. I'm just here to decide what is going to be done with what's owed to them, what's owed to Mr. Simon, who needs to get paid.

DIRECT EXAMINATION CONTINUED

BY MR. GREENE:

Q Angela.

A Yes.

Q When did you come to know the Simons?

A I met Alaina (phonetic) when my daughter was in preschool and we've known them for quite a long time. Alaina helped me a lot when my father passed away. She was a good friend, and I considered her to be one of my closest friends. We took family vacations together and you know, our kids knew each other since preschool.

Q Did you ever at that time gain an understanding as to what her husband Danny did for a living?

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. GREENE: Wow. He's right, it's not a personal injury case at a 40 percent fee. He's dead right about that. It is, you know --

THE COURT: Hold on. One minute, I think that's where we're all -- but I think we have -- we need to limit this hearing, because I think the reason that we're in Day 5 is because there have been no limits on this hearing, this three-day hearing that now we're in Day 5.

The question was what effect did this have on her.

MR. GREENE: On the family, and it's a broad question.

THE COURT: It's a broad -- well, she can talk about the financial aspects of that, because as I previously explained, I'm not here to judge anyone. I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed. She can talk about the financial effects of how this affected her family.

MR. GREENE: Okay.

BY MR. GREENE:

Q What financial effects did this litigation have on you and your family?

A It was very stressful. It was a very stressful time for us.

THE COURT: And you said -- I'm sorry, Mr. Greene, I don't mean to cut you off either, but we kind of moved on. And I'm sorry, I never know when you are done with one section.

You said you had concerns that the billing was exaggerated. Are these concerns that you have now or are these concerns that you had when you guys received, because I thought Mr. Greene was talking about the four original bills. Did you have concerns when you received those four original bills, or are these concerns you have after the January 2018 bill?

THE WITNESS: I had concerns back then, Your Honor.

THE COURT: Did you express those to Mr. Simon?

THE WITNESS: No.

THE COURT: Okay.

And I'm sorry, Mr. Greene.

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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 **REPLY TO PLAINTIFFS' OPPOSITION TO THE MOTION OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' COMPLAINT** HEARING REQUESTED Date of Hearing: August 13, 2020 Time of Hearing: 9:00 a.m.

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 Reply to Plaintiffs DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION (collectively referred to as SIMON) to VANNAH'S Motion to Dismiss Plaintiffs' Complaint.

This Reply is based upon the attached Memorandum of Points and Authorities, the Memorandum of Points and Authorities set forth in VANNAH'S Motion to Dismiss Plaintiffs'

Complaint, NRCP 12(b)(5), NRS Sections 41.635-670, EDCR 2.20(e), Nevada Rules of Professional Conduct (NRPC) 1.2 and 1.5, 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 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.

I. PREFATORY STATEMENT

To date as it pertains to VANNAH, SIMON has filed a retaliatory Complaint that is a SLAPP; an unnecessary Emergency Motion to Preserve Evidence on an OST that, on its face, didn't address or raise any emergent facts or circumstances; and, an Amended Complaint. The original Complaint raises perhaps eight (8) Counts/claims against VANNAH, while the Amended Complaint raises "merely" five (5) Counts/claims against VANNAH. 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. SIMON'S Amended Complaint was filed within days after VANNAH filed the Motion to Dismiss and a Special Motion to Dismiss: Anti-SLAPP.

In response to the initial Motions, SIMON has filed an initial Opposition to the Motion to Dismiss, with seventy-three (73) pages of arguments; an initial Opposition to the Special

Motion to Dismiss: Anti-SLAPP, with another sixty-one (61) pages of arguments; a shortened Opposition to the Motion to Dismiss (with thirty (30) pages of content); and, a shortened Opposition to the Special Motion to Dismiss: Anti-SLAPP (Twenty-tw0 (22) more pages), each with additional arguments and authority.

In response to the filing by SIMON of his Amended Complaint, and in an abundance of caution, VANNAH filed a Motion to Dismiss SIMON'S Amended Complaint and a Special Motion to Dismiss SIMON'S Amended Complaint: Anti-SLAPP. Depending on whether this Court entertains the anticipated arguments of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE (the Edgeworths) that it is impermissible for SIMON to file an amended complaint while a Special Motion to Dismiss: Anti-SLAPP, is pending, then the Motion to Dismiss SIMON'S Complaint either remains relevant and actionable, or is rendered moot by the subsequent filing of the Amended Complaint.

Either way, SIMON'S plethora of unnecessary and voluminous filings is needlessly adding to the increasing allocations of time and costs in this litigation.

II. ARGUMENT

A. VANNAH CORRECTLY APPLIED NEVADA LAW IN BRINGING AND MAINTAINING THE CLAIM FOR CONVERSION ON BEHALF OF THE EDGEWORTHS, WHILE SIMON DID NOT.

SIMON'S one hundred and three total pages of opposition (73 + 30) are ineffective and fail to counter the arguments raised and law cited in VANNAH'S Motion to Dismiss all of the Counts/claims brought against them. Rather, it is abundantly clear that *all* of SIMON'S arguments hinge on the unfounded assertion that there wasn't a good faith basis for the Edgeworths' claim for conversion under Nevada law. (*Id.*) He said as much scores of times in his Opposition. (*Id.*)

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.) That's exactly what SIMON has done here when he asserted his liens in amounts that he knew he had no reasonable basis to assert.

As argued in the Motion, 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. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) That's conversion of the Edgeworths' property. See, *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)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).

It's clear that, contrary to SIMON'S assertions, to prevail on their claim for conversion under Nevada law, 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, a manual taking, 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. (*Id*.; and, please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Since VANNAH followed the law as set forth in *Evans, Wantz*, and *Bader* in bringing claims for conversion on behalf of the Edgeworths against SIMON, VANNAH clearly had and has a good faith basis to bring and maintain this claim. (*Id*.) Since VANNAH clearly had and has a good faith basis to bring and maintain the claim for conversion under Nevada law, the basis for all of SIMON'S Counts/claims for relief clearly brought against VANNAH (Wrongful Use of Civil Proceedings; Malicious Prosecution; Abuse of Process; Negligent Hiring, etc.; Negligence; Civil Conspiracy) and those that are vague, at best (Defamation; Business Disparagement) must be dismissed since, "…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).

Hypothetically, even if VANNAH'S reading of and interpretation of Nevada law of the tort of conversion is deemed incorrect by the Nevada Supreme Court, it's still based on a good faith interpretation of the law. (Please see Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached to the Motion as Exhibits A & B, respectively.)

Since all of SIMON's claims are all wrongly founded on an incorrect assumption of the law of the tort of conversion, and since the Edgeworths' claim of the tort of conversion is based on the good faith interpretation of, and application of, Nevada law set forth in *Evans, Wantz*, and *Bader*, discussed above and in the Motion, 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; Malicious Prosecution; Abuse of Process; Negligent Hiring, etc.; Negligence; Civil Conspiracy; Defamation; or, Business Disparagement. Therefore, SIMON'S Complaint must be dismissed pursuant to NRCP 12(b)(5), and *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

B. SIMON'S COUNTS/CLAIMS ARE SOLELY FOUNDED ON THINGS ALLEGEDLY SAID AND DONE BY VANNAH IN THE COURSE OF LITIGATION AND VARIOUS JUDICIAL PROCEEDINGS. THEY ARE ALL PROTECTED BY THE TIME-HONORED AND ABSOLUTE LITIGATION PRIVILEGE.

As argued in the Motion, 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**. (Please see SIMON'S Complaint attached to the Motion as 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." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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). It is clear that the litigation privilege as set forth in these controlling cases is *absolute*,

not qualified as SIMON asserts in his Opposition.

Since all of SIMON'S allegations against VANNAH are based solely on VANNAH'S communications made **in the course of litigation** and during various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials, the time-honored and absolute litigation privilege applies, regardless of what VANNAH allegedly said or did in these proceedings, even if the Nevada Supreme Court eventually determines that VANNAH'S interpretation is wrong on the law of conversion. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

SIMON is plain wrong to state that *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), imposes some "good faith" test whether the absolute litigation privilege applies to our facts—communications made **in the course of litigation** and during various judicial proceedings, together with the filing of pleadings, briefs, and other legal materials. There is no law to support SIMON'S assertion or position, and Nevada law provides him zero support in his claims against VANNAH. *Jacobs* clearly reaffirms the absolute nature of the litigation privilege as it applies to our facts. (*Id*.)

Jacobs does address an additional niche area of "…the existence of an absolute privilege for *defamatory* statements made to a third party *outside* of the course of judicial and quasi-judicial proceedings." (*Id*., emphasis added.) Then for the absolute privilege to apply to *defamatory* statements made in those settings, "…(1) a judicial proceeding must be contemplated

in good faith and under serious consideration, and (2) the communication must be related to the litigation." (*Id*.) That niche is not this case.

In *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), it is undisputed that Mr. Adelson gave a press release to the Wall Street Journal, a third party, concerning Mr. Jacobs. (*Id*.) Mr. Jacobs then amended his complaint to bring a claim for defamation per se against Mr. Adelson. (*Id*.) The court in *Jacobs* reiterated that the absolute litigation privilege applies to communications made in the course of litigation, such as all of the communications SIMON alleged against VANNAH. (*Id*.)

The *Jacobs* court was very clear in its ongoing mandate that, "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." *Jacobs*, 130 Nev. at 412-413, 325 P.3d at 1285-1286 (2014).

SIMON is also wrong to lean so hard for support on *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980). The court in *Bull* makes a series of statements that eviscerates SIMON'S use of this case, yet supports the arguments of VANNAH. First, the court reiterated the rule that, "As a general proposition an attorney at law is absolutely privileged to publish defamatory matter concerning another…in which he participates as counsel, if it has some relation to the proceeding." *Id*. at 711-12. It stated further: "The privilege rest upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to obtain justice for their clients." *Id*., at 712.

The court went on to state: "Attorney Bull's comments may be understood to pertain to either Dr. McCuskey's competence or his credibility, and therefore, are privileged. *Id*. Finally, the court stated: "Although the denigrating comments of attorney Bull regarding Dr. McCuskey

were privileged, and alone would not supply a basis for liability in damages, it does not follow that an attorney may so conduct himself without fear of discipline." *Id*. The discipline referred to by the court in *Bull* was before the State Bar, not a judge or jury of one's peers. *Id*.

Therefore, the law in Nevada is crystal clear in its mandate that all of the allegations SIMON made against VANNAH, even if they're factually correct (which VANNAH strongly disputes), SIMON'S Counts/claims are barred by the absolute litigation privilege, as they clearly all pertain to 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*.; see also SIMON'S Complaint attached to the Motion as Exhibit A.)

When the proverbial shoe was on the other foot, SIMON argued to Judge Jones in a Special Motion to Dismiss: Anti-SLAPP, that "The litigation privilege is absolute and applies to any communication uttered or published in a judicial proceeding." (Please see excerpts of SIMON'S Special Motion to Dismiss: Anti-SLAPP, at page 21, attached to this Reply as Exhibit A.) He stated further that, "The use of an attorney lien when there is a fee dispute is (a) protected communication and is absolutely privileged. As a matter of law, the law office is immune, and the Edgeworths cannot prevail." (*Id*.) This conceptual shift from SIMON on such a pivotal issue as the absolute litigation privilege is akin to the John Kerry moment from March of 2004, where he famously told a crowd at Marshall University: "I actually did vote for the $87 billion, before I voted against it."

Either way, VANNAH is clearly entitled to the full benefits of the time-honored and absolute litigation privilege as to all of the allegations contained in SIMON'S Complaint. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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);

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); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

As a result, SIMON'S Complaint must be dismissed.

C. THE BALANCE OF SIMON'S ARGUMENTS ARE EITHER: 1.) BELIED BY THE FACTS; 2.) UNSUPPORTED BY THE RECORD; 3.) COUNTER TO THE LAW; AND, AMONG OTHER THINGS, 4.) OPPOSITE OF SIMON'S PRIOR POSITIONS.

For what it's worth, SIMON was never fired by anyone, let alone the Edgeworths, he never withdrew, and VANNAH did not substitute in his place. (Please see Appellants' Appendix, Vol 2, 000363:15-17, namely Judge Jones' Decision and Order on Motion to Adjudicate Lien attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) For SIMON to allege and repeatedly state in his Opposition that he was "fired" is false and does a disservice to the integrity of these proceedings.

SIMON also states without citing any legal authority the VANNAH adopted allegedly defamatory statements allegedly made by the Edgeworths. EDCR 2.20(e) requires "…an opposition thereto, together with a memorandum of points *and authorities* why the motion…should be denied." (Id., emphasis added.) In failing to include any legal *authority* in his Opposition in support of this argument, SIMON has given this Court the liberty to construe this material omission "…as an admission that the motion…is meritorious and a consent to granting the same." (*Id*.) The VANNAH Defendants are attorneys, not an adoption agency of arguments or otherwise. (NRPC 1.2.)

In another disservice to the facts, SIMON argues that VANNAH didn't appeal the

finding of Judge Jones that the fee agreement was implied as opposed to oral. In Appellants' Appendix, Vol. 2, at 000435-000427, attached as Exhibit A to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A., the Notice of Appeal of the Decision and Order of Judge Jones on the Motion to Adjudicate Lien and from the Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) indicates the exact opposite. In appealing the D&O on Motion to Adjudicate Attorneys Lien, the findings of Judge Jones were clearly challenged, which included the finding of an implied versus an oral fee agreement. (Id., at 000353-000374.)

The Edgeworths' Amended Complaint (attached to VANNAH'S Special Motion to Dismiss: Anti-SLAPP as Exhibit C) alleges that SIMON committed the tort of conversion. (*Id*.) In SIMON'S Opposition on many pages, he uses the words "blackmail, extortion, and theft." There are no allegations in the Edgeworths' Amended Complaint that SIMON committed theft, extortion or blackmail, though VANNAH acknowledges that the Edgeworths were initially concerned with theft when SIMON proposed to deposit the settlement funds into his account. Yet, what SIMON fails to ever acknowledge in any pleading is what he said in writing to the Edgeworths, SIMON'S clients, in his letter dated November 27, 2017 (attached to VANNAH'S Special Motion to Dismiss: Anti-SLAPP, as Exhibit E).

In SIMON'S own words, this is how he 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 were interpreted to 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*.; *See* also Exhibits A & B attached to the Special Motion.) Meaning SIMON would **quit**, despite the looming reality

that the litigation against the Lange defendant, which had yet to settle, was set for trial early in 2018. (*Id*.) This is yet another example of the reality that the Edgeworths have lived, and continue to live, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*Id*.) The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*See*, Exhibits A & B attached to VANNAH'S Special Motion to Dismiss: Anti-SLAPP).

SIMON'S threat to quit may mean nothing to him now, or back then, but SIMON'S words had and have meaning. On the one hand, he giveth by stating in the top paragraph on page 4, "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." (*Id*.) Then, just a page later, SIMON taketh away when he threatens to **quit** if the Edgeworths won't agree to pay SIMON another $1,114,000 in fees ($1.5 million, minus fees and costs paid to date at the hourly rate of $550 per hour). (*Id*.) Isn't the noun of "extortion" defined as the practice of obtaining something, especially money, through force or threats? A reasonable and learned recipient of the letter of November 27, 2017 (Exhibit E to the Motion), could easily reach that exact conclusion, and do so in good faith.

Without evidence or authority, SIMON also oddly asserts at page 19 of his Opposition that the Defendants "fabricated an express oral contract for an hourly rate …." Yet, SIMON'S own words set forth above in his letter of November 27, 2017, states: "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." (*Id*., emphasis added.) That's exactly what SIMON did and presented the Edgeworths with a super bill of $692,120, all billed at $550 per hour, the same rate that

SIMON had charged the Edgeworths from the date of the first entry in May of 2016, thought the last date of service on January 8, 2018. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

SIMON admitted that he *never* reduced the hourly fee agreement to writing; rather, the first written fee agreement he ever presented to the Edgeworths was on November 27, 2017—which was *days after* obtaining a settlement in principle for $6 million, which was eighteen (18) months after the attorney-client relationship began. (*Id*., at, Vol. 3, 000515-1:8-25.) Rather than show contrition about his material omission and breach of the Rules (NRPC 1.5), SIMON chides the Defendants for "fabricating" a story, one that is actually supported by his own letter, as well as substantial evidence that was adjudicated due solely by the errors and omissions of SIMON. (*Id*., at, Vol. 3, 000515-1:8-25.) His own *invited errors* should not be allowed to be used by SIMON in support of his arguments to this Court. *Carstarphen v. Milsner*, 270 P.3d 1251, 128 Nev. 55 (2012).

Next, SIMON blames VANNAH of ill will in the refusal to withdraw the claim for conversion, thus exacerbating the injuries and damages in this matter, including fees. However, as argued in VANNAH'S Opposition to SIMON'S Emergency Motion, in two Motions to Dismiss, one being a Special Motion, and what will soon be two Replies, the facts that make up the basis for the Edgeworths' Amended Complaint (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A; and Exhibit C to VANNAH'S Special Motion to Dismiss: Anti-SLAPP), as well as well-established Nevada law, provide a good faith basis to bring and maintain the claim for conversion against SIMON. *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).

Additionally, as one can clearly read in Exhibit B to VANNAH'S Opposition to SIMON'S Emergency Motion, on October 31, 2018, SIMON received the first of two letters from VANNAH agreeing not seek any appeal and to pay the fees to SIMON that were awarded in the Decision and Order Adjudicating Lien in exchange for SIMON agreeing to release the balance of the Edgeworth's funds. (See Exhibit 2.) It's the functional equivalent of a "stand down" order. (*Id*.) A second, identical letter was sent on November 19, 2018. (*Id*.) As the affidavit of Mr. Vannah states, SIMON refused to respond to either letter, thus causing the appeals to be filed. (Please see Exhibit A to VANNAH'S Special Motion to Dismiss: Anti-SLAPP.) These two letters were sent and received over one year *before* SIMON asked VANNAH to withdraw the claims for conversion. (*Id*.) Thus, we see that it is SIMON'S actions and inactions that continue to cause the fees and costs to accumulate at an astounding rate.

SIMON asserts it was wrong to sue him personally, yet he did the same here, suing everyone personally—Mr. Vannah, Mr. Greene, Mr. Edgeworth, and Mrs. Edgeworth. Where's the logic in that argument when SIMON'S actions here are directly to the contrary? In any event, it seems elementary to state the obvious, but lawyers, not legal entities such as law firms or law corporations, are the primary focus of the Nevada Rules of Professional Conduct. When was the first or the last time the Nevada Lawyer published a Supreme Court opinion that reprimanded or disciplined a law firm as opposed to *the* lawyer who performed (or didn't perform) the acts that triggered the reprimand or discipline?

SIMON is incorrect that claim preclusion has any bearing in this matter, as discussed in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) and its predecessors. The Court in *Five Star*, and in all of the cases discussed in *Five Star*, stated that for either claim

preclusion or issue preclusion to be triggered and applied, two lawsuits must have been filed by the offending party, one after the other after the initial suit was dismissed or adjudicated on the merits, with both suits seeking the same or similar relief. (*Id*.)

In *Five Star*, two sets of counsel on two separate occasions failed to appear for final pretrial calendar calls, resulting in dismissal of the initial complaint on the merits pursuant to EDCR 2.69(c). (*Id*.) Thereafter, the second set of counsel filed a new (second) complaint based on the same contract, or same basic facts. (*Id*.) A motion for summary judgment was then brought to get the new, or second, suit dismissed on the basis of claim preclusion. (*Id*.) The court agreed that since the first suit was dismissed on the merits under EDCR 2.69(c), the new, or second, suit was barred by the doctrine of claim preclusion. (*Id*.) Those were the facts and that was the law. (*Id*.)

Here, neither the facts nor the law jive with *Five Star*. Primarily, the Edgeworths did not file a new, or second, complaint, as done in *Five Star*, after an initial complaint was dismissed on the merits. Rather, the Edgeworths appealed the wrongful dismissal of their Amended Complaint. Thus, there isn't the necessary tangible second filing of a new suit—aka condition precedent—by the Edgeworths for the doctrine of claim preclusion to apply. Also, since the Decision and Order dismissing the Amended Complaint is on appeal, there isn't a final judgment here, as there was in *Five Star*. *Id*. These are critical distinctions that preclude any application of the doctrine of claim preclusion under *Five Star*. *Id*. If there was a temptation to expand *Five Star* well beyond its intended boundaries here, public policy reasons and common sense should halt any such step backwards.

As argued throughout the Motion and the papers and pleadings on file, the facts are clear that SIMON'S own words and deeds throughout this long ordeal demonstrate that he knew that he had no reasonable basis to claim a lien in an amount that is striking similar to a

40% contingency fee of the Edgeworths' settlement. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) He stated as much in his letter of November 27, 2017; he admitted as much at the evidentiary hearing to adjudicate his lien; and, *his* hourly super bill totaled $692,120, not 40%, etc. (*Id*.)

Also, the law did not and does not support the findings of Judge Jones, who erroneously believed that physical possession of the settlement proceeds by SIMON was a necessary element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require physical possession of the settlement proceeds by SIMON for a claim for conversion to be brought and maintained by the Edgeworths. *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).

Instead, under Nevada law, "conversion is a distinct act of dominion and control 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." *Id*. Additionally, under Nevada law, "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." (*Bader, at 356*)(Emphasis added.) That's exactly what SIMON has done here when he asserted (and continues to assert) his liens in amounts that he knew he had no reasonable basis to assert. And that's why the factual and legal basis for the Decision and Order of Judge Jones is fundamentally incorrect and on appeal. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's

previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

Finally, the court in *Five Star* held that claim preclusion *may* be applied, thus bestowing discretion to the judge on whether to extinguish a second, or new, suit. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Since neither the facts nor the law support the consideration of claim preclusion here, since Judge Jones was clearly wrong in the application of the facts to the law of conversion, and since the Orders are not deemed final, being on appeal, there isn't a factual or legal basis to either consider or expand claim preclusion to this matter or Motion.

SIMON argues that Defendants never provided evidence of SIMON'S conversion at the evidentiary hearing to adjudicate SIMON'S lien. The operative words here are "the evidentiary hearing to adjudicate SIMON'S lien." That hearing was about SIMON'S lien to adjudicate and how much Judge Jones was going to award him. How do we know this? At a hearing on February 20, 2018, James R. Christensen, Esq., told the court that: "We move for adjudication under a statute. The statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit B, at p. 13:5-6.)

He went on to state that: "If you look through literally every single case in which there's a lien adjudication in the State of Nevada, in which there is some sort of dispute…the Court can take evidence…or set an evidentiary hearing…This is the way you resolve a fee dispute under the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set a date for an evidentiary hearing…Let's get this done…But there's nothing to stop that lien adjudication at this time." (*Id*., at 14:8-12.) The court then ordered the parties to attend a settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a status check to be held on April 3, 2018. (Please see Excerpts from Transcript attached as Exhibit C, at p. 15:18-19.)

At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to Dismiss (*Id*.) and ordered that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary Hearing on the dates as Follows: 05-29-18 1:00 a.m., 5-30-18 at 10:30 a.m., and 5-31-18 at 9:00 a.m." (Please see minutes of the court attached as Exhibit D.) The evidentiary hearing for SIMON'S Motion to Adjudicate Lien was a proceeding that the Court deemed "…very, very important…." (*See,* Exhibit B, at p. 2:19-20.) The court also ordered the parties to submit briefs prior to the hearing.

On that note, how much ink did SIMON devote in his Brief re: Evidentiary Hearing to discuss the merits of PLAINTIFFS' Amended Complaint and whether or not it should be dismissed pursuant to NRCP 12(b)(5)? Absolutely none. (Please see SIMON'S Brief re: Evidentiary Hearing, attached as Exhibit E.) Rather, every argument made focused solely on reasons for SIMON to get either a contingency fee via quantum meruit, or another $692,120 in fees from his super bill. (*Id*.)

How did Judge Jones view that issues to be resolved at the evidentiary hearing on SIMON'S Motion to Adjudicate Lien? Attached to this Reply as Exhibit F are excerpts from the transcript of the evidentiary hearing. On the first day of the evidentiary hearing, Judge Jones stated at page 4, lines 13-14: "Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case…." At page 14:15-17, the Court further stated: "So, this is the motion to – in regards to the adjudicating the lien. The motion was filed by you Mr. Christensen. Are you ready to call your first witness?"

Mr. Christensen then stated to the Court as follows, at page 18:18-24: "Secondly, this is a lien adjudication hearing. This is not an opening statement. We don't have a jury. This is being presented to the Court in order for the Court to have a full understanding of the facts…There's really no rules governing what you can say or can't say in an introductory

statement to a court in an adjudicatory – in a adjudication hearing."

On day #5, and at page 20, lines 17-19, while Mr. Greene was working to establish the background of Mrs. Edgeworth, the court stated: "Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies *to what's owed to Mr. Simon and the legal work that he did*." (*Id*., emphasis added.)

After an explanation as to why this line of questions was relevant, the court added the following at page 21:2-13: "…I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me…*I'm here to make a call about the legal work that was done by Mr. Simon, and what is owed to him. That is the only thing I am here to pass judgment on*." (*Id*., emphasis added.) The court added further at page 21:12-13: "*I'm just here to decide* what is going to be done with what's owed to them, *what's owed to Mr. Simon*, who needs to get paid." (*Id*., emphasis added.)

What did SIMON believe back then (when the matter was much fresher in his mind) regarding the basis was of the evidentiary hearing on his motion to adjudicate his lien? At page 39:4-6, Mr. Christiansen, SIMON'S attorney, stated and objected as follows: "It still has absolutely no relevance as to what money of the 1.9 million dollars in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, *that's the issue*." (*Id*., emphasis added.) Mr. Christiansen went further in an objection by stating: "Judge, this isn't a personal injury case, *this is an adjudication of an attorney's lien*…." (*Id*., emphasis added.)

The court's response was consistent with prior rulings and is as follows (at page 40:3-5): "…as I previously explained, I'm not here to judge anyone. *I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed*." (*Id*., emphasis added.) It is clear to any reader of the record that the purpose of the evidentiary hearing was SIMON'S motion to adjudicate his lien, not the issue raised in this collateral

argument by SIMON. (*Id*.) It can't get any clearer than that.

III. CONCLUSION

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**. (Please see SIMON'S Complaint attached to the Motion as Exhibit A.) As such, all of the Counts/claims are barred by the time-honored and absolute litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *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); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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.) See also, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished); *Baral v. Schnitt*, 1 Cal.5th 376, 384, 205 Cal.Rptr.3d 475, 376 P.3d 604 (2016); *Gotterba v. Travolta*, 228 Cal.App. 4th 35, 41, 175 Cal.Rptr.3d 47 (2014); *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1048, 1063, 37 Cal.4th 1000, 1063, 39 Cal.Rptr. 516, 128 P.3d 713 (2006); and, *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 210, 190 Cal.Rptr.3d 1 (2015). Since SIMON filed his Complaint to punish the VANNAH and the Edgeworths for using the

judiciary to resolve a legal dispute, SIMON'S Complaint, which is a SLAPP, must be dismissed.

In addition to the preceding fatal defects, a basis for SIMON'S allegations contained in Count I (Wrongful Use of Civil Proceedings), Count II (Malicious Prosecution), 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). (Please 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 through 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, claims for malicious prosecution (since abandoned) and abuse of process require 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…Instead, 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 through III are 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.

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; see also NRPC 1.2.) In furtherance of the role as attorney under the Rules, 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. (See, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) 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 and case law.

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. (Please 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, and NRPC 1.2.) 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 illegality and/or 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).

Finally, in addition to being barred by the time-honored and absolute litigation privilege, SIMON'S Counts/claims for defamation and disparagement lack clarity, specificity, and definiteness regarding the claims made, the factual basis for his claims, when and where they were made, as well as the specific parties he is making the claims against, though he doesn't name VANNAH specifically. (Please see Exhibit A attached to the Motion.) As argued above, SIMON'S Opposition agrees that these claims were not made against VANNAH, but that he may choose to amend to present them later, though SIMON'S Amended Complaint again does not bring them against VANNAH. Nonetheless, these baseless claims should be dismissed.

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." All 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).

Since the statements that make up the allegation in SIMON'S complaint 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. SIMON did not present any arguments or authority in his Opposition to sufficiently counter those set forth in the Motion or this Reply. Therefore, SIMON'S Complaint must be dismissed pursuant to NRCP 12(b)(5), as it does not state a claim upon which relief could ever be granted.

DATED this 23rd day of July, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

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Traditional Manner:

None

DATED this 23rd day of July, 2020.

/s/Patricia A. Marr
_____
An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

MTD

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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

SPECIAL MOTION TO DISMISS THE AMENDED COMPLAINT: ANTI-SLAPP

Date of Hearing:
Time of Hearing:

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.

CONSOLIDATED WITH

Case No.: A-18-767242-C
Dept. No.: 26

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

DATED this 10th day of May, 2018.

/s/ James R. Christensen
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

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

DATED this 10th day of May 2018.

/s/ James R. Christensen
JAMES CHRISTENSEN, ESQ.
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Attorney for Daniel S. Simon

On February 6, 2018, Mr. Vannah acknowledged in open court that this was a fee dispute case. To quote Mr. Vannah: "This is a fee dispute."[28] The law office agrees. Adjudication of the attorney lien is the Legislature approved method to resolve a fee dispute. The law office cannot be sued for following the law.

IV. Argument

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

A special motion to dismiss first requires the defendant to establish by preponderance of the evidence that the plaintiffs' claim is based on a protected communication. NRS 41.665. If yes, then the burden shifts, and the plaintiff must establish, by clear and convincing evidence, a likelihood of prevailing. NRS 41.665. If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted.

---

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

[28] Exhibit 15, transcript at page 35 line 24.

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

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

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

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> ...
> ...
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or,
> ...

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

> 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The litigation privilege is absolute and applies to any communication uttered or published in a judicial proceeding. *Greenberg,* 331 P.3d at 902.[29] Further:

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

Blaurock, 2015 WL 3540903.

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

[29] The sole recognized exception is in the context of a legal malpractice claim, which is not presented here.

V. CONCLUSION

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

DATED this 10th day of May, 2018.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

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

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN

EXHIBIT B

EXHIBIT B

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-16-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ.
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

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

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

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

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

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

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

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

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

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

Mister --

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: Me too.

MR. CHRISTENSEN: And --

MR. VANNAH: About 40 years.

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

THE COURT: Okay --

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

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

EXHIBIT C

EXHIBIT C

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC,. Defendant.	CASE NO. A-16-738444-C DEPT. NO. X (CONSOLIDATED WITH: CASE NO. A-18-767242-C)

And related matter/cases.

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

FOR THE PLAINTIFF: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

FOR THE DEFENDANT: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

THE COURT: Okay.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you, counsel.

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

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

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

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

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

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

THE COURT: Not the new one.

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

THE COURT: Yeah.

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

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

THE COURT: Okay.

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

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

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

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

MR. VANNAH: No. No, Your Honor.

THE COURT: Okay.

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

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

MR. VANNAH: Right.

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

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

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

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

MR. CHRISTENSEN: That's correct.

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

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

MR. VANNAH: Well --

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

EXHIBIT D

EXHIBIT D

EVENTS & ORDERS OF THE COURT

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

Minutes
04/03/2018 9:30 AM
- APPEARANCES CONTINUED: Robert Vannah, and Robert Greene, present. Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp; Order Shortening Time....Status Check: Settlement Conference...Defendant Daniel S. Simon's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Countermotion to Amend Complaint Following arguments by counsel, COURT ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Special Motion to Dismiss: Anti-Slapp, DENIED. COURT FURTHER ORDERED, Defendant Daniel S. Simon d/b/a Simon Law's Motion to Adjudicate Attorney Lien of the Law Office Daniel Simon PC, Set for Evidentiary Hearing on the dates as Follows: 05-29-18 11:00 a.m., 05-30-18, at 10:30 a.m., and 5-31-18 at 9:00 a.m. Court notes is will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/29/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties Present
Return to Register of Actions

EXHIBIT E

EXHIBIT E

BRF
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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5 and ROE entities 6 through 10; Defendants.	Case No.: A-18-767242-C Dept No.: 26 Consolidated with Case No.: A-16-738444-C Dept No.: 10 **DEFENDANTS' BRIEF RE: EVIDENTIARY HEARING**
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.	Date of Hearing: 5.29.18 Time of Hearing: 11:00 A.M.

I. PREFACE

This brief is submitted for the evidentiary hearing being held by the Court to adjudicate the Law Office attorney lien pursuant to NRS 18.015. This brief is limited primarily to adjudication issues.

II. INTRODUCTION

The Edgeworth and Simon families were close friends for many years. When a flood occurred in a speculation home being built by Brian Edgeworth, Brian turned to his friend Daniel Simon for help. Mr. Simon agreed to help, and worked for his friend without a fee agreement.

The flood was caused by a defective fire sprinkler built by Viking and installed by Lange. Mr. Simon filed a case against Viking and Lange.

The entire law office worked for Brian Edgeworth; and, Mr. Simon obtained an amazing result. Mr. Simon recovered over $6M ($6,000,000.00) in a case with a property damage cost of repair of about five hundred thousand, and on a home with a total build budget of about 3.3M.

Shortly prior to trial, after Viking made a $6M settlement offer, Brian Edgeworth ended communication with the Law Office, stopped taking litigation advice from Mr. Simon, and hired the Vannah firm to sue the Law Office. In so doing, Mr. Edgeworth constructively discharged Mr. Simon from any alleged fee agreement; and, took the advice of Mr. Vannah over Mr. Simon when Mr.

Edgeworth abandoned a valuable contract based claim against Lange for attorney fees spent in pursuit of Viking.

This Court is tasked with settling the amount of the outstanding fee owed the Law Office for its excellent work. As detailed below, whether the Court uses the *quantum meruit* analysis suggested by the Law Office or the hourly rate of $550.00 an hour preferred by Edgeworth, the outstanding fee owed is substantial.

III. THE LAW OFFICE IS DUE A SUBSTANTIAL FEE

This Court will necessarily find that the Law Office is due a substantial fee. As the two main arguments go; either, the Law Office is due a reasonable fee under *quantum meruit*, or the Law Office is due $550.00 an hour for unpaid work.

A. The weight of the evidence establishes that there was an implied-in-fact contract with a missing attorney fee term.

A charging lien is a "creature of statute". *Argentina Consolidated Mining, v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009). NRS 18.015(2) states that the attorney can recover the contract rate; or, if no contract rate, then a "reasonable fee"-that is, *quantum meruit*:

> 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.

In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme Court found:

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

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

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

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

NRS 18.015(2) follows basic Nevada contract law. If there is an express (written or oral) contract, then the contract terms are applied. If there is an implied in fact contract - that is, a contract implied by conduct; then, *quantum meruit* is used to determine the missing payment term. *See, e.g., Certified Fire Protection v. Precision Construction*, 283 P.3d 250, 256 (Nev. 2012).

1. <u>There is no express written agreement</u>.

The parties agree that there is no express written agreement.

2. There is no express oral agreement.

To have an enforceable express oral contract, all terms must be agreed upon. *See*, e.g., *Loma Linda University v. Eckenweiler*, 469 P.2d 54, 56 (1970). The weight of the evidence does not support a finding that the attorney fee was agreed upon by the parties. For example:

Edgeworth claims the following:

- An oral contract to work for $550.00 per hour was formed on May 1, 2016. (Complaint and Amended Complaint at ¶8 & 9.)

OR

- An oral contract to work for $550.00 per hour was formed on May 27, 2016. (Brian Edgeworth affidavit of 2.2.2018, at ¶3, 5 & 6.)

However:

- On May 27, 2016, Mr. Simon agreed to "send a few letters". (Ex. 1; 5.27.16 email string.) The contemporaneous email does not support an oral fee agreement for $550.00 an hour. Rather the email reflects a friends and family arrangement.
- In December of 2016, the first law office bill was sent. Bills are sent monthly on hourly cases. Hourly lawyers do not wait six months to send their first bill.

- The billings sent were incomplete and did not reflect all work performed. Mr. Edgeworth is a sophisticated business person with experience with hourly attorneys. Mr. Edgeworth was aware the bills were incomplete.
- On August 22, 2017, Mr. Edgeworth admitted no express oral agreement had been reached on the amount of the fee. Mr. Edgeworth wrote:

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

(Ex. 2, 8.22.2017 email.)

If there was an agreement to pay Mr. Simon $550.00 an hour in place, the above statements would not have been made by Mr. Edgeworth. Instead, Mr. Edgeworth's own words confirm that his friend was not fully billing the case to ease the strain on Mr. Edgeworth, and because of an expectation of a fee based on results and not time. Mr. Simon does contingency fee work, he is comfortable sharing risk on a case.

The Edgeworth claims do not survive the weight of the evidence.

3. There was an implied-in-fact contract, with a missing fee term.

There was an implied-in-fact contract between the Law Office and the Edgeworths. The parties agree the Law Office performed excellent legal work, obtained an amazing result, and the work was not done for free.

The weight of the evidence establishes that the Law Office fee was not agreed upon. (*See, e.g.*, Ex. 1 & 2.) Under the lien statute and Nevada contract law, when there is a missing payment term in an implied-in-fact contract, *quantum meruit*-that is, a reasonable fee, is used to determine what is owed. NRS 18.015(2); and, *Certified Fire Protection*, 283 P.3d at 256.

4. The contract analysis is moot, because the Edgeworths' constructively discharged the Law Office.

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 the client); *citing*, *Gordon v. Stewart*, 324 P.3d 234 (1958)(attorney paid in *quantum merit* 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).

In this case, the clients constructively discharged the Law Office:

- The clients stopped all communication with the Law Office-even though vital legal decisions had to be made.
- The clients did not follow the advice of the Law Office on the Lange attorney fee claim; and, abandoned a certain contract claim worth over one million dollars.
- The clients accused Mr. Simon of an intent to steal six million dollars.
- The clients' new lawyer accused the Law Office of billing fraud.
- The clients' new lawyer threatened an increased damage claim unless the Law Office continued to work for the client, despite being sued.
- The client has not paid the Law Office any amount for undisputed time.
- The clients sued the Law Office.
- The clients sued the Law Office for conversion before there were any funds to convert.
- The clients filed two complaints against the Law Office, seek a jury trial and want punitive damages.

In *Rosenberg v. Calderon Automation*, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986), a lawyer provided services to the client without a contract. As the case was ready to be resolved the client did not want to pay the lawyer because there

was no contract. The client stopped all communication with the lawyer. The Ohio Appellate Court found that the client refusal to communicate with their lawyer was a constructive termination of services; and, that the lawyer was due compensation by *quantum meruit*.

Constructive termination can occur in other ways. In *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court found constructive termination of a lawyer when the client placed "counsel in a position that precluded effective representation and thereby constructively discharged his counsel or (2) through his obstructionist behavior, dilatory conduct, or bad faith, the defendant de facto waived counsel."

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

Suit between an agent and a principal is 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.

When a client stops talking to their lawyer, threatens their lawyer, sues their lawyer, refuses to pay their lawyer, and hires a new lawyer, there has been a constructive discharge of the lawyer by the client.

B. The Outstanding Fee Owed to the Law Office.

The Law Office did excellent work and obtained an amazing result. The Law Office is due a fee. The Law Office submits it is due a reasonable fee under *quantum meruit*. The Edgeworths argue that the Law Office should be paid $550.00 an hour. Under either scenario, the Law Office is due a substantial fee.

1. Reasonable Fee under *Quantum Meruit*.

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

The *Brunzell* factors are:

1. The qualities of the advocate;
2. The character of the work to be done;
3. The work actually performed; and,
4. The result obtained.

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

The Declaration of William Kemp is attached at Exhibit 3. Mr. Kemp is one of the top product liability attorneys in the United States. Mr. Kemp is also very experienced in the determination of the reasonable fee of an attorney in a product liability case. In his Declaration, Mr. Kemp describes his experience in detail, including his work on the determination of a reasonable attorney fee. Mr. Kemp then reviews and applies the *Brunzell* factors to find a reasonable fee for the Law Office for the amazing work performed on behalf of the Edgeworths. Mr. Kemp reaches a reasonable attorney fee value of $2,440,000.00.

Mr. Kemp used the market approach (fair market value) to calculate the reasonable fee. The fair market value, or market price, is an accepted method to calculate a fee. Restatement Third, The Law Governing Lawyers, §39.

The Law Office seeks a reasonable fee of $1,977,843.80 as stated in the Amended Lien of January 2, 2018. The Law Office number is net of $367,606.25 already paid. The Law Office seeks a total fee below the market rate set by Mr. Kemp.

2. The hourly rate.

The Law Office provided comprehensive billings which documented all work, including previously unbilled work and work performed since the last Edgeworth payment.

The hours were provided for several reasons. First, Courts can be critical of attorneys-even those with a written contingency fee agreement-that seek fees without providing a time record. *See, e.g., Golightly*, 281 P.3d 1176. Second, the comprehensive bill provides a record of the time spent and work done on the file, which is helpful for the Court. Third, the Law Office is aware that the Court may choose to calculate the fee due on an hourly basis. While the Law Office believes the facts call for a reasonable fee following the analysis of Mr. Kemp, the Law Office is not going to ignore the alternate possibility. Fourth, the time record provides additional evidence of constructive discharge-in that, the record supports the value of the contract claim against Lange which the Edgeworths abandoned against the advice of Mr. Simon.

Lastly, the hours submitted demonstrate the amount of risk Mr. Simon shared with the clients. As explained by Mr. Edgeworth in his August 2017 email, if Brian Edgeworth paid an hourly for the "whole case", he would need to take out more loans and/or sell a house to pay the Law Office. (Ex. 2.) (Mr. Edgeworth is a knowledgeable person, he understood that paying hourly for the whole case could cost more than an additional $450,000.00. Ex. 2.) The Law Office did not force Mr. Edgeworth to sell a house or his Bitcoin. Instead, the Law Office took a milder approach for Mr. Simon's friend, and balanced the utility of demonstrating fees with the goal of easing financial strain on Brian Edgeworth.

All hours should be considered. The previous billings were plainly incomplete, which was known to Mr. Edgeworth as many calls/emails and meetings with the Law Office were not previously billed; and, because he did not have to take out more loans or sell Bitcoin to pay the bills. And, until the Viking case settled, the number of hours and final amount of the attorney fee claim against Lange was unknown.

There is no estoppel or other argument which prevents the submission and payment of a complete bill for services in this case. Mr. Edgeworth clearly understands that money is owed, but has made the decision not to pay his lawyer. Mr. Edgeworth explicitly understood that an hourly rate for the whole case would cost considerably more than what he had already paid (Ex. 2).

Of course, the rate of $550.00 an hour was used for illustrative purposes. If the Court decides to apply *quantum meruit*, and calculate a reasonable fee using an hourly approach, the Court is not limited to $550.00 an hour. Using $550.00 an hour (for Mr. Simon), the outstanding fee due the Law Office is $692,120.00. However, considering the result, a higher rate of $700-800 an hour is more than reasonable, if the Court chooses to use an hourly approach.

IV. CONCLUSION

The Law Office did exemplary work. Mr. Simon and the Law Firm committed all their time and effort to bringing home a fantastic result for the Edgeworth family. The Law Office is due a reasonable fee for its work.

DATED this 18th day of May, 2018.

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EXHIBIT F

EXHIBIT F

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

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

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

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

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

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

MR. VANNAH: Yes, Your Honor.

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

MR. VANNAH: We are, Your Honor.

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

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

THE COURT: It's okay. Me either.

[Pause]

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

THE COURT: Okay.

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

quote from the email. And that was in May of 2016. And from then on, the case progressed until it was filed in June, and then when it became active really in late 2016 through 2017 before Your Honor.

So, we are here because, of course, there was a very large settlement. Mr. Simon got a result, and there's a dispute over the fees. So, the first question we have is whether there was an expressed contract to the fees or expressed contract regarding the retention. We all know, and we all agree, there was no expressed written contract. It started off as a friends and family matter. Mr. Simon probably wasn't even going to send them a bill if he could have triggered adjusters

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

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

Q What affect, Angela, do you remember that this flood litigation had on you and your family?

MR. CHRISTIANSEN: Objection, relevance.

THE COURT: Mr. Greene?

MR. GREENE: It has relevance, as she's going to be

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. CHRISTENSEN: No, Judge. They ended my examination of Mr. Edgeworth. I asked a question, and I intended to go into a slew of things he and his wife had talked about. Mr. Vannah asserted the privilege that I couldn't talk to him about it. I sat down. Mr. Vannah has that right. That was the end of it. They're judicially estopped from now unwinding that assertion.

THE COURT: Well, I mean, she can testify to something she has independent knowledge of, but she can't testify to something he told her because you guys have invoked that privilege. And this is about the volleyball. Wasn't this about -- I'm sorry; I forgot what the question was you asked. Wasn't this about him doing some volley -- the volleyball place?

MR. GREENE: It's about charitable backgrounds, talking about her background at this particular point.

THE COURT: Okay.

MR. GREENE: So --

THE COURT: Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies to what's owed to Mr. Simon and the legal work that he did.

MR. GREENE: Well, I understand that, Your Honor. But they spent time and volumes and words in their briefs for lack of a better word, sliming the Edgeworths. Calling them dishonest, that they don't pay their bills, that they're -- that they can't be trusted. Most assuredly their charitable background, their giving, their conduct towards others is certainly relevant to help unwind some of that stain that the defense put

on.

THE COURT: Well, let me -- I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging them based on whether or not they gave money to Three Square. I'm here to make a call about the legal work that was done by Mr. Simon and what is owed to him. That is the only thing I am here to pass judgment on.

I'm not here to pass judgment on who's passing out canned goods at Three Square. I'm doing it every other week in all reality, but that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of fact. I'm not a jury. I'm not here to discuss things that are outside the legal realm. I'm just here to decide what is going to be done with what's owed to them, what's owed to Mr. Simon, who needs to get paid.

DIRECT EXAMINATION CONTINUED

BY MR. GREENE:

Q Angela.

A Yes.

Q When did you come to know the Simons?

A I met Alaina (phonetic) when my daughter was in preschool and we've known them for quite a long time. Alaina helped me a lot when my father passed away. She was a good friend, and I considered her to be one of my closest friends. We took family vacations together and you know, our kids knew each other since preschool.

Q Did you ever at that time gain an understanding as to what her husband Danny did for a living?

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. GREENE: Wow. He's right, it's not a personal injury case at a 40 percent fee. He's dead right about that. It is, you know --

THE COURT: Hold on. One minute, I think that's where we're all -- but I think we have -- we need to limit this hearing, because I think the reason that we're in Day 5 is because there have been no limits on this hearing, this three-day hearing that now we're in Day 5.

The question was what effect did this have on her.

MR. GREENE: On the family, and it's a broad question.

THE COURT: It's a broad -- well, she can talk about the financial aspects of that, because as I previously explained, I'm not here to judge anyone. I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed. She can talk about the financial effects of how this affected her family.

MR. GREENE: Okay.

BY MR. GREENE:

Q What financial effects did this litigation have on you and your family?

A It was very stressful. It was a very stressful time for us.

THE COURT: And you said -- I'm sorry, Mr. Greene, I don't mean to cut you off either, but we kind of moved on. And I'm sorry, I never know when you are done with one section.

You said you had concerns that the billing was exaggerated. Are these concerns that you have now or are these concerns that you had when you guys received, because I thought Mr. Greene was talking about the four original bills. Did you have concerns when you received those four original bills, or are these concerns you have after the January 2018 bill?

THE WITNESS: I had concerns back then, Your Honor.

THE COURT: Did you express those to Mr. Simon?

THE WITNESS: No.

THE COURT: Okay.

And I'm sorry, Mr. Greene.

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 OPENING BRIEFS** **VOLUME XV** **BATES NO. AA002873 -3056**

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EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058

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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

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2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
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2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175

JOIN
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **DEFENDANTS EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE'S JOINDER TO REPLY TO ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., AND, ROBERT D. VANNAH, CHTD., D/B/A VANNAH & VANNAH, TO PLAINTIFF'S OPPOSITION TO VANNAH'S SPECIAL MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT: ANTI-SLAPP**

Defendants Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth And Angela Edgeworth, Individually, and as Husband and Wife, by and through their counsel of record, MESSNER REEVES LLP, hereby submit this joinder to Defendants Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth And Angela Edgeworth, Individually, And As Husband And Wife's Joinder To Reply To Of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., And, Robert D. Vannah,

Chtd., D/B/A Vannah & Vannah, To Plaintiff's Opposition To Vannah's Special Motion To Dismiss Plaintiffs' Amended Complaint: Anti-Slapp, e-filed July 23, 2020.

DATED this 31st day of July, 2020.

MESSNER REEVES LLP

/s/ Christine Atwood
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Attorneys for Defendant American Grating, LLC

CERTIFICATE OF SERVICE

On this 31st day of July, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE'S JOINDER TO REPLY TO ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., AND, ROBERT D. VANNAH, CHTD., D/B/A VANNAH & VANNAH, TO PLAINTIFF'S OPPOSITION TO VANNAH'S SPECIAL MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT: ANTI-SLAPP** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **DEFENDANTS EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE'S JOINDER TO REPLY TO ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., AND, ROBERT D. VANNAH, CHTD., D/B/A VANNAH & VANNAH, TO PLAINTIFF'S OPPOSITION TO VANNAH'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT: ANTI-SLAPP**

Defendants Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth And Angela Edgeworth, Individually, and as Husband and Wife, by and through their counsel of record, MESSNER REEVES LLP, hereby submit this joinder to Defendants Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth And Angela Edgeworth, Individually, And As Husband And Wife's Joinder To Reply To Of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., And, Robert D. Vannah,

Chtd., D/B/A Vannah & Vannah, To Plaintiff's Opposition To Vannah's Special Motion To Dismiss Plaintiffs' Complaint: Anti-Slapp, e-filed July 23, 2020.

DATED this 31st day of July, 2020.

MESSNER REEVES LLP

/s/ Christine Atwood
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Las Vegas, Nevada 89148
Attorneys for Defendant American Grating, LLC

CERTIFICATE OF SERVICE

On this 31st day of July, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE'S JOINDER TO REPLY TO ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., AND, ROBERT D. VANNAH, CHTD., D/B/A VANNAH & VANNAH, TO PLAINTIFF'S OPPOSITION TO VANNAH'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT: ANTI-SLAPP** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

/s/ Ka'Tina Artis
Employee of MESSNER REEVES LLP

A-19-807433-C Law Office of Daniel S Simon, Plaintiff(s)
vs.
Edgeworth Family Trust, Defendant(s)

August 13, 2020 09:00 AM All Pending Motions

HEARD BY: Crockett, Jim COURTROOM: Phoenix Building 11th Floor 116

COURT CLERK: Lord, Rem

RECORDER: Maldonado, Nancy

REPORTER:

PARTIES PRESENT:

Michael C. Meyer	**Attorney for Defendant**
Patricia A. Marr, ESQ	**Attorney for Defendant**
Peter S Christiansen	**Attorney for Plaintiff**
Renee M. Finch	**Attorney for Defendant**

JOURNAL ENTRIES

Motion Of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and, Robert D. Vannah, CHTD., d/b/a Vannah & Vannah, To Dismiss Plaintiffs Complaint, And Motion In The Alternative For A More Definite Statement ... Defendants Edgeworth Family Trust, American Grating LLC Brian Edgeworth and Angela Edgeworth's Motion to Dismiss Plaintiffs Complaint ... Special Motion of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D. Vannah, Chtd., d/b/a Vannah & Vannah, to Dismiss Plaintiff's Amended Complaint: Anti-Slapp ... Joinder of Edgeworth Family Trust, and Brian and Angela Edgeworth to American Grating, LLC's, and Robert Darby Vannah, Esq.; John Buchanan Greene, Esq.; and Robert D. Vannah, CHTD. d/b/a Vannah & Vannah's Special Motions to Dismiss Plaintiffs' Complaint ... Defendant American Grating, LLC's Joinder To Special Motion Of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., And, Robert D. Vannah, Chtd., D/B/A Vannah & Vannah, To Dismiss Plaintiffs Complaint: Anti-SLAPP ... Defendant American Grating, LLC's Joinder To Edgeworth Family Trust, Brian Edgeworth, And Angela Edgeworth s Special Anti-Slapp Motion To Dismiss Pursuant To NRS 41.637 ... Joinder of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D.Vannah, CHTD., d/b/a Vannah & Vannah, to Defendants' Special Motions to Dismiss Plaintiffs' Complaint: Anti-Slapp ... 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 ... Defendant American Grating, LLC's Joinder To Special Motion Of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., And Robert D. Vannah, Chtd., D/B/A Vannah & Vannah, To Dismiss Plaintiffs Amended Complaint: Anti-Slapp ... Defendant American Grating, LLC's Joinder To 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 ... Defendant American Grating, LLC s Motion to Dismiss Plaintiffs Amended Complaint ... Renewed Special Motion of Brian Edgeworth Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC Anti-Slapp Motion to Dismiss Pursuant to NRS 41.637 and for Leave to File Motion in Excess of 30 Pages Pursuant to EDCR 2.20(a) ... Defendans Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Motion to Dismiss PLaintiffs' Amended Complaint ... Joinder of Edgeworth Family Trust, and Brian and Angela Edgeworth to American Grating, LLC's, and Robert Darby

Vannah, Esq.; John Buchanan Greene, Esq.; and Robert D. Vannah, CHTD. d/b/a Vannah & Vannah's Motions to Dismiss Plaintiffs' Amended Complaint ... Joinder of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D. Vannah, Chtd., d/b/a Vannah & Vannah, to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint and Defendant's Renewed Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-Slapp ... 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 ... Special Motion of American Grating, LLC Anti-Slapp Motion to Dismiss Pursuant to NRS 41.63 and for Leave to File Motion in Excess of 30 Pages Pursuant to EDCR 2.20(a) ... Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Anti-Slapp Motion to Dismiss Pursuant to NRS 41.637

Court reviewed the procedural history of the case and admonished counsel regarding length of filings being several thousand pages long. COURT ORDERED, all matters, motions and joinder OFF CALENDAR. Court instructed counsel to correctly file appropriate motions by 8/27/2020, oppositions to be filed by 9/10/2020, reply briefs due 9/24/2020 and hearing will be set 10/1/2020.

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **SPECIAL MOTION OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' AMENDED COMPLAINT: ANTI-SLAPP** (HEARING REQUESTED) Date of Hearing: October 1, 2020 Time of Hearing: 9:00 a.m.

Defendants ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH (referred to collectively as VANNAH), hereby file this Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP (Special Motion).

This Special Motion is based upon the attached Memorandum of Points and Authorities; the Memorandum of Points and Authorities contemporaneously filed in support of the Motion to Dismiss Plaintiffs' Amended Complaint; the Memorandum of Points and Authorities set forth in

VANNAH'S Opposition to Plaintiffs' previously filed Emergency Motion to Preserve Evidence, namely pages 5-21; 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 Plaintiffs' 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; the Affidavit of Robert D. Vannah, Esq.; the Affidavit of John B. Greene, Esq. (attached as Exhibits A & B, respectively); and, any oral arguments this Court may wish to entertain.

DATED this 25th day of August, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ANTI-SLAPP

Anti-SLAPP statutes protect those who exercise their right to free speech, petition their government on an issue of concern, or try to resolve a conflict through use of the judiciary. The right to "petition the government for the redress of grievances" is a right guaranteed by the First Amendment ("the petition clause").[1] In the 1980s, two (2) law professors coined the phrase "Strategic Lawsuit Against Public Participation" or "SLAPP" to describe a growing trend of bringing a civil suit in response to an exercise of free speech or the right to petition.[2] Anti-

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

[2] *See*, George W. Pring and Penelope Canan, SLAPPS: Getting Sued for Speaking Out (Temple University Press 1996). Canan and Pring coined the term SLAPP. The book contains a SLAPP summary, reviews legislation, and

SLAPP statutes arose to combat the growing trend. An Anti-SLAPP statute typically provides for early judicial intervention and equally early dismissal of a SLAPP lawsuit such as SIMON'S.

Nevada courts look to California law for guidance in interpreting Anti-SLAPP laws. *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (Nev. 2017). California courts have held that the anti-SLAPP law "provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." *Baral v. Schnitt*, 1 Cal.5th 376, 384, 205 Cal.Rptr.3d 475, 376 P.3d 604 (2016). These courts have held further that, by its plain language, the anti-SLAPP law reaches not only oral and written statements "made *before* a ... judicial proceeding," but also statements "made *in connection with* an issue under consideration or review by a ... judicial body." (*citing*, Cal.Civ.Code Section 425.16, subd. (e)(1) & (2), italics added.)

As construed by California courts, these categories can include "communication[s] preparatory to or in anticipation of litigation" (*Gotterba v. Travolta*, 228 Cal.App4th 35, 41, 175 Cal.Rptr.3d 47 (2014)) as well as "post judgment enforcement activities" (*Rusheen v. Cohen*, 37 Cal.4th 1048, 1048, 1063, 37 Cal.4th 1000, 1063, 39 Cal.Rptr. 516, 128 P.3d 713 (2006) (Accord, *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 210, 190 Cal.Rptr.3d 1 (2015) ["*all* communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP [law]" (italics added)].)

Here, SIMON wants to punish VANNAH and mutual clients, the Edgeworths, for filing a lawsuit in good faith to redress wrongs that were allegedly committed by SIMON. (*See*, a copy of SIMON'S Amended Complaint, which shall be referred to as SIMON'S SLAPP or SLAPP, and its eight (8) counts attached to this Special Motion as Exhibit D, of which five (5) are now directed towards VANNAH). The Edgeworths' Amended Complaint referenced above brought

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suggests a model bill.

claims against SIMON for breach of contract, declaratory relief, breach of the implied covenant of good faith and fair dealing, and conversion. (*See*, a copy of the Edgeworths' Amended Complaint attached to this Special Motion as Exhibit C). The Edgeworths' Amended Complaint was filed by VANNAH in good faith and was based, in part, on the acts of SIMON asserting a lien in an amount that constituted a contingency fee when he had an hourly fee agreement with the Edgeworths, then holding the Edgeworths' funds and refusing the return their funds to them for what now amounts to over two (2) years. (*Id.*; *see also*, Affidavits of Robert D. Vannah, Esq., and John B. Greene, Esq., attached as Exhibits A & B; *see also*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.)

But let there be no doubt: If the Defendants here had not filed the Amended Complaint against SIMON in the underlying matter, the dismissal of which is presently on appeal, SIMON never would have filed his SLAPP in this matter. (Please see Exhibit C, then Exhibit D.) As the appellate record clearly shows, the Edgeworths did not ask for any of this from SIMON; they simply wanted the contract for the payment of hourly fees honored and the balance of their settlement funds given to them. (Please see Exhibit C; please also see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) Any other inference, assertion, argument, or allegation by SIMON to the contrary is nonsensical and belied by the facts and the record. (*Id*.) Since SIMON'S suit was brought in response to the legal use of the courts by Defendants here to redress wrongs, SIMON'S amended complaint is a SLAPP and must be dismissed under Nevada's Anti-SLAPP law.

The Nevada Anti-SLAPP statute shields those who make a protected communication. NRS 41.635-41.670. The act of filing a complaint to seek redress from a judicial body is a

protected communication under the statute. (*See*, NRS 41.637(3)). Thus, when SIMON sued VANNAH in retaliation for asking Judge Tierra Jones to resolve a dispute with SIMON on behalf of the Edgeworths, VANNAH can file a special motion to dismiss under Nevada's Anti-SLAPP statutes and interpretive laws and prevail. (*Id*.)

Nevada and California courts grant Anti-SLAPP special motions in favor of attorneys who ask the Court to dismiss SLAPP complaints. *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished). Following that direction, VANNAH respectfully requests that this Court grant this Special Motion to Dismiss SIMON'S amended complaint, which is clearly a SLAPP and will be referred to as such.

II. FACTUAL BACKGROUND

The Edgeworths retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home they owned, which was under construction. (*See*, Appellants' Appendix AA, Vol. 2, p.000296, lines 10 through 14; 000298:10-12; 000354-000355, attached to VANNAH'S Opposition to Plaintiffs' previously filed Emergency Motion to Preserve Evidence as Exhibit A). SIMON undertook this assignment on May 27, 2016. (*Id*., at AA, Vol. 2, 000278:18-20; 000298:10-12; 000354.) He then began billing the Edgeworths $550 per hour for his work from that date to his last entry on January 8, 2018. (*Id*., at 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 Eighth Judicial District Court as Case Number A-16-738444-C. (*Id*., at AA, Vol. 2, 000296*).* In that action, the Edgeworths brought suit against entities responsible for defective plumbing on their property: Lange Plumbing, LLC, The Viking Corporation, and Supply Network, Inc. (*Id*., at AA, Vol. 2, 000278:24-27; 000354).

Judge Tierra Jones conducted an evidentiary hearing over five days from August 27, 2018, through August 30, 2018, and concluded on September 18, 2018, to adjudicate SIMON'S attorney's lien. (*Id*., at AA, Vol. 2, 000353-000375). The Court found that SIMON and the Edgeworths had an implied agreement for attorney's fees. (*Id.,* at 000365-000366; 000374). However, the Edgeworths vigorously asserted that an oral fee agreement existed between SIMON and the Edgeworths for $550/hour for work performed by SIMON. (*Id*., at AA, Vols. 2 & 3, 000277-301; 000499:13-19; 000502:18-23; 506:1-17; 511:25; 512:1-20). In addition to the Edgeworths' testimony, SIMON'S invoices from May 27, 2016, through January 8, 2018, were all billed at $550 per hour for his time. (*Id*., at AA, Vols. 1 & 2, 000053-000267).

SIMON admitted that he *never* reduced the hourly fee agreement to writing; rather, the first written fee agreement he ever presented to the Edgeworths was on November 27, 2017—which was *days after* obtaining a settlement in principle for $6 million. (*Id*., at AA, Vol. 3, 000515-1:8-25). Regardless, SIMON and the Edgeworths performed the understood terms of the original oral fee agreement with exactness. (*Id*., at AA, Vol. 2, 000297:3-9; AA, Vol. 3, 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20*).* This was demonstrated when SIMON sent four (4) invoices to the Edgeworths over time with very detailed invoicing, billing $486,453.09 in fees and costs, from May 27, 2016, through September, 19, 2017. (*Id*., at AA, Vols. 1 & 2, 000053-000084; 000356:15-17; 000499:13-19; 000502:18-23; 506:1-17; 511:25, 512:1-20).

One can see that SIMON always billed for his time at the hourly rate of $550 per hour, and his two associates always billed at the rate of $275 per hour. (*Id*., at AA, Vols. 1 & 2, 000053-000267; 000374). It is undisputed the Edgeworths paid the invoices in full, and SIMON deposited the checks without returning any money. (*Id*., at AA, Vol. 2, 000356:14-16). And SIMON *did not express an interest* in May of 2016 in taking the property damage claim with a

value of $500,000 on a contingency basis. (*Id*., at AA, Vol. 2, 000297:1-5).

SIMON thought that his attorney's fees would be recoverable as damages in the underlying flood litigation. (*Id*., at AA, Vol. 2, 000365-000366). As such, it was incumbent upon him, as the attorney, to provide and serve computations of damages pursuant to NRCP 16.1 listing how much in the fees he'd charged. (*Id*., at 000365:24-26). At the deposition taken of Brian Edgeworth on September 27, 2017, he was asked what SIMON'S attorney's fees were to date, and, on the record, SIMON voluntarily admitted that "[the fees have] all been disclosed to you" and "have been disclosed to you long ago." (*Id*., at AA, Vol. 2, 000300:3-16; 000302-000304; 000365:27; 000366:1). That was less than two (2) months before the *crucial* meeting in his office in mid-November of 2017, where SIMON demanded that the hourly fee agreement be modified to pay him a percentage of the Viking settlement, or he'd quit. (*Id*., at 000300:3-16; 000302-000304). Thus, we see that through SIMON'S words and deeds he clearly knew, understood, and operated with the understanding that his fee agreement with the Edgeworths was for $550 per hour for the work he performed.

Notwithstanding the existence of a fee agreement, a mutually understood pattern of invoices sent and paid for SIMON'S fees, and the Edgeworths' affidavits and testimony that an oral contract for fees paid at the hourly rate of $550 per hour had been reached in May of 2016, SIMON eventually wanted more than an hourly fee. (*Id*., at 000271-000304). In mid-November, and again on November 27, 2017, and only after the value of the case skyrocketed past $500,000 to over $6,000,000, SIMON demanded that the Edgeworths modify the fee contract so that he could recover a contingency fee dressed as a bonus. (*Id*., at AA, Vol. 2, 000298:3-17).

The Edgeworths initially understood that SIMON had scheduled that earlier meeting with the Edgeworths at SIMON'S office to discuss the flood litigation, but it became clear to the Edgeworths that SIMON agenda was to pressure them into modifying their $550/hour fee

agreement. (*Id*., at 000298:12-24). At that meeting, SIMON told the Edgeworths he wanted to be paid far more than $550.00 per hour and the $486,453.09 in fees and costs he'd received from the Edgeworths for the preceding eighteen (18) months. (*Id*.)

In a letter to the Edgeworths dated November 27, 2017 (attached as Exbibit E), SIMON claimed that he was losing money and that it would be the right thing to do for the Edgeworths to agree to pay him basically 40% of the $6 million settlement with Viking. (*Id*., at AA, Vols. 2 & 3, 000299:13-22; 000270; 000275; 000515-1). SIMON also invited the Edgeworths to contact another attorney and verify that this was the way things work. (*Id*., at AA, Vol. 3, 000000515-1, 000515-2, 000516:1-7, 000517:13-25).

In SIMON'S own words, this is how he 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." (*See* Exhibit E, emphasis added.) These words were interpreted to 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*.; *See* also Exhibits A & B.) 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 continue to live, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*Id*.) The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*See*, Exhibits A & B attached to this Special Motion).

The Edgeworths refused to bow to SIMON'S pressure and demands for a fee bonus. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely AA, Vol. 2, 000300:16-23).

When the Edgeworths did not acquiesce to SIMON'S demands, SIMON refused to release the Edgeworths' settlement proceeds. (*Id.)* Instead, SIMON served two (2) attorney's liens: one (1) on November 30, 2017, and an Amended Lien on January 2, 2018. (*Id*., at 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 the Edgeworths had paid in full to SIMON for all his services and time from May 27, 2016, through September 19, 2017. (*Id*., at AA, Vol. 2, 000301:12-13). Simple math reveals that 40% (a contingency fee) of $6,000,000 is **$2,400,000**. Similar math skills show that $486,453.09 plus $1,977,843.80 equals **$2,464,296.89**.

On January 4, 2018, VANNAH, on behalf of the Edgeworths, filed a complaint against SIMON, alleging claims for breach of contract, declaratory relief, and conversion. On March 15, 2018, VANNAH, on behalf of the Edgeworths, filed an amended complaint against SIMON, alleging claims for breach of contract, declaratory relief, conversion, and breach of the implied covenant of good faith and fair dealing. (*See*, Exhibit C). Portions of several relevant paragraphs of the Amended Complaint are as follows:

(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 Eighth 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….

(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.

(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.

(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 then 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.

(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.

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

(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 possibly 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. (**Emphasis** added.) (*Id*.)

As one can clearly see, there is nothing in the Edgeworths' Amended Complaint that alleges that SIMON "stole" the Edgeworths' money. (*Id*.) Put in the best possible light, that is a false allegation by SIMON. (*See,* Exhibit D.) A basis for the Edgeworths' claim for conversion against SIMON is that he knew or had every reason to know through his own statements and actions (the deposition of Brian Edgeworth; NRCP 16.1 disclosures and computation of damages; the amount of the super bill of $692,120, not a billable amount "that may well exceed $1,500,000" that SIMON stated to VANNAH in a letter dated December 7, 2017; etc.) that the largest amount of additional fees that SIMON could reasonably claim from the Edgeworths via an attorneys lien is **$692,120**. In other words, the Edgeworths' Amended Complaint does not challenge SIMON'S right to assert a lien. Rather, it has always been about its **amount**, and SIMON'S persistent refusal to release the balance of the funds to the Edgeworths. (*See*, Exhibit C; see also Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.)

The plain reading of SIMON'S SLAPP clearly reveals that every Count/claim against VANNAH is directly related to VANNAH'S use of the courts—a judicial body—to bring and present claims for relief on behalf of clients—the Edgeworths—against SIMON, namely the claim for conversion. (*See*, Exhibit D.) There is no other reasonable interpretation of the basis for, or the content of, SIMON'S SLAPP. (*Id*.) Pursuant to Nevada law, a "Written or oral statement made in direct connection with an issue under consideration by a…judicial body…" is a protected communication under Nevada's Anti-SLAPP statute. NRS 41.637(3). Furthermore, pursuant to NRS 41.650, "A person who engages in a good faith communication in furtherance of the right to petition…with an issue of public concern is *immune* from any civil action for

claims based upon the communication." (*Id*., Emphasis added.)

Therefore, VANNAH cannot be sued for following the law in petitioning a judicial body for relief afforded pursuant to well established Nevada law. (*Id*.) As a result, SIMON'S SLAPP must be dismissed.

III. ARGUMENTS

The Nevada Anti-SLAPP statute allows a defendant to file a special motion to dismiss claims based on protected communications that are made in good faith, such as asking this Court to dismiss SIMON'S complaint that is solely based and grounded in the Amended Complaint that VANNAH filed in good faith on behalf of the Edgeworths, asking a judicial body to grant certain relief and to make certain findings. NRS 41.660(1)(a). A special motion to dismiss first requires the defendant—VANNAH here—to establish by preponderance of the evidence that the plaintiffs' claim is based on a good faith communication made in furtherance of the right to petition the courts. NRS 41.660(3)(a).

If the answer is yes, which it is here, then the burden shifts, and the plaintiff—SIMON here—must establish, by prima facie evidence, a likelihood of prevailing. NRS 41.665(2). If the plaintiff does not establish a likelihood of prevailing, then the special motion to dismiss must be granted. *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished).

A plaintiff such as SIMON cannot establish a likelihood of prevailing if the claim is based upon a protected communication to a court, because the litigation privilege provides absolute immunity, even for otherwise tortious or untrue claims. *Greenberg Taurig v. Frias Holding Co.*, 331 P.3d 901, 902 (Nev. 2014); and, *Blaurock v. Mattice Law Offices* 2015 WL 3540903 (Nev. App. 2015); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

Submission of a complaint, amended complaint, briefs, and arguments to a court/judicial body for adjudication to redress wrongs are all protected communications. And they're the whole nine yards of SIMON'S SLAPP. Here, VANNAH cannot be sued by SIMON for following the law and making protected communications, written and oral, to the court. *NRS 41.650.*

A. SIMON'S SLAPP IS CLEARLY AND SOLELY FOUNDED ON PROTECTED COMMUNICATIONS TO A JUDICIAL BODY BY VANNAH.

Filing a complaint and an amended complaint by VANNAH in good faith on behalf of the Edgeworths to seek redress for wrong committed by SIMON pursuant to well-founded claims for relief are two examples of petitions to the judicial body, as well as issues of public concern. *See*, *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). As such, the complaint and amended complaint that VANNAH filed on behalf of the Edgeworths qualify as protected communications pursuant to NRS 41.637(3), which states:

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
> …
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law;
> …

SIMON'S SLAPP describes the use of VANNAH'S pleadings, and the associated hearings ordered by the court, to resolve disputes, including the lien adjudication that SIMON initiated, as the grounds for each of its eight (8) Counts/claims. However, only five (5) of the eight (8) counts are alleged against VANNAH. Here are prime examples from SIMON'S SLAPP (attached as Exhibit D) that mandate dismissal, with emphasis added in **bold**:

> 19. On January 4, 2018, Edgeworth's, through Defendant Lawyers, **sued** Simon, **alleging conversion**….

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

25. **All filings for conversion** were done without probable cause or a good faith belief that there was an evidentiary basis.

35. The Edgeworth entities, through the Defendant attorneys, **initiated a complaint**….

36. The Edgeworth entities, through the Defendant attorneys, **maintained the**…**conversion claim when filing an amended complaint**….

41. The Edgeworths and the Defendant attorneys **advanced arguments in public documents**….

50. The Defendants…intended to harm…**by advancing arguments in public documents**…**filings**….

58. The Edgeworth's and the Defendant attorneys abused **the judicial process** when **initiating a proceeding and maintained the proceeding alleging conversion**….

67. Robert D. Vannah, Chtd., **had a duty**…to act diligently and competently **to represent** (sic) **valid claims to the court and to file pleadings before the court**…

103. Defendants, and each of them…intended to accomplish the unlawful objective of (i) **filing false claims**…to **defend wrongful institution of civil proceedings**…were committed several times **when filing the complaint, amended complaint, all briefs, 3 affidavits, oral arguments and supreme court filings**…. (*Id.*)

These are but a few of the numerous references in SIMON'S SLAPP that demonstrate the sole reason it was brought is because the Edgeworths, through their attorneys, VANNAH, had the temerity to bring well-recognized claims in good faith to seek redress from SIMON through a

judicial body, then appeal some of the decisions to the Nevada Supreme Court when VANNAH determined, in good faith, the district court did not follow the law. (*Id*; please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) The use of a complaint, an amended complaint, briefs, and arguments are all protected communications of public concern under NRS 41.637, and the use of these devices serves as **the** basis for SIMON'S SLAPP. (See Exhibit D; *Abrams v. Sanson,* 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished).

To quote SIMON'S position from his earlier-filed Special Motion to Dismiss, "…you cannot be sued for following the law." Thus, VANNAH has satisfied their burden under NRS 41.660 & 41.665, and the burden now shifts to SIMON, which he cannot possibly meet.

B. SIMON DOES NOT HAVE ANY LIKELIHOOD OF PREVAILING.

Under Nevada law, "communications uttered or published in the course of judicial proceedings are absolutely privileged, rendering those who made the communications immune from civil liability." *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002). The privilege also applies to "conduct occurring during the litigation process." *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, "bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957

(1980).

The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies "so long as [the statements] are in some way pertinent to the subject of controversy." (*Id.)* Moreover, the statements "need not be relevant in the traditional evidentiary sense, but need have only 'some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Circus Circus Hotels*, 99 Nev. 56, 61, 657 P.2d 101, 104. Contrary to SIMON'S allegations in his SLAPP, there is vast evidentiary support for all of the allegations contained in the Amended Complaint. (*See*, Exhibit C; *see also*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.)

A plain reading of SIMON'S SLAPP reveals that the basis for *all* of SIMON'S Counts/claims are 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 D.) Since these written and oral communications and statements allegedly made by VANNAH are "absolutely privileged," there is no set of facts…which would entitle SIMON to any relief from VANNAH, or to prevail. *See*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). VANNAH is also "immune from any civil liability for claims based upon the communication." *NRS 41.650.* Therefore, SIMON does not have any prima facie evidence to support any of his Counts/claims upon which relief against VANNAH could ever be granted. Therefore, SIMON cannot meet his burden under the law. NRS 41.660(3)(b).

In addition to the litigation privilege and statutory immunity mentioned above, there is also a complete lack of prima facie evidence to support SIMON'S Counts/claims for abuse of process and wrongful use of civil proceedings, as 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 in SIMON'S 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*.) There is no dispute whatsoever that the prior action has not been terminated favorably or otherwise; it's on appeal to the Nevada Supreme Court with both sides appealing rulings made by the district court. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A; *see also*, Exhibits A & B.)

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 lacks sufficient factual and/or legal support to meet his burden on these counts, either. (NRS 41.660(3)(b)).

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 <u>after</u> the filing of a complaint to state a claim. (*Id*.) As indicated in the appellate record, <u>nothing</u> 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. *See, Laxalt,* 622 F. Supp. at 752. Since this count/claim is legally insufficient, SIMON cannot meet his burden under NRS 41.660(3)(b).

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 (not "fired" as alleged throughout SIMON'S SLAPP) by the Edgeworths (even though SIMON said in as many words in his November 27, 2017, letter that he'd quit if the Edgeworths didn't agree to pay him a fee bonus—Exhibit E), 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 (see Exhibit E, where SIMON threatened to quit if the Edgeworths didn't modify the fee contract), 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. (*Id*.)

That's $33,811.25 in fees that SIMON billed the Edgeworths for work he performed after SIMON erroneously alleges in his SLAPP he was "fired" by the Edgeworths. (*Id*.) That's also pretty good work if you can find it these days.

Since SIMON'S SLAPP is inextricably linked to written and oral communications made by VANNAH (and the Edgeworths) in 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 show by prima facia evidence that he can prevail on 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). Therefore, SIMON again cannot meet his burden under NRS 41.660(3)(b).

As with SIMON'S other Counts/claims, the one 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 any 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 claim in Nevada, the plaintiff had and identified the contractual relationship that was allegedly interfered with by a defendant. (*Id*.) However, SIMON fails in his SLAPP to identify <u>any</u> actual prospective contractual relationship between SIMON and <u>any</u> third party. (Please see Exhibit D.) Instead, SIMON'S SLAPP speaks in generalities and is full of speculation and conjecture. (*Id*.) Who are the specific third parties and what are actual 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 absolute 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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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, SIMON can't, among other things, meet element 4 ("the absence of privilege or justification by defendants"). Therefore, SIMON'S SLAPP must be dismissed as a matter of law pursuant to NRS 41.635-670. *See*, also *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/claim IV (Negligent Hiring, Supervision, and Retention) and Count/claim 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; *see also*, Exhibits A & B). There is no dispute that these Counts/claims (IV & VIII) are brought by SIMON, who is an admitted and documented adversary of the Edgeworths, due to communications allegedly made and actions allegedly taken in the underlying judicial action by the Edgeworths and their attorneys, VANNAH, namely the filing of pleadings, briefs, and in making arguments to Judge Jones. (*See*, Exhibit D).

The law is clear that VANNAH, as attorneys, does not owe a duty of care to SIMON, an adversary of a client, the Edgeworths, 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/claims IV & VIII of SIMON'S SLAPP shows that they are based on the breach of an alleged duty by VANNAH to SIMON in the filing of, and engaging in, litigation. (*See*, Exhibit D.) Neither the extensive law discussed above, nor common sense, allow SIMON to make or maintain such Counts/claims against VANNAH. Since SIMON cannot maintain these claims as a matter of law pursuant to Nevada (and general) law, he cannot prevail. *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). Since SIMON cannot prevail, he cannot meet his burden under NRS 41.660(3)(b).

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 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; *see* also, Exhibits A & B).

VANNAH also agrees that the allegations in the complaints represented a good faith understanding of the factual reality that the Edgeworths had lived 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 by that client at the hands of another, such as SIMON. *NRS 41-635-670*. There is also nothing in Nevada law that makes it criminal or unlawful for an attorney to then file a complaint and/or amended complaint alleging various claims for relief, including conversion, when an adverse party, even an 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. *NRS 41.635-670; Bull v. McCuskey,* 96 Nev. 706, 711-713, 615 P.2d 957 (1980). This is all part of the public record and was all done to seek a remedy that SIMON withheld—a large 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, namely Vol. 2, 000277-000316). And he's done so now for over two (2) years. (*Id*.) Neither the facts, nor the law, nor common sense support SIMON'S claim for civil conspiracy. Therefore, he cannot prevail. *Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel*, 124, Nev. 313, 316, 183 P.3d 133, 135 (2008). Since this count/claim is legally and factually insufficient, SIMON cannot meet his burden under NRS 41.660(3)(b).

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." All are barred by the absolute 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. With all of his Counts/claims being legally and factually deficient in material respects, SIMON cannot meet his burden under NRS 41.660(3)(b).

C. VANNAH HAD AND HAS A GOOD FAITH BASIS TO FILE AND MAINTAIN THE EDGEWORTHS' CLAIMS AGAINST SIMON, INCLUDING CONVERSION.

SIMON is wrong, factually and legally, when he speaks of an "arrangement" that purportedly undermines the Edgeworths' claim for conversion. 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. (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316). That was the fee contract. (*Id*.)

The Edgeworths reasonably expected that the fee 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 bonus, 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 over $1,977,843 in additional fees and costs, and refused to release the settlement funds to the Edgeworths, not even the funds that exceed the amount of SIMON'S own super bill, which totaled $692,120. (*Id*.)

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. (*Id*.) 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 above and beyond what SIMON billed for the work the court found that he performed and is entitled to receive following the adjudication proceedings. (*Id*.)

Even now, SIMON continues to exercise dominion and control of well over $1 million dollars of the Edgeworths' funds, an amount in which SIMON has 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 and control 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*.)

It's clear that, contrary to the allegations and arguments 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 an amount of the Edgeworths' money without a reasonable basis to do so via his liens. (*Id.*; *see also*, Exhibit C.) It doesn't require proof of theft or ill intent, as SIMON wants everyone to believe. *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). Rather, the conversion is SIMON'S 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, namely Vol. 2, 000277-000316).

SIMON'S SLAPP raises a question: are lawyers truly exempt from the laws governing conversion when they exercise unlawful dominion and control over an amount of money that we have no reasonable basis to lay a claim to? SIMON seems to say "yes." (*See*, Exhibit D.) What if a contingency fee agreement is actually drafted by the lawyer per NRPC 1.5(c), providing for a 40% fee, then the attorney asserts a lien for 50%? Or 60%? Or more? Or even 41%? Isn't that conversion under the law because the amount of the lien has no reasonable

basis by any factual or legal measure, thus rising to, "…a distinct act of dominion and control 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).

Some of the best evidence of the good faith nature of the conversion claim brought against SIMON by the Edgeworths through their attorneys, VANNAH, is the amount of SIMON'S superbill ($692,120) versus the amount of his Amended Lien ($1,977,843.80). (*See*, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, best described in Vol. 2, 000277-000316.)

Even though the super bill 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 well over a million dollars of the Edgeworths' money to them. (*Id*.) That conduct by SIMON constitutes a good faith basis for VANNAH, on behalf of the Edgeworths, to bring a claim against SIMON for the 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).

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, namely Vol. 2, 000277-000316). Instead, SIMON still seeks a contingency fee despite failing to ever reduce the fee agreement to writing per NRPC 1.5(c), and despite the Decision and Order from Judge Jones stating, "…this is not a contingency fee case, and the Court is not awarding a contingency fee." (*Id*., at AA, Vol. 2 000353-000375, with specific emphasis on pages 000373-000374).

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. (NRPC 3.1). The good faith basis for the claims for breach of contract and breach of the covenant of good faith and fair dealing are adequately discussed in the factual background above, at pages 5-13. Thus, we see that it is clear that SIMON cannot meet his burden by showing any measure of evidence a likelihood of prevailing on any of the Counts/claims of his SLAPP. Therefore, SIMON'S SLAPP must be dismissed according to Nevada law.

IV. CONCLUSION

SIMON'S suit is a SLAPP. VANNAH has met their burden under the law, while SIMON did not and cannot meet his. Therefore, SIMON'S SLAPP must be dismissed under Nevada's Anti-SLAPP laws found in NRS sections 41.635-41.670.

DATED this 25th day of August, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

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Traditional Manner:
None

DATED this 25th day of August, 2020.

/s/Patricia A. Marr
_____
An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **AFFIDAVIT OF ROBERT D. VANNAH, IN SUPPORT OF SPECIAL MOTION TO DISMISS: ANTI-SLAPP** Date of Hearing: Time of Hearing:

AFFIDAVIT OF ROBERT D. VANNAH, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, ROBERT D. VANNAH, being duly sworn, states:

1. I am the senior partner of Robert D. Vannah, Chtd., d/b/a Vannah & Vannah.

2. I received my J.D. from Loyola in Los Angeles in 1976. I became a licensed attorney in September of 1976, and have remained licensed to practice law since then. I have never been disciplined by the Nevada Bar Association.

3. In November of 2017, Mr. Brian Edgeworth called me and asked me for legal advice. He had a letter from Mr. Simon recommending that he seek independent legal counsel regarding legal fees. Since Mr. Simon asked him to seek independent counsel, I felt that there were no ethical concerns in my doing so.

4. I met with Mr. Edgeworth on November 29, 2017, in my office. John B. Greene, one of my associates, was also present. After reviewing documents, I concluded that on or about May 27, 2016, the Edgeworths retained Danny Simon to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by the Edgeworths. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that Mr. Simon's drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C, with a trial date of early 2018. A settlement in favor of the Edgeworths for a substantial amount of money was reached with Defendant Viking on November 15, 2017, and a lesser settlement with Defendant Lange was reached on December 1, 2017.

5. Near the beginning of the attorney-client relationship, the Edgeworths and Mr. Simon agreed that Mr. Simon would be paid for his services by the hour and at an hourly rate of $550. No other form or method of compensation such as a contingency fee or a hybrid was ever brought up at that time, let alone agreed to. Despite Mr. Simon serving as the attorney in this business relationship, and the one with the requisite

legal expertise, he never reduced the terms of the contract to writing in the form of a Fee Agreement for the Edgeworths to sign. However, that formality didn't matter to the parties as they each recognized what the terms of the contract were and performed them accordingly with exactness through September 19, 2017, a time spanning about eighteen (18) months.

6. For example, Mr. Simon sent four invoices to the Edgeworths that were dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017 (the Invoices). The amount of fees and costs Mr. Simon billed the Edgeworths in the Invoices totaled **$486,453.09**. Simple reading and math show that Mr. Simon billed for his time at the hourly rate of $550 per hour, and his two associates billed at the rate of $275 per hour. It's undisputed that the Edgeworths paid the Invoices in full to Mr. Simon, and that he deposited the checks without any questions and without returning any of the money.

7. As discovery in the underlying flood 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 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 and culminating the following November. On the 17th of that month, Mr. Simon scheduled an appointment for the Edgeworths to come to his office to discuss the flood litigation. Instead, the evidence determined that his only agenda item was to pressure the Edgeworths into modifying the terms of the contract.

8. At that meeting, the evidence determined that Mr. Simon told the Edgeworths that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd

received from the Edgeworths for the preceding eighteen (18) months. On November 27, 2017, Simon sent a letter to the Edgeworths. I read that letter and its attachments, such as a proposed settlement breakdown and a proposed retainer agreement. These documents set 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 the favorable settlement that was reached with the defendants in the flood litigation.

9. At that time, these additional "fees" were not based upon invoices submitted to the Edgeworths or for detailed work performed by Mr. Simon. The proposed fees and costs were in addition to the $486,453.09 that the Edgeworths had already paid to Mr. Simon pursuant to the fee contract, the invoices that Mr. Simon had presented to the Edgeworths, the evidence produced to defendants in the flood litigation, and the amounts set forth in the computations of damages disclosed by Mr. Simon in the flood litigation.

10. One reason given by Mr. Simon to modify the contract was he claimed he was losing money on the flood litigation. Another reason given by him was that he purportedly under billed the Edgeworths 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 Mr. Simon, he under billed in the flood litigation in an amount in excess of $1,000,000.00.

11. Mr. Simon concluded the letter of November 27, 2017, with these words: "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." I interpreted these words to clearly mean that if the Edgeworths didn't agree to sign a new retainer agreement that would give Mr. Simon

an additional $1,114,000 in fees, he would no longer agree to be their lawyer. Meaning he would quit, despite the looming reality that the litigation against the Lange defendant was set for trial early in 2018.

12. Mr. Simon doubled down on that position of under billing in a letter to Mr. Greene and me, dated December 7, 2017, where Mr. Simon claimed that the worked performed by him from the outset that has not been billed, "may well exceed $1.5M."

13. Despite Mr. Simon's requests and demands for the payment of more in fees, the Edgeworths refused to alter or amend the terms of the contract. When the Edgeworths refused to alter or amend the terms of the contract, Mr. Simon refused to agree to release the full amount of the Edgeworths' settlement proceeds to them. Instead, Mr. Simon served two attorney's liens and reformulated his billings to add entries and time that never saw the light of day in the flood litigation.

14. Even when Mr. Simon finally submitted his "new" invoices on January 24, 2018, they totaled $692,120 for "additional" services, and billed them at the contract rate of $550/$275 per hour. That's less than 1/2 of the amount that he'd written to Mr. Greene and me about six weeks earlier. Yet, despite the contract, 18 months of course of dealing, and the amount of the "new" invoice/super bill of $692,120, Mr. Simon's Amended Lien wrongfully exercised dominion and control to over $1,977,843 of the settlement proceeds, and he refused to release to the Edgeworths' funds in excess of the amount of Mr. Simon's own super bill.

15. 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. The claims of the Edgeworths against Mr.

Simon are for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing.

16. I, as the senior partner of the firm, made the decisions to file the pleadings with the claims made and thereafter, the arguments presented in briefs, in court, and all other judicial proceedings, including the pending appeal. These decisions were made after a thorough review of the law pertaining to these claims, and a good faith belief that all of the written and oral communications made to the court are accurate and well-founded in the law, and not done for any ulterior or improper motive.

17. To date, Mr. Simon hasn't filed an Answer to either of the Edgeworths' Complaints. Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the Complaint and another for the Amended Complaint), and two "Special" Motions to Dismiss: Anti-SLAPP.

18. Judge Tierra Jones held an evidentiary hearing on Mr. Simon's Motion to Adjudicate, and that hearing took place over five days. At the conclusion of the hearing, Judge Jones asked the parties to submit written closing arguments and written findings of fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss Anti-SLAPP. Mr. Simon's Motion to Dismiss was granted without any discovery allowed and with findings that clearly show that Judge Jones chose to believe Mr. Simon's account of several contested facts as opposed to the legal standard of accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as moot.

19. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a contingency fee case; 2.) an implied agreement for fees was in existence at the rate of $550 per hour for Mr. Simon and $275 per hour for his two associates; 3.) Mr. Simon was paid in full by the Edgeworths for his fees for services rendered from May of 2016 through September 19, 2017; 4.) Mr. Simon is entitled to $284,982.50 in fees at the hourly rate of $550 for Mr. Simon and $275 for his associates from September 19, 2017, through November 29, 2017; and, 5.) Mr. Simon is entitled to $200,000 in fees under quantum meruit from the date he was constructively discharged on November 30, 2017, until the case concluded in early January of 2018.

20. On October 29, 2018, Mr. Simon filed a Motion for Reconsideration and to Clarify, seeking to rehash his losses and to clarify whether the agreement for fees was an implied oral agreement versus an implied agreement. Of note, the parties agreed that the LDO incorrectly awarded additional costs to Mr. Simon, when the parties stipulated that no additional costs were owed. On October 31, 2018, I sent a letter to James R. Christensen, Esq., advising him that, despite arguable errors by Judge Jones in finding a constructive termination as of December 1, 2017, in dismissing the Edgeworths' Amended Complaint, and in awarding $200,000 in extra fees in quantum meruit when Mr. Simon had "only" billed $33,811.25 in fees for that time frame, the Edgeworths are willing to pay Mr. Simon the $484,982.50 in fees that Judge Jones awarded in the LDO...and call it a day. Mr. Simon never responded to that letter.

21. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as opposed to an implied agreement and a LDO that removed any award of costs to Mr.

Simon, as stipulated. On November 19, 2018, I sent yet another letter to Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as outlined earlier, the Edgeworths are still willing to pay Mr. Simon the **$484,982.50** in fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Mr. Simon didn't respond to that letter, either. Since Mr. Simon remained fixed and immovable in his quest for more in fees, and since a settlement couldn't be reached with one who won't communicate, the Edgeworths appealed the LDO and the Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete and we are waiting for further instruction and action from the Nevada Supreme Court.

22. Thereafter, Mr. Simon filed a Motion for Fees and Costs, seeking $262,099.48 in fees and $18,434.73 in costs. The Motion was vague as to whether the fees and costs he sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both. the Edgeworths argued that there wasn't and isn't any basis on the law for Mr. Simon to seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs associated with Will Kemp, Esq., and the vast majority of the fees associated with James R. Christensen, Esq., were incurred adjudicating Mr. Simon's lien in its exorbitant amount. In Mr. Simon's Reply, he limited his request for fees and costs allegedly incurred in seeking the dismissal of the Edgeworths' Complaint (original and amended), namely the claim for conversion.

23. On February 6, 2019, Judge Jones signed an order granting in part and denying in part Mr. Simon's Motion. The Court found that the conversion claim was not maintained upon reasonable grounds; that the purpose of the evidentiary hearing was primarily for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the

purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were incurred to defend the lawsuit; and, awarded $50,000 in fees and $5,000 in costs.

24. In her ruling, Judge Jones seemed to adopt the position of Mr. Simon that conversion can't happen without some measure of actual theft or sole control. Yet, both are wrong, as Nevada law does not require theft of, or sole control of, another's property to rise to conversion. Rather, the law clearly states that 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).

25. Following my review of the facts, and knowing this to be the law in Nevada governing claims for conversion, I believed, and still believe, that Mr. Simon's intentional act of exerting dominion of any portion of the settlement proceeds that exceeds the amount of his own billings, including his super bill of $692,120, is inconsistent with his rights and in derogation to those of the Edgeworths. Therefore, I determined that Nevada law clearly supported a claim for conversion against Mr. Simon. And the act of conversion continues to this day, over two years after the settlement proceeds were received and eighteen (18) months since Mr. Simon's lien was adjudicated.

26. The evidence shows that Mr. Simon has no reasonable basis to make a claim for 40% of the Edgeworths' settlement proceeds. NRPC 1.5(c) requires that all contingency fee agreements be in writing with specific language and Mr. Simon waited until November 27, 2017, to present one to the Edgeworths, who rightfully declined to sign it. By then all of the risk that is generally associated with contingency fee agreements

was gone, as the lucrative Viking settlement had already been reached. Mr. Simon also acknowledged in his letter of November 27, 2017, that he didn't and can't have a contingency fee agreement. Judge Jones also told him and Ordered that he cannot have one, either. Yet, Mr. Simon still refuses to relinquish the control he has over the settlement funds, an amount that still closely resembles a 40% contingency fee when all payments and offered payments are factored in.

27. What if an attorney actually has a written 40% contingency fee agreement, then serves an attorney's lien for 50% of a settlement? Or 60%? Or more? And then what if that attorney won't budge from that amount? Do we then force the client to accept one of two awful options—either acquiesce or litigate? If the second option is selected, does that attorney get a free pass on a claim for conversion? Would the average citizen get that same free pass if that citizen exercised dominion and control over an amount of money owned by another in an amount that was unreasonable on the facts?

28. The sad irony here is that the Edgeworths wanted none of this. Instead they got all of this. Even if litigation wasn't filed, they still got over two years of litigation with the lien adjudication process, because Mr. Simon seems to have no interest in accepting anything less in fees than what he wants, which, according to his Amended Lien, is 40%. It's going to take intervention from the Nevada Supreme Court to unwind what is so tightly wound. With the Decisions and Orders presently on appeal, and with briefing now complete, a final decision could take years beyond the years that the Edgeworths have been forced to wait for their property to be given to them.

29. It did occur to me at that time that the Nevada Supreme Court may determine that, despite the unreasonable amount of an attorney's lien, an attorney cannot be sued if

the lien adjudicating process is utilized. Perhaps that day will come, or perhaps it won't. Until that day, clients still have the right to petition the courts to seek help to redress wrongs committed by others, even if that "other" is their attorney.

30. I am well aware of Anti-SLAPP laws and their central, important purpose. The Amended Complaint that I directed to be prepared and filed against Mr. Simon and his law firm was based on my good faith belief that the amount of his Amended Lien, coupled with the facts and evidence of this case, constituted conversion under Nevada law, as well as a breach of contract and breach of the covenant of good faith and fair dealing. Additionally, I believe that Mr. Simon knew, and still knows, that he had no reasonable basis to serve his Amended Lien in an amount that he calculated to be 40% of the settlements reached with the flood defendants. My belief on the existence of Mr. Simon's knowledge and awareness on this issue was gleaned through letters he prepared, pleadings in the flood litigation, his billings, the evidence, and the conclusions of Judge Jones. Yet, Mr. Simon still won't relinquish the dominion and control that he has been exercising since January of 2018.

31. These facts stand in stark contrast to the allegations made in the SLAPP of Mr. Simon. My law firm, my associate, and me, are all being sued for making, in good faith, written and oral communications in judicial proceedings on behalf of clients. Each of the claims for relief in the complaints that are being attacked by Mr. Simon in his SLAPP are supported by the facts, the evidence, and by Nevada law.

32. The documents that have been attached to this Special Motion as Exhibits, as well as Appellants Appendix that was attached in the Opposition to Mr. Simon's emergency motion, which is referenced and incorporated, are all true, authentic, and correct copies of the original documents. Regarding Exhibit "E" specifically, it was

referenced in the prior litigation and sworn testimony was offered that this letter, and its two exhibits, were prepared by Mr. Simon, were given to the Edgeworths on or near the date of the letter, and served as the basis for Mr. Simon's new fee proposal and his invitation for the Edgeworths to seek independent counsel on his proposed fees. All of the documents attached as Exhibits support the claims for relief brought by the Edgeworths and undermine the SLAPP of Mr. Simon.

33. Finally, at no point in time was anyone at my firm retained to counsel or to represent Mr. Simon in this matter, and neither Mr. Greene nor I, ever provided counsel or representation to Mr. Simon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

ROBERT D. VANNAH, ESQ.

SUBSCRIBED and SWORN TO before me
this 14th day of May, 2020.

NOTARY PUBLIC

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

EXHIBIT B

EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **AFFIDAVIT OF JOHN B. GREENE, IN SUPPORT OF SPECIAL MOTION TO DISMISS: ANTI-SLAPP** Date of Hearing: Time of Hearing:

AFFIDAVIT OF JOHN B. GREENE, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, JOHN B. GREENE, ESQ., being duly sworn, states:

1. I am an associate of Robert D. Vannah, Chtd., d/b/a Vannah & Vannah.

2. I received my J.D. from the University of the Pacific, McGeorge School of Law in 1991. I became a licensed attorney in September of 1991, and have remained

licensed to practice law since then. I have never been disciplined by the Nevada Bar Association.

3. I have read the Affidavit of Robert D. Vannah and agree with the truthfulness and content of each paragraph, as we've discussed all of the facts and developments of this case since November 29, 2017.

4. Mr. Vannah and I met with Mr. Edgeworth on November 29, 2017, in Mr. Vannah's office. After reviewing documents, we concluded that on or about May 27, 2016, the Edgeworths retained Danny Simon to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by the Edgeworths. The damage from the flood caused in excess of $500,000 of property damage to the home. It was initially hoped that Mr. Simon's drafting a few letters to the responsible parties could resolve the matter, but that wasn't meant to be. Thereafter, that dispute was subject to litigation in the 8th Judicial District Court as Case Number A-16-738444-C, with a trial date of early 2018. A settlement in favor of the Edgeworths for a substantial amount of money was reached with Defendant Viking on November 15, 2017, and a lesser settlement with Defendant Lange was reached on December 1, 2017.

5. Near the beginning of the attorney-client relationship, the Edgeworths and Mr. Simon agreed that Mr. Simon would be paid for his services by the hour and at an hourly rate of $550. No other form or method of compensation such as a contingency fee or a hybrid was ever brought up at that time, let alone agreed to. Despite Mr. Simon serving as the attorney in this business relationship, and the one with the requisite legal expertise, he never reduced the terms of the contract to writing in the form of a Fee Agreement for the Edgeworths to sign. However, that formality didn't matter to

the parties as they each recognized what the terms of the contract were and performed them accordingly with exactness through September 19, 2017, a time spanning about eighteen (18) months.

6. For example, Mr. Simon sent four invoices to the Edgeworths that were dated December 16, 2016, May 3, 2017, August 16, 2017, and September 25, 2017 (the Invoices). The amount of fees and costs Mr. Simon billed the Edgeworths in the Invoices totaled **$486,453.09**. Simple reading and math show that Mr. Simon billed for his time at the hourly rate of $550 per hour, and his two associates billed at the rate of $275 per hour. It's undisputed that the Edgeworths paid the Invoices in full to Mr. Simon, and that he deposited the checks without any questions and without returning any of the money.

7. As discovery in the underlying flood 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 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 and culminating the following November. On the 17th of that month, Mr. Simon scheduled an appointment for the Edgeworths to come to his office to discuss the flood litigation. Instead, the evidence determined that his only agenda item was to pressure the Edgeworths into modifying the terms of the contract.

8. At that meeting, the evidence determined that Mr. Simon told the Edgeworths that he wanted to be paid far more than $550.00 per hour and the $486,453.09 he'd received from the Edgeworths for the preceding eighteen (18) months. On November 27, 2017, Simon sent a letter to the Edgeworths. I also read that letter and its

attachments, such as a proposed settlement breakdown and a proposed retainer agreement. These documents set 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 the favorable settlement that was reached with the defendants in the flood litigation. A true and authentic copy of that letter is attached as Exhibit E.

9. At that time, these additional "fees" were not based upon invoices submitted to the Edgeworths or for detailed work performed by Mr. Simon. The proposed fees and costs were in addition to the $486,453.09 that the Edgeworths had already paid to Mr. Simon pursuant to the fee contract, the invoices that Mr. Simon had presented to the Edgeworths, the evidence produced to defendants in the flood litigation, and the amounts set forth in the computations of damages disclosed by Mr. Simon in the flood litigation.

10. One reason given by Mr. Simon to modify the contract was he claimed he was losing money on the flood litigation. Another reason given by him was that he purportedly under billed the Edgeworths 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 Mr. Simon, he under billed in the flood litigation in an amount in excess of $1,000,000.00.

11. Mr. Simon concluded the letter of November 27, 2017, with these words: "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." These are Mr. Simon's words; he owns them and their meaning. I agree with Mr. Vannah and interpreted these words to clearly mean that if the Edgeworths didn't agree to sign a new retainer agreement that would give Mr.

Simon an additional $1,114,000 in fees, he would no longer agree to be their lawyer. Meaning he would quit, despite the looming reality that the litigation against the Lange defendant was set for trial early in 2018.

12. Mr. Simon doubled down on that position of under billing in a letter to Mr. Vannah and me, dated December 7, 2017, where Mr. Simon claimed that the worked performed by him from the outset that has not been billed, "may well exceed $1.5M."

13. Despite Mr. Simon's requests and demands for the payment of more in fees, the Edgeworths refused to alter or amend the terms of the contract. When the Edgeworths refused to alter or amend the terms of the contract, Mr. Simon refused to agree to release the full amount of the Edgeworths' settlement proceeds to them. Instead, Mr. Simon served two attorney's liens and reformulated his billings to add entries and time that never saw the light of day in the flood litigation.

14. Even when Mr. Simon finally submitted his "new" invoices on January 24, 2018, they totaled $692,120 for "additional" services, and billed them at the contract rate of $550/$275 per hour. That's less than 1/2 of the amount that he'd written to Mr. Vannah and me about six weeks earlier. Yet, despite the contract, 18 months of course of dealing, and the amount of the "new" invoice/super bill of $692,120, Mr. Simon's Amended Lien wrongfully exercised dominion and control to over $1,977,843 of the settlement proceeds, and he refused to release to the Edgeworths' funds in excess of the amount of Mr. Simon's own super bill.

15. 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. The claims of the Edgeworths against Mr.

Simon are for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing.

16. Before any of the claims were filed against Mr. Simon and his firm, I conducted research on each of the claims. After a thorough review of the law pertaining to these claims, I believed we had a good faith basis to make the claims. I also believe that all of the written and oral communications made to the court in all forums are accurate and well-founded in the law, and not done for any ulterior or improper motive.

17. To date, Mr. Simon hasn't filed an Answer to either of the Edgeworths' Complaints. Instead, he filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the Complaint and another for the Amended Complaint), and two "Special" Motions to Dismiss: Anti-SLAPP.

18. Judge Tierra Jones held an evidentiary hearing on Mr. Simon's Motion to Adjudicate, and that hearing took place over five days. At the conclusion of the hearing, Judge Jones asked the parties to submit written closing arguments and written findings of fact. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to Adjudicate Lien (LDO). On that same date, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss Anti-SLAPP. Mr. Simon's Motion to Dismiss was granted without any discovery allowed and with findings that clearly show that Judge Jones chose to believe Mr. Simon's account of several contested facts as opposed to the legal standard of accepting all allegations as true. Judge Jones deemed the Anti-SLAPP Motion as moot.

19. Of primary significance in the LDO, Judge Jones found that: 1.) this is not a contingency fee case; 2.) an implied agreement for fees was in existence at the rate of

$550 per hour for Mr. Simon and $275 per hour for his two associates; 3.) Mr. Simon was paid in full by the Edgeworths for his fees for services rendered from May of 2016 through September 19, 2017; 4.) Mr. Simon is entitled to $284,982.50 in fees at the hourly rate of $550 for Mr. Simon and $275 for his associates from September 19, 2017, through November 29, 2017; and, 5.) Mr. Simon is entitled to $200,000 in fees under quantum meruit from the date he was constructively discharged on November 30, 2017, until the case concluded in early January of 2018.

20. On October 29, 2018, Mr. Simon filed a Motion for Reconsideration and to Clarify, seeking to rehash his losses and to clarify whether the agreement for fees was an implied oral agreement versus an implied agreement. Of note, the parties agreed that the LDO incorrectly awarded additional costs to Mr. Simon, when the parties stipulated that no additional costs were owed. On October 31, 2018, Mr. Vannah sent a letter to James R. Christensen, Esq., advising him that, despite arguable errors by Judge Jones in finding a constructive termination as of December 1, 2017, in dismissing the Edgeworths' Amended Complaint, and in awarding $200,000 in extra fees in quantum meruit when Mr. Simon had "only" billed $33,811.25 in fees for that time frame, the Edgeworths are willing to pay Mr. Simon the $484,982.50 in fees that Judge Jones awarded in the LDO...and call it a day. Mr. Simon never responded to that letter.

21. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as opposed to an implied agreement and a LDO that removed any award of costs to Mr. Simon, as stipulated. On November 19, 2018, Mr. Vannah sent yet another letter to Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as

outlined earlier, the Edgeworths are still willing to pay Mr. Simon the **$484,982.50** in fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018. Mr. Simon didn't respond to that letter, either. Since Mr. Simon remained fixed and immovable in his quest for more in fees, and since a settlement couldn't be reached with one who won't communicate, the Edgeworths appealed the LDO and the Decision and Order on Motion to Dismiss NRCP 12(B)(5). Briefing is now complete and we are waiting for further instruction and action from the Nevada Supreme Court.

22. Thereafter, Mr. Simon filed a Motion for Fees and Costs, seeking $262,099.48 in fees and $18,434.73 in costs. The Motion was vague as to whether the fees and costs he sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both. the Edgeworths argued that there wasn't and isn't any basis on the law for Mr. Simon to seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs associated with Will Kemp, Esq., and the vast majority of the fees associated with James R. Christensen, Esq., were incurred adjudicating Mr. Simon's lien in its exorbitant amount. In Mr. Simon's Reply, he limited his request for fees and costs allegedly incurred in seeking the dismissal of the Edgeworths' Complaint (original and amended), namely the claim for conversion. In those pleadings, it was never alleged that Mr. Simon stole from the Edgeworths, as Mr. Simon wrongfully alleges in several paragraphs of his SLAPP, including 19-21. That's not a necessary element of a claim for conversion under Nevada law and not an allegation made.

23. On February 6, 2019, Judge Jones signed an order granting in part and denying in part Mr. Simon's Motion. The Court found that the conversion claim was not maintained upon reasonable grounds; that the purpose of the evidentiary hearing was primarily

for the Motion to Adjudicate Lien; Mr. Kemp's costs were incurred solely for the purpose of the Motion to Adjudicate Lien; that the costs of David Clark, Esq., were incurred to defend the lawsuit; and, awarded $50,000 in fees and $5,000 in costs.

24. In her ruling, Judge Jones seemed to adopt the position of Mr. Simon that conversion can't happen without some measure of actual theft or sole control. Yet, both are wrong, as Nevada law does not require theft of, or sole control of, another's property to rise to conversion. Rather, the law clearly states that 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).

25. Following my review of the facts, and knowing this to be the law in Nevada governing claims for conversion, I also believed, and still believe, that Mr. Simon's intentional act of exerting dominion of any portion of the settlement proceeds that exceeds the amount of his own billings, including his super bill of $692,120, is inconsistent with his rights and in derogation to those of the Edgeworths. Therefore, it was determined that Nevada law clearly supported a good faith basis for a claim for conversion against Mr. Simon. And the act of conversion continues to this day, over two years after the settlement proceeds were received and eighteen (18) months since Mr. Simon's lien was adjudicated.

26. The evidence shows that Mr. Simon has no reasonable basis to make a claim for 40% of the Edgeworths' settlement proceeds. NRPC 1.5(c) requires that all contingency fee agreements be in writing with specific language and Mr. Simon waited until November 27, 2017, to present one to the Edgeworths, who rightfully declined to sign

it. By then all of the risk that is generally associated with contingency fee agreements was gone, as the lucrative Viking settlement had already been reached. Mr. Simon also acknowledged in his letter of November 27, 2017, which is Exhibit E, that he didn't and can't have a contingency fee agreement. Judge Jones also told him and Ordered that he cannot have one, either. Yet, Mr. Simon still refuses to relinquish the control he has over the settlement funds, an amount that still closely resembles a 40% contingency fee when all payments and offered payments are factored in.

27. Mr. Vannah asks a key set of questions in his Affidavit, which are: What if an attorney actually has a written 40% contingency fee agreement, then serves an attorney's lien for 50% of a settlement? Or 60%? Or more? And then what if that attorney won't budge from that amount? Do we then force the client to accept one of two awful options—either acquiesce or litigate? If the second option is selected, does that attorney get a free pass on a claim for conversion? Would the average citizen get that same free pass if that citizen exercised dominion and control over an amount of money owned by another in an amount that was unreasonable on the facts?

28. The sad irony here is that the Edgeworths wanted none of this. Instead they got all of this. Even if litigation wasn't filed, they still got over two years of litigation with the lien adjudication process, because Mr. Simon seems to have no interest in accepting anything less in fees than what he wants, which, according to his Amended Lien, is 40%. I agree that it's likely going to take intervention from the Nevada Supreme Court to unwind what is so tightly wound. With the Decisions and Orders presently on appeal, and with briefing now complete, a final decision could take years beyond the years that the Edgeworths have been forced to wait for their property to be given to them.

29. I, like Mr. Vannah, am well aware of Anti-SLAPP laws and their central, important purpose. The Amended Complaint that I prepared under Mr. Vannah's direction and filed against Mr. Simon and his law firm was based on my good faith belief that the amount of his Amended Lien, coupled with the facts and evidence of this case, constituted conversion under Nevada law, as well as a breach of contract and breach of the covenant of good faith and fair dealing. Additionally, I, like Mr. Vannah, believe that Mr. Simon knew, and still knows, that he had no reasonable basis to serve his Amended Lien in an amount that he calculated to be 40% of the settlements reached with the flood defendants. Our collective belief on the existence of Mr. Simon's knowledge and awareness on this issue was gleaned through letters he prepared, pleadings in the flood litigation, his billings, the evidence, and the conclusions of Judge Jones. Yet, Mr. Simon still won't relinquish the dominion and control that he has been exercising since January of 2018.

30. These facts stand in stark contrast to the allegations made in the SLAPP of Mr. Simon. I am being sued for making, in good faith, written and oral communications in judicial proceedings on behalf of clients. Each of the claims for relief in the complaints that are being attacked by Mr. Simon in his SLAPP are supported by the facts, the evidence, and by Nevada law.

31. The documents that have been attached to this Special Motion as Exhibits, as well as Appellants Appendix that was attached in the Opposition to Mr. Simon's emergency motion, which is referenced and incorporated, are all true, authentic, and correct copies of the original documents. Regarding Exhibit "E" specifically, it was referenced in the prior litigation and sworn testimony was offered that this letter, and its two exhibits, were prepared by Mr. Simon, were given to the Edgeworths on or

near the date of the letter, and served as the basis for Mr. Simon's new fee proposal and his invitation for the Edgeworths to seek independent counsel on his proposed fees. All of the documents attached as Exhibits support the claims for relief brought by the Edgeworths and undermine the SLAPP of Mr. Simon.

32. Finally, at no point in time was anyone at this firm retained to counsel or to represent Mr. Simon in this matter, and neither Mr. Vannah, nor I, ever provided counsel or representation to Mr. Simon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

JOHN B. GREENE, ESQ.

SUBSCRIBED and SWORN TO before me
this 14TH day of May, 2020.

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My Appt. Expires Jan. 9, 2021

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STATE OF NEVADA
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EXHIBIT C

EXHIBIT C

ACOM
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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.

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 D

EXHIBIT D

ACOMP
PETER S. CHRISTIANSEN, ESQ.
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Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AS HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: XXIV **AMENDED COMPLAINT**

Plaintiffs, by and through undersigned counsel, hereby allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation, was at all times relevant hereto a professional corporation duly licensed and authorized to conduct business in the County of Clark, state of Nevada and will hereinafter be referred to as ("Plaintiff" or "Mr. Simon," or "Simon" or "Law Office.")

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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.

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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.

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

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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

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.

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

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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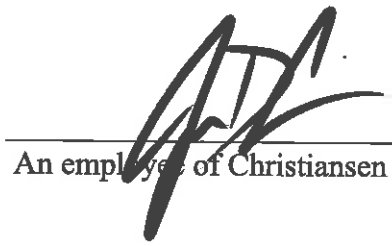
CERTIFICATE OF SERVICE

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.



An employee of Christiansen Law Offices

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EXHIBIT E

EXHIBIT E

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

Pursuant to your request, please find attached herewith the agreement I would like signed, as well as the proposed settlement breakdown, if a final settlement is reached with the Viking entities. The following is to merely clarify our relationship that has evolved during my representation so you are not confused with my position.

I helped you with your case and went above and beyond for you because I considered you close friends and treated you like family

As you know, when you first asked me to look at the case, I did not want to take it as I did not want to lose money. You already met with Mr. Marquis who wanted a 50k retainer and told you it would be a very expensive case. If Mr. Marquis did the work I did, I have no doubt his billing statements would reflect 2 million or more. I never asked you for a retainer and the initial work was merely helping you. As you know, you received excellent advice from the beginning to the end. It started out writing letters hoping to get Kinsale to pay your claim. They didn't. Then this resulted in us filing a lawsuit.

As the case progressed, it became apparent that this was going to be a hard fight against both Lange and Viking who never offered a single dollar until the recent mediations. The document production in this case was extremely voluminous as you know and caused my office to spend endless late night and weekend hours to push this case through the system and keep the current trial date.

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and 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

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patricia@marrlawlv.com
Counsel for Defendants
Robert Darby Vannah, Esq.,
John B. Greene, Esq., and
Robert D. Vannah, Chtd., dba Vannah & Vannah

DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION, Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, HUSBAND AND WIFE; ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH; and DOES I through V, and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO.: A-19-807433-C DEPT NO.: 24 **MOTION OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., and, ROBERT D. VANNAH, CHTD., d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' AMENDED COMPLAINT** (HEARING REQUESTED) Date of Hearing: October 1, 2020 Time of Hearing: 9:00 a.m.

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 contemporaneously-filed Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP; the Memorandum of Points and Authorities set forth in VANNAH'S Opposition to Plaintiffs' previously filed Emergency

Motion to Preserve Evidence, namely pages 5-21; 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 26th day of August, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

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 now 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. (Please 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 against VANNAH are barred by the time-honored and absolute litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

They are also based on protected communications pursuant to NRS Sections 41.635 through 41.670—Nevada's Anti-SLAPP statutes—and are "immune from any civil action for claims based upon the communication." (*Id.*, at 41.650.) Since SIMON filed his Amended Complaint to punish VANNAH for using the judiciary to resolve a legal dispute for a mutual client, SIMON'S Amended Complaint is a SLAPP, and will be referred to as such throughout this Motion.

In addition to the preceding fatal defects, 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). (Please see SIMON'S SLAPP attached as Exhibit A; please also

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. (*Id*.) 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…Instead, 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. (*Id*.)

Similarly, 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 and hyper speculative. (*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)).

Most importantly, this Count/claim is barred by the time-honored and absolute litigation privilege set forth in *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014), *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980), and the litany of supporting cases, as cited above at page 3, lines 3-12. All claims are 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. Thus, SIMON cannot meet any of the elements of the Count/claim, especially element 4. *Wichinsky v. Moss*, 109 Nev. 84, 847 P.2d 727, (1993); and, *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 734 P.2d 1225 (1987).

The basis for SIMON'S allegations contained in Count/claim 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 attorneys) 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, namely Vol. 2, 000277-000316.) 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. (Please 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 are somehow criminal, illegal, or 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). Finally, where, in SIMON'S SLAPP, are the citations to the criminal code for the alleged illegal and/or criminal acts committed by VANNAH? Of course, there are none because there were none. (Please see Exhibit A.)

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." All 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 Counts/claims have even the bare minimum quantity of merit, 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. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) 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. (Please see a copy of the Edgeworths' Amended Complaint attached as Exhibit B.) His 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 revenge 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 baseless 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*., AA Vol. 2, 000305-000316.) Should that occur, any sliver of factual or legal basis for any of SIMON'S claims would be eradicated.

And 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 litigated matter 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 perceived "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 here, and a really bad set of facts to set it with. (Please see Exhibit B; please also see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.)

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*., namely Vol. 2, 000277-000316; please also see Exhibit B.) 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 their 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*.)

The Edgeworths' Amended Complaint (attached as Exhibit B) alleges that, among other things, SIMON committed the tort of conversion. (*Id*.) In SIMON'S SLAPP, he uses the words "stealing, extortion, and blackmail" as being alleged against him. (See paragraph 41 of

Exhibit A.) There are no allegations in the Edgeworths' Amended Complaint that SIMON committed theft, extortion or blackmail, though VANNAH acknowledges that the Edgeworths were initially concerned with theft when SIMON proposed to deposit the settlement funds into his account. (See Exhibit B.) Yet, what SIMON fails to ever acknowledge in his SLAPP is what he said in writing to the Edgeworths, SIMON'S clients, in his letter dated November 27, 2017 (attached, as Exhibit C).

In SIMON'S own words, this is how he 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 were interpreted to 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.*; *See* also Exhibits A & B attached to the Special Motion to Dismiss Amended Complaint: Anti-SLAPP.) 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 continue to live, and a basis for the actions that were taken by VANNAH, on behalf of the Edgeworths, in return. (*Id.*) The Edgeworths accepted that invitation and met with Mr. Vannah and Mr. Greene on November 29, 2017. (*Id.*)

SIMON'S threat to quit may mean nothing to him now, or back then, but SIMON'S words in Exhibit C had and have meaning. On the one hand, he giveth by stating in the top paragraph on page 4, "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." (*Id.*, emphasis added.) Then, just a page later, SIMON taketh away when he threatens to **quit** if the Edgeworths won't agree to pay

SIMON another $1,114,000 in fees ($1.5 million, minus fees and costs paid to date at the hourly rate of $550 per hour). (*Id*.) Isn't the noun of "extortion" defined as the practice of obtaining something, especially money, through force or threats? A reasonable recipient of Exhibit C could easily reach that exact conclusion, and do so in good faith.

Again, even if VANNAH adopted SIMON'S narrative and actually used the words, extortion, blackmail, theft, or the insults raised in the *Bull* case (which VANNAH denies), all of these statements directly relate to 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*.; see also SIMON'S Amended Complaint attached to the Motion as Exhibit A.) Therefore, VANNAH "is immune from civil liability" for any statements allegedly made. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) 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. (Please see Appellants' Appendix attached to

VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) 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. (*Id*.)

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 and control 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*.)

The law did not and does not support the findings of Judge Jones or the allegations of SIMON, who erroneously believe and believed that physical possession of the settlement proceeds by SIMON was a necessary element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require physical possession of the settlement proceeds by SIMON for a claim for conversion to be brought and maintained by the Edgeworths. *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).

Instead, under Nevada law, "conversion is a distinct act of dominion and control 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." (*Id*.) Additionally, under Nevada law, "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." (*Bader, at 356*)(Emphasis added.)

That's exactly what SIMON has done here when he asserted (and continues to assert) his liens in amounts that he knew he had no reasonable basis to assert. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) And that's why the factual and legal basis for the Decision and Order of Judge Jones is fundamentally incorrect and on appeal. (Id., at *AA Vol. 2* 000497-000483.)

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. *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). 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. (*Id*.; Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.)

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). Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) 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. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.) 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: all of SIMON'S 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**. (Please 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." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980). 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); and, *Bull v. McCuskey,* 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

In one of SIMON'S several oppositions filed to date, he sought solace and support in the case of *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980), by wrongfully claiming that *Bull* softens the impact of the absolute litigation privilege. SIMON is in error to ever lean for support on *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980). The court in *Bull* makes a series of statements that eviscerates SIMON'S use of this case, yet supports the arguments of VANNAH. The court reiterated the rule that, "As a general proposition an attorney at law is absolutely privileged to publish defamatory matter concerning another…in which he participates as counsel, if it has some relation to the proceeding. (*Id*. at 711-12.) It stated further: "The privilege rest upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to obtain justice for their clients." (*Id*., at 712.)

The court went on to state: "Attorney Bull's comments may be understood to pertain to either Dr. McCuskey's competence or his credibility, and therefore, are privileged." (*Id*.) Finally, the court stated: "Although the denigrating comments of attorney Bull regarding Dr. McCuskey were privileged, *and alone would not supply a basis for liability in damages*, it does not follow that an attorney may so conduct himself without fear of discipline." (*Id*., emphasis added.) The discipline referred to by the court in *Bull* was before the State Bar, not a judge or jury of one's peers. (*Id*.)

A plain reading of SIMON'S SLAPP 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. (Please see Exhibit A.) Since these alleged statements by VANNAH 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 any 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 <u>after</u> the filing of a complaint to state a claim. *Id*. As indicated in the appellate record, <u>nothing</u> substantive with the Edgeworths' Amended

Complaint was allowed to be taken after it was filed and served. (Please 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. (Please 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 Count/claim 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 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 <u>any</u> actual prospective contractual relationship between SIMON and <u>any</u> third party. (Please 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); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

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, SIMON can't meet any of the elements, especially, element 4 ("The absence of **privilege** or justification by defendants"), and 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. (Please 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/claims 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. (Please see Exhibit A.) Pursuant to the voluminous caselaw cited above, the law pertaining to the absolute litigation privilege does not allow SIMON to make or maintain such claims against VANNAH. (*Id.*) Since SIMON cannot maintain these Counts/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. (Please see Exhibit B; please also 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).

Again, to put a finer point on the legal basis for the claim for conversion, 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.) That's exactly what SIMON did here when he asserted his liens in amounts that he knew he had no reasonable basis to assert. (Please see Exhibit B; please also see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.) SIMON knew he couldn't charge or collect a contingency fee without the written fee agreement that he'd failed to draft or obtain. (*Id*.; see also Exhibit C.) SIMON knew that the additional work he performed at his full hourly rate of $550 was never going to exceed the amount of his super bill of $692,120, yet he still continued to assert an amended lien in the amount of $1,977,843.80. (Please see Exhibit B; please also see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

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. *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980); *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. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A, namely Vol. 2, 000277-000316.)

The sole design of SIMON'S SLAPP (Exhibit A) 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. (Please see Exhibit B.) A simple reading of the Edgeworths' Amended Complaint (Exhibit B) in light of SIMON'S SLAPP (Exhibit A) makes that abundantly clear.

There is nothing criminal or illegal about any of the actions allegedly taken by VANNAH. 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). (We're also supposed to prepare fee agreements for our clients to sign, as well as explain several important things to them at the outset of the attorney client relationship.) (NRPC 1.5)

That's what the record on appeal shows that VANNAH did, and in response, SIMON filed his SLAPP. (Please 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, namely Vol. 2, 000277-000316.) 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." Here, all of SIMON'S Counts/claims 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 26th day of August, 2020.

PATRICIA A. MARR, LTD.

/s/Patricia A. Marr, Esq.
PATRICIA A. MARR, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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Traditional Manner:
None

DATED this 26th day of August, 2020.

/s/Patricia A. Marr, Esq.
_____
An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

ACOMP
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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**

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.

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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.

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

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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

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,

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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

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.

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.

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

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.

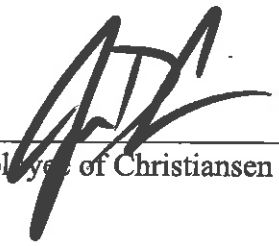

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EXHIBIT B

EXHIBIT B

ACOM
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.

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 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 XVI** **BATES NO. AA003057 - 3290**

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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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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **APPENDIX TO EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637** **VOLUME 1**

COMES NOW Defendants, BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC by and through its counsel of record MESSNER REEVES, LLP and hereby submits its Appendix to Edgeworth Defendants' Special Anti-Slapp Motion to Dismiss Plaintiff's Amended Complaint Pursuant to NRS 41.637, Volume 1.

Exhibit	Description	Page Numbers
A.	Declaration of Brian Edgeworth, dated August 27, 2020.	0001-0021
B.	Decision and Order on Motion to Adjudicate Liens.	0022-0044
C.	Billing Invoice from James Christensen.	0045
D.	November 27, 2017 Letter.	0046-0053
E.	Retainer Agreement and Settlement Breakdown.	0054-0056
F.	November 29, 2017 Letter from Brian to Simon.	0057
G.	December 7, 2017 Letter.	0058-0059
H.	Emails dated December 18-28, 2017.	0060-0064
I.	Herrera Emails.	0065-0067
J.	Notice of Attorney's Lien.	0068-0072
K.	Notice of Amended Attorney's Lien.	0073-0076
L.	The Edgeworth Complaint.	0077-0086
M.	The Edgeworths' Amended Complaint, dated March 15, 2018.	0087-0098
N.	Affidavit of Brian Edgeworth, dated February 12, 2018.	0099-0107
O.	Affidavit of Brian Edgeworth, dated March 15, 2018.	0108-0118
P.	Plaintiffs' Motion to Adjudicate Attorney Lien.	0119-0146
Q.	Order on Motion to Dismiss NRCP 12(B)(5).	0147-0157
R.	Motion for an Order Directing Simon to Release Funds.	0158-0167
S.	Appellant's Opening Brief.	0168-0205
T.	Nevada Supreme Court Docket No. 7982.	0206-0210

DATED this 27th day of August, 2020.

MESSNER REEVES LLP

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CERTIFICATE OF SERVICE

On this 27th day of August, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **APPENDIX TO EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637 VOLUME 1** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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“EXHIBIT A”

DECLARATION OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN EDGEWORTH, being duly sworn, states:

1. I am owner of a fifty (50) percent interest in American Grating LLC (also known as "AMG").
2. My wife, Angela Edgeworth, and I are the trustees of the Edgeworth Family Trust.
3. I have personal knowledge as to the facts and circumstances surrounding the case filed in the Eighth Judicial District Court under Case No. A-19-807433-C.
4. As fifty (50) percent owner of American Grating, LLC, I am authorized to make representations on behalf of the company.
5. On April 10, 2016, a flood, caused by a Viking fire sprinkler installed by Lange Plumbing during the construction of my home, resulted in significant property damage.
6. On May 27, 2016, I drafted an email to Simon to discuss representation in a claim against the responsible parties including Viking and Lange.
7. On May 28, 2016, I met with Simon to discuss retention.
8. During that meeting, we discussed retaining Simon to write letters to the responsible parties (Kinsale, Lange, and Viking) regarding compensation for the damages incurred.
9. On June 2, 2016, Simon sent representation letters to Kinsale, Lange, and Viking.
10. On or between June 8, 2016 and June 10, 2016, Simon called to discuss that he needed to file a lawsuit and he would need to start billing.
11. During that call he indicated that his court approved rate was $550 per hour and that based on his extensive experience in the courtroom trying cases he believed he could recover the damages incurred from Lange.
12. I had previously contacted Attorney Craig Marquiz, a construction defect attorney to discuss representation, and he had quoted me a rate of $500 per hour.

13. Although Simon had requested a higher rate of pay than Mr. Marquiz and what I found to be the market average, I decided to hire Simon because he told me about his extensive experience and assured me that his reputation would compel the companies to resolve the matter quickly, and because our wives were friends.
14. No written fee agreement was drafted, but I believed based on this conversation that Simon would work on the case and invoice me at a rate of $550 per hour.
15. On June 14, 2016, because the case was not resolved with the demand letters, Simon filed a Complaint against Viking and Lange.
16. In December 2016, I received the first invoice for legal services from Simon totaling $42,564.95, at the previously discussed rate of $550 per hour.
17. After asking Simon where the check should be sent, I paid the amount invoiced in full.
18. Simon deposited the check from the payment of this invoice and the funds cleared.
19. On May 3, 2017, I received a second invoice from Simon for legal services totaling $46,620.69, at the previously discussed rate of $550 per hour, of which $11,365.69 was for costs.
20. This invoice was paid in full in a prompt and timely manner.
21. Simon deposited the check from the payment of this invoice and the funds cleared.
22. Between May 3, 2017 and August 9, 2017, I identified information that may result in a settlement agreement worth well more than the initial estimated damages of $528,000.00.
23. Around August 9, 2017, Simon and I traveled to San Diego to meet with an expert.
24. On our way back home, and while sitting in an airport bar, Simon broached the topic of modifying our fee agreement from a straight hourly contract to a contingency agreement with a slightly lowered hourly fee.
25. 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.
26. Weeks then passed without Simon mentioning the subject again.
27. On August 16, 2017, I received an invoice from Simon totaling $142,081.20, of which $110,137.50 was attorney's fees (billed at $550.00 per hour) and $31,943.70 was costs.

28. As with the previous invoice, I remitted payment to Simon in full in a prompt and timely manner.

29. Simon deposited the check from the payment of this invoice and the funds cleared.

30. On August 22, 2019, I sent an email to Simon labeled "Contingency."

31. The main purpose of that email was to make it clear to Simon that we had never had a structured conversation about modifying the existing fee agreement from an hourly agreement to a contingency agreement.

32. I also told Simon 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.

33. Simon never responded to this email.

34. On September 25, 2017, I received an invoice from Simon totaling $255,185.25, of which $183,630.25 was attorney's fees and $71,555.00 was for costs.

35. As with the previous invoice, I remitted payment to Simon in full in a prompt and timely manner.

36. Simon deposited the check from the payment of this invoice and the funds cleared.

37. On October 10, 2017, the parties attended mediation at JAMS with Floyd Hale.

38. The mediation was ultimately unsuccessful.

39. On November 10, 2017, we attended a second mediation at JAMS, again with Floyd Hale.

40. This time I had additional information, which I believed significantly increased the settlement value of my claim.

41. During the mediation Simon presented me with an invoice for attorney's fees totaling around $72,000, and informed me that there was a "large cost" invoice that would follow for expert costs. However, the invoice was not among my papers when I left the mediation, prompting me to email Simon about the invoice.

42. The mediation was ultimately unsuccessful. However, the mediator, Floyd Hale, suggested a mediator's proposal to attempt to get the parties to agree to a settlement.

43. Because we had court hearings that were significant to the case, we agreed that the Mediator's Proposal would include settlement for $6,000,000, and Viking would have until November 15, 2017, just five days later, to respond.

44. On November 11, 2017, I emailed Simon confirming we accepted the mediator's proposal.

45. On the morning of November 15, 2017, I requested by email that Simon provide me with a fees and costs invoice for the case, specifically stating "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?"

46. Neither Simon nor anyone else from his office ever responded to my request for the final invoice for the matter.

47. Later that evening, on November 15, 2017, Simon contacted me via telephone to inform us that the mediator was calling him, which indicated that Viking had agreed to the Mediator's Proposal to settle for $6 Million and asked us if we wanted to settle.

48. I again notified Simon that we would accept the mediator's proposal, which was a confirmation of my email to Simon the week earlier stating the same.

49. On November 16, 2017, I received a text message from Simon with a picture of a letter from Viking's counsel to Mr. Hale and message that said "Floyd [expletive removed] us, Case is back on."

50. I reviewed the letter pictured in the photo and identified the terms of the settlement agreement found therein.

51. I noted that there was a confidentiality clause as to only the amount of the settlement agreement.

52. I was in agreement with the terms as they were drafted and informed Simon of that via text.

53. This was the third time I had confirmed to Simon that we accepted the mediator's proposal for settlement.

54. I began to be concerned as to why Simon kept asking if we wanted to settle.

55. On November 17, 2017, at approximately 7:20 am, I received a text message from Simon asking me to come to his office to discuss getting things finished or keeping dates on the calendar.

56. I contacted my wife Angela, and we planned to meet at Simon's office at approximately 8:30 am.

57. During the meeting at Simon's office, Simon seemed irritated that Angela had come with me, but I was not sure why.

58. Simon spent a significant amount of time telling us what an excellent job he had done representing us during the course of the case, and that Simon was able to get us far more money than we deserved, so he needed to settle with us on how much of the settlement he would be receiving.

59. I told him that he had been paid hourly for all of the fees invoiced and I had covered all of the costs, and he was not entitled to any additional compensation.

60. Simon became angry and told me that being paid hourly is not how he works, and he was entitled to forty (40) percent of the $6 Million settlement, but since he knew we had some costs he was going to "rip himself off" and only take forty (40) percent of the amount in excess of our losses, which he calculated to be no more than $3,000,000.

61. I informed Simon that our total incurred losses were significantly higher than $3,000,000, but he stated that those were "not real losses."

62. Simon insisted that he had done a super job for us on this case and emphasized that he had lost money representing us for a number of reasons.

63. At this point Simon told us that if we were not going to treat him fairly, he would not continue to lose money and represent us.

64. He told us that the settlement was not finalized and we could lose the deal if he was no longer a part of it.

65. Simon claimed that he was being overly fair with the fee agreement he had proposed, and the judge would give him more than what he was asking us to pay because his office operated exclusively on contingency fees, so he was owed a portion of the settlement.

66. He indicated that he was doing us a favor and ripping himself off, but we were not clear as to exactly what or how much Simon was asking for.

67. Angela and I never agreed to Simon's proposed new deal because we had already paid Simon almost $500,000 in fees and costs to represent us based on the invoices presented for work at his hourly rate.

68. After an hour in Simon's office, we left and went about our day. Simon proceeded to call me three times that day demanding an answer to his proposed fee agreement.

69. Simon became angry with me that we had not agreed to his demand by that evening, and I told him that we were not even really sure what he was seeking and asked for the proposal in writing.

70. At that time Simon informed me that he would be leaving for Peru the morning of Saturday, November 18, 2017, and needed an answer immediately.

71. I was shocked that Simon was planning to leave the country with the settlement deal incomplete and some very important upcoming hearings for which it appeared he had not prepared.

72. Simon proceeded to make persistent phone calls to me while on his trip to Peru to discuss various issues related to monies he wanted from the Viking settlement.

73. On November 27, 2017, while I was on a business trip in China, Simon sent my wife and I a letter by email with two attached contracts that he wanted us to sign, the Retainer Agreement and Settlement Breakdown ("New Fee Proposal").

74. In my opinion, the contents of the letter were very troubling.

75. Simon stated that if we did not sign the New Fee Proposal as provided, the settlement that both Viking and we had agreed to nearly two weeks earlier would be in jeopardy.

76. In my opinion, Simon's November 27, 2017 Letter made it clear that he would either jeopardize our settlement with Viking by stopping all work on it, refusing to sign the confidentiality provision demanded by Viking, or sue us regarding his fees, as Simon stated there was no doubt that a court would award him 40% of the entire Viking settlement ($2.4 Million) plus all costs.

77. Specifically, in my opinion, I found the following troubling:

a) By his own words, Simon acknowledged that we had been operating under an hourly fee arrangement but Simon asserted it did not matter and that any judge would side with him, costing us financially in legal fees to defend against a lawsuit if we did not sign the New Fee Proposal. To this point, Simon made the following statements within his November 27, 2017, Letter:

- "I did not have you sign my initial standard retainer agreement as I treated you like family to help you with your situation"
- "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"
- "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."**

b) Simon would sue us if we did not sign the New Fee Proposal, and in that suit he would be awarded more than he was asking us to pay with his New Fee Proposal, as Simon indicated this was common and a judge would ensure Simon received his typical fee, which Simon stated was 40%. To this point, Simon made the following statements within his November 27, 2017 Letter:

- "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."

- "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."
- "If you are not agreeable [to New Fee Proposal] then I cannot continue to lose money to help you. I will need to consider all options available to me."
- "my standard fee of 40% on all my other cases produced hourly rates 3-10 times **the hourly rates you were provided**"
- "My standard fee is 40% for a litigated case…That is what I get in every case."

c) The settlement agreement could not and would not go through without Simon's active participation because there was extensive work left to do and his signature and agreement were required to complete the deal. To this point, Simon made the following statements within his November 27, 2017 Letter:

- "the relationships I have and my reputation is why they are paying you this much"
- "There is a lot of work left to be done…..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."**
- "If the Court does not grant to the motion, **then there is no settlement**"

- "Simply, there is a **substantial amount of work that still needs to be addressed** ...This week was very important to make decisions **to try and finalize a settlement"**

d) Regarding finalizing of the settlement, Simon stated in his November 27, 2017 Letter that "[i]f you are agreeable to the attached agreement, please sign both so I can **attempt to finalize the agreement".** Based upon Simon's statements, we believed we needed to reply quickly or nothing would proceed on the settlement, putting the entire agreement with Viking at risk.

e) The terms of Simon's New Fee Proposal, as described in November 27, 2017 Letter were non-negotiable.

- "I have thought about it a lot and this is the lowest amount I can accept"

f) Simon's November 27, 2017 Letter made clear that he would withdraw from our case if we did not sign the New Fee Proposal. This did not appear to us to be an opening request in a negotiation, but, instead, a demand and requirement to have Simon continue representing us and prerequisite to finalizing the Viking settlement. To this point, Simon made the following statements within his November 27, 2017 Letter:

- "**If you are not agreeable, then I cannot continue to lose money to help you.**"

78. Simon's November 27, 2017 Letter and attached New Fee Proposal amounted to a newly proposed settlement breakdown and a proposed retainer agreement, **two weeks AFTER both parties had agreed to a $6 Million settlement**.

79. These documents set forth additional fees in the amount of $1,114,000, plus unspecified costs in the amount of $80,000, that Simon wanted to be paid in light of the favorable settlement that was reached with the defendants in the flood litigation even though our fee agreement was that Simon would be paid hourly and we had paid him under that agreement for 18 months.

80. At that time, these additional "fees" were not based upon invoices submitted to me or for detailed work performed by Simon.

81. The proposed fees and costs were in addition to the $486,453.09 that I had already paid to Simon, the invoices that Simon had presented to me, the evidence produced to defendants in the flood litigation, and the amounts set forth in the computations of damages disclosed by Simon in the flood litigation.

82. I was not provided with the final invoice for Simon's fees and costs, which I requested and would have paid in full if received.

83. Simon later testified at the lien adjudication evidentiary hearing that he had "carefully drafted" his November 27, 2017 Letter, and his intention was to make sure that Angela and I were "crystal clear" on each and every point.

84. I interpreted Simon's words in the November 27, 2017 Letter to clearly mean that if I didn't agree to sign the New Fee Proposal giving Simon an additional $1,114,000 in fees, he would no longer agree to be our lawyer and the Viking Settlement might not go through.

85. I understood this to mean that Simon would quit, despite all the upcoming deadlines and the looming reality that the litigation against the Lange defendant was set for trial early in 2018.

86. Much later, I learned that prior to sending his November 27, 2017 Letter, Simon had retained counsel to represent him in the "Edgeworth Fee Dispute." Nothing in that letter indicated that Simon had retained a lawyer before drafting the letter, nor did anything in the letter inform us that we were in a dispute with Simon.

87. The invoice from James Christensen shows that Simon had an attorney on November 27, 2017, long before the Edgeworth Complaint was filed on January 2, 2018 (and served on January 9, 2018), and even before I met with Vannah to discuss retention on the evening of November 29, 2017.

88. Simon never informed me that he had retained counsel to represent him on this fee issue, nor that we were in a "dispute", leaving me to believe that Simon was still my advocate, not my adversary.

89. In my opinion this further demonstrated that Simon's claim that he incurred damages because he was ***forced to retain an attorney*** to defend himself was not fully truthful.

90. Both Angela and I felt uncomfortable with Simon's statements within the November 27, 2017 Letter regarding the status of the Settlement Agreement and the amount of work that still had to be performed to finalize it, as both parties had agreed to the terms almost two weeks before Simon sent his letter.

91. Angela sent an email to Simon, copying me, on November 27, 2017 at 3:20 p.m., requesting that Simon, as our attorney, forward the Settlement Agreement to us.

92. Simon replied to our request within the hour that he did not have the agreement and would forward it upon receipt.

93. We believed at that time that Simon had already received the Viking Settlement Agreement despite his statements otherwise, and he was stalling until we agreed to sign the New Fee Proposal Simon had just emailed us.

94. I felt this answer was evasive and found it concerning that Simon did not provide any information but instead asked if we had signed the New Fee Proposal.

95. Nine months later, Simon testified at the lien adjudication evidentiary hearing that he had the Viking Settlement Agreement before drafting the November 27, 2017 Letter.

96. On November 27 at 4:14pm, Angela replied to Simon on our behalf asking if he had agreed to the settlement and inquiring as to why it had not yet been received.

97. That same day, Simon replied to us at 4:58pm that "It appears that you have a lot of questions about the process which is one reason I wanted to meet with you. If you would like to come to the office or call me tomorrow I will be happy to explain everything in detail. **My Letter also explains the status of the settlement and what needs to be done. Due to the holiday they probably were not able to start on it. I will reach out to lawyers tomorrow and get a status**. I am also happy to speak to your attorney as well. Let me know. Thx."

98. I was concerned about the response in Simon's email reply as potentially being evasive given the settlement was agreed to by both parties nearly two weeks earlier.

99. I felt we were being pressured into signing the New Fee Proposal when Simon claimed that Viking would require his signature on the confidentiality clause and he stated "I may not be comfortable doing this as **I never agreed to sign off on releases."**

100. At the evidentiary hearing to adjudicate the lien, Simon testified that the confidentiality clause was removed on November 27, 2017, before he sent us the November 27, 2017 Letter requiring that we sign the New Fee Proposal to have Simon finalize the settlement with Viking and to ensure he would be able to remove that clause. (*See*, Transcript of Day 3 of Evidentiary Hearing, at pages 216:24-218:13). It appeared based on Simon's own admission that Viking had removed ***all*** of the "risk factors" Simon references in his November 27, 2017, Letter, ***before*** Simon sent the Letter to us – even though the letter asked us to sign ***so he could finalize the terms***.

101. Without informing us or getting our approval for same, Simon made it a requirement of the Viking Settlement that Simon and/or Plaintiffs' name be included on the settlement check, making it impossible for us to deposit the settlement funds from the Viking Settlement without Simon's signature.

102. Despite Simon's requests and demands for the payment of more in fees, Angela and I did not agree to alter or amend the terms of the fee arrangement, or sign Simon's new fee agreement, because Simon had already been paid pursuant to our hourly-fee arrangement. We also felt that Simon was not being honest with us about the status of the settlement agreement while he was demanding more money which made us feel very uneasy about his intentions and whether he was looking out for our best interests.

103. After reviewing Simon's aggressive and demanding language in the November 27 Letter, Simon's evasive answers to Angela's email, and discussing it with my wife, I felt the need to consult an attorney to protect our rights, assist with finalizing the settlement, and to ensure we received the settlement funds.

104. On November 29, 2017, I flew back to the United States from China and I met with Robert D. Vannah, of Vannah & Vannah in his office to discuss the New Fee Proposal Simon wanted us to sign. John B. Greene, one of his associates, was also present.

105. We also retained Vannah to help us navigate the New Fee Proposal Simon wanted us to sign.

106. Following retention of Vannah, he took over communications with Simon regarding the New Fee Proposal.

107. When Angela and I refused to alter or amend the terms of our fee arrangement, nor sign the New Fee Proposal, Simon refused to agree to release the full amount of the Viking settlement proceeds.

108. Instead, Simon served two attorney's liens and reformulated his billings to add entries and time that never saw the light of day in the flood litigation.

109. On December 1, 2017 Angela and I signed the Settlement Agreement with Viking.

110. On December 4, 2017, after receipt of several emails from Simon regarding Simon's daughter's participation with the Vegas Aces Volleyball Club (the "Club"), the Club's coach, Ruben Herrera, called me and told me that Angela and I needed to be aware of the emails he received from Simon.

111. During that initial telephone conversation, Herrera and I did not discuss the issues/disputes between us and Plaintiffs, which Simon had referenced in his email to Herrera.

112. Herrera forwarded the email string to me following the end of the telephone conversation. Simon had emailed Herrera on November 30 and December 4, 2017, and in both emails disclosed information to Herrera concerning Angela and me.

113. On December 4, 2017, I met Herrera at Ventano's Restaurant in Henderson, Nevada to discuss what Simon had disclosed to him.

114. Ventano's was open to the public at the time of the in-person meeting between Herrera and me.

115. During my meeting with Herrera at Ventano's, Herrera inquired why Simon would be informing Herrera about a dispute between us and Simon, and what the statements in Simon's

email referred to. I told Herrera Simon was representing us on a lawsuit for the last 18 months. I told Herrera that we had paid Simon an hourly fee for his services. This had amounted to nearly $500,000.00 in fees and costs over 18 months. I also told him that when the Viking settlement came in, Simon demanded that we sign a New Fee Proposal that would entitle him to a portion of the Viking Settlement funds.

116. I told Herrera that we received the November 27, 2017 Letter from Simon demanding that we pay additional attorney's fees and sign the New Fee Proposal, or Simon would quit.

117. I told Herrera that Simon's letter said that we should agree to this New Fee Proposal because a judge would give him more if he took us to court.

118. I told Herrera, we had refused Simon's proposal and we had been forced to hire a lawyer to protect our monetary interest in the Viking Settlement.

119. I told him that Simon's first email to Herrera on November 30, 2017 had come on the same day Simon was informed we had hired Vannah.

120. I expressed no other information to Herrera about the case with Simon.

121. All subsequent conversations between Herrera and me were related to Club operations.

122. Any and all statements made by me to Herrera were my opinion about the dispute with Simon.

123. The statements I made to Herrera at that meeting were not only my opinions but were also a truthful and accurate recounting of what had occurred.

124. The conversation I had with Herrera was in response to the emails sent by Simon to Herrera indicating that there was an issue between our families ("I am sure you are aware of the issues involving the Edgeworth's. Given the ongoing issues with the Edgeworth's") and insinuating wrongdoing on the part of myself and Angela, "As for the other issue with the Edgeworth's, just as you, we believed we were friends. However, as parents, we must do everything in our power to protect our children. This is why she could not have come to the gym."

125. I never used the words "stole[,]" "stolen" "theft" "extortion" or "blackmail" during my conversation with Herrera.

126. On December 7, 2017 Angela and I signed the Settlement Agreement with Lange, the other defendant in the flood.

127. Upon information and belief, on December 7, 2017, Vannah received a letter from Simon wherein Simon claimed he had underbilled in the flood litigation and that the work performed by him that had not been billed, "may well exceed $1.5M."

128. Because we had paid all of the invoices that had been presented to us, it seemed impossible that Simon could invoice us for anywhere close to an additional $1.5 million in fees under the hourly agreement or otherwise. From the time of our last paid invoice of September 25, 2017 through December 7, 2017 there are only 73 calendar days and Simon was in Peru for 8 of them. Even invoicing 24 hours a day, 7 days a week for the 65 days at $550 per hour amounts to only $858,000 by my calculations.

129. Both Angela and I believed, in our opinion, it was unjust that Simon could file an attorney's lien against our settlement proceeds and then make completely impossible claims as to the amount of the lien, especially considering he had never provided us with a final invoice.

130. Vannah also let me know that this December 7, 2017 letter confirmed Simon agreed to refer all decisions that needed to be made on the case through Vannah.

131. On December 18, 2017, Simon informed John Greene that he had the settlement checks.

132. After Simon received the settlement checks, we requested that Simon allow us to deposit the entirety of the settlement proceeds into our account, planning to pay Simon's final hourly invoice for fees and costs.

133. Simon demanded that the settlement checks be deposited into his office's trust account and refused to allow me access to the settlement checks.

134. John Greene informed us on December 18, 2017, that Simon had told Greene that Simon would not disclose the amount he intended to withhold of the $6 Million Viking Settlement funds by filing of an amended attorney's lien until **AFTER** Angela and I endorsed the settlement checks and they were deposited into Simon's account.

135. Mr. Greene told us he knew of no legal right that Simon had to make such demands, and that he had expressed this to Simon, to no avail.

136. Mr. Vannah then suggested that the check could be held in his trust account, but that was not satisfactory to Simon.

137. On January 2, 2018 Simon filed an amended lien for $1,977,843.80 in additional fees but still would not provide us with an invoice.

138. By my calculations, even if Simon invoiced 24 hours a day, 7 days a week at $550.00 per hour, for the unbilled days between September 24, 2017 and January 1, 2018, it was mathematically impossible for Simon to have invoiced the amount of attorney's fees claimed in the Amended Lien filed on January 2, 2018, $1,977,843.80.

139. By January 2, 2018, I had been requesting final invoices for more than seven weeks without receiving them.

140. My attorney Vannah had been requesting final invoices for more than four weeks on my behalf.

141. Even after filing an Amended Lien, Simon still was refusing our requests to provide an invoice.

142. When Simon continued to exercise dominion and control over settlement proceeds he was clearly not entitled to, on January 4, 2018 we were forced to file a lawsuit with the court to elicit the Court's assistance in righting this wrong.

143. On January 8, 2018, a special trust account was opened to deposit and hold the Viking Settlement funds.

144. The Settlement Trust Account requires that both Simon and Vannah provide a signature for any action to be taken

145. When I asked Robert Vannah to request the balance in this account as of August 15, 2020, Mr., Vannah forwarded me the bank's reply that the balance is $2,042,194.28. This balance is far more than even Simon's Amended Lien filed January 2, 2018 and more than four times the amount Judge Jones adjudicated for Simon.

146. On January 24, 2018, Simon finally produced his "new" invoices totaling $692,120 for "additional" services billed at the contract rate of $550/$275 per hour ("Super Bill"). He never sent the Super Bill to us, but attached it as an exhibit to his Motion to Adjudicate Lien filed with the Court.

147. The total of the Super Bill was surprisingly less than the $1.5 million that Simon had written to Vannah on December 7, 2017, six weeks earlier, and far less than the $1,977,843.80 Simon sought in his January 2, 2018 Amended attorney lien, 3 weeks earlier.

148. Despite this, Simon refused to release to Angela and me the funds in excess of the amount of Simon's own Super Bill.

149. I relied on Vannah, the senior partner of the firm, to make the decisions to file the pleadings with the claims made and thereafter, the arguments presented in briefs, in court, and all other judicial proceedings, including the pending appeal.

150. I trusted that these decisions were made after a thorough review of the law pertaining to these claims, and a good faith belief that all of the written and oral communications made to the court are accurate and well-founded in the law, and not done for any ulterior or improper motive.

151. In response to our complaint filing, in lieu of an answer, Simon filed a Motion to Adjudicate his lien, two Motions to Dismiss (one for the Complaint and another for the Amended Complaint), and two "Special" Motions to Dismiss: Anti-SLAPP.

152. Judge Tierra Jones held an evidentiary hearing on Simon's Motion to Adjudicate the Lien, and that hearing took place over five days.

153. At the conclusion of the hearing, Judge Jones asked the parties to submit written closing arguments and written findings of fact.

154. On October 11, 2018, Judge Jones issued a Decision and Order on Motion to Adjudicate Lien (LDO). (*See* **Exhibit B** attached to the Edgeworth's Special Anti-SLAPP Motion to Dismiss Plaintiff's Amended Complaint).

155. On that same date, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) and a decision and Order on Motion to Dismiss Anti-SLAPP.

156. Simon's Motion to Dismiss 12(B)(5) was granted with findings that clearly show Judge Jones chose to believe Simon's account of several contested facts as opposed to the legal standard of accepting all allegations in the complaint as true.

157. Judge Jones deemed the Anti-SLAPP Motion moot.

158. Of primary significance in the LDO, Judge Jones found that: 1) this is not a contingency fee case; 2) an implied agreement for fees was in existence at the rate of $550 per hour for Simon and $275 per hour for his two associates; 3) Simon was paid in full by Angela and me for his fees for services rendered from May of 2016 through September 19, 2017; 4) Simon is entitled to $284,982.50 in fees at the hourly rate of $550 for Simon and $275 for his associates from September 19, 2017, through November 29, 2017; and, 5) Simon is entitled to $200,000 in fees under quantum meruit from the date he was constructively discharged on November 30, 2017, until the case concluded in early January 2018.

159. Of note, the parties agreed that the LDO incorrectly awarded additional costs to Simon, when the parties stipulated that no additional costs were owed.

160. On October 31, 2018, Vannah sent a letter to James R. Christensen, Esq., advising him that, despite arguable errors by Judge Jones in finding a constructive termination as of December 1, 2017, in dismissing the Edgeworth Amended Complaint, and in awarding $200,000 in extra fees in quantum meruit when Simon had "only" invoiced $33,811.25 in fees for that time frame, Angela and I were willing to pay Simon the $484,982.50 in fees that Judge Jones awarded in the LDO in order to buy our peace and be done with the matter.

161. Simon never responded to that letter.

162. On November 14, 2018, Judge Jones issued a Decision and Order on Motion to Dismiss NRCP 12(B)(5) that removed the reference to an "oral" agreement as opposed to an implied agreement and an LDO that removed any award of costs to Simon, as stipulated.

163. On November 19, 2018, Vannah sent yet another letter to Mr. Christensen telling him that, despite the same arguable errors of Judge Jones as outlined earlier, Angela and I were still willing to pay Simon the **$484,982.50** in fees that Judge Jones awarded/reiterated in the LDO of November 19, 2018.

164. Simon did not respond to that letter, either.

165. Thereafter, Simon filed a Motion for Fees and Costs, seeking $262,099.48 in fees and $18,434.73 in costs.

166. The Motion was vague as to whether the fees and costs he sought were related to the Motion to Adjudicate, the Motions to Dismiss, or both.

167. Vannah argued in the opposition filed on behalf of Angela and me that there was not and is not any basis in the law for Simon to seek or obtain fees and costs in a Motion to Adjudicate a Lien for Fees and Costs AND that all of the fees related to Peter S. Christiansen, Esq., all of the costs associated with Will Kemp, Esq., and the vast majority of the fees associated with James R. Christensen, Esq., were incurred adjudicating Simon's attorney's lien in its exorbitant amount.

168. In Simon's Reply, he limited his request for fees and costs allegedly incurred in seeking the dismissal of the Edgeworth Complaint (original and amended), namely the claim for conversion.

169. Since Simon remained fixed and immovable in his quest for more in fees, and since a settlement could not be reached with one who refuses to communicate, Vannah filed an appeal of the LDO and the Decision and Order on Motion to Dismiss NRCP 12(B)(5) on our behalf.

170. Briefing is now complete and we are waiting for further instruction and action from the Nevada Supreme Court.

171. Following an evidentiary hearing on Plaintiffs' Motion to Adjudicate the Lien, Judge Jones awarded Simon additional fees she believed he was owed under the hourly agreement and dismissed the pending motions and Edgeworth Complaints because the controversy over the fee agreement had been adjudicated and they were therefore moot.

172. Following a consultation with my attorney, Vannah, who is highly experienced, and my own review of the facts and applicable law, I believed, and still believe, that Simon's exercise of dominion and control over the settlement funds is inconsistent with his rights and in direct conflict with that of mine and Angela's rights to those funds.

173. I further believe that Nevada law clearly supports a claim for conversion against Simon, and the act of conversion continues to this day, over two years and nine months after the settlement proceeds were received and nearly two years since Simon's lien was adjudicated.

174. As of August 15, 2020, the amount being withheld from us in the trust account is $2,0242,194.28, an amount four times larger than Simon's lien was adjudicated for and substantially more than Simon's Amended Lien amount.

175. The evidence shows, in my opinion, that Simon has no, and never had any, reasonable basis to make a claim for any of the proceeds from the Viking settlement.

176. Simon now refuses to accept the offered payment for the lien adjudication, and still refuses to relinquish the control he has over our settlement funds, even though the funds he is withholding are far more than he was adjudicated and far more than his lien.

177. Angela and I wanted none of this, instead we got all of this.

178. Angela and I only wanted to be dealt with honestly and openly, receive the final invoice we requested and receive our settlement monies so we could pay that invoice and move on with our lives.

179. Instead, we have been forced to wait for our property to be given to us, which we are told could be years more to come, in addition to this lawsuit and hundreds of thousands of dollars in legal invoices.

180. My wife Angela, my company, our trust and I, are all being sued for making, in good faith, written and oral communications in judicial proceedings, which were made in the context of the underlying litigation, were opinions and/or were made in a place open to the public.

181. The documents that have been attached to this Special Anti-SLAPP Motion to Dismiss as Exhibits, support the claims for relief brought in the Edgeworth Complaint and the Edgeworth Amended Complaint and undermine the SLAPP of Simon.

Pursuant to N.R.S. §53.045, I declare under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

MESSNER REEVES LLP

“EXHIBIT B”

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

//

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 C”

James R. Christensen Esq.
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Las Vegas, NV 89101
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E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada
TIN: 26-4598989

SIMON LAW GROUP – EDGEWORTH FEE DISPUTE
November/December 2017 Billing Statement

I. ATTORNEY

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

“EXHIBIT D”

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

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

RETAINER AGREEMENT

THAT Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating have retained and does by this instrument retain the Law Offices of Daniel S. Simon, as his/her attorneys; said attorneys to handle on his/her behalf, all claims for damages arising out of and resulting from an incident on or about April 9, 2016 involving the flood caused by a failed sprinkler head, which clients now have, and which might hereafter accrue against Viking Corporation, Viking Group and Viking Supply Net, for damages arising out of said incident to Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating that the parties have respectively agreed as follows:

1. THE FEE FOR LEGAL SERVICES SHALL BE IN THE SUM OF 1,500,000 for services rendered to date. This sum includes all past billing statements, the substantial time that is not included in past billing statements, the current outstanding billing statements and any further billing statements that may accrue to finalize and secure the settlement with the Viking Entities only. Any future services performed prosecuting Lange Plumbing will be determined by a separate agreement. However, all past services performed prosecuting Lange Plumbing will be included in the above fee. The above sum will be reduced by all payments already made toward the attorneys fees. If for some reason, the settlement cannot be finalized with the Viking Entities, this agreement shall be void as it only contemplates a reasonable fee for services performed and to finalize the settlement agreement.

2. ALL COSTS, INCLUDING ARBITRATION COSTS, COSTS OF OBTAINING EXPERTS TO ANALYZE AND EVALUATE THE CAUSE OF THE ACCIDENT, COSTS OF EXPERT TESTIMONY, COSTS OF WITNESS FEES, TRAVEL COSTS, DEPOSITION COSTS, COURT COSTS, AND ALL COSTS OF LITIGATION, INCLUDING LONG DISTANCE PHONE CALLS, COPYING EXPENSES, REGARDLESS OF THE OUTCOME, ARE TO BE PAID BY THE CLIENT, AND IF ANY OF THEM SHALL HAVE BEEN ADVANCED BY THE ATTORNEY, HE SHALL BE REIMBURSED FOR THE

SAME. THE ATTORNEY IS AUTHORIZED TO PAY ANY OF SAID EXPENSES OUT OF THE SHARE OF THE SETTLEMENT ACCRUING TO THE CLIENT.

SIGNED this _____ day of _____, 2017.

LAW OFFICES OF DANIEL S. SIMON	**Brian Edgeworth on behalf of Edgeworth Family Trust and American Grating**
	Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

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

SETTLEMENT BREAKDOWN

Date: November 27, 2017

Re: EFT AND AMERICAN GRATING v. ALL VIKING ENTITIES

Settlement	$ 6,000,000.00
Attorney's Fees	1,114,000.00 (1,500,000 Less payments made of 367,606.25)
Costs	80,000.00 (200,000 Less payments made of 118,846.84)

Balance to Clients **$ 4,806,000.00**

Clients hereby agree to the above distribution from the settlement proceeds if a settlement is finally reached and finalized. The costs may be adjusted depending on the actual costs incurred and paid. A final accounting will be made at the time of final distribution.

Dated this_____day of November, 2017.

_____
Brian Edgeworth on behalf of Edgeworth Family Trust and American Grating

_____
Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating

“EXHIBIT E”

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

RETAINER AGREEMENT

THAT Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating have retained and does by this instrument retain the Law Offices of Daniel S. Simon, as his/her attorneys; said attorneys to handle on his/her behalf, all claims for damages arising out of and resulting from an incident on or about April 9, 2016 involving the flood caused by a failed sprinkler head, which clients now have, and which might hereafter accrue against Viking Corporation, Viking Group and Viking Supply Net, for damages arising out of said incident to Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating that the parties have respectively agreed as follows:

1. THE FEE FOR LEGAL SERVICES SHALL BE IN THE SUM OF 1,500,000 for services rendered to date. This sum includes all past billing statements, the substantial time that is not included in past billing statements, the current outstanding billing statements and any further billing statements that may accrue to finalize and secure the settlement with the Viking Entities only. Any future services performed prosecuting Lange Plumbing will be determined by a separate agreement. However, all past services performed prosecuting Lange Plumbing will be included in the above fee. The above sum will be reduced by all payments already made toward the attorneys fees. If for some reason, the settlement cannot be finalized with the Viking Entities, this agreement shall be void as it only contemplates a reasonable fee for services performed and to finalize the settlement agreement.

2. ALL COSTS, INCLUDING ARBITRATION COSTS, COSTS OF OBTAINING EXPERTS TO ANALYZE AND EVALUATE THE CAUSE OF THE ACCIDENT, COSTS OF EXPERT TESTIMONY, COSTS OF WITNESS FEES, TRAVEL COSTS, DEPOSITION COSTS, COURT COSTS, AND ALL COSTS OF LITIGATION, INCLUDING LONG DISTANCE PHONE CALLS, COPYING EXPENSES, REGARDLESS OF THE OUTCOME, ARE TO BE PAID BY THE CLIENT, AND IF ANY OF THEM SHALL HAVE BEEN ADVANCED BY THE ATTORNEY, HE SHALL BE REIMBURSED FOR THE

SAME. THE ATTORNEY IS AUTHORIZED TO PAY ANY OF SAID EXPENSES OUT OF THE SHARE OF THE SETTLEMENT ACCRUING TO THE CLIENT.

SIGNED this _____ day of _____, 2017.

LAW OFFICES OF DANIEL S. SIMON	**Brian Edgeworth on behalf of Edgeworth Family Trust and American Grating**
	Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

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

SETTLEMENT BREAKDOWN

Date: November 27, 2017

Re: EFT AND AMERICAN GRATING v. ALL VIKING ENTITIES

Settlement	$ 6,000,000.00
Attorney's Fees	1,114,000.00 (1,500,000 Less payments made of 367,606.25)
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Balance to Clients **$ 4,806,000.00**

Clients hereby agree to the above distribution from the settlement proceeds if a settlement is finally reached and finalized. The costs may be adjusted depending on the actual costs incurred and paid. A final accounting will be made at the time of final distribution.

Dated this_____day of November, 2017.

_____
Brian Edgeworth on behalf of Edgeworth Family Trust and American Grating

_____
Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating

“EXHIBIT F”

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

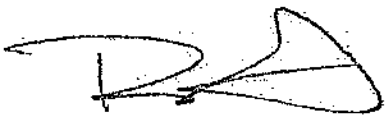
RE: Letter of Direction

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 G”

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

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

December 7, 2017

Robert Vannah, Esq.

John Greene, Esq.

400 South 7th Street, Suite 400

Las Vegas, Nevada 89101

RE: Edgeworth v. Viking, et al.

Dear Mr. Vannah,

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

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

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

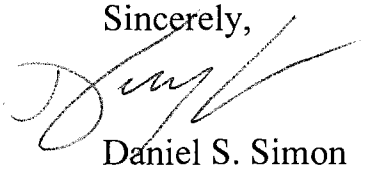
The Lange offer is good as far as the property damage claims are concerned. However, there is a potential for recovery of attorney fees and costs from Lange

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

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

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

Sincerely,



Daniel S. Simon

“EXHIBIT H”

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

“EXHIBIT I”

---------- Forwarded message ---------
From: **Ruben Herrera** <ruben@vegasacesvolleyball.com>
Date: Mon, Dec 4, 2017 at 4:02 PM
Subject: Fwd: Siena Simon
To: Brian Edgeworth <brian@pediped.com>, Angela Edgeworth <angela.edgeworth@pediped.com>

Response from Danny Simon.

Ruben Herrera | Vegas Aces Volleyball
O 702.592.3182 | M 702.592.8927
123 Pancho Via Drive | Henderson, NV 89012
ruben@vegasacesvolleyball.com | www.vegasacesvolleyball.com

"Home of Southern Nevada's Premier Volleyball"

Begin forwarded message:

From: Daniel Simon <dan@simonlawlv.com>
Subject: RE: Siena Simon
Date: December 4, 2017 at 3:54:38 PM PST
To: Ruben Herrera <ruben@vegasacesvolleyball.com>

Cc: "Eleyna Simon (simonsays3@cox.net)" <simonsays3@cox.net>

Thank you for your response. Siena is very disappointed. She was truly excited to be a part of your special team and have you as a coach. You would have really enjoyed her as part of your program providing her knee did improve, which we anticipate. She is currently treating for her knee issue and hope it will be resolved in the near future. As for the other issue with the Edgeworth's, just as you, we believed we were friends. However, as parents, we must do everything in our power to protect our children. This is why she could not have come to the gym. Regardless, thank you for your understanding of this situation. Is there a form that you will provide us confirming the release or should I send you something merely stating that the Vegas Aces release her of any obligations under the contracts signed concerning the 2017/2018 season? Please advise. Also, feel free to call me anytime. Thanks again.

From: Ruben Herrera [mailto:ruben@vegasacesvolleyball.com]
Sent: Thursday, November 30, 2017 6:47 PM
To: Daniel Simon <dan@simonlawlv.com>
Cc: Eleyna Simon (simonsays3@cox.net) <simonsays3@cox.net>
Subject: Re: Siena Simon

First of all, assuming I knew anything about your family and the Edgeworth's is completely incorrect but now I know something is going on but I still don't care, because it's not any of my business. Secondly, I have listened to your voicemails and as I mentioned in the parents meeting, I discuss everything volleyball related with the athlete. If Sisi was going to be out of practice because of her knee, she needed to relay that message not her parents. At that time I would've told her, she still needed to attend practice regardless of her situation.

I will gladly release her with no problems and again why anyone would assume I would have anything negative to say is mind boggling; I never even saw her in the gym other than tryouts. I never make any volleyball related decisions based on other people's business problems, especially when I have no knowledge of any of it! My mistake is I assumed your two family's were friends.

Neither here nor there, like I mentioned before, I will gladly release Sisi.

Good luck to Sisi this year.

Coach Ruben

Ruben Herrera | Vegas Aces Volleyball
O 702.592.3182 | M 702.592.8927
123 Pancho Via Drive | Henderson, NV 89012
ruben@vegasacesvolleyball.com | www.vegasacesvolleyball.com

"Home of Southern Nevada's Premier Volleyball"

On Nov 30, 2017, at 5:44 PM, Daniel Simon

<dan@simonlawlv.com> wrote:

This shall confirm that I have left you three messages this week on your cell phone. On Monday, 11-27-17 , I left you a detailed message that Siena would not be at practice as she was being evaluated for her knee. Then, I left you a message on Wednesday, 11-29-17 and today 11-30-17 at 10:40 a.m requesting a return phone call. Thus far, you have failed to return a single phone call to me. I am quite surprised by the email sent by Ms. Hunt suggesting Siena needs to call you. Feel free to call me anytime on my Cell Phone at 702-279-7246. I am sure you are aware of the issues involving the Edgeworth's. Given the ongoing issues with the Edgeworth's and my daughters knee condition, she will not be able to play for the Aces this season. In light of this, we are requesting that you release her under the contracts signed. If you are not willing to do so, please state all reasons why and please feel free to call me discuss in detail. Most importantly, I trust that there will not be any negative statements made about my daughter or my family as all of these matters are certainly beyond her control and there is absolutely no reason why any derogatory statements should be made about my 14 year old daughter. I look forward to hearing from you.

“EXHIBIT J”

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

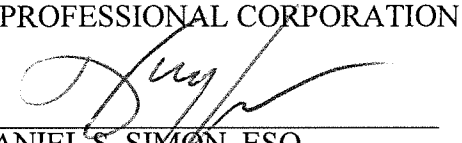
determined.

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
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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

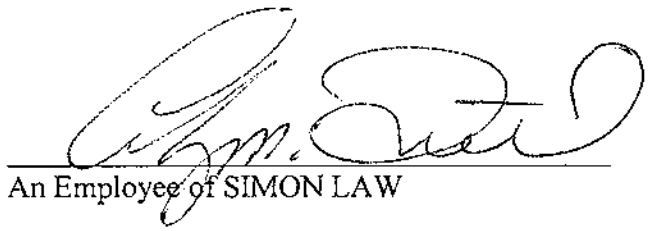
TRISHA TUTTLE
Notary Public State of Nevada
No. 08-8840-1
My Appt. Exp. June 19, 2018

Notary Public

CERTIFICATE OF MAIL

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

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



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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 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
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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
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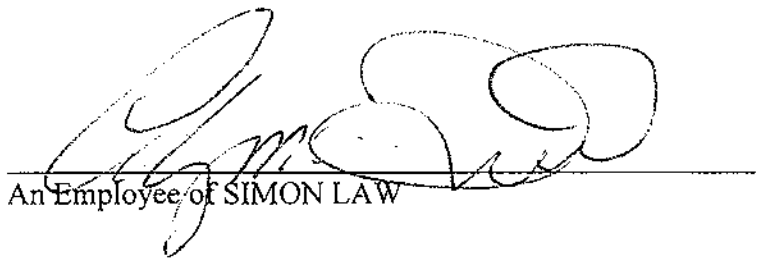
Las Vegas, NV 89144
Attorney for Defendant
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

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

“EXHIBIT K”

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Las Vegas, Nevada 89101
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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.
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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.
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Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
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Attorney for Third Party Defendant
Giberti Construction, LLC

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The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

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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
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Henderson, Nevada 89012

Edgeworth Family Trust
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Henderson, Nevada 89012

Bob Paine
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Claims Adjustor for
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Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
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Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

An Employee of SIMON LAW

“EXHIBIT L”

COMP
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JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
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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, 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**

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 (SIMON) is an attorney licensed to practice law in the State of Nevada and doing business as SIMON LAW.

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. On or about May 1, 2016, PLAINTIFFS retained SIMON to represent their interests following a flood that occurred on April 10, 2016, in a home under construction that was owned by PLAINTIFFS. That dispute was subject to litigation in the 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

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.

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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5. Costs of suit; and,

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

DATED this 3 day of January, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4274)

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“EXHIBIT M”

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.

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

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

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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.

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

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“EXHIBIT N”

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 O”

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Nevada Bar. No. 002503
JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
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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, d/b/a SIMON LAW; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive,

Defendants.

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

Consolidated with

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

EXHIBIT 1 TO PLAINTIFFS OPPOSITION TO DEFENDANTS SPECIAL MOTION TO DISMISS: ANTI-SLAPP

Date of Hearing: April 3, 2018
Time of Hearing: 9:30 a.m.

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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

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

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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. 13-10387-1
My Appt. Exp. March 21, 2021

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“EXHIBIT P”

ORIGINAL

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Steven D. Grierson
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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A738444
Dept. No.: 10

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

Date of Hearing:
Time of Hearing:

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

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

DATED this 23rd day of January, 2018.

James R. Christensen Esq.
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Attorney for LAW OFFICE OF DANIEL S. SIMON, P.C.

ORDER SHORTENING TIME/NOTICE OF MOTION

Good cause appearing, it is hereby

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

DATED this 23 day of January, 2018.

DISTRICT COURT JUDGE

Submitted by:

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DECLARATION OF COUNSEL IN SUPPORT OF

ORDER SHORTENING TIME

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

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

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

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

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

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

Dated this 18th day of January, 2018.

James R. Christensen

POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

II. THE CHARGING LIEN STATUE

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

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

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

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

III. PRINCIPLES OF LAW

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

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

- An attorney "shall have a lien" on a case they worked on for a client. NRS 18.015(1)(a).
- If there is no express contract, the charging lien is for a "reasonable fee". NRS 18.015(2); *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958); and, *see, Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009).
- A reasonable fee is determined by the factors in *Brunzell v. Golden Gate Nat'l Bank*, 455 P.2d 31, 33-34 (Nev. 1969). *Argentina*, 216 P.3d at fn.2.
- A charging lien does not have to state an exact amount. *Golightly & Vannah, PLLC v TJ Allen LLC,* 373 P.3d 103, at 106 (Nev. 2016).
- A charging lien is perfected by service on the client by certified mail, return receipt requested. NRS 18.015(3).
- A charging lien attaches to money received after service of the lien. NRS 18.015(4)(a); *Golightly & Vannah*, 373 P.3d at 105 (a charging lien must be perfected "before the attorney receives the funds").
- An attorney **does not** violate a professional duty owed to a client by filing a charging lien. NRS 18.015(5).

- A charging lien may be adjudicated by the Court upon five days' notice. NRS 18.015(6); and, *Leventhal*, 305 P.3d at 911 (timely adjudication allows the court to determine the fee while "the attorney's performance is fresh in its mind", and before "proceeds are distributed").
- A charging lien is not precluded, nor does it preclude, other remedies in a fee dispute. NRS 18.015(7).

IV. FACTS

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

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

pedestrian walkways; and, that Brian Edgeworth was involved in construction, including speculation houses.[2]

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

A. The Flood

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

Viking fire sprinklers were installed in the house by sub-contractor Lange Plumbing & Fire Control. On April 10, 2016, during the build, a Viking fire sprinkler(s) malfunctioned, which caused a destructive flood.

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[2] The flooded house started as a speculation project.
[3] The Edgeworths currently live in the house.
[4] Exhibit 1; cost basis of speculation build.
[5] Exhibit 2; MLS listing for 645 St. Croix.

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

Brian Edgeworth spoke with other attorneys, but wanted Danny Simon to help him. In May of 2016, Mr. Simon agreed to lend a hand, and "send a few letters".[6]

Danny Simon did not have a structured discussion with Brian Edgeworth about the fee for the case.[7] Mr. Simon worked without a written fee agreement.

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

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

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[6] See, e.g., Exhibit 3; 5.27.2016 email string.

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

B. The Case

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

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

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

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

[8] The high interest loans were contested by defendants. The loans were from the mother in law of Brian Edgeworth and a close friend of Mr. Edgeworth. The

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

C. The Fee Dispute

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

In the late summer of 2017[9], and into the fall, there were talks about how to calculate a fee; but, no agreement was reached. Danny Simon was occupied with the case and Brian Edgeworth was content to leave the issue alone.

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

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

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interest rate was 33%, well above market rate.

[9] *See*, fn. 7.

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

On November 27, 2017, Mr. Simon wrote to the clients about the fee.[10]

On November 30, 2017, the clients sent Mr. Simon a fax stating that the Vannah firm had been retained.[11]

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

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

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

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[10] Exhibit 5.
[11] Exhibit 6.
[12] Exhibit 7.
[13] Exhibit 8.

might be in the $1.5M range. Mr. Vannah did not tell Mr. Simon to cease work or to transfer the file. Mr. Simon documented the call.[14]

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

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

On Monday, December 18, 2017, two checks with an aggregate value of $6M for the Viking settlement were picked up.[16]

On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called the Vannah office to arrange check endorsement. Mr. Simon left a message.[17]

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

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[14] Exhibit 9.
[15] Exhibit 10.
[16] Exhibit 11.
[17] Exhibit 12.

clients endorse the checks prior to December 22nd. Mr. Greene told Mr. Simon that the clients were not available to endorse until after the New Year. Mr. Greene stated that he would contact LAW OFFICE OF DANIEL S. SIMON, P.C. about scheduling endorsement.[18]

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

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

> 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.[19]

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

[18] Exhibit 12.
[19] Exhibit 12.

Mr. Vannah responded the same day. He began:

> The clients are available until Saturday.[20] 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.[21]

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

On December 27, 2017, a response was sent to Mr. Vannah. In sum, Mr. Vannah was asked to act collaboratively and to avoid hyperbole.[22]

On December 28, 2017, Mr. Vannah wrote he did not believe Mr. Simon would steal money, he was simply "relaying his clients' statements to me". Mr. Vannah proposed opening a single client trust account.[23]

The same day, Mr. Simon agreed to open a single client non-IOLTA trust account at Bank of Nevada, with all interest going to the clients.[24]

On January 2, 2018, an amended lien was filed. The lien contained an amount certain for the reasonable value of services claimed.[25] On January 4, 2018, the lien was served.[26]

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[20] On December 18, 2017, Mr. Greene indicated the clients were out of town until after the new year. (Exhibit 12.) It appears the clients became available to endorse checks the day after Mr. Simon left town.
[21] Exhibit 12.
[22] Exhibit 13.
[23] Exhibit 14.
[24] Exhibit 14.
[25] Exhibit 15.
[26] Exhibit 16.

On January 4, 2017, collaborative efforts continued to set up the trust account, and the clients sued their friend for "conversion".[27]

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

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

Later in the day, Mr. Vannah confirmed that LAW OFFICE OF DANIEL S. SIMON, P.C. had not been fired, despite being sued by the clients for conversion.[29] Mr. Vannah stated if Mr. Simon withdrew, the damages sought from him would go up.[30]

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[27] Exhibit 17; the complaint.

[28] Exhibit 18.

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

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

V. ARGUMENT

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

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

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

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

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

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

The court may hold an evidentiary hearing to aide in the determination of the reasonable fee.[31] Because of the size and complexity of the underlying case, and the size of the reasonable fee sought, an evidentiary hearing is respectfully requested.

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

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

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

[32] Exhibit 15.

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

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

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

Costs advanced need to be reimbursed. Outstanding costs are $71,794.93.[34] The amount is slightly less than the amount in the lien. A billing was received on January 12, that demonstrated a refund of $4,937.50 was due. The $71,794.93 cost number reflects the expected refund.

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

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[34] Exhibit 21; Memorandum of Costs.

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

A. The charging lien is ripe for adjudication.

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

The charging lien has been perfected by proper service upon the clients. NRS 18.015 (3). The case is resolved[38], money is held in a trust account, and the lien is ripe for adjudication.

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[35] Even if true, which it is not, the conversion claim might not be enough to stop adjudication. *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev. 2012) (unpublished). In *Hallmark*, the Supreme Court remanded an adjudication claim and ordered the District Court to conduct an evidentiary hearing on a reasonable fee and "the allegations of billing fraud". If fraud can be addressed in an adjudication, then conversion probably can as well.

[36] Mr. Clark was Nevada State Bar Counsel and is intimately familiar with all the Rules of Professional Conduct and related issues.

[37] Exhibit 22.

[38] Pending completion of the Lange settlement. The closing documents are in the hands of the Lange attorney.

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

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

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

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

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

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

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

Lien adjudication is appropriate.

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[39] Exhibit 10.

B. The *Brunzell* Factors

A reasonable fee must be determined by use of the *Brunzell* factors. *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.

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

1. Qualities of the advocate.

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

2. The character of the work to be done.

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

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

This case demanded quality work of the highest order.

3. The work actually performed.

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

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

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

4. The results.

The result was incredible. Mr. Simon recovered double what it cost to build the entire house. Another lawyer might have set their target on a case value ranging from $500k to $1M. Mr. Simon recovered orders of magnitude above.

Mr. Simon was not done at the $6M mark. The attorney fee claim against Lange was potentially worth more than $1M. The claim was abandoned by the clients; however, recognition is due Mr. Simon for placing the clients in a great position to recover an even greater amount.

The *Brunzell* factors support a significant fee to Law Office of Daniel S. Simon, P.C. In the absence of an express contract, the market approach fee is requested. If a contract is found, then the outstanding fees and costs per the contract are requested.

VI CONCLUSION

The charging lien is ripe for adjudication. An evidentiary hearing is respectfully requested at the earliest convenience of the court.

DATED this 16th day of January 2018.

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Attorney for LAW OFFICE OF DANIEL S. SIMON, P.C.

CERTIFICATE OF SERVICE

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

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN, ESQ.

“EXHIBIT Q”

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)

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

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

[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.

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 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 oral 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 their 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 10th day of October, 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 to:

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

Tess Driver
Judicial Executive Assistant
Department 10

“EXHIBIT R”

JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
ROBERT D. VANNAH, ESQ.
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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: 14520

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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

ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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Traditional Manner:
None

DATED this 13 day of December, 2018.

An employee of the Law Office of
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“EXHIBIT S”

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

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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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).

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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

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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
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Case Information: 79821

Short Caption:	LAW OFFICE OF DANIEL S. SIMON VS. DIST. CT. (EDGEWORTH FAMILY TRUST) C/W 77678/78176	**Court:**	Supreme Court
Consolidated:	77678*, 78176, 79821	**Related Case(s):**	77678, 78176
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444, A767242	**Classification:**	Original Proceeding - Civil - Mandamus/Prohibition
Disqualifications:	Parraguirre	**Case Status:**	Screening Completed
Replacement:		**Panel Assigned:**	Panel
To SP/Judge:		**SP Status:**	
Oral Argument:		**Oral Argument Location:**	
Submission Date:		**How Submitted:**	

+ Party Information

Docket Entries

Date	Type	Description	Pending?	Document
10/17/2019	Filing Fee	Filing fee paid. E-Payment $250.00 from James R. Christensen. (SC)		
10/17/2019	Petition/Writ	Filed Petition for Writ of Mandamus or Prohibition. (SC)	Y	19-43116
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 1 of 9. (SC)		19-43117
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 2 of 9. (SC)		19-43118
10/17/2019	Appendix	Filed Appendix to Petition		19-43119

		for Writ - Volume 3 of 9. (SC)	
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 4 of 9. (SC)	19-43120
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 5 of 9. (SC)	19-43121
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 6 of 9. (SC)	19-43122
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 7 of 9. (SC)	19-43123
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 8 of 9. (SC)	19-43124
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 9 of 9. (SC)	19-43125
10/28/2019	Motion	Filed Petitioner's Motion to Consolidate Writ and Appeal (Nos. 77678, 78176 & 79821). (SC)	19-44210
11/15/2019	Order/Procedural	Filed Order Partially Dismissing Cross-Appeal, Granting Motions to Consolidate, Directing Answer, and Regarding Briefing. Accordingly, "the cross-appeal from the November 19, 2018, decision and order on motion to adjudicate attorney lien is dismissed." The cross-appeal shall proceed with respect to the October 11, 2018, decision and order on special motion to dismiss. The Law Office of Daniel S. Simon has filed motions to consolidate the writ petition in Docket No. 79821 with the consolidated appeals in Docket Nos. 77678 and 78176. Cause appearing, the motion is granted. Docket Nos. 77678 and 78176 are hereby consolidated with Docket No. 79821. In the original petition for a writ of mandamus filed in Docket No. 79821, petitioner challenges a district court order adjudicating an attorney lien. Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Daniel S. Simon and The Law Office of Daniel S. Simon shall have 30 days from the date of this order	19-46946

		to file and serve the combined answering brief on appeal and opening brief on cross-appeal. Edgeworth Family Trust and American Grating, LLC, shall have 30 days from service of the combined answering and opening brief to file and serve a single document containing a reply brief on appeal, an answering brief on cross-appeal, and an answer, including authorities, on behalf of respondents in Docket No. 79821, against issuance of the requested writ. Daniel S. Simon and The Law Office of Daniel S. Simon shall have 30 days from service of the combined reply brief, answering brief, and answer to file and serve a reply brief on cross-appeal. Nos. 77678/78176/79821. (SC).	
12/11/2019	Motion	Filed Motion for Extension of Time for Filing Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal. Nos. 77678/78176/79821. (SC)	19-50142
12/11/2019	Notice/Outgoing	Issued Notice - Motion Approved. Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal due: January 15, 2020. Nos. 77678/78176/79821. (SC)	19-50177
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 1 of 11. Nos. 77678/78176/79821. (SC)	20-01985
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 2 of 11. Nos. 77678/78176/79821. (SC)	20-01988
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 3 of 11. Nos. 77678/78176/79821. (SC)	20-01989
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 4 of 11. Nos. 77678/78176/79821. (SC)	20-01990
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 5 of 11. Nos. 77678/78176/79821. (SC)	20-01991
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 6 of 11. Nos. 77678/78176/79821. (SC)	20-01992
01/15/2020	Appendix	Filed Respondent/Cross-	20-01993

		Appellants' Appendix - Volume 7 of 11. Nos. 77678/78176/79821. (SC)	
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 8 of 11. Nos. 77678/78176/79821. (SC)	20-01994
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 9 of 11. Nos. 77678/78176/79821. (SC)	20-01996
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 10 of 11. Nos. 77678/78176/79821. (SC)	20-01997
01/15/2020	Appendix	Filed Respondent/Cross-Appellants' Appendix - Volume 11 of 11. Nos. 77678/78176/79821. (SC)	20-01998
01/15/2020	Brief	Filed Answering Brief on Appeal and Opening Brief on Cross-Appeal. Nos. 77678/78176/79821. (SC)	20-02005
01/16/2020	Motion	Filed Motion for Leave to File Brief of Amicus Curiae of National Trial Lawyers in Support of Daniel S. Simon and The Law Office of Daniel S. Simon; and In Support of Affirmance of the Dismissal of the Conversion Claim. Nos. 77678/78176/79821. (SC)	20-02131
01/16/2020	Brief	Filed Brief of Amicus Curiae of the National Trial Lawyers in Support of Daniel S. Simon and The Law Office of Daniel S. Simon; and In Support of Affirmance of the Dismissal of the Conversion Claim. Nos. 77678/78176/79821. (SC)	20-02132
01/16/2020	Other	Justice Ron Parraguirre disqualified from participation in this matter. Disqualification Reason: Law Firms. (SC)	
01/28/2020	Motion	Filed Respondent/Cross-Appellants' Motion for En Banc Review. Nos. 77678/78176/79821. (SC)	20-03823
01/30/2020	Order/Procedural	Filed Order Granting Motion. The unopposed motion of the National Trial Lawyers to file a brief of amicus curiae in support of Daniel S. Simon and the Law Office of Daniel S. Simon is granted. NRAP 29. The amicus brief was filed on January 16, 2020. Nos. 77678/78176/79821. (SC)	20-04149
02/06/2020	Order/Procedural	Filed Order Denying Motion. Daniel S. Simon	20-05096

		and the Law Offices of Daniel S. Simon have filed a motion for en banc review of these matters. This court will decide whether en banc review is appropriate once briefing is completed. Accordingly, the motion is denied without prejudice at this time. Nos. 77678/78176/79821. (SC)	
02/14/2020	Brief	Filed Appellant's Reply Brief, Answering Brief to Cross Appeal, Answer to Writ, and Response to Amicus Brief. Nos. 77678/78176/79821. (SC)	20-06285
03/05/2020	Motion	Filed Respondent/Cross-Appellants' Motion for Extension of Time for Filing of Reply Brief on Cross-Appeal and Reply in Support of Writ Petition. Nos. 77678/78176/79821. (SC)	20-08846
03/16/2020	Order/Procedural	Filed Order Granting Motion. The Law Office of Daniel S. Simon and Daniel S. Simon shall have until April 16, 2020, to file and serve a combined reply brief on cross-appeal and reply in support of the petition for a writ of mandamus. Nos. 77678/78176/79821. (SC).	20-10199
03/28/2020	Appendix	Filed Respondent's/Petitioner's Appendix to Reply. Nos. 77678/78176/79821 (SC)	20-11932
03/28/2020	Brief	Filed Reply Brief on Cross-Appeal and Reply in Support of Petition for Writ of Mandamus.Nos. 77678/78176/79821. (SC)	20-11933
03/30/2020	Case Status Update	Briefing Completed/To Screening.Nos. 77678/78176/79821. (SC)	

Combined Case View

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 XVII** **BATES NO. AA003291 - 3522**

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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
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **APPENDIX TO EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637** **VOLUME 2**

COMES NOW Defendants, BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC by and through its counsel of record MESSNER REEVES, LLP and hereby submits its Appendix to Edgeworth Defendants' Special Anti-Slapp Motion to Dismiss Plaintiff's Amended Complaint Pursuant to NRS 41.637, Volume 2.

Exhibit	Description	Page Numbers
U.	Transcript of Testimony Referenced in Simon Amended Complaint.	0211-0396
V.	Plaintiffs' Motion for En Banc Review, dated January 28, 2020.	0397-0403

DATED this 27th day of August, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch, Esq.

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Las Vegas, Nevada 89148
Attorneys for Defendant American Grating, LLC

CERTIFICATE OF SERVICE

On this 27th day of August, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **APPENDIX TO EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637 VOLUME 2** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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Employee of MESSNER REEVES LLP

“EXHIBIT U”

Electronically Filed
5/8/2019 2:03 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
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

Case Number: A-16-738444-C

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FOR THE DEFENDANT	MARKED	RECEIVED
None		

Las Vegas, Nevada, Tuesday, September 18, 2018

[Case called at 11:10 a.m.]

THE COURT: -- Edgeworth Family Trust versus Lange Plumbing as well as Edgeworth Family Trust versus Daniel Simon.

Good morning, counsel. It seems like it's been so long since we were all together.

GROUP RESPONSE: Good morning, Your Honor.

THE COURT: Are you guys ready?

MR. CHRISTENSEN: Yes.

MR. VANNAH: We are.

THE COURT: Okay.

MR. CHRISTENSEN: Judge, I have one quick matter before we call -- or I think it's John's witness first, right. And that was, I don't know if the Court recalls during the course of the last hearing a couple of times with Mr. Edgeworth, I suggested to him that he was not -- he was looking to counsel for answers. And Mr. Vannah took issue with me and I told him I apologize, and I went forward.

I went back and actually looked at an issue that's sort of central to this case and that is the timing of what the word outset means. You remember that whole cross of what outset means?

THE COURT: Uh-huh.

MR. CHRISTENSEN: And so, I got about a 15 second clip I'd like to show the Court before we get going.

THE COURT: Okay.

MR. CHRISTENSEN: This is my cross of Mr. Edgeworth on that issue and take a look at Mr. Greene.

[A Videotape played at 11:11 a.m., ending at 11:11 a.m.]

MR. CHRISTENSEN: See him shake his head, Your Honor?

THE COURT: I did.

MR. CHRISTENSEN: And so, I just want to point that out, so we don't have a repeat today with Mrs. Edgeworth.

MR. VANNAH: Are we not allowed to move our heads? I'm sorry; I didn't see it. I can't see that well.

MR. GREENE: Let me address that. Nobody has ever called into question my integrity. I don't coach witnesses. I don't do things the wrong way. I take extreme offense to that type of depiction of me. I practice above board and that is wrong for them to have asserted that. If my head moved, whatever; I did not coach my witnesses. I will not do it in the past, the present or the future. Your Honor, please understand that.

THE COURT: And I do, Mr. Greene. And I mean, this is where we are. I mean, Mr. Edgeworth testified for an extremely long period of time. So today we're going to let Mrs. Edgeworth testify. Mrs. Edgeworth, you're going to answer the questions honestly, to the best of your memory, to the best of what you remember and we're going to proceed on that today, okay.

MR. CHRISTENSEN: Understood, Your Honor.

MR. GREENE: Thanks, Judge.

THE COURT: Okay. Are you guys ready to call her?

MR. GREENE: Yes.

MR. CHRISTENSEN: Yes, ma'am.

THE COURT: All right. Mrs. Edgeworth. Okay. And as she's coming up, I want to talk to you guys about timing in the sense of timing.

MR. CHRISTENSEN: John and I both agreed we were going to ask you about that too when you came in, Your Honor, because when you scheduled today you sort of were being helpful to me thinking I had to go back upstairs and be in the murder trial with Judge Herndon, which I'm in, but he agreed to take today dark I think at your request.

THE COURT: He did do that on Friday. Because I spoke with Judge Herndon about a day or two right after we finished this hearing last time and I had asked him if he would go dark with it and he said 12:30. So I -- we were under the impression this would be over by 12:30, you would leave, and then there would be closing after you were gone.

MR. CHRISTENSEN: Yes, ma'am.

THE COURT: I spoke with Judge Herndon again on Friday because he was under the impression that you were doing the closing, so he was basically saying, I'll do whatever you guys want me to do. I just need to know so I can tell my jury and so I can plan accordingly. So yes. He is willing to be dark today so that you can be here.

But in regards to scheduling, I wanted to let you guys know, because as we were waiting for Judge Herndon, because he's in trial right now. So, I had to wait for him to take his lunch break to return my calls on Friday. I had my law clerk reach out to Mr. Vannah's office, and I said, talk to Mr. Greene or Mr. Vannah, not an assistant, because I

wanted some sort of timing as to whether 12:30 would work for everybody or how it was going to go. And my law clerk was under the impression that this testimony from Mrs. Edgeworth is going to take three to four hours.

MR. VANNAH: With cross-examination there's no doubt.

THE COURT: And so, I mean, this is where we are. I mean, this hearing has been going on for several days. This hearing is ending today. So, if we get up and until 4:00 -- you guys have the remainder of today. And my staff has to take a break for lunch at some point, but other than that we have the whole day. But if it's 4:30 when you guys get done questioning her, then we're going to have to close in writing, because I don't want this to keep going on. I'm not going to remember what everybody said. I'm not going to remember what happened and that's not fair to anybody.

So, if we don't have time to do oral closing arguments today this -- we will close in writing by the end of the week in this case.

MR. VANNAH: I have a suggestion anyway in that regard.

THE COURT: Okay.

MR. VANNAH: Jim and I talked about it, and I don't think we care one way or another. This is the kind of the case, there's no way we'd be able to do closings today no matter what happens. So why don't we just close in writing? Because this is a document intensive case. It's --

THE COURT: And either way is fine with me. I didn't know if you guys would prefer that, but I just wanted to let you know that this is

the only opportunity I have this week for you guys to get this done. I have hearings for every day of the remainder of the week and I don't want to pass this out until the middle of October when I have forgotten what everybody's said.

MR. VANNAH: It's a little more work on us, but there's no way -- there's no possible way to do it.

THE COURT: Okay.

MR. VANNAH: And so, I -- and Jim said he has no vested interest one way or another. I've prepared a closing, but I don't see how I can even close within two hours.

THE COURT: Well, yeah. And I'm not going to let one side go and not the other side.

MR. VANNAH: Right.

THE COURT: So, if there wasn't time for them. So, what we'll do right now is we'll plan on taking Ms. Edgeworth today -- Mr. Christensen, I'm so sorry; I didn't even hear from you. Do you have anything to add?

MR. CHRISTENSEN: I do, Your Honor.

THE COURT: Okay.

MR. CHRISTENSEN: I told Mr. Vannah I don't have a vested interested, but I also said let's see what happens. If we run through this thing in an hour, which agreed, may be a little, you know --

THE COURT: It may be a little optimistic on your part but --

MR. CHRISTENSEN: That may be a fantasy on my part. I don't know.

THE COURT: -- we can always hold that hope.

MR. CHRISTENSEN: But we'll just see what happens, and we can address it afterwards. I've got a closing. I can shorten it down; I can go on. You know, whatever the Court wants.

THE COURT: And I'm totally fine with that. I know I plan to go until like 12:30, start with her, and then we'll break for lunch, and then we'll come back. And I'm totally fine with addressing where we are when we finish with her as far as timing.

MR. CHRISTENSEN: Okay. Thank you, Your Honor.

MR. VANNAH: It just seems like we also have, you know, with the legal arguments and everything else, tying it all together, it just makes a lot of sense to -- I thought that I could -- you know, the facts are the facts --

THE COURT: Right.

MR. VANNAH: -- pretty much. I mean, there's some devil in the details as everybody's said. And there are a lot of details that need to be ferreted out. It'd take forever to do a closing on this case.

THE COURT: No. And I totally agree with that. And so, I'm okay with just addressing. I'm not as optimistic as Mr. Christensen that we'll get anywhere near closing today, but if for some reason we can address that this afternoon when we get there.

MR. VANNAH: Let's put it this way. If I did closing, I know you don't want to do that, there's no way I could -- I know how many questions he's got, I know how long it's going to take. I assume there's going to be some cross-examination. And with my closing I would leave

them no time at all. And I know you don't want to do that so.

THE COURT: No. And I appreciate -- and Mr. Greene was very candid with my law clerk. When he thought there was going to be more as he was prepping, he let her know that it would take more time. So, I'm very well aware of how long you guys estimate this is going to take, but we'll just see where we are when we finish with her.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Okay. If you can raise your right hand, ma'am.

ANGELA EDGEWORTH, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. State and spell your name for the record.

THE WITNESS: Angela Edgeworth, A-N-G-E-L-A Edgeworth, E-D-G-E-W-O-R-T-H.

DIRECT EXAMINATION

BY MR. GREENE:

Q May I call you Angela?

A Yes.

Q Please introduce yourself to the Court and tell Judge Jones a little bit about yourself.

A I'm Angela Edgeworth. I live in Henderson. I've been a resident of Henderson since 2006. My husband and I are very active in the community. I'm the mother of two teenage girls. I am currently the president and cofounder of pediped Footwear.

Q Okay. Tell us a little about your family background if you will please.

A I was born in Canada and with my parents two immigrants, and basically grew up in Canada and moved to the U.S. Lived in Taiwan for a few years and moved to the U.S. a little bit more than 20 years ago.

Q Perfect. Are you are married?

A Yes, I am. Happily.

Q That man back there, Brian?

A Yes.

Q Okay. When did you guys meet?

A We met in University. So, I met Brian in 1992. So, I've known him for more than 25 years.

Q What did you study in college, Angela?

A Business administration and actuarial science.

Q What are your majors?

A Business administration and actuarial science.

Q Gotcha.

A Yeah.

Q Would you please share what your career background has been since you graduated?

A Sure. I worked in California, Costa Mesa in an art gallery for a few years, and then I went to Taiwan. I started my own cosmetics company there which I sold. I came back, and I worked in the family business for about eight years. And before when we got married my husband and I took over the family business. And we also started pediped Footwear at the same time, which was around 2004. So, I've been an entrepreneur for more than 20 years.

Q And what do you do for a living now?

A I'm president and cofounder of Pediped Footwear. And we make children's shoes for basically newborns up to age 12. And we've been recognized by the American Podiatric Medical Association and we've won numerous awards in the industry for quality and design excellence.

Q Do you have any time for hobbies and interests?

A Yes. I love to spend time with my family and my friends, and I take -- I partake in all of my daughter's volleyball activities and we travel.

Q An issue has arisen about what -- how you and Brian honor your obligations. So, let's describe for a moment on that topic some of your charitable work that you do.

A Sure. I currently sit on three boards. So, the first board I sit on is the Moonridge Foundation. It was founded by Julie Murray and Diana Bennett. They started Three Square, and the other board members include Staci Alonso who's the highest ranking SPP for Station Casinos, Punam Mathur, Marlo Vandemore who's the CFO for Bonotel. That foundation, basically what it does is we administer funds. So, for example, the October 1 fund, Zappos Cares, Downtown Cares, and we're responsible for holding two philanthropy summits a year, one in Las Vegas and one in Reno.

Also, I sit on the board for the International Women's Forum, which is an amazing and a collected group of women in town. It includes -- the members include Mayor Debra March, Mayor Goodman,

Nancy Houssels, Diana Bennett, Chief Justice Miriam Shearing, Jeanne Jackson who was the former president of Nike and the global initiative of IWF is to promote women in basically in leadership positions in the country and around the world.

I'm also on the committee which awards scholarships for the Carolyn Sparks award. So, we recently awarded two scholarships. One to Kelly McMahill who's the highest ranking female police officer in LVPD and who her husband is the undersheriff. And also, Marissia Bacha (phonetic) who is the director of Las Vegas Cares.

I also sit on the committee for the -- basically the nominating board committee for that organization as well. We also have scholarships for WRIN, the Women's Research in Nevada. And we recently hosted a meeting to promote women on corporate boards at the Boyd School of Law.

Thirdly I'm on the advisory council for Vegas Aces, which is a nonprofit my husband and I started. We created that volleyball gym when our girls were young and then we were practicing basically in squash courts. So, my husband converted a gym space in our warehouse to a volleyball facility. It's always been his dream to create a --

MR. CHRISTENSEN: Objection as to what somebody else's dream is. your Honor, that's hearsay. And they asserted the marital privilege in the last hearing so they can't talk -- she can't now talk about what her husband and her have ever talked about. They asserted and instructed Mr. Edgeworth to not talk about anything between the two of

them.

MR. GREENE: We didn't instruct to talk nothing between the two of them. If he wants to give a specific example as to a question that he asked --

MR. CHRISTENSEN: Sure.

MR. GREENE: -- that something was allegedly not provided, most assuredly then perhaps that could be limited to that. Or the option is if he wants to ask Brian about some question that he had about a marital privilege we can bring him right back up for five minutes and answer that question too.

MR. CHRISTENSEN: No, Your Honor. They made the decision to assert the privilege. It was done on the 28th of August at 12:25 p.m. Mr. Vannah asserted the privilege, marital privilege and instructed Mr. Edgeworth to not answer my questions about conversations between his wife and himself about her seeing attorneys. They asserted the privilege. Presumption attaches when you do that and instruct your client not to answer. And you can't use the privilege as a shield and a sword as the Court knows.

MR. GREENE: It was a privilege about what communications had been happening between attorneys and clients. That's the whole gist of that conversation. Mr. Edgeworth testified numerous times as to what he and his wife were talking about. This was -- they're plaintiffs in this case. They both have a vested interest in this case.

So, this case was about them. So, they've already shared information that they have talked about between each other. So, if we

want to limit the spousal privilege to discussions between attorneys then that's exactly what the privilege perhaps might have attached to at the time that it was raised. That's not the law.

MR. CHRISTENSEN: Judge, just let me read Mr. Vannah's objection. "You are not allowed to know what his wife told him." That's from Robert Vannah. That is an assertion of the privilege, instructed his client to not answer what -- Mr. Edgeworth what Mrs. Edgeworth told him. The assertion of the privilege is done once they've done it.

I wasn't allowed to inquire as to anything Mr. Edgeworth and his wife talked about because Mr. Vannah asserted a privilege which he has every right to do. It was a valid assertion. Marital privilege exists in Nevada. There's two kinds as the Court knows. Once they assert it they are judicially estopped from thereafter having the spouses talk about what they spoke with each other about. That's the law. I didn't assert the privilege, they did.

MR. GREENE: It was a limited assertion of the privilege as to discussions between attorneys. We had that conversation. That was a contested issue, Your Honor.

THE COURT: And. Mr. Christensen, do you have the transcript? Because I remember Mr. Edgeworth asserting the privilege, but I don't remember the question that he was asked or exactly all of the term -- the argument that was made on that.

MR. CHRISTENSEN: I think I have the video, Judge, that I can play for you actually.

THE COURT: Please do, because I --

MR. CHRISTENSEN: I actually have that.

THE COURT: -- I remember the privilege but I don't remember --

MR. CHRISTENSEN: And I can read it to you.

UNIDENTIFIED SPEAKER: Here is.

MR. CHRISTENSEN: You got it, Ash?

UNIDENTIFIED SPEAKER: Yeah.

MR. CHRISTENSEN: Go ahead and play it for Her Honor.

UNIDENTIFIED SPEAKER: Oops, I'm sorry. Hold on.

[A Videotape played at 11:25 a.m., ending at 11:25 a.m.]

MR. CHRISTENSEN: So, you see, Your Honor, I asked for communications. Mr. Vannah under the spousal privilege instructed him to not answer those communications between him and his wife. Your Honor then inquired did he have, Mr. Edgeworth, any independent knowledge separate and aside from his wife. He said no and I was forced to end my examination.

So that's the shield that they rightfully assert. They have a right to assert marital privilege. They now can't use it as a sword and have Mrs. Edgeworth come in to try to clean up what they wouldn't let Mr. Edgeworth talk about. Just can't do it. They're judicially estopped.

THE COURT: Mr. Greene.

MR. GREENE: Everything about that line of questioning had to do with conversations that the parties had with attorneys.

THE COURT: Right. But you guys weren't asserting the attorney/client privilege. You asserted the spousal privilege in regards to

conversations between herself and her husband about these attorneys that they talked to and what was said to these attorneys.

MR. GREENE: That's because he was trying to get at the discussions that Angela had with attorneys. I'm trying to shield them from being able to get into protected communications that the clients and attorneys have.

THE COURT: Right. And I mean and had you guys said attorney/client privilege then I totally understand that, but you guys asserted a spousal privilege, which is a conversation he had with her. That -- I mean, I understand that Mr. Christensen's line of questioning when you asserted the privilege was about attorneys, but you didn't assert an attorney/client privilege. You asserted a spousal privilege.

MR. GREENE: And Judge, each individual in a marriage holds the privilege. So, she doesn't need to assert the privilege and we're not asserting it on her behalf. She can prevent her husband from discussing things that they talk about if she chooses. He can prevent her if he exercises the privilege. She hasn't exercised the privilege. She does not exercise the privilege.

We're not invoking the privilege on her behalf. He has plenty of opportunity to cross-examine Ms. Edgeworth, and he's going to, on any topic that he wants. So, holder of the privilege is a viable issue here. She holds it too. She has not invoked it.

MR. CHRISTENSEN: Judge, actually in Nevada the rules regarding privilege are different than what Mr. Greene is citing to, which is the federal rule on privilege. There is the holder, and there's the

asserter privilege. They just across the board asserted marital privilege and ended my examination. My examination wasn't, tell me what the lawyer said. My question was, do you know one way or another if your wife talked to lawyers before she met with the Vannah firm and after you quit listening to Mr. Simon.

That's not an attorney privilege question. Did she talk to lawyers and who were they? Marital privilege, don't let him answer, you saw, shut me down. Ended my cross. They cannot -- the law is abundantly clear. They are estopped from now coming in and trying to unwind what Mr. Edgeworth, at the advice of counsel, did with Mrs. Edgeworth. She can't talk about what her and her husband discussed.

THE COURT: So, I mean, she -- you asserted the privilege with him, so how can she talk about their conversation?

MR. VANNAH: She has her own privilege.

MR. GREENE: Yes. She holds her own privilege.

THE COURT: So why would he then not be able to talk? Why would you guys object to him talking about the exact same thing that you're now asking her to talk about?

MR. GREENE: I'm asking --

THE COURT: It was objectionable when Mr. Christiansen asked him about it, but now you want her to talk about?

MR. VANNAH: Yes.

MR. GREENE: Yes. And I'm also not asking her about what discussions Brian had with attorneys before we got involved in the case. It's a totally different -- that was a narrow focus, narrow pointed series of

questions. It has nothing to do with this line of questioning that I'm asking Angela about. Yes. She does hold the privilege. She's not invoking it.

MR. VANNAH: John, if there's any ambiguity -- I mean, if you want to him back on the stand and ask anything they want about what they talked about, I don't care.

MR. GREENE: Yeah. We presented that option as well.

MR. VANNAH: Well, tell her.

THE COURT: Well, I understand that. But you guys have already asserted the privilege with him so you can't now go back and say we're going to remove it, and we're going to call him back to testify. I mean, you asserted the privilege and now you're basically saying, we wanted you to prevent Mr. Christensen from letting him talking about this, but we want her to talk about that exact same thing.

MR. GREENE: No, Your Honor. I'm not asking her about conversations that Brian had with her about lawyers that he spoke to prior to the time that we got involved.

THE COURT: So, it's your position the privilege only applies to her talking to him about lawyers that she talked to.

MR. GREENE: That's the objection that we were -- we tried to get the objection sustained on attorney/client privilege. And we also invoked the privilege on attorney discussions that they had -- or discussions they had with attorneys before we got involved. That was the narrow focus of this question. That's the only aspect of the privilege that was asserted pertaining to Brian's testimony, that's it.

MR. CHRISTENSEN: No, Judge. They ended my examination of Mr. Edgeworth. I asked a question, and I intended to go into a slew of things he and his wife had talked about. Mr. Vannah asserted the privilege that I couldn't talk to him about it. I sat down. Mr. Vannah has that right. That was the end of it. They're judicially estopped from now unwinding that assertion.

THE COURT: Well, I mean, she can testify to something she has independent knowledge of, but she can't testify to something he told her because you guys have invoked that privilege. And this is about the volleyball. Wasn't this about -- I'm sorry; I forgot what the question was you asked. Wasn't this about him doing some volley -- the volleyball place?

MR. GREENE: It's about charitable backgrounds, talking about her background at this particular point.

THE COURT: Okay.

MR. GREENE: So --

THE COURT: Okay. Well, can we move on from that, Mr. Greene? Because I'm not really sure how that applies to what's owed to Mr. Simon and the legal work that he did.

MR. GREENE: Well, I understand that, Your Honor. But they spent time and volumes and words in their briefs for lack of a better word, sliming the Edgeworths. Calling them dishonest, that they don't pay their bills, that they're -- that they can't be trusted. Most assuredly their charitable background, their giving, their conduct towards others is certainly relevant to help unwind some of that stain that the defense put

on.

THE COURT: Well, let me -- I understand your desire to do that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging them based on whether or not they gave money to Three Square. I'm here to make a call about the legal work that was done by Mr. Simon and what is owed to him. That is the only thing I am here to pass judgment on.

I'm not here to pass judgment on who's passing out canned goods at Three Square. I'm doing it every other week in all reality, but that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of fact. I'm not a jury. I'm not here to discuss things that are outside the legal realm. I'm just here to decide what is going to be done with what's owed to them, what's owed to Mr. Simon, who needs to get paid.

DIRECT EXAMINATION CONTINUED

BY MR. GREENE:

Q Angela.

A Yes.

Q When did you come to know the Simons?

A I met Alaina (phonetic) when my daughter was in preschool and we've known them for quite a long time. Alaina helped me a lot when my father passed away. She was a good friend, and I considered her to be one of my closest friends. We took family vacations together and you know, our kids knew each other since preschool.

Q Did you ever at that time gain an understanding as to what her husband Danny did for a living?

A Yes. I understood he was a personal injury attorney.
Q Let's go into your understanding of, just a cliff notes version, of what happened with the flood and how you became involved in that?
A Well, what happened with the flood was we came home in April of 2016 and we came home, and the house had flooded. And apparently the water ran down the house and caused damage, about $500,000 worth.
Q Did you feel that you would be able to resolve this issue without involving lawyers?
A Initially we were hoping that it would, but it didn't turn out that way. So, we -- not at first. We were hoping but it didn't happen that way.
Q What was the first thing that was discussed or decided upon with you with getting legal help involved to help address this flood and the ramifications?
A Sure. The insurance company actually recommended that we speak to an attorney Craig Marquis.
Q Did you speak with him?
A Yes.
Q Okay. Did you decide to go with him?
A No.
Q Why not?
A Because I didn't like his technique first, and I didn't get a good vibe from him. And then also at the end of the day I didn't want to work with somebody that I didn't know and didn't have any experience

with.

Q What hourly rate did he quote you?

A $500 an hour.

Q Okay. What other options were available to you as a business person for legal help following this flood?

A Mark Katz who's our general business attorney and Lisa Carteen who's a friend and attorney of mine for almost 20 years.

Q Did you consider hiring either of those attorneys to help out following this flood?

A Yes, we did.

Q What was behind the discussions or the decision making on whether or not they were going to be involved?

A Well, Alaina was a friend of mine, and so I suggested to Brian that he call Danny, and that's where that began.

Q But how about with Mark Katz and Lisa Carteen, what was -- what do you recall was maybe the rule out, or the hey, maybe they're not going to be the ones that we're going to be choosing?

A Lisa's based out of California. And Mark was busy. Sometimes he's unavailable, and he wasn't available at that time.

Q What was Mark's hourly rate at that time?

A $250 an hour.

Q How about Lisa?

A $415 an hour.

Q Thank you.

MR. CHRISTENSEN: I'm sorry; I just didn't hear the last

number, John.

THE WITNESS: 415.

MR. CHRISTENSEN: Thank you, ma'am.

MR. GREENE: Yeah. But that was --

THE COURT: And what was Mr. Katz?

THE WITNESS: $250 an hour.

THE COURT: 250.

BY MR. GREENE:

Q In your business lives, or life, under what circumstances have you needed to reach out and retain legal counsel in the past?

A Yes. On many occasions. We have occasional things come up such as business contracts, patents, trademarks, attorneys with different patents that we hold in litigation.

Q What law firms -- you mentioned Mark, you mentioned Lisa. What law firms have you retained in the past to assist in your business dealings?

A Baker Hostetler, Luis Rocha and probably 20 or more so attorneys throughout our years doing business.

Q Do you have an understanding as to what the highest hourly rate that you would pay an attorney or a law firm prior to getting involved in this flood litigation?

A Yes. The highest rate we ever paid was $475 an hour.

Q And who was that for?

A That was for an IT litigator who was a specialist. She was based out of their St. Louis office and she was a trademark specialist in

litigation. And then also Gary Rinkerman who was a trademark specialist out of the D.C. office, and he worked for the U.S. Trade Commission. So, he had a lot of expertise when we were in a patent and trademark litigation case.

Q You've heard a lot about fee agreements as you've been sitting in the gallery in this case. What type of fee agreements have you entered into in the past with these law firms you just mentioned to the judge?

A All hourly.

Q Did you ever have a contingency fee agreement presented to you prior to this flood litigation?

A Never.

Q So when you understood from your friendship with Alaina that Danny was an attorney, walk us through the steps that led to the suggestion of Danny becoming legally involved in this case.

MR. CHRISTENSEN: Objection; to the extent it calls for hearsay or spousal communications.

BY MR. GREENE:

Q Do you have an independent understanding as to how Danny --

A I do, yes. I had suggested to Brian that he call Danny.

MR. CHRISTENSEN: Judge, objection. I just asserted the spousal -- we can't talk about what they instructed their other client to not talk about to me last week.

MR. GREENE: No, no, no, no. The spousal privilege is what

Brian would have said to her. That's the whole point that he just spent all the time on. She just said she has an independent understanding and she suggested to her husband.

THE COURT: She can testify to what she did. She suggested he call Danny.

BY MR. GREENE:

Q Is that what happened?

A Correct.

Q Do you have an understanding as to what fee was eventually reached?

A I do.

Q What is that understanding?

A It was $550 an hour.

Q When did you gain the understanding that Danny was going to be charging 550 an hour for the work that he performed on this case. Brian and I had a conversation before the lawsuit was actually filed about the fee. And I remember it because I wasn't happy about the fee. It was high in my estimation. $550 was really expensive in my mind, but we agreed because Alaina was a friend of mine and also because he had already started working on the case. And at the time I thought it would be maybe $5,000, $10,000 and then we'd be done.

THE COURT: This is before the original lawsuit, or the lawsuit against Danny Simon?

THE WITNESS: No. The very first lawsuit when we filed against Viking.

BY MR. GREENE:

Q Do you have an independent recollection Angela, as to what month and what year these concerns became up on your frontal lobe?

A Yeah. It was in June of 2016.

Q Despite those concerns what happened?

A Despite those concerns we decided to proceed based on friendship. And you know, I would agree with Mr. Christensen that no good deed goes unpunished. I mean, that's what we were thinking. I just thought like we would, you know, write a few letters and then we'd be done with it. And you know, we'd get our money for the damages.

Q Why did you believe Angela, that this was going to be resolved with spending five to tenish thousand dollars on Mr. Simon to get this thing wrapped up?

A I thought it would just be when you just send a few letters to the insurance company to kind of let you know that they're -- we're serious, and we wanted them to just wrap it up and that we -- you know, that we had legal representation that could help us. And so, I just thought it would be a few letters. I had no idea what was about to happen.

Q At any time that you had be in the presence of Danny, or received emails from Danny, did he ever suggest to you prior to November of 2017 that any work was being performed on a contingency fee basis?

A No, never.

Q If, knowing your business background and the way you work,

if a contingency fee would have been suggested back in June of 2016 what would you have decided to do?

A No. There's no way.

Q Why not?

A Because it was a property damage case. There was no upside to this case. I mean, we were just hoping to get our damages claim back, which was around half a million dollars. So, it didn't make sense to do any type of contingency fee at that time.

Q Do you know whether -- we're so loose, sorry. Did Danny ever present an hourly fee agreement for either you or Brian to sign?

A He didn't, but he should have.

Q Why do you say that?

A Because usually in -- you know, when we start working with attorneys, but maybe smaller firms don't do this, but at least the large firms that I've worked at we will generally sign an engagement letter of some type and they'll go over, you know, a range of fees. So, I'm used to that. Sometimes with the smaller attorneys, if they're just one or two person offices they might just verbally tell me what the rate is, and then we agree to it, and then they send me a bill.

Q And then what happens?

A And then I get a bill, and then I pay the bill. I review it to make sure that it's okay and I pay it.

Q Knowing you as you know you, with your business background if -- would you have ever entered into -- or let me just strike that. Knowing you as you know and the business that you've done in the

past, would you have ever entered into a fee agreement where the terms were unknown?

A There is no way I would ever do anything like that. I like things 100 percent crystal clear. There's absolutely no way that I would ever do that.

Q Did Danny ever tell you in person, by email, snail mail, that we're just going to wait until the end to decide what a fair fee is?

A Never.

Q If Danny would have ever told you that, what would you have done in response?

A I wouldn't have accepted that.

Q Why is that?

A It's unheard of. I -- how can you decide what's fair at the end? I mean, you have to know what the deal is up front. You know, we need to have an agreement right up front so everybody's 100 percent clear, so we're not stuck in the situation like we are right now.

Q Do you have an understanding as to how Brian conducts business?

A I do.

Q Knowing Brian as you know him, do you have an opinion whether or not he would ever enter into an agreement for the payment of a fee where it was to determine at the end what a fair fee would be?

MR. CHRISTENSEN: Objection. Speculation.

MR. GREENE: I just asked if she had an opinion of Brian as she knew him.

THE COURT: Well, you haven't laid the foundation as to how she knows him as a business man and what type of agreements he entered to.

MR. GREENE: Sure. Can I ask those questions, Judge?

THE COURT: Yeah.

BY MR. GREENE:

Q Have you had the opportunity in your past Angela, to gain an understanding as to how Brian conducts his business?

A Yes. I've known Brian for 25 years, and we started Pediped together. He was actually the one who came over and took over my father's business after my father became ill. So, we've been working together -- we work together not only, you know, at home but in our business as well. We see each other every day, so we work together in a business capacity as well.

Q Have you had an opportunity as you watch Brian in his business transactions have seen him or watch his negotiations with vendors?

A Yes. He's very tough.

Q Have you gained an understanding as to how he negotiates terms and payments for agreements that he enters into?

A Yes. They're very clear.

MR. GREENE: Is that a sufficient enough foundation, Your Honor?

THE COURT: Yes. She can have an opinion.

BY MR. GREENE:

Q And back to that original question. Knowing Brian as you know him in his business dealings, would he have ever entered into an agreement for the payment of fees when the amount of the fees to be paid was to be determined at some later date based upon some fair amount?

A Absolutely not. It's unheard of.

Q Did you choose to be actively involved, or whatever word would you describe in this -- in the flood litigation, or how would you describe your involvement in the flood litigation?

A I knew what was going on, but I wasn't actively involved in the day to day. I mean we -- there's no way two of us could be as involved as my husband was in this case. I have a family to run, a business to run, so I had to take care of a lot of things, but he would tell me a lot about the case, so I knew a lot about the case, although I wasn't actively involved in doing all the things that he did.

THE COURT: And Mr. Greene, I'm sorry. I don't mean to cut you off, but I have a question in regards to the last line of questioning, I was just waiting for you to finish.

MR. GREENE: I'm sorry.

THE COURT: You said that you would have never entered into any sort of agreement where you are going to pay later and distribute the fee, and you said there was never a fee agreement, not even for the hourly fee, is that what you testified to?

THE WITNESS: No.

THE COURT: You testified you understood that Mr. Simon

was going to be paid 550 an hour, but there was never a written agreement for the 550?

THE WITNESS: Right.

THE COURT: So, at any point, did you say to Danny Simon, hey, I've never done business like this before, I need you to write something down?

THE WITNESS: I've done business like that before with smaller attorneys.

THE COURT: Okay. I thought you testified that you hadn't. I'm sorry.

THE WITNESS: Yeah. No, I -- I have --

THE COURT: Okay.

THE WITNESS: -- with attorneys that are maybe one or two in their office. They don't send a written agreement over.

THE COURT: Uh-huh.

THE WITNESS: I mean usually the larger firms, because they want to run a check to make sure there are no conflicts of interest. So, I'm used to signing an engagement letter with a larger firm, but the smaller attorneys, if there are one or two, no, I'm -- I'm used that.

THE COURT: Okay.

THE WITNESS: So usually it's a verbal, and then I get a -- I get a fee or an invoice later, and then we pay the invoice.

THE COURT: Okay.

Sorry, Mr. Greene. I'm sorry, I had to clear that up.

MR. GREENE: No, please, anytime.

BY MR. GREENE:

Q So, to follow up on what the Judge just asked, at any of those instances with those one or two lawyer firms, where there's been an oral agreement for fees and an hourly rate was quoted, and an invoice is sent based upon that hourly agreement, and then it's paid, had you ever had one of those other lawyers, pursuant to the oral agreement, come back and ask to change the terms of the agreement?

A Never.

Q How many times, do you think in the past in your business life, Angela, that you had dealt with that kind of a situation where it was that one or two lawyer boutique firm, and there was simply an oral agreement for fees?

A I would say at least ten, ten, 15.

Q Those are all prior to this incident?

A Yes.

Q Any since?

A At least ten or 15.

Q Okay. Now we saw a presentation where there were a lot of boxes brought into the court -- a lot of documents in this case. Is that your understanding?

A Yes.

Q Do you have an understanding as to what -- if any, documents that you looked at throughout this litigation to keep yourself apprized?

A From time to time, we had a -- we had access to go shared

Google-dot file, and so from time to time, Brian would ask me to like look at some things and help him reference it. I didn't want to do it, but I did it just to help him out. So, from time to time, yes.

Q Do you have an estimation on the number of times that you actually went in and delved in to gain access to the documents that were being generated in this case?

A I probably went in a handful of times, but, you know, Brian would usually print things out for me, and then he would basically have it laid out, and he would say hey, can you go through these? Can you match these numbers up? Can you just look at this, because he's been looking at it too much, that just to get a fresh pair of eyeballs.

Q Okay. And that was a share point that -- that Danny's office kindly provided for the two of you?

A Yes.

Q Okay. Just to -- other than what you just mentioned, if there's anything in addition that you, personally, did to stay actively involved in the case, other than looking at the share point and some of the documents that -- that Brian would print out. Anything else that you can share with the Judge that you did to stay advised?

A I looked at the bills, because in our office, the -- the bills will come across my desk with procedure on how -- on how invoices are paid. So, Brian would sign off on the invoice. They would go get printed by the accountant, and then they would come across my desk for a final check. So, in that regard, I was involved.

He would, you know, he would tell me about the case all the

time, especially when he made discoveries or found new things, or he spoke to new people. So, along the way, I had heard a lot of new discoveries that were being made about the case.

Q We saw some spreadsheets earlier in this case, as well. Do you have any recollection of looking at any of the spreadsheets that were generated, activations, fees, what -- whatnot. Have you looked at those documents?

A Yes.

Q Let's talk about some of these activations for a moment about some prior testimony that was offered, okay? Did you hear Ms. Ferrel testify that she found over 90 activations in Great Britain?

A Yes.

Q Do you have an understanding of whether or not that testimony is true?

A I do have an understanding.

Q And what is your testimony on that?

A It's not accurate. Even I know that the activations, she's misunderstanding an email that was basically sent about 90 activations in the U.S. So, they did not occur in the U.K., and, in fact, there's only 11 identified activations in the U.K., and that, like at the end of the case, there were 20. So that's not accurate.

Q Do you have an opinion as to who found those activations?

A My husband did.

Q And how do you know that?

A Because he would tell me whenever he found them.

MR. CHRISTIANSEN: Objection. Hearsay, then, Your Honor, it's privileged. If he's telling her stuff, they can't assert it. She can say what she knows independently, that's the rule.

THE COURT: Does she have any independent knowledge of this without something Mr. Edgeworth told her?

MR. GREENE: That was going to be my next question, Judge.

THE COURT: Okay. Because she was about to -- she said he said, so she was about to get into something he told her.

BY MR. GREENE:

Q So other than what your husband --

A Yes.

Q -- told you, do you have any independent knowledge as to -- as to who found these activations?

A He did.

Q And how do you know that?

A I saw him do all the work, and we discussed the activations every single time that there was a --

MR. CHRISTIANSEN: Objection.

THE WITNESS: -- a new activation.

MR. CHRISTIANSEN: Hearsay, spousal privilege. They cannot get into it.

BY MR. GREENE:

Q Other than this in-court testimony you heard from Ms. Ferrel and from Danny, did you ever hear them say that they found these

activations in the U.K.?

A Never.

Q Do you hear them give credit to Brian for finding these activations?

A I'm sorry, I didn't hear you.

Q Did you ever hear them outside of this courtroom, give Brian credit for the work that he was doing in finding these activations in Great Britain, Los Angeles, and, you know, other parts of this world?

A No.

Q Okay. Who is Harold Rogers?

A Harold Rogers is one of the largest installers of the BK457. He installed, I think, more than 50 percent of all of those heads around the world.

Q Did you ever have a chance to speak with him?

A No, I did not.

Q Were you aware how active Brian was --

A Yes.

Q -- in this flood litigation?

A Yes.

Q What did you observe?

A I observed him working all the time. He was basically consumed from January to November with this case. Weekends, weeknights, time away from family. When we went to dinner, it would be talk all about the sprinkler heads and torque and hinges. I think that's basically the entire life that we lived for those months. So -- and I saw

him working all the time, and we did a lot of things in the family without him during that time. I basically didn't have a husband during that time.

Q Let's shift gears for a moment and talk about the -- some of the invoices in this case that Mr. Simon's office generated and sent to the -- to you and Brian. Are you aware of -- you mentioned it came across your desk. Are you aware of the content of the invoices that Danny Simon's office submitted to you for payment?

A Yes.

Q Do you have any concerns with the content of the original four invoices that were submitted from December of 2000 -- or paid from 2016 until September of 2017?

A I was concerned because there was a lot of block billing in them and not a lot of detail. The invoices that I usually received from attorneys are very, very detailed. So, for one line, they might put five different descriptions of what it was for, even if it was a 15 minutes. So, this was a little bit different than what I was used to, so I was concerned.

Q Any other concerns that you had about the content of the invoices that were submitted and paid by you and Brian?

A I just seemed like because he didn't have a billing system, maybe he might have overexaggerated not on my -- not to my benefit.

Q What affect, Angela, do you remember that this flood litigation had on you and your family?

MR. CHRISTIANSEN: Objection, relevance.

THE COURT: Mr. Greene?

MR. GREENE: It has relevance, as she's going to be

answering shortly, on every aspect, including their finances, including their ability to conduct other business affairs, and that Danny Simon was well aware of it.

MR. CHRISTIANSEN: It still has absolutely no relevance as to what money of the 1.9 million dollars is in the joint trust account is owed to Mr. Simon and owed to the Edgeworth's, that's the issue.

MR. GREENE: Oh, wow. The thing is, is that three days of Brian Edgeworth being on for two days on the stand recently and limited to how much Danny is owed or not owed, pursuant to the work that he did or didn't put perform went far abreast of that.

So, this is her chance, she was injured in this -- in this case, Your Honor. This is not a huge diversion from a relevant issue of damages that they suffered in this case.

MR. CHRISTIANSEN: Judge, this isn't a personal injury case, this is an adjudication of an attorney's lien, and her mental anguish because she chose to not pay Mr. Simon and sue him instead, isn't relevant.

MR. GREENE: Wow. He's right, it's not a personal injury case at a 40 percent fee. He's dead right about that. It is, you know --

THE COURT: Hold on. One minute, I think that's where we're all -- but I think we have -- we need to limit this hearing, because I think the reason that we're in Day 5 is because there have been no limits on this hearing, this three-day hearing that now we're in Day 5.

The question was what effect did this have on her.

MR. GREENE: On the family, and it's a broad question.

THE COURT: It's a broad -- well, she can talk about the financial aspects of that, because as I previously explained, I'm not here to judge anyone. I'm here to get to the bottom of what is owed, what's been paid, what hasn't been paid, and what people are owed. She can talk about the financial effects of how this affected her family.

MR. GREENE: Okay.

BY MR. GREENE:

Q What financial effects did this litigation have on you and your family?

A It was very stressful. It was a very stressful time for us.

THE COURT: And you said -- I'm sorry, Mr. Greene, I don't mean to cut you off either, but we kind of moved on. And I'm sorry, I never know when you are done with one section.

You said you had concerns that the billing was exaggerated. Are these concerns that you have now or are these concerns that you had when you guys received, because I thought Mr. Greene was talking about the four original bills. Did you have concerns when you received those four original bills, or are these concerns you have after the January 2018 bill?

THE WITNESS: I had concerns back then, Your Honor.

THE COURT: Did you express those to Mr. Simon?

THE WITNESS: No.

THE COURT: Okay.

And I'm sorry, Mr. Greene.

MR. GREENE: Oh, no, Judge, this is your show.

THE COURT: Well, I am the trier of facts, so I think I can ask questions more than I can when we're in trial.

MR. GREENE: We just live in your world. No worries.

BY MR. GREENE:

Q Let's talk about the legal bills some more. Were you concerned about them?

A Yes, I was.

Q How so?

A I was concerned about the amount of money that we were paying. So, over the course of -- from December until November, we had paid out more than $500,000 in legal fees, which is a lot of money to pay in legal fees. And I had no idea where the end was going to be. So, you know, at that time, when you're right in the thick of it and you have no idea where, you know, if there's an end in sight for those legal bills. So, I was really concerned about that.

Q To his credit, only 370'ish-thousand was legal fees, part was costs. So, if we can just focus on that. Knowing that that was the amount of the fees, what other concern did you have about them?

A Well, 370 -- $330,000 over ten months, you know, it's $33,000 a month in legal fees, and it's a lot of money. I mean my greatest concern was just the financial stress that it was putting on the family at the time.

Q When you were seated in the gallery, Angela, did you hear Danny testify words to the effect that the payment, these invoices for

fees was optional?

A I heard this -- that, yes.

Q Do you have an opinion as to whether or not that's true?

A It's completely not true.

Q Did Mr. Simon ever, in person, by email, text, snail mail, ever tell you that the payment of his invoices was optional?

A Never.

Q If he had told you that, what would it be now?

A Of course. I mean we would have taken him up on that, that we -- Danny knew how much of a financial stress this was putting on our family, and, of course , we would have taken him up on that.

Q You're copied on some emails, Angela. Have you had a chance to review the emails in this case? There are a lot of them.

A Yes.

MR. CHRISTIANSEN: John, are those the ones you sent over last week?

MR. GREENE: Well, you know, there are some. The first ones I'm -- I'm going to show her are Bates Simon 3100 --

MR. CHRISTIANSEN: Exhibit?

MR. GREENE: Yeah, that's your --

MR. CHRISTIANSEN: Which exhibits are those?

THE COURT: So, they're in the Simon exhibits?

MR. CHRISTIANSEN: Which exhibit goes on that Bates number?

MR. GREENE: Oh, it's -- it's Simon -- Simon EH 3100.

MR. CHRISTIANSEN: That's -- that's the Bates stamp number. I'm asking what the exhibit number is.

THE COURT: Yeah, what's the exhibit number, Mr. Greene?

MR. GREENE: Oh, it's -- that's a super good question. I thought I was making it easy by pulling from theirs and -- and I failed.

MR. CHRISTIANSEN: Let me -- let me see, John, maybe I can help you.

MR. GREENE: Totally failed.

THE COURT: What's the Bates Stamp, 3000?

MR. GREENE: It's 3100, Judge. It starts with 3100. And I'll put it up on the ELMO here, so we can all see in a second.

MR. CHRISTIANSEN: I don't know -- just tell me the exhibit before I can say if I object or not, because I don't --

THE COURT: Yeah, I just had to get the exhibit number so I can follow you.

Ms. Ferrel, do you know the exhibit number?

MS. FERREL: Let me see what it is.

THE COURT: You've been pretty good at getting that.

MS. FERREL: This is an Exhibit 80.

THE COURT: 80?

MS. FERREL: This would be an Exhibit 80, yeah. So, this wasn't -- this would be on the CD.

THE COURT: Oh, okay.

MS. FERREL: So, yeah.

THE COURT: Okay. Then I'll wait for Mr. Greene to put it on

the ELMO.

MR. GREENE: Is this show and tell?

THE COURT: Yeah.

Laura, can you make sure -- did we make sure the ELMO's working?

MR. GREENE: I did. I did, Your Honor.

THE COURT: Oh, okay.

MR. GREENE: It's working. Well, it was an hour ago. Hold on a minute.

THE COURT: We just rely on Brian to do things like that.

MR. GREENE: Thank you.

MR. CHRISTIANSEN: Mr. Greene, will you tell me the Bates Stamp one more time so I can try to find my own?

MR. GREENE: It's Simon EH, and then 3100.

MR. CHRISTIANSEN: You don't happen to have an extra copy, do you?

MR. GREENE: I -- you know what, I'm so sorry. I do not, at least I -- oh, hold it. I do. Sorry, I'm sorry.

MR. CHRISTIANSEN: That's okay.

MR. GREENE: I got it for you.

MR. CHRISTIANSEN: No worries. Thank you very much.

MR. GREENE: It's always out. I'm going to try to zoom it in. Come on, zoomie, zoomie. Is that -- can you see that font?

BY MR. GREENE:

Q Angela, you can read that?

A I can read this, yes.
Q I can try and make it bigger and maybe break the thing at the same time. Do you recognize this email as one that you had reviewed?
A Yes.
Q This is from Brian to Daniel Simon, dated December 15th, 2016. Would you agree?
A Yes.
Q Just after noon?
A Correct.
Q Focusing right here on the first question. Do you have an understanding as to whether or not this is around the time that the first invoice was paid?
A Yes, it is.
Q There's a question from your husband to Danny. Here are some things you may need to know before I leave.
Do you where you guys were going?
A Vacation.
Q It's pretty personal stuff?
A Uh-huh.
Q Okay. See Item Number 1?
A Yes.
Q Your bill, Send check to your house or office?
A Yes.
Q How about Number 3, do you see that?
A Yes.

Q What does that say?

A I'm taking another high interest loan unsecured, only covered by the lawsuit proceeds for $300,000 from Colin Kendrick to put five percent interest.

Q Down further?

A This amount will be used by Edgeworth Family Trust to pay the invoices for the bills from the venders and the legal that are due, including American Grating and lawyer.

Q Did you have involvement, Angela, in the taking out of the loans from your mom and from Colin to pay the invoices in this case?

A Yes.

Q Do you have personal knowledge of that?

A Yes.

Q Down below.

MR. GREENE: Let me just do a little zoomie thing, Judge, to see if I can get it a little bit bigger without breaking it.

BY MR. GREENE:

Q Right here, read that.

A I do not know if you need to notify the lawyers again that I have done this and will need to do it again, as their client's negligence has cost me a substantial amount of money, and this put my other companies in financial jeopardy to the point where I'm forced to take out ridiculous loans to pay expenses that they are responsible for.

Q Let me just go to a couple more pages on that. One more page.

MR. CHRISTIANSEN: Your Honor, before Mr. Greene moves on, can we get an understanding for when Mrs. Edgeworth became aware of these emails? She's not copied on them, so I'm just not understanding that she knew about them back then or in preparation for now.

THE COURT: Okay.

Mr. Greene, can you clarify that with her?

MR. GREENE: Sure.

BY MR. GREENE:

Q You managed to gain an understanding as to the content of these?

A I knew that something like this existed, and you just have to find the emails, so. But I just saw it not too long ago, recently.

THE COURT: The email?

THE WITNESS: Yes.

THE COURT: But when you said you knew something like this existed, so does that -- are you saying that you knew that this was happening or --

THE WITNESS: I knew that we had an agreement to pay the bills and pay the invoices on an hourly basis. That's what I mean.

THE COURT: Okay.

THE WITNESS: Yeah.

THE COURT: But I mean in regards to did you know that your husband sometime -- in 2016, did you know that he had a discussion with Danny Simon about where to send the check?

THE WITNESS: No, I didn't know that.

THE COURT: Okay. So, you just found that out. Did you know about him telling Danny Simon, I got to take out another loan, these are the terms, superhigh interest. Did you know about that?

THE WITNESS: Yes, I did.

THE COURT: Okay, but you found out about -- you saw this email in its entirety recently?

THE WITNESS: Yes.

THE COURT: In preparation for this hearing?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. GREENE:

Q Did you sign the checks?

A Yes, I did.

Q You sent the checks?

A Yes.

MR. GREENE: This is Bate stamped, and just two pages down, Judge. This is 3102.

MR. CHRISTIANSEN: You said 2, Mr. Greene?

MR. GREENE: Yes.

MR. CHRISTIANSEN: Thank you.

BY MR. GREENE:

Q This is Mr. Simon's response re: address. Do you see that down below on the bottom, Angela?

A Yes. So, anything regarding fees should be sent to 810

South Casino Center Boulevard, Las Vegas 89101.

Q But if you needed that information to send the check to Danny Simon for the payment of that first invoice?

A Yes.

Q Without Mr. Simon providing clarification to you, as the bookkeeper, how would you have known where to send the check?

A Correct.

Q Anywhere on here that you can see where it says that the payment of fees was optional?

A No.

Q You were again sitting in the gallery when Mr. Simon was testifying, were you not?

A Yes.

Q Did you hear all of it?

A Yes.

Q Did you hear Danny testify that your husband wanted a fourth invoice in the amount of, in essence, $255,000 for fees and costs so he could then be able to testify at his deposition that he had paid all of the invoices in full?

A Yes.

Q You had an opinion as to whether or not that's true?

MR. CHRISTIANSEN: Objection, to the extent it calls for marital communications.

THE COURT: Mr. Greene, give me your status how she would know that?

BY MR. GREENE:

Q Did Plaintiffs have a little plan, as Mr. Simon testified, to inflate your damages against the Lange and the Viking Defendants?

A No. We wanted to pay the bills, and we have to know what the bills are, and, you know, we don't want to bounce any payrolls or -- I mean we need to know what we owe, and my -- we pay our bills very promptly. So as a general rule, we like to pay our bills promptly and we don't like to owe people money.

Q Do you have an understanding of Brian's business practices as to whether or not he seeks out the opportunity to spend money and pay bills on his own?

A I'm not sure I understand your question.

Q It's another bad question, a long line of many that I've asked. Do you have an understanding as to Brian's business practices, as to how he pays bills?

A Yes.

Q And the circumstances in which he pays bills?

A Yes.

Q Do you have an understanding as to whether or not, with your knowledge of Brian's business practices, whether he has a custom or practice of asking vendors to simply send him an invoice so he can pay it?

A Yes, all the time.

Q Okay. Would Brian, with your understanding of him, if he had been presented with an invoice, what is he going to do with it?

A Pay it.

Q You've heard, have you not, in the gallery from attorneys and Mr. Simon, that Brian doesn't pay bills. Have you heard that?

A Yes.

Q Do you have an opinion on whether or not that's true or not?

A It's not true.

Q And how do you know that?

A Because we pay our bills.

Q What impact, Angela, was the payment of invoices for fees, mediation of the house, those kind of laces, what effect was that having financially on your family?

A It had a very strong effect at the time because we had just several things going on at the time and --

Q Like what?

A -- we plan everything. So, we had planned out the entire year's expenditures, and so we had the volleyball bill going on at the same time, and then the house damage occurred. You know, we were at basically the tail end of finishing our house and we had, you know, money set aside to finish it up and decorate, and then all of a sudden, you know, we had the repairs to do, and then we had all these legal bills that kept mounting.

Q In September of 2017, did you have 255-plus-thousands -- thousand dollars just setting aside in a piggybank, a slush fund, to be able to simply pay an invoice that wasn't due?

A No.

Q What were the finances like back then, in September of 2017?
A It was very tight.
Q Knowing Brian as you know him, knowing your finances as you know them, would Brian, in his business practices, simply offer to spend $255,000 if it wasn't expected to be paid?
A No.
Q Would you explain to the Judge, and again in that Cliff notes fashion, your understanding as to what financial resources were used to pay Danny's fees, invoices for fees and costs?
A Yeah, we took out loans.
Q Why didn't you go to U.S. Bank, Bank of Nevada, Bank of -- on every corner to do that?
A We tried with Wells Fargo, our bank, and they wouldn't loan us money.
Q Why not?
A Because when we told them what it was for, they said no, for litigation, they said no.
Q Selling some property, did you think about that?
A It didn't make sense to sell property. So, from just a business perspective, we decided to take out loans.
Q There's the general rule of don't loan money to family members, but one of the lenders was your mom. Why was she on the list of potential sources of revenue?
A My mom has money that she doesn't use, and so I asked her. I had never borrowed money from her before, and so when, in a time of

need, I asked her, and she said yes.

Q Who's Colin?

A Colin is a friend of ours.

Q Is he a hard money lender?

A No.

Q How did he make his way to the list of individuals who would be available to loan money?

A Again, he was close enough a friend that we could ask that to and felt comfortable, and so we asked that, and he said yes.

Q Is Danny aware of these resources --

A Yes.

Q -- that were being used?

A Yes.

Q As a business person, like you are, what financial benefit, if any, were you and your family getting from having to pay high interest on the loans that were used to pay fees and costs?

A None, absolutely none, we had to pay the interest.

Q Did you hear Danny testify where you are the other day, that you benefited from the interest?

A I did.

Q Do you have an opinion on that?

A We did not benefit at all from the interest payments. We had to pay them.

Q Do you know how much?

A We had to pay more that, 1.1 million dollars back, which after

we received the settlement, we paid right away.

Q So, Mr. Simon says you don't pay your bills. Did you hear that testimony?

A Yes.

Q You read that in the pleadings?

A Yes.

Q So you had principal and interest on these loans that were used to pay his fees?

A Yes.

Q And costs, correct? When did you get the undisputed funds following the Viking settlement?

A January 21st.

Q Of?

A 2018.

Q What day did you pay your mother and Colin for the principal and interest that you had borrowed and accrued?

A The next day. I mean to stop the interest rate from accruing more, we paid them the very next day.

Q Anything outstanding there? Any money still owed to the lenders?

A No.

Q Did you also hear Danny testify under oath, in that chair, that Brian wanted to pay all of Danny's invoices as part of his little strategic plan, quote, little strategic plan, to give credibility to his damages and justify his loans that he was taking out and earning all this interest on?

Did you hear that?

A Yes.

Q Did the Plaintiffs have a strategic little plan to ramp up your damages to justify loans that you were taking out?

A Absolutely not.

Q Did you want damages?

A We wanted no part of this.

Q Again, do you earn any interest on these loans?

A No.

Q At any time prior to -- let's just shift gears a little bit if we can. At any time prior to November 17 of 2017, did Danny ever suggest to you, Plaintiffs, that hey, we should enter into a different kind of fee agreement, hybrid contingency, anything of the like?

A No, never.

THE COURT: And did you say did Danny ever suggest that Mr. Greene; is that what you said?

MR. GREENE: Yes. Yes.

THE COURT: Okay.

BY MR. GREENE:

Q As a Plaintiff in the litigation, the flood litigation, if, in July, August of 2017, if Danny had come forward with a written proposal for a hybrid-type fee agreement, what would have been your response?

A We would have considered it, and it would have taken some of the financial burden off of ourselves, but it would have to be something that made sense. So, again, after we got all of our costs back,

all of our losses, and there was some sort of upside for, you know, both parties to kind of pursue the case to the list, then we would have considered it, yes.

Q Did that ever happen?

A No.

Q Even though you were a Plaintiff -- well, maybe just back up a little bit. What ownership interest do you have in the underlying Plaintiffs that were in the flood litigation? Edgeworth Family Trust, and so on, etcetera, American Grating?

A Fifty percent.

Q Okay. Is it a partnership, a LLC, do you know?

A LLC.

Q Okay. Edgeworth Family Trust is a trust?

A Yes.

Q Are you a trustee?

A Yes, I am.

Q Do you share those responsibilities with anyone else?

A Just Brian.

Q Okay. When the case against Viking settled on November 15th of 2017, how did you feel?

A I was relieved. I was happy that it was over.

Q It's over. What did you think was going to happen next?

A I thought it was --

Q What did you expect was going to happen next?

A I thought we would sign documents, and it would be over,

and we could put it behind us.

Q What effect did it have on Brian to finally get this thing settled?

A He was relieved as well.

Q Yeah. Let's go forward a couple of days of the settlement with Viking. I'm going to focus for a few minutes.

MR. GREENE: I'm going to spend some time on this, Judge, on the --

THE COURT: Would you guys like to break for lunch now, because I was going to wait -- so we'll break for lunch now and then we'll come back and you can -- so you don't have to break that up, Mr. Greene.

Okay. So, we're going to break for lunch now. It's 12:20, we'll be back from lunch at 1:45. So we'll come back and then Mr. Greene, you can resume.

MR. GREENE: Thanks, Judge.

THE COURT: Thank you.

MR. CHRISTIANSEN: Thank you, Your Honor.

THE COURT: Okay, Ms. Edgeworth, you are still going to remain under oath. You're not allowed to talk to anybody about your testimony over the lunchbreak. Okay? Thank you.

[Recess at 12:22 p.m., recommencing at 1:51 p.m.]

THE COURT: A-767242 and A-738444, Edgeworth Family Trust v. Lange Plumbing, Edgeworth Family Trust v. Daniel Simon.

Mrs. Edgeworth, if you could just approach back up to the

witness stand. And I'd just like to remind you that you are still under oath; you don't have to be sworn in again. So, you can have a seat, ma'am. Thank you.

And, Mr. Greene, whenever you are ready.

MR. GREENE: Thank you.

DIRECT EXAMINATION CONTINUED

BY MR. GREENE:

Q Angela, let me just go back and cover something with you quickly if we can. Earlier you testified about your hope or expectation that five to $10,000 would hopefully get this matter put in the rearview mirror or words to that effect. Do you remember testifying to that?

A Yes.

Q You had hoped that sending a few letters might get the job done basically is kind of what you were saying, correct?

A Yes.

Q Now by the time that those few letters were to be written, what's your understanding as to what the status of this whole matter was?

A It wasn't resolved.

Q And when Danny was going to get involved and the letter writing campaign ended, did you have any expectation as to what would happen next?

A Yes. I knew we were going to file a lawsuit.

Q Let's get back to kind of where we left off before we took -- let me make sure this is -- this little thingy is --

THE COURT: Okay. I was going to say if not we'll get Brian to help you, Mr. Greene, because I couldn't begin to help you.

MR. GREENE: It's actually working. It's a miracle, Christmas miracle.

BY MR. GREENE:

Q Angela, when we left off at lunch we had moved up to November 17 of 2017. So, let's focus on that date for the next few minutes, okay.

A Yes.

Q Were you in a meeting with Brian and Danny in Danny's office on November 17th of 2017?

A Yes.

Q What was your understanding Angela, as to why you were going to meet with Danny at his office?

MR. CHRISTENSEN: Objection; to the extent it calls for communication with her spouse.

BY MR. GREENE:

Q Do you have an understanding as to -- an independent understanding as to what that meeting was about?

A Yes.

Q And what was your understanding?

A My understanding that we were going to talk about settlement agreement and next steps and strategy.

Q Strategy of?

A The settlement, to finish up and wrap up the settlement

agreement.

Q Okay. What time of the day was this meeting scheduled for?

A I believe it was 9:00 a.m.

Q Let's walk ourselves back then. You're arriving there. What were the circumstances that actually brought you there? Did you and Brian go together?

A No. I arrived separately. My girlfriend dropped me off at a donut shop downtown, and my husband picked me up and then we went over to Danny's office together.

Q So it has a festive mood?

A Yes.

Q What happened next?

A I got to his office, and I went in and brought some donuts for them, and I needed to use the restroom. So, I proceeded to use the restroom and then I walked into the room. And when I walked into the room my husband gave me a little bit of a glance, which I was wondering what that was about and then I proceeded to sit down. I sat right here, if this is Danny's desk. I sat right here. My husband sat right here and then this is Danny's desk. He leaned up against the desk and then --

THE COURT: Who is he?

THE WITNESS: Danny.

THE COURT: Okay.

THE WITNESS: Uh-huh. And then he started off by saying that well, you know, usually in these cases I receive a contingency fee.

And that was how he started the conversation and then I just looked -- we were just looking at him. And he said, I wouldn't be being fair to myself, and I would be cheating myself if I didn't get more money out of this case is essentially what he was saying.

So, then he went onto tell us that he normally receives a 40 percent contingency fee. And in this case it would -- that would amount to $2.4 million. But as a, you know, basically as a favor or discount he was asking for the number that he threw out was $1.2 million.

So, then I argued back, and I said well, we paid you hourly this entire time. I couldn't understand what this conversation was about. And he said that, no, normally, in this case you know, because the result was so great, he felt he deserved more. And I said well, we paid you hourly. And he said, no, normally, sometimes I might receive an hourly and a contingency fee. And my head was just spinning.

BY MR. GREENE:

Q What was your response to that comment by Mr. Simon that in some of his cases he gets a contingency and an hourly fee?

A I believed him. I thought that was the case. I didn't know any better. He's telling me -- this is my attorney. He's telling me that so I believed him and, but I was still arguing that we paid you hourly this entire time and that how could you expect more at this point when the settlement is done? You know, the settlement came out. It was 6 million dollars, a large sum of money.

And he said well, I expect you to do what's fair to me. And I said well, if -- what if we had lost? What if we had gotten zero? Would you

have given me all my money back that we paid you in fees? And he said, no. That's not the way this works; you don't understand. And he also said that you can ask any attorney this and any attorney would agree with him that this is -- this was customary; this was normal.

And then he wanted us to sign documents right then and there regarding a contingency fee, which he alluded to were behind him on the desk if we were ready to sign, if we could come to an agreement. And at some point I looked at him, and I said well, we have to discuss this. We'll think about this and we'll get back to you.

And he also went on to say that you know, there was still things left on the case, the settlement that were not done yet, and he would feel uncomfortable signing if we didn't come to this agreement.

THE COURT: Signing what?

THE WITNESS: Signing his contingency fee document. He wouldn't feel comfortable signing the settlement agreement if we didn't come to an agreement before the settlement case.

So, he made it sound that him completing the settlement agreement was contingent upon us agreeing to his contingency agreement. He also said that -- he threatened basically not to go to court for us anymore and that he wouldn't feel comfortable doing that if we didn't sign the contingency agreement.

THE COURT: What did he say when he threatened to not go to court for you?

THE WITNESS: He said basically, you know, there are still a lot of things that needed to be done, and I might not feel comfortable

representing you in that case if you know, you don't treat me fairly basically was what he was saying.

BY MR. GREENE:

Q Did he say anything else that brings to mind as you sit here?

A That was essentially what he told me that day, yeah. And --

Q Let's back up for just a minute. You mentioned the orientation, attorney desk, client chairs and Danny sitting in front. How far away from you was he?

A Probably two feet. I think the chairs were about two or three feet from his desk, and he was standing in front of his desk looking kind of down at us while we were seated.

THE COURT: So, he's standing in front of his desk; he's not behind the desk?

THE WITNESS: He's not behind the desk; he's in front of his desk.

THE COURT: Okay.

THE WITNESS: And he had his feet crossed leaning against his desk.

BY MR. GREENE:

Q You had been friends with the Simon family for how many years before this November 17, 2017 meeting?

A Eleven years.

Q How many opportunities in that 11 years had you had the opportunity to interact with Danny prior to this November 17, 2017 meeting?

A Many.

Q What was his demeanor during that meeting in the moment that he began?

A It was a little condescending and kind of saying, you know, he did such a great job on the case that he felt that he deserved more. And I felt threatened. He held all the cards. You know, at that point we didn't -- I didn't know if there was a settlement agreement in hand, or whether it was still in the negotiating phase. So, I really felt like the entire settlement agreement was hinged upon whether he could basically make or break the deal at that point.

THE COURT: What did you think the status was of the settlement negotiations at that time?

THE WITNESS: At that time, I thought that the settlement agreement was they had -- they put an offer out there. But the way that Danny presented it to me was that his signature was required in order for the settlement to be consummated. It -- part of the agreement was contingent upon him signing documents as well.

So, I knew that there was an offer, but I did not know if there was an actual agreement that they presented to us. I know there was a verbal offer, but I didn't know if it was a done deal. So, I really felt like he could have sabotaged the deal, or said something that wasn't, you know, in our favor to you know, make the deal not happen. So, I was really concerned about that.

BY MR. GREENE:

Q In the 11ish years that you had interacted with Danny prior to

this meeting had you ever seen him like that?

A Never.

Q How was it different?

A I didn't recognize the Danny in front of me at that time.

Q How long did this meeting last?

A I want to say it lasted about 30 minutes. Because we just went back and forth. We were sitting there talking about the fee, his contingency agreement and how he wanted us to sign. And it just was a lot of back and forth. And I just couldn't believe I was hearing what I was hearing. I was sitting there completely in disbelief of what was going on.

Q While you were there in that meeting with Danny, what was Brian saying?

A He had his own questions. He was interjecting.

Q Like what?

A I can't think of them right now.

MR. CHRISTENSEN: Objection. Hearsay.

THE WITNESS: I can't think of them right now anyhow. I mean, I remember what I said.

BY MR. GREENE:

Q Okay. Did Danny present anything at that meeting for you to sign?

A No. He alluded to the fact that it was behind him on the desk because he wanted us to agree first and then he was -- wanted us to sign the documents right then and there. Like he was anxious for us to sign the documents that day so that he could -- he felt that you know, how

could we not sign the documents. What he was asking was really fair so we should sign them right then and there and then he could proceed with the settlement of the case.

And that's when I said, I need some time, we need to discuss this; we need to think about it, and we'll get back to you. And then I asked him for the documents, and he wouldn't give them to me. He said well, we need to come to an agreement first.

Q You testified that he said, talk to anybody. What did you interpret that to mean?

A I needed to find an attorney.

Q Talk to anybody about the proposal that I have, they'll say it's fair. What were the words that he used?

A He said, talk to any attorney because they will tell you exactly what I told you, that this is how things work.

Q Okay. While you were there for that half an hour with Danny and Brian in Danny's office, did Danny ever bring up on his own the status of the Viking or the Lange settlements or prospective settlement?

A No. He didn't. I kept bringing it up and Brian kept bringing it up. What was the status, where were we? You know, is there a settlement in hand? And I basically pleaded with him at that meeting, I said please don't stop working on this case. I said, please proceed as if we don't have a settlement in hand, because I knew we had an evidentiary hearing coming up.

And so, I didn't want him to stop doing all those things because he had said well, I'm going to cancel this. We don't need to do this because

we have the settlement, but then I didn't know if we actually had the settlement.

So, I said -- I reiterated many times during that meeting I said, please don't stop working on this case. You should continue as if we don't have a settlement. Because I wasn't sure if it was still, like the details had to be negotiated or you know, what was going to happen.

Q So you --

THE COURT: I'm sorry, Mr. Greene. You said that he said I will -- he was going to cancel something. What was he going to cancel?

THE WITNESS: There was something coming up with an evidentiary hearing and there were -- I don't know exactly what it was, but there was either -- I don't know. But there was something coming up with an evidentiary hearing that was really critical, really important.

THE COURT: Uh-huh.

THE WITNESS: And he said that well, we don't need to do this, and we don't need to do that. And I said well, we should do that because we don't -- we still don't have the settlement in hand.

BY MR. GREENE:

Q You, as the client, with Brian as the client and Danny as the attorney, when you asked him to keep working on the Viking settlement and consummate it, what assurances did Danny, your attorney give you that he would do that?

A None. And in fact, he made it sound like he couldn't do those things if we didn't sign the agreement that he had prepared for us that day.

Q As the client how did that make you feel?

A I was terrified. I mean, this was a year of our life and I thought it could go down the drain right then and there. And I was really, really scared. I was shaken after the meeting. I was taken aback. I had no idea what was going on.

Q Have you ever had one of your lawyers, the other ones that we discussed earlier in this hearing ever come on to you as a client like that before?

A No.

Q And use that kind of demeanor with you before?

A Never.

Q And make those kind of threats before?

A Never.

Q How did that make you feel?

A It didn't feel like there was a friend sitting across from me at the table at that point. And I felt threatened, I felt scared, I felt worried. And I had the feeling that we were getting blackmailed at that point.

Q When you and Brian wouldn't sign some sort of agreement, in the midst of that November 17, 2017 meeting, what was Danny's reaction?

A He seemed perturbed, and he wasn't happy that we were -- that we didn't sign; that we were going to leave. I think he was in disbelief that we didn't sign it right then and there.

Q Did he give you the names of any attorneys that perhaps you and Brian could seek out to vouch for what he had told you?

A No.

Q Do you recall? What did you decide to do after you walked out of Danny's office following that November 17, 2017 meeting?

A I knew we had to seek counsel to figure out what my rights were as a client.

Q Did you do that?

A Yes.

Q Go into that a little bit more and we're almost done, okay. So, what happened after this November 17, 2017 meeting? And kind of work our way up to November 27th. Did you have any additional meetings with Danny?

A No. We exchanged emails, Danny and I.

Q Do you know whether -- there's been testimony you heard that the Simon family went to Peru around the Thanksgiving holiday. Do you have an understanding as to when that happened?

A I do. It was over the Thanksgiving weekend or week.

Q I think a date might have mentioned that it was just shortly after this November 17th meeting?

A I believe it was the 17th to the 25th.

Q Okay. Do you know, have any personal knowledge whether or not while the time that Danny was in Peru with his family whether or not he was working on consummating the Viking settlement?

A I do not.

Q Was a Viking settlement agreement ever sent to you or Brian that you know of from the date of that November 17th meeting through

November 27th for example of 2017?

A No. I had asked for it many times.

Q Okay. We'll get into that, some email correspondence again in just a moment. Do you know if Danny and Brian communicated at all while the Simons were in Peru?

A Yes. I was in the room when Danny called from Machu Picchu.

Q And what was said that you overheard?

MR. CHRISTENSEN: Objection; hearsay.

MR. GREENE: What Danny said is hearsay?

MR. CHRISTENSEN: Well, unless she's sitting on the phone with him she can't hear, and she can't talk about what her husband said because that is hearsay.

THE COURT: Did -- were you able to hear what Mr. Simon was saying?

THE WITNESS: No.

THE COURT: Okay.

MR. CHRISTENSEN: Objection; hearsay.

THE WITNESS: I could only hear my husband.

THE COURT: Then that objection is sustained.

MR. GREENE: Thank you, Your Honor.

BY MR. GREENE:

Q There was also testimony that Brian needed to go do business in China sometime just after or around the Thanksgiving break as well; did you hear that?

A Yes.
Q And he was gone as well?
A Yes.
Q Do you know if Brian and Danny communicated regarding the Viking settlement while Brian was in China?
A There was no communication.
Q How about you? While your husband was in China doing business did you and Danny Simon have any communications about anything?
A Yes, we did.
Q And how did you communicate?
A By email.
Q Let's take a look at some of those. And this is -- once again I'm going to fumble and Ashley's going to have to come to our rescue. This is a -- I know the bates numbers. Simon EH1669, that's an email from Danny to Brian and Angela dated the 27th of November beginning at 2:26 p.m.
UNIDENTIFIED SPEAKER: 1669 is going to be in Exhibit 80.
MR. GREENE: 80, all of these are 80?
UNIDENTIFIED SPEAKER: Well, not all of them. There are certain ones that are not.
MR. GREENE: Okay.
UNIDENTIFIED SPEAKER: But that specific one is.
MR. GREENE: There are one or two that were out of order. And Ashley, there's one that also starts with number 421.

UNIDENTIFIED SPEAKER: That one --

MR. CHRISTENSEN: What's the date on the first one, John?

MR. GREENE: Everything starts on the 27th --

MR. CHRISTENSEN: Okay.

MR. GREENE: -- of November.

MR. CHRISTENSEN: Thank you.

MR. GREENE: And it just kind of --

THE COURT: Okay.

MR. GREENE: -- works its way to more recent.

UNIDENTIFIED SPEAKER: So, the 421 one is Exhibit 44.

MR. GREENE: 44.

THE COURT: That's 421?

UNIDENTIFIED SPEAKER: Yes.

MR. GREENE: 44 is the 421 and then 80 --

THE COURT: Okay.

MR. GREENE: -- begins those.

THE COURT: So, you're going to start with 80, Mr. Greene?

MR. GREENE: Yes, Your Honor.

THE COURT: Okay. So, I can put the 44 -- and you said 44 is the other one?

MR. GREENE: Yes. Correct, Your Honor. Do you have those? Those are the ones that I had sent over last week.

MR. CHRISTENSEN: The Gmail ones?

MR. GREENE: Yeah.

MR. CHRISTENSEN: Okay.

MR. GREENE: But these -- but we pulled these from your exhibits, and they'd be more friendly on the --

MR. CHRISTENSEN: Just tell me which ones you want to use. I don't mind either way.

MR. GREENE: Sure. We're just going to use the ones that -- this is at the bottom, it says 1669.

BY MR. GREENE:

Q Take a look at this email on your screen.

A Yes.

Q Angela, do you recognize this?

A I do.

Q What is this?

A It's Danny's email in response to Brian requesting something in writing.

Q I'll represent to you that this is where the retainer agreement is contained where a letter is contained. We've spent a lot of time on that with your husband's testimony. And when a settlement breakdown is attached.

MR. GREENE: Another version of it, Your Honor, I can pull up, but that's undisputed that that's what was attached to this particular email from --

THE COURT: And I can see the attachment listed --

MR. GREENE: Okay, gotcha.

THE COURT: -- on there, Mr. Greene.

BY MR. GREENE:

Q When you saw this email from Danny regarding these documents attached, what was your response?

A I read the documents.

Q What did you think about those documents that you read?

A I was really upset. I was very outraged. There were a lot of things in there that I believe weren't true in the documents.

Q Meaning the letter, which?

A The letter. The letter --

Q What was --

A -- portion of it.

Q -- concerning to you?

A Pardon me?

Q What was concerning to you?

A In the letter he had written things such as, you knew that this was not an hourly case from the beginning, which was false. He claimed that he lost money on the case, which I found incredible because we paid him an enormous amount of money. He had also in the letter mentioned about not being comfortable about continuing to work on our case if we didn't come to an agreement.

There were a few things that were pretty upsetting. And then in the actual retainer agreement itself he had asked for 1.5 million which was different than the 1.2 million that I understood from the November 17th meeting.

Q As the client?

A Yes.

Q Getting this -- these three documents from your lawyer, how did that make you feel in light of that relationship?

A It was pretty upsetting. I mean, I just -- I didn't understand what was going on. I was completely flabbergasted and lost.

Q Did you expect that from your attorney?

A Absolutely not.

Q Did you respond to this email, Angela?

A I did.

Q This is same Exhibit 80, bate stamp 1667 is the next email, next in line --

THE COURT: Okay.

BY MR. GREENE:

Q -- same date. Looking at the one that says -- it's weird how these emails are setup. I'm such a technologically challenged human, but they don't just go from top to bottom, is that your understanding as well, Angela?

A Yes.

Q So looking at this little dot here this says from you?

A Yes.

Q To Danny?

A Yes.

Q 3:20 p.m.?

A Yes.

MR. GREENE: Your Honor, I don't think it's in dispute that the prior email that Danny sent was at 2:26 p.m. So, this is --

BY MR. GREENE:

Q Is this your first response to that letter?

THE COURT: And this is 3:20, correct?

THE WITNESS: Yes.

THE COURT: Okay. Because I thought you said 2:20 though.

MR. GREENE: Yeah. The one that --

THE COURT: Danny sent was at 2:26, but this --

MR. GREENE: Yes.

THE COURT: -- is at 3:20.

MR. GREENE: I'm sorry. Yes, I'm sorry.

THE COURT: So right after, okay.

BY MR. GREENE:

Q Do you know whether or not you had sent an email to Danny in response to that earlier email that is -- that was earlier than this one that we're looking at here?

A No. This should be the first one.

Q What did you convey to Danny at that time?

A I conveyed to Danny that Brian was out-of-town, and we were trying to process what was going on. And I was -- said you know, kind of just said we'll try to meet when he's back. And we didn't know -- in my mind I didn't know what was going on. And I reiterated to him that I would need to have an attorney to look at this agreement. And then I finally said you know, in the meantime, please send us the Viking agreement immediately so we can review it because I was very, very concerned about the status of the settlement agreement.

Q So it looks like a half an hour later if you go up one more subject line, that appears to be Danny's response to you. Is that your understanding as well?

A Yes.

Q And what was your understanding about his advice to you then? I haven't received the Viking agreement, he said that, correct?

A Correct.

Q And did he advise you in anything else of significance in his reply in relation to your concerns --

A No.

Q -- as a client?

A No. I was hoping for some reassurance, but no.

Q Okay.

THE COURT: When you sent -- just before you move that, Mr. Greene. When you sent the email that you sent at 3:20 you said, we would like to have our attorney look at this agreement before we sign. Who are you referring to?

THE WITNESS: I wasn't. I was referring to my -- I mean, I was referring to my girlfriend Lisa Carteen who's been my attorney for more than 20 years. So, when I said that I just wanted him to know that I wasn't going to sign anything unless I had an attorney read it. So, she's been my long-time friend and attorney.

THE COURT: Okay.

BY MR. GREENE:

Q Let me show you the next exhibit. This is bates number

1664, same of Exhibit 80. Do you recognize this email, Angela?

A I do.

Q Do you remember receiving this?

A Yes.

Q Do you remember sending this?

A I do.

Q What's your understanding as to the order? Would it be your understanding that down here at the bottom of the exhibit would be an email from Danny?

A Yes. But there's an email below it that was before that.

Q Right here?

A At the very bottom it says 4:14.

Q 4:14. This is an email that you sent to Danny?

A Yes.

Q What were you asking for?

A I said, did you agree to the settlement because we wanted him to. We conveyed in the November 17th meeting that we were fine with the settlement agreement as it was and just wanted to know did he agree to it, did he have it, what was the status of it. And then I was concerned, I said why have they not sent it yet and when is it coming? Please clarify.

Q So then what was his reply?

A His reply was; it appears you have a lot of questions about the process which is one reason I wanted to meet with you. If you'd like to come to the office or call me tomorrow, I'd be happy to explain

everything in detail. My letter also explains the status of the settlement and what needs to be done. Due to the holiday they probably weren't able to start on it. I'll reach out to the lawyers tomorrow and get a status. I'm also happy to speak to your attorney as well. Let me know, thanks.

And after I read that I was not about to walk in by myself into Danny's office and sit down with him and have him bully me into signing some documents that I didn't want to sign.

Q Let's back up for a second. This 4:14 p.m. email that you sent to Danny, did you agree to the settlement, what settlement were you referring to?

A The Viking settlement agreement.

Q And Danny's reply to you, 45ish minutes later, did he provide you any attorney advice as to the status of the Viking settlement?

A No.

Q What was the tag line -- what was he only talking about to you as a client, what did you understand it to be?

A The fee.

Q Next up, the top, a larger email. Was this your reply?

A Yes, it was.

Q What concern did you have as a client?

A Well, I think I was in full panic mode at that point. And so, I said, I do have a lot of questions about the process because I was confused. I said, I had no idea we were on anything but an hourly contract with you until our last meeting. And then I told him that Brian

was still away, and I said I wanted to get a complete understanding of what has transpired so I can consult my attorney because I'm scared. I don't -- I do not believe I have to get her involved at this time. I was hoping that he would just give me some information about the settlement agreement.

And then I said, please let me know what the terms of the settlement are to your knowledge at this point. And if they're -- because they're not detailed in your letter. I mean, it was just this thing overhanging us that we had just no idea whether, you know, he had mixed the deal, or you know, what was the status of it.

And I said, please send over whatever documentation you have or tell us what they verbally committed to, otherwise you know, I'll review the letter, meaning the settlement agreement and get back to you in a couple of days. And then in the meantime I trust we're still progressing with Lange, et al., any other immediate concerns that should be addressed, because I was concerned that he wasn't going to represent us anymore on all the other issues that were in play.

And then I reiterated, as I mentioned in our last meeting, the November 17th meeting, that we should still be progressing as originally planned. I would hate to see it delayed for any reason. And that was in response to Danny saying that we didn't have to do this and that. And I said, until we see an agreement there is no agreement so please let me know if there are any upcoming delays.

And I think everyone has been busy over the holidays and not had time to process everything. And then I -- then again, I was just

trying to confirm. You know, you have not yet agreed to the settlement, is that correct? Have you seen it? Is it there? You know, what's the status of the settlement?

Q Do you recall getting a reply email from Mr. Simon --

A No.

Q -- in reply to this, at least on the evening of November 27, 2017 --

A No.

Q -- 5:32 p.m.?

A I didn't get a reply.

Q Not that evening?

A No.

Q Let's look at another email.

MR. GREENE: This is Exhibit 44, Your Honor.

THE COURT: Okay.

MR. GREENE: Bate stamp 421.

BY MR. GREENE:

Q Do you recognize this email, Angela?

A Yes, I do.

Q It looks like there's one to -- from Danny and there's one to Danny. Is that your understanding?

A Yes.

Q At least the ones we're focusing on from November 29th?

A Yes.

Q And looking at this Wednesday 29th email, is it your

understanding that this is one that you sent to Danny --

A Yes.

Q -- in the morning? Why was this email sent, Angela?

A I hadn't heard from Danny in more than a day. And I was panicked, scared. I had no idea what was going on, and so I sent another email and I said, Danny, Brian is on route and gets back late tonight. You know, he'll back to you shortly at a time and sit down and talk. I'd prefer if you and Brian worked this out as I did not want to be involved. When I came to your office I thought it was to talk about next steps in the case. I had no idea we were going to talk about fees. So, I would prefer to be excluded from the narrative until you two reach a resolution.

I said, this has been stressful and awkward. Please feel free to call me today if you'd like to discuss anything, but I have little knowledge about the case and process and prefer the two of you figure this out and move on and move forward. But that was my polite way of saying just please try to work this out.

Q And then he replied, of course it looks like at 10:36 a.m. that morning?

A Yes. He said, in light of the recent emails from you this week and that your signature is required for all documentation as well as the fact that you are principal of the parties in the lawsuit, it will be necessary for both of you to be present at any meeting we have. Therefore, please advise what time is good for both of you to come to my office and meet when he returns. Thanks.

Q Any other communications that you and Danny had via email

while Brian was still in China?

A Well, I felt like he wasn't answering my emails. I would ask him a direct question and he wouldn't answer me.

MR. CHRISTENSEN: Judge, objection; move to strike as nonresponsive. The question was, were there any other emails.

THE COURT: And then the question was, were there any other emails exchanged between you and Mr. Simon while your husband was away in China?

THE WITNESS: No. That was it, Your Honor.

THE COURT: Just the ones that Mr. Greene --

THE WITNESS: That's it.

THE COURT: -- has shown you?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. GREENE:

Q And as a client again and Danny Simon, the attorney in this relationship, what did you feel that your representation from him was like? What was the impact upon you upon receiving or not receiving email communications from your attorney?

A I was really concerned. And I wasn't sure if he was an advocate for me anymore.

Q Viking case settlement. What terms were acceptable to you for settling with Viking and when? And as to what terms were first and then we'll go to the when second.

A We were agreeable to the agreement as it was, as is.

Q Six million dollars?
A Yes.
Q Confidentiality?
A Yes.
Q Just didn't matter?
A At that point we just wanted to put it behind us.
Q Wanted it done. Was Danny made aware of this?
A Yes.
Q Angela, why did you and Brian hire Vannah and Vannah?
A I never thought in a million years that I'd have to hire an attorney to protect me from my attorney. And that's why we had to hire Vannah and Vannah to basically help us through this process because now we found ourselves in this predicament.
Q Angela, did you ever tell Danny to stop working on your cases against Viking and Lange?
A Never. In fact, at the meeting I reiterated, don't stop working on the case. And by email I also told him, please don't stop working on the case.
Q Did you ever stop listening to the advice of Danny Simon?
A No.
Q Following and listening, are those distinct different words to you?
A Yes.
Q When you've received advice from attorneys in your past business life and present business life, do you always follow the advice

that the attorneys give?

A No.

Q You have a business background?

A Yes.

Q Smart, feel you can make decisions on your own too?

A Absolutely.

Q Did you ever send anything to Danny, any form of communication that said you are no longer my lawyer?

A No.

Q There was a thing that we called a super bill that was presented to everyone on January 24th of 2018. It was included in Danny's motion to adjudicate his attorney's lien. Prior to the time that that bill saw the light of day, had you ever seen any of those billing entries before?

A No.

Q Had Danny, your lawyer, ever communicated to you prior to November 17 of 2017 that he had additional time that he was going to be billing you that he expected to be paid?

A Never.

Q Let me back that up. Did he ever tell you at any time that up -- or up until the -- even the 27th of November when the letter came and the retainer agreement came, that he had additional time that he was going to bill?

A Never.

MR. GREENE: Court's indulgence for a moment, Your Honor.

THE COURT: Yes.

BY MR. GREENE:

Q Nonetheless, you knew that Danny still was working on your case to wrap things up, correct?

A Correct.

Q Okay. And you probably had an understanding, did you not, that there was going to be additional time that was going to be billed that you'd be obligated to pay as a plaintiff. Is that fair to say?

A Yes.

Q Did you have the opportunity to review the super bill that was given to all of us on January 24th of 2018?

A Yes.

Q With your background and expertise in reviewing legal bills, or at least business practices, did you form opinions on the nature and content of the super bill?

A Yes.

Q And what are those opinions?

A I was upset. I was upset that he went back, and he found more billing. I found that it was unethical what he did. I was upset because he had written one line item for 135 hours for emails that was $70,000. I knew that the bill came two and a half months after our meeting and that it most certainly wouldn't be in my favor. And that it was probably used to justify the higher amount -- to get him to justify the high amount that he was due. So, I felt that it was egregious.

Q You were here in court when Danny testified that he

presented a bill at the mediation on November 10 for $72,000; were you not?

A Yes.

Q Did you hear his explanation, that it was for costs?

A Yes.

MR. CHRISTENSEN: Objection; Your Honor, misstatement of the testimony. That was never said.

MR. GREENE: Pretty sure it was, but it's in the transcript, Your Honor.

THE COURT: I'll rely --

MR. GREENE: We'll point that out.

THE COURT: -- on the transcript of what was said.

MR. GREENE: Okay.

BY MR. GREENE:

Q Were you here when Brian testified that it was his understanding that that invoice for $72,000 was actually for fees?

A Yes.

Q Do you have an opinion whether or not -- well, let me back up. Do you know what the costs are that have been incurred in this case and paid to Danny Simon's office from September 28 forward?

A Yes.

Q And what's that amount?

A $68,000 and change.

MR. GREENE: Your Honor, we've already agreed to submit all of our exhibits into evidence. We have a check that was written and

signed by Mr. Simon and Mr. Vannah. It does have a bates number. Once again, I'm just high maintenance and I don't know exactly which defense exhibit this comes from.

THE COURT: Okay.

MR. GREENE: But it's the actual check for $68,000.

UNIDENTIFIED SPEAKER: What's the bate number, John?

MR. GREENE: It's 454.

MR. CHRISTENSEN: What's the date on it, John?

MR. GREENE: It's the March 1st --

MR. CHRISTENSEN: Thank you.

MR. GREENE: -- of 2018.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: It's Exhibit 55.

THE COURT: 55.

MR. GREENE: Thank you.

BY MR. GREENE:

Q As a plaintiff in the flood litigation was this your understanding as the costs that were paid to Mr. Simon's office following his -- the payment of his fourth invoice?

A Yes.

Q And this represented payment and cost in full?

A Correct.

Q I'm not a math major. Is that $72,000?

A No.

Q So the $72,000 bill as a plaintiff in the flood litigation that

was handed to your husband at the mediation, could that have been for cost?

A No.

MR. CHRISTENSEN: Objection. Speculation.

MR. GREENE: It's a plaintiff in the litigation. She knows what the costs are. It's simple deductive reasoning.

THE COURT: Well, did she see the bill that was given to them at mediation?

MR. CHRISTENSEN: Nope.

THE COURT: So how does she know what the bill is for?

MR. GREENE: Because she has read every single piece of paper in this litigation and she -- as it relates to this motion to adjudicate the lien. This was attached the motion to adjudicate the lien.

THE COURT: Right.

MR. GREENE: It was part of the whole process. Do I need to ask a foundational question as to whether --

THE COURT: No. I know she can testify to what the check was for, but you keep referring to this bill that was given during the mediation. Was she there to get that bill?

MR. GREENE: She was not there at the mediation.

THE COURT: Okay. So how does she know what the bill says? Has she -- can you lay some foundation that she has seen that, and she can somehow testify to what the bill said the charges were for?

MR. VANNAH: Danny testified to it.

MR. GREENE: It's a -- Danny testified --

THE COURT: Right.

MR. GREENE: -- as we indicated -- Danny testified it was costs.

THE COURT: That Danny's seen the bill.

MR. GREENE: -- cost. Brian testified that it was for fees.

THE COURT: Because they've both seen the bill. But I don't know how she could clear that up if she has never seen the bill. I mean, you've got to lay some foundation that she has some sort of knowledge of this. Danny I'm assuming is the person that produced the bill so of course he's seen it. It's my understanding he gave it to Mr. Edgeworth at the mediation, so he's seen it, but how does she know?

MR. GREENE: Because of what she's read.

THE COURT: Right. But I mean, she read about it, but I could read about what it says. I mean, she has to have some sort of knowledge as to what was contained in this bill if she's going to testify to what it says.

BY MR. GREENE:

Q On the super bill Angela, do you have an opinion whether it's accurate?

A I don't believe it's accurate.

Q And how do you form that opinion?

A Well, there were things on it such as the 24-hour billing for Ashley Ferrel. There were phone bills. After looking at the phone bills, there were phone bills that were billed for three times the same phone call. Things like that that made me question the accuracy.

Q Did you see in the super bill Angela, that there was billing entries going back to the Starbucks meeting for May of 2016 going all the way forward through the last date of the invoice that I'll call it the fourth invoice?

A Yes.

Q As the client in this attorney/client relationship, how do you feel about having your attorney go back and rebill time that's already been billed and paid?

A I was outraged and very upset.

Q Why so?

A Because that's never happened to me ever.

Q Angela, do you have an opinion to share with Judge Jones as to how much you believe that plaintiffs owe Danny Simon --

A Yes.

Q -- for the work that he has -- that he performed in this matter in addition to what's already been paid?

A Yes.

Q Would you please share that with the Judge?

MR. CHRISTENSEN: Objection. Foundation. She's not an expert.

MR. VANNAH: She's a client.

MR. GREENE: She's a client. She's reviewed all the invoices for heaven sakes.

THE COURT: She's reviewed all the invoices in this case. She can testify what she thinks she owes him.

THE WITNESS: I believe we owe him the $72,000 invoice that was presented, and I believe that we owe him the amount of time of work that was done from the end of that invoice to the conclusion of the settlement agreement.

BY MR. GREENE:

Q Do you have an estimation as to what that additional amount would be? Talking about the 72,000. Do you have an opinion as to what that additional time from the 10th of November of 2017 through the time that -- for the most part everything had wrapped up by early December 2017?

A I think being generous it would be double that. We are just going by a month but --

THE COURT: Double what?

THE WITNESS: Double that bill.

THE COURT: The 72,000?

THE WITNESS: Yes.

BY MR. GREENE:

Q So 144?

A Correct.

THE COURT: And are you basing this on the $550 an hour, or how are you coming to this figure?

THE WITNESS: I'm just using averages, and I know that there was work done during that period, and I know it ramped up towards the end. So, I'm just extrapolating from that bill.

THE COURT: Okay. So about how many hours do you think

that there are?

THE WITNESS: I don't know how many hours exactly there were.

THE COURT: Okay. So how are you arriving at a figure of $144,000? Are you -- and does that figure include -- are you calculating it at $550 an hour or what is the base -- what is the rate --

THE WITNESS: $550 an hour. So just based on the $72,000 of that period and there was about the same amount of time after that from November 10th until the conclusion of the settlement.

THE COURT: But that's just what you believe?

THE WITNESS: That's just what I believe, Your Honor.

THE COURT: Okay.

BY MR. GREENE:

Q When we were last here for what seemed like forever, we talked about some phone bills and phone records that Danny Simon's law office produced. Do you remember us talking about that at length?

A Yes, I do.

Q Did you have a chance to review the phone records that Danny Simon's office produced?

A Yes.

Q Did you have the opportunity to review your own phone bills and phone records pertaining to the same timeline that pertained to the records from Danny Simon?

A Yes.

Q Were you able to perform any analysis comparing the

number of calls, time spent on those calls versus time billed?

A Yes.

MR. CHRISTENSEN: Objection; Your Honor, they haven't produced her phone bills, and so this analysis is trial by ambush. If they wanted to do an analysis they owed me her phone bills when I gave them Mr. Simon's phone bills.

MR. GREENE: They never asked for them ever.

THE COURT: Right. But I mean, the issue came up when Ms. Ferrel testified that she started talking about what was in her phone records, and Mr. Vannah jumped up out of his seat and demanded that we get the phone records. And I mean, we all didn't have them and so we got them.

So, she can't now do some sort of comparison from her own phone records if you guys haven't handed those over. Because Ms. Ferrel was required to hand over her phone records after she testified to them.

BY MR. GREENE:

Q In reviewing Danny's phone records and Ashley's phone records and comparing them to the times on the invoices that you were billed for, did you determine that there were any discrepancies?

A Yes. They were overstated.

Q To what extent were Danny Simon's charges where his bill said, X number of minutes per a phone call versus what you as the client were billed, what discrepancy percentage did you find?

A For Danny it was 166 percent and for Ashley it was 218

percent.

THE COURT: And just so you can translate that for me, I mean, what does that mean? Does that mean that you took Danny Simon's phone records, the ones that were provided, put them together -- is this the January bill or is this the previous bills?

THE WITNESS: This is the super bill.

THE COURT: They're in the super bill. So, you put them together. And when you -- how do you arrive at 166 percent?

THE WITNESS: So, when you look at all the phone bills and the minutes that were billed, and this includes the one minute calls that are usually just you don't reach somebody, or you get a voicemail. When you add all of those up on his phone records and then you add up all the time that was billed for the phone records.

So, for example, if there was ten minutes on the one bill it would have been 28 minutes on the, you know, the billed phone bill. So, it was 200 -- or for Ashley, I'm sorry; for 218 percent more over and above what the actual phone records were.

THE COURT: Okay.

MR. VANNAH: You want to show some examples, John?

MR. GREENE: No, no.

MR. VANNAH: Okay.

MR. CHRISTENSEN: I wouldn't do that.

MR. VANNAH: Well, you know what --

THE WITNESS: Actually --

MR. VANNAH: -- he's challenging them.

THE WITNESS: -- it would be 21.8 minutes, Your Honor. I think I did that math wrong.

MR. GREENE: You know, I don't chirp during your exam, but that's fine. If you want to chirp, that's fine. Whatever. Goodness.

BY MR. GREENE:

Q Let's move onto another topic, okay. Do you remember Mr. Christensen examining your husband on Coach Ruben email issue?

A I do.

Q Who is he?

A I'm sorry?

Q Who is Coach Ruben?

A Coach Ruben is the director of Vegas Aces Volleyball, our nonprofit.

Q Did you become aware that an email was sent by Danny to Coach Ruben?

A Yes.

Q Did you hear Mr. Christensen say that you and Brian and Coach Ruben, being the Board are just self-examining, self-investigating?

A Yes.

Q Is that true?

A No.

Q How so?

A This is a non-profit, and we take allegations of any impropriety very seriously. And so, it's important that we protect the club, we protect the girls, the athletes that play at the club. And we

protect the reputation of the club.

So, we decided to do the USAB checks after that because Danny had basically disparaged us to Coach Ruben who is a friend of ours. So, I can imagine what he was saying to other people that we didn't know. And so, we wanted to protect our reputation and protect the integrity of the volleyball facility, the nonprofit.

Q Do you plan on being involved in that nonprofit forever?

A Not necessarily.

Q Do you plan on that nonprofit organization outlasting you?

A Yes.

Q Did you have any idea or any indication that a corporate culture needed to be established?

A Yes.

Q Did that have anything to do or not with you and Brian and Ruben decided that this type of allegation warranted an investigation?

A Absolutely. If it was me or anybody we would require the same thing.

Q I'm just going to a couple of topics that shouldn't take too long that deal with bill pay.

MR. GREENE: Just about five minutes on this, Judge. I'm getting close.

THE COURT: Okay.

MR. GREENE: Scouts' honor.

BY MR. GREENE:

Q Danny has stated in a court filing in his motion to adjudicate

and in his reply that you and Brian don't pay your bills; have you read that?

A Yes.

Q He indicated there was a 20 -- there was an outstanding obligation to Lange in the amount of $22,000ish. Do you remember that discussion?

A Yes. But in the motion it was for 24,000.

Q Twenty-four thousand. What's your understanding as to the truth or falsity of that allegation made by Danny that you didn't pay -- you plaintiffs didn't pay your obligations to either Lange or United Restorations in this flood litigation?

A It's completely false. And I think it was Danny's attempt to disparage us and make it seem like we don't pay our bills.

MR. CHRISTENSEN: Judge, objection. Speculation. She can't say what somebody's attempt is, or intent is. Rank speculation, move to strike.

THE COURT: We'll strike that comment. She can -- I'll keep the comment that she says it was false.

MR. GREENE: Okay.

BY MR. GREENE:

Q Why do you know it was false?

A Because the amount owed was actually to Lange which was $22,000. And all those dealings were frozen, and that money was paid out, and Danny signed the check for that check to go to Lange after the settlement was done. So, there was $100,000 owed to us, 22,000 owed

to Lange. The United Restorations matter was a completely separate matter. And the reason that that bill wasn't paid was because they didn't present the mold certificate at the time. And what happened was that they -- United Restorations didn't pay the mold certificate company.

So, we had to negotiate that on our own and pay United Restorations a certain amount, 19,000 and then pay the mold company $5,000 to finally get the mold certificate release, which wasn't presented to us until May of 2018.

Q So the deal with United Restorations, they're cleaning up water damage, right?

A Correct.

Q Water causes mold, right?

A Correct.

Q So they were to remediate, correct?

A Yes.

Q Until you can get occupancy in your home what did you need first?

A The mold certificate.

Q And they hadn't given you that, had they?

A Correct.

Q And that was part of the deal?

A Yes.

Q Once it was given to you?

A We paid. Well, we paid before that, and then we got the certificate actually.

Q After Danny invited you on November 17th of 2017 and the letter of November 27th of 2017 to speak with attorneys --

A Yes.

Q -- what did you do?

A I reached out.

Q To?

A Lisa Carteen and Chief Justice Miriam Shearing.

Q Sometimes when we tell stories we give the varnished opinion, kind of the one that smells the best, tastes the best.

MR. CHRISTENSEN: Objection. Is this a question, Judge, or an argument?

BY MR. GREENE:

Q What facts did you tell Lisa about this conflict with Danny?

MR. CHRISTENSEN: I just want to make sure he understands he's now waiving the privilege by getting into this privilege they've asserted.

BY MR. GREENE:

Q So you spoke with her as a friend, and she happens to be an attorney. Did you retain Lisa?

A No.

Q Speak with her in what capacity?

A As a friend.

THE COURT: Okay.

BY MR. GREENE:

Q So what did you tell her about what had happened between

you and Brian and Danny with this dispute?

A I said we had an hourly fee agreement with our attorney to represent us in the Viking and Lange case. And then when the settlement came down he decided to change the deal and ask for a contingency fee.

Q Did the counsel that you received from your friend Lisa have any bearing on your decisions on how to proceed going forward?

A Yes.

Q How so?

A We're here.

Q Did you speak with anyone else about -- who has a legal background about the dispute with Danny?

A Yes. I spoke to Chief Justice Miriam Shearing.

Q Did you retain her as an attorney?

A No. I spoke to her as a friend.

Q And what facts did you tell Justice Shearing about this dispute with Danny?

A The same as I told Lisa.

Q Did the -- did she provide any response?

MR. CHRISTENSEN: Objection. Hearsay.

MR. GREENE: Hang on.

THE WITNESS: Yes.

BY MR. GREENE:

Q Did the advice that you received from Miriam Shearing have any bearing on how you proceeded from that time forward?

A Yes.

THE COURT: And what time -- when did you talk to Justice Shearing?

THE WITNESS: February of 2018.

THE COURT: And the advice you got from her determined how you proceeded after that?

THE WITNESS: It was a long time between November 19th until now. So, there was -- I mean, the case was still ongoing. We're here, it's nine months later or ten months later so yes.

THE COURT: Okay. I'm so confused. When did you talk to Justice Shearing?

THE WITNESS: February 20 -- 2018.

THE COURT: So, you talked to her in February of 2018?

THE WITNESS: Yes.

THE COURT: And did you just testify that the advice she gave you --

THE WITNESS: Uh-huh.

THE COURT: -- determined how you proceeded after that?

THE WITNESS: Yes. I feel her advice, you know --

THE COURT: Determined how --

THE WITNESS: -- gave me confidence in what we were doing and that we were in the right.

THE COURT: After February?

THE WITNESS: Correct.

THE COURT: Okay.

BY MR. GREENE:

Q What did she say?

MR. CHRISTENSEN: Objection. Hearsay.

MR. GREENE: It's effect on the hearer, Your Honor. It's a non hearsay purpose. I'm not offering to the truth of the matter asserted.

THE COURT: I'll let in for the effect on the listener.

THE WITNESS: I've known Chief Justice for five or six years. I approached her as a friend, and I told her what happened, and she was outraged for me. She said that she couldn't believe that that happened, and she suggested I report it to the bar as the first step and then said that this was a case that was destined for the Supreme Court because it should set precedence for any other case that happens like this in the future. And she said she felt sorry that I was in this situation. And in her entire career she's never heard of anything like this happening ever.

MR. GREENE: Your Honor, that's all I have.

THE COURT: Okay, thank you. Mr. Christensen, do you need a short break before you start or --

MR. CHRISTENSEN: If you don't mind, Judge.

THE COURT: Yeah. We'll do --

MR. CHRISTENSEN: Maybe we could use --

THE COURT: We're only going to do like ten --

MR. CHRISTENSEN: -- a restroom break real quick.

THE COURT: Yeah. We'll take a restroom break. We're only going to take like ten minutes because I want you to be able to wrap it up

today.

MR. CHRISTENSEN: I'm going to be not so long as I was with her husband, Your Honor.

THE COURT: Yeah. We don't have two days.

[Recess at 2:54 p.m., recommencing at 3:04 p.m.]

THE COURT: -- Plumbing, Edgeworth Family Trust v. Daniel Simon. Mrs. Edgeworth, if you could approach the witness stand. And ma'am, I'll just remind you, you're still under oath. You may be seated.

THE WITNESS: Sure.

THE COURT: Mr. Christiansen, whenever you're ready.

MR. CHRISTIANSEN: Sure.

CROSS-EXAMINATION

BY MR. CHRISTIANSEN:

Q Good afternoon, Ms. Edgeworth.

A Good afternoon.

Q Ms. Edgeworth, I'm going to ask you some follow up questions to those that were posed to you this morning and then after lunch break by Mr. Greene and the topics sort of that he covered with you, okay?

A Yes.

Q This is cross-examination, so my questions are going to call for yes or no answers, and I'd just appreciate it if you'd answer that way, all right?

A All right.

Q Ms. Edgeworth, I'm going to jump around a bit, because we

started from -- or sorry -- we ended today -- one of the last topics was this proposition that you all -- you -- I'm going to stick with you. You pay your bills?

A Yes, sir.

Q You pay them when you get them?

A Yes.

Q You don't wait for a court order to pay them?

A No.

Q All right. So, let's look at what's been entered --

MR. CHRISTIANSEN: It's Bates stamp 80, John.

BY MR. CHRISTIANSEN:

Q You've seen this before. April 18th, 2017 correspondence, where your husband says, We don't have a contract and I'll pay him what the Court tells me to, right? Those are my highlights and underlines, correct?

A Correct.

Q Because your husband owed money at this time to this contractor, correct?

A I don't know. I don't know this case and I don't know the --

Q Wait a second. Wait a second.

A -- outstanding --

Q Wait a second. You just told Mr. Greene that when you get a bill, you pay it, right?

A Yes.

Q And you just told me you don't wait for a court order. You

get a bill and you pay it, right?

A Correct.

Q That email from your husband says I'm not paying it, because they don't have a contract, and I'll give them what the Court awards them, right?

A Yes, Mr. Christiansen, but --

Q Okay. That's all I asked you.

A -- I don't understand what this is about.

Q You don't understand?

THE COURT: It's okay, ma'am.

BY MR. CHRISTIANSEN:

Q You don't understand what that's about?

A No, Mr. Christiansen, I don't.

Q Right. And that's a bit indicative, ma'am, of sort of the historical -- your, Mrs. Edgeworth's historical approach to this case. Sometimes you know everything about the case and other times you don't know anything about the case, fair?

MR. GREENE: Objection. Is he just going to belittle her or is he going to ask a question? Show some respect.

THE COURT: Mr. Christiansen, can you rephrase the question?

MR. CHRISTIANSEN: Sure.

BY MR. CHRISTIANSEN:

Q Ma'am, on -- at different moments throughout -- and we'll just use the last one. I show you an exhibit about a matter you just

testified to with Mr. Greene and when Mr. Greene asked you questions, you know everything. You knew all the answers to his questions, right?

A Yes.

Q Yet, I show you an exhibit and now you don't know the answer, correct?

A I --

Q That's what we just did back and forth.

A I don't know what this email is about, Mr. Christiansen.

Q Okay. You told the Court today to start with that you knew in June of 2016 that Danny Simon was going to bill you 550 an hour?

A Yes.

Q You never talked to Danny in June of 2016, did you?

A No.

Q Danny Simon never told you that, did he?

A No.

Q In fact, ma'am, up until November the 17th in Danny Simon's office, you never had a conversation with Danny Simon about how he was going to bill this case, correct?

A No.

Q That's not correct or that is correct?

A It is correct.

Q Okay. That's okay. Cross is a little bit dicey sometimes. So, from the moment Danny agree -- 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 -- in 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. I've heard it. I don't know what you're 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 your best guess is that you may owe Danny another $144,000. Do you remember that?
A Yes.
Q And you remember me talking -- 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 that?
A Yes.
Q You further remember your husband presenting to the Court that spreadsheet he had created, correct?
A The activation spreadsheet?
Q No.
A Is that what you're referring to?
Q No, ma'am. The spreadsheet he created to criticize the bills,

to come in and say he'd been overbilled. Do you remember that?

A I do not.

Q You probably -- I'll refresh your recollection, if I remind you. This is the spreadsheet that Her Honor caught your husband in a mistake. Do you remember that?

A No. Could you explain it to me?

Q Sure. Were you here when the Judge questioned Mr. Edgeworth about these entries that he put in the spreadsheet that he proffered as proof that he'd been overbilled?

A I was here, yes.

Q Do you remember your husband admitting that he -- to the Judge -- she caught him -- that he'd made a mistake?

A I do not remember that.

Q Do you remember if we look down here to August 20th of the year 2017 and August 21st, your husband testified that he thought he'd been billed twice for the same batch of emails. Do you remember that?

A I don't remember that specific comment.

Q Well, you were here?

A Yes.

Q Okay. I was asking him questions about what these boxes meant. Do you remember?

A No.

Q Okay. Do you remember Mr. Edgeworth testifying that he thought he'd been double-billed for those two sets of emails on the consecutive dates in August?

A I don't remember that specific testimony.

Q And the emails aren't a secret, Mrs. Edgeworth, right? Everybody's got them. Fair?

A I'm sorry. Could you say --

Q The --

A -- that again?

Q The emails aren't a secret. In other words, Mr. Greene gave me your emails. They kind of come out a little bit different than if I print them off Mr. Simon's. Yours say Gmail. Mr. Simon's say Simon Law, but you all physically possess all the emails that went back and forth between you and Danny, right?

A Yes.

Q All right. And so, it would have been super easy, would it not, for Mr. Edgeworth to look at these dates, August 20th and August 21st and say hey, I did or didn't send X emails on those dates, right? That would have been simple.

A Sure.

Q And rather than do that -- because remember, I had to show him that on one day, he'd sent 10 and on another day he'd sent 12 and they were totally separate emails. Not double-billed. Do you remember that?

A No. I'm sorry I don't, Mr. Christiansen.

Q Okay. And he could have gone and done that, right?

A Yes.

Q And it's a little bit like your -- and I want to make sure I get it

right. Like the percentage of overbilling you accused Mr. Simon and Mr. Ferrel of. Right? Because what you did -- and you didn't bring any work product. You don't have a spreadsheet to show me about that, do you?

A I do.

Q You do?

A Mr. John Greene has it.

Q Okay. And what you did is went and compared total amount of time on a phone call to total amount of time billed, correct?

A Correct.

Q And ma'am, you know, don't you -- somebody that's a Har -- are you Harvard educated as well or is that Just Brian?

A That's just Brian.

Q Okay. But you have a background in business. It sounds like you've been super successful in your own right in your career?

A Yes.

Q Dozens of lawyers?

A Fair.

Q Bills all the time?

A Yes.

Q You know lawyers bill in incremental amounts, correct?

A I do.

Q So if I do something for two minutes as a lawyer and I bill 0.1, that's actually six minutes, right? It's a tenth of an hour.

A Yes, but sometimes you don't -- for example, if you've made back to back phone calls, I wouldn't expect to be billed six minutes, six

minutes and six minutes for each one minute call.

Q Okay, ma'am. I simply --

A My attorneys wouldn't do that.

Q -- asked you a question, very simple question. Lawyers bill in increments, right?

A Yes.

Q All right. And so, when you try to tell Her Honor that these telephone calls are inflated by the percentages you assign to Mr. Simon and Ms. Ferrel, that does not take into account at all the incremental billing of lawyers. True?

A True.

Q All right. So that figure, by its very nature, is inflated. True?

A I would think it would go --

Q That's --

A -- up and down, Your Honor. Up and down. It should be pretty fair. It shouldn't always be against my favor.

Q I got you. And Ms. Edgeworth, do you remember -- if I get back -- I'm sorry. I skipped a little bit. In June of 2016, you knew Danny was billing you at 550 an hour, not from Danny, but from your husband. Fair?

A Yes.

Q Okay. Remember your husband said that was June the 10th. Do you remember that?

A Around --

Q Did he --

A -- that date.
Q Did you know Danny was working for free from May the 27th to June the 10th?
A I did not know that.
Q Brian didn't tell you that? Fair?
A I did not know that.
Q In fairness to you, ma'am, I think you said you've not been involved -- I think you told Mr. Greene this morning -- in every aspect of the case. Is that a fair statement?
A Fair.
Q And in fairness to you, you only know to a certain degree what you've been told by your husband. True?
A Well, I've seen documents, yes, but the --
Q I --
A -- other stuff, you're right. I know what Brian has told me.
Q Right. And you weren't privy to the phone call that occurred on June the 10th. Is that fair?
A Fair.
Q You weren't billed for any phone call on June the 10th by Mr. Simon of 2016. Is that fair?
A I don't know. I'd have to look at the bill to see if there was a charge for that on the invoice.
Q Okay. So, if you weren't billed for it, either Mr. Simon underbilled you or it didn't happen. One of the two.
A I don't know.

Q Okay. I got you. You don't know. I'm with you. Do you know what the register of actions looks like?

A I do not.

Q I showed it to your husband a little bit. It's just sort of all the filings that happened in you all's case.

MR. CHRISTIANSEN: And this is Exhibit 63, John. I'm sorry.

THE COURT: Okay.

BY MR. CHRISTIANSEN:

Q It's just the register of everything that was done in the underlying case. Have you ever looked at that, Ms. Edgeworth?

A I didn't see it. Could you put it --

Q Sure.

A -- back up again, please?

Q There you go. Have you ever looked at --

A Can I see the whole thing, please? I may have seen this a long time ago, but I don't recall.

Q Anything in this register of actions, any of the filings, any of the motion work, any of the courtroom work, was any of it done by you or Brian?

A I don't know what's in that document, Mr. Christiansen. I don't understand your question.

Q Okay. I'll move on, Ms. Edgeworth. Ms. Edgeworth, when you get billed by lawyers, they bill you every month, right?

A No.

Q So you go six months at a time without billing?

A Yes, they do.
Q Wow. And that was your agreement with Mr. Simon that he would go six months at a time without billing. Is that what you're telling the Judge?
A No.
Q You don't know what the agreement was, correct?
A I know the agreement was hourly.
Q You don't know what the interim payment schedule was for, correct?
A I know there wasn't much work done for the first six months.
Q Ma'am, it's an easy question.
MR. GREENE: I'm --
BY MR. CHRISTIANSEN:
Q Do you know what -- do you know when he was supposed -- how often you were supposed to get billed and pay Mr. Simon? Yes or no?
A No.
Q All right. That's a term you're just unfamiliar with, correct?
A Which term? I'm sorry.
Q The incremental timing of the bills and paying them.
A I'm not familiar with that term, no.
Q Do you remember having your deposition taken --
A I do.
Q -- in the underlying matter? The Lange lawsuit?
A I do.

Q Mr. Simon went with you to your deposition?
A Yes.
Q And in your deposition, do you remember your husband answering questions relative to the portion of his deposition he cites in all his affidavits in the complaint, where he claims that his testimony was that all the bills as of his depo in September for the case had been submitted, and there were no other bills?
A I do.
Q And do you remember me having to show Brian -- Mr. Edgeworth. I apologize. Your husband. That he'd sort of forgotten to cite the second part, the latter part of the deposition, where he testified that the bills were still accruing?
A I'll take your word that he did, but I don't remember specifically.
Q But you do recall that that's nowhere in any of his affidavits or the complaint Edgeworth v. Simon, correct?
A I don't know.
Q All right. Well, the Judge has all that and we'll let her see it. And I asked it that way, because your deposition -- I'll show you.
MR. CHRISTIANSEN: John, it's Exhibit 86, Mr. Greene.
BY MR. CHRISTIANSEN:
Q Is Monday, September the 18th, 2017. Do you remember going for your deposition, Mrs. Edgeworth?
A Yes.
Q Do you remember the oath you took?

A Yes.
Q The same oath you took here in court?
A Yes.
Q And do you remember being asked questions in your deposition relative to attorney's fees?
A Yes.
Q And your deposition is -- let me think -- 14 or 15 months after you came to this understanding that Mr. Simon was billing at 550 an hour, right?
A Okay.
Q True?
A Yes.
Q Okay. And yet when you're asked, Mrs. Edgeworth, how much you've paid your attorney's fees and costs to date, you don't know.
A I don't know the full amount. That's -- I didn't know the full amount.
Q Okay.
A I know the hours and rates.
Q Okay. Let's just read.
"Q Can you tell me how much you've paid in attorney's fees and costs to date?
"A I don't know. That would be a question for my husband.
"Q Okay. All right.
"A I don't think I want to know.
Did I get that right?

A That's a joke.
Q Oh, I just mean did I read it correctly?
A Yes, you did.
Q Okay. And this is some 14 or 15 months after you had this firm understanding between you and your husband about what your husband told you Mr. Simon agreed to be paid, correct?
A I knew the rate, Mr. Christiansen. I didn't know the exact amount that we'd paid Danny to that date.
Q Well ma'am, you told Mr. Greene this morning that you were the person that reviewed the bills. You had an internal procedure where Mr. Edgeworth would check off on a bill and you would check off on a bill and an accountant or a maybe a bookkeeper or somebody would actually sign the bill?
A Yes.
Q All right. So, by September, you'd submitted three or four invoices, right? Over 18 months?
A I couldn't tell you right now, at that particular time how much we had paid. I don't remember the exact dates of all the payments, so I couldn't tell you the exact amount that we had paid at that time.
Q Right. But today in preparation for the hearing, you knew back in June of 2016, based on not conversations with my client, Danny Simon, that you were going to pay Danny Simon 550 an hour?
A Yes.
Q All right. So, if Mr. Greene and you agree how much I'm going to get paid, does that bind me?

A I'm sorry. Could you repeat that?

Q If you and Mr. Greene agree to what my rate is, but you don't tell me about it, am I bound by that?

A I don't understand your question.

Q I think probably the Judge does. This is further in your deposition.

MR. CHRISTIANSEN: Page 48, Mr. Greene. I'm sorry.

BY MR. CHRISTIANSEN:

Q Why did you need to borrow the money? Question.

"A The ongoing lawsuit and repairs.

"Q So was this money used to pay the attorney's fees?

"A Correct.

"Q Okay. Because you guys have paying the attorney's fees as you've gone?

"A Correct.

"Q Okay. So, on a monthly basis, you'll pay those fees?

"A I don't know. I don't know. You have to ask my husband that.

Did I get that all right?

A Yes.

Q So, in September of '18 -- '17. I'm sorry. Your deposition testimony accurately reflects how familiar you were with the agreement with Danny Simon, correct?

A Yes.

Q And can we agree that that's drastically different than your

testimony this morning as to how familiar you were with the financial arrangement with Danny Simon?

A No.

Q No. Okay. Remember when I objected at one point this morning and said can we get some context when Mrs. Edgeworth learned about the things she's testifying to? And your -- I think you told the Judge in preparation of this hearing; you learned a lot of things?

A Yes.

Q And that's because, in all fairness to you, you were taking care of your family. I think you have a couple of daughters that are active young ladies, and you're a busy woman yourself?

A Yes.

Q And most of what you knew about the Edgeworth v. Viking and Lange lawsuit came from Brian?

A Yes.

Q Like a simple example. Remember Mr. Greene showed you that check for 68 grand? Remember the check that you got paid in March for 68,000 and change?

THE COURT: Exhibit 55, Mr. Christiansen?

MR. CHRISTIANSEN: I think that's right, Your Honor.

THE WITNESS: Is that for the costs?

MR. CHRISTIANSEN: Yes, ma'am.

THE WITNESS: Yes, ma'am.

BY MR. CHRISTIANSEN:

Q And those costs were paid in March. Fair?

A Yes.

Q I'm sorry. I didn't -- my fault. Bad question. I didn't finish. March of 2018?

A Yes.

Q Right. That's about two months after you sued Mr. Simon, correct?

A Yes.

Q And I'll show you. Let me see if I can blow it up for you Ms. Edgeworth. $68,844. And that's signed by -- I think that's Mr. Vannah's signature.

MR. VANNAH: It is.

BY MR. CHRISTIANSEN:

Q I'm not sure.

MR. VANNAH: I will stipulate that's my signature.

THE COURT: Okay. That's a [indiscernible] symbol saying Robert Vannah.

BY MR. CHRISTIANSEN:

Q That's Mr. Vannah's signature and Mr. Simon's on that joint trust account that was created to deposit the $6 million Viking settlement?

A Yes.

Q Is that right?

A Yes.

Q Okay. And you suggested to the Court that you are guessing that this is the amount that Danny had in attorney's fees that he gave --

72,000 is the amount Danny had in attorney's fees he gave to Brian at the mediation -- Mr. Edgeworth at the mediation?

MR. GREENE: I'll object. That mischaracterizes her testimony. She never said guessing. That's Mr. Christiansen's hope.

MR. CHRISTIANSEN: Well, actually I think it was the Judge that pinned that down. I'll rephrase.

BY MR. CHRISTIANSEN:

Q You never saw whatever bill or invoice or whatever it was that your husband received at the November mediation. Fair?

A No, but I believe it was there, because I believe my husband, yes. But --

Q I --

A -- no, I didn't see it.

Q Okay. I'm not -- I recognize that you believe your husband, all right? And the amount that Danny was owed in costs is just a few grand less than this -- that bill your husband got in November, right?

A You're referring to this check?

Q Yes. Yes, ma'am.

A Yes.

Q And did you know immediately before this check was cut that Mr. Simon had found an accounting error, a cost that had been put into your client -- your case file and they talked to your lawyers and that backed out of it and -- from the 72 grand in costs, this was actually the total? Did you know that?

A I did.

Q Okay. So, the 72 grand that Brian saw was more likely than attorney fees billed as a cost bill, right?

A No.

Q Just magically 72 grand was both, right?

A It's possible.

Q Okay. The truth is, you just don't know?

A I'm sorry.

Q The truth is, you just don't know?

A I don't know.

Q Right. And that was true also of you in your deposition. You didn't know lots of things about the lawsuit. Fair?

A I feel like I know lots of things about the lawsuit.

Q Did you know what an interrogatory was in your deposition?

A No.

Q Did you know what your cost itemization of losses were in your deposition?

A I'd seen the sheet before, but I couldn't rattle them off to you.

Q Okay. Those are questions better asked to your husband, I think is the short version of what is sort of testified to?

A That's correct.

Q Fair?

A Fair.

Q Brian is the -- Mr. Edgeworth. I apologize. I keep -- everybody's started using first names in this case, and it's making me nuts. Mr. Edgeworth is the genesis of much, if not -- well, much of the

information you have -- you had going through this case until that meeting at Danny's office November 17th?

A Fair.

Q Is that a fair statement? All right. And the meeting. You didn't testify today that Mr. Simon was dropping F bombs, correct? Using the F word, curse word at that meeting? You didn't testify to that, did you?

A My husband told me and I --

Q Well, that's -- my question is you did not testify to that, correct?

A Today, no.

Q Right.

A But I know about that.

Q You didn't hear it, correct?

A I heard it from my husband, because I was not in the room at the time.

Q Right. And you believe your husband, right?

A I do.

Q All right. Have you seen the emails where you husband is using F bombs all over the place?

A He uses them frequently.

Q Okay. Nobody's getting offended by the F word, right? Between Mr. Simon and your husband, right?

A No. It just --

Q And you've --

A -- seemed out of place at the moment.

Q How would you know, if you didn't hear it?

A I'm sorry?

Q How would you know it was out of place, if you didn't hear it, ma'am?

A Because we went there to talk about the case. It didn't seem the appropriate place to drop F bombs.

Q Ma'am, you didn't hear it. How would you know whether it was appropriate or not?

A My husband told me about it after.

Q Okay. Do you remember your husband testifying about this meeting in Danny's office?

A Yes.

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 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. And do you remember Mr. Edgeworth telling me that you felt threatened?
A Yes.
Q And you know, if we were to compare sizes, Mr. Simon's probably closer to you than to Brian's size, right?
A Fair.
Q So Danny Simon wasn't physically threatening anybody, was he?
A Physically, no.
Q All right. And the words. I wrote down -- you had lots of words for that meeting and 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 he was converting your money, right?
A I wasn't worried about conversion at the time, because I was more -- I was worried about the settlement deal not happening.
Q Flabbergasted?
A Yes.
Q This another word? 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 --
A That's how I felt --
Q -- in any of your email?
A -- 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 to 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 Yes.

Q 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 the determination after you 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 [phonetic].

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? Do you remember Brian -- Mr. Edgeworth's testimony that he was never shown a document on that day of the 17th that he was to sign? Do you remember that?

A Yes.

Q Okay. Do you remember your testimony? 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 a desk like this that he was -- he had it, if we were ready to sign it, 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 it, 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 Correct. 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 attorney's fees. You've seen them all?

A I've seen them at some point.

Q And 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 --

A -- the very first day.

Q -- my question. Did you -- were you hear when he didn't understand 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. Is 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 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 to -- 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 through them all -- when you talked to Ms. Carteen -- did I get that right?

A Yes.

Q Were those the words you used 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. If I get the gist of what you were saying is that you were of the belief that if you didn't sign the document you'd never seen -- because you told me you never saw the document on the 17th, Mr. Simon would blow up the $6 million settlement?

A I didn't know. That was a possibility at that time, when I was

sitting there, yes.

Q All right. And so, the -- if it's a possibility and from that possibility, you feel extorted, blackmailed, terrified, spooked, all the words -- isn't that -- I mean, can we agree that's a little bit like when you and your husband as the board of the volleyball team make you as individuals to do those applications? It's a bit histrionic, right?

A No.

Q All right. It's a bit of self-imposed drama, isn't it?

A No, it's not.

Q I mean, it's not contained in any correspondence between you and a long-time friend that hey man, you're spooking me, Mr. Simon?

A I wrote that I was stressed --

Q And it was awkward.

A -- and it was awkward and that is pretty -- for me, that's pretty powerful.

Q Okay. Did you use any --

A I was being polite.

Q -- of the words you used today, ma'am?

A Excuse me?

Q Did you use any of the words you used today for Her Honor? Terrified, extorted, blackmailed, in any of your emails?

A No.

Q All right. And this is your friend, right?

A Yes.

Q A guy that was working for free for at least part of the -- even to believe Brian, for at least two weeks he was working for free as a favor, right?

A For two weeks, yes.

Q Right. He was working for free.

A Certainly wasn't working for free later.

Q And you told the Judge this morning that you agreed -- kind of a gratuitous mention of my name. You said you agreed with me that no good deed goes unpunished. Remember that?

A I agree with you 100 percent on that, Mr. Christiansen.

Q Right. And you guys had a $500,000 property claim, correct?

A Correct.

Q You got $4 million already, correct?

A Correct.

Q And you don't want to pay your lawyer as much as you paid interest to your mom and your husband's best friend, right?

A I want to pay Danny what we owe him.

Q Okay. And let's just sort of back up. When you go talk to that Ruben, is that the coach? That -- the charities coach, Ruben, he's an employee of the Aces, Volleyball Aces? I've forgotten the name of it.

A Yes.

Q And so he works for the board?

A I'm sorry. He works for the --

Q The board.

A Board. Yes.

Q Works for you and your husband, correct?
A Yes.
Q And when you went to him and told him, you used those same words. You'd been blackmailed or you felt like you were being blackmailed by Danny Simon, correct?
A I didn't speak to Coach Ruben about those things, no.
Q Do you know if Coach Ruben ever called Mr. Simon and said hey, let's get to the bottom of this? What's the big deal?
A I'm sorry. Could you repeat that?
Q Do you know one way or another, did Coach Ruben call Mr. Simon?
A I don't know.
Q All right. Back to your November 17th meeting. I've been in the same office with Mr. Simon off and on for 25 years. Are you really telling the Judge -- and I want to make sure I'm understanding just the physics of it, all right? I'm not trying to get closer to you. I'm just going to use. This is the front of Mr. Simon's desk. He's between you and his two client chairs that are right here leaning against the desk?
A Yes.
Q That's about four inches.
A The chairs --
Q Right? There's nothing underneath Danny's desk, right? There's like a big gap, correct?
A That's how I remember it.
Q And those chairs are about four inches from the front of that

desk, right?

A Not at that time, they weren't.

Q Okay. When you told your husband -- let me start back at the beginning a little bit with you -- that Mr. Simon was a lawyer, husband of your friend, Elaina, you told -- and I wrote it down. You told Mr. Greene that you knew that Danny was a personal injury attorney?

A Yes.

Q You knew that he took cases on a percentage fee arrangement?

A I didn't know his arrangement, but I would assume that he did.

Q You knew he didn't bill clients, correct?

A I didn't know that for sure, no.

Q Okay. Has Mr. Simon ever told you -- I don't want to know what your husband told you -- Mr. Simon ever told you he has any other billable clients?

A No.

Q Mr. Simon ever indicated that you'd get an hourly bill every month with you?

A I'm sorry. Say that again.

Q Did Mr. Simon ever tell you what period time he would bill you?

A No.

Q Did Mr. Simon ever tell you how much Ashley would bill for?

A I saw it in the invoices.

Q So the answer is no?
A No.
Q All right. Did Mr. Simon ever tell you what costs he would front as opposed to you all paying?
A No.
Q Did Mr. Simon -- I mean, these are all like pretty important terms in an arrangement, right? Yes.
A Sure, yes.
Q I mean, those are terms that in your experience, lawyers work out with clients, right?
A Sure.
Q And you didn't work any of those out with Danny Simon, correct?
A My husband was handling those.
Q So the answer is yes, you didn't work any of those out with Mr. Simon, correct?
A Correct.
Q All right. And you talked about -- you told the Judge that you felt as if the initial four invoices were exaggerated. That was your word, correct?
A I felt that they were unclear and that they were, yes, I did.
Q Ma'am, your was --
A Yes.
Q -- exaggerated, right?
A Yes.

MR. CHRISTIANSEN: Let me see those pictures, Ash. Rather than bring all the boxes back in, I took a picture so Mr. Vannah wouldn't get irritated with me.

MR. VANNAH: Oh, I'm still irritated with you.

MR. CHRISTIANSEN: Story of my life, Judge.

THE COURT: Okay.

MR. VANNAH: I'm being irrational here.

BY MR. CHRISTIANSEN:

Q This is -- we'll use this as Exhibit 92, I think is next in line.

MR. CHRISTIANSEN: Is that right?

THE CLERK: Yes.

MR. CHRISTIANSEN: Ms. Clerk?

THE CLERK: Yes.

MR. CHRISTIANSEN: How do you say 92 in New York?

THE CLERK: 92.

(Plaintiff's Exhibit 92 marked for identification)

BY MR. CHRISTIANSEN:

Q Ma'am, in those four invoices, can we agree that you were not billed for reviewing all the documents that went in these boxes?

A No.

Q You think the amount of hours contained in those four invoices includes bills for all these boxes and the paper included there, 160 some thousand pages worth of documents?

A I don't believe all those documents were reviewed.

Q Okay. So, you were, or you weren't billed for them? I'm

asking you.

A I was billed for all the work that they did, yes.

Q Okay, well, no you weren't, ma'am and you know you weren't. Exhibit 93 are the emails. You know in those first four invoices, you're not billed for all those emails, right? You know that.

A No.

Q What do you mean, no? How is it you don't know that you're not billed for all the emails? You got the emails, right?

A Yes.

Q You got the invoices, right?

A Yes.

Q You're telling the Judge with a straight face that there are time entries equivalent to the number of emails in Exhibit 93 contained in your bills?

A Mr. Christensen --

Q Yes or no --

A -- the bills were so --

Q -- ma'am? Is that what you're telling? You have --

A There were --

Q -- to answer. You don't get to just --

A -- big blocks --

Q -- look at the Judge and start talking. You have to answer my questions.

A I'm sorry. Say the -- please say it again.

Q Sure. You're telling the Court, yes or no, that in the first

invoices, there are time entries for which you paid Mr. Simon for his time for all the emails your husband caused to be sent back and forth, which are depicted in Exhibit 93?

A Yes.

Q Well, you disagree with your husband then, right?

A I'm sorry?

Q You disagree with Mr. Edgeworth then, correct?

A I don't know what you're referring to, Mr. Christiansen.

Q Well, you heard him testify, didn't you?

A About? I don't know --

Q Emails. Yes?

A Yes.

Q You heard him say he knew all the bills for emails were included in those first four invoices, correct?

A I don't know that, Mr. Christiansen.

Q That's not what I asked you, ma'am. I asked you did your husband say yes, I Brian, know that I didn't get billed for all the emails? Did you hear him say that?

A I don't recall that.

Q Well, we'll let the Judge look at the transcript. Were you familiar, ma'am, with the calculation of damages in your case? The underlying case?

A Yes.

Q You knew that was something that your husband and Mr. Simon worked on together, correct?

A Yes, Brian put it together.

Q He did those spreadsheets you saw me show him three weeks ago?

A Yes.

Q All right. And the calculation included line items like John Olivas' [phonetic] $1.5 million for stigma damage to the house?

A Yes.

Q You heard your husband say that was a line item that Mr. Simon was solely responsible for, correct?

A Correct.

Q Do you agree with that?

A Yes.

Q Now, do you agree with $4 million for a $500,000 property claim as being made whole?

A Yes.

Q Okay. So, you've been made whole, correct?

A Yes.

Q All right. And once you were made whole or about the same time you were made whole, you sued Mr. Simon rather than pay him, correct?

A No.

Q When were you made whole? When did you get the check? Tell me the date. You knew it earlier.

A January 21st.

Q You sued Mr. Simon what date? January 4th?

A Yes.
Q So before you even had your money, you sued Mr. Simon? Yes?
A Yes.
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. And in that lawsuit, you sought to get from him personally and individually, from his and his wife Elaina, your friend, you want punitive damages, right?
A Yes. I didn't --
Q Just yes.
A -- ask to be in this position.
Q Just yes.
A Yes.
MR. GREENE: Your Honor, object. We didn't --
MR. CHRISTIANSEN: Sure -- most certainly did.
MR. GREENE: Elaina wasn't sued.
MR. CHRISTIANSEN: Well, it was his family.
MR. GREENE: Well --
THE COURT: Well, I mean, if Danny Simon as an individual and the Law Office of Danny Simon, isn't it?

MR. GREENE: Yes, but we didn't name his wife --

MR. VANNAH: That's not his wife.

MR. GREENE: -- as a defendant.

THE COURT: Okay.

BY MR. CHRISTIANSEN:

Q Is Elaina 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 their family's money, right?

MR. GREENE: Same objection.

THE COURT: 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 a check yet, correct?

A No.

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

MR. VANNAH: Yeah, we -- it's just we opened a trust account --

THE COURT: Right.

MR. VANNAH: -- that both he and I are on, so neither one of our trust accounts got it, but it went into a trust account to comply with the Bar rules.

THE COURT: Okay.

MR. CHRISTIANSEN: So --

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. GREENE: Me, too, but go ahead, Bob.

THE COURT: Okay.

MR. VANNAH: The 6 million dollars 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 --

THE COURT: Okay.

MR. VANNAH: -- and then we gave the clients the remainder.

THE COURT: So, the 6 --

MR. VANNAH: In other words, he chose a number that -- in other words, we both agreed that look, here's the deal. Obviously can't take and keep the client's money, which is about 4 million dollars, so we -- 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 Edgeworth's.

THE COURT: Okay. So, there's about $2.4 million or something along those lines --

MR. VANNAH: Yeah.

THE COURT: -- in the trust account.

MR. VANNAH: 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. Just so --

MR. CHRISTIANSEN: Oh, that's true --

THE COURT: Yeah. Just so --

MR. CHRISTIANSEN: -- Mr. Kimball said --

THE COURT: -- I was sure about what happened. I mean, the rest of the money was disbursed, 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 and paid back the in-laws, so they wouldn't keep that 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: Any -- 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 Edgeworth's, right?

MR. VANNAH: Exactly.

MR. CHRISTENSEN: That's correct.

MR. VANNAH: That's what we all agreed to, yes.

THE COURT: Okay. Yes, I was aware of that.

MR. VANNAH: Yes, that's accurate.

BY MR. CHRISTIANSEN:

Q Ms. Edgeworth, in time, timing wise, 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, sometime 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 -- I'm trying to kind of move it along -- where you husband leaves blank spaces that he still owes money for attorney's fees in October and November?

A Yes.

Q All right. And so that's leading up to when you guys hired Mr. Vannah. And I'll show you just --

MR. CHRISTIANSEN: By way of ease, this is 90, John.

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 Okay. 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 until you got a new lawyer 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 Right. And you stopped listening to Danny in terms of following his advice, correct?
A No.

Q Okay. You choose to settle the Lange case for 100 grand minus the 22 you still owed Lange, right?

A Yes.

Q That wasn't Danny's advice, was it?

A No.

Q You -- so you stopped listening to Danny's advice and started listening to Mr. Vannah's advice right?

A No. Brian and I made that decision together.

Q Okay. I'm not disputing that. That -- but the decision was to disregard Mr. Simon's advice and to follow or heed the advice of Vannah & Vannah?

A They had different pieces of advice. We weren't following anybody. We were deciding for ourselves.

Q And the decision you made was inconsistent with the advice Mr. Simon was giving you, correct?

A Yes, correct.

Q And that decision was made on the 7th, that consent to settle was dated the 7th and that's two days after Mr. -- oh, I'm sorry. It's Mr. Edgeworth that sends the email to Danny saying just called John, just call Mr. Greene, right?

A Yes.

Q And you heard your husband testify that he never spoke to Danny Simon once -- I think you said he lost it and told Danny to put something in writing, correct?

A Yes.

Q And the -- you understood, did you not, ma'am, that the attorney's fees were a line item of damages against Lange, the plumber?

A Yes, if you say so.

Q Well, I just want to know, did you understand that during the case?

A I understood -- can you please rephrase that question?

Q Sure. You understood, did you not, during the litigation of Edgeworth v. Viking that attorney's fees were a line of damages against the Lange defendant?

A Yes.

Q Similarly, you understood that the loan and the interest rates -- they went from about 2 to 3 percent interest a month, were line items of damages in Lange or the Viking case, correct?

A Yes.

Q And you talked -- you told the Judge about the hardship that you went through, and it was trying times and financially difficult. And one of the emails where you're have this tough time is you're taking off on vacation the day the inquiry is where should we send the bill, right?

A Yes.

Q Okay. You all are very sophisticated business folks. True?

A Yes.

Q You knew that by borrowing money from your mom and your husband's buddy at these usury rates or 25, 30 percent interest a year, that you could increase your property damage in a property damage claim against Lange and Viking, correct?

A No.
Q You didn't know that?
A That's not why we did it, if that's what you're --
Q I asked you did you know it?
A Yes.
Q Right. It --
A Though not necessarily that we would get it back, Mr. Christiansen.
Q Okay. Ma'am, could you just listen to my question? You knew you were trying to increase your damage calculation against Lange and Viking, correct?
A Yes.
Q Okay. Because it's not as if you couldn't have got the money other places, true?
A No, that's not true.
Q Your husband could have sold his bitcoin.
A There were a lot of business ramifications for that and that was not --
Q Ma'am, that's not what --
A -- something we wanted to do.
Q I recognize, ma'am, that you made a business choice, a smart people choice to borrow money. My question to you is, that wasn't your only option. Fair? You had other options. That just -- was the smartest one in Brian's prudent decision making as he described it for me.
A Sure.

Q Okay. You borrowed money from your mom?
A Sure.
Q You're mom's not going to sue you, if you didn't pay you back, was she?
A No.
Q Right. Colin wasn't going to sue Brian if he didn't pay him back, was he?
A I can't answer for Colin.
Q So all this risk that we've been hearing about for weeks on end that you guys wore all this risk, and it was so stressful. You're not stressed that your mom's going to do something bad to you, are you?
A No. I'm not --
Q Okay.
A -- stressed about my mom.
Q All right. Do you remember ever writing -- do you remember in Mr. Vannah's consent to settle document, the one dated December 7th, where you all agreed that you'd been made more than whole?
A Yes.
Q Okay. And you agreed to that then and I think you told me you agree to that now?
A Yes.
Q And that's whole with the 4 million you've already taken and put it your own bank account and paid back your relatives and friends and done the rest with whatever folks do with their money?
A Yes.

Q Okay. And earlier you said, in response to Mr. Greene's questions, that you got the check, I think January 21st, and the very next day, you paid everybody back, to the tune of I think, 1.1 million bucks.

A Yes.

Q Okay. So, you had 1.1 million bucks already sitting in your bank accounts?

A No. We took the proceeds from the money that we received from the trust and paid them back.

Q So you're telling the Judge you got a cashier's check or some type of check that your bank negotiated for you in 24 hours and you wrote checks out to other people?

A I don't know the exact circumstances --

Q Yeah, you do.

A -- but yes.

Q You knew them this morning. You knew and you said under oath you had a check on day one. On day two, you paid everybody back. True?

A We received the money on the 21st and we paid them back on the 22nd, yes.

Q So where are the checks?

A Mr. Greene has them.

MR. GREENE: Do you want to see them, Pete?

BY MR. CHRISTIANSEN:

Q Haven't been produced. Are you telling the Court that the checks can clear in one day or are you telling the Court that you had 1.1

million bucks sitting in your --

A I don't think the checks cleared that day, because they needed to be mailed, and so they weren't cleared the same day, so there was probably sometime in between the depositing of the funds from the trust and the checks.

THE COURT: Can I see them, Mr. Greene?

MR. GREENE: Absolutely, Your Honor.

THE COURT: Mr. Christiansen, if you could approach.

MR. VANNAH: Should we mark them as exhibits?

MR. GREENE: I haven't seen them. Sure.

MR. CHRISTIANSEN: I would see them, sure. Looks great.

THE WITNESS: I think there's a date on there, where it shows that it actually cleared.

[Counsel confer]

BY MR. CHRISTIANSEN:

Q I'll ask her. I would just ask her. Did they clear the same day? Do you know? Mr. Vannah is whispering that they did clear the same day.

A I don't know.

Q All right.

MR. VANNAH: I could help with that. Do you want to know?

MR. CHRISTIANSEN: I hear --

MR. VANNAH: Our banks called each other, and they cleared the funds the same day.

THE COURT: Okay.

MR. CHRISTIANSEN: Okay.

BY MR. CHRISTIANSEN:

Q Ms. Edgeworth, let's back up. Remember the cross that bridge when we come to it email?

A Was that about the fee in the beginning, Mr. Christiansen?

Q It was.

A Yes.

MR. VANNAH: Should we mark those and put them in exhibits?

THE COURT: Do you guys want these admitted?

MR. GREENE: Please.

MR. VANNAH: Please, yes. I'd like to make those exhibits.

THE COURT: Okay. Just next in line?

MR. GREENE: Please.

MR. CHRISTIANSEN: Which numbers would they be, Your Honor, just so I can write them down? 92 and 3 maybe or something like.

MR. GREENE: Probably more than that.

[Court and Clerk confer]

MR. GREENE: 94 and 5 maybe.

[Court and Clerk confer]

THE COURT: Okay. So, 92 will be the $437 check.

MR. GREENE: Judge --

THE CLERK: We just assigned 92 and 93.

MR. GREENE: -- I think 92 might have been the photos of the

boxes of the exhibits.

MR. CHRISTIANSEN: They were, Judge.

MR. GREENE: And then the photos of the emails might have been 93.

THE CLERK: Correct.

THE COURT: So -- but there was two -- well, there were two photos of the boxes, so did you want both of those? So that would be 92 --

MR. CHRISTIANSEN: Judge, one was a photo of what would have been the production and one was a photo of just the emails.

THE COURT: The emails. So, 92 -- can we have those, Mr. Christen --

UNIDENTIFIED SPEAKER: And I have tabs for the Clerk when we take a break.

THE COURT: Okay. 92 --

MR. CHRISTIANSEN: May I approach your Clerk, Your Honor?

THE COURT: -- yes. Will be the photos of the boxes.

(Defendant's Exhibit 92 marked for identification)

THE COURT: 93 will be the emails.

(Defendant's Exhibit 93 marked for identification)

THE COURT: 94 is the $437,000 check.

(Plaintiff's Exhibit 94 marked for identification)

THE COURT: And 95 is the $728,000 check.

(Plaintiff's Exhibit 95 marked for identification)

MR. VANNAH: So, since I interjected, somebody is still taking this down, I -- as an officer of the Court, that is what happened is the two banks did talk to each other and -- because with the -- they did clear the checks the same day.

THE COURT: Okay. Thank you, Mr. Vannah. Mr. Christiansen.

BY MR. CHRISTIANSEN:

Q Ma'am, before the beginning of the hearing, where I put your husband as the first witness, did you ever -- you had never seen Exhibit 80, Bates stamp 3557, the we'll cross that bridge when we come to it or let's cross that bridge later email. True?

A True.

Q Yes?

A Yes.

THE COURT: So, you had never seen that before this hearing?

THE WITNESS: No.

THE COURT: Okay.

BY MR. CHRISTIANSEN:

Q And three different times after you and your husband sued Danny Simon, your -- he signed affidavits saying that Mr. Simon agreed from the outset to 550 an hour?

A Yes.

Q And on all three of those affidavits, he also stated that he hired Danny Simon on May 25th -- 27th, 2016, correct?

A Correct.
Q At a Starbucks out in Henderson?
A Yes.
Q And I can show you, just so you. This is Exhibit 80.
MR. CHRISTIANSEN: Bates stamp 3552 and 3, John. Mr. Greene. I'm sorry.
MR. GREENE: Thank you. That's okay. I am what I am.
THE COURT: Can you make that a little bit bigger, Mr. Christiansen?
MR. CHRISTIANSEN: I sure will try, Your Honor.
MR. VANNAH: I'm glad you asked. I can't see it.
THE COURT: Yeah, I can't see it. Okay. Thank you.
MR. CHRISTIANSEN: Better, Bob?
MR. VANNAH: Yeah, that helps. Thanks.
MR. CHRISTIANSEN: Sure.
BY MR. CHRISTIANSEN:
Q That was -- this email just reflects that that meeting was out there at the Starbucks in Green Valley someplace?
A Yes.
Q In all the emails -- and I count 2,000-ish emails. Believe me, I wish I didn't, but I did count them. Can you find me an email, just one, that shows your husband or you saying to Danny Simon here's 550 bucks and hour? That's what we're going to pay you?
A That I said it to Danny?
Q Sure.

A I'd have to look through all the emails.
Q Did you see your husband show anybody an email when he testified that he said this is what we agreed to?
A Could you say that again, please?
Q Sure. Brian didn't -- Mr. Edgeworth didn't show the Judge an email he wrote reflecting the June 10th meeting, where this phone call or this 550 bucks and hour occurred, correct?
A No.
Q And in fact, as of June, your husband doesn't even know who's writing the promissory notes.
MR. CHRISTIANSEN: This is Exhibit 80 Bates stamp 3505.
BY MR. CHRISTIANSEN:
Q Whether it's Mark Katz or Danny, correct?
A Correct.
Q I mean, they far from cemented any type of attorney-client relationship. Can we agree on that?
A No.
Q Well, what was Danny going to get paid for writing the promissory note?
A 550 an hour.
Q Hadn't agreed to it yet, ma'am. This is June 5th.
A Oh. June 5th. I didn't know that.
Q So 550 is the number you and your husband agreed upon, right?
A Yes.

Q That's what I thought. And can we agree that on June 10th, Mr. Simon's sending emails. And -- with Brian, and there's no mention of 550 bucks an hour? Right. This is June 10th. I'll move it up.

A Okay. Yeah. I --

MR. CHRISTIANSEN: Sorry, Mr. Greene. That's --

THE WITNESS: -- just reading the whole thing.

MR. CHRISTIANSEN: -- Exhibit 80.

MR. GREENE: Thank you.

MR. CHRISTIANSEN: 3499.

THE WITNESS: Could you scroll it up, please?

BY MR. CHRISTIANSEN:

Q Scroll it up? Yes, ma'am.

A Yeah. So, I can read it.

Q Yep. I'm sorry. I was trying to keep it large so the Judge can -- all of us could see.

A Correct. I don't see 550 an hour there.

Q And this is your Harvard, Masters in Business husband, right? He graduated from Harvard?

A Yes.

Q Multinational businessman, right?

A Sure.

Q And you're a multinational business woman. Sounds like you had -- you went to Taiwan at some point and had a cosmetics line?

A Yes.

Q Hired dozens of lawyers?

A Yes.
Q Just asked you -- did you ever put in an email that you thought Mr. Simon had exaggerated his four first invoices?
A No, that would be rude, no.
Q Did you ever put in an email that you thought Mr. Simon's rate was too high?
A No.
Q Did you ever acknowledge in your testimony that Mr. Simon told you all that his rate of 550 an hour was a reduced rate?
A I don't recall him telling me that, but --
Q Well, you looked at all the bills, right?
A Yes.
Q And I'll just show you the bottom of bill number --
MR. CHRISTIANSEN: Exhibit 8, John. Mr. Greene. I'm sorry.
BY MR. CHRISTIANSEN:
Q See where it says 550 an hour, reduced?
A Yes, I've seen that before.
Q Okay. So, you knew right from the first bill that Mr. Simon was giving you guys a break on the bill, correct?
A It didn't feel like the friends and family rate, Mr. Christiansen.
Q Ma'am, I'm not asking what it felt like. I'm asking you what it said on the bill. It said reduced, right?
A Yes.
Q And in fairness, the initial work done on this case, you heard your husband testify, is for a property damage claim, right?

A Yes.
Q I mean, at first, Mr. Edgeworth thought it was just going to be a favor. Danny was going to work for free, right?
A I don't think he thought Danny was going to work for free.
Q Well, that's what he testified to ma'am. So --
A Well --
Q -- do you accept what he says is true or not? That's what he said.
A Okay. Well, I'm just saying what I believe.
Q You don't believe him now?
A I'm sorry?
Q Well, you've been telling me all along you believe your husband. You believe your --
A I do believe, yes.
Q -- well, he's testified from that witness stand with you in the courtroom that he Danny was going to do him a favor.
A Okay. Fair. Yes.
Q That's work for free.
A Okay.
Q Okay.
A Sure.
Q That changed as the nature of the case changed, correct?
A Yes.
Q Right. And when the case got into sort of hard and heavy litigation, it was no longer a claim case, correct? It wasn't a friends and

family rate property damage claim anymore.

A It was still a claims case up until later on, when the discoveries started being made.

Q When was that?

A I want to say July or August. Somewhere around that time. July of 2016.

Q And you --

A '17. I'm sorry.

Q -- you became aware of that in preparation for this hearing, as opposed to knowing it back then, right?

A No. I knew about it then, because my husband told me about the -- all the cases that he had discovered, so.

Q Right. And it's your testimony that your husband found everything, right?

A Yes.

Q And Ms. Ferrel, she was fabricating what she found and the work she did. I think that -- I think the word you used was exaggerating this morning, right?

A With regards to the 90 activations.

Q And this chart that Ms. Ferrel testified from, have you ever seen it before?

A Can you please --

Q There you go.

A -- minimize it, just so I can see the whole thing? I think I saw this a long time ago, yes.

Q Okay. Ashley did this before your husband found anything, right? In time --

A I don't know.

Q Right. Well, ma'am, you know, that's the concerning thing. Remember when your husband said, I think I've been overbilled, and then I presented him his little chart and he said well, I really don't know. I don't have any evidence of it. Do you remember that testimony?

A We can't prove it.

Q Okay. That's a little bit like you saying your husband found everything. You don't know, and you can't prove it, right?

A That I can prove.

Q Okay. I just showed you a chart Ms. Ferrel prepared, showed a cover letter to the judge last week that --

A Can I --

Q -- that predates --

A -- I can --

Q -- listen to my question -- that predates in time any of your husband's discoveries. Do you remember that?

A No, I don't.

Q All right. I didn't think so.

MR. VANNAH: You know, I'd move -- I don't think so is kind of -- it's cute in front of a jury, but it's getting old. He's good at that, though.

BY MR. CHRISTIANSEN:

Q Have you seen this July confidential production from July

6th?

A What is the contents of that?

Q It's production by Viking. Have you -- had you seen it?

A Yes.

Q Did you see the email where Ms. Ferrel, before you 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're asking.

Q 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 -- well -- 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 --

Q Sure.

A -- repeat that question?

Q Mr. Edgeworth signed affidavits in support of this hearing on February the 2nd, February the 12th and March the 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 bel -- yes.
Q Do you agree with him in -- 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'm just trying to make it easy. Is that fair?
A Yes.
Q And after the 17th, you're texting Elaina Simon, right? You texted her on November the 23rd and said Happy Thanksgiving.
A I did.

Q And you're so upset, you're so threatened, you're so extorted, you're such a victim of blackmail that you're talking nicely to Mrs. Simon, correct?

A I'm trying to keep the peace, yes.

Q And ma'am, were you here in -- when I say here, I mean physically in court, when your husband testified that Danny Simon's November 27th letter was sent at his request? At Brian's request?

A Yes.

Q So do you remember telling the Judge you -- the letter made you feel terrified and you thought all kinds of untoward things were going on?

A Yes.

Q And I think the word you used over and over and over is you were stunned to receive the letter?

A Yes.

Q How can you be stunned to receive a letter your husband requested?

A I was stunned at the contents of the letter, Mr. Christiansen.

Q All right. Because we're not going to dispute that Brian directed Danny to put in writing what Danny put in writing and you received November the 27th, correct?

A Correct.

Q That was something he did at Brian's request after Brian sent him an estimation of damages, correct?

A Could you please repeat that?

Q Sure. Brian on November the 21st gave Mr. Simon an estimation of what he thought his hard damages were?

A Yes.

Q They were less than $4 million, correct?

A Yes.

Q And that was with the 1.5 stigma that Danny had found an expert to attest to, correct?

A Yes.

Q That was with 220,000 in prejudgment interest, correct?

A Yes.

Q I mean, it was with a whole bunch of money to fluff it up as high as it could get and it was still not $4 million, correct?

A Those were the costs, yes.

Q And that's why the 4 million you received made you more than whole, right?

A Sure.

Q And Mr. Simon's the lawyer that did the work that got you the 4 million, right?

A Yes.

Q And I couldn't put my finger on it, but Mr. Simon handed to me. On page 6 paragraph 21, last sentence says, since we've already paid him for his work to resolve the litigation, can't he at least finish what he has been retained and paid for?

Did I read that correctly?

A Can you tell me what -- in what context this is? What

document are we looking at?

Q This is your husband's affidavit signed under penalty of perjury dated --

A Which affidavit? Can I see --

Q Number 1. February 2, 2018, about a month after you sued Mr. Simon, rather than pay him.

A Okay. Yes.

Q Do you agree with that statement?

A Since we've already paid him for this work to resolve the litigation, can't he at least finish what he has been retained and paid for? I think it's taken in the wrong context. We still owe him money for work that he's done.

Q Where does it say that?

A I don't see --

Q Let me make it easy for you. Isn't it true that until your testimony today, you've never conceded you owe Danny Simon money?

A No. That's completely wrong.

Q Well, before your husband agreed he owed him somewhere between 350 and 450 grand on my cross, did you ever agree you owed him money?

A Yes, we owe Danny money.

Q Ma'am, your husband signed an affidavit saying, quote, "Since we've already paid him for this work and this work is to resolve the litigation, can't he at least finish what he has been retained and paid for?"

Did I read that correctly? Did I read that right, ma'am?

A I was trying to read the whole paragraph.

Q All right.

MR. CHRISTIANSEN: I'll move on, Judge.

BY MR. CHRISTIANSEN:

Q And I'll just show you the complaint, so we'll be consistent. This was the complaint filed January the 4th by you all and the highlighted portions, it says that, Plaintiffs are entitled to declaratory judgment setting forth the terms of the contract as alleged herein that the contract has been fully satisfied by the Plaintiff and that Simon is in material breach of the contract and that Plaintiffs are entitled to the full amount of the settlement proceeds.

Did I read that correctly?

A Yes.

Q Okay. So as of January, when you sued Mr. Simon, you thought you were entitled to all of the 1.9 million and change, correct?

A Yes.

Q And he was entitled to nothing else, correct?

A He was entitled to whatever we owed him to finish up the case as a separate issue.

Q As a separate issue. Do you remember in the affidavits when your husband -- all three of them -- was savvy, and he uses the word savvy enough to know that if Mr. Simon hadn't presented damages, he couldn't make a claim for damages?

A I don't recall that.

Q Okay. You were unfamiliar -- I'll just show it to you, and I think you're going to say you were -- with the agreement with Lange, Mr. Teddy Parker, between him and Mr. Simon to continue out all the dates? Right?

A Unfamiliar with it, yes.

Q You were unfamiliar with it at the time. Is that true? November 29th.

A What do you mean unfamiliar with at the time?

Q Did you know it --

A I knew that there was a settlement.

Q No. This is an agreement with the Lange -- Lange hired a new lawyer, an African-American man named Teddy Parker.

A Yes. I was here.

Q Member, your husband's scared of Teddy?

A I was in the courtroom with Teddy Parker.

Q Okay. Do you know Teddy on the 29th agreed with Danny, your lawyer, to extend all the deadlines to produce damage calculations, get experts, et cetera? Did you know that?

A Can you say that again? I don't understand.

Q Had you ever seen this letter, ma'am, on the 29th of November?

A I believe I've seen it before.

Q No, ma'am. On the 29th of November, did you know it existed?

A No.

Q When you hired Mr. Vannah did you know it existed? Same day, 29th.

A No.

Q Okay. When your husband signed the affidavit saying he was savvy enough to know certain things, isn't it true he didn't know this existed?

A I don't understand your question, Mr. Christiansen.

Q Very simple. When you're sign -- when your husband's signed the affidavit saying he was savvy enough to know that damages hadn't been put in the calculation spreadsheet, so they couldn't be pursued, isn't it true he didn't know? He -- Brian didn't know that Lange had agreed to extend all the deadlines?

A I don't know.

Q Just touch on a couple of emails and I'll probably sit down with you. Exhibit 42 is an email sent to you on Monday the 27th. And just so we're clear, the 27th is the day after the Thanksgiving weekend. Is that right?

A Two days, I believe.

MR. VANNAH: It says Monday.

THE WITNESS: 25th is Monday.

BY MR. CHRISTIANSEN:

Q Monday would be -- Sunday would be the end of the weekend?

A Okay. Yes.

Q That's okay.

A Sure.

Q No problem. Mr. Simon's saying, Please review and advise me of your position at your earliest possible convenience. If you'd like to discuss please call me anytime. Thanks.

A Yes.

Q And it's this email that I wrote it down, you felt outrage from. Right? Outrage was your word. You got this email. You got his proposal and you were outraged?

A After I read the proposal, yes.

Q And then it's in response to this email as the day goes on and Mr. Greene did it with you sort of chronologically that you're telling him hey, we're going to come sit with you. We're going to come sit with you when Brian gets back and then ultimately, rather than that, you go hire Vannah & Vannah?

A I was stalling for some time to figure out what to do.

Q Just -- I'm just meaning chronologically that's what happened. In August of 2017, was there any money on the table to settle your case against Viking?

A August 2017, no.

Q So why did your husband sign an affidavit saying that after a substantial sum of money was offered, Mr. Simon wanted to change the contract?

A He was referring to the 6 million dollar of the settlement agreement.

Q Okay. That didn't happen until November, right?

A Yes.
Q And you and I can agree -- probably not on much -- but that your husband authored an email unsolicited. There's no email saying -- from Danny saying tell me what you want to do. Brian wrote an email entitled contingency, right?
A Yes.
Q And that email says what it says. I'm not going to get into it with you. You didn't write it?
A Correct.
Q You didn't read it?
A I read it.
Q You didn't read it at the time.
A Not the day it was written.
Q You likely didn't read it until this fee dispute occurred. Fair?
A No. I've heard about that email, because Brian and I spoke about the contingency fee, that conversation that he had with Danny at the San Diego meeting.
Q Right. And that's when everybody agreed the case had changed, right? It was a different beast.
A Sure.
Q Your husband -- I'm paraphrasing -- said nobody could have predicted this when we started. Fair?
A Sure. Fair.
Q Nobody had an agreement about this new beast? Right? That the case had become, it had become a beast. To use your words, it

was consuming your husband?

A Yes.

Q Okay. Nobody had ever contemplated a friends and family favor to be something consuming everybody's life. Fair?

A Fair.

Q And if it was consuming your husband, it likely was consuming Elaina's husband. True?

A I don't know.

Q I mean, you got to see your husband, right? He's calling Danny on the weekends, at night, on vacation, from different countries. True?

A My husband read thousands and thousands of pages of documents and discoveries and talked to all the key people involved, so I saw him working a lot on the case.

Q And you heard Mr. Kemp testify, right? Our expert?

A Yes.

Q And you don't have an expert. Fair?

A Correct.

Q And you heard Mr. Kemp say there was, in his view, no contract for -- at any time, but much -- for sure not about the new beast that your husband memorialized in the August 22nd email, correct?

A He's wrong.

Q You heard Mr. Kemp say it. That's all I asked you. True?

A Correct.

Q All right. And since you don't have an expert, if there's no --

you're not a lawyer, right?

A No.

Q All right. You don't know when an agreement exists, do you?

A I'm sorry. Say that again, please.

Q You don't know the legal requirements for an agreement, a meeting of the minds? True?

A True.

Q Okay. And so, you don't have any evidence to dispute Mr. Kemp's opinions, right? Evidence. Not what you think and how you feel and all that other stuff. You don't have any evidence, right?

A No.

Q Essentially what you're asking the Court to do, if you agree you were made whole with a $4 million settlement that you've already received is to give you monies that were earmarked as lawyer fees in the settlement, right?

A No.

Q And you heard Mr. Kemp say he talked to the mediator, who knew and told Will Kemp --

MR. GREENE: Object to hearsay on that as well.

MR. CHRISTIANSEN: She sat through the trial, Your Honor. She heard the testimony.

THE COURT: Are you asking her to testify to a hearsay statement or are you asking her what Mr. Kemp said?

MR. CHRISTIANSEN: The latter, Your Honor.

THE COURT: Okay. You can ask her what Mr. Kemp said, because he already --

BY MR. CHRISTIANSEN:

Q You heard Mr. Kemp say --

THE COURT: -- testified to it.

MR. CHRISTIANSEN: I'm sorry.

BY MR. CHRISTIANSEN:

Q -- that Mr. Floyd, the gentleman who mediated the $6 million settlement told him 2.4 of that money was earmarked as attorney's fees, right?

A No.

Q I mean, Mr. Vannah is the one he did it to and Bob and him got up and they talked back and forth with each other. Do you remember that?

MR. GREENE: Mischaracterizes testimony. It's also hearsay.

BY MR. CHRISTIANSEN:

Q You don't remember that?

THE COURT: Well, she said she doesn't remember, and I remember Mr. Kemp's testimony. I remember what he said.

BY MR. CHRISTIANSEN:

Q And Exhibit 61, these are photos of your home, ma'am. Is that right?

A Yes.

Q This is the home that you guys now own outright, as I understand Mr. Edgeworth's testimony, correct?

A Yes.

Q From the money that Mr. Simon got from Viking for you all from a $500,000 property damage claim, correct?

A No.

Q Who got the money for you?

A I'm sorry. Could you rephrase your question?

Q Sure.

A I didn't understand the question. Whether --

Q The money you used to pay your house off and own it free and clear came from the Viking settlement?

A No, that's wrong. We built it with our own cash. It never had a mortgage on it, if that's what your -- I understand you question, Mr. Christiansen.

Q Well, I thought you needed to borrow money from people to build the house.

A Yes.

Q But you didn't need to borrow money from people to build up your damage?

A We plan everything, Your Honor. Okay. So, we had certain monies set aside for the volleyball gym, certain money set aside to finish up our house, to furnish it. And then the damage came, which was half a million dollars plus our mountain legal fees. We did not anticipate that.

THE COURT: Okay. So, you guys did not use the Viking settlement to pay off this house?

THE WITNESS: No.

THE COURT: Okay. How was the house paid off?

THE WITNESS: We paid for it in cash. We built it slowly over time with cash.

THE COURT: And then after the sprinkler busted, you guys did what?

THE WITNESS: I'm sorry?

THE COURT: After the sprinkler busted, then this litigation occurred.

THE WITNESS: Yeah.

THE COURT: So, while you guys are in this litigation, are you -- you're borrowing money from your mom --

THE WITNESS: Yes.

THE COURT: -- and this friend and then you use the Viking settlement to pay them back?

THE WITNESS: Yes.

THE COURT: But you used all of your own money to redo the stuff in the house?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. CHRISTIANSEN:

Q Just by ease of example, wasn't there an line item for a couple hundred grand to replace all your cabinets in your kitchen?

A Yes.

Q At least in this photograph, those cabinets have yet to be replaced, correct?

A No. They were -- I think they were -- I don't know when this picture is, Mr. Christiansen, so they were replaced at some point.

Q Okay. The house that you told the Judge was going to -- you were going to live in really is a spec house you guys were building --

A Correct.

Q -- as an investment, correct?

A Yes.

Q And during the litigation, you finished the house and actually listed it for 5 and a half million bucks?

A Yes.

Q And then just chose to move, I think -- if I get the geography down, you all live down -- used to live down the street and moved up into this 5 and a half million dollar house that you own outright?

A Yes.

MR. CHRISTIANSEN: Court's indulgence.

[Pause]

MR. CHRISTIANSEN: Judge, your preference. Do you need me to go through the volleyball emails or has the Court seen enough of them?

THE COURT: I've seen plenty of volleyball emails.

MR. CHRISTIANSEN: Okay. That concludes cross-examination, Your Honor.

THE COURT: Okay.

MR. CHRISTIANSEN: Even I know when I'm irritating somebody.

THE COURT: Mr. Greene, do you have redirect?

MR. GREENE: Just briefly. I promise this time.

MR. CHRISTIANSEN: We're all going to finish today, right John?

MR. GREENE: Yes.

THE COURT: Oh, we're finishing today.

REDIRECT EXAMINATION

BY MR. GREENE:

Q Let's talk about evidence of a contract, okay?

A Yes.

MR. GREENE: This is Exhibit 2.

THE COURT: 2. Okay.

BY MR. GREENE:

Q Page 1. This is the first invoice that Danny Simon and his law firm sent to you?

A Yes.

Q Do you see any dates on here?

A No.

Q He didn't get dates going on until the 8th of August -- sorry, the 19th of August 2016, correct?

A Correct.

Q You see the first entry?

A Yes, initial meeting with client.

Q What did he charge you guys for that?

A $550 an hour.

Q For how much time?
A 1.75 hours.
Q Very first meeting, correct?
A Correct.
Q This is the Starbucks meeting, isn't it?
A It is.
Q Fourth entry down. We don't have any dates on these, so we don't know when these happened. You as the client don't know when these happened, do you?
A No.
Q You don't know when Danny is keeping track of his time or when he's actually marking that a discussion with the client took place, correct?
A Correct.
Q But you are seeing on the fourth entry down, he's billing you 4.25 hours for discussion with client, correct?
A Yes.
Q You're also seeing that second line down. Review file. We don't have a date on that one, either, do we?
A No.
Q Review file. Several discussions with clients at how many hours?
A 4.75.
Q And what did he bill you at -- per hour at 4.75 hours?
A $550 an hour.

Q How about 4.25 hours?
A $550 an hour.
Q From the very beginning -- let's look at the very end, okay? This is part of the superbill, Exhibit 5, page 79. See the very last dated entry for Mr. Simon?
A I do.
Q Dated what?
A January 8th, 2018.
Q Travel to Bank of Nevada to X re trust deposit. Do you see that?
A Yes.
Q Number of hours?
A Two and a half.
Q What did Mr. Simon bill you, the client per hour for that 2.5 hours?
A $550 an hour.
Q From the initial meeting with client that we know took place in May of 2016 -- nobody disputes that -- to January 8th of 2018, what has every entry for Mr. Simon been billed at?
A $550 an hour.
Q Did he ever send any of the fee checks back to you?
A No.
Q Did he ever offer to send any of the fee checks that you had sent to him back to you?
A No.

Q Did they all clear?

A Yes.

MR. GREENE: I have nothing else, Your Honor.

THE COURT: Thank you, Mr. Greene. Mr. Christiansen, do you have any follow up?

MR. CHRISTIANSEN: Just one question.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. CHRISTIANSEN:

Q Ms. Edgeworth, on -- I showed you the first bill. If I were to show you the last line of bills 2, 3 and 4, could we agree that the word reduced is all four -- all three of those bills?

A If you say that they are, Mr. Christiansen, yes.

Q Okay.

MR. GREENE: I just have one more then.

FURTHER REDIRECT EXAMINATION

BY MR. GREENE:

Q Let's take a look at the very last line of Mr. Simon's very last bill, okay?

THE COURT: This is the superbill, Mr. Greene?

MR. GREENE: This is the superbill.

THE COURT: Okay.

MR. GREENE: This is page 79.

BY MR. GREENE:

Q Total fees at 550 per hour. Do you see that, Angela?

A I do.
Q Where does it say reduced?
A It does not.
Q Anywhere, does it?
A No.
Q That's all I have.

FURTHER RECROSS-EXAMINATION

BY MR. CHRISTIANSEN:

Q Just -- Ms. Edgeworth, do you know the date of your first bill? Just the date?
A December 6th or 16. Somewhere in December, '16.
Q Thank you, ma'am.

THE COURT: Anything else, Mr. Greene?

MR. GREENE: No, Your Honor.

THE COURT: Mr. Christiansen?

MR. CHRISTIANSEN: No, ma'am.

THE COURT: Okay. This witness may be excused. Ms. Edgeworth, thank you very much for your testimony again today.

THE WITNESS: Thank you, Your Honor.

MR. GREENE: I think your estimation of time of Mr. Vannah's was more accurate than Mr. Christensen.

THE COURT: Me and Mr. Vannah just aren't as optimistic as Mr. Christensen.

MR. CHRISTENSEN: I did use the word fantasy, and I know what it means.

MR. VANNAH: I'm outraged. I'm outraged and shocked.

THE COURT: Okay. So --

MR. GREENE: Please don't tell us how you know that.

THE COURT: -- it's 4:25. I think everybody has an understanding and nobody is going to close today.

MR. VANNAH: I'm too tired.

MR. CHRISTIANSEN: No, ma'am.

THE COURT: I understand, Mr. Vannah. So, what we're going to do is I'm going to get your closing arguments in writing. They're going to be blindly done. We're not going to do a closing and then a response and a reply. They're going to be blindly done by both parties. If you could submit those to chambers by Friday at 5:00.

MR. CHRISTIANSEN: Perfect.

MR. VANNAH: Could you give us like until Monday, so we can have the weekend?

THE COURT: Mr. Vannah. Yeah, Monday at 5:00 is fine.

MR. VANNAH: Monday at 5:00.

THE COURT: Yes.

MR. VANNAH: Yeah. That way we have a little more time.

THE COURT: Okay.

MR. CHRISTIANSEN: Thank you, Your Honor.

MR. GREENE: Thank you, Your Honor.

MR. CHRISTENSEN: Thanks for all you're accommodating me, Judge. I really appreciate it.

THE COURT: No, I appreciate it. It's fine. I just have to not

get Judge Herndon mad at me.

MR. CHRISTIANSEN: Oh, he'll take it out on me. Don't worry about it.

THE COURT: Yeah. My goal is to not get Judge Herndon mad at me. I was very nice to him when I called him.

[Proceedings concluded at 4:29 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

_____

Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

“EXHIBIT V”

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC,

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; and THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation,

Respondents/Cross-Appellants.

Supreme Court No. 77678

District Court Case No.: A-16-738444-C
Consolidated with:
A-18-767242-C

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; and THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation,

Respondents.

Consolidated with:
Supreme Court No. 78176

LAW OFFICE OF DANIEL S. SIMON; DOES 1 through 10; and, ROE entities 1 through 10;

Petitioner,

vs.

Consolidated with:
Supreme Court No. 79821

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

Respondents,

and

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC,

Real Parties in Interest.

MOTION FOR *EN BANC* REVIEW

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I. Introduction

Respondent/Cross Appellant/Petitioner, collectively referred to as Simon, requests *en banc* review of this consolidated appeal and writ petition because two issues are raised which have the potential for substantial precedential impact.

First, Appellant/Cross Respondent/Real Parties in Interest, collectively referred to as the Edgeworths, seek to maintain a conversion case against an attorney for asserting a statutory attorney lien when there is no evidence of, and no allegations of, taking money for personal use. A ruling in favor of the Edgeworths on the ability to bring a conversion claim when the disputed funds are safekept would have substantial precedential impact because it would be the first such holding in the United States.

Second, Simon seeks relief from the District Court decision which denied Simon's Anti-SLAPP motion to dismiss as moot. While courts in California have found that an attorney lien is a protected activity under the California Anti-SLAPP statute, Nevada has yet to rule on the issue. Accordingly, a ruling on this issue could set precedent for Nevada.

II. Argument

The Court may hear a matter *en banc* in the first instance if there is a a substantial precedential issue.[1] Precedent is generally defined as a decision that provides an example or authority for similar cases which follow.[2] Simon believes there are two such issues presented.

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[1] IOP at Rule 2(b)(2) & 13(a).
[2] *See, e.g.*, Black's Law Dictionary, 5th ed. (1979), at 1059.

A. Suit for conversion when money is safekept.

The Edgeworths sued Simon for conversion because Simon used a lien to resolve a fee dispute. The Edgeworths agree that Simon is owed fees and costs, albeit there is a disagreement over the amount. The Edgeworths agree that the disputed funds are safekept. Lastly, the District Court found the attorney lien complied with NRS 18.015 and was enforceable.

After repeated searches on Westlaw and Lexis, Simon has not found any case authority in the United States in which a conversion claim against an attorney who used a lawful lien to resolve a fee dispute has been allowed when the disputed funds are safekept. Likewise, the Edgeworths did not provide the District Court with any case authority which supports their collateral conversion claim, nor did they provide any precedent in their opening brief.

Accordingly, a ruling in favor of the Edgeworths would be the first such holding in the United States and would thus serve as precedent for the nation. The potential for precedent which could negatively impact the administration of justice and the attorney client relationship is so distinct that the National Trial Lawyers Association filed an Amicus Brief in support of affirmance of the dismissal of the conversion claim.

B. An attorney lien is a protected activity under Anti-SLAPP law.

Simon moved to dismiss the Edgeworth conversion complaint under the Nevada Anti-SLAPP law because filing an attorney lien should be recognized as a protected activity under the law. The District Court did not so find, and instead denied the motion as moot. Simon seeks relief.

Nevada has looked to California on Anti-SLAPP issues in the recent past. In *Shapiro v. Welt*, 133 Nev. 35, 35, 389 P.3d 262, 265 (2017), the Court adopted "California law to determine if a statement is an issue of public interest".

Simon respectfully requests the Court to look to California law on this issue as well. California case law holds that assertion of an attorney lien is a protected activity under the California Anti-SLAPP statute. *See, e.g.*, *Jensen v. Josefsberg*, 2018 WL 5003554 (C.A. 2nd Dist. Div. 2, 2018)(unpublished)(a complaint challenging an attorney lien as unethical was subject to dismissal under the Anti-SLAPP statute); *Finato v. Fink*, 2018 WL 4719233 (C.A. 2nd Dist. 2018) *review denied* 2019 (unpublished)(*Finato* recognized filing an attorney lien was a protected activity under the Anti-SLAPP law and on appeal ordered dismissal of lien related claims for malpractice, breach of fiduciary duty and breach of contract); *Kattuah v. Linde Law Firm*, 2017 WL 3033763 (C.A. 2nd Dist.

Div. 1 Calif. 2017) (unpublished)(reversing denial of an Anti-SLAPP motion); *Roth v. Badener*, 2016 WL 6947006 (C.A. 2nd Dist. Div. 2 Calif 2016) (reversing a denial of an Anti-SLAPP motion)(unpublished); *Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald LLP*, 2015 WL 881588 (C.A. 2nd Dist. Div. 8 Calif 2015) (unpublished); *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist., C.A. 2009)(unpublished)(order granting Anti-SLAPP motion affirmed); *Transamerica Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (U.S.D.C.C.D. Calif. 2016)(unpublished)(an attorney lien is "protected petitioning activity").

Recognition that use of an attorney lien is a protected activity would set Nevada precedent.

III. Conclusion

There appear to be two issues which could set precedent. Accordingly, Simon requests an *en banc* hearing.

Dated this 28th day of January 2020.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January 2020, I served a copy of the foregoing Motion for En Banc Hearing on the following parties by electronic service pursuant to Nevada Rules of Appellate Procedure:

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRS 41.637** **Hearing Date:** October 1, 2020 at 9:00am

COMES NOW, Defendants, BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, by and through their counsel of record, M. Caleb Meyer, Esq., Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER

REEVES, LLP, and hereby respectfully submit EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRS 41.637.

This Special Motion is based upon the attached Memorandum of Points and Authorities, NRS sections 41.635-670, the pleadings and papers on file herein, the Declarations of Brian Edgeworth and Angela Edgeworth attached hereto, and any oral argument which this Honorable Court may entertain at time of hearing on this matter.

DATED this 27th day of August, 2020.

MESSNER REEVES LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Seeking to protect the exercise of fundamental speech rights against meritless and retaliatory suits, the Nevada State Legislature passed NRC 41.635, one of the strongest anti-SLAPP laws in the country in 2015. A strategic lawsuit against public participation, more commonly known as "SLAPP," is a meritless lawsuit initiated to chill a defendant's freedom of speech and right to petition under the First Amendment. Anti-SLAPP procedures are designed to shield a defendant's constitutionally protected conduct from the undue burden of frivolous litigation. Thus, where a lawsuit such as this is brought in response to "communication made in direct connection with an issue of public interest, in a place open to the public or public forum," N.R.S. 41.637(4), Nevada's anti-SLAPP law permits Defendants to bring a special motion to dismiss in response to which Plaintiffs must meet the heavy burden of showing that their case has merit, or risk paying significant fees. The Anti-SLAPP statute was designed to protect against exactly the type of lawsuit now before this Court. Accordingly, and for the reasons discussed below, Defendants' First Amendment and other civil rights must be protected, and The Simon Complaints must be dismissed.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

A. The Edgeworths' Underlying Claim and Retention of Simon on an Hourly Fee Contract

The matter before this Court stems from a dispute between Brian and Angela Edgeworth (hereinafter "Brian" and "Angela" respectively and "the Edgeworths" collectively with the Edgeworth Family Trust and American Grating) and their lawyer Plaintiff Daniel S. Simon (hereinafter "Simon") by and through The Law Office of Daniel S. Simon, P.C. (hereinafter collectively referred to with Simon as "Plaintiffs"). *See* Declaration of Brian Edgeworth, attached hereto as **Exhibit A**.

On April 10, 2016, an under-construction home owned by the Edgeworths flooded. *See* **Exhibit A**. The flood resulted in approximately $500,000 in damage to the house. *Id.* Initially, the Edgeworths retained Simon in May of 2016, to send letters to the involved parties in hopes they could resolve the matter. *Id*. The matter was not resolved with the demand letters. *Id.* Simon and Brian discussed that Simon would be paid $550.00 per hour for his services. *Id.* On June 14, 2016, Simon filed a Complaint

in the case of *Edgeworth Family Trust, and American Grating LLC vs. Lange Plumbing, LLC, the Viking Corporation, Supply Network Inc., dba VIkingSupplynet*, Case No. A-18-738444-C. *Id*.

B. Plaintiffs' Billing Practices and Attempt to Change the Fee Arrangement

During his representation of the Edgeworths, Simon periodically presented bills for payment. *See* Decision and Order on Motion to Adjudicate Liens, attached hereto as **Exhibit B**. In total, Simon presented the following bills for fees and costs: (1) $42,564.95, in December 2016 for fees; (2) $46,620.69, of which $11,365.69 were costs, on May 3, 2017; (3) $142,081.20, of which $31,943.70 were costs, on August 16, 2017; and (4) $255,186.25, of which $71,555.00 were costs, on September 25, 2017. *See* **Exhibit B**. These bills were billed at the rate of $550.00 per hour as previously discussed by Simon and Brian. *Id.* The legal services billed in this matter through September 25, 2017 totaled $486,453.09, of which $367,606.25 were attorneys' fees and $118,846.84 were purported costs. *Id*.

C. Settlement of the Edgeworths' Claim Against Viking and Plaintiffs' Continued Attempts to Modify the Fee Arrangement

During the discovery phase Brian identified information which made it apparent that a much larger damages award for the Edgeworths was feasible. *See* **Exhibit A**. On November 15, 2017, a settlement was reached between the Edgeworths and Viking when they accepted a mediator's proposal to resolve the case for $6,000,000.00 with certain agreed upon terms (the "Viking Settlement"). *Id*. That day, Brian requested a final invoice from Simon so he could pay the outstanding fees and costs. *Id.* Plaintiffs never responded to Brian's email requesting the final invoice. *Id.* On November 17, 2017, Simon summoned the Edgeworths to his office. *Id.* Simon spoke with the Edgeworths about modifying their fee agreement because he believed he was entitled to more than his hourly fees. *Id*. Simon told the Edgeworths that if they did not agree to pay more, the Viking Settlement would fall apart because it required his signature and there were still many terms to be negotiated. *Id.* No agreement was reached during the meeting, leaving Simon's only the hourly agreement in place. *Id.* After that meeting, Simon placed numerous telephone calls to Brian asking him to commit to a modified fee arrangement, but no agreement was reached. *Id*.

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D. Simon Retains Counsel to Represent Him on the "Edgeworth Fee Dispute" and the November 27, 2017 Letter

Brian requested a final invoice from Simon to settle any outstanding attorney's fees and costs. *Id.* The Edgeworths had promptly paid all of the invoices for fees and costs. Simon had no reason to believe that they would not do the same with any final bill presented to them. *Id.* However, on November 27, 2017, Simon retained counsel regarding the "Edgeworth Fee Dispute," a dispute that notably did not exist at that time. *See* Billing Invoice from James Christensen, attached hereto as **Exhibit C**. That same day Simon sent a letter to Brian and Angela regarding a proposed modification to the Edgeworths' fee agreement which would entitle Simon to $1,500,000 in attorneys' fees, and $200,000 in costs. ("November 27, 2017 Letter"). *See* November 27, 2017 Letter, attached hereto as **Exhibit D,** *see also* Retainer Agreement and Settlement Breakdown, attached hereto as **Exhibit E.** Within the November 27, 2017 Letter, Simon made the following statements:

> "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"
> [. . .]
> "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."
> [. . .]
> "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."
> [. . .]
> "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."
> [. . .]
> "my standard fee of 40% on all my other cases produced hourly rates 3-10 times the hourly rates you were provided"
> [. . .]
> "the insurance company factored in my standard fee of 40% (2.4 million)"
> [. . .]
> "My standard fee is 40% for a litigated case…That is what I get in every case."
> [. . .]
> "the relationships I have and my reputation is why they are paying you this much"
> [. . .]
> "There is a lot of work left to be done…..this will need to be negotiated. If this cannot be achieved, there is no settlement"
> [. . .]
> "Simply, there is a substantial amount of work that still needs to be addressed…..This week was very important to make decisions to try and finalize a settlement"

> [. . .]
> "If you are agreeable to the attached agreement, please sign both so I can attempt to finalize the agreement.
> [. . .]
> "I have thought about it a lot and this the lowest amount I can accept"
> [. . .]
> "If you are not agreeable, then I cannot continue to lose money to help you."

See **Exhibit D**.

Simon's November 27, 2017 Letter indicated that he would not finalize the settlement if the Edgeworths did not sign the new fee proposal attached to his letter. *See* **Exhibit D**. Although the parties had agreed on the settlement terms in the mediator's proposal, Simon indicated that there was a substantial amount of work remaining in order to finalize the Viking Settlement. *Id*. Simon went on to state that he had thought about it a lot, and the proposed fee arrangement was the lowest amount he could accept, and ***if the Edgeworths were not agreeable he could no longer "help" them***. *Id*., at p. 5. The Edgeworths did not agree to accept Simon's new fee arrangement proposal, nor did they ever sign the "Retainer Agreement" or purported "Settlement Breakdown." *See* **Exhibit A**.

E. The Edgeworths' Retention of Vannah

Simon encouraged the Edgeworths to seek legal counsel to verify his claims. For this reason, and because Simon's new fee proposal sought additional compensation beyond his hourly invoices and costs, the Edgeworths retained Robert Vannah, Esq. of Vannah & Vannah (collectively "Vannah"). *See* **Exhibit A**. On November 29, 2017, Brian informed Simon that he had retained Vannah ***to assist*** Simon in finalizing the Viking settlement and settling the final bill for fees and costs, and that Simon was to cooperate with Vannah in every regard concerning the litigation and settlement. *See* Letter from Brian to Simon, attached hereto as **Exhibit F**. Thereafter, both Brian and Vannah informed Simon that the Edgeworths would not sign the new fee agreement. Simon was also informed that the Edgeworths agreed to the terms in the mediator's proposal and wanted to sign the deal without any modifications. *See* **Exhibit A**. On December 7, 2017 Simon wrote to Vannah about the outstanding settlement terms. *See* December 7, 2017 letter, attached hereto as **Exhibit G.** In the correspondence, Simon indicated that he was still reviewing the case file and made the claim that there may be as much as $1.5 million in allegedly unbilled fees and $200,000.00 in allegedly unbilled costs, despite the fact the Edgeworth's had already paid

Plaintiffs nearly $500,000.00 in fees and costs for a matter which never finished discovery. *Id.* Vannah began requesting the final invoice when he was retained on November, 30, 2017. *See* **Exhibit A**. He continued to make this request for the final invoice between December 18 and 28, 2017. *See* Emails dated December 18-28, 2017, attached hereto as **Exhibit H**. Neither the amount nor the bill were ever provided. *See* **Exhibit A**.

F. The Special Trust Account Created to Hold the Funds

During negotiations, Simon added a term to the Viking Settlement agreement that his name would be on the Settlement checks. *Id.* When the Viking settlement checks were received, Simon insisted that they be deposited in Plaintiffs' trust account instead of being given to the Edgeworths. *Id*. As a compromise, Vannah suggested that the checks could be held in Vannah's trust account, but that was not satisfactory to Simon. *Id*. Thus, on January 8, 2018, a special trust account was opened to deposit and hold the Edgeworths' settlement funds [hereinafter referred to as the "Settlement Trust Account"]. *See* **Exhibit A**. The Settlement Trust Account requires that both Simon and Vannah sign for any action to be taken. *Id*.

G. Allegations Regarding Defamatory Statements

After being informed that the Edgeworths would not sign the fee agreement, Simon contacted Ruben Herrera ("Herrera"), Club Director and coach of the Las Vegas Aces Volleyball Club, via email and stated that due to "ongoing issues with the Edgeworths," Simon was requesting that his daughter be released from her player's contract with the Club. *See* Herrera Emails, Attached hereto as **Exhibit I**. Herrera responded to the first email that he knew nothing and did not want to know anything. *Id*. Simon responded again with further disparaging remarks on December 4, 2017, when Simon sent a second email to Herrera, wherein he stated "[a]s for the other issue with the Edgeworth's, just as you, we believed we were friends. However, as parents, we must do everything in our power to protect our children. This is why she could not have come to the gym." *Id*. On December 4, 2017, Herrera forwarded the email string to Brian to inform him of the statements Simon had made about the Edgeworths. *Id*. Later that same day, Brian met Herrera at Ventano's Restaurant in Henderson. *Id*. There, Brian told Herrera that the Edgeworths had paid Simon nearly $500,000.00 (at $550.00 per hour) over 18 months but after the Viking

Settlement proposal was received, Simon demanded additional compensation from the Edgeworths. *Id*. Brian told Herrera about receiving the November 27, 2017 Letter and that it said that if the Edgeworths did not pay agree to pay Plaintiffs additional attorney's fees, Plaintiff Simon would quit and the settlement would not go through. *Id*. Brian also told Herrera that, according to the letter, they had to agree to the new fee proposal because a judge would award more if they had to litigate the issue. *Id*. Brian told Herrera he felt forced to hire a lawyer to protect their monetary interest in the Viking Settlement. *Id*. No other information was expressed to Herrera about the case. *Id*. Angela never spoke with Mr. Herrera regarding this issue. *Id*.[*]

H. Plaintiffs' Attorney's Liens Against the Viking Settlement

On November 30, 2017, Simon filed a Notice of Attorney's Lien against the Edgeworths, claiming by supporting affidavit that $80,326.86 was outstanding and had not been paid by the Edgeworths (the "Original Lien"). *See* Notice of Attorney's Lien, attached hereto as **Exhibit J**. Simon provided no invoices to substantiate the costs represented in the lien.[1] On January 2, 2018, Plaintiffs filed a second Notice of Amended Attorney's Lien wherein Plaintiffs claimed outstanding costs of $76,535.93 and entitlement to a sum total of $2,345,450 in attorney's fees, less payments received in the sum of $367,606.25, for a net lien in the sum of $1,977,843.80 in total attorneys' fees against the Viking Settlement (the "Amended Lien"). *See* Notice of Amended Attorney's Lien, attached hereto as **Exhibit K**; *see also* **Exhibit B**. When Simon filed the Original and Amended Liens, no final bill had been provided to the Edgeworths, and no contingency, hybrid, or other fee agreement had been reached outside of the original agreement that the Edgeworths would pay Simon $550.00 per hour for his services plus costs. *Id.* To date, from the $6,000,000 Viking Settlement funds, the Edgeworths have received only $3,950,561.27. *Id.*

I. The Filing of the Edgeworth Complaint and Edgeworth Amended Complaint

Because Plaintiffs were maintaining unlawful dominion and control over funds to which they were not entitled, on January 4, 2018, the Edgeworths filed a Complaint alleging breach of contract, declaratory

[*] The Edgeworths note that Plaintiffs have identified Brian's use of the word "extort" within Brian's Affidavits as one of their overarching bases for their SLAPP suit. However, as will be demonstrated below, Brian did not use that word when speaking to Mr. Herrera, but only in Brian's Affidavits to concisely define his opinion of Plaintiff Simon's conduct and, as discussed in detail herein, given that Brian's Affidavits at issue were filed with a judicial body, same are absolutely privileged. As such, Plaintiffs' have not, and cannot, demonstrate that Brian's statements to Mr. Herrera support any of their "Counts" and especially not Plaintiffs' "Count" for defamation, requiring that this Court grant the Edgeworths' Special Anti-SLAPP Motion to Dismiss.

relief and conversion. *See* The Edgeworth Complaint, attached hereto as **Exhibit L**. On March 15, 2018, the Edgeworths filed an Amended Complaint against Plaintiffs, adding a claim for breach of the covenant of good faith and fair dealing, (the "Edgeworth Amended Complaint" and collectively with the January 4, 2018 Complaint as the "Edgeworth Complaints"]. *See* The Edgeworths' Amended Complaint, dated March 15, 2018, attached hereto as **Exhibit M**. In response to the filing of the Edgeworth Complaint, Plaintiffs filed a Motion to Dismiss the Edgeworth Complaint and a Special anti-SLAPP Motion to Dismiss.[†] *See* Plaintiffs' Motions to Dismiss the Edgeworth Complaint, on-file in Case No. A-16-73844-C. The Edgeworths filed Oppositions including affidavits in support signed by Brian ("Brian's Affidavits"). *See* Affidavit of Brian Edgeworth, dated February 12, 2018, attached hereto as **Exhibit N**; *see also* Affidavit of Brian Edgeworth, dated March 15, 2018, attached hereto as **Exhibit O,** *see also* Opposition to Motions to Dismiss, on-file in Case No. A-16-73844-C.

On January 24, 2018, Plaintiffs filed a Motion to Adjudicate Lien. *See* Plaintiffs' Motion to Adjudicate Attorney Lien, attached hereto as **Exhibit P**. Judge Jones held a five-day evidentiary hearing between August 27, 2018 and September 18, 2018. *See* **Exhibit B**. Throughout the evidentiary hearing, Judge Jones, counsel for Simon, and Vannah all repeatedly indicated that the only purpose of the hearing was to adjudicate Plaintiffs' lien, not to litigate the issues presented in the Edgeworth Complaints or any other motions presented to the Court in the matter. *See* **Exhibit A**. On November 19, 2018, Judge Jones granted Plaintiffs' Motion to Adjudicate Attorneys' Liens, finding that Plaintiffs were entitled to attorney's fees totaling $484,982.50 under the hourly agreement.[‡] *See* **Exhibit B**. Thereafter the Edgeworth Complaints were dismissed. *See* Order on Motion to Dismiss NRCP 12(B)(5), attached hereto as **Exhibit Q**. On December 13, 2018, the Edgeworths filed a Motion for an Order Directing Simon to Release funds. *See* Motion for an Order Directing Simon to Release Funds, attached hereto as **Exhibit R**. To date, Simon still has not agreed to release the adjudicated undisputed portion of the funds from the Viking Settlement to the Edgeworths. *Id*. On February 25, 2019, the Edgeworths filed an appeal challenging Judge Jones' Order Adjudicating the Lien. *See* Appellant's Opening Brief, attached hereto as

[†] Plaintiffs' Special Anti-SLAPP Motion to Dismiss the Edgeworths' Amended Complaint filed on March 28, 2018, in matter number A-16-738444-C, was specifically denied as moot and, as such, and for the sake of brevity, no further presentation regarding same is presented herein.

[‡] Notably, this amount is nearly $1,500,000 less than the amount Simon was exercising dominion and control over by refusing to provide his signature for it to be released.

Exhibit S. Plaintiffs also filed a Petition for Writ of Prohibition or Mandamus with the Nevada Supreme Court on October 17, 2019, challenging the amount adjudicated by Judge Jones. *See* Nevada Supreme Court Docket No. 7982, attached hereto as **Exhibit T**. The Appeal and Writ have been consolidated and fully briefed and are currently pending resolution. *Id.*

J. The Simon Complaints and Relevant Procedural History

On December 23, 2019, Plaintiffs initiated the instant suit by filing a Complaint (hereinafter "The Simon Complaint"). *See* Simon Complaint, on-file herein. The Simon Complaint seeks damages against the Edgeworths following litigation regarding the Edgeworth Complaints eight causes of action. *Id*. On May 18, 2020, Defendants American Grating and Defendants Edgeworth Family Trust, and the Edgeworths filed Special Anti-SLAPP Motions to Dismiss pursuant to NRS 41.647, and 12(b)(5) Motions to Dismiss the Simon Complaint. On May 21, 2020, Plaintiffs filed an Amended Complaint. With the instant Motion, Defendants respectfully request that this Court dismiss Plaintiff's Amended Complaint for the reasons set out below, and the totality of the evidentiary record in this case.

III. THE AMENDED SIMON COMPLAINT IS IMPROPER AND CANNOT BE CONSIDERED

As a matter of record, Defendants maintain arguments asserted in their original briefing regarding Plaintiffs' improperly asserted Amended Complaint. Understanding the Court's position outlined during the August 13, 2020 hearing that the Amended Complaint renders anything prior to that pleading moot, Defendants respectfully move the Court to reconsider the issue. Based upon the statutory history, purpose behind the anti-SLAPP law and persuasive precedent, support Defendant's position that arguably Plaintiffs did not have the right to file the Amended Simon Complaint following the filing of Defendants' Original Anti-SLAPP Motions. NRCP 15(A) allows amendment of a Complaint 21 days after service of a responsive pleading or 21 days ***after service of a motion under Rule 12(b), (e), or (f)***, whichever is earlier. The Rule further states that any other amendments require leave of Court.[2] Here, Defendants filed Motions to Dismiss pursuant to 12(b)(5), ***and*** Anti-SLAPP Motions to Dismiss. Amendment of a complaint after the filing of a special anti-SLAPP motion to dismiss is specifically in contravention of the purpose and history of Nevada's anti-SLAPP law and should therefore not be permitted.

The plain language of Nevada's Anti-SLAPP statute does not provide Plaintiffs the right to file an amended complaint following the filing an Anti-SLAPP MTD, nor does NRCP 15(A).[3] Further, the procedure set forth in the statute for disposal of SLAPP suits is to dispose of such SLAPP suits ***in an expedited manner***.[4] Upon the filing of a Special anti-SLAPP Motion to Dismiss, discovery is immediately stayed pending disposition of the special motion.[5] The purpose behind Nevada's anti-SLAPP legislation is to protect the communication and the right to petition, yet not allow the protection to become meaningless by having a drawn-out court battle.[6] This intention is consistent with prohibiting Amendment of a Complaint after an Anti-SLAPP Motion is filed. In 2013 protection of immunity within Nevada's anti-SLAPP law was specifically broadened to be likened to the Anti-SLAPP Statute in California.[7] Interestingly, California courts specifically prohibit the filing of an amended complaint in response to an Anti-SLAPP Motion to Dismiss, which is persuasive precedent for this Court.[8] In *Salma*, the Court held that *Simmons*, *supra*, 92 Cal.App.4th 1068, supported "***automatic dismissal of the amended claims***.[9] The *Salma* Court, extending the holding of *Simmons*, specifically recounted that "[a]llowing a SLAPP plaintiff leave to amend the complaint once the court finds the prima facie showing has been met ***would completely undermine the statute by providing the pleader a ready escape from California's anti-SLAPP statute's quick dismissal remedy***.[10]

Allowing the Amended Simon Complaint to stand in this matter would be wholly in contravention of the stated purposes behind Nevada's anti-SLAPP statute and would improperly allow Plaintiffs a second opportunity to disguise the vexatious nature of their SLAPP Complaint. The Edgeworths respectfully request that this Court strike the Amended Simon Complaint from the record in this case and only consider the Simon Complaint in this Court's resolution of the Edgeworths' Original Anti-SLAPP Motions, as well as in its resolution of the Special Anti-SLAPP Motions to Dismiss filed by Vannah. In the event that this Court does not strike the Amended Simon Complaint as a rogue pleading, it should be dismissed under Nevada's Anti-SLAPP laws for the following reasons.[11]

IV. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS

The Nevada legislature enacted statutory provisions to protect persons from being subject to retaliatory litigation and to weed out meritless claims arising from protected conduct. SLAPP lawsuits

abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs.[12] Nevada's anti-SLAPP statute provides that a person "who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication."[13] In such case, , the person against whom the action is brought may file a special motion to dismiss.[14]

The Court employs a two-step process in ruling on a special motion to dismiss. The Court has to determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon good faith communication in furtherance of the right to petition…in direct connection with an issue of public concern.[15] If the movant fails to satisfy this threshold burden, the Court must deny the motion.[16] Second, if the defendant does not demonstrate this initial prong, the court should deny the anti-SLAPP motion and need not address the second prong.[17] If the moving party satisfies their initial burden, the court then determines whether the non-moving party "has demonstrated with prima facie evidence a probability of prevailing on the claim, and the burden is shifted to the Plaintiff.[18] Under Nevada law, the motion is reviewed on a de novo standard as set out in Park v. Board of Trustees of California State University.[19] Thus, "[a]lthough called a 'motion to dismiss,' anti-SLAPP motions are treated like motions for summary judgment."[20] Summary judgment is appropriate when a review of the record viewed in a light most favorable to the nonmoving party reveals no triable issues of material fact and judgment is warranted as a matter of law.[21] The two substantive requirements for the entry of summary judgment are: (1) there must be no genuine issue of material fact; and (2) the moving party is entitled to judgment as a matter of law.[22] Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.[23] Further, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.[24]

V. THE EDGEWORTHS' ANTI-SLAPP MOTION SHOULD BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

The Amended Simon Complaint should be dismissed pursuant to Nevada's Anti-SLAPP statute and relevant case law. First, the Edgeworths unquestionably had and have a good faith basis to assert

claims against Plaintiffs. Second, the speech in question regarding any and all documents filed during the course of litigation or stated during a judicial hearing is clearly covered by the First Amendment, as the communications at issue were: (1) made to a judicial body; (2) were made in anticipation of litigation or regarding on-going litigation; (3) were made in places open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is an issue of public interest; and/or (4) were opinions. Finally, Plaintiffs cannot and will not prevail on the claims alleged against the Edgeworths in the Amended Simon Complaint. As discussed *supra*, dismissal of the Amended Simon Complaint in its entirety is appropriate.

Under the Nevada Anti-SLAPP statute, it appears that Plaintiffs' objective in filing the Simon Complaints is to harass and punish the Edgeworths due to a multi-million-dollar fee dispute. Demonstrative of this theme is the timing of Simon's original retention of counsel. Specifically, prior to sending the November 27 Letter Simon also retained counsel regarding the "Edgeworth Fee Dispute."[25] Notably, at that time, there was not a dispute between the parties about the fee.[26] The record demonstrates that Simon was preparing for litigation against defendants in advance of the Edgeworths' final decision regarding the new fee proposal. On the same day Simon attempted to pressure the Edgeworths into signing the new fee proposal, which would have resulted in a windfall to Plaintiffs of nearly $1.2 million, Simon was also setting up a process by which he could seek redress from, harass, and punish the Edgeworths if they did not agree to his demands. Simon knew, or should have known, that he had no legal or equitable basis to claim any portion of the Viking Settlement because no contingency or hybrid fee agreement had been reached.. Additionally, Simon had no reason to believe that the Edgeworths would not satisfy any outstanding legal fees and/or costs given their impeccable payment record. Despite this knowledge, Simon retained James Christensen prior to sending the November 27, 2017 Letter, and three (3) days prior to the Edgeworths' retention of Mr. Vannah. Simon did not disclose that he had retained a lawyer to handle the "Edgeworth Fee Dispute" prior to sending the November 27, 2017 Letter.[27] Thus, Simon elected to retain counsel prior to the initiation of his new fee proposal. It follows that Simon's claim that he incurred damages because he was ***forced to retain an attorney to defend himself*** is patently false. He had clearly retained counsel long before the Edgeworths had even consulted with

Vannah. The Simon Complaints were both brought against the Edgeworths for the improper purposes Nevada's anti-SLAPP statute specifically seeks to protect against, and, as such, the Edgeworths respectfully request that this Court grant their instant Motion.

A. The Edgeworths Satisfy the First Prong of the Anti-SLAPP Analysis

In the instant case, as discussed previously, the Amended Simon Complaint alleges eight causes of action (identified as "Counts"): (I) Wrongful Use of Civil Proceedings; (II) Intentional Interference With Prospective Economic Advantage; (III) Abuse of Process; (IV) Negligent Hiring, Supervision, and Retention – The Defendant Attorneys; (V) Defamation Per Se – The Edgeworths; (VI) Business Disparagement – The Edgeworths; (VII) Negligence – The Edgeworths; (VIII) Civil Conspiracy.[28] The Complaint indicates that these causes of action alleged against the Edgeworths are "set forth in the oppositions, affidavits, amended complaint, motions filed, participating in an evidentiary hearing, emails, 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."[29] Simon recognizes that the damages he claims ***all*** stem from the Edgeworth Complaint lawsuit, which are protected speech.

Imposing tort liability on the Edgeworths, would be in contravention of Nevada's Anti-SLAPP law. Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern means any written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law.[30] The essence of the Amended Simon Complaint is that the Edgeworths utilized the court system to allegedly disparage Simon and his business, thereby allegedly damaging their reputations and causing economic harm. This assertion is patently false, and unsupported by the factual assertions contained in the Amended Simon Complaint. As demonstrated *supra*, the Edgeworths had a good faith basis for bringing their claims against Plaintiffs to recover the Viking Settlement Funds, and the speech alleged in conjunction with the litigation of the Edgeworth Complaints is protected by the First Amendment. Further, as will be demonstrated *infra,* the statements to Herrera were in relation to the litigation, opinion, and matter of public concern, and therefore cannot be the basis for Simon's causes of action. These cannot therefore be the basis for Plaintiffs' claims.

i. *Defendants Engaged in Protected Pre-Litigation and Litigation Conduct*

"It is a long-standing common law rule that communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged.[31] 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.[32] A communication can be protected under the litigation privilege even when no judicial proceedings have commenced if (1) a judicial proceeding is contemplated in good faith and under serious consideration, and (2) the communication is related to the litigation.[33] An absolute privilege bars any civil litigation based on the underlying communication.[34] The purpose of the absolute privilege is to afford all persons the ability to access the courts with assured freedom from liability for defamation where civil or criminal proceedings are seriously considered.[35] Therefore, the absolute privilege affords parties the same protection from liability as those protections afforded to an attorney for defamatory statements made during, or in anticipation of, judicial proceedings.[36] The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies so long as the statements are in some way pertinent to the subject of controversy.[37] Moreover, the statements need not be relevant in the traditional evidentiary sense, but need have only some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged.[38]

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.[39] The privilege also applies to conduct occurring during the litigation process.[40] It is an absolute privilege that bars any civil litigation based on the underlying communication.[41] The privilege, which even protects an individual from liability for statements made with knowledge of falsity and malice, applies so long as the statements are in some way pertinent to the subject of controversy.[42] Moreover, the statements need not be relevant in the traditional evidentiary sense, but need have only 'some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged.[43]

Further, because there is no such thing as a false idea,[44] statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.[45]

On January 4, 2018, and March 15, 2018, respectively, the Edgeworth Complaints were filed. These pleadings were filed in good faith to seek redress for wrongs committed by another pursuant to well-founded claims for relief. By definition, the Edgeworth Complaints are petitions to a judicial body and qualify as, and are, protected communications pursuant to NRS 41.637(3).[46] Any involvement in the litigation that followed is also protected by the litigation privilege.[47] The use of these protected communications serves as one of the main basis for the Amended Simon Complaint, which in and of itself satisfies the first prong of the Anti-SLAPP statute analysis because said communications fall squarely within the Anti-SLAPP statute provisions.

ii. *Statements Made by the Edgeworths Cannot be the Basis for Plaintiffs' Claims*

The Amended Simon Complaint includes allegations regarding statements to third parties by Brian and Angela. These claims are wholly without merit when evaluated outside of the small vacuum of a universe as presented by Plaintiffs within the Amended Simon Complaint. First, Plaintiffs' allegations regarding statements made by Brian to Herrera are privileged on several independent grounds and therefore cannot be the basis for Plaintiffs' Complaints. NRS 41.637(4) states that communications made in direct connection with an issue of public interest in a place open to the public or in a public forum, which were truthful or made without knowledge of falsehood are protected. In this case, Brian met Herrera at a Ventano's to discuss the email Simon sent to Herrera about the Edgeworths.[48] Ventano's is a restaurant open to the public that was open for regular business on the day of the meeting.

In Plaintiffs' request for e*n banc* review of Plaintiffs' Writ, Plaintiffs specifically conceded that the matter underlying the issue between the Edgeworths and Plaintiffs ***is one of such public interest that it required a panel of seven Justices to consider it***. *See* Plaintiffs' Motion for En Banc Review, dated January 28, 2020, attached hereto as **Exhibit V**. Further, the issue involved in the underlying litigation between Plaintiffs and the Edgeworths is of the utmost public importance, because it specifically affects the interest of anyone who retains counsel for legal representation. It is a matter of public concern for all attorneys because it affects the practice of law, how it is perceived by the public and an attorney's ability

to ***lawfully*** institute an attorney's lien in justified circumstances. Issues concerning attorneys and their representation of clients have very recently been confirmed by the Nevada Supreme Court as being issues of public interest, as that Court recently held that ***statements criticizing an attorney's courtroom conduct and practices are directly connected with a matter of public interest***.[49] The issue of an attorney attempting to change an existing fee arrangement at the 11th hour of litigation or in the midst of finalizing a settlement is a matter of public interest. An attorney attempting to assert entitlement to a percentage of a settlement without a written contingency agreement is a matter of public interest. An attorney filing an attorney's lien against proceeds of a client's settlement without a contingency agreement or belief that the client will not pay the final bill pursuant to the hourly agreement that had been operative during the duration of representation is a matter of public interest. These issues are a matter of interest to both the public who may seek attorney services at some time, and attorneys who have requirements under the rules of professional conduct for how fee agreements must be handled.

Brian did not initiate contact with Herrera to discuss the pending litigation or fee dispute with Plaintiffs. Simon himself initiated conversation with Herrera in an email where he implied some non-existent wrong-doing on the part of the Edgeworths, and specifically referenced the "on-going issues" between the parties, mere hours after Simon was first informed by Vannah of the formal dispute.[50] Simon intimated actual wrong-doing on the part of the Edgeworths which required him to protect his daughter by not allowing her to be present at the gym for volleyball practice.[51] It was well known that Brian, Angela and Herrera were all on the Board of the Club. Simon knew, or should have known, that an allegation of wrongdoing against the Edgeworths would force Herrera to confront the Edgeworths with the alleged misconduct. This is exactly what happened. Herrera approached Brian regarding the issue, which in turn required Brian to have frank and honest conversations regarding the issue with Herrera to defend his integrity. Brian did not (as Plaintiffs claim) use the words "extortion," "blackmail," "theft" or "steal" with Herrera.[§] Brian's statements were opinions of his perceptions of what had occurred between Plaintiffs and the Edgeworths which have been specifically held to be privileged.[52]

[§] Brian had previously only used the term "extort" in Affidavits filed with the Court for the specific purpose of it accurately defining his ***perception and opinion*** of Simon's actions based on his personal experience. *See* **Exhibit A**.

The evidence does not and cannot support an allegation that the Edgeworths made any statements to Herrera that could support the claims forwarded within the Amended Simon Complaint. Plaintiffs are now asking this Court to find that Brian being forced to respond to false insinuations of wrongdoing was not protected speech. Adopting this position would specifically endorse curbing of the exercise of free speech in the context of responding to allegations of wrongdoing. This position is wholly in contravention of the purpose behind Nevada's anti-SLAPP law and, as such, should not be countenanced by this Court. Further, these statements were also privileged pursuant to NRS 41.637(3) and (4) as made in the context of the underlying litigation, and opinions made in a place open to the public regarding an issue which Plaintiffs have already admitted and/or conceded is of public interest.[53] Specifically, a person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern ***is immune from any civil action for claims based upon the communication***.[54] Here, the opinions of the Edgeworths constitute protected speech and cannot support the allegations made within the Amended Simon Complaint.

Plaintiffs also claim that statements made by Angela form a basis for counts V, VI, and VII. As support for these claims Plaintiff cite Angela Edgeworth's sworn testimony at the evidentiary hearing on September 18, 2018, and provide a citation of 133:5-23.[55] Defendants have obtained the certified transcript from District Court Department 10, certified by Court Recorder Victoria Boyd as the official record of the Court proceedings. A cursory review of page 133 of the transcript indicates that the testimony therein is from Angela Edgeworth discussing the damages that were incurred, funds received, and the fact that the Edgeworths wanted to pay Plaintiffs what they were owed. *See* Transcript of Testimony Referenced in Simon Amended Complaint, attached hereto as **Exhibit U**. Plaintiffs have pled no facts regarding conversations had by Angela Edgeworth at all, let alone those that would support counts V, VI, and VII. Therefore, Defendants request that the Court disregard this bare allegation unsupported by facts as pled.

Because it contains only unsupported claims, the Amended Simon Complaint is an inappropriate SLAPP suit which must be immediately dismissed against the Edgeworths and all other named Defendants in this matter.[56]

iii. *The Edgeworths had a Good Faith Basis for Bringing a Claim for Conversion*

Plaintiffs claim that the Edgeworths did not have a good faith basis for bringing the Edgeworth Complaints and thus the filing of the suit caused Plaintiffs to sustain damages. The Edgeworths had, and continue to have, a good faith basis upon which they relied in setting forth the claims presented within the Edgeworth Complaints. Plaintiffs have admitted that no fee arrangement or agreement which would have entitled Plaintiffs to any portion and/or percentage of the Viking Settlement funds ever existed during their representation of the Edgeworths. The Edgeworths specifically and unequivocally ***rejected*** Plaintiffs' offer to enter into the new fee proposal.[57] Plaintiffs were only ever entitled to payment for work at the agreed upon hourly rate.[58] At no time did the parties actually enter into an agreement whereby Plaintiffs would in any manner be entitled to any percentage whatsoever of the Viking Settlement.[59] Brian expressly indicated that he would pay any outstanding fees for work performed at Plaintiffs' agreed to hourly rate.[60] After this time, Simon sent several bills for fees under the hourly agreement, and costs, which were promptly paid by the Edgeworths.[61] Given these facts, Simon knew or should have known that no new fee agreement had been created giving him any legal right to file an attorney's lien on the Viking Settlement. This position was clearly contested by Plaintiffs, and thereby a genuine dispute arose between the Edgeworths and Plaintiffs regarding the reasonable amount of fees which may be owed to Plaintiffs, and the genuine dispute between the Edgeworths and Plaintiffs regarding the Amended Lien could not be informally resolved between the parties, thus necessitating Court intervention.[62]

The Edgeworths had a good faith belief that Simon's actions amounted to the ***tort of conversion***. Under Nevada law, the tort of 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.[63] 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.[64] The Court in *Bader* specifically approved of a definition of conversion wherein a physical taking of personal property is not a required element of a conversion claim and the ***asserting of an unfounded lien supports a claim for conversion***.[65] Further, ***conversion does not require a manual taking***.[66] Where one makes an unjustified claim of title to personal property or asserts an unfounded lien [. . .] which causes actual ***interference with the owner's rights of possession***, a conversion exists.[67]

Even though he had no legal right to the settlement funds, unbeknownst to the Edgeworths, Simon changed the terms of the agreement to add his name to the settlement checks and refused to allow the funds to be deposited into any existing account because he claimed he was entitled to a portion of them.[68] When the checks were received, the Edgeworths were forced to allow the settlement funds to be deposited in a special Settlement Trust Account that required Simon's signature for any withdrawal.[69] Since that time, Simon has refused to provide his signature to release the remaining settlement funds.[70] Once the settlement funds were deposited in the Settlement Trust Account, Plaintiffs released only a portion of them, and withheld more than two million dollars of the settlement funds in a trust account only able to be accessed with the signatures of both Vannah and Simon.[71] Plaintiffs exercised, and continue to exercise, dominion and control over the funds by their actions. The Edgeworths were forced to enlist the assistance of an attorney to help with discussions to navigate receipt of the funds.[72] Unfortunately, those discussions proved to be fruitless.[73] When the efforts of the attorney to negotiate this matter outside of court were fruitless, the Edgeworths were forced to file a civil complaint asking the Court to assist them in obtaining the funds they were rightfully owed.[74]

In the underlying proceedings, Judge Jones adjudicated an additional $484,982.50 was owed to Plaintiffs under the hourly agreement.[75] Following that adjudication, the Edgeworths offered to pay Plaintiffs the amount awarded to Plaintiffs by the Court in exchange for Simon's agreement to release the remaining Viking Settlement funds.[76] Despite this communication, Plaintiffs continued to maintain that they were owed more money than was adjudicated by the Court. The matters in the underlying case are still pending decision before the Nevada Supreme Court, yet Plaintiffs continue to maintain wrongful dominion and control over the funds.[77]

Plaintiffs assert that the Edgeworths could not have a good faith basis for bringing the Edgeworth Complaints because it was an impossibility for Simon to have physically taken the money out of the Settlement Trust Account.[78] This is an egregious misstatement of the law regarding conversion. A physical taking is not a required showing for a conversion claim.[79] Rather, Plaintiffs began exercising dominion and control over the Viking Settlement funds prior to the filing of the Edgeworth Complaint on January 4, 2018, by way of: (1) making it a requirement of the Viking Settlement that Simon's and/or his

law firm's name be included upon the settlement checks, without informing or getting approval for same from the Edgeworths; (2) after the settlement checks were made available to Simon between December 8 and 12, 2017, refusing to allow the Edgeworths to deposit the settlement checks in the Edgeworths' bank account or Vannah's trust account, by withholding his signature from the settlement checks, and demanding that the settlement checks be deposited in Plaintiffs' trust account; and (3) filing the Amended Lien on January 2, 2018. The Edgeworths had a good faith belief that all of Simon's acts in this regard were distinct acts of dominion wrongfully exerted over the Edgeworths' personal property in denial of, or inconsistent with, the Edgeworths' title or rights therein or in derogation, exclusion, or defiance of such title or rights, which amounted to conversion. The Edgeworths have a well-founded belief that Plaintiffs' Amended Lien for $1,977,843.80 was an improper lien against the Viking Settlement funds and that Plaintiffs' filing of the Amended Lien caused actual interference with the Edgeworths' ownership rights of possession of said funds, which amounted to conversion.

Simon claims he had to assert the lien because the Edgeworths "refused to speak to Simon about a fair fee and instead stopped talking to him and hired other counsel.[80] This is unsupported by fact. The communication from Brian to Simon indicates that they were to work with Vannah to finalize everything,[81] and the communication between Simon and Vannah clearly indicates that they were working together and Simon was still working on the matter in December, after he claims he was "fired."[82] It is simply unfathomable that Simon continues to this day to refuse to release the remaining portion of the Viking Settlement funds despite judicial determination of the same and when Plaintiffs have already been paid and offered compensation in the total amount of $971,435.59.

Plaintiffs have distorted Nevada law regarding a claim for conversion, by attempting to argue that conversion requires physical theft and/or a physical taking by Simon.[83] Plaintiffs repeatedly intimate that the Edgeworths have furthered the theory that Simon stole their money.[84] The Edgeworths have made no such claim. Plaintiffs are the only parties in this matter that have ever used the words "stole," "stolen," and "theft," or implied that Simon was accused of the crime of theft.[85] In reality, as discussed *infra*, a claim for conversion in Nevada does not require a physical taking, stealing or theft, making Plaintiffs' arguments in this regard wholly without merit and a clear attempt to the confuse the issue. Simon

committed conversion by exercising dominion and control over the Viking Settlement funds on the unfounded belief that he was owed more than the hourly fee the Edgeworths had been paying and that he had to assert an attorney's lien against the funds because the Edgeworths would not pay the final bill when it was presented to them. This belief was unfounded for a number of reasons. First, the Edgeworths had paid all invoices for fees and costs previously presented to them and had presented Plaintiffs with no reason to believe that they would not pay the final invoice.[86] The Edgeworths had even requested the final invoice from Simon, indicating that they intended to pay it upon receipt.[87] Second, the parties at no time had a written contingency fee agreement, as required by NRPC 1.5 that would have entitled Simon to a percentage of the Viking Settlement.[88] While the issue of the lien adjudication and dismissal of the underlying suit was pending before the Nevada Supreme Court, Simon did exactly as he had promised in the November 27, 2017 Letter, and brought this SLAPP suit purely to intimidate and punish the Edgeworths for not signing the new fee proposal under threat, as set forth by Simon within his November 27, 2017 Letter.[89]

Contrary to Plaintiffs' allegations, there is vast evidentiary support for all of the facts forwarded within the Edgeworth Complaints. The Edgeworths had a good faith basis for bringing the Edgeworth Complaints because they believed Simon was improperly exercising dominion and control over more than two million dollars ($2,000,000) from the Viking Settlement. The Edgeworths properly utilized the court system available to adjudicate a dispute between the parties. All of Plaintiffs' claims are based on protected speech, and thus none of the counts can serve as the basis for Plaintiffs' complaint pursuant to NRS 41.650. Thus, the Edgeworths have satisfied their burden for the first prong under NRS 41.660 and 41.665, and the burden shifts to Plaintiffs to show that they could prevail on their claims. The Edgeworths submit that Plaintiffs cannot meet the second prong under the Anti-SLAPP Statute, and therefore request that the SLAPP suit furthered in the Simon Complaints be dismissed with prejudice pursuant to NRS 41.637.

B. Plaintiffs Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis Because They Cannot Demonstrate a Probability of Prevailing on Their Claims

All of Plaintiffs' claims are either procedurally premature and/or there is no set of facts that Plaintiffs could prove that would entitle them to a remedy at law.[90] Plaintiffs cannot show that they have

a probability of prevailing on their claims and, thus, their claims must be dismissed. A plain reading of the Amended Simon Complaint reveals that the primary basis for Plaintiffs' claims are pleadings filed and statements made by one or more of the defendants ***in the course of the underlying litigation*** and judicial proceedings which were in regard to a matter of public interest and/or concern in a place open to the public and/or were merely opinions.[91] There is no set of facts which would entitle Plaintiffs to any relief, or to prevail.[92] Therefore, Plaintiffs do not have any prima facie evidence to support these claims/counts upon which relief could ever be granted and thus cannot satisfy their burden under the law.[93]

i. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Wrongful Use of Civil Proceedings*

Plaintiffs cannot establish a prima facie case for Count I Wrongful use of Civil Proceedings. Although many jurisdictions recognize this tort, ***the State of Nevada does not***.[94] Nevada Rule of Professional Conduct 1.5(c)(5), requires that any contingency fee agreement warn that "a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process." The rule also clearly states that ***the tort of abuse of process is the potential remedy for a vexatious civil case***, indicating that a claim for wrongful use of civil proceedings neither exists nor applies in this context.[95] Because a claim for wrongful use of civil proceedings is not a recognized claim by which Plaintiffs could be granted relief under Nevada Law, Plaintiffs have no probability of prevailing upon their claim in Count I, and it must be dismissed pursuant to 41.660(3)(b).

ii. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Intentional Interference with Prospective Economic Advantage*

Plaintiffs cannot establish a prima facia case for Count II, Intentional Interference with Prospective Economic Advantage, against the Edgeworths. First and foremost, the litigation privilege bars Plaintiffs from alleging civil claims against the Edgeworths based on any statements or arguments made within the context of litigation, because the speech is absolutely privileged and immunized from civil liability. It is a long-standing common law rule that communications made in the course of judicial proceedings, even if known to be false, are absolutely privileged, and therefore cannot be the basis for this cause of action.[96] In Nevada, "[l]iability for the tort of intentional interference with prospective economic advantage (hereinafter "IIPEA") carries the following elements:

(1) a prospective contractual relationship between the plaintiff and a third party;
(2) knowledge by the defendant of the prospective relationship;
(3) intent to harm the plaintiff by preventing the relationship;
(4) the absence of privilege or justification by the defendant; and
(5) actual harm to the plaintiff as a result of the defendant's conduct.[97]

Absent proof of each element of the tort of IIPEA, the claim must fail.[98] To establish this tort, a plaintiff must show that the means used to divert the prospective advantage was unlawful, improper or was not fair and reasonable.[99] Further, when the actions of the defendant are in protection of that defendant's own interests, such action is privileged and cannot support a claim for IIPEA.[100] A plaintiff must prove damages to the plaintiff proximately caused by the acts of the defendant. [101] The defendant's conduct is the proximate cause of the plaintiff's harm only if the plaintiff would have been awarded the contract but for the defendant's interference.[102] The defendant's conduct must be a substantial factor in bringing about the plaintiff's injury.[103]

In order to demonstrate the intent element of a claim for IIPEA, Plaintiffs must demonstrate that the Edgeworths ***expressed a desire or knew it was substantially certain*** that such action would interfere with Plaintiffs' business.[104] The Court in *Gray Line* specifically held that the interference with the other's prospective contractual relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action.[105] Nevada has adopted same.[106] The United States Court of Appeals for the Ninth Circuit has specifically held that a plaintiff's pleading of a defendant's general knowledge that the plaintiff entered into generalized business relationships is insufficient to support the knowledge element of a claim for IIPEA.[107] As pled, the Simon Complaint fails to provide a factual basis for this alleged knowledge or intent on behalf of the Edgeworths.[108]

None of the Nevada Supreme Court cases addressing an IIPEA cause of action involve the generalized referral business as pled by Plaintiffs; they instead involve parties negotiating with a defined third-party.[109] All four of the Nevada cases regarding this issue involve ***specifically identified***, third-party customers whom the plaintiff complains the defendant interfered with. Plaintiffs have only alleged general "loss of business" in his Complaint. This insufficient identification of the prospective clients and resulting income that were lost fails to adhere to the established Nevada case law on this issue.

Accordingly, element 1 of a claim for IIPEA, "a prospective contractual relationship between the plaintiff and a third party," is not present here as pled within the Amended Simon Complaint, demonstrating that on this basis alone, Plaintiffs have no possibility of prevailing on their claim for IIPEA.

Plaintiffs also have no possibility of prevailing upon their claim for IIPEA because they cannot demonstrate that the Edgeworths had any knowledge of any specific business relationship or economic opportunity of Plaintiffs' at the time of the filing of the Edgeworth Complaints that was later interrupted or intent to do so. Plaintiffs' generalized allegations regarding unidentified business opportunities, which were allegedly interfered with, ***are wholly insufficient*** to support a claim for IIPEA. Plaintiffs have not identified, and there is no evidence whatsoever of, any specific prospective relationship of which the Edgeworths allegedly had knowledge. For these reasons, Plaintiffs have no possibility of prevailing upon their claim for IIPEA. Even if Plaintiffs had properly pled that the Edgeworths had knowledge of a specific prospective relationship they still could not prove the requisite intent. There is simply ***no evidence whatsoever that the Edgeworths desired to interfere in any of Plaintiffs' business*** or that the Edgeworths' knew that the filing of the Edgeworth Complaints would certainly result in interference with any of Plaintiffs' business.[110] Lastly, Plaintiffs have not demonstrated that the Edgeworths' actions were a significant factor in Plaintiffs losing the wholly identified prospective relationship. Because Plaintiffs have not pled sufficient facts to establish a claim for IIPEA under Nevada Law, Plaintiffs have no probability of prevailing upon their claim in Count II, and it must be dismissed pursuant to 41.660(3)(b).

iii. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Abuse of Process*

First and foremost, litigation privilege bars Plaintiffs from alleging civil claims against the Edgeworths based on any statements or arguments made within the context of litigation, because the speech is absolutely privileged and immunized from civil liability. It is a long-standing common law rule that communications made in the course of judicial proceedings, even if known to be false, are absolutely privileged, and therefore cannot be the basis for this cause of action.[111]

Abuse of process is a tortious cause of action arising from one party maliciously and deliberately misusing the courts and the law through an underlying legal action. An abuse of process claim in Nevada has two fundamental elements: (1) an ulterior purpose, and (2) a willful act in the use of the process not

proper in the regular conduct of a proceeding.[112] The action for abuse of process hinges on the misuse of regularly issued process.[113] The complaining party must include some allegation, in addition to the filing of a complaint, of abusive measures taken after the filing of the complaint in order to state a claim.[114] Plaintiff has failed to do so. Abuse of process will not lie for a civil action which inconveniences a defendant, or for one filed in expectation of settlement a nuisance suit because settlement is included in the goals of proper process, even though the suit is frivolous.[115] The second element's reference to a willful improper action cannot simply be the filing of a complaint. Rather, it must be a subsequent willful act such as minimal settlement offers or huge batteries of motions filed solely for the purpose of coercing a settlement.[116] Thus, in order to survive the instant motion to dismiss, a party must plead a willful act taken by the defendant in addition to filing the complaint.[117]

The Simon Complaint is inextricably linked to written and oral communications made by the Edgeworths in the underlying judicial action that is presently on appeal.[118] Simply put, unless it was filed for an improper purpose, a matter that has been appealed, briefed and submitted to the Nevada Supreme Court, cannot be found to support a showing of additional abusive measure, as required to demonstrate a prima facie case for abuse of process. As addressed *infra*, the Edgeworths filed suit for a proper purpose and therefore Plaintiffs cannot establish that abusive measures were taken by the Edgeworths to satisfy the second element of abuse of process. Plaintiffs cannot then demonstrate by prima facia evidence that they can prevail on their claim for abuse of process.[119] Because Plaintiffs have not pled sufficient facts to establish a claim for abuse of process for which Plaintiffs could be granted relief under Nevada Law, Plaintiffs have no probability of prevailing upon their claim in Count III, and it must be dismissed pursuant to 41.660(3)(b).

iv. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Negligent Hiring, Supervision and Retention*

Plaintiffs' fourth claim alleges Negligent Hiring, Supervision, and Retention. It appears that this Count is only actually alleged against the Vannah defendants, and as such the Edgeworths will not address this cause of action. Rather, the Edgeworths adopt any arguments made by the Vannah Defendants regarding same.

v. *Plaintiffs Cannot Make a Prima Facie Case Against the Edgeworths for Defamation Per Se, Business Disparagement or Negligence*

Plaintiffs next assert Count V for Defamation *Per Se*, Count VI for Business Disparagement, and Count VII for Negligence. Plaintiffs cannot establish prima facie cases for any of these claims as against the Edgeworth Defendants. Within the Amended Simon Complaint Plaintiffs alleged that statements made by Brian to Herrera are the basis for these claims. This claim is unsupported.

Plaintiffs allege that Brian and Angela, acting on their own personal behalf as well as acting as agents of AMG and the Trust, made statements to third parties not in the context of the underlying litigation.[120] First and foremost, litigation privilege bars Plaintiffs from alleging civil claims against the Edgeworths based on any statements or arguments made within the context of litigation, because the speech is absolutely privileged and immunized from civil liability. It is a long-standing common law rule that communications made in the course of judicial proceedings, even if known to be false, are absolutely privileged, and therefore cannot be the basis for this cause of action.[121] Pursuant to Nevada's anti-SLAPP statute, the absolute litigation privilege's broad applicability extends beyond communications made during litigation to communications related to the litigation even when judicial proceedings have not commenced.[122] Based on the litigation privilege alone Plaintiffs' Counts V, VI, and VII must all be dismissed as a matter of law as against the Edgeworths. And as a matter of public policy Brian's statements to Herrera cannot be the basis for these claims because Brian was clarifying an issue of public concern to Herrera in response to Simon's accusations of wrongdoing.

To the extent that Plaintiffs base these three Counts on an allegation that the Edgeworths accused Simon of stealing from them, the Edgeworths have discussed in detail *supra* that it is only Plaintiffs who have confused the criminal charge of theft with the civil cause of action for conversion. Plaintiffs have distorted Nevada law regarding a claim for conversion, by attempting to argue that same required a stealing, theft and/or physical taking by Simon.[123] In reality, as discussed *supra*, a claim for conversion in Nevada does not require a physical taking, stealing or theft, making Plaintiffs' arguments in this regard wholly without merit and a clear attempt to the confuse the issue, which appears to have been successful in the underlying litigation. The Edgeworths, therefore, again implore this Court to see Plaintiffs' arguments in this regard for what they are really worth – nothing.

Notwithstanding the fact that Plaintiffs have failed to show that their claims have any merit, a claim of defamation, business disparagement, and negligence cannot stand against a corporation such as AMG or an entity such as the Trust, based upon the factual allegations as presented within the Amended Simon Complaint. It is well settled that a corporation, just as an individual, may be liable for defamation by its employees.[124] Further, if an agent is guilty of defamation, ***the principal is liable so long as the agent was apparently authorized to make the defamatory statement***.[125] A master is only subject to liability from defamatory statements made by an agent acting within the scope of his authority.[126]

Pursuant to these principles, a corporation or trust can only be liable for the proven defamatory statements of its agent ***when it is also proven that the agent was authorized to make the defamatory statement by the corporation and the agent made the defamatory statement within the scope of the agent's authority***. In order to have any likelihood of surviving a motion to dismiss, Plaintiffs must have pled facts which demonstrate an agency relationship existed between AMG, the Trust and Brian and/or Angela, AND that AMG or the Trust authorized Brian and/or Angela to make the defamatory statement AND that the defamatory statements were made within the scope of that authority. Plaintiffs have failed to do so.

Plaintiffs claim that "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…." is bald and conclusory at best, and completely lacking any factual support at worst.[127] Nothing within the Amended Simon Complaint pleads facts that, even if taken as true, plausibly infer that AMG or the Trust authorized anyone to do anything, let alone that they authorized Brian or Angela to make defamatory statements on their behalf about Plaintiffs. The use of the term "on behalf of" does not provide the required specificity to meet this burden. Without an agency relationship properly alleged in the Amended Simon Complaints, Plaintiffs' Counts V, VI, and VII against AMG and the Trust have no probability whatsoever of prevailing. Because Plaintiffs have not pled sufficient facts to establish a claim for defamation *per se*, Business Disparagement, and Negligence for which Plaintiffs could be granted relief under Nevada Law, Plaintiffs' have no probability of prevailing upon their claim in Count III, and it must be dismissed pursuant to 41.660(3)(b).

vi. *Plaintiffs Cannot Make a Prima Facie Case for Civil Conspiracy*

Plaintiffs cannot make a prima facie case for civil conspiracy against the Edgeworths. Count VIII, Civil Conspiracy, is factually and legally defective as well. An actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage.[128] While the essence of the crime of conspiracy is the agreement, the essence of civil conspiracy is damages.[129] The damages result from the tort underlying the conspiracy.[130] Here, Plaintiffs advance their civil conspiracy claim by asserting that "Defendants and each of them, through concerted action among themselves and others, intended to accomplish the unlawful objectives of filing false claims for an improper purpose."[131] Established Nevada law shows that the filing of a complaint, even if such a filing was allegedly made for an ulterior purpose, does not constitute a tort.[132] Plaintiffs fail to establish that there is any actionable or recognized "tort" upon which the civil conspiracy claim is predicated. Thus, the civil conspiracy claim must itself fail.

In short, none of Plaintiffs' allegations brought against the Edgeworths "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 occurred, others still by the clear absence of any duty owed or remedy afforded, and all are protected by Nevada's Anti-SLAPP laws. Because Plaintiffs have not pled sufficient facts to establish a claim for Civil Conspiracy for which relief could be granted, Plaintiffs have no probability of prevailing upon their claim, and it must be dismissed pursuant to 41.660(3)(b).

As demonstrated extensively herein, the claims and allegations forwarded within the Edgeworth Complaints were made in good faith and any and all documents and statements relied upon by Plaintiffs within the Amended Simon Complaint are privileged as same were made in anticipation of litigation, were in direct connection with an issue under consideration by the court in the underlying action, were regarding an issue of public concern at a place open to the public and/or were opinions which cannot support the claims at issue. Therefore, the Amended Simon Complaint cannot be allowed to move forward against the Edgeworths, or any other defendant named therein.

CONCLUSION

Plaintiffs brought this lawsuit against the Edgeworths and Vannah in direct contravention of Nevada's anti-SLAPP statute. For the foregoing reasons, the Edgeworths request that this Court dismiss the Amended Simon Complaint with prejudice.

DATED this 27th day of August, 2020.

MESSNER REEVES LLP

/s/ *Renee M. Finch*

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[1] *See* **Exhibit A**.
[2] NRCP 15(A)(2).
[3] *See*, NRS 41.660, *see also* NRCP 15(A).
[4] *See*, Assembly Bill 485 (1997), at 8.
[5] *Id*.
[6] *Id*. at 9.
[7] *Id*. at 12. "'Where Nevada law is lacking, its courts have looked to the law of other jurisdictions, particularly California, for guidance.'" *Eichacker v. Paul Revere Life Ins. Co.*, 354 F.3d 1142, 1145 (9th Cir. 2004) (quoting, *Mort v. United States*, 86 F.3d 890, 893 (9th Cir.1996)).
[8] *See, Salma v. Capon,* 161 Cal.Rptr.3d 873, 888-89 (Cal.App.1st, 2008) (***emphasis added***) (extending the holdings of caselaw which prohibited amending of a complaint following a judicial finding of the first prong of the anti-SLAPP framework test, as stated in *Simmons.Simmons v. Allstate*, 92 Cal.App.4th, 1068, 1074 (Cal.App.3rd, 2001), *Roberts v. County Bar Ass'n*, 105 Cal.App.4th 604, 612-613 (Cal.App.2nd, 2002) and *Nevellier v. Sletten*, 106 Cal.App.4th 763, 773 (Cal.App.1st, 2003)).
[9] *Salma v. Capon*, 161 Cal.Rptr.3d 873, 888-89 (Cal.App.1st, 2008).
[10] *Salma*, 161 Cal.Rptr.3d at 888-89 (quoting *Simmons*, 92 Cal.App.4th at 1073) (***emphasis added***); *c.f.*, *Verizon Del., Inc. v. Covad Commc'ns*, 377 F.3d 1081, 1091 (9th Cir. 2004).
[11] Should this Court determine that Plaintiff was not permitted to file an Amended Complaint following the filing of an Anti-SLAPP Motion to Dismiss, the Edgeworths reserve the right to renew and/or refile the previously filed Anti-SLAPP Motions to Dismiss the Simon Complaint.
[12] 1997 Nev. Stat., Ch. 387, Preamble, at 1364 (preamble to bill enacting anti-SLAPP statute).
[13] NRS 41.650.
[14] Rebel Commc'ns, LLC, 2010 WL 2773530, at *2; NRS 41.660(1)(a).
[15] Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp., No. 2:14-cv-424, 2016 WL 4134523, at *3 (D. Nev. Aug. 2, 2016) (quoting NRS 41.660(3)(a)) (alterations in original).
[16] See Baharian-Mehr v. Smith, 189 Cal. App. 4th 265, 271-72 (Cal. Ct. App. 2010).
[17] Id.
[18] NRS 41.660(3)(b).
[19] Coker v. Sassone, 2019 Nev. LEXIS 1.
[20] Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp., No. 2:14-CV-424 JCM (NJK), 2016 U.S. Dist. LEXIS 101028, at *6-7 (D. Nev. Aug. 2, 2016) (citing Davis v. Parks, 2014 Nev. Unpub. LEXIS 651, 2014 WL 1677659, at *7.
[21] Scialabba v. Brandise Const. Co., Inc., 112 Nev. 965, 968; 921 P.2d 928 (1996).
[22] NRCP 56.
[23] Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005).
[24] Id. at 1031.
[25] *See* **Exhibit C**.
[26] *See* **Exhibit A**.
[27] *See* **Exhibit A.**
[28] *See* Simon Amended Complaint, at ¶ 4.
[29] *See* Amended Simon Complaint.
[30] NRS 41.637(3), states,
[31] *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).
[32] *Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 630 (2014).
[33] *Clark Cty. Sch. Dist.*, 125 Nev. at 383.
[34] *Hampe v. Foote*, 118 Nev. 405, 409 (2002), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224 (2008).
[35] *Clark Cty. Sch. Dist.*, 125 Nev. at 383.
[36] *Id*.
[37] *Id*.
[38] *Id*. at 61, 657 P.2d at 104.
[39] *Id*.; *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002).
[40] 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).
[41] *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).
[42] *Id*.
[43] *Id*. at 61, 657 P.2d at 104.
[44] *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted)
[45] *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020).
[46] See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished).
[47] *Clark Cty. Sch. Dist.*, 125 Nev. at 383.

[48] *See* **Exhibit A**.
[49] See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020) (emphasis added).
[50] *See* Email String Between Simon and Ruben Herrera, attached hereto as **Exhibit H**.
[51] *Id*.
[52] *Id*.; *see also*, *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.").
[53] *See* Transcript of Testimony Referenced in Simon Amended Complaint, at 134:3-6, attached hereto as **Exhibit U**; *id*.; *see also*, NRS 41.637(3) and (4); *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020) (holding "[b]ecause 'there is no such thing as a false idea,' *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.").
[54] NRS 41.650 (emphasis added).
[55] *See* Amended Simon Complaint, at 19:21-26.
[56] *Id*.; *See*, *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d at 1064.
[57] *See* **Exhibit A**.
[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] *See* **Exhibit A**; *see also* **Exhibit B**.
[62] *Id*.
[63] *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) (overruled on other grounds by *Dean Witter Reynolds*, 116 Nev. 606, 5 P.3d 1043 (2000).
[64] *Id*.
[65] *Bader*, 96 Nev. at 356-57 and n.1, 609 P.2d at 317 and n.1 (emphasis added).
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id*.
[70] *Id*.
[71] It should be noted that Vannah has never refused to sign for the funds to be released from the trust account. Simon's refusal to sign for the release of the funds he is not entitled to is the basis for the conversion claim made against him.
[72] *See* **Exhibit A**.
[73] *Id*.
[74] *Id.; see also* **Exhibits O, P**.
[75] *See* **Exhibit B**.
[76] *See* **Exhibit A**.
[77] *Id*.
[78] *See* Amended Simon Complaint, on file herein.
[79] *Bader*, 96 Nev. at 356-57 and n.1, 609 P.2d at 317 and n.1 (emphasis added).
[80] *See* The Amended Simon Complaint at paragraph 15, on-file herein.
[81] *See* **Exhibit F**.
[82] *See* **Exhibit H.**
[83] *See* Simon Complaints, on-file herein; *see also* **Exhibits M, N and S**.
[84] *Id*.
[85] *Id*.
[86] *See* **Exhibit A.**
[87] *Id*.
[88] *Id*.
[89] *See* **Exhibits D and E**.
[90] *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).
[91] *See* The Amended Simon Complaint, generally, on-file herein.
[92] *See*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).
[93] NRS 41.660(3)(b).
[94] *Ralphaelson v. Ashtonwood Stud Assocs., L.P.*, No. 2:08-CV-1070-KJD-RJJ, 2009 WL 2382765, at *2 (D. Nev. July 31, 2009).
[95] NRPC 1.5(c)(5).
[96] *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).
[97] *Wichinsky v. Mosa*, 109 Nev. 84, 87-88, 847 P.2d 727, 729-30 (1993) (citing, *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987)).
[98] *Wichinsky* at 730.
[99] *Custom Teleconnect, Inc. v. Int'l Tele–Servs., Inc.*, 254 F.Supp.2d 1173, 1181 (D.Nev.2003) (citing *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 591 P.2d 1135 (1979)); *see also*, *Las Vegas–Tonopah–Reno Stage Line, Inc.*,

v. Gray Line Tours of S. Nev., 792 P.2d 386, n. 1 (Nev.1990) (emphasizing that "[i]mproper or illegal interference is crucial to the establishment of this tort").
[100] *See, Leavitt v. Leisure Sports Incorporated*, 103 Nev. 81, 88-89, 734 P.2d 1221, 1226 (1987) (citing, *Zoby v. American Fidelity Company*, 242 F.2d 76, 79–80 (4th Cir.1957); *Bendix Corp. v. Adams*, 610 P.2d 24, 31 (Alaska 1980).
[101] *See, Leavitt*, 103 Nev. at 88, 734 P.2d at 1225; *see also Marsh v. Anesthesia Serv. Med. Grp., Inc.*, 132 Cal.Rptr.3d 660, 679–80 (Cal.Ct.App.2011).
[102] *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 958 (Cal.2003).
[103] *Franklin v. Dynamic Details, Inc.*, 10 Cal.Rptr.3d 429, 441 (Cal.Ct.App.2004).
[104] *See, Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990).
[105] *See, Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990).
[106] *Id*.
[107] *See, Capital West Appraisals LLC v. Countrywide Financial Corp.*, 467 Fed.Appx. 738, 740 (9th Cir. 2012).
[108] *See* Amended Simon Complaint, on file herein.
[109] *See Leavitt v. Leisure Sports Incorporation* involves a dispute between shareholders and directors regarding the remnants of a singled specified failed business venture.[109] Second, *Winchinsky v. Mosa* involves a dispute between business partners regarding the buy-out of one of the partners.[109] Third, *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada,* involves a dispute between two businesses regarding the courtship of a specified third-party customer.[109] Finally, *Consolidated Generator-Nevada, Inc. v. Cummings Engine Co., Inc.* involved a dispute between the buyer and manufacturer of portable generators.[109]
[110] *See, Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 288, 792 P.2d 386, 388 (1990).
[111] *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).
[112] *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998).
[113] *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9 (1972).
[114] *Id.*
[115] *Rashidi v. Albright*, 818 F. Supp. 1354, 1359 (D. Nev. 1993); *Wilson v. Hayes*, 464 N.W. 2d 250, 267 (Iowa 1990).
[116] *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (1985); *Kollodge v. State*, 757 P.2d 1024 (Alaska 1988) (explaining that the second element of the tort of abuse of process contemplates some overt act done in addition to the initiating of the suit).
[117] *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985).
[118] *See* Amended Simon Complaint, on file herein.
[119] See, *LaMantia v. Redisi*, 38 P.3d 877, 879-80 (2002); *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985).
[120] *See* The Amended Simon Complaint, on-file herein.
[121] *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (*quoting Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).
[122] *See*, NRS 41.637(4).
[123] *See* Simon Complaints, on-file herein.
[124] Restatement, Agency 2d § 247; *Axton Fisher Tobacco Co. v. Evening Post Co.*, 1916, 169 Ky. 64, 183 S.W. 269, L.R.A. 1916E, 667; *Baker v. Atlantic Coast Line R. Co.*, 1939, 141 Fla. 184, 192 So. 606; *Hooper-Holmes Bureau v. Bunn*, 5 Cir. 1947, 161 F.2d 102, 104-105.
[125] *American Society of Mechanical Engineers v. Hydro Level Corporation*, 456 U.S. 556, 566, 102 S.Ct. 1935, 1942, 72 L.Ed.2d 330 (1982); Restatement (2d) of Agency, § 247 (1957).
[126] *Draper v. Hellman Commercial Trust & Savings Bank*, 203 Cal. 26, 263 P. 240 (1982); *Rosenberg v. J. C. Penney Co.*, 30 Cal.App.2d 609, 86 P.2d 696 (1939); Rest. 2d Agency, sec. 247.
[127] *See* The Amended Simon Complaint, at paragraph 5, on-file herein.
[128] *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303 (1983).
[129] *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003).
[130] *Id.*
[131] *See* Amended Simon Complaint at ¶89.
[132] *See, Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 843, 963 P.2d 465, 478 (1998).

CERTIFICATE OF SERVICE

On this 27th day of August, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRS 41.637** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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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 XVIII** **BATES NO. AA003523 - 3762**

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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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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: OCTOBER 1, 2020
HEARING TIME: 9:00 A.M.

PLAINTIFFS' OPPOSITION TO EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRS 41.637

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The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Edgeworth Defendants' Special Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRS 41.637. [1]

[1]During the hearing on August 13, 2020, the Court ordered all matters off calendar and issued a new briefing schedule for the parties to file the appropriate motions, oppositions and replies addressing Plaintiffs' Amended Complaint.

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.[2]

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION[3]

Defendants ignore that only good faith communications are entitled to the protections of the anti-SLAPP statutes. While anti-SLAPP immunity is broad, it is certainly not without limitation. To prevail on their Motion to Dismiss, Defendants much first show the statements at issue were either true or made without knowledge of their falsity. Any contrary ruling would not only condone, but encourage the use of the judicial system as a weapon by which to defame others while enjoying absolute immunity. Because Defendants alleged Simon converted the subject settlement funds knowing such a claim was both a legal and factual impossibility, they can never demonstrate the underlying allegations were true or made without knowledge of their falsity. Accordingly, this Court should reject Defendants' invitation to immunize the knowing and intentional filing of frivolous lawsuits and deny the motion.[4]

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[2] Plaintiffs have addressed Defendants' arguments to dismiss Plaintiffs' amended complaint in contemporaneously filed Oppositions to Defendants' Motion to Dismiss pursuant to NRCP 12(b)(5) and Special Anti-SLAPP Motions to Dismiss. For purposes of brevity Plaintiffs specifically adopt and incorporate by reference any and all arguments made within those Oppositions, as if fully presented herein for purposes of a complete record.

[3] This Court should note the Edgeworths have filed the instant motion to dismiss based on NRS 41.660 and did not file a motion pursuant to NRCP 12(b)(5).Thus, Defendants impliedly concede Plaintiff's Amended Complaint is properly plead and dismissal is sought based only on Anti-SLAPP. Nevertheless, out of an abundance of caution, Simon incorporates herein by reference his Opposition to Vannah's motion to dismiss as it may related to the NRCP 12(b)(5) arguments that Edgeworth attempts to improperly make as part of the special motion under 41.660. The Edgeworth motion also exceeds this Court's explicit order to submit a brief within 30 pages by footnoting every single citation in four single spaced pages following the substance of the motion. As such, all authorities cited by Edgeworth are presented to the court outside of the 30-page limit and should be disregarded.

[4] The conversion claim is so outrageous that the National Trial Lawyer Association was compelled to voice their position on the issue. Robert Eglet, Esq., current president of the NTLA, filed an Amicus Curie Brief in support of Judge Jones position dismissing the conversion claim. *See*, Amicus Curie brief, attached hereto as **Exhibit 35**. This

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The doctrines of issue and claim preclusion foreclose Defendants' attempts to persuade this Court their conversion allegations were brought in good faith.[5] Particularly relevant here, Judge Tierra Jones determined that: (1)The Edgeworths owed Simon fees and costs when Simon was discharged; (2) Simon had a valid and enforceable lien; 3) The Edgeworths' conversion complaint against Simon should be dismissed as a matter of law; and (4) The conversion complaint "was not maintained on reasonable grounds." *See*, ¶¶31-33 of Simon Amended Complaint; *See also,* Amended Decision and Order on Motion to Adjudicate lien, attached as **Exhibit 2**; *See also*, Amended Decision and Order on Motion to Dismiss NRCP 12(B)(5), attached hereto as **Exhibit 3**; *See also*, Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs, attached hereto as **Exhibit 1**. Judge Jones remarkably went on to award Simon additional attorneys' fees and costs for having to oppose the Edgeworths' baseless claims. These findings alone demonstrate Defendants cannot meet their burden to show by a preponderance, that their conduct was in good faith.

In sum, Defendants knowingly lodged allegations having no good faith basis in law or fact. Inventing stories and making up facts do not make them true and these same facts/issues have already been litigated and decided. If Simon steals money from his clients, he is personally a crook and his business and, its services, are criminal. This is the sting of the Edgeworths' statements to third parties. Defendants had no factual or legal basis to say that Mr. Simon stole,

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brief echoed the undeniable fact that a lawyer who follows the law by filing a lawful attorney lien and places the funds in a protected account cannot be sued for conversion. *Id*. One cannot violate the law by following the law enacted by the legislature. The Vannah/Edgeworth team are on their own when desperately seeking to punish Simon. The facts, law and common sense do not support their position.

[5] The orders of dismissal and award of fees are both final orders and a pending appeal does not change that the doctrine of issue preclusion forecloses relitigating such issues. *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)).

extorted or blackmailed anyone, and definitely had no probable cause for asserting conversion. Defendants have been adjudged as frivolous litigators and this Court should not permit Defendants to use the anti-SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

STANDARD FOR SPECIAL MOTION TO DISMISS: ANTI-SLAPP

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." In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), 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."

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Defendants attempt to confuse the application of the litigation privilege with Anti-SLAPP protections. The Anti-SLAPP statutes require the communication to be made in "good faith" and also be "true or made without knowledge of the its falsehood." The Vannah attorneys and the Edgeworth team all seek Anti-SLAPP protection for having made knowingly false statements, and then cite to the litigation privilege cases that allow false statements in hopes the court will gloss over the distinction. The litigation privilege also does not immunize Defendants' conduct under the facts of this case, but it is nevertheless a distinct issue not before this Court in the instant motion.[6]

III.

FACTUAL BACKGROUND

Mr. and Mrs. Simon were close family friends with the Edgeworths and treated them like family. *See*, August 29, 2018 Transcript at 207:15-20, attached hereto as **Exhibit 6**. They travelled around the world and their kids went to school together. Mrs. Simon planned the funeral for Mrs. Edgeworth's father, among many other favors as close friends. They shared special events, including birthdays. The Edgeworths paid a minimal amount for attorney's fees during the underlying hotly contested case against a world-wide manufacturer. This benefited Edgeworth as he always cried poor (which was later revealed to be a ploy). It also shows the risk Simon shared. This is why Mr. Simon agreed to determine a fair fee at the end of the case. *See* August 30, 2018 Transcript at 118:23-119:1, attached hereto as **Exhibit 7.**

[6] In *Greenberg Traurig v. Frias Holding Co.,* 130 Nev. 627, 331 P.3d 901 (2014), the Court only addressed the malpractice conduct of lawyers, but confirmed the application is not absolute when refusing to apply the litigation privilege. The litigation privilege, if applied, only protects statements made in good faith, in court proceedings, as a defense to defamation and does not preclude Simon's claims of abuse of process, civil conspiracy, negligence, intentional interference with prospective economic advantage, as well as the defamatory statements made to third persons not interested in the outcome of the case.

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A. THERE WAS NEVER AN EXPRESS ARGEEMENT REGARDING ATTORNEY'S FEES

Simon and Edgeworth did not have an express agreement for fees and costs because the case started out as a favor. *Id*. Simon composed bills to be used for the Rule 16.1 calculation of damages given that the construction contract had an attorneys' fees provision. *See,* **Exhibit 6** at 208:16-21. All Defendants knew that Simon does not generally work on an hourly fee basis and the bills that were generated only contained a fraction of the actual work performed. Mr. Edgeworth was abundantly aware as he was on the other end of the hundreds of unbilled emails and phone calls. The few bills generated over the course of intense litigation totaled $365,006.25 in attorney's fees through September 19, 2017. Vannah and Edgeworth then turned those bills on Simon to fabricate the existence of an express oral contract in order to challenge Simon's true reasonable fees.

Defendants' reliance on the fact they paid part of Simon's fee based on the hourly bills is misplaced because that alone does not establish an express oral contract. Judge Jones heard testimony on the issue and found only an implied agreement, which the Edgeworths terminated. *See*, **Exhibit 2** at pp 7:15-16; 13-14.[7] As a result, Simon's office was left with a valid and enforceable lien claim for unpaid fees and advanced costs, which Judge Jones adjudicated in the firm's favor. *Id.*

Equally as significant, because no express contract existed, there was nothing to modify. Simon never approached Edgeworth to change anything. While traveling back from meeting with

[7] The impact of the checks sent by the Edgeworths in the underlying case was ruled on by Judge Jones. Unless the Nevada Supreme Court weighs in, the impact of the checks has been resolved. *Id.* The acceptance of the checks was found to have created an implied contract, which Defendants terminated, which left The Law Offices of Daniel Simon with a valid and enforceable lien claim for unpaid fees and advanced costs, which Judge Jones adjudicated.

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experts in the summer of 2017, Edgeworth acknowledged at the airport that if another firm had the case, the bills would be three times what they were and he knew the bills were not the full fee. *See,* **Exhibit 6** at 205:6-206:3. Shortly after, and months before the November 2017 settlement was reached, Edgeworth sent an unsolicited email to Simon – it was in fact, Edgeworth, who suggested some form of contingent fee arrangement. *Se*e August 22, 2017 email, **Exhibit 5** at 154:12-23. This email confirms no agreement existed, but discussions were ongoing and the only time a fair fee could be determined was at the end of the case. *See,* **Exhibit 7** at 96:19-97:1.

To be clear, there was never an express contract to modify in the first instance and Simon never asked for a contingency fee or a percentage (a proposed agreement for a flat fee representing the reasonable value of services is not a contingency fee). Brian Edgeworth conceded a contract could not have been entered into earlier because the dynamics of the case were fluid and the highly successful outcome could not have been anticipated earlier on. *See*, **Exhibit 4** at 160:14-20**;** *See also*, ¶13 of Simon Amended Complaint.

B. <u>SIMON SENT THE NOVEMBER 27, 2017 LETTER AT THE REQUEST OF THE EDGEWORTHS.</u>

Simon and the Edgeworths met on November 17, 2017 as they had many times over the course of the case, to discuss settlement as well as many matters on calendar. Given that Brian Edgeworth's August proposal to negotiate a final fee agreement had not yet been resolved, it was also time to discuss the fair and reasonable attorney's fees. The case against Viking was on the verge of resolution and Simon provided the Edgeworth's a copy of the outstanding costs, which Simon fronted for months at a time (not a benefit typically provided by a firm working on a strict hourly fee basis). Simon also advised the Edgeworths that any fees and costs paid to Simon would likely be recovered against Lange Plumbing under the construction contract. *See*, August 29, 2018 Transcript at 215:7-24, attached hereto as **Exhibit 6.**

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The clients left the office after stating they would discuss the fee issue among themselves and let Mr. Simon know their position. *Id.* Mr. Simon discussed the issue with Mr. Edgeworth later on that same evening and Mr. Edgeworth was acting quite different. *Id.* at 16-23. He was very cagey and his demeanor deviated drastically from the close working relationship and friendship he and Mr. Simon once enjoyed. *See*, **Exhibit 6** at 7:23-8:7. Nevertheless, Edgeworth acknowledged the case was not a straight hourly matter and a fair fee needed to be decided. To that end, Edgeworth asked for something in writing so a fair fee could be worked out. *See*, **Exhibit 7** at 7:14-8:7. In an effort to meet that request, Simon asked Edgeworth for a breakdown of what he believed were his out of pocket expenses. *See*, **Exhibit 7** at 7:14-8:7. Mr. Edgeworth forwarded an email to Mr. Simon on November 21, 2017 solely for this purpose. *See*, November 21, 2017 Email, attached hereto as **Exhibit 38.**

After returning from vacation, Simon sent the Edgeworths a detailed letter outlining the proposed fee. *See*, November 27, 2018 Letter, proposed Retainer Agreement and proposed Settlement Breakdown, attached hereto as **Exhibit 39.** The entire reason for the letter was so a fair fee could be worked out. Why would Edgeworths request that Simon send something in writing if there was already contract in place? Mr. Simon offered to receive $1.5 million and reduced this amount by crediting all payments already received. *Id.* Simon also suggested the Edgeworths consider the exceptional result achieved. While the Edgeworths suggested a mediator proposal of $5 million, Simon achieved a $6.1 million settlement on what began as a $500,000 property damage claim. *Id*. Indeed, Edgeworth concedes he would have walked away from mediation for $4.5 million. *See*, Brian Edgeworth May 18, 2020 Affidavit at 5:4-6, attached hereto as **Exhibit 43**.

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Mr. Simon never said "agree to it or else." This is another self-serving interpretation to justify Defendants' misconduct. Afterall, within 2 days, the Edgeworths had competent new counsel, who could readily finalize the settlement.[8] The Edgeworths refused to even make a single phone call after receiving the requested written proposal. Instead, they chose to stop all direct communication with Mr. Simon. [9] Judge Jones considered the impact of the November 27, 2017 letter and rejected the Edgeworths' unfounded assertions.

Defendants further suggest Simon did something untoward by seeking advice from Jim Christensen. *See*, Edgeworth Motion to Dismiss Anti-SLAPP at 13:21-14:1. This too was discussed at the evidentiary hearing and is nothing new. Of course Simon sought advice to ensure he was complying with all of his duties and obligations when dealing with litigious clients who changed their attitude toward Simon when it was time to pay a reasonable fee for the services rendered.

C. DEFENDANTS AGREED TO HAVE THE VIKING SETTLEMENT ISSUED JOINTLY TO SIMON'S OFFICE AND THE EDGEWORTHS

Defendants now incredulously contend as a basis for conversion that Simon unilaterally requested the settlement check be made payable to both Simon and the Edgeworths. Tellingly, they glaringly omit the Viking Release expressly delineated how and to whom the settlement check would be made payable and the Vannah Attorneys and the Edgeworths reviewed and agreed to those terms. *See* Viking Release at page 2, paragraph A, attached hereto as **Exhibit 26**. To be clear, based on the advice of the Vannah Attorneys, the Edgeworth's executed the Viking

[8] Similar to the Volleyball emails, Edgeworth wants to paint a picture they were mistreated to be a victim as part of their litigation strategy. The Edgeworth's lacked credibility and Judge Jones saw right through this tactic.

[9] Mrs. Edgeworth's newest affidavit of June 4, 2020 now suggests she was counseled by Lisa Carteen at this time making her prior in-court testimony completely false and even more incredible. *See,* Angela Edgeworth Affidavit, attached hereto as **Exhibit 44**.

Agreement, which provided the settlement check would be made payable to the Edgeworths and Simon (as this Court is undoubtedly aware this is a common practice where there are costs, fees and or liens to be paid from settlement proceeds). *Id.* at page 6, paragraph G. Moreover, it was procedurally necessary in this case to deposit the checks and to distribute the client's undisputed portion because Simon was admittedly owed $68,000 in costs and substantial fees, which Defendants were unwilling to pay.

D. DEPOSITING THE SETTLEMENT PROCEEDS IN SIMON'S TRUST ACCOUNT IS NOT CONVERSION

Defendants also now disingenuously assert as a basis for conversion Simon refused to deposit the money into Vannah's account. *See*, Edgeworth Motion to Dismiss Anti-SLAPP at 21:2-5. First, Vannah never made such a request and the many communications between Vannah and Jim Christensen confirm this falsehood. Equally as significant, the Vannah attorneys know very well that even if the money was deposited in Simon's account, that would have been the equivalent of interpleading the funds with the court. *See e.g., Golightly & Vannah*, 132 Nev. 416, 418 (2016). Vannah knows this, which means so did the Edgeworths. Even worse, Simon immediately agreed with Vannah and Edgeworth to put the money in a special account earning the Edgeworths 100% of the interest, even on Simon's share. Vannah and Edgeworth met Simon at the bank to jointly deposit the funds and thus, knew exactly where the money was at all times. *See*, **Exhibit 23.** This means that a claim never existed because Edgeworth never had any damages. *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir. Cal.2003). Vannah knew this, which means so did Edgeworth.

E. THE EDGEWORTHS ARE NOT VICTIMS

Judge Jones did not buy this ploy during the motion to release the funds when Mr. Vannah had to tap dance around the fact the Vannah/Edgeworth team filed the notice of appeal. If the

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Edgeworths did not want this then why did they sue Simon for conversion? Why oppose prompt adjudication of the lien based on the frivolous conversion complaint? Why ask for all of the money in the conversion suit when they all admitted they always knew they owed Simon money? Why make up a story about an express oral contract? Why make up stories about theft, blackmail and conversion? Why appeal the adjudication order? Why testify under oath that that you sued Simon for conversion to punish him for stealing, converting their money? Why did the Vannah attorneys place their stated subjective beliefs of conversion over the objective conclusion that conversion did not exist under the facts of this case. *See*, Declaration of James Christensen, attached hereto as **Exhibit 11**.

It was Simon that did not want any of this. He wanted to get paid a fair fee for the work actually performed. He was owed money. He did what is encouraged by the State Bar of Nevada - file a statutory lien. Despite being fired, Simon still protected the client's interests, for which Judge Jones applauded him. *See,* **Exhibit 2** at 19:19-20:1. Simon simply requested prompt adjudication of his lawful lien and fought for it over Defendants objection. Simon presented experts to support his lien and his conduct. *See*, ¶24 of Simon Amended Complaint.

Simon did not file a notice of appeal until Defendants forced his hand by appealing first. The disputed funds remain held in trust not because Simon unilaterally refuses to release the money, but because the Court ordered that the money should not be distributed pending appeal. Simon encouraged pursuit of a slam dunk multi-million dollar claim against the plumber for attorney's fees and costs, which the Edgeworths abandoned in their zeal to punish Simon.

The Edgeworths are simply not the victims they have been incredibly portraying. After all, they have admittedly been made more than whole with the receipt of nearly $4 million (for a $500,000 property damage claim).Their greed and the relentless quest to avoid paying their

attorney (a close family friend helping them when others would not), speaks volumes. The Vannah attorneys were happy to oblige while billing $925 an hour with an endless well of money sitting in a protected account. *See*, Vannah Fee Agreement, attached hereto as **Exhibit 41**; *See also*, **Exhibit 23**.

F. THE UNPRIVILEGED DEFAMATORY STATEMENTS OF ANGELA AND BRIAN EDGEWORTH

Filing an attorney lien is not blackmail, extortion or theft. Defendants were well aware of the falsity of the statements when repeatedly made. Angela Edgeworth admitted to all of these false statements in Court. Specifically, Mrs. Edgeworth stated to Ms. Carteen, as follows:

> Q. Okay. The words you used, ma'am -- and I won't go through them all -- when you talked to Ms. Carteen -- did I get that right?
> A. Yes.
> Q. Were those the words you used 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.**

See, **Exhibit 8** at 131:3-20. (emphasis added)

Mrs. Edgeworth's June 4, 2020 affidavit is the exact opposite of her testimony at the evidentiary hearing. *See,* **Exhibit 44**. Mrs. Edgeworth now attempts to make Lisa Carteen her lawyer instead of her friend to avoid liability for defamation. *Id*. The self-serving affidavit also undermines the false narrative that they were scared upon receipt of Mr. Simon's November 27, 2017 letter. *Id*. She now admits (if you can believe any of it), that she was counseled by Carteen prior to Vannah. *Id.* She had lawyers advising her how to avoid paying the reasonable fees and

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yet, concealed Carteen's involvement as counsel at the time of the evidentiary hearing. When she told the false stories of extortion and blackmail to Carteen, was it as a friend or lawyer? It cannot be both because she was asked point blank and testified the statements were made to her as a friend, **and not as her lawyer.** *See*, **Exhibit 8** at 131:3-20. This is likely the reason they have not attached this affidavit to the instant motion. The Vannah/Edgeworth self-serving affidavits are riddled with falsehoods in an attempt to re-litigate the facts already decided by the Court. They should be disregarded and treated with little weight, if any. Otherwise, this court is asked to potentially make inconsistent rulings that were already made with the same parties on the same issues based on the same facts.

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. In the affidavits, he falsely asserts blackmail and extortion of millions of dollars which Edgeworth told his volleyball coach. *See*, **Exhibit 13** at 3:22-23. *See also*, ¶22 of Simon Amended Complaint. Specifically, Edgeworth stated in his affidavit, 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, **Exhibit 15** at 8:17-20.

Edgeworth continued to falsely assert Simon has been "paid in full." *See*, Edgeworth Complaint at 8:6-8, attached hereto as **Exhibit 16**; *See also*, Edgeworth Amended Complaint at 8:21-9:21 attached hereto as **Exhibit 17.** Although Defendants now contend he was only referring to invoices sent and paid that assertion is not contained in his affidavits and is contrary to their Complaint and Amended Complaint wherein Defendants sought an order from the Court that

Simon was "paid in full." *See*, Brian Edgeworth's Affidavits, attached hereto as **Exhibit 14** and **15**; *See also*, ¶¶75-78, 85-87 of Simon Amended Complaint.

In sum, Defendants have knowingly and intentionally continued to forward false and defamatory claims regarding Simon to both the Court and uninterested third parties. Their lack of good faith should be neither condoned nor rewarded. To that end, Simon respectfully requests this Court deny the instant motion to dismiss and allow the parties to proceed with discovery.

III.

ARGUMENT

Boldly suggesting that even intentionally false statements are entitled to Anti-SLAPP protection, Defendants assert Simon's claims are barred. In so doing, Defendants ask this court to ignore that NRS 41.637 only protects a ***good faith*** communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Here, Defendants cannot get past the good faith requirement. First, Judge Jones already determined Defendants' claims were not brought in good faith. Defendants further fail to demonstrate by a preponderance that their allegations against Simon were ***truthful or made without knowledge of [their] falsehood."*** NRS 41.637(4)(emphasis added) Defendants, not Simon, must first make such a showing – these are burdens Defendants can never meet.

Consistent with the lack of any evidence that Defendants had no knowledge their conversion allegations were false, a sister court likewise found Defendants' claims to lack good faith. Because Defendants cannot meet their initial evidentiary hurdle, the burden never shifts to Simon to provide prima facie evidence of a likelihood of success. Thus, this Court need not consider the second prong of the analysis. Nevertheless, even if it did, Simon has more than demonstrated a likelihood of success on the merits.

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A. AMERICAN GRATING IS BOUND BY THE ACTS OF ITS OWNERS AND OFFICERS – BRIAN AND ANGELA EDGEWORTH.

As a preliminary matter, Plaintiffs must address the erroneous contention that Simon has not pled sufficient facts to hold American Grating liable for Brian and Angela Edgeworth's conduct. *See*, Edgeworth Motion to Dismiss: Anti-SLAPP at 28:8-15. Defendant American Grating is liable through its principals' conduct, i.e., Defendants Brian and Angela Edgeworth. Notably, Defendants Brian and Angela Edgeworth were not named plaintiffs in the suit against Simon. Defendant American Grating (and Defendant Edgeworth Family Trust) were the plaintiffs that sued Simon for conversion. *See,* Conversion Complaint, attached hereto as **Exhibit 16**. This relationship has been pled properly in Simon's Amended Complaint. *See*, ¶¶3-5 of Simon Amended Complaint.

Further, Simon has pled that Defendant American Grating has ratified all of Brian and Angela Edgeworth's conduct. *Id*. The Edgeworths have already admitted as much. *See*, **Exhibit 8** at 164:16-165:12**.** Both Brian Edgeworth and Angela Edgeworth testified at the Evidentiary Hearing as principles of American Grating. *See*, **Exhibit 4** at 38:10-19; *See also*, **Exhibit 8** at 56:6-16. They confirmed their defamatory accusations of blackmail and extortion were to support their lawsuit and benefit American Grating and the Edgeworth Family Trust.

Perhaps equally as significant, Simon represented American Grating (and Defendant Edgeworth Family Trust) in the underlying products liability and property damage case. Brian and Angela Edgeworth were never named parties. Instead, they acted and participated in the underlying case as the officers (and agents) of American Grating and as trustees of the trust. They then did the same when retaining Vannah to sue Simon for conversion – on behalf of American Grating. *See,* **Exhibit 41**. Brian Edgeworth provided multiple affidavits supporting American Grating's (and Defendant Edgeworth Family Trust) oppositions to Simon's motions to dismiss

pursuant to NRCP 12(b)(5) and for Anti-SLAPP relief – the same affidavits that contain Brian Edgeworth's defamatory statements to third parties and conduct. *See*, Brian Edgeworth's Affidavits, attached hereto as **Exhibits 13, 14** and **15**, respectively.

Angela Edgeworth testified in the underlying case and at the adjudication hearing to further the claims of American Grating and Edgeworth Family Trust. The simple reality is that Brian and Angela Edgeworth are American Grating and the Edgeworth Family Trust.[10] This fact is further revealed in Brian Edgeworth's affidavit when he attests to his conversation with Ruben Herrera that "I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me." *See*, **Exhibit 15** at 8:17-20. Brian Edgeworth's affidavits show that he considers himself to be the same as American Grating. The settlement proceeds in dispute were being paid to American Grating and Edgeworth Family Trust, which Mr. and Mrs. Edgeworth both signed on behalf of at the bank to deposit the money in the special trust account.

Finally, Simon's Amended Complaint properly pleads sufficient facts that comport with Nevada's agency laws holding American Grating liable for Brian and Angela Edgeworth's conduct because that conduct was for the intended benefit to American Grating and imputed upon the corporation. *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196, 214-15, 252 P.3d 681, 695-96 (2011) (the actions of corporate agents are imputed to the corporation.) *See also, Nevada Nat'l Bank v. Gold Star Meat Co*., 89 Nev. 427, 431, 514 P.2d 651, 654 (1973) (Courts have consistently held principal responsible to third parties for misconduct of agent committed within the scope of agent's authority, even though principal is completely innocent and has

[10] Both are also co-trustees and the only beneficiaries of the Edgeworth Family Trust. *See*, ¶¶3-5 of Simon Amended Complaint.

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received no benefit from the transaction); *Dezzani v. Kern & Assocs*., 134 Nev. Adv. Rep 9, *11, 412 P.3d 56, 61 (2018) (Agency law typically creates liability for a principal for the conduct of his agent that is within the scope of the agent's authority).

Thus, American Grating's attempt to claim that somehow Brian and Angela Edgeworth did not have authority to sue Simon for conversion in bad faith and then defame Simon during that process is ludicrous as Brian and Angela Edgeworth are the only persons who can determine any officer or agent's scope of authority for American Grating. *See,* Nevada Secretary of State Business Entity Information for American Grating, LLC, listing only Brian and Angela Edgeworth as its officers, attached hereto as **Exhibit 42.** In their affidavits, they admit they both equally own American Grating and there are no other owners. The suggestion that American Grating cannot be sued for the acts of their principals acting on its behalf is contrary to Nevada law and should be summarily dismissed.

B. DEFENDANTS' FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS BECAUSE CONVERSION WAS A LEGAL AND FACTUAL IMPOSSIBILITY

When reviewing the Edgeworths' initial complaint, it is clear the communication(s) for which they now seek protection, were knowingly false. At the outset, Defendants asserted Simon was "paid in full," contrary to their own under-oath testimony - *they always knew they owed Simon money.* They also asserted 100% of the funds were exclusively the Edgeworths. These are blatantly false statements.

Defendants also can never show that Simon converted the settlement funds 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 the Edgeworths.

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Additionally, the underlying complaints do not suggest the amount of the lien was too much as their basis for the conversion claim. To the contrary, the amount of the lien was supported by the opinion of Will Kemp, Esq. and the District Court found a proper and lawful lien. *See*, **Exhibit 9**; *See also*, **Exhibit 2**. More falsehoods include Edgeworth testifying that his August, 2017 email was sent after a significant offer was made. *See*, **Exhibit 13** at 3:4-10; *See also*, **Exhibit 14** at 3:1-3**.** This under oath statement was eventually abandoned when Simon showed the first offer was not until late October, 2017. *See*, **Exhibit 4** at 130:7-131:15. These statements are blatantly false and confirm that prong one can never be met even by Defendants own admissions, and especially not in combination with Judge Jones' contrary factual determinations and express finding of bad faith.

1. <u>Simon Never Sought a Bonus</u>

The Edgeworth/Vannah team also invented the new story that Simon sought a bonus only after a significant offer was made. 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*, **Exhibit 13** at 3:4-10; *See also*, **Exhibit 14** at 3:1-3**.** When Simon pointed out the undeniable fact that an offer was not made in the case until late October, 2017, this portion of the affidavit was abandoned. Also, "bonus" is a word created and used solely by Vannah and Edgeworth. *See*, **Exhibit 4** at 180:25-181:11. The Defendants have never been able to explain why they sought relief that Simon has already been "paid in full," when they all admitted they always knew they owed him money. This fact is completely avoided in the moving papers.The Edgeworths' assertions, through the Vannah attorneys, follow a long and winding road.

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2. Simon Never Sought a Contingency Fee

Much like inventing an express oral contract to avoid paying fees, Defendants fabricated the contingency fee story to call Simon unethical. Judge Jones found otherwise, stating in her ruling this is not a contingency fee case, presumably to put an end to the false assertion being repeated ad nauseum. *See,* **Exhibit 2** at 21:15-16. 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 math for Simon's proposed fee in November 2017 equals 25%, not 40%. *See*, **Exhibit 38**. Simon's lien did not request a contingency fee or a percentage and the proposed agreement and November 27, 2017 letter requested by the Edgeworths does not request a contingency fee or a percentage. *Id.* Yet, Defendants continue to repeat this falsehood. *See*, Vannah Affidavit at 9:23-10:7, attached as **Exhibit A** to Vannah Anti-SLAPP Motion. *See*, Brian Edgeworth Affidavit at 7:1-5, attached as **Exhibit A** to Edgeworth Motion to Dismiss: Anti-SLAPP.[11] Those falsities have been repeated in all of Defendants' filings, including the most recent affidavits seeking dismissal. Given these recent admissions, this Court should not rely on the statements in the affidavits. The false statements also conclusively deprive Defendants of Anti-SLAPP protection as almost everything they assert is a falsehood.

Judge Jones already rejected the same factual assertions contained in the new affidavits to support the instant Motion, and made a judicial finding that the compliant was not filed in good faith, therefore, Defendants cannot meet the burden of a preponderance to apply NRS 41.660.

[11] Perhaps unintentionally, but astonishing nevertheless, the Edgeworth special motion to dismiss previously filed by Patricia Lee, Esq. finally admits to this fraudulent scheme by acknowledging a contingency fee was never sought, but only a flat fee. *See*, Edgeworth Initial Special Motion to Dismiss: Anti-SLAPP (filed by Patricia Lee) at 6:10-11;7:8-9, attached as **Exhibit 45**. Finally, the Edgeworths admit the alleged contingency assertion was a false narrative, which confirms their fraud upon the court and that their communications were not truthful.

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.[12] Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team. *See*, **Exhibit 1;** *See also***, Exhibit 3.**

3. Simon Sought Adjudication of his Lawful Attorney's Lien for a Reasonable Fee.

The Edgeworths now admit that they sued Simon for conversion for filing an amended attorney lien. *See*, Edgeworth Motion to Dismiss Anti-SLAPP at 21:9-12. However, Simon was 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. This is yet another reason their complaint was filed in bad faith. A strategic lawsuit against public participation, known more commonly by its shortened name "SLAPP" is a meritless lawsuit that a plaintiff initiates to chill a defendant's freedom of speech and right to petition under the First Amendment. NRS 41.637. The Edgeworth frivolous conversion lawsuit squarely meets the definition of SLAPP confirming Simon was always protected by NRS 41.660. Filing an attorney's lien is a protected activity. *Beheshti v. Bartley*, 2009 WL 5149862 (Calif, 1st Dist, C.A. 2009); *Transamerica Life Insurance Co., v. Rabaldi*, 2016 WL 2885858 (D.C. Calif. 2016). The conversion lawsuit was initiated to chill Simon's right to petition the court to adjudicate his lien for attorneys' fees admittedly owed. The District Court did not rule on Simon's motion as moot when she dismissed the conversion

[12] The Edgeworths incorrectly argue that "[t]he Simon complaint recognizes that the damages he claims all stem from the lawsuit filed on January 4, 2018." *See,* Edgeworth Motion Dismiss: Anti-SLAPP at 14:13-14. This is not true and certainly not the end of the story. The damages were caused from the abuses of the process, as well as the defamation per se to parties outside the litigation. It is not the mere filing of the complaint, but all of the ongoing abuses and malicious conduct attacking the integrity and moral character of Simon, as well as the relentless pursuit of the frivolous claims through false testimony that caused the damages.

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lawsuit pursuant to NRCP 12(b)(5) as meritless and found it was brought in bad faith issuing sanctions. *See*, **Exhibit 3;** *See also*, **Exhibit 1**.

Defendants never met the "preponderance" evidentiary threshold when Judge Jones made her findings based on the same evidence from the same parties regarding the same issues. Therefore, since Judge Jones dismissed the Edgeworth conversion Complaint noting the bad faith, the Defendants cannot meet the "preponderance" evidentiary threshold required in this Motion. 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.

C. THE NEW DESPERATE INTERPRETATION OF ANTI-SLAPP LAW

The Edgeworth/Vannah team effectively ask this Court to adopt the bizarre position that Defendants can defame anyone they want as long as the defamation occurred in a restaurant or at a fundraiser. *See,* Edgeworth Motion to Dismiss: Anti-SLAPP at 16:16-18. The statements Defendants made to third parties are false no matter where they are made and simply because a statement to a third person is made in a public place, it is still defamation. There is nothing contained in NRS 41.660 that allows a person to defame someone to third persons not interested in the litigation. *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014). Since the statement is false, NRS 41.660 does not apply and not made in good faith.

This desperate interpretation of NRS 41.660 does not save Defendants' position or excuse their conduct. False statements are not afforded Anti-SLAPP protection regardless of where they are made. Accusing a lawyer of stealing and extorting millions from a client's settlement is the most egregious allegation to be made against a lawyer.

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D. SIMON HAS ESTABLISHED A PRIMA FACIE CASE

However, if this Court determines that the Defendants somehow made an initial showing as to the first prong, the burden shifts to the Plaintiffs 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 Plaintiffs show a probability of prevailing on the claim, the Anti-SLAPP Motion is denied. The summary judgement standard analysis gives the Simon Plaintiffs all reasonable inferences in their favor when analyzing this issue.

In the present case, the prima facie case is established merely by the judicial finding of bad faith when dismissing the Edgeworth conversion Complaint along with the admissions of the Edgeworths -- that the ulterior purpose was to punish Simon for stealing, converting their money, among other improper purposes. Defendants, and each of them, made allegations of theft, extortion, blackmail, and conversion, all of which, were blatantly false and only made in an improper attempt to refuse payment of attorney's fees admittedly owed and to punish and harm Simon, not to achieve success on the conversion claim. This is already admitted by all Defendants, under oath, and correctly asserted in Simon's Complaint and Amended Complaint. *See,* **Exhibit 8** at 142:15-25; *See also,* Simon Amended Complaint at ¶ ¶ 24-27,59-61,103-104.

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 4** at 178:20-25; *See also,* **Exhibit 5** at 36:1-37:3. They also had actual knowledge that a special bank account was opened to protect the funds. *Id.* Again, the amount of the lien was never challenged. The arguments that Simon knew he could never recover more than his superbill of 692,000 is false. The Court could have awarded the full amount of the lien consistent with Will Kemp's opinion, if she awarded quantum meruit based on the market

rate. The Supreme Court can still remand this issue for her to award the full amount based on quantum meruit.

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 Nevada Supreme Court reversed the District Court dismissal of the complaint based on Anti -Slapp finding Delucchi and Hollis presented sufficient evidence to create a genuine issue of material fact.

Importantly, the *Delucchi* Court held:

> **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. (emphasis added)

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. *See*, **Exhibits 1, 2** and **3**. This judicial decision by Judge Jones is the prima facie evidence needed to defeat the Anti-SLAPP Motion. Plaintiffs submit this Court does not get to the second prong of the analysis, but if it does

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there is a plethora of admissible evidence to support denial of the Defendants motion consistent with *Delucchi*. The recent case *Nielsen v. Wynn*, 2020 Nev. Unpub. LEXIS 821, re-confirms the analysis in *Delucci* that supports Simon when applied to the facts of this case.

Since Angela Edgeworth admitted to the real purpose of filing the Edgeworth Complaint (punishment), and this reason was adopted by the Vannah attorneys, the lack of good faith is admitted, and they never filed the conversion with the good faith belief they could ever prevail. *See*, **Exhibit 8** at 142:15-25. 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 the Edgeworth frivolous Complaints to fall within the purview of NRS 41.660. This is especially so when the complaint alleges Simon was already paid in full despite admitting they always knew the owed him money.

The falsity of the statements become more problematic when the lawsuit was filed prior to Simon ever receiving the funds. Vannah's lack of good faith about conversion is his own email – he didn't believe Simon would steal the money. *See,* **Exhibit 20.** This was one week before filing the Edgeworth conversion claim. The money was finally received 12 days after the Edgeworth conversion Complaint. The money was placed in the special account solely on the premise Simon was going to steal the money.

1. The Edgeworths' New Ad Hoc Rescue Argument That the Admitted Defamation was an Opinion in a Public Place also Fails.

The Edgeworths also now suggest they are excused because their defamatory statements are opinions. *See,* Edgeworth Motion to Dismiss: Anti-SLAPP at 17:24-25. This is not true. Mr. Edgeworth's affidavit telling the volleyball coach Simon was attempting to extort him was not stated as an opinion but rather, a fact. *See*, Brian Edgeworth's February 12, 2018 Affidavit at 8:11-15, attached hereto as **Exhibit 14.** It was put in an affidavit and filed with the Court to

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persuade the Court not to dismiss the conversion claim. His statement is not qualified as an opinion. Why would opinions be put in the affidavit as opinion? Regardless, the Supreme Court of Nevada has also confirmed that defamation is actionable when a person states an opinion that Plaintiff is a thief if the statement is made in such a way as to imply the existence of information which would prove plaintiff to be a thief. *Nevada Indep. Broadcating Corp. v. Allen, 99 Nev. 404, 664 P.2d 337, 342 (1983)* (Opinion which gives rise to inference that the source has based the opinion on underlying, undisclosed defamatory facts.)

The statements of theft, conversion and blackmail are easily verifiable facts and Edgeworth never asserted them as merely an opinion. After all, they had several seasoned lawyers, Mr. Vannah and Mr. Greene, advising them when preparing their affidavits and testimony for court. *See,* **Exhibit 4,** 49:14-18. These statements were presented to the court as facts to persuade the court to cast Simon as a bad unethical lawyer not deserving of a fee. The verifiable facts would not be advanced by these very respected lawyers unless there existed some evidentiary basis and certainly implied the existence of information to prove their wild defamatory statements. *Also see Cohen v. Hansen, 2015 U.S. Dist. LEXIS 74468, 19-21 (D. Nev. June 9, 2015*) (expressions of opinion may suggest 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); *Wynn v. Smith 117 Nev. 6, 16 P.3d 424, 431 (Nev. 2001*) (the statement I think he must be an alcoholic is actionable because a jury might find that it implied that the speaker knew undisclosed facts justifying his opinion.) Restatement (Second Torts, s556, see also *Gordon v. Dalrymple, No. 3:07-CV-00085-LRH-RAM, 2008 U.S. Dist. LEXIS 51863, 2008 WL 2782914, at 4(D. Nev. July 8, 2008)* ("Any statement which presupposes defamatory facts unknown to the interpreter is

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defamatory."). Finally, whether a statement is opinion vs. fact is a question for the jury and is not a basis to dismiss this claim on a motion to dismiss. *Fink v. Oshins*, 118 Nev. 428 (2002).

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). Their new affidavits attempting to qualify their statements as opinions or feelings does not provide a basis to dismiss these claims. At a minimum, this is a question of fact for the jury. Edgeworth also denies using the term "extortion" to Coach Herrera, which is in direct contrast to his affidavit filed as fact to persuade a court not to dismiss the conversion claims. The pattern of the Edgeworths is to change facts when it best serves them depending on issue before the court. 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 27, 2016 at a Starbucks. *See*, **Exhibit 4** at 81:5-15. Now, in his new affidavit, Edgeworth says a new story by averring that 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. *See*, Brian Edgeworth Affidavit at 1:20-25, attached as **Exhibit A** to Edgeworth Motion to Dismiss: Anti-SLAPP. 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 demonstrates how incredible all Defendants are and why Anti-SLAPP should not apply to this case. Their statements in their SLAPP suit for conversion were always false. They have yet to ever explain why they sought relief that Simon was already "paid in full," or the real reason given by Angela

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Edgeworth for filing the conversion lawsuit, which was to punish for stealing, converting their money. *See*, **Exhibit 8** at 142:21-25.

E. AT A MINIMUM, SIMON SHOULD BE ALLOWED TO CONDUCT DISCOVERY

The Vannah attorneys and Edgeworth's cannot demonstrate good faith in order to survive the first prong of the anti-SLAPP analysis. 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. Simon did not **wrongfully** control the funds. Simon never touched the funds. Simon only filed a lawful attorney lien. *See*, **Exhibits 18** and **19**. The lien was always supported by substantial evidence. *See*, **Exhibit 9**. The lack of good faith is demonstrated by the mere fact Vannah/Edgeworth never challenged the enforceability 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. Mr. Simon was not paid in full and did not steal, extort or blackmail anyone. The changing reasons for the Edgeworth Complaint also confirms the lack of good faith.[13] Asserting ***ex-post facto,*** new conversion theories long after the evidentiary hearing does not rescue the lack of good faith and knowing falsehoods at the time the Edgeworth Complaints were filed and maintained. The Court needs to focus on the facts that existed at the time the complaint and amended complaint were filed. Following the hearing, Judge Jones ordered the funds remain in the account after Edgeworths appealed to the Supreme Court.

[13] Vannah, in a sworn affidavit, 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." *See*, Vannah's Affidavit at 5:24-27, attached as **Exhibit A** to Vannah's Anti-SLAPP Motion. Edgeworth repeats this false statement. *See*, Brian Edgeworth's Affidavit at 16:17-19, attached as **Exhibit A** to Edgworth Motion to Dismiss: Anti-SLAPP. Vannah and Edgeworth both knew the proceeds had not even been received when the initial lawsuit was filed on January 4, 2018.

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Notwithstanding, even if the Court reaches the second prong, Simon has demonstrated a likelihood of success on the merits and should be afforded the opportunity to conduct discovery pursuant to NRS 41.660(4) pending the Anti-SLAPP ruling. *Crabb v. Greenspun Media Grp., LLC*, 2018 Nev. App. Unpub. LEXIS 526, 46 Media L. Rep. 2143 (July 10, 2018). Specifically, Plaintiffs seek discovery about what the Defendants knew or did not know when filing the initial Edgeworth complaint and/or subsequent pleadings. The Vannah attorneys aver they did substantial research prior to filing the initial Edgeworth Complaint in support of their good faith basis. However, they have not provided any evidence of this research, or even a relevant fact specific case through today. Discovery surrounding their research, including the specific research and the research trails is crucial to determine the asserted good faith by the Vannah Attorneys.

Plaintiffs also seek discovery about what the Edgeworth Defendants told Rueben Herrera, Justice Miriam Shearing and attorney Lisa Carteen. The new Edgeworth affidavits attached to their Special Motion to Dismiss: Anti-SLAPP specifically address what they assert was told to these witnesses and their depositions are crucial to determine exactly what was said to these witnesses. Their new affidavits stating what was told to these witnesses is completely opposite of their in court and under oath testimony.

Additional discovery surrounding the email communications, text communications as to what they knew, their plan and on-going abuses is also needed to address the core issue of good faith at the time the initial Edgeworth Complaint and subsequent filings. All Defendants are in exclusive possession of this information and thus far have refused to allow imaging of their portable devices to preserve this evidence. This discovery is specifically requested if the Court is not inclined to deny the motions outright. *See,* Declaration of Peter S. Christiansen, Esq., attached hereto as **Exhibit 12.**

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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 Simon's 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 faith and, therefore, was not entitled to the litigation privilege at that juncture). Therefore, Defendants' Motions should be denied.

In sum, 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*, **Exhibits 1, 2** and **3**.

IV.

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 have also presented, under oath testimony directly disputing the self-serving false facts presented in the new affidavits in support of their Motions. Finally, the order Judge Jones and the party admissions deprives Defendants of the protections sought. Therefore, Plaintiffs respectfully request this Court DENY the Edgeworth Defendants' Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP in its entirety, or alternatively allow discovery pending the final order on the Motion.

Dated this 10th day of September, 2020.

CHRISTIANSEN LAW OFFICES

By _____
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Attorneys for Plaintiffs

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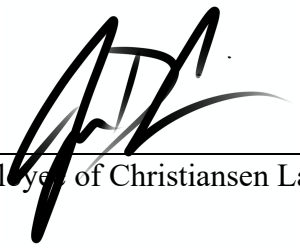
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 10th day of September, 2020 I caused the foregoing document entitled ***PLAINTIFFS' OPPOSITION TO EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRS 41.637*** 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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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: OCTOBER 1, 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' AMENDED COMPLAINT**

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The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the instant Motion to Dismiss Plaintiffs' Amended Complaint and Motion in the Alternative for a More Definite Statement.[1] This Opposition is made and based on all the pleadings and papers on

[1]During the hearing on August 13, 2020, the Court ordered all matters off calendar and issued a new briefing schedule for the parties to file the appropriate motions, oppositions and replies addressing Plaintiffs' Amended Complaint.

file herein, the following Points and Authorities, and such oral argument as may be permitted at the hearing hereon. [2]

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 as alleged demonstrate Defendants failed to contemplate and pursue in good faith, the underlying conversion claim against Plaintiffs. As to the lack of good faith, this Court need look no further than the findings of Judge Jones (which are specifically referenced in the Amended Complaint) when she awarded fees against the Edgeworths for Defendants having filed and maintained the frivolous conversion claim in bad faith:[3]

> The Court finds that the claim for conversion was not maintained on reasonable grounds… since it was an impossibility for Mr. Simon to have converted the Edgeworths' property, at the time the lawsuit was filed.

See, Order on Motion for Attorney's Fees and Costs, attached hereto as **Exhibit 1**; *See also*, ¶33 of Simon Amended Complaint. Judge Jones made this same finding in dismissing the Edgeworth's baseless conversion claim.

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[2] Plaintiffs have addressed Defendants' arguments to dismiss Plaintiffs' amended complaint in contemporaneously filed Oppositions to Defendants' Motion to Dismiss pursuant to NRCP 12(b)(5) and Special Anti-SLAPP Motions to Dismiss. For purposes of brevity Plaintiffs specifically adopt and incorporate by reference any and all arguments made within those Oppositions, as if fully presented herein for purposes of a complete record.

[3] Plaintiffs recognize that generally, the Court may not consider matters outside the pleadings when ruling on a Rule 12(b)(5) motion to dismiss. However, the Nevada Supreme Court has long held that the court may take into account matters of public record, orders, items present in the record of the case, any exhibits attached to the complaint and any documents incorporated by reference into the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1992). Accordingly, this Court may consider the papers, pleadings and orders on file in the underlying litigation giving rise to this case. Further, NRCP 12(d) provides if, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Plaintiffs also note that Defendants have attached several exhibits to their own motions and have proffered misrepresentations of numerous facts, which are disproven by the exhibits attached hereto.

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These are final appealable orders, which are subject to issue preclusion with respect to Defendants' failure to act in good faith as well as the issues giving rise to that judicial determination. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). While the Edgeworths have appealed those orders, "an appeal has no effect on a judgment's finality for purposes of claim or issue 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/Edgeworth complaints were frivolous. This issue has been adjudicated and cannot be re-litigated in this case. 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 pursued such claims on behalf of their client. *Bull v. McCuskey*, 96 Nev. 706, 709, 615 P.2d 957, 960 (1980).[4] In short, Defendants knew the allegation that Simon exercised ***wrongful*** control over the subject funds was a legal impossibility but they pursued it anyway, for several improper purposes.[5] The purpose of maintaining the conversion theft claim was malicious for several improper purposes, including

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[4] Mr. Vannah boldly asserts that it is permissible to sue a lawyer for conversion under the facts of this case for filing a lawful attorney lien. However, Mr. Vannah has yet to provide any authority to support this position. So far, nobody agrees with this position and others who have extensively examined the facts of this case disagree with the Vannah/Edgeworth team. Particularly, the Honorable Judge Jones, Robert Eglet, Esq., on behalf of the National Trial Lawyers Association, William Kemp, Esq. and David Clark, Esq. have presented their independent positions relative to the facts of this case and squarely reject the Vannah/Edgeworth team lone assertions. This is likely due to the reason that the Vannah/Edgeworth team never presented any experts to dispute Will Kemp or David Clark and did not provide any evidence of excessiveness or conversion. Mr. Christensen has also weighed in on the matter. *See,* Declaration of James Christensen, Esq., attached hereto as **Exhibit 11.**

[5] 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.

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; and (6) Avoiding prompt lien adjudication of the valid lien and to delay the proceedings. *See*, ¶¶22-26,58-59,103 of Simon Amended Complaint.

Moreover, in this case, it is not merely the act of filing the frivolous lawsuit that gives rise to liability, but the ongoing abusive conduct engaged in by all Defendants. The Vannah attorneys concede a valid claim for abuse of process may exists where there are allegations of abusive conduct beyond the mere filing of the complaint. *See*, Vannah Motion to Dismiss 12(b)(5) at 17:25-28. Vannah would have this Court ignore the extensive abusive conduct that continued long after the filing of the initial complaint, which included filing an amended complaint, extensive motion practice and days of evidentiary hearings. *See*, ¶¶21-30 of Simon Amended Complaint. Even today, Defendants continue to attack Mr. Simon's professional and moral character by falsely accusing him of the most egregious conduct a lawyer can commit – stealing millions from a client's settlement.

Simply put, Vannah's Rule 12(b)(5) motion fails because presuming the truth of the facts alleged in the Amended Complaint, Plaintiffs have stated viable causes of action, which are substantiated by the prior judicial determinations of Judge Jones and party admissions by Edgeworth. Because Defendants could not have contemplated in good faith their conversion claim, they cannot use the litigation privilege as a shield. No party should ever 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.

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II. FACTUAL BACKGROUND

A. THE UNDERLYING CASE

Simon Law represented the Edgeworth entities in the underlying case *Edgeworth Family Trust and American Grating, LLC vs. Lange Plumbing, LLC and The Viking Corporation* (and related entities) for claims resulting from a defective sprinkler head prematurely activating and flooding a single-family residence resulting in approximately $500,000.00 in property damage. *See*, ¶12 of Simon Amended Complaint. Mr. Simon and Edgeworth never entered into a formal written fee agreement because Mr. Simon's representation started out as a favor to his longstanding friend, who did not want to pay other counsel. Edgeworth could not find any other lawyer to take the case without charging him significant retainer fees, so he called Mr. Simon for a favor. *See*, ¶13 of Simon Amended Complaint; *See also*, May 27, 2016 Email, attached hereto as **Exhibit 21**; *See also*, **Exhibit 2** at 2:23-26.

Mr. Simon commenced the representation in hopes of sending a few letters and triggering coverage so the sprinkler installer, Lange Plumbing, would take over the case pursuant to the construction contract requiring it to enforce the warranty for the defective sprinkler against the manufacturer, Viking, et al. *See*, ¶4 of Simon Amended Complaint; *See also*, August 29, 2018 Transcript at 203:5-18, attached hereto as **Exhibit 6.** Mr. Simon continued to help his friends longer than anticipated but with the full understanding they would work out what would be a fair fee at the end of the case. *See*, ¶¶14-15 of Simon Amended Complaint; *See also,* August 30, 2018 Transcript at 96:19-97:1, attached as **Exhibit 7.** The case continued to morph into a complex, contentious and time-consuming products liability, construction defect and contract case. *See*, ¶14 of Simon Amended Complaint. Simon was focused on doing a great job.

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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 the unique nature of the property damage claim and extent of legal services and costs required to achieve a great result. *See*, ¶14 of Simon Amended Complaint. In August of 2017, Mr. Simon and Edgeworth agreed the flood case had dramatically changed and engaged in discussions about an express fee agreement based on a hybrid of hourly and contingency fees. *See*, Contingency Email, attached hereto as **Exhibit 22.** The suggestion that Simon wanted to modify a contract is false. 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*, ¶¶14-15 of Simon Amended Complaint*; See also*, August 27, 2018 Transcript at 121:2-8; 136:14-137:4, attached hereto as **Exhibit 4.** Edgeworth also admitted that a written fee agreement could not have been reached earlier because the manner in which the case changed in discovery could not have been anticipated. *See*, **Exhibit 4** at 160:14-20. Due to the friendship, at the time Mr. Simon, regrettably, had no doubts the two would come to a fair agreement regarding the fee based on the work performed and result achieved.

Mr. Simon and his firm obtained a $6.1 million recovery for a $500,000 property damage claim. The Edgeworths admit they were made whole when they received their share of almost $4 million. *See*, ¶21 of Simon Amended Complaint. Rather than pay a fair fee and say "thank you," they created a different plan to refuse payment. Instead, the Edgeworths stopped all direct communications with Mr. Simon and his office entirely, secured new counsel, fired him and sued him for conversion, breach of contract, breach of fiduciary duty, implied covenant of good faith and fair dealing, conversion, and punitive damages asserted against Simon for merely filing an attorney's lien. *See*, ¶16 of Simon Amended Complaint; *See also*, **Exhibit 2**; *See also*, Edgeworth

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Motion to Dismiss: Anti-SLAPP at 21:9-12. Even worse, the Edgeworths, through their lawyers, commenced a smear campaign making wildly false accusations of extortion, stealing, blackmail, dishonesty and unethical conduct. *See*, ¶19 of Simon Amended Complaint.

The Vannah/Edgeworth affidavits in support of the instant motions are merely subjective and do not change the adjudicated facts already found by Judge Jones. Anyone can argue for good faith. For example, one could suggest vigorously that "I robbed the bank in good faith." However, this does not make is so. In adjudicating Simon's attorneys lien and determining whether to dismiss the Edgeworth's claims against Simon, Judge Jones heard extensive testimony regarding the very arguments the Vannah/Edgeworth team continue to forward in seeking immunity in this case. After hearing several days of evidence, Judge Jones adjudicated the lien in Simon's favor and further found the claims against him to be baseless and not brought in good faith., presumably because she did not believe the Edgeworths. The Vannah/Edgeworth team concede as much, now admitting Judge Jones believed Simon over Edgeworth. *See*, Brian Edgeworth Affidavit at 18:3-5, attached to Edgeworth Motion to Dismiss: Anti-SLAPP as **Exhibit A.** To be clear, these claims have been adjudicated and cannot now be re-litigated in this case.

1. <u>Events *Prior* to the January 4, 2018 Conversion Filing</u>

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 25;** *See also*, ¶16 of Simon Amended Complaint. On November 30, 2019, the attorney lien was served. *See*, Attorney Lien, attached hereto as **Exhibit 18;** *See also*, ¶17 of Simon Amended Complaint. On December 1, 2017 Vannah signed the release for settlement of $6 million. *See*, Viking Release, attached hereto as **Exhibit 26;** *See also*, ¶18 of Simon Amended Complaint. Tellingly, Defendants glaringly omit the Viking Release expressly delineated how and to whom the

settlement check would be made payable and the Vannah Attorneys and the Edgeworths reviewed and agreed to those terms. *See* Viking Release at page 2, paragraph A, attached hereto as **Exhibit 26**. To be clear, based on the advice of the Vannah Attorneys, the Edgeworths executed the Viking Agreement, which provided the settlement check would be made payable to the Edgeworths and Simon (as this Court is undoubtedly aware this is a common practice where there are costs, fees and or liens to be paid from settlement proceeds). *Id.*; **Exhibit 26** at page 6, paragraph G.

On December 18, 2017, Mr. Simon picked up the settlement checks and asked Vannah's office to have clients endorse the checks in order to deposit into the trust account. *See*, **Exhibit 27**, p.4. Clients became unavailable and refused to sign. On December 26, 2017, Vannah sent an email stating, **"clients are fearful Simon will steal money."** *See*, December 26, 2017 email, attached hereto as **Exhibit 27.** On December 27, 2017, Mr. Simon's lawyer, Jim Christensen, sent a letter with specific timelines and a request to avoid hyperbole and false accusations, offering to instead work collaboratively toward resolution. *See*, December 27, 2017 Letter, attached hereto as **Exhibit 28.**

On December 28, 2017, Vannah responded, "…**he did not believe Simon would steal money, he was simply relaying his client's statements."** *See*, **Exhibit 20**. (emphasis added) Later that day, Vannah proposed and Mr. Simon agreed, to a single purpose trust account with both Mr. Simon and Mr. Vannah as signors. The clients receive all interest from the 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 19.** *See*, ¶18 of Simon Amended Complaint. On January 4, 2018, without any further explanation, Vannah filed the frivolous conversion/theft lawsuit - one week after confirming he did not believe Simon would steal the money, and after

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all parties agreed to put the disputed money in the special trust account. *See,* Edgeworth Complaint, attached hereto as **Exhibit 16***;* ¶19 of Simon Amended Complaint; *See also*, **Exhibit 20.**

2. <u>The Events *After* the January 4, 2018 Conversion Filing</u>

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 deposited into the new joint trust account. *See,* ¶20 of Simon Amended Complaint. On January 9, 2018, Simon was served with the Vannah/Edgeworth Complaint for conversion. *See*, ¶21 of Simon Amended Complaint. When the Edgeworth Complaint was served, the Edgeworth's, Greene and Vannah had ***<u>actual knowledge</u>*** that the funds were sitting in the protected account earning Mr. Edgeworth 100% of the interest, even on Simon's share. *See*, Deposit/hold slip, attached hereto as **Exhibit 40.** *See also*, ¶21 of Simon Amended Complaint

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 4** at 178:20-25. Yet, Defendants filed the frivolous Edgeworth Complaint falsely claiming that Simon was already **"paid in full."** *See*, **Exhibit 16** at 8:6-8; *See,* ¶¶58-61 of Simon Amended Complaint. The affidavits of Brian Edgeworth repeated the known fallacy that Simon was already "paid in full." *See*, ¶23 of Simon Amended Complaint; *See also*, February 2, 2018 Affidavit at 6:10-11 attached as **Exhibit 13;** *See also*, February 12, 2018 Affidavit **Exhibit 14** at 7:11-12; *See also*, March 15, 2018 Affidavit **Exhibit 15** at 7:16-17. Simply, Defendants' conduct was not maintained on reasonable grounds, which was later adjudicated as a fact by Judge Jones. *See*, ¶31 of Simon Amended Complaint; *See also*, **Exhibit 1**.

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On January 9, 2018, after serving Simon with the conversion lawsuit, Vannah threatened that if Simon formally withdrew, bad things would happen. *See*, January 9, 2018 Email attached hereto as **Exhibit 29;** *See also,* ¶21 of Simon Amended Complaint. Greene intentionally ignored Mr. James Christensen's efforts to focus on resolving the money owed to Mr. Simon. Instead, Greene continued to maliciously pursue the conversion claims at the direction of Vannah and the clients. Mr. James Christensen repeatedly asked for the legal or factual basis for the conversion claim. None could be given. *See*, James Christensen Declaration, attached as **Exhibit 11.** Even Judge Jones asked for the basis and Vannah responded in open Court, **"we just think it is a good theory"** *See*, **Exhibit 30** at 34:20-24; *See,* ¶22 of Simon Amended Complaint. At this same hearing, Vannah also confirmed this was merely a dispute over money and Defendants had no criticism of Simon's work. *See*, **Exhibit 30** at 32:5-9. These statements underscore Defendants' transparent motives to harm Simon and further negate any assertion of good faith. *See,* ¶25 of Simon Amended Complaint.

3. <u>Defendants intentionally opted to sue Simon individually in addition to his firm to punish him.</u>

Defendants used the conversion complaint as a basis to circumvent lien adjudication, among other improper purposes. There can be no dispute the Vannah/Edgeworth team's extraordinary efforts to maintain the conversion action scream bad faith abusive conduct. Angela Edgeworth confirmed, under oath, the frivolous conversion claim was filed for an ulterior purpose out of ill-will and hostility to punish Mr. Simon for "stealing" their money:

Q. You made an intentional choice to sue him as an Individual, as opposed to just his 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 8** at 142:15-25 (emphasis added); *See also*, ¶¶27,75-78,85-87 of Simon Amended Complaint. Notably, Defendants' motions are silent as Angela Edgeworth's testimony on this point, apparently hoping the Court will gloss over this damning party admission. The Edgeworths boldly assert in their motion they never used any form of the word theft, steal or stole, yet the sworn testimony proves otherwise. *See*, Edgeworth Motion to Dismiss: Anti-SLAPP at 21:2-25. The Vannah attorneys have never rebuked this testimony. As much as they want to give other reasons for the complaint, ***ex post facto***, these facts have already been adjudicated and final.

Despite that the attorney's lien was filed only by the Law Office of Daniel S. Simon, A Professional Corporation, Defendants sued Mr. Simon personally – yet another abuse of process. *See*, Notice of Attorney Lien, attached hereto as **Exhibit 18**; *See also*, Notice of Amended Attorney Lien, attached hereto as **Exhibit 19**. The Vannah attorneys greatly benefit from a prolonged litigious case. Both Vannah and Greene are paid $925 an hour each with an endless well to bill against as $2 million is safekept in the special trust account. *See*, Fee Agreement, attached hereto as **Exhibit 41**. They have great incentive to advance false narratives to vexatiously attack Simon.

4. The Vannah attorneys admit to their own independent malice.

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 31.** On January 9, 2020, Mr. Vannah wrote an email confirming his true malicious intent to personally

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punish Mr. Simon. *See*, January 9, 2020 Email, attached hereto as **Exhibit 32.** 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, on behalf his clients, confirmed it is his personal intent to punish Mr. Simon. He had no regard for what you call the claim (whether a claim exists or not), his intent is to punish Mr. Simon.

Adding to the list of malicious abusive conduct toward Mr. Simon is the Vannah/Edgeworth team's fabricated allegations of unethical conduct. Mr. Simon met his ethical obligations and followed the law precisely pursuant to NRS 18.015 as confirmed by David Clark, Esq. *See*, **Exhibit 10.** Vannah and Greene were given Mr. Clark's report at the beginning of the case, yet they never disputed his opinion. Judge Jones adopted Mr. Clark's conclusions as part of her findings that Mr. Simon did not do anything unethical and should be commended. *See*, **Exhibit 3** at 6-19. This is another adjudicated fact and Defendants cannot ignore Judge Jones order when asserting facts to the contrary. [6]

5. Only the Disputed Funds are Safekept Pending Appeal

The Edgeworths received the total value of all undisputed funds immediately after the settlement checks cleared the bank. *See*, September 18, 2018 Transcript at 143:4-146:2, attached hereto as **Exhibit 8.** On December 13, 2018, Vannah and Greene filed a motion to direct Simon to release funds over and above the adjudication order - again accusing Simon of conversion. *See,*

[6] Simon did not file the instant complaint in retaliation. The claims are all separate and distinct and clearly supported.

Motion to Release Funds at 6:7-9, attached hereto as **Exhibit 33.** On December 31, 2018, Mr. James Christensen sent a letter again asking Vannah and Greene to stop the false accusations of theft and conversion, pointing out that the motion for an order to release funds repeats the conversion claim. *See*, December 31, 2018 Letter, attached hereto as **Exhibit 34.** The motion was denied because the Vannah/Edgeworth team had already appealed the adjudication order to the Nevada Supreme Court. Simon also filed a writ petition challenging the Court's decision to award less than the full amount of the lien.

Only the disputed funds remain in the special trust account. Simon is following the District Court order to keep the disputed funds safe pending appeal. Yet, the Vannah/Edgeworth team continue to argue conversion and maintain the unethical lawyer theme in all of their briefing, including those to the Nevada Supreme Court. Defendants' conduct extends well beyond the mere filing of the complaint. *See,* ¶¶35-42 of Amended Complaint.

III. ARGUMENT

Defendants seek dismissal erroneously contending that: (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. Defendants motion is without merit because neither the litigation privilege nor the anti-SLAPP statute insulates a litigant from liability for bringing false claims made in bad faith. The court in the underlying action already determined Defendants did not act in good faith and an appeal does not impact the finality of that decision for purposes of issue preclusion.

A. STANDARD OF REVIEW

The standard of review for dismissal under NRCP 12(b)(5) is rigorous, as the court must construe the pleading liberally and draw every fair inference in favor of the nonmoving party.

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Simpson vs. Mars Inc., 113 Nev. 188; 929 P.2d 966 (1997). In considering a 12(b)(5) motion to dismiss for failure to state a claim, 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). 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). A plaintiff's complaint should be dismissed ONLY if it appears beyond doubt that he could prove no set of facts, which if true, would entitled him to relief. *Buzz Stew, LLC v. City of North Las Vegas,* 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

B. <u>DEFENDANTS ARE ESTOPPED FROM RE-LITIGATING CONVERSION</u>

In Nevada, a party cannot re-litigate issues already decided by a sister court. Estoppel is decided by the Court as a matter of law and not discretionary as Vannah incorrectly suggests. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). The Nevada Supreme Court has set forth a four-part test to determine whether issue preclusion applies:

1. The issue decided in the prior litigation must be identical to the issue presented in the current action;
2. The initial ruling must have been on the merits and have become final;
3. The party against whom the judgement is asserted must have been a party or in privity with a party to the prior litigation; and
4. The issue was actually and necessarily litigated.

In *Five Star*, a lawyer for the party did not show up to a calendar call and the court dismissed the case. The dismissed party filed a new complaint trying to use new language and claims. The Supreme Court determined the issue was litigated on the merits even though it was dismissed for

the lawyer's failure to appear. The court also noted the attempts to correct the deficiency with a new complaint re-naming or attempting to re-style new arguments were too late and the aggrieved party was prevented from re-filing. The *Five Star* court went on to clarify *issue preclusion vs. claim preclusion* noting the subtle difference prevents re-litigation of issues of a fairly decided issue.

Here, Judge Jones decided all issues presented at the five-day evidentiary hearing, including, but not limited to, conversion, theft, blackmail, extortion, discharge, the existence of the lawful and enforceable lien, breach of contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, and punitive damages. In doing so, Judge Jones heard Edgeworth's testimony about the effect of the November 27, 2017 letter, the checks sent and deposited, the enforceability of the lien, Simon's ethical/unethical conduct surrounding the false contingency fee argument, the settlement, as well as the lack of good faith and frivolity of the conversion claim. She found in favor of Simon and against Edgeworth. *See,* **Exhibit 2**; *See also*, **Exhibit 3**. Thus, Defendants' attempt to re-litigate these facts and issues are precluded.

The issues presented in Defendants moving papers are identical to the same facts and issues already adjudicated and involved the same parties. The Vannah attorneys concede that the facts and claims litigated in front of Judge Jones are inextricably intertwined and were already part of the lien adjudication hearing. *See*, Vannah Motion to Dismiss 12(b)(5) at 18:19-20. In fact, these issues were litigated on the merits several times. They were litigated as part of the five-day evidentiary hearing to decide Simon's motion for lien adjudication, Simon's motions to dismiss, and Simon's motions for sanctions and award of attorney's fees and costs. It is of no consequence that Simon is using issue preclusion offensively and each factor is squarely met here. Accordingly, Defendants are estopped from re-litigation any of these issues. *Edwards v.*

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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)); *See also Coyle Crete, LLC v. Nevins*, 137 Conn. App. 548-49. (Citation omitted; internal quotation marks omitted.)" *Creed*, 72 A.3d 1175, 1187 (Conn. App. 2013).(all facts and issues already necessarily decided cannot be re-litigated by the same parties in a later action.)

C. DEFENDANTS FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS

Application of the litigation privilege requires a good faith filing of a valid claim. *See, Jacobs v. Adelson,* 130 Nev. 408, 325 P.3d 1282 (2014). The analysis by this court as to the lack of good faith is an objective one. *Capanna v. Orth*, 432 P.3d 726, 734(2018). To benefit from the litigation privilege, Defendants bear the burden of showing by a preponderance that their conduct was made in good faith. *Id.* Because Judge Jones already determined the lack of good faith and rejected the same factual assertions contained in the new affidavits supporting the instant motion, Defendants cannot meet that burden. Simply, filing a frivolous conversion claim to punish a lawyer for filing a lawful attorney lien is not good faith litigation, especially when the real reason is admitted in sworn testimony by a party – that is, to punish Simon for purportedly stealing, converting their money. *See*, **Exhibit 8** at 142:15-25. Defendants want to skip over this conclusive party admission and the binding judicial rulings when making their overbroad arguments for dismissal. Again, this Court does not need to look beyond Judge Jones order dismissing and sanctioning the Vannah/Edgeworth team. *See*, **Exhibit 1**.

It is no surprise that the Vannah motions completely fails to address the party admissions by Angela Edgeworth or the opinions of Will Kemp, Esq. supporting the value of the lien and only peripherally address the rulings by Judge Jones when calling them completely erroneous

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when it was the Defendants that never provided her any authority to rely on. This lack of authority remains even through today.

D. THE LITIGATION PRIVILEGE DOES NOT APPLY TO THE FACTS OF THIS CASE

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).

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). Another way to view the "contemplated in good faith" component in assessing 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) citing *Larmour v. Campanale, supra*, 96 Cal.App.3d 566, 568 (**a communication not related to a**

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potential judicial action contemplated for legitimate purposes is not protected by the privilege.) (emphasis added). Consideration of whether litigation is "contemplated in good faith" calls for an analysis of 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, accepting Simon's allegations as true, 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 attorney's fees admittedly owed and to harm and punish Simon; not to obtain legal success of the conversion claim at trial. The facts of this case fall squarely within the very situation in which courts can and should refuse to allow application of the litigation privilege. Undeniably, the testimony of the Edgeworths admit this lack of good faith and ulterior purpose, which has already been adjudicated by Judge Jones.

Nevertheless, even if the Court finds the litigation privilege applies, it does not support dismissal of all claims. Absolute immunity for attorneys is generally limited to only defamation claims. Restatement (Second) of Torts § 586 (1986). Although other jurisdictions may have extended it beyond defamation claims, Nevada has not done so and it does not provide a defense to abuse of process. *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)).

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E. PLAINTIFFS HAVE PROPERLY PLED ALL CAUSES OF ACTIONS IN THE AMENDED COMPLAINT[7]

1. 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 because to even be appealable, Judge Jones' orders had to be final determinations on the merits – which they were. Moreover, 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. *Ging v. Showtime Entm't, Inc.,* 570 F.Supp. 1080, 1083 (Nev. Dist. Ct. 1983). Nevertheless, if it was necessary, the underlying litigation was adjudicated in favor of Simon.

2. All Defendants, including the Vannah attorneys are liable for Abuse of Process.

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); 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).

[7] Plaintiffs' Amended Complaint does not assert defamation claims or business disparagement claims against the Vannah attorneys at this time; however, Plaintiffs reserve the right to pursue these claims at a later time as facts are discovered. These claims are properly plead against the Edgeworth entities.

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Courts have recognized injury to business and business reputation as an improper ulterior motive and abuse of process. *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), 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 that assertion as true, the Court found the Mastros "properly identified an ulterior purpose" to satisfy the first element of the abuse of process test." *Id.*

Defendants attempt to dismiss all claims with the brush of a litigation privilege wand is contrary to Nevada law. Even if this court applied the litigation privilege for the judicial statements, the abuse of process claims still proceed for the conduct of the parties. Nevada clearly allows abuse of process claims, even against attorneys. Vannah's reliance on *Bull,* is misplaced given that the Nevada Supreme Court confirmed an abuse of process claim against counsel can go forward regardless of the litigation privilege. *Bull v. McCuskey*, 96 Nev. 706, 615 P.2d 957 (1980). While the Vannah attorneys focus on the statements made in *Bull*, they blatantly ignore that the conduct of the Vannah attorneys clearly allows the claim to proceed irrespective of the litigation privilege.[8]

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.

[8] The Bull case did not perform the good faith analysis to apply the litigation privilege as requested here.

Then, Dr. McCuskey sued attorney Bull for abuse of process and a jury returned a verdict in favor of Dr. McCuskey for compensatory and punitive damages. Attorney Bull appealed.

On appeal, the Nevada Supreme Court held that evidence 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. *Id.*

Here, Edgeworth and the Vannah attorneys fabricated the existence of an express oral contract for an hourly rate in order to refuse payment of Simon's reasonable fee. The conversion claim was yet another false basis to refuse payment of attorney fees admittedly owed and to punish Simon – which the Edgeworths admit. The frivolous complaint was used as a predicate to oppose prompt adjudication of the lien and argue Simon was owed nothing by calling him an unethical thief. Vannah used the baseless conversion action to argue Simon needed to be deposed for days in order to harass Simon and just as in *Bull*, to force a settlement.

All of these acts were done by the Vannah Attorneys in agreement with Edgeworths. Their conduct was aimed to destroy Mr. Simon's practice, another ulterior purpose. Defendants sued Simon personally to punish him for purportedly stealing their money. *See*, September 18, 2018 Transcript at 142:15-25, attached hereto as **Exhibit 8**. They also sought to cause Simon substantial expenses to defend the frivolous claims. Again, as in *Bull*, Defendants' misconduct was intended to force Simon to settle for less than his reasonable fees rather than defend against the frivolous claims and incur substantial fees. This is also another ulterior purpose. *Nienstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876 (1982).[9]

This strategy was also likely to persuade the court to award less than the reasonable value of Mr. Simon's work. If Simon steals money from his clients, he is personally a crook and certainly not deserving of a fair fee. Simon need only show the Court one improper purpose, but

[9] Presently, Simon has incurred in excess of $300,000 in litigating this matter.

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Vannah, Greene, and the Edgeworths have admitted to several improper purposes, and openly admitted to their malice. Their new argument that they can have an improper purpose as long as they have a proper purpose is not Nevada law. *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). They have it backwards. This is another unfounded theory lacking authority. Simon only needs to show one improper purpose, but has shown several through the admissions of Defendants.

The lack of authority and probable cause for the conversion claim[10] also highlights their malice. *See, Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 758 P.2d 1313, 1318 (Ariz. 1988). The Vannah attorneys adopted the false testimony of Edgeworths despite always knowing that filing a lawful attorney lien is not conversion, extortion or blackmail. The Vannah attorneys were warned many times not to pursue the conversion by Mr. Christensen, but ignored his requests. *See*, **Exhibit 11**. [11]

Defendants did not challenge the enforceability of the lien as to the amount at the adjudication hearing, and the amount of the lien was not the basis for the conversion complaint. *See*, **Exhibit 17** at 9:9-15. The ability to assert the lien pursuant to Nevada law is not ***wrongful*** and has always defeated the conversion claim from the outset. The Vannah Attorneys have always known this undeniable fact, especially given the dialogue with Mr. Christensen. *See*, Declaration

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[10] In *M.C Multi-Family Development, L.L.C. v. Crestdale Associate, Ltd*., 193 P.3d 536, 543, (2008), citing California law, the Nevada Supreme Court recognized the need to establish the right of "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, the Vannah/Edgeworth team plead a right to payment based upon a contract. However, an alleged contract right to possession is not exclusive enough, without more, to support a conversion claim as a matter of law. *Plummer v. Day/Eisenberg*, 184 Cal. App.4th 38, 45 (Cal.CA, 4th Dist. 2010). *See*, Restatement (Second) of Torts s237 (1965), comment d.

[11] Vannah erroneously argues that allowing an abuse of process claim here would mean that every victorious litigant will file a claim. *See*, Vannah Motion to Dismiss 12(b)(5) at 8:28-9:1. To the contrary, the only threat would be to frivolous litigants, which is no threat at all. In fact, it is good public policy. Edgeworth and Vannah were sanctioned for the frivolous complaint. *See*, **Exhibit 1**. This is quite different than a litigant who loses after a case was litigated in good faith on the merits.

of James Christensen, attached hereto as **Exhibit 11**. The underlying Court was forced to decide whether a conversion claim may be brought against every lawyer who brings charging lien. The court properly avoided such a ludicrous result and consistent with an overwhelming weight of authority dismissed the claims against Simon as baseless.

3. Intentional Interference with Prospective Economic Advantage is Properly Pled

A claim for Intentional Interference with prospective Economic Advantage is established when:

> (1) a prospective contractual relationship between Clarke and a third party;
> (2) knowledge by defendant of the prospective relationship;
> (3) intent to harm plaintiff by preventing the relationship;
> (4) the absence of privilege or justification by defendant; and
> (5) actual harm to plaintiff as a result of defendant's conduct.

See, Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727 (1993).

Defendants contend Plaintiffs have failed to plead specific prospective contractual relationships with third parties for their Intentional Interference with Prospective Economic Advantage cause of action. *See*, Vannah Motion to Dismiss 12(b)(5) at 4:27-5:7. The cases cited by Defendants to support their position are appeals from verdicts or summary judgment decisions and do not analyze the motion to dismiss standard at issue here. Defendants fail to do so because the Nevada Supreme Court has clearly stated that this cause of action falls within the liberal pleading requirements of NRCP 8(a) and not the more specific particularity required by NRCP 9(b) as held in *Kahn v. Dodds (In re AMERCO Derivative Litg.),* 127 Nev. 196, 222-23, 252 P.3d 681, 699 (2011).

Furthermore, Plaintiffs have properly pled that they lost prospective contractual relationships as a result of Defendants' conduct. Plaintiffs allege that "Plaintiffs had prospective contractual relationships with clients who had been injured due to the fault of another, including

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but not limited to persons injured in motor vehicle accidents, slip and falls, medical malpractice and other personal injuries." *See*, ¶ 48 of Simon Amended Complaint. Plaintiffs further allege, "[t]he 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." *Id*. at ¶ 49. Nevada courts have found that allegations of the loss of prospective clients is sufficient when pleading intentional interference with prospective economic advantage. *See, Barket v. Clarke*, 2012 U.S. Dist. LEXIS 88097, *8-10, 2012 WL 2499359 (D. Nev. June 26, 2012). Therefore, the Simon Plaintiffs have properly pled this cause of action. *See,* ¶¶47-56 of Simon Amended Complaint. Nevertheless, if this Court is inclined to grant Defendants' Motion regarding the IIEPA cause of action, then Plaintiffs respectfully request leave to amend pursuant to NRCP 15(a)(2).

4. Wrongful Use of Civil Proceedings is Properly Pled

Exceeding what is required on a motion to dismiss, the Simon Plaintiffs have already met each and every element of their claim for wrongful use of civil proceedings ("WUCP"). More specifically,

> One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if:
>
> (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and
> (b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought.

Restatement (Second) of Torts, §674 (1977). 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

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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 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.*

Here, the Edgeworth/Vannah team brought the claim to delay expedited lien adjudication and increase the cost of litigation when asking Judge Jones for full blown discovery and a jury trial aimed to cost Simon substantial expenses, force an unreasonable settlement and to punish him out of their ill-will. In this case, 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. *See*, **Exhibit 1**. The Defendants all admit the claim was brought to punish Mr. Simon and his Law Firm. *See*, **Exhibit 8** at 142:15-25. The District Court dismissed the Edgeworth's complaints 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. *See*,

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Exhibit 1. The District Court's finding is sufficient to meet the "final determination" prong. Therefore, the Simon Plaintiffs have already established more than a prima facie case for this claim. *See,* ¶¶34-46 of Simon Amended Complaint. The Nevada Supreme Court has never expressly rejected this claim and Defendants fail to cite any authority establishing that this claim should not be formally recognized in Nevada.

Defendants may 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. Plaintiffs submit 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. Judicial resources are becoming scarcer and more valuable, which supports recognizing the claim for the wrongful use of civil proceedings, especially against frivolous litigators abusing the courts to punish others.

5. <u>Civil Conspiracy is Properly Pled</u>

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 defamation is the wrongful conduct establishing the conspiracy. *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003).

The Edgeworth's, 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. It is unlawful to file frivolous lawsuits and present false testimony of theft, extortion and blackmail. The Edgeworth's and the Vannah Attorneys 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 and a valid lien was asserted pursuant to Nevada law.

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,* Simon 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

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assertions. They all mistakenly believed that their conduct was immune from liability based on the litigation privilege.[12]

6. Negligent Hiring, Supervision and Retention is Properly Pled

The Vannah Defendants argue they were not Simon's lawyer and not in privity of contract to erroneously conclude they cannot be sued for their acts in representing the Edgeworths. *See*, Vannah Motion to Dismiss 12(b)(5) at 20:24-21:10. Simon's claims do not involve the Vannah attorney's malpractice as that will be left to Edgeworth. Mr. Simon is pursuing claims against the Vannah attorneys for their own independent conduct.

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 non-client when a non-lawyer 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

[12] Moreover, the claim relates to the Vannah attorneys when they conspired with the Edgeworths 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). Plaintiffs, at a minimum, request discovery on these issues. *See*, Declaration of Peter Christiansen, attached hereto as **Exhibit 12.**

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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.

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. *See*, December 28, 2017 Email, attached hereto as **Exhibit 20.** Without any further explanation, Vannah/Edgeworth sued Simon for conversion. *See*, **Exhibit 16**. The Vannah/Edgeworth team presented these false criminal accusations 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 Vannah lawyers prepared and filed the false affidavits to defend dismissal of the conversion claims. *See*, **Exhibits 14** and **15**; *See also,* ¶23 of Simon Amended Complaint. They are well aware that filing an attorney lien is not theft, blackmail or extortion and know Mr. Simon was not paid in full. In the Vannah attorneys moving papers, they attempt to distance themselves from the false statements they have repeatedly advanced – theft, extortion and blackmail. Unfortunately, it is too late. The lack of good faith is clear when Vannah, Greene and the Edgeworths all stated in Court - we always knew we owed Simon Money. *See*, August 27, 2018 Transcript at 178:20-25, attached hereto as **Exhibit 4**. Simon always had an interest in the disputed funds, never controlled the funds, and the amount was always based on substantial

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evidence Therefore, conversion has always been a legal impossibility. *See*, ¶22 of Simon Amended 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.

The Vannah & Vannah firm failed to supervise and avoid the wrongful conduct. It is not permissible for a firm to turn a blind eye to wrongful conduct merely because it benefits by receiving $925 per hour. A law license gives attorney the right to represent client in good faith, not to abuse the system. Vannah and Greene, at all times were acting in the course and scope of their employment or agency relationship with Vannah & Vannah, Chtd and the firm is liable for all of their conduct. *See*, ¶ 68 of Simon Amended Complaint. The firm also ratified this conduct. *See*, ¶ 71 of Simon Amended Complaint. Therefore, Plaintiffs has properly pled this cause of action. *See,* ¶¶66-73 of Simon Amended Complaint.

IV. CONCLUSION

In light of the foregoing facts, law and analysis, as a result of Defendants' bad faith conduct, they cannot demonstrate they are entitled to the protection of the litigation privilege. Even if they could, the litigation privilege would only immunize Defendants from liability for defamation. Plaintiffs have pled sufficient facts supporting all causes of action, particularly given this is a Rule 12(b)(5) motion and the Court is to assume the truth of Plaintiffs' allegations. Accordingly, Plaintiffs respectfully request this Court DENY the Vannah Defendants' Motion in its entirety.

Dated this 10th day of September, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
KENDELEE L. WORKS, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 10th day of September, 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' AMENDED COMPLAINT*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

An employee of Christiansen Law Offices

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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: OCTOBER 1, 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' AMENDED COMPLAINT: ANTI-SLAPP**

The Plaintiffs, by and through undersigned counsel, hereby submit their Opposition to the Vannah Defendants' Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP.[1]

[1]During the hearing on August 13, 2020, the Court ordered all matters off calendar and issued a new briefing schedule for the parties to file the appropriate motions, oppositions and replies addressing Plaintiffs' Amended Complaint.

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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. [2]

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants ignore that only good faith communications are entitled to the protections of the anti-SLAPP statutes. While anti-SLAPP immunity is broad, it is certainly not without limitation. To prevail on their Motion to Dismiss, Defendants much first show the statements at issue were either true or made without knowledge of their falsity. Any contrary ruling would not only condone, but encourage the use of the judicial system as a weapon by which to defame others while enjoying absolute immunity. Because Defendants alleged Simon converted the subject settlement funds knowing such a claim was both a legal and factual impossibility, they can never demonstrate the underlying allegations were true or made without knowledge of their falsity. Accordingly, this Court should reject Defendants' invitation to immunize the knowing and intentional filing of frivolous lawsuits and deny the motion.[3]

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[2] Plaintiffs have addressed Defendants' arguments to dismiss Plaintiffs' amended complaint in contemporaneously filed Oppositions to Defendants' Motion to Dismiss pursuant to NRCP 12(b)(5) and Special Anti-SLAPP Motions to Dismiss. For purposes of brevity Plaintiffs specifically adopt and incorporate by reference any and all arguments made within those Oppositions, as if fully presented herein for purposes of a complete record.

[3] The conversion claim is so outrageous that the National Trial Lawyer Association was compelled to voice their position on the issue. Robert Eglet, Esq., current president of the NTLA, filed an Amicus Curie Brief in support of Judge Jones position dismissing the conversion claim. *See*, Amicus Curie brief, attached hereto as **Exhibit 35**. This brief echoed the undeniable fact that a lawyer who follows the law by filing a lawful attorney lien and places the funds in a protected account cannot be sued for conversion. *Id*. One cannot violate the law by following the law enacted by the legislature. The Vannah/Edgeworth team are on their own when desperately seeking to punish Simon. The facts, law and common sense do not support their position.

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The doctrines of issue and claim preclusion foreclose Defendants' attempts to persuade this Court their conversion allegations were brought in good faith.[4] Particularly relevant here, Judge Tierra Jones determined that: (1)The Edgeworths owed Simon fees and costs when Simon was discharged; (2) Simon had a valid and enforceable lien (3) The Edgeworths' conversion complaint against Simon should be dismissed as a matter of law; and (3) The conversion complaint "was not maintained on reasonable grounds." *See*, ¶¶31-33 of Simon Amended Complaint; *See also,* Amended Decision and Order on Motion to Adjudicate lien, attached as **Exhibit 2**; *See also*, Amended Decision and Order on Motion to Dismiss NRCP 12(B)(5), attached hereto as **Exhibit 3**; *See also*, Decision and Order Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees and Costs, attached hereto as **Exhibit 1**. Judge Jones remarkably went on to award Simon additional attorneys' fees and costs for having to oppose the Edgeworths' baseless claims. These findings alone demonstrate Defendants cannot meet their burden to show by a preponderance, that their conduct was in good faith.

In sum, Defendants knowingly lodged allegations having no good faith basis in law or fact. Inventing stories and making up facts do not make them true and these same facts/issues have already been litigated and decided. If Simon steals money from his clients, he is personally a crook and his business and, its services, are criminal. This is the sting of the Edgeworths' statements to third parties. Defendants had no factual or legal basis to say that Mr. Simon stole, extorted or blackmailed anyone, and definitely had no probable cause for asserting conversion. Defendants and their clients have been adjudged as frivolous litigators and this Court should not

[4] The orders of dismissal and award of fees are both final orders and a pending appeal does not change that the doctrine of issue preclusion forecloses relitigating such issues. *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)).

permit Defendants to use the anti-SLAPP statutes as a vehicle by which to knowingly and intentionally abuse the system and cause harm.

II.

STANDARD FOR SPECIAL MOTION TO DISMISS: ANTI-SLAPP

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." In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), 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.

Defendants attempt to confuse the application of the litigation privilege with Anti-SLAPP protections. The Anti-SLAPP statutes require the communication to be made in "good faith" and also be "true or made without knowledge of the its falsehood." The Vannah attorneys and the Edgeworth team all seek Anti-SLAPP protection for having made knowingly false statements, and then cite to the litigation privilege cases that allow false statements in hopes the court will gloss over the distinction. The litigation privilege also does not immunize Defendants' conduct

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under the facts of this case, but it is nevertheless a distinct issue not before this Court in the instant motion.[5]

III.

FACTUAL BACKGROUND

A. THERE WAS NEVER AN EXPRESS ARGEEMENT REGARDING ATTORNEY'S FEES

Simon and Edgeworth did not have an express agreement for fees and costs because the case started out as a favor. *Id*. Simon composed bills to be used for the Rule 16.1 calculation of damages given that the construction contract had an attorneys' fees provision. *See,* **Exhibit 6** at 208:16-21. All Defendants knew that Simon does not generally work on an hourly fee basis and the bills that were generated only contained a fraction of the actual work performed. Mr. Edgeworth was abundantly aware as he was on the other end of the hundreds of unbilled emails and phone calls. The few bills generated over the course of intense litigation totaled $365,006.25 in attorney's fees through September 19, 2017. Vannah and Edgeworth then turned those bills on Simon to fabricate the existence of an express oral contract in order to challenge Simon's true reasonable fees.

Defendants' reliance on the fact the Edgeworths paid part of Simon's fee based on the hourly bills is misplaced because that alone does not establish an express oral contract. Judge Jones heard testimony on the issue and found only an implied agreement, which the Edgeworths

[5] In *Greenberg Traurig v. Frias Holding Co.,* 130 Nev. 627, 331 P.3d 901 (2014), the Court only addressed the malpractice conduct of lawyers, but confirmed the application is not absolute when refusing to apply the litigation privilege. The litigation privilege, if applied, only protects statements made in good faith, in court proceedings, as a defense to defamation and does not preclude Simon's claims of abuse of process, civil conspiracy, negligence, intentional interference with prospective economic advantage, as well as the defamatory statements made to third persons not interested in the outcome of the case.

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terminated. *See*, **Exhibit 2** at pp 7:15-16; 13-14.[6] As a result, Simon's office was left with a valid and enforceable lien claim for unpaid fees and advanced costs, which Judge Jones adjudicated in the firm's favor. *Id.*

Equally as significant, because no express contract existed, there was nothing to modify. Simon never approached Edgeworth to change anything. While traveling back from meeting with experts in the summer of 2017, Edgeworth acknowledged at the airport that if another firm had the case, the bills would be three times what they were and he knew the bills were not the full fee. *See,* **Exhibit 6** at 205:6-206:3. Shortly after, and months before the November 2017 settlement was reached, Edgeworth sent an unsolicited email to Simon – it was in fact, Edgeworth, who suggested some form of contingent fee arrangement. *Se*e August 22, 2017 email, **Exhibit 5** at 154:12-23. This email confirms no agreement existed, but discussions were ongoing and the only time a fair fee could be determined was at the end of the case. *See,* **Exhibit 7** at 96:19-97:1.

To be clear, there was never an express contract to modify in the first instance and Simon never asked for a contingency fee or a percentage (a proposed agreement for a flat fee representing the reasonable value of services is not a contingency fee). Brian Edgeworth conceded a contract could not have been entered into earlier because the dynamics of the case were fluid and the highly successful outcome could not have been anticipated earlier on. *See*, **Exhibit 4** at 160:14-20**;** *See also*, ¶13 of Simon Amended Complaint.

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[6] The impact of the checks sent by the Edgeworths in the underlying case was ruled on by Judge Jones. Unless the Nevada Supreme Court weighs in, the impact of the checks has been resolved. *Id.*

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B. <u>SIMON SENT THE NOVEMBER 27, 2017 LETTER AT THE REQUEST OF THE EDGEWORTHS.</u>

Simon and the Edgeworths met on November 17, 2017 as they had many times over the course of the case, to discuss settlement as well as many matters on calendar. Given that Brian Edgeworth's August proposal to negotiate a final fee agreement had not yet been resolved, it was also time to discuss the fair and reasonable attorney's fees. The case against Viking was on the verge of resolution and Simon provided the Edgeworth's a copy of the outstanding costs, which Simon fronted for months at a time (not a benefit typically provided by a firm working on a strict hourly fee basis). Simon also advised the Edgeworths that any fees and costs paid to Simon would likely be recovered against Lange Plumbing under the construction contract. *See*, August 29, 2018 Transcript at 215:7-24, attached hereto as **Exhibit 6.**

The clients left the office after stating they would discuss the fee issue among themselves and let Mr. Simon know their position. *Id.* Mr. Simon discussed the issue with Mr. Edgeworth later on that same evening and Mr. Edgeworth was acting quite different. *Id.* at 16-23. He was very cagey and his demeanor deviated drastically from the close working relationship and friendship he and Mr. Simon once enjoyed. *See*, **Exhibit 6** at 7:23-8:7. Nevertheless, Edgeworth acknowledged the case was not a straight hourly matter and a fair fee needed to be decided. To that end, Edgeworth asked for something in writing so a fair fee could be worked out. *See*, **Exhibit 7** at 7:14-8:7. In an effort to meet that request, Simon asked Edgeworth for a breakdown of what he believed were his out of pocket expenses. *See*, **Exhibit 7** at 7:14-8:7. Mr. Edgeworth forwarded an email to Mr. Simon on November 21, 2017 solely for this purpose. *See*, November 21, 2017 Email, attached hereto as **Exhibit 38.**

After returning from vacation, Simon sent the Edgeworths a detailed letter outlining the proposed fee. *See*, November 27, 2018 Letter, proposed Retainer Agreement and proposed

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Settlement Breakdown, attached hereto as **Exhibit 39.** The entire reason for the letter was so a fair fee could be worked out. Why would Edgeworths request that Simon send something in writing if there was already contract in place? Mr. Simon offered to receive $1.5 million and reduced this amount by crediting all payments already received. *Id.* Simon also suggested the Edgeworths consider the exceptional result achieved. While the Edgeworths suggested a mediator proposal of $5 million, Simon achieved a $6.1 million settlement on what began as a $500,000 property damage claim. *Id*. Indeed, Edgeworth concedes he would have walked away from mediation for $4.5 million. *See*, Brian Edgeworth May 18, 2020 Affidavit at 5:4-6, attached hereto as **Exhibit 43**.

Mr. Simon never said "agree to it or else." This is another self-serving interpretation to justify Defendants' misconduct. Afterall, within 2 days, the Edgeworths had competent new counsel, who could readily finalize the settlement. The Edgeworths refused to even make a single phone call after receiving the requested written proposal. Instead, they chose to stop all direct communication with Mr. Simon. Judge Jones considered the impact of the November 27, 2017 letter and rejected the Edgeworths' unfounded assertions.

C. DEFENDANTS AGREED TO HAVE THE VIKING SETTLEMENT ISSUED JOINTLY TO SIMON'S OFFICE AND THE EDGEWORTHS

Defendants are asserting new, ex post facto, reasons for conversion, which all fail. First, they now incredulously contend Simon unilaterally requested the settlement check be made payable to both Simon and the Edgeworths. Tellingly, they glaringly omit the Viking Release expressly delineated how and to whom the settlement check would be made payable and the Vannah Attorneys and the Edgeworths reviewed and agreed to those terms. *See* Viking Release at page 2, paragraph A, attached hereto as **Exhibit 26**. To be clear, based on the advice of the Vannah Attorneys, the Edgeworth's executed the Viking Agreement, which provided the

settlement check would be made payable to the Edgeworths and Simon (as this Court is undoubtedly aware this is a common practice where there are costs, fees and or liens to be paid from settlement proceeds). *Id.* at page 6, paragraph G. Moreover, it was procedurally necessary in this case to deposit the checks and to distribute the client's undisputed portion because Simon was admittedly owed $68,000 in costs and substantial fees, which Defendants were unwilling to pay.

D. VANNAH'S EXPRESS AGREEMENTS UNDERSCORE THE BAD FAITH IN THIS CASE

The Edgeworth's, through Vannah, refused to sign the settlement checks so that they could be deposited in Simon's law firm trust account. *See*, December 26, 2017 Email, attached hereto as **Exhibit 27**. The basis for their refusal was purported fear Simon would steal the money. *See*, **Exhibit 27**. Vannah confirmed he did not believe Simon would steal the money. *See*, **Exhibit 20**. Vannah proposed and Simon agreed to put the money in a special trust account with Vannah equally controlling the account as a signor with all interest going to the client, even Simon's share. *Id*. This was done to eliminate the fear of theft by Simon. Mr. Vannah and Greene also confirmed the terms of the agreement with Simon to place the amount of the lien in a special trust account to the Court. Specifically, Vannah represented to the Court that he agreed to have Mr. Simon place the ***biggest number he could recover in the trust account***. *See*, **Exhibit 8** at 144:2-12 when he told Judge Jones the following:

> MR. VANNAH: Mr. Simon said this is how much I think I'm owed. We took the largest number that he could possibly get –
>
> THE COURT: Okay.
>
> MR. VANNAH: -- and then we gave the clients the remainder.
>
> THE COURT: So, the 6 --

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MR.VANNAH: In other words, he chose a number that – *in other words, we both agreed that* look, here's the deal. Obviously can't take and keep the client's money, which is about 4 million dollars, so we -- ***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*.

See, **Exhibit 8** at 144:2-12. (Emphasis and Italics added.)

As part of this agreement, Simon proceeded to work with Bank of Nevada and promptly signed all documents to open the account. Vannah was also communicating with the bank to sign the documents. *See*, **Exhibit 20,** and working with Mr. Christensen on behalf of Simon. Vannah and Greene were sending letters to the bank during this time. *See*, **Exhibit 23**. The Banker scheduled a time for all parties to meet at the bank to finally deposit the settlement checks. Undeniably, the admissions by Vannah, Greene and Edgeworth confirm the falsity of their communications when they affirmatively assert the complaint was filed when Simon refused to release the funds. The conversion complaint also stated that a lien amount has not been given as a basis. *See,* Edgeworth Complaint at 5:26-6:3, attached hereto as **Exhibit 16,** even though a specific amount was provided on January 2, 2018. *See*, Amended Lien, attached hereto as **Exhibit 19.** This lien amount was provided at the request of Vannah/Edgeworth and was consistent with the agreement with Vannah. *See*, **Exhibit 8** at 144:2-12. Notwithstanding the false statements in the complaint, the Vannah/Edgeworth team continued to make up more false facts to further support their frivolous conversion claim.

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E. DEPOSITING THE SETTLEMENT PROCEEDS IN SIMON'S TRUST ACCOUNT IS NOT CONVERSION

Defendant disingenuously assert as a basis for conversion Simon refused to deposit the money into Vannah's account.[7] *See*, Edgeworth Motion to Dismiss Anti-SLAPP at 21:2-5. First, Vannah never made such a request and the many communications between Vannah and Jim Christensen confirm this falsehood. Equally as significant, the Vannah attorneys know very well that even if the money was deposited in Simon's account, that would have been the equivalent of interpleading the funds with the court. *See e.g., Golightly & Vannah*, 132 Nev. 416, 418 (2016). Vannah knows this, which means so did the Edgeworths. Even worse, Simon immediately agreed with Vannah and Edgeworth to put the money in a special account earning the Edgeworths 100% of the interest, even on Simon's share. Vannah and Edgeworth met Simon at the bank to jointly deposit the funds and thus, knew exactly where the money was at all times. *See*, **Exhibit 23.** This means that a claim never existed because Edgeworth never had any damages. *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064 (9th Cir. Cal.2003). Vannah knew this, which means so did Edgeworth.

F. SIMON FOLLOWED THE LAW AND IS IN FULL COMPLIANCE WITH ALL ETHICAL RULES, ALL DEFENDANTS' STATEMENTS ARE FALSE AND THIS WAS INVENTED AS PART OF THEIR SCHEME

The Vannah attorneys equally participated and created the baseless allegations of unethical conduct, which was part of their devised plan. 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

[7] They assert they wanted the money to go into Vannah's trust account even though he was not their new lawyer for the case.

> 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. Plaintiffs followed the law and placed the settlement money into a joint trust account with all interest accruing to Edgeworth. *See*, ¶20 of Simon Amended 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 of 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 10.** The District Court noted in its decision and order that Vannah and Edgeworth never disputed Mr. Clark's opinion, and also stated Simon should be commended for his efforts after termination. *See*, Amended Decision and Order on 12(b)(5) at 7:10-11, attached hereto as **Exhibit 3.**

1. <u>The Vannah Attorneys Were Well Aware that the Conversion Claim was Frivolous</u>

Due to the Edgeworth/ Vannah conversion complaints, Simon filed two separate motions to dismiss. One of which was pursuant to NRCP 12(b)(5) on January 29, 2018 and one of which, was based on Anti-SLAPP on March 2, 2018. Vannah, Greene and the Edgeworths, were all made aware of the facts and law as to why the conversion theft claim was frivolous. *See,* ¶ 22 of Simon 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. *Jensen v. Josefsberg*, 2018 WL 5003554 (C.A. 2nd Dist. Div. 2, 2018)(unpublished) (a complaint challenging an attorney lien as unethical was subject to dismissal under the Anti-SLAPP statute); *Finato v. Fink*, 2018 WL 4719233 (C.A. 2nd Dist. 2018) review denied 2019 (unpublished)(Finato recognized filing an

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attorney lien was a protected activity under the Anti-SLAPP law and on appeal ordered dismissal of lien related claims for malpractice, breach of fiduciary duty and breach of contract.)

The Edgeworth entities admit in their moving papers the conversion complaint was filed because of Simon's attorney lien. *See*, Edgeworth Motion to Dismiss Anti-Slapp at 21:9-12. 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,* Mr. Edgeworth's Affidavits, attached hereto as **Exhibits 13, 14** and **15***; See also,* ¶23 of Simon Amended Complaint. In the affidavits, he falsely asserts blackmail and extortion of millions of dollars which Edgeworth told his volleyball coach. *See*, **Exhibit 13** at 3:22-23. *See also*, ¶22 of Simon Amended Complaint. Specifically, Edgeworth stated in his affidavit, 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, **Exhibit 15** at 8:17-20.

The Vannah Attorneys and Edgeworth continued to falsely assert Simon has been "paid in full." *See*, Edgeworth Complaint at 8:6-8, attached hereto as **Exhibit 16**; *See also*, Edgeworth Amended Complaint at 8:21-9:21 attached hereto as **Exhibit 17.** Their new explanation that he was only referring to invoices sent and paid is not suggested in his affidavits and completely opposite his Complaint and Amended Complaint when they seek an order from the Court that Simon was "paid in full." *Id*. Even under their contract theory, at the time of the frivolous complaints were filed, Simon was owed substantial fees for the period September, 2018 thru March, 2018. Continuing to advance conversion in their Oppositions and affidavits to the court

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is additional abusive conduct supporting abuse of process. This is completely opposite of Edgeworths' testimony and the Vannah attorneys' statements at the evidentiary hearing **stating we always knew he owed Simon money.** *See*, **Exhibit 4** at 178:20-25; *See also,* August 28, 2018 Transcript at 36:1-37:3, attached hereto as **Exhibit 5.**

The bad faith motives are further substantiated by Vannah and Greene filing the Amended Edgeworth Complaint without leave of court on March 15, 2018, re-asserting the conversion/theft and punitive damage claims. *See*, Edgeworth Amended Complaint, attached hereto as **Exhibit 17;** *See also*, ¶22 of Simon Amended Complaint. This was filed after Simon filed his motions to dismiss. Since the Edgeworths already received the undisputed portion of the money immediately after the funds cleared the bank in January, 2018 and the disputed money was safe kept in the protected joint account for two months, the new Edgeworth Amended Complaint underscores the transparent malicious motives of Vannah, Greene and the Edgeworths.

III.

ARGUMENT

Boldly suggesting that even intentionally false statements are entitled to anti-SLAPP protection, Defendants assert Simon's claims are barred. In so doing, Defendants ask this court to ignore that NRS 41.637 only protects a ***good faith*** communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Here, Defendants cannot get past the good faith requirement. First, Judge Jones already determined Defendants' claims were not brought in good faith. Defendants further fail to demonstrate by a preponderance that their allegations against Simon were ***truthful or made without knowledge of [their] falsehood."*** NRS 41.637(4)(emphasis added) Defendants, not Simon, must first make such a showing – these are burdens Defendants can never meet.

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Vannah admitted he did not believe Simon would steal client money and was on actual notice in this case that any alleged conversion was an impossibility. Consistent with the lack of any evidence that Defendants had no knowledge their conversion allegations were false, a sister court likewise found Defendants' claims to lack good faith. Because Defendants cannot meet their initial evidentiary hurdle, the burden never shifts to Simon to provide prima facie evidence of a likelihood of success. Thus, this Court need not consider the second prong of the analysis. Nevertheless even if it did, Simon has more than demonstrated a likelihood of success on the merits.

A. DEFENDANTS FRIVOLOUS COMPLAINTS/FILINGS ARE NOT GOOD FAITH COMMUNICATIONS

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 their conduct was truthful or made without the knowledge of its falsehood. In *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6, *9-10, 389 P.3d 262, 268 (2017), 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."

Judge Jones 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 NRS 41.660. 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. *See*, Order regarding Attorney's Fees and Costs, attached hereto as **Exhibit 1**.

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The falsity of the statements become more problematic when the lawsuit was filed prior to Simon ever receiving the funds. 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. *See*, **Exhibit 27.** 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 20.** This was one week before filing the conversion claim. The money was finally received 12 days after the conversion complaint.

Telling, is the new unfounded theory the lien amount was the basis for conversion when a simple review of the initial complaint demonstrates the falsehood. 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. Certainly, the conversion Complaint was not filed when "Simon refused to release the funds" when they were not even received. Since there was never a justiciable claim, the false accusations of theft, blackmail and extortion were always known to be false by the Edgeworth's. Vannah equally knew the testimony his clients were presenting was false. Simon did not blackmail anyone and did not **wrongfully** control the funds. Simon only filed a lawful attorney lien. The lien was always supported by substantial evidence. *See,* **Exhibit 9**. Defendants lack of good faith is demonstrated by the mere fact Vannah/Edgeworth never challenged the enforceability of the lien, never disputed Will Kemp or David Clark or that the lien was somehow improper because they agreed and invited the biggest number as the undisputed amount. *See*, **Exhibit 8** at 143:4-146:2. Vannah could never provide any case specific authority even though Simon did. His statement to

the court "we just think it is a good theory really says it all. *See*, **Exhibit 30** at 34:20-24. The changing reasons for the initial Edgeworth Complaint also supports their lack of good faith and actually underscores their bad faith. Asserting ***ex-post facto,*** new conversion theories long after the evidentiary hearing does not rescue the lack of good faith and falsehoods when the Edgeworth Complaints were filed and maintained. Judge Jones ordered the funds remain in the account after Edgeworths appealed to the Supreme Court. All Defendants do not meet the first prong by a preponderance of the evidence regardless of their self-serving affidavits.

More falsehoods already proven include, the express oral contract was always false when Edgeworth has now given a third version about how the made-up contract was formed. *See*, Vannah Affidavit attached as **Exhibit A** to Vannah motion to Dismiss Anti-SLAPP. Edgeworth also knew his statements were false when testifying that his August, 2017 email was sent after a significant offer was made when he overlooked that the first offer was not until late October, 2017. Incredibly, Mr. Greene adopted this same false statement in his affidavit to this court attempting to present his good faith and truthfulness. *See*, John Greene Affidavit at 6:3-8, attached as **Exhibit B** to Vannah's Anti-SLAPP Motion. Vannah also falsely states Simon presented the Edgeworths with a contingency fee agreement. *See*, Robert Vannah Affidavit at 6:5-9, attached as **Exhibit A** to Vannah's Anti-SLAPP Motion. These statements in the affidavits are blatantly false and already rejected by Judge Jones. Defendants cannot re-write the story and request this Court to make factual findings inconsistent with the findings of Judge Jones. This is the entire basis for issue preclusion and finality. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008).

Defendants never met the "preponderance" evidentiary threshold when Judge Jones made her findings based on the same evidence from the same parties. Therefore, since Judge Jones

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dismissed the Edgeworth conversion Complaint finding bad faith, the defendants cannot meet the "preponderance" evidentiary threshold required in this motion. 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.

B. THE LACK OF CASE SPECIFIC AUTHORITY ALSO UNDERSCORES DEFENDANTS' LACK OF GOOD FAITH

Vannah and Greene base their conclusory statements of good faith to file the case on the premise they researched the law supporting the claims. In their affidavits they only cite *Evans v. Dean Witter Reynolds, Inc*., 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) as a basis. *See*, Vannah Affidavit at 9:3-10, attached as **Exhibit A** to Vannah Anti-SLAPP Motion; *See also*, Greene Affidavit at 9:4-12, attached as **Exhibit B** to Vannah Anti-SLAPP Motion. *Evans* 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. *See*, **Exhibit 11**. Notably, the *Evans* case was cited for the first time in their appellate briefs and was not the authority relied upon when filing the initial conversion claim or maintaining it during the underlying case. This is yet another false premise for the conversion claim. If this is the research the Defendants relied on, Simon's claims are conclusively established, along with the malice and bad faith.

In *Evans*, the attorney actually controlled the money by forging his aunt's name and put the money in his own personal account. No such facts exist in this case and the Vannah attorneys are well aware that the *Evans* case does not support their conversion claims, yet this is the only case they cite in their self-serving affidavits as the basis for the conversion claim. Significantly, this case was cited for the first time by the Vannah/Edgeworth team in their appellate briefs to the Supreme Court.

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Defendants now heavily rely on *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d.314, 317 (1980), a case also never cited in the underlying case. This case also does not remotely relate to the instant matter as it involves a rancher that branded someone else's cattle after he defaulted on a purchase contract. In *Bader*, branding cattle as his own when he did not pay for it was conversion. Unlike *Bader*, Simon immediately released all undisputed funds of $4 million for a $500,000 property damage claim. Vannah asserts the jury instruction in *Bader* as controlling, which stated as follows: "Conversion exists where one exerts **wrongful** dominion over another's personal property or **wrongful** interference with the owner's dominion…." *Id*., at 357, fn. 1. The Vannah attorneys fail to analyze the *Bader* jury instruction with the present facts because doing so actually supports Plaintiffs' position. The Court found as a matter of law, the element of ***wrongful*** could not be established at the evidentiary hearing.

Unlike *Bader*, who did not have a legal right to continue to hold the cattle after failing to perform his obligations under the contract, Plaintiffs always had an interest in the proceeds. All Defendants always knew Simon was owed substantial fees. Plaintiffs' claim was justified and the lien was properly founded upon NRS 18.015. *See*, **Exhibit 2** at 6:18-7:12. As much as Defendants want to create a new ***ad hoc rescue*** argument over the amount of the lien, they skip over the undeniable fact that Plaintiffs were legally within their rights to assert an attorney lien – a lien that has already been approved by a fellow district court. Simon never had exclusive control of the money, always had an interest and never did a ***wrongful*** act to deprive them of the undisputed money. The Vannah/Edgeworth team never argued to Judge Jones that a manual taking was not necessary in any of their motions. It is improper to make new arguments to criticize her rulings when the result would not by any different.

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Interestingly, Vannah cited *Kasdan* in an effort to support his conversion claim, then Simon pointed out it supports his case, now he suggests it does not apply. Simon submits that the Defendants in this case do not have a good faith basis for their arguments and application of their authorities, which underscores the pattern when filing the conversion Complaint. Merely because Defendant did not like the filing of the lawful lien does not give them a basis to file a frivolous claim to abuse Simon and defame him to the community. The lack of authority continued throughout the entire case when Mr. Christensen repeatedly requested the conversion authority, but none could be given. *See*, Declaration from James Christensen, Esq. attached hereto as **Exhibit 11.**

Mr. and Mrs. Edgeworth, through Vannah and Greene, also created a fraudulent story of extortion, blackmail, stealing, intimidation, unethical conduct and threats to support the frivolous conversion claim for the mere act of filing a lawful attorney lien. *See*, ¶25 of Simon 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 for stealing, converting their money. *See*, **Exhibit 8** at 142:15-25**;** *See also*, ¶¶26-27, 75-78 of Simon 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, as all of these statements were always a complete falsehood and were the basis to advance the conversion claim in attempt to also recover punitive damages against Simon.

C. SIMON HAS ESTABLISHED A PRIMA FACIE CASE

The recent case of *Delucchi v. Songer*, 133 Nev. Adv. Rep. 42, 396 P.3d 826 (2017),

supports denial of Defendants' Motion. 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. (emphasis added)

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 Jones is at a bare minimum, 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*.

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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. Defendants never had a good faith belief they could ever prevail against Simon on a claim for conversion. Punishing an attorney for filing a lawful attorney lien by filing and maintaining a conversion claim coupled with false allegations of extortion, theft and blackmail does not meet the requirements for these conversion complaints to fall within the purview of NRS 41.660.

D. UNSUPPORTED AD HOC RESCUE ARGUMENTS

1. The Five-Day Evidentiary Hearing Supported Dismissal of the Conversion Claim

The Vannah attorneys assert that the hearing was only about the lien amount and nothing was done in the case other than filing a complaint. There was much more done after the mere filing of the complaint. There was substantial motion practice and the court held a 5 day evidentiary hearing. Many witnesses testified and substantial evidence admitted into evidence. Post hearing motions were conducted. The order dismissing the frivolous complaint was made after an extensive evidentiary hearing on all matters. *See*, **Exhibit 3**. The District Court entered her final 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 3;** *See also*, ¶32 of Simon Amended 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*, ¶33 of

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Simon Amended Complaint. This is a final order even though it was appealed to the Supreme Court and may possibly get reversed or modified. Notably, the Vannah/Edgeworth team did not challenge the non-existence of the alleged express oral contact and this finding is now final and also constitutes issue preclusion to the same extent as the bad faith motives when pursuing the frivolous conversion claims. It is unknown why the Vannah attorneys continue to argue that there exists an oral contract that was breached by Simon and he committed conversion as if Judge Jones never entered a Court order with findings of fact, conclusions of law. *See* Vannah motion, 8:7-19.

The motions to dismiss were decided only after the underlying court heard all the evidence. *Id*. Judge Jones did not place any limits for questioning any witness about the conversion or any other claim. The breach of contract claim in the complaint was also the entire basis for challenging Simon's true reasonable fees and lien amount. Notwithstanding the breach of contract, there was extensive discussion and testimony about conversion, extortion, blackmail, contingency fees, breach of fiduciary duties, unethical conduct, timing of settlement, timing of discharge, and the amount of the lien claimed. In fact, Judge Jones considered the November 27, 2017 letter, the invoices sent, the checks deposited, the release language, the several thousand emails between the parties, the amount of work done, over 80 exhibits, phone records, the Edgeworth's testimony, Simon's testimony and expert reports of Will Kemp and David Clark, among other witnesses. She then adjudicated all of these facts confirming that the entire complaint should be dismissed as a matter of law. *See*, **Exhibit 3**. Simply, there was no evidence to support of any of their wild and unsupported accusations.

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2. Vannah never made a showing for discovery

The issues presented by Edgeworth and Vannah about the basis for the conversion was argued ad nauseum in the underlying case, which is inextricably interwoven with the case currently on appeal. Although they now complain about their inability to conduct discovery due to the dismissal, this is the very reason Judge Jones allowed extra days for the hearing. Notably, the Vannah/Edgeworth team never made a specific showing of what they were allegedly deprived of in regard to discovery. They never objected to the discovery method allowed during the five-day evidentiary hearing. Also, Judge Jones allowed extra days for them to present any evidence. They never secured an expert and could have called any witness they wanted. Judge Jones took evidence as per NRCP 43 and NRCP 12(d) and adjudicated all issues. These are the same issues between the same parties that Defendants now attempt to re-litigate. These attempts are contrary to well established Nevada case law on finality. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008), *Edwards v. Ghandour*, 123 Nev. 105, 159 P.3d 1086 (2007).

E. 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 also concede this duty. *See*, Vannah Motion to Dismiss Amended Complaint at 24:11-14.

The Vannah Defendants did not have a good faith evidentiary basis to assert the conversion claim against Simon, much less continue to maintain it – 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 20.** 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. *See*, **Exhibit 8** at 143:4-146:2. Vannah/Edgeworth refused to respond to multiple inquiries by Mr. Christensen for the basis of the conversion claim. *See*, **Exhibit 11**. The Vannah attorneys re-confirmed their malicious conduct in their email in January, 2020. *See*, January 9, 2020 Email, attached hereto as **Exhibit 32.** They don't know what to call the claim, if it exists, but the Vannah attorneys personally intend to punish Simon. *Id.*

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. They also knew Simon was not paid in full. The Vannah attorneys prepared the affidavits and presented the false testimony to desperately keep the conversion claim alive. They prepared and filed the conversion complaint seeking relief Simon was "paid in full." Now, they provide false testimony for the basis of the initial complaint when Vannah states in his affidavit it was filed: "when Simon continued to exercise control of the funds. *See*, Vannah Affidavit at 5:24-26, attached as **Exhibit A** to Vannah Anti-SLAPP Motion. Therefore, when filing the complaint alleging conversion, the Vannah/Edgeworth team did not have a good faith belief in the merits and the communications making the basis for conversion have always been false.

In sum, Defendants never made a good faith effort to resolve the lien prior to firing of a frivolous complaint accusing a lawyer of the most egregious acts a lawyer can commit – stealing, extorting and/or blackmailing a client for millions of dollars from a settlement.

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IV.

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 have also presented, under oath testimony directly disputing the self-serving false facts presented in the new affidavits in support of their Anti-SLAPP Motion. Finally, the order Judge Jones and the party admissions deprives Defendants of the protections sought. Therefore, Plaintiffs respectfully request this Court DENY the Vannah Defendants' Special Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP in its entirety, or alternatively, allow the requested discovery pending a final ruling.

Dated this 10th day of September, 2020.

CHRISTIANSEN LAW OFFICES

By _____
PETER S. CHRISTIANSEN, ESQ.
KENDELEE L. WORKS, ESQ.
Attorneys for Plaintiff's

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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 10th day of September, 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' AMENDED COMPLAINT: ANTI-SLAPP*** 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 Office

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APEN
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DANIEL S. SIMON; Plaintiffs, vs. EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; BRIAN EDGEWORTH AND ANGELA EDGEWORTH, INDIVIDUALLY, AND AS HUSBAND AND WIFE, ROBERT DARBY VANNAH, ESQ.; JOHN BUCHANAN GREENE, ESQ.; AND ROBERT D. VANNAH, CHTD, d/b/a VANNAH & VANNAH, and DOES I through V and ROE CORPORATIONS VI through X, inclusive, Defendants.	CASE NO. A-19-807433-C DEPT. NO. 24 **APPENDIX TO DEFENDANT'S REPLY IN SUPPORT OF EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637** **VOLUME 1**

COMES NOW Defendants, BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC by and through its counsel of record MESSNER REEVES, LLP and hereby submits its Appendix to Defendant's Reply in Support

of Edgeworth Defendants' Special Anti-Slapp Motion to Dismiss Plaintiff's Amended Complaint Pursuant to NRS 41.637, Volume 1.

Exhibit	Description	Page Numbers
A.	Declaration of Angela Edgeworth, dated September 24, 2020.	0001-0007
B.	Recorder's Transcript of Evidentiary Hearing-Day 2 (August 28, 2018)	0008-0180

DATED this 24th day of September, 2020.

MESSNER REEVES LLP

/s/ Renee M. Finch, Esq.

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Attorneys for Defendant American Grating, LLC

CERTIFICATE OF SERVICE

On this 24th day of September, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **APPENDIX TO DEFENDANT'S REPLY IN SUPPORT OF EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637-VOLUME 1** to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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/s/ Kimberly Shonfeld
Employee of MESSNER REEVES LLP

“EXHIBIT A”

DECLARATION OF ANGELA EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, ANGELA EDGEWORTH, being duly sworn, states:

1. I am owner of a fifty (50) percent interest in American Grating LLC (also known as "AMG").
2. I have personal knowledge as to the facts and circumstances surrounding the case filed in the Eighth Judicial District Court under Case No. A-19-807433-C.
3. My husband, Brian Edgeworth, and I are the trustees of the Edgeworth Family Trust.
4. I declare the following is true and correct, to the best of my knowledge and belief, and if called as a witness, I could and would competently testify to the matters stated herein, which are within my personal knowledge.
5. In 2016, a home Brian and I were having built sustained approximately $500,000 in damage from a flood caused by a Viking sprinkler head.
6. Initially we hoped we could resolve the issue without involving lawyers but were disappointed to discover that would not work.
7. We considered a couple of attorneys and I also suggested that we contact Daniel Simon ("Simon") because I knew his wife Eleyna Simon for many years and we were close friends.
8. I understood that we agreed to pay Simon $550 per hour to represent us in the case.
9. Simon did not reduce the fee arrangement to writing; however, I knew it to be $550/hour, as he billed us, and I saw the invoices and payments.
10. Simon billed us for his time from the very first meeting.
11. The invoices paid totaled $367,606.25 in attorney's fees in addition to incurred costs.
12. On November 10, 2017, the mediator proposed $6 million to settle the case.
13. Brian and I discussed this and agreed to accept the proposal.

14. On November 11, 2017 Brian accepted the mediator proposal via email on our behalf.
15. On November 15, 2017, we learned that Viking accepted the mediator's proposal of $6 million with regards to the settlement agreement.
16. On November 17, 2017, my husband and I met with Simon at his office after Simon had asked Brian to come to his office to discuss the case.
17. It was at that point that Simon began to press for an agreement that would entitle him to additional compensation.
18. I believed we were there to discuss the settlement agreement and next steps.
19. After I sat down, Simon started off by saying what an excellent job he had done and that he usually receives a contingency fee on cases he works.
20. Simon stated it would be unfair to him, and he would be cheating himself, if he did not receive more money from this case than the hourly fee we had been paying.
21. He said he normally would take a 40% contingency fee, which would amount to $2.4 million, but he was willing to "do us a favor" and let us pay him only an additional $1.2 million.
22. In my opinion, it sounded to me that Simon was proposing and wanted a contingency fee agreement or a bonus, as everything about the new fee he was demanding sounded like it was based on the amount of the settlement and not hours worked.
23. I told Simon we were paying him hourly, and he said that did not matter because sometimes he might receive an hourly rate plus a contingency fee.
24. I asked if we had lost the case, would he refund all the hourly billing invoices we already paid, but he said "no, that is not how it works, you don't understand."
25. He told us we could ask any attorney and they would agree with him that this was customary and normal.

26. I told Simon that Brian and I would have to think about and discuss Simon's newly proposed fee arrangement.

27. Simon told us there were still things to do for the Viking settlement and that he would feel uncomfortable signing the settlement agreement if we did not reach an agreement on the additional compensation for which he was asking.

28. Based upon Simon's statement regarding the Viking settlement, I believed that he could make the deal fall apart if we didn't agree to give him more money.

29. Simon kept telling us that he felt what he was asking was really fair and that we should sign so he could finish the settlement.

30. I did not know that Simon would not be allowed to just quit representing us and leave us without a lawyer to finalize the settlement agreement with Viking and for all the upcoming hearings with the Lange defendant.

31. Brian and I both asked Simon about the status of the settlement several times during the meeting and we asked for the final invoice, consisting of the hourly fees and costs then outstanding.

32. I wanted to pay Simon what he was owed for his hourly work, but I did not understand how he could ask for a percentage of the settlement (or some equivalent) when we had an agreement to pay him hourly for the work he did.

33. Simon and his wife both contacted me on Saturday November 25, 2017, regarding a meeting to discuss the case.

34. Sometime between when we accepted the $6 million settlement with Viking and when we received the settlement agreement, Simon added a term to the settlement agreement that his name would be added to the checks in addition to our names.

35. On November 27, 2017, at 2:26 p.m., while Brian was on a business trip in China, Simon sent Brian and I a letter by email with two attached contracts that he wanted us to sign, the Retainer Agreement and Settlement Breakdown.

36. I felt uncomfortable regarding Simon's statements within his November 27, 2017 Letter because it stated that if we did not agree to the new fee arrangement, he could not continue to work on our case.

37. Simon and I exchanged emails about the finalization of the Viking Settlement.

38. In the exchange, I sent an email to Simon, copying Brian, requesting that Simon provide us with details regarding what he had been discussing with Viking concerning the settlement, with the intention of sending it to my attorney Lisa Carteen to review.

39. Although I referenced her in my email, I did not discuss this case with her until our meeting on December 21, 2017 at I Love Sushi restaurant in Henderson, NV.

40. Simon and I exchanged emails on November 27, 2017 regarding his November 27, 2017 Letter. In the evening of November 27, 2017, after we received the November 27, 2017 Letter, Simon stopped answering my emailed questions.

41. I sent an email on November 27, 2017 that was never answered by Simon. Because I received no response, I sent a follow up email on November 29, 2017, that also went unanswered.

42. Based on the contents of the November 27, 2017 Letter and the fact that Simon stopped responding to my emailed questions, we believed that we needed assistance in navigating this complicated fee situation with Simon.

43. Brian and I retained Robert Vannah, who we knew to be a reputable attorney in Las Vegas.

44. I relied on Mr. Vannah, the senior partner of the firm, to make the decisions to file the pleadings with the claims made and thereafter, the arguments presented in briefs, in court, and all other judicial proceedings, including the pending appeal.

45. After we retained Vannah to represent us, on December 21, 2017, I had a dinner to discuss various business issues with Lisa Carteen my longtime attorney and friend.

46. Lisa Carteen is an attorney licensed in the State of California who has represented various business and personal interests for myself and my husband since 2006.

47. Among the things we discussed that night was the situation we were in with Simon, and how I felt about it.

48. I sought legal guidance from an attorney who has always been a friend over the many years she has represented my business interests.

49. The issues with Simon came up in the conversation as it related to what I was experiencing, how I felt, and what remedies we might have.

50. I have trusted Ms. Carteen's legal advice over many years and sought her advice in anticipation of litigation as a trusted legal counselor and friend.

51. My conversation with Ms. Carteen influenced how we proceeded in the litigation with Vannah.

52. I did not make any knowingly false statements to Ms. Carteen.

53. I also spoke about the situation with Simon with Justice Miriam Shearing.

54. Justice Miriam Shearing and I serve as Directors for a women's organization in Las Vegas.

55. I knew Justice Shearing to be a well-respected attorney and member of the judiciary, as well as knowing that she had been the Chief Justice of the Nevada Supreme Court.

56. My discussion with Justice Miriam Shearing about the dispute with Plaintiffs occurred on February 8, 2018, at a luncheon held at Lago at the Bellagio.

57. At that time, I expressed to Justice Shearing my opinions on what had occurred between us and Plaintiffs, and how they made me feel.

58. I asked Justice Shearing for legal advice regarding whether what Plaintiffs had done was legally justified and whether we were legally justified in filing our Complaint.

59. My discussion with Justice Shearing was rooted in her reputation and ability as an attorney and member of the judiciary in Nevada.

60. My conversation with Justice Shearing confirmed our good faith belief that we were justified in filing the Complaint with Vannah.

61. I did not make any knowingly false statements to Justice Shearing.

62. I never used or utilized the words "stole[,]" "stolen" or "theft" during any statements made to Ms. Carteen or Justice Shearing.

63. I never spoke with Ruben Herrera regarding the dispute we were having with Plaintiffs.

64. Prior to filing the Complaint on January 4, 2018, we had agreed to resolve the case with Viking for $6,000,000, and the case with Lange for $100,000.

65. Because the case was concluding, our attorney Vannah requested that Simon send us a final bill for his fees and costs pursuant to the hourly agreement we had been paying him under, but he ignored our requests.

66. Brian and I wanted the final invoice so that it could be paid in full, just as all the previous invoices had been paid.

67. Instead of providing us with a final invoice, or even the amount of the final invoice for fees and costs, Simon placed an attorney lien on the funds on November 30, 2017, and a second attorney lien on the funds on January 2, 2018.

68. On January 4, 2018, Mr. Vannah filed a Complaint on our behalf.

69. Based on the events that had transpired, Simon's behavior at the November 17, 2017 meeting, our conversations with Simon, the email exchanges with Simon, the contents of the November 27, 2017 Letter, and consultation with counsel, I believed at the time that we had a good faith belief that Simon was exercising wrongful dominion and control over our money.

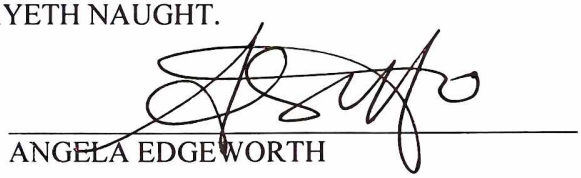
70. Within the complaint we indicated that Plaintiffs had been paid in full, which referenced the invoices that had been presented to us.

71. Brian and I expected a final bill for Simon's attorney's fees and costs so that we could pay him what we owed him, but we never received one.

72. We have always wanted to pay Simon what he is owed, and we offered to pay the $484,982.50 awarded in fees by Judge Jones after the lien adjudication hearing, but Simon would not accept it.

Pursuant to N.R.S. §53.045, I declare under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



ANGELA EDGEWORTH

“EXHIBIT B”

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

INDEX

INDEX OF EXHIBITS

FOR THE PLAINTIFF	MARKED	RECEIVED
None		

FOR THE DEFENDANT	MARKED	RECEIVED
None		

Las Vegas, Nevada, Tuesday, August 28, 2018

[Case called at 11:09 a.m.]

THE COURT: -- Edgeworth Family Trust v. Lange Plumbing, A-767242, Edgeworth Family Trust v. Daniel Simon. Okay, Mr. Edgeworth -- are we beginning with him?

MR. CHRISTENSEN: Your Honor, we have client to take -- or one witness to take out of order --

THE COURT: Okay.

MR. CHRISTENSEN: -- Mr. Michael Nunez.

THE COURT: Okay.

MR. CHRISTENSEN: Mr. Nunez.

THE MARSHAL: I'll have you remain standing, face Madam Clerk and raise your right hand.

MICHAEL NUNEZ, DEFENDANTS' WITNESS, SWORN

THE CLERK: Please be seated, stating your full name, spelling your first and last name for the record.

THE WITNESS: Michael Nunez, M-I-C-H-A-E-L, Nunez, N-U-N-E-Z.

THE COURT: Okay. Mr. Christensen, this is your witness.

MR. CHRISTENSEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Mr. Nunez, what do you do for a living?

A I'm a lawyer.

Q How long have you been a lawyer?
A Since 1992.
Q How long have you practiced in Nevada?
A Since 2008.
Q Where do you currently work?
A Murchison & Cumming.
Q And how long have you worked there?
A Nineteen years.
Q Are you familiar with Mr. Simon?
A Yes.
Q How are you familiar with Mr. Simon?
A In a professional capacity. I've had one or two cases with him through the years.
Q Did you work on a case with Mr. Simon that we're just kind of generically calling the Edgeworth v. Viking case?
A Yes.
Q Are you familiar with that case?
A Yes.
Q How are you familiar with that case?
A I was counsel for R. Giberti, Giberti Construction.
Q How was Giberti positioned in the case?
A Giberti was brought in as a third party defendant, by Viking.
Q And how did it come about that you became their lawyer?
A I was assigned counsel by insurance.
Q Do you have an understanding of how insurance was

triggered in the case for Giberti?

A I know that the claim was tendered. I know that there was a claim's process, while there was a determination of whether a defense would be afforded; ultimately defense was afforded, and I was assigned.

Q Do you know if Mr. Simon had a hand in that process?

A Yes. He assisted Mr. Giberti in obtaining coverage for the claim.

Q Okay. It sounds like you may have come into the case a little late, so-to-speak?

A Yes, quite late.

Q Okay. Approximately when did you come into the case?

A I want to say it was at least a year into the litigation, maybe May, before the October eventual resolution of the case.

Q Okay. Did you have difficulty getting up-to-speed?

A Yeah. It took me a while. It was a very voluminous file, many, many bankers' boxes, many depositions, a good deal of discovery. The case was well under way by the time I was brought in.

Q Did Mr. Simon ever make himself available to you, to help bring you up-to-speed?

A I'm not sure what you mean by available. I know I had multiple conversations with all counsel in the case, to come up to speed.

Q Did you personally observe Mr. Simon's work on the file?

A Yes.

Q Can you characterize his work in any fashion that you feel comfortable with?

A Sure. Like I said, the case had been well under way by the time that I had brought -- my client had been brought in. I think that he had already positioned his client in a very advantageous position, at the time I was in. The theory that my client was asserted against had more or less been thoroughly covered by Mr. Simon, so I would say he did an incredible job on the file.

He was zealous in his representation. He was extremely thorough. There were a great many depositions, exhaustive discovery. I think it was a very thorough, a very competent, a very complete job that Mr. Simon did.

Q Just from your perspective did it look like he was working on any other cases, during this period of time?

A I did not get the impression he was working on any other case. I know he also had an associate working for him. It seemed like practically on a daily basis I would get communication from Mr. Simon on the case. He was extremely thorough.

Q I'm going to show you what's been marked and admitted as Exhibit 32, it's Bate Simon404. Do recognize the email that's been marked and admitted as Exhibit 32?

A Yes.

Q What is that email?

A That was an email I sent to Mr. Simon after I read one of his motions to strike Viking's affirmative defense I believe on the heat defense. It was a devastating motion, I thought.

Q Did that motion inure to your client's benefit --

A Absolutely.

Q -- as well? Now are you aware of a contract that existed between Lange Plumbing and American Grating?

A Yes.

Q And was that contract of interest to your client and to the case as a whole?

A Sure. From the claims being made, from the damages being asserted perspective, yes.

Q Okay. The contract has been marked and is admitted as Exhibit 56; the lead Bate is Simon455. What I'd like to do is, is I'd like to jump into the middle of it and show you what's on page 14, which is Bate 468, Section 7.1; and that was a warranty section?

A Yes.

Q And then the following section was Section 7.2, and that was the indemnity section?

A Yes, I've seen these.

Q And without going through all the 30 or 40 lines of print there, essentially Lange had obligated itself to pursue warranty claims on behalf of American Grating for any products they installed in the building that were affected; is that true?

A I recall that, yes.

Q At the time you came into the case did you take a look to see whether, in your opinion, Lange had breached that contract?

A From what I remember the principal of Lange had already been deposed by the time that I was brought in as a third party. I do

remember reading that deposition, and I do remember I was surprised how freely he admitted that. He understood that they were in breach of their warranty obligations.

Q Now this contract also had an attorney fee provision; is that correct?

A Yes, I believe so.

Q This is Bate 472, Exhibit 56. We're going to take look at Section 18, which is page 18 of the contract; that's the attorney fee section?

A Yes, it appears to be.

Q So in essence to summarize, that means that if someone has to pay money pursuing that warranty, say to a lawyer, you can seek return of that money from Lange under this contract, correct?

A That would be how I would interpret it.

Q Was that -- did that generally seem to be how all the lawyers in the case interpreted it?

A Yes.

Q And that was something that was discussed and relevant to settlement negotiations, et cetera?

A Yes. It was a subject in discovery and settlement negotiations.

Q Okay.

A It was an issue in the case.

Q Did you have an opportunity to personally observe Mr. Edgeworth, either at a hearing, or a deposition, or something related to

the case?

A Yeah. He was involved in the case, and he was present at most depositions.

Q Most, but not all?

A Maybe just one or two, I would say just about all of them.

Q Did you reach any impressions of Mr. Edgeworth during those times that you were able to observe him?

A Impressions?

Q What was his behavior like?

A You know, he was involved in the case, obviously. You know, he was angry that his house had been damaged to the extent that it was; that was evident. He was frustrated that Lange and Viking weren't stepping up to their obligations. He was, I guess, frustrated with how long it was taking for his case to be pursued. I would say it was probably very consuming to him; that's the distinct impression I got.

Q How does his -- from what you could see how was his relationship with Mr. Simon during those depositions?

A It was -- I mean, they were close. He always sat next to Mr. Simon. He always was passing notes to Mr. Simon. It seems to me like Mr. Simon was doing all he could to represent him as effectively as he could, and Mr. Giberti certainly appreciated that.

Q There was a relationship of course between Mr. Giberti and Mr. Edgewood?

A Yes.

Q Okay. How did Mr. Simon react to this -- like passing him

notes in the middle of deposition. Did he --

A He was patient. He would always take the time to read them. I don't know what the questions said, so I don't know if he always asked the questions that were put up now, but I know he always took the time to read them.

Q How would you describe, Mister -- just in general how would you describe Mr. Simon's advocacy of Mr. Edgeworth?

A Stellar. It's one of the most impressive representations I think I've ever seen in my ten years in Nevada, it was exemplary.

Q Thank you, Mr. Nunez.

MR. CHRISTENSEN: No more questions.

THE COURT: Okay. Cross?

MR. VANNAH: Yeah.

THE COURT: Okay.

MR. CHRISTENSEN: Give me just a second to tidy up here.

MR. VANNAH: Take all the time you need.

MR. CHRISTENSEN: There you go.

MR. VANNAH: No problems.

CROSS-EXAMINATION

BY MR. VANNAH:

Q Mr. Nunez?

A Yes, sir.

Q Mr. Nunez, how are you?

A Very good.

Q We can agree on one thing, Mr. Simon's a good lawyer,

right?

A Yes.

Q From what you saw he does a good job?

A Yes.

Q We both agree on that?

A Yes.

Q So let me just ask you this. Murchison and Cumming, you have offices in four cities; you're a big firm?

A Los Angeles, San Diego, San Francisco, Irvine, and Las Vegas.

Q Okay. We're just little firms, but how many lawyers do you have in that firm, there must be quite a few?

A In the Las Vegas office, or --

Q Not a whole office, but the whole thing?

A Probably about 80.

Q Eighty. So, when you are -- when you were asked to work on the case, I think I understand, I used to do insurance defense; that's what you do, right?

A Yes, sir.

Q That's a firm that's well-known for insurance defense, right?

A Yes.

Q One of your former partners used to be a law school professor of mine.

A Oh, yeah.

Q I know they're a good firm. So, you get paid -- your firm gets

paid to -- on this -- how much was your hourly billing on this case?

MR. CHRISTENSEN: Excuse me, Your Honor.

MR. VANNAH: No, it's very important, because we're talking about 550 for your client..

THE COURT: Okay. Let me see what -- what's the objection, Mr. Christensen?

MR. CHRISTENSEN: a) it's beyond the scope; and b) it's not relevant, because Murchison & Cumming and this gentleman was paid pursuant to, presumably a contract with an insurance company. And that encompasses not just the work on this case, but the whole body of work that they might get all of the lines of claims that they might get from the carrier.

So, I don't like to use the word bulk work, because I think that kind of talks down a little bit to what the real work this gentleman does, but he doesn't just get one case, a one-off case --

MR. VANNAH: So, this is --

MR. CHRISTENSEN: -- from a carrier.

MR. VANNAH: -- an argument, Your Honor. This is like we're now going --

MR. CHRISTENSEN: He gets a whole bunch of cases.

MR. VANNAH: -- on and on about --

THE COURT: No just one second, Mister --

MR. VANNAH: -- evidence, sir.

MR. CHRISTENSEN: He gets a whole bunch of cases. So, trying to establish relevancy of what this gentleman does to a rate that

could be applied to Mr. Simon, it's just not relevant.

THE COURT: Mr. Vannah?

MR. CHRISTENSEN: And it's beyond the scope, again.

MR. VANNAH: Very well. I mean, we're -- I don't disagree. We're not taking the position that Mr. Simon didn't do a fine job, I never said that. Never have said it, never pled it, nor argued it. And I don't disagree with Mr. Nunez that Mr. Simon did a fine job, and it's not a malpractice case in any way, shape or form.

So, Mr. Simon is billing $550 an hour in this case, and he's doing similar work to what Mr. Simon [sic] is doing, I'd like to know how much he charges with this large firm he works with, on this case.

THE COURT: Okay. I'll allow Mr. Vannah to ask the question. Mr. Christensen, if you want to follow-up on the cross as to the differences in their work you'll be allowed to do that.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Sir, you can answer the questions.

THE WITNESS: I don't remember exactly.

THE COURT: I thought that might happen.

BY MR. VANNAH:

Q What amount? You guys have billing rates --

A We do have billing rates. It would have been something between 185 and 225, probably in that range.

THE COURT: $185 and $225? Okay.

BY MR. VANNAH:

Q All right. so, it would have been somewhere within a range

of $185 an hour, to $225 an hour, correct?

A I believe so, yes.

Q Do you think you did a stellar job on the case?

A Yes, I did.

Q All right. Was your firm losing money, at 185 to 225 an hour, are they losing money?

MR. CHRISTENSEN: Your Honor, there is a --

MR. VANNAH: I'll withdraw --

MR. CHRISTENSEN: Not only is this question --

MR. VANNAH: -- the question. I mean, the answer is so obvious.

THE COURT: Okay. Ask another question, Mr. Vannah.

THE WITNESS: Were we losing money?

THE COURT: That's okay, sir. You don't have to answer that question, he withdrew it.

BY MR. VANNAH:

Q You had been asked what was their relationship with a deposition. I've been in a many -- you went to a lot of depositions in your life, right?

A Yes.

Q And when you're talking a relationship with a deposition between a client, the clients usually sit next to their attorneys, right?

A No. Usually the Plaintiff doesn't attend the depositions.

Q Oh, that's a good point. When a client does attend a deposition with the attorney, they usually sit next to each other, right?

A Yes.

Q And often times you see people passing notes, the client usually telling the attorney, hey, dumbass, here's a good question to ask, right? That's happened to you, right?

A It's happened, yeah.

Q It's happened to me too. It's happened to everybody that's practiced law, that somebody's saying, hey, you're missing the big point. So that's -- when you talk about the relationships, how many depositions did you attend that Mr. Edgeworth was at with Danny Simon?

A At least half a dozen.

Q About six, okay. And so, when you say, what's your relationship, generally when you went into the deposition and you see Mr. Simon, and he's sitting next to Mr. Edgeworth, and what you see is Mr. Edgeworth making notes and passing them over for Mr. Simon to look at, and to use as he deems appropriate, correct?

A Yes.

Q That's the relationship you observed, right?

A Yes.

Q They weren't yelling at each other, or beating each other up, or anything like that, right?

A Not on the record. They seemed to have quarrels from time-to-time in the hallways, or something like that.

Q Oh, okay. So, you observed the times that Mr. Edgeworth wasn't totally happy with Mr. Simon, they were having a quarrel in the hallway?

A Not with Mr. Simon. As I said, he was frustrated with the case. He was a very angry man. He was angry at what had happened to his house. He was angry that he wasn't getting a response from Lange, or Viking, and that the case had gone on so long.

Q Did it seem to be inappropriate that he was angry about the fact that his house had been flooded like this, and they hadn't stepped up to the plate? Did it seem inappropriate that he was angry about that him being Mr. Edgeworth?

A Whether it was appropriate or not, he came across to me as very angry.

Q Okay. And so, in the hallway, this cordial relationship, you didn't always see that, you saw that they had -- they argued in the hallway sometimes, Mr. Edgeworth and Mr. Simon, correct? You could see that?

Q I wasn't eavesdropping on attorney/client communications. But, typically, when there was testimony that Mr. Edgeworth didn't like, he would get angry.

A Okay.

Q So you had talked about -- you didn't represent Lange, right?

A No.

Q Now you talk about -- everybody thought Lange owed money to Mr. Edgeworth. Did the Lange attorneys feel that way too? Did they say, hey, we think we owe Mr. Edgeworth a lot of money, did they ever say that to you, or anybody in your presence?

A I'm not sure what you're asking. They didn't share their

strategies, thoughts, and impressions with me, if that's your questions.

Q The question that's been asked of you, did everybody in the case think Lange owed Mr. Edgeworth a lot of money? I thought that was the question that was asked, and you said, Yeah. All the lawyers thought that.

A There was consensus that there was a breach of the warranty.

Q Okay. Is that -- so a consensus, did the Lange lawyers, the people that are going to spend the money, did the Lange defendants and the Lange lawyers also agree that they had breached the agreement, did they say that to you, or in front of you?

A It -- I don't remember. I mean, perhaps not directly. It was a concern. A lawyer is never going to admit that it has no defense, so I don't really call those type of discussions.

Q Okay. So, when you say, it was a consensus among all the lawyers, the people who had the money that had to pay the claim that wasn't something they shared with you. We believe that we're going to have to pay a lot of money some day; they didn't tell you that, right?

A I only reported to my carrier, and I reported --

Q So the answer is, no, they never told you that? The Lange lawyers never told you, we think we're in big trouble here, and we're going to have to pay a lot of money some day; they never said that to you did they?

A Well, sure. Everybody was concerned that there was liability somewhere. Everybody is aware this is a very expensive home.

Everybody was aware that there was massive flooding. My client had made very large cost estimates as to what it would cost to repair it. We were aware that an attorneys' fees provision was -- was triggered by the contract, so there were a lot of pieces in play.

Q Here's the question. Did the Lange lawyers, or the Lange Defendants, ever say to you, or in your presence, that we feel that we are going to have to pay a lot of money someday to Mr. Edgeworth; did they ever say that in your presence?

A I don't remember if those words, or words to that effect were used.

Q Okay. Now you -- were you aware that there was a settlement offer by Lange for $100,000 minus 22,000 that they felt Mr. Edgeworth paid; were you aware of that?

A I think so.

Q When there's a settlement offer in a case like this, who is it that has the decision-making on whether to settle, or eliminate that risk -- and to eliminate the risk or to go forward on a case, who is the person that makes that decision, ultimately?

A Are you talking about from the Plaintiff's side or from the defense side?

Q From the Plaintiff's side? The question from Lange -- Lange offered settlement to the Edgeworths, right?

A Yes.

Q Who is it that makes the decision as to whether or not to continue forward and accept whatever risk, reward there may be in that

situation, or to settle the case, who's the person that makes that decision? Is it the lawyers, or the client?

A Ultimately it's the client's decision.

Q Okay. The lawyer can advise their client. You've done that many times, given advice to a client, or to an insurance company, as to what you think would be a fair settlement, right?

A Are you asking --

Q Would they put --

A -- my opinions?

Q Do they always take your opinions?

A No. I make recommendations, and ultimately it's the client's decision.

Q So, in this case the decision to accept the Lange settlement, that would have been Mr. Edgeworth's decision, not Mr. Simon's, correct?

A I would only assume so. I don't know the relationship, I'm not privy to that.

Q Okay. And on the heat defense, can you tell the Court a little -- you mentioned that you thought there was a good motion on the heat defense. I'm kind of familiar with it. Can you tell the Court what that heat defense was?

A Sure. A claim against Giberti as the general contractor on the project was one of sequencing and timing. There was an assertion that they allowed the sprinklers to be in place during the hot summer months for too long a period of time, and that may have caused or

contributed to the failure.

Q And were you aware that Mr. Edgeworth went out and did considerable research on his own, regarding the heat that would apply to these sprinkler systems, during manufacturing, and things like that anyway, and that Mr. Edgeworth is the one that came up with the scientific part of the argument on that; were you aware of that?

A No, not at all.

Q Who did that, if it wasn't Mr. Edgeworth; do you know?

A I always believed it was Mr. Simons.

Q You thought Mr. Simon did all this research on his own?

A Yes.

Q Oh. What's his educational background in the area of engineering; do you know?

A No.

Q How do you know that Mr. Simon went out and did this scientific research, and looked at all the documents to come up with this information, as opposed to Mr. Edgeworth, who's very involved in the case, as you say, doing the research, getting all the information together and feeding it to Mr. Simon?

A I --

Q You don't know?

A I assumed.

Q Okay.

A All the discovery, all the communications came from Mr. Simon's office, so I assumed it was his work.

Q Did you think that 184 to 225 an hour was a fair compensation to be paid to your firm for your time?

A No.

Q You think it should be higher than that?

A Yes.

Q We all think that, right?

A Insurance companies don't pay their lawyers enough.

Q Okay. Fair enough, I don't actually disagree with that, but that's the amount that was agreed to, and --

A Yes.

Q Thank you so much.

MR. VANNAH: Thank you. I have nothing further, Your Honor.

THE COURT: Redirect?

MR. CHRISTENSEN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Mr. Nunez, you've been practicing for a long time?

A Yes.

Q So have you ever done your own research when you had a case that involves maybe an engineering issue, or a medical issue?

A Sure.

Q You hit the books?

A Absolutely.

Q It's not unusual?

A No.

Q Certainly it's a client's decision to accept it or reject a settlement. And isn't it also true that it's the lawyer's job to give good advice to the client to assist in that decision?

A I would agree with that.

Q I want to -- since the billing issue came up, I know it's a tough issue, but let's talk about it a little bit. Does your office have billing software?

A Yes.

Q It's something that's wired into everybody's computer?

A Yes.

Q You have folks there at the office who are timekeepers?

A Yes.

Q You're a timekeeper?

A Yes.

Q Do you have assistants, for timekeepers, paralegals?

A Yes.

Q When you -- and Murchison & Cummings is in multiple jurisdictions?

A Yes.

Q So, the relationship that firm has with an insurance company may apply not just to Southern Nevada, but also maybe Southern California, or maybe Arizona as well?

A That's correct.

Q So, if you're going to examine what Murchison & Cummings

is being paid by an insurance company, you really have to look at the whole picture, and look at all the cases they're getting from the carrier, and how that has an impact on the law firm's bottom line, correct?

MR. VANNAH: Your Honor, I'm going to have to -- he's basically testifying. Leading is -- to say he's leading has been an understatement.

MR. CHRISTENSEN: I'm just trying to speed things along.

MR. VANNAH: Well --

BY MR. CHRISTENSEN:

Q Mr. Nunez, have you ever worked as a managing partner at a firm?

A I'm a senior partner, I'm an equity partner.

Q Okay. You have a general understanding at least of how the relationship works between an insurance defense firm and a carrier?

A Yes.

Q Is it true that the carrier may provide cases in different jurisdictions?

A Yes.

Q And is it true that you have to look at the big picture when you're taking a look at a particular rate?

A Yes.

Q I mean, you're not just getting one case from the carrier, you're getting multiple cases?

A Yes.

Q Okay. And all of that works into the fee calculation?

A Yes.

Q Okay. That's it. Thank you, Mr. Nunez.

A Thank you.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Okay. Mr. Nunez may be excused?

MR. VANNAH: Certainly.

THE COURT: Sir, you're excused. Thank you very much for your testimony here today. Do we have anyone else, or are we ready for Mr. Edgeworth?

MR. VANNAH: I think we're ready for Mr. Edgeworth.

THE COURT: Okay. He walked out the door.

MR. GREENE: I think he might have used the restroom, or something, Your Honor.

THE COURT: Yeah.

MR. VANNAH: Can I get set up?

THE COURT: Yeah. And he's walking in the door.

Mr. Edgeworth, if you could take the witness stand. And, sir, we'll just re-swear you in, since it's a different day. Thank you.

BRIAN EDGEWORTH, PLAINTIFF, SWORN

THE CLERK: Please be seated, stating your full name, spelling your first and last name for the record.

THE WITNESS: Brian Edgeworth, B-R-I-A-N, E-D-G-E-W-O-R-T-H.

THE CLERK: Thank you.

THE COURT: Whenever you're ready, Mr. Christiansen

MR. CHRISTIANSEN: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. CHRISTIANSEN:

Q Mr. Edgeworth, I appreciate you're back on the stand today. I tried to sort of whittle down some of the issues. So, if we can try to move through it, rapidly. Do you remember -- and get at least my examination be complete before the lunch hour.

Do you remember yesterday discussing with me the term used in your affidavits about -- the term was the outset?

A Yeah. The beginning of the --

Q Right. And yesterday you had some challenges with understanding that the outset meant the very beginning, right? You thought it meant June 10th, as opposed to the 27th or 28th of May, right? Now that was your story yesterday on the stand, is that you didn't learn of Mr. Simon's fee at the outset, you learned of it June the 10th?

A Correct.

Q Correct, okay. And, sir, when did -- can we agree that that version of events, so June the 10th, being the date in which you learned of Mr. Simon's fee of 550 an hour, that that is not contained anywhere, that date, June the 10th, in any of the three affidavits you signed, or the complaint you filed in this case, or I'm sorry, Mr. Vannah's office filed on your behalf?

A I believe so.

Q That's an accurate statement, correct?

A I believe it is.

Q And, sir, were you here when Mr. Vannah gave an opening statement on your behalf, yesterday?

A Yes.

Q And you know that there's been no discovery in this case, nobody's had to sit for depositions, this is our hearing, right? We're just sort of coming into it cold?

A Correct.

Q Okay. And did you hear -- I went back and listened to it, we had the CD last night, at 11:16 when Mr. Vannah told the Court that at the very first meeting, point blank, you were told Danny Simon's rate was 550, and his associate's rate were 275; did you hear him say that?

A I'm not sure about that, but I believe you.

Q Okay. And that's not your testimony, correct?

A No, it's Mr. Vannah's testimony, I guess.

Q And he's your lawyer, a very fine lawyer, one of the finest in Southern Nevada, right?

A Right.

Q And presumably, without telling the contents of the conversation, before he gave an opening statement he'd spoken to you, fair?

A Correct.

Q And in his presentation he gave a version of events that once I confronted you with the, we'll cross that bridge later email from Mr. Simon you had to alter, correct?

A No, I've never altered my story.

Q You never told that story in any affidavit, that you were told on 6/10, Danny Simon's right, correct?

A Correct.

Q In fact, yesterday, after being shown that email and confronted with the bills, for the very first time you conceded that you didn't even know what his associates' were for 14 or 15 months, correct?

A Correct.

Q All right. And June the 10th, in your exhibits I requested for, I think this is exhibit -- let me ask Mr. Greene.

[Counsel confer]

BY MR. CHRISTIANSEN:

Q This is teeny tiny writing Mr. Edgeworth, so I'm going to -- your Exhibit 9, and I'm just going to put a page, is like a side-by-side comparison of bills, that looks like somebody must have done in anticipation for this hearing; is that fair?

A Yes.

Q You did this?

A Yes.

Q And you compared the bills?

A Correct.

Q Okay. And did you find a bill on 6/10, for Danny Simon talking to on the phone for this new version of when you learned of his fee? Did he bill you for that phone call?

A He didn't put dates on his early bills.

Q So that's a no?

A I would assume he billed me for it. There's a block billing on that date.

Q Right. He -- at your lawyer's request, later submitted a complete bill for all of his time, correct?

A I'm not sure what you mean. my lawyer's request.

Q You got a bill in December, and I agree with you that for the first half dozen entries Mr. Simon, in May and June, doesn't put dates for things he did; that's what you're telling me, fair?

A Fair.

Q Okay.

A There's no dates. I think -- I don't know how far. You showed me, yesterday, the exhibit.

Q It went about two-thirds of that first page, I think, that you pointed out to me. But later on, after you hired Vannah & Vannah, and listened to Vannah -- you know, were getting advice from Vannah & Vannah, maybe you don't know, but a request was made for a bill, and then a final bill came in. Did you get that bill?

A We received a final bill with a court filing motion for adjudication, I believe on January 24, I believe.

Q Okay. January 24, so you prepped well enough for this hearing to even remember when things were filed, right?

A I remember that date, correct.

Q But you didn't read any of your affidavits in preparation for testimony today?

A No.

Q None of them?

A No.

Q Okay. Did you see in that court filing for the -- and I agree with you, that's what it was, it was a bill involving adjudication of the lien, a bill for June 10th or a phone call, the phone call that you told the, Judge, for the first time in this litigation that you were informed of Mr. Simon's rate?

A There's no phone calls going back after a certain date --

Q So the answer's --

A -- he stopped them.

Q -- no?

A No.

Q Okay. And I went and found an email from Mr. Simon, on that date, it's --

MR. CHRISTIANSEN: John, Exhibit 80. Ashley, what's that --

MS. FERRELL: 3499.

MR. CHRISTIANSEN: 3499. It's too small for me to read.

THE COURT: Which Exhibit is it, Mr. Christiansen?

MR. CHRISTIANSEN: 80, Your Honor --

THE COURT: And this is your 80?

MR. CHRISTIANSEN: Yes, ma'am. It's the CD, it's the giant exhibit.

THE COURT: Okay.

MR. CHRISTIANSEN: With --

THE COURT: With all of the emails and --

MR. CHRISTIANSEN: Yeah. You know --

THE COURT: -- that were in the chair yesterday.

MR. CHRISTIANSEN: -- all the things that were over there.

THE COURT: Okay.

BY MR. CHRISTIANSEN:

Q And I've forgotten which one you like to look on, Mr. Edgeworth. On the screen in front of you can you see the email I'm talking about?

A Yes, I can.

Q And again, these emails go backwards. It looks like you are asking Mr. Simon, on June the 10th, questions about United Restorations, and other expenses you're having to incur?

A Yes, that's correct.

Q All right. And he responds to you on June the 10th. Not sure on fireplace issue, we can talk about it, I'm out of town until Monday?

A Correct.

Q So he's answering you -- this is a Friday, June the 10th, 2016 is a Friday. So, he's answering you from out of town, in response to his friend, who at this time he's doing a favor for?

A Correct.

Q All right. And, yesterday, do you remember talking about, it might have been my term, I can't remember who used it first, for things being in flux between you and Mr. Simon early on?

A What do you mean by that?

Q Well, at first he was going to represent you as a favor, you

told me that?

A Correct.

Q And then later he was going to charge you?

A Correct. Just before the filing of the lawsuit.

Q Okay. And I think yesterday I said -- and so at least at that timeframe, things were in flux, and I think you agreed with me?

A Up until the Friday call, I'd agree, but then --

Q No argument --

A -- on Monday the lawsuit --

Q -- I'm saying that's what you said.

A -- was sent to me, to ask to read it.

Q And so, then clearly things would have been set in stone about how you two were going to operate, from that point going forward?

A Yes.

Q All right. So, when September the 17th of 2017, Exhibit 80, Bate Stamp 173, maybe, is sent from you to Mr. Simon. This is, I don't know, 15, 17 months after he's been your lawyer, let me think? Sixteen months, sorry, my math's not great. Is it fair to say that this email reflects that you don't even know who's paying the experts; are you going to pay them, or is he going to pay them?

A No, I'm offering to pay upfront.

Q No. No, you didn't. Are you paying these guys, or was I supposed to pay Vollmer [phonetic]. That's the -- I read that, right?

A Yeah. He had forward on a bunch of Vollmer bills, and I

wanted to know, should I take care of this?

Q Right. So, it wasn't set in stone, you didn't know. So that's all I'm pointing out, you didn't know --

A Yeah.

Q -- correct?

A Okay. Correct.

Q And that's consistent with Exhibit 80, Bate Stamp 2148, which is just a few days later. Hey, should I pay this, or you?

A Correct.

Q So it's still not set in stone --

A Well, that one there was --

Q -- September 17?

A That one I had signed a retainer agreement, so I assumed that bills would come to me.

Q You were asking, were you not, should I pay this or you?

A Correct, of course.

Q So, it had not been set in stone. You're asking, you're not telling him I'm paying it, right?

A Correct.

Q All right. And yesterday there was some discussions about after your being advised by Vannah & Vannah, communications relative to Mr. Simon and Mr. Vannah; do you remember those discussions?

A Vaguely.

Q And one of them --

MR. CHRISTIANSEN: This is Exhibit 53, Mr. Greene.

BY MR. CHRISTIANSEN:

Q Is an email from Mr. Vannah to Mr. Christensen saying, I guess you can move to withdraw, however that doesn't seem in his best interest. I'm pretty sure you can 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 a jury.

Did I read that correct?

A Correctly.

Q And that's January the 9, 2018?

A Correct.

Q You sued him five days before that?

A Correct.

Q You hadn't served him yet, but you sued him. Do you know one way or another if that's true?

A I do not know that.

Q Okay. And you had told Mr. Simon in a December 4th email, don't -- talk to John Greene in Mr. Vannah's office for about things going forward?

A I think December 5th --

Q You're right.

A -- but I'm not --

Q You're right, Mr. Edgeworth, I apologize.

A -- not positive of the date.

Q And then I guess if on -- I guess it was a little before us. This

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?

A I don't know that at all.
Q You don't?
A No one's said that that's the ethical way to proceed.
Q Okay. And do you remember in your affidavits, Mr. Edgeworth, saying at that 11/17/17 hearing -- I'm sorry, meeting at Mr. Simon's office, the high pressure one, that's your term not mine, that the sole issue Mr. Simon wanted to talk to you about was his bonus?
A Correct.
Q That's not true, is it?
A Yes, it is.
Q He wanted to talk to you about the Lange resolution, correct?
A He never brought it up.
Q He wanted to talk to you about what he had to go in front of -- he had to come to Court that morning in front of Judge Jones, and he wanted to talk to about that too?
A No, he never brought it up.
Q He never brought any of that stuff up?
A None of it.
Q And what you said in your affidavit, and I'll show you, this sort of dovetails back to your deposition, okay, that's what I'm sticking with.
MR. CHRISTIANSEN: Sorry, this is Exhibit 16.
MR. GREENE: Thank you.
MR. CHRISTIANSEN: Yeah. It's the first one, John, and I'm at page 4.

BY MR. CHRISTIANSEN:

Q The bottom of page 4, and I'll try to point -- do you see where my finger is at Mr. Edgeworth?

A I see your finger.

Q Since Simon hadn't presented these quote/unquote: "new damages" to Defendants in the litigation, in a timely fashion we were savvy enough to know they would not be able to be presented at trial; did I read that correctly?

A Correct.

Q And by savvy enough, you thought that because Mr. Simon hadn't presented -- well, you thought because you quoted part of your deposition, where Mr. Simon said he produced all the bills that were incurred up to May of 2017, that meant he couldn't present any bills going forward?

A Your question was about May of 17 --

MR. GREENE: Pete, actually it was September of -- September 22nd of 2000 something, not May.

MR. CHRISTIANSEN: It actually is May, and I'll show them to you in a minute.

BY MR. CHRISTIANSEN:

Q But you got savvy in these affidavits, to take the position that Danny, Mr. Simon, was trying to steal your money because you didn't owe him anymore money, and that's actually what he put, was what's contained in the body of the complaint, and I'm not going to quibble with Mr. Vannah or you, we'll just show the judge in an argument that that's

right in the complaint, Okay?

And what you thought you were savvy about, is that the time had run to present damages in the Lange litigation, right? That's what you thought, when you wrote that in this affidavit?

A No.

Q You didn't think that?

A This is stating that you can't just say at the 11th hour, oh, yeah, my lawyer fees, now that I've one, my lawyer fees are $2 million more than we ever told you, through the whole case.

Q Right. I agree you can't do that. You were aware, were you not, that Mr. Parker, Theodore Parker represented Lange at this stage of the game, correct?

A Correct.

Q Now Mr. Parker is a very well respected attorney in this community, fair?

A I like him.

Q And Mr. Parker came into the case, and once Viking settled recognized the nature of the case against his client had changed; do you remember that?

A The hearing I went to where Mr. Parker came in, he was mostly arguing that he had just come on the case, he just landed from South Carolina --

Q He sure does.

A -- I haven't really had time to read it all. Your Honor, I believe before we get it started, I'm not sure that this is a legal contract between

my client Lange, and Mr. Edgeworth. That's Mr. Parker.

Q You have good memory, that's exactly what Mr. Parker, who is from Charleston, South Carolina and has --

A Yeah. It was South Carolina.

Q -- a practice down there. My daughter went to college there, so I see Teddy, going back and forth all the time. He had just come back from Charleston and he had -- he wanted to revisit the Lange issue; do you remember that? He wanted to litigate whether the contract was enforceable, things of that nature?

A I think the term he used was whether it was a legal contract, yes.

Q And when you think you're -- when you use the term in these affidavits that you're savvy enough to know the damages that weren't presented can't be sought, recovery for those can't be pursued, fair?

A Extreme amounts that were never presented during the time of the case, they can't just pop up.

Q Let me show you Exhibit 80 --

MR. CHRISTIANSEN: Bate stamp 4552 through 4555, Mr. Greene.

BY MR. CHRISTIANSEN:

Q And this is an email from staff at Mr. Parker's office, Parker, Nelson, I know Her Honor knows that's where Mr. Parker works, and it attaches a November 29th letter from Teddy, Mr. Parker, who is new to the case. Mr. Simon told you about Teddy being new to the case; right Mr. Edgeworth?

A Yes.

Q Mr. Simon told you that the nature of the case against Lange had become streamlined and far easier to pursue, because Viking was out, correct?

A No.

Q Mr. Simon told you that Teddy wanted to extend the deadlines, and there would be additional time to do discovery, produce evidence, depose witnesses, et cetera, correct?

A It was going to delay everything, yes.

Q All right. So, when you're savvy about the time having expired, you remember that's what you put in your affidavit, you sort of forgot to tell -- put in your affidavit that Mr. Parker is continuing -- asking Mr. Simon, who's agreed to continue all the cut-offs, so there's plenty of time to present your lawyer damages. You knew that, didn't you?

A No.

Q You absolutely knew that this agreement between Danny Simon and Teddy Parker had taken place, and instead of telling the Court that, you want to tell the Court how savvy you are about knowing Danny couldn't present any new damages, right?

A I've never seen the letter you've shown me.

Q The guy that micro-manages everything, and that can quote me the day things were filed in this litigation is telling me he hasn't seen the email?

A Can you show me the date of email?

Q Sure.

A No, I haven't.
Q November 29th, 2017.
A Did Mr. Simon email me this, because I have no memory of it.
Q You're telling me you didn't see it?
A No. I didn't see this.
Q Okay. And just to be clear, I don't want to put words in Mr. Parker's mouth. Additionally, Mr. Simon pointed out that if Plaintiffs go forward against Lange this case will be different, than the case intended pursue against the Viking Defendants and Lange Plumbing; that's in Mr. Parker's letter, correct?
A Correct.
Q And that's something that Danny also explained to you?
A No.
Q Okay. This was that same email, or the same affidavit, just a different copy. We've got so many highlights.
MR. CHRISTIANSEN: Paragraph 19, Mr. Greene.
THE COURT: Which exhibit is this, Mr. Christiansen?
MR. CHRISTIANSEN: I'm sorry, Your Honor. It is --
THE COURT: 16?
MR. CHRISTIANSEN: 16, Judge.
THE COURT: Okay.
BY MR. CHRISTIANSEN:
Q This was your affidavit under oath, penalty of perjury, Mr. Edgeworth? Paragraph 19.

When Simon refused to release the full amount of the settlement proceeds to us, we felt that the only reasonable alternative available to us was to file a complaint for damages against Simon.

Correct?

A Correct.

Q You thought you were due the full amount, and he wasn't due anything?

A That's incorrect.

Q It's incorrect, however, you agree that you accuse Mr. Simon, in a cause of action contained in your complaint, of conversion?

A Correct.

Q Do you remember sitting for your deposition, Mr. Edgeworth?

A Yes.

Q Do you remember quoting that portion of deposition where, in all your affidavits saying that the bills have been presented?

A Yes.

Q Do you remember not quoting? Do you remember intentionally omitting from your affidavit, the portion of your deposition where Danny Simon asks you questions about your attorneys' fees continuing to accrue? You didn't quote that in a single affidavit, did you?

A No.

Q You didn't put it in your complaint, did you?

A No.

Q You intentionally omitted it, didn't you?

A No.

Q Because you knew, darn good and well, that Mr. Simon asked you questions, and that your damages, or your attorneys' fees were still accruing.

MR. CHRISTIANSEN: I'm looking at page 294, John.

THE COURT: And what is the exhibit number?

MR. CHRISTIANSEN: It's his deposition, Your Honor, which is Exhibit 84.

THE COURT: 84.

BY MR. CHRISTIANSEN:

Q Q Those damages are still accruing every day?

A Correct.

A Correct.

THE COURT: And what page is that.

MR. CHRISTIANSEN: 84, Your Honor.

THE WITNESS: I've always said that. I actually emailed and asked --

THE COURT: Hold on, Mr. Edgeworth --

THE WITNESS: Oh, sorry.

THE COURT: -- I'm asking a question. So, when I'm talking --

THE WITNESS: I'm sorry.

THE COURT: -- you're not.

THE WITNESS: I beg your pardon.

THE COURT: Mr. Christiansen, the Exhibit Number is 84,

what's the page number?

MR. CHRISTIANSEN: 294, Your Honor.

THE COURT: 294, okay.

BY MR. CHRISTIANSEN:

Q And you also say, sir, at page 289 of your deposition, that you understand, and it's pretty clear under the contract, that's your words, pretty clear under the contract, that pursuant to the contract they're responsible for your attorney's fees and costs; and they being Lange, correct?

A Correct.

Q And then at your deposition you say, that's correct, it's pretty clear in the contract?

A Correct.

Q You understood it?

A Correct. And I hoped a jury would.

Q I didn't hear you?

A And I hoped a jury would.

Q Okay. And it's true, is it not, that neither one of those sections are contained in any affidavit you signed in this litigation?

A It is true.

Q It's true, also, is it not, that neither of those sections are contained in the complaint that was filed, if you know?

A I do not know that.

Q All right. What you told me, yesterday, sir, is that it was your hard work that led to the $6 million settlement with Viking, correct?

A Not completely correct.

Q Well, actually, that's exactly what you said in your second affidavit, dated the 12th of February. See that little underline in red, at lines 13 and 14?

MR. CHRISTIANSEN: And I'm sorry, Your Honor, let me tell you the number. This is Exhibit 17, Your Honor?

THE COURT: 17.

BY MR. CHRISTIANSEN:

Q I'm looking at paragraph 11. You're talking about, you were the one that located the prior case involving Viking?

A Correct.

Q You were the one that dug through thousands of documents and found a trail?

A Correct.

Q You were the one that did the research and made the calls?

A Correct.

Q This was the work product that caused this case to grow into the one it did?

A Correct.

Q It's all because of you?

A I didn't say that, no.

Q Do you say in here it was Danny's work that caused the case to grow what it did?

A No, I do not.

Q You only take credit for your work, it's causing the case to --

and I'm just -- this was the work product that caused the case to grow on the one that it did.

A I've never denied he did a good job.

Q Right. Because when -- as Mr. Vannah pointed out earlier, when you -- the lawsuit filed the 4th of January this year against Mr. Simon doesn't allege legal malpractice, fair?

A Fair.

Q He did an outstanding job for you. Fair?

A Fair.

Q He got you a $6 million settlement on a $500,000 property damage claim?

A Yes. I think his filings were good, solid.

Q But as we approach the hearing to determine to agree again with Mr. Vannah, the value of Mr. Simon's services, it was your work product, alone, that caused the case to increase in value; that's what you put?

A Yes.

Q And this -- in the second affidavit signed --

MR. CHRISTIANSEN: I think it's the 12th, right, Ashley? The 12th of February this year?

MS. FERREL: Yes, sir.

BY MR. CHRISTIANSEN:

Q Remember yesterday, just help me keep the timeline, Mr. Edgeworth, we were talking about the end of November when Mr. Vannah sent -- you send the letter to Mr. Simon saying, Vannah &

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.

THE WITNESS: No.

BY MR. CHRISTIANSEN:

Q And your email, the one we referenced earlier from December the 5th, I just want to make sure I show it to you so that we can agree that we have the correct date, where you tell Danny to call Mr. Greene, that's with this, right?

A Correct.

Q In response to Danny's voicemail, that he leaves on your cell phone?

A Correct.

Q And from that point forward no conversations, verbal conversations with Danny?

A No.

Q Never listened to him anymore, right?

A I listened to what he told my lawyers.

Q Right. Disregarded his advice relative to settling with Lange, and follow Mr. Vannah's advice, correct?

A Yes. I took Mr. Vannah's advice.

Q I showed you, yesterday the release for Viking. That was, I think done the first of December, and that was -- you were advised on that by Vannah & Vannah, not Danny Simon, correct?

A I was advised on both of them.

Q You weren't talking to them?

A They were passing on his theory of how I get money, and they were giving their theory, and I took the risk and reward to balance

them --

Q Followed Mr. Vannah there?

A I felt that they had a better outcome, actually.

Q All right. I'm not quibbling, and I'm not saying Mr. Vannah was wrong, I'm just saying it was a different set of advice?

A Correct.

Q Danny had one set of advice, Mr. Vannah and Mr. Greene had a different set of advice. You disregarded Danny's and followed theirs?

A That's correct.

Q Their name appears on the Viking release; not Danny Simon's, correct?

A I don't know that.

Q I showed it to you yesterday, it's right in the body of the release?

A Well, I'm just telling you I don't remember that, but if you show me I can --

Q The Court --

THE COURT: We have the release Mr. Christiansen.

MR. CHRISTIANSEN: Yeah.

BY MR. CHRISTIANSEN:

Q And the Vannah firm had you sign that other document, and said, consent to settle, correct?

A Correct.

Q With Lange?

A Correct.

Q Danny Simon's name is not on that?

A I don't believe it is, no.

THE COURT: Mr. Christiansen, before you move on to another -- I have a question in regard to that. Mr. Greene, I apologize early if this was a question you were going to ask, and I already asked it.

When is the last time you, personally, had contact with Danny Simon?

THE WITNESS: Through email, or telephonically?

THE COURT: Any contact at all. Any contact at all between you and him, that doesn't involve --

THE WITNESS: December --

THE COURT: -- Mr. Vannah, Mr. Greene, you and Danny Simon?

THE WITNESS: December 5th.

THE COURT: December 5th. And what was that contact?

THE WITNESS: Danny left a voicemail on my phone saying something about there was some --

THE COURT: Okay. Did you call him back?

THE WITNESS: No, I did not.

THE COURT: So, you've never spoke to him?

THE WITNESS: No.

THE COURT: When is the last time you and Mr. Simon conversed? Like there's something --

THE WITNESS: Or email --

THE COURT: -- from you, something from him?

THE WITNESS: Not just emails back and forth. Because the 5th --

THE COURT: I don't care if it's an email. There's communication, if you communicated with him.

THE WITNESS: Yeah.

THE COURT: Because if he left you a voicemail, and you didn't call him back, you didn't talk to him. So, what is the last time you personally had communication with Mr. Simon?

THE WITNESS: I believe that's the December 5th email that Mr. Johansen [sic] --

MR. CHRISTIANSEN: Christiansen, it's okay.

THE WITNESS: Christiansen, I apologize.

MR. CHRISTIANSEN: Peter's fine, it's okay.

THE COURT: Okay. So, the email you sent to Danny Simon?

THE WITNESS: Correct.

THE COURT: And when's the last time you talked to him?

THE WITNESS: Spoke to him was probably November 25th when I was packing to go to Asia.

THE COURT: And you spoke with him on the phone?

THE WITNESS: Correct. He called me from --

THE COURT: It's okay, sir, I don't need details. Okay. Thank you. Sorry, Mr. Christiansen.

MR. CHRISTIANSEN: You're fine, Your Honor.

THE COURT: And, Mr. Greene, like I said I apologize if you

were going to clean that up, but that was just confusing to me.

[Pause]

BY MR. CHRISTIANSEN:

Q I'm almost done, Mr. Edgeworth. I apologize for the delay. Do you remember in your second affidavit, Mr. Edgeworth, Mr. Simon, and I think you're referencing at his office, that the meeting on the 17th of November, told you, you had to do this or else?

A Correct.

Q Did you ever send -- is there an email that I can point Her Honor to, between that meeting on the 17th, that you and your wife were present, and today, that says, hey, Danny, why are you trying to threaten us. I thought we were friends, I thought we had a deal. Why would you do this?

A No.

Q Did your wife send an email like that?

A No. She had a couple of emails and then telephonically Simon called me while I was on vacation, I don't know how many times.

Q Okay. Ever in the phone call, did she say, hey, Danny, why are you doing this to me?

A Yes. That's what led to the November 27th letter.

Q What you told Danny Simon, sir, is that all you were trying to do is play devil's advocate, and that you knew you didn't have just an hourly agreement; that's what you told him?

A No.

Q And your wife's emails -- and you read your wife's emails

now, that's how prepared you are for this hearing, right?

A Which of my wife's emails?

Q The ones you just referenced for me, that after the meeting she had emails back forth to Danny Simon?

A I haven't read them recently, but I know that she had emails. I was in Asia, so I'm copied on all the emails, I'm reading them while I was in Asia.

Q Okay. Your wife never says, hey, Danny, you threatened us?

A No.

Q You're extorting us, you're stealing our money?

A No.

Q Never?

A No.

Q And all this while you know you owe him money, right?

A Correct. I had a requested a bill probably the 15th --

Q And rather than --

A -- not that long --

Q -- work it out you hired a new firm, chose to follow their advice and then sued Danny?

A Correct.

Q And I want to understand, I recognize Mr. Vannah's legal argument, but I want to talk to you about your position. Throughout the course of this lien adjudication issue hasn't it been your consistent position, Mr. Edgeworth that Danny Simon has been paid in full for his work?

A No.

Q Hasn't it been your consistent position in three different affidavits, Mr. Edgeworth, that Danny Simon was paid through September, and he should quote/unquote: "finish the work he was paid to complete"?

A No.

Q I'm going to -- Judge can look at your affidavits, I'm just trying to summarize.

A Okay.

Q Wasn't it your position when your claim went from $1 million in June, to 2.4 million -- 1 million in March, 2.4 million in June, 3.3 million in October, and even after a $6 million settlement you only valued your own case at 3.8 million; isn't that all true?

A No.

Q And that's all reflected by emails you created, sir, that we've gone through in this hearing, in the last two days, right?

A No.

Q Those charts are all yours.

A The charts are mine; they don't reflect what you just stated.

Q They don't reflect an ever-increasing value, Brian Edgeworth's every-increasing personal evaluation of his $500,000 property claim; they don't reflect that?

A They reflect that.

Q Okay. Brian Edgeworth's property value claim increased, not because Brian Edgeworth was his own lawyer, right?

A No, I wasn't my own lawyer.

Q It increased because Mr. Simon pursued a punitive damage aspect to the case that was never contemplated or discussed between the parties, correct?

A No. It probably settled -- we'd have to ask Viking exactly why they settled for that amount. But there's good other reasons.

Q Sir, the punitive emails that I showed you that you wrote make it unequivocal there was never a meeting of the minds relative to pursuing a claim for punitive damages, correct? You say that, you could never have contemplated it. If you couldn't have contemplated it you couldn't have a meeting of the mind.

A We were pursuing the case, from the start, aggressively, to its bitter end. I don't --

Q I get confused when you say you were doing things in the case. Did you ever go to Court and argue?

A No.

Q Did you ever take a deposition?

A No.

MR. GREENE: Judge, we already covered this yesterday.

THE COURT: We did, Mr. Christiansen.

MR. CHRISTIANSEN: All right, Your Honor.

BY MR. CHRISTIANSEN:

Q Did you consult with anybody before hiring Vannah & Vannah?

MR. GREENE: What's --

MR. CHRISTIANSEN: I just asked if he consulted --

MR. VANNAH: Object.

MR. GREENE: What's the relevance of that?

THE COURT: What's the relevance of that Mr. Christiansen?

MR. CHRISTIANSEN: Timing. Constructive discharge and timing, Your Honor. I just want to know if he talked to another lawyer before he sought -- he mentioned several times he talked to Mr. Marquis.

MR. GREENE: He testified already that he was out of the country in Asia and --

THE COURT: Okay. When did he get back? I mean, he knew he was out of the country in Asia, at the end of November, but I don't know when he returned. That hasn't been testified to, that I've heard.

THE WITNESS: May I --

THE COURT: No. You just wait until we're done. Mr. Greene?

MR. GREENE: I'll ask the question, or John could ask it, I don't care.

MR. CHRISTIANSEN: When he got back. She just wants to know when he got back from Asia, John?

MR. GREENE: When did you get back?

THE WITNESS: I flew back after -- I rescheduled flights right after --

THE COURT: Sir, can you just please give us a date?

THE WITNESS: Oh, I'm sorry. November 29th, right when I drove to your office.

THE COURT: Okay. Well, that pretty much answers the question, as well, Mr. Christiansen.

MR. CHRISTIANSEN: I just want to make sure. You land the 29th, I think that's the date Mr. Vannah gave me of the fee agreement as to that. I just don't want to misspeak.

MR. VANNAH: It is, you're right?

MR. CHRISTIANSEN: Is that right Bob?

MR. VANNAH: Yeah.

MR. CHRISTIANSEN: It is.

BY MR. CHRISTIANSEN:

Q That's the date on the Vannah & Vannah fee agreement; is that right, Mr. Edgeworth?

A I landed the same -- same day that I went to their office.

THE COURT: Okay. Mr. Edgeworth, if you could just please just answer Mr. Christiansen's question.

THE WITNESS: Oh, I'm sorry.

THE COURT: Mr. Greene, as he has clearly demonstrated is a very fine lawyer, and he's going to have just as much time as Mr. Christiansen going to have to ask you questions. And you've got to leave the lawyering to the lawyers, and they're going to -- he's going to clear up anything he thinks that's unclear for me.

THE WITNESS: Okay.

THE COURT: You've got some of the finest lawyers in town, just answer the question.

THE WITNESS: Sorry.

THE COURT: We could have done with this a lot quicker, if you'd just answer the question.

THE WITNESS: Okay.

BY MR. CHRISTIANSEN:

Q Sir, do you know one way or another, whether -- I'm not asking who, I'm not asking contents, one way or another if your wife consulted with lawyers before Vannah & Vannah, but after Mr. Simon?

MR. GREENE: The same objection, and also privileged.

MR. CHRISTIANSEN: I don't understand what the privilege is, Your Honor?

MR. VANNAH: Spousal privilege.

MR. CHRISTIANSEN: I didn't ask what the communication was.

MR. VANNAH: You asked what the wife told him.

MR. CHRISTIANSEN: I did not. I said, if you knew one way or another --

MR. VANNAH: No, you didn't

MR. CHRISTIANSEN: -- if she talked to a lawyer.

MR. VANNAH: You're not allowed to know what the wife told him.

MR. CHRISTIANSEN: I didn't ask --

MR. VANNAH: It's spousal privilege.

MR. CHRISTIANSEN: -- if she old him.

MR. VANNAH: Well, that's the only way to answer the question.

THE COURT: Well, sir, do you have any independent knowledge of that, separate and apart from what your wife told you?

THE WITNESS: No.

THE COURT: Okay. He doesn't know much right now.

MR. CHRISTIANSEN: All right. I think that concludes cross, Judge.

THE COURT: Okay.

MR. CHRISTIANSEN: Thank you. Mr. Edgeworth.

THE COURT: I think that will be a good time to take our lunch break. Because, Mr. Greene, I don't want to cut you off in anyway, I want to give you ample time cross-examine him that you need to.

We're going to go to break for lunch right now, it's 12:30. So I'm going to give you guys an hour and a half and we'll be back, or can you guys do it a little quicker like -- do you guys want a hour?

MR. CHRISTIANSEN: Ninety minutes is great, Judge.

MR. GREENE: An hour-and-a-half is good. I'd liked the hour-and-a-half, Your Honor.

THE COURT: I just like to leave, and so we'll be back here -- I'm pretty sure my staff likes that too. So, we'll be back here at 2:00. Yes, I have 2:00. So, we'll return at 2:00. All right.

[Recess at 12:26 p.m., recommencing at 2:06 p.m.]

THE COURT: -- 444, Edgeworth Family Trust v. Lange Plumbing A-767242, Edgeworth Family Trust v. Daniel Simon.

Mr. Edgeworth, if you could take the stand. And I would just like to remind you, you are still under oath.

THE WITNESS: Yes, ma'am.

THE COURT: And, Mr. Greene, whenever you are ready for cross.

MR. GREENE: Thank you, Judge.

THE COURT: You're welcome.

CROSS-EXAMINATION

BY MR. GREENE:

Q Brian, let's begin where we left off. Do you remember we were discussing an email to Coach Reuben, to and from?

A Yes.

MR. GREENE: And I apologize, I did not write down the exhibit number that you guys had associated with that. We're happy to use yours, or we can just start a new off our Exhibit 9, our last in order. I'm happy to just do that, Judge, so we can speed this up. Our last in order was Exhibit 9.

MR. CHRISTIANSEN: I think ours was 45, Mr. Greene, but whichever one you prefer.

MR. GREENE: 45. Let's just keep it simple.

THE COURT: Okay.

MR. GREENE: We'll keep it simple stupid is what -- all right.

BY MR. GREENE:

Q Let me show you this email. Do you remember when Mr. Christiansen was showing you these emails, how the first series of the emails is on this second page, and we flip over?

A Yes.

Q Is that your understanding, as well?

A Yes.

Q Now regarding this email to Coach Reuben, did you have any discussions with Coach Reuben, to give you an understanding of what was being communicated to him from Mr. Simon?

A Yes. He telephoned me.

Q He telephoned you. Did he mention this series of emails at all?

A Yes. He said he was going to --

MR. CHRISTIANSEN: Objection, hearsay, Your Honor.

THE COURT: And your response to that?

MR. GREENE: Well, it's really good hearsay, Your Honor.

MR. VANNAH: Wait a minute, Your Honor.

MR. GREENE: I can move on.

[Counsel confer]

MR. GREENE: Yeah. Just effect on the hearer, Your Honor.

THE COURT: Okay. Mr. Christiansen, I'm going to allow it.

MR. CHRISTIANSEN: Okay.

THE WITNESS: Yes. He telephoned me --

THE COURT: There's no question pending, Mr. Edgeworth. He'll get back to you.

BY MR. GREENE:

Q And when he spoke with you about this email what did he say?

A He phoned and told me he was going to forward an email

that was troubling, and that the two of you needed to talk to about it.

Q Let's just focus on the important page, okay. I've got on page 45 of that exhibit; do you see that?

A Yes.

Q And I've highlighted a portion. Can you read that for us?

A As for the other issue with the Edgeworths, just as you, we believed we were friends. However, as parents we must do everything in our power to protect our children.

Q However, as parents we must do everything in our power to protect our children. What, if any effect, did that statement in that email from Mr. Simon have upon you and your wife?

MR. CHRISTIANSEN: Objection, relevance.

THE COURT: What is the relevance of this, Mr. Greene?

MR. GREENE: Look at the timing of this, Your Honor. The date of this email is December 4, 2007. They've talked about --

MR. VANNAH: '17.

MR. GREENE: I'm sorry, 2017. They've talked about a constructive termination. They made Mr. Edgeworth out to be a bad human being, acting with unilateral steps, doing things to hinder a relationship with Mr. Simon.

And then the relevance is, we have this type of information being communicated to the coach of the youth volleyball team, to which I can get more testimony out of it as to whose daughter is playing in it, and what interactions he was going to have with Coach Reuben, and also what steps he had to do to protect himself after this email was received

and communicated.

THE COURT: Okay. I'll allow the email, that sentence.

BY MR. GREENE:

Q Did you hear that question? I can ask it again for you?

A I'm sorry, please.

Q Sure, no worries. What impact did this email, from Coach Reuben -- to Coach Reuben from Danny Simon, have upon you?

A Complete humiliation and embarrassment, and I ended up having to expose myself to someone who actually works for the non-profit I founded, and I financed. I paid for the entire thing, and then I had to explain to him why it wasn't true, when it was clearly, the email before, Reuben had said he wanted to know nothing about it.

So that the next email came it's obvious, after saying, I don't want to hear about it, it's none of my business, that there was some serious implication here.

MR. CHRISTIANSEN: Judge, I'm going to object and ask you to strike the answer. He can't speculate as to what Mr. Simon meant or thought when he sent the email; which is what he's doing.

THE COURT: All right. Mr. Edgeworth, if you could just tell us the effect it just had on you, and you said that it forced you to say it wasn't true; what wasn't true?

THE WITNESS: That I was a danger to children.

THE COURT: Okay. Where does is say that, because I don't see that in this email?

THE WITNESS: It says, as for the other issue with the

Edgeworths.

THE COURT: Okay.

THE WITNESS: So, he's talking about us. Just as you we believed we were friends. However, as parents, we must do everything in our power to protect our children. This is why she could not come to the gym --

THE COURT: Okay.

THE WITNESS: -- because of the Edgeworths.

BY MR. GREENE:

Q So what impact did that have on you --

A It would --

Q -- and this volleyball team, and your interactions with Coach Reuben?

A He made an awkward situation, and I had to explain myself. I had to explain a bunch of personal business. Then we had to come to a determination on what to do about it.

THE COURT: Who is we?

THE WITNESS: Me and Reuben.

THE COURT: Okay.

BY MR. GREENE:

Q What was done about this email?

A It was decided that Angela and I should retake our background checks with USA Volleyball. So, we filled in the forms and sent in our background checks. Even though we have no contact with children, it was just a protective measure.

Q Do you have any understanding how the board reacted to this email from Danny Simon?

A The board on that point was myself, my wife, Reuben, the director of volleyball and an attorney.

Q And what happened next?

A We took the -- we filled in the forms, we paid 140 bucks, or whatever USA Volleyball charges. They were sent in, of course they come back all clear. Then I told Mr. Vannah and yourself about this and you addressed it with Mr. Simon and his attorney, who said it was --

MR. CHRISTIANSEN: Objection, hearsay, Your Honor.

MR. GREENE: He can most assuredly testify as to what he has personal knowledge of. Whether it's true or not he understood there was a communication made between attorneys, and -- as to what the strategy and response of this email would be.

THE COURT: Well, he can testify to what he did in response to this email. But if there's some communication between some attorneys as to how they're going to respond, I don't know how he has personal knowledge of that unless he was there.

MR. GREENE: That's fine, Your Honor.

BY MR. GREENE:

Q What then was done in response to this email?

A Basically, I followed up with Reuben a couple of times. It's something you always -- we sound guilty when you say that it's not that, it's not true, it just doesn't make sense. And I've asked, has Mr. Simon ever responded to say, no, this isn't true, that's not what I meant,

anything like that. Nothing's ever been sent.

Q Did this email have any effect on your relationship with Mr. Simon?

A That pretty much ended any time I'll ever speak to the man again, because he knew how much the club means to me, and how much I've put into it, how many years of my life it put into it, to make it what it is. And it just -- it felt like he was trying to hurt me.

Q Do you have an understanding whether Mr. Simon was made aware of Reuben's concerns, or the board's concerns?

A My attorneys told me that they made --

MR. CHRISTIANSEN: Objection.

THE WITNESS: -- him aware.

MR. CHRISTIANSEN: Hearsay, what other people told him.

MR. GREENE: And you have to understand the Judge has already sustained that objection.

THE COURT: Okay. Do you know this outside of somebody else telling you?

THE WITNESS: No.

THE COURT: Okay.

BY MR. GREENE:

Q Okay. Brian, let's begin at the beginning, after dealing with that, and then work our way back to some other comments that were made, okay. This is your first time you have a chance to introduce yourself to the Court. Give us a little bit of CliffsNotes version of who you are?

A Okay. I grew up in Canada. I grew up out in the country, about 20 miles from the nearest town. I graduated from high school. We were fairly poor. My dad was an auto worker, and I grew up in the '80s, which was a bad time in Ontario for auto industry. After high school I couldn't afford to go to university, and neither could my older brother, he was a year ahead of me. I had to drop out because we didn't have enough money.

We both worked in factories. I worked in factories for three years, my brother worked in factories for four years, and helped pay each other's way through college, and graduated from Western Ontario School of Business, it's one of the top-ranked undergraduate institutions in the world.

And from there I got a job in Houston working commodity derivatives with Enron in '94. I worked there for a couple of years and went to Harvard Business School. After Harvard Business School I worked in Wall Street, in institutional equity sales for six years, up until the point where my wife's father got terminal cancer. And she was an only child, so we moved to Santa Monica to be with him.

It wasn't something I could do with the job I did. The job I did I worked on a trading floor; you can't really do it in Santa Monica. So, from that point forward we took over her dad's business. Later bought it when we moved it to Nevada, and we started our own company. We started pediped footwear. It's a kids' show company that makes shoes up until around seven, eight-years-old, for children.

And then after growing that company for a bit we needed more

space, and we couldn't find it in California, we moved to Nevada in 2006.

Q When did you meet Angela?

A We went undergrad together.

Q Where did you meet, Western Ontario?

A We were in the same business -- Western Ontario, the same business school class.

Q How long have you been married?

A Fifteen years.

Q Kids?

A Yes.

Q How many?

A I guess 16 years, sorry. Caroline, whose birthday's today. I appreciate you letting her go. She's 15 today and Lauren, she's 13.

Q Sir, we can appreciate that. What do you do for a living now, Brian?

A Just run a bunch of small companies. I have Pediped, which I manage on a daily basis. American Grating, which I manage, but somebody who's quite competent runs it. I used to build houses and stuff. This -- ended that business. I also, in partnership with my brother, who -- he's been into cryptocurrency forever, so we run some operations that basically confirm cryptocurrency transactions.

Q Brian, why did this lawsuit end your construction business?

A Construction is a cash flow business, and basically I needed the cash from this house to keep building another house. So, when -- when that house became tied up all my capital in the house became tied

up too. You can't acquire and start building your next house, unless you want do leverage with that.

Q You were described as being focused in this litigation. So apart from this litigation do you have hobbies and interests?

A My kids and I go skiing. I spend a lot of time with youth volleyball, travelling around, watching my kids play, and we go on vacations.

Q Brian, this volleyball team was discussed, or described as a charitable organization, a non-profit. Do you have any other charitable and non-profit organizations that you and your wife work with in any capacity?

A Well, over the last ten years we've supported numerous charities, mostly focused on kids. We set up a pediped foundation. That gave away around $3 million to children's charities. Make a Wish used to be a large charity that we did. Every year we would give them hundreds of thousands of dollars. I also donate to charities, my interests, like the Folded Flag Foundation, is a big one for us. Local schools. We give money to -- I think we give about -- small donations to about 100 schools.

And then whenever there's a natural disaster we always send shoes. We try to -- like in Haiti we connected with a convent down there, and we shipped them all a whole bunch of shoes, so they can hand them out, stuff like that.

Q Any other charitable organizations or non-profits that you and Angela are involved with, you'd like to share with the Judge?

A We started Vegas Aces, basically in -- four years ago. There was a real vacuum for youth sports for girls in the town. Volleyball, because we don't have middle school here. What wasn't well-done, and a lot of the girls that had potential to play that sport because they didn't start young enough they really couldn't compete in a lot the scholarship market unless you were a super-gifted athlete.

So, with the help from the UNLB coaches and the USC coach, they're very generous with their time, all of these college coaches, they helped us set up a one-port gym in the back. My wife and I financed it, we paid for it all. It lost money every year, of course. And then during this, I had already committed to say we were going to move and build a large facility, and I started building that during this lawsuit, and it was finished June of -- a year and a half ago.

This is my proudest thing. Like in four years since we built this, with huge community support, and huge support from the college community, we've won three national championships, which is something nobody ever has done in Las Vegas.

Q Thank you, Brian. Let's move to a different topic about how you became to be friends with and know the Simons. When did that relationship first form in your recollection?

A Our children went to preschool together, I believe.

Q When was that?

A It was probably ten years ago. It's been awhile. And for a couple, a couple of years, or three years they attended school together. And then we went -- our wives planned some vacations together. We've

gone away skiing, we went to Bora Bora, and to Ko Samui. They met us there when Angela and I were there for a wedding.

Q When you were on these family trips, or at any time, did you get to have an understanding as to what Danny did for a living?

A He was a lawyer.

Q Did you guys talk about your respective careers, to see if you had an understanding, or just dude talk, or anything like that?

A No. Well, we'd talk about stuff, but not a super amount of work, but I understand he's a personal injury lawyer, yes.

Q Let's move on. Again, the Judge is completely familiar with the facts of this underlying case, so we don't want to spend an inordinate amount of time discussing the flood. If you give, once again, the Cliff Note's version to the Judge as to how this happened and how your concerns were raised?

A Basically in 2016, a sprinkler had blew in a house that was five-weeks from completion. It was a 12,000 square foot spec house I was building. Because ironically it was the highest point in the entire house, that's the sprinkler that blew, and flooded the entire house. And I was in LA, I got the call from Mark Giberti, because he went on Monday morning, and the water just poured out when he opened the front door.

He called me in LA, I drove home, and by the time I got home the remediation company had already ripped all the drywall down. In a custom home everything insulated at the -- in the interior and exterior so there's no sound. So, all the insulation, it was just a disaster.

And then we started remediating it. United Restorations Market

called them, which is a friend of his son's I guess, running that company, and they were cleaning it up. In the next three weeks Mark and I spent 12 to 15 hours a day there, just trying to see what we could salvage, and get out of there, we took dumpsters, and dumpsters and stuff out of the house. Then I got on with trying to rebuild it, and the rest is history, that's why we're here.

Q Yes, we are. So, you figured out you needed some lawyers to get through this. And we've already heard you kind of were led to Danny through your wife, and tell us again, though, with your words, just yes or no answers, how this decision was reached?

A Kinsale asked for the head and everything else, and they had it tested, that they were going to pay the claim. Like the adjuster was like, yeah, we just need adjuster's estimates. They got three estimates, and I think when the size of the estimates came in they just flaked, and they called and -- actually they sent a letter and said the claim's refused it's Viking's fault, limited to a manufacturing defect, it's not our problem.

And at that point I was told by everybody there, our insurance adjuster -- or broker, sorry, and everyone else who had experience with this on the job, that they were responsible. Lange installed it, and they would inevitably pay. So, I figured, I just need a simple push for them.

My insurance broker recommended somebody, whose name was Craig Marquis, his name's been brought up a couple of times, did a preliminary call with him. I didn't feel comfortable because of some of the actions he was going to take against Lange and their contractor's license, that didn't really make sense to me.

I also talked to our Estate attorney, Mark Katz, but he was sick at the time, and then Angela suggested I call Danny. I sent him an email, and that was what we've already seen in evidence.

Q And you met at Starbuck's didn't you?

A On the Saturday. Yeah. He asked me to do a summary of all the stuff and bring it over. We met on Starbuck's on St. Rose.

Q What day?

A Saturday, May 28th, 2016.

MR. GREENE: I'm going to show Exhibit 5 --

THE COURT: 5.

MR. GREENE: From his book binder, page number 1.

BY MR. GREENE:

Q I'm going to show you what's been -- I'm going to admit it into evidence as -- we called it a super bill but it's a January of 2018 bill. This is the first page of that. Have you seen this document?

A Yes.

Q Do you see that date on there; what's the date on top?

A 5/27/16.

Q What's the description, Brian?

A Email chain with client, re: representation.

Q Representation of you?

A Yes.

Q How much were you charged for that?

A At this point he was doing it for free, but I actually paid for this -- well, I've been billed for. And I paid for the days on the original

bill; it's $550 an hour.

Q The very first day?

A Correct.

MR. CHRISTIANSEN: Is that 5, John, I'm sorry.

MR. GREENE: I'm sorry?

MR. CHRISTIANSEN: Is that Exhibit 5?

MR. GREENE: Yes.

THE COURT: Yes.

MR. CHRISTIANSEN: I apologize, sorry.

MR. GREENE: Start on page 1.

MR. CHRISTIANSEN: I didn't mean to interrupt, I apologize.

MR. GREENE: No worries.

THE WITNESS: Yes. I was billed from the first day.

BY MR. GREENE:

Q And even on Exhibit 2, can we show you that one too, Brian?

A Yes, please.

MR. GREENE: This will be Exhibit 2, page 1, Judge.

THE COURT: Okay.

BY MR. GREENE:

Q Can you see that?

A Yes.

Q What does that first line say, Frank?

A Initial meeting with client: one and three-quarter hours.

Q You have no idea what date that was, at least as far as the billing is concerned, correct?

A Correct.
Q But was there any other initial meeting, than that initial meeting at Starbucks?
A No.
Q Did you pay this bill --
A Yes.
Q -- for 100 -- 1.75 hours?
A Yes, I did.
Q We'll get into more in just a little bit, Brian, about what invoices have been paid, okay. So, Mr. Simon gets involved, but it didn't settle, correct?
A No.
Q Correct, yes?
A Yes, sorry. It did not settle.
Q I know, sorry. It's about my leading question that I got away with. I appreciate that. We talked, and you did on cross-examination, I know a lot of yes and no answers, but do you have a recollection as to the substance of the conversations you had with Mr. Simon, when the amount of the fee was discussed?
A Yes.
Q Would you please share that with the Judge?
A Danny called and said, Look, they're not going to settle. This is not going to be --
THE COURT: Okay. Do you know what date this was?
THE WITNESS: This is June 10th of 2016.

THE COURT: Okay.

BY MR. GREENE:

Q What was said?

THE COURT: What did he say?

THE WITNESS: He said, they're not going to settle, we're going to need to file a lawsuit, and I'm going to start incurring expenses. The rate at which I've been approved by the Court, my court-approved rate is $550 an hour, and I hate to charge friends and stuff, but this is going to start costing money. Do you approve of filing a lawsuit against them?

I approved and accepted his rate, and then on Monday he emailed me a copy of the lawsuit to read over, and he filed it on Tuesday.

Q There was a discussion about whether or not you had any idea about what Ms. Ferrel was going to be charging. Did Mr. Simon discuss at all, in the initial meeting, or that meeting on June 10th, whether Ms. Ferrel was going to be involved in the handling of your case?

A No, he did not.

Q Who did he indicate to you who was going to be doing the work on your case, when you met with him?

A Danny Simon.

Q What was your involvement with Mr. Simon, that you recall, after the Starbuck's meeting, and then you have the telephone conversation with him about fees and scope of work; what happened

next?

A I'm sorry?

Q No worries. So, we talked about the Starbuck's meeting, we talked about the telephone conversation you had with Danny about fees. What happened next with Danny's representation of you, as your attorney?

A He filed a lawsuit on -- on Tuesday, the following Tuesday. He emailed it to me on a Monday for me to read over. This was -- it was the Friday of the phone call, there was a weekend in between. And I read it over on the Monday and then it was filed with the Court on June 14th on the Tuesday.

Q Brian, I got a little bit ahead of myself, I apologize. Have you ever had the opportunity to retain lawyers to represent your business interests, prior to the time that you were needing to retain Danny?

A Yes.

Q And describe that, briefly for the Judge, the experience you had and the reasons why, so we can get a better understanding?

A I've had an immigration lawyer. After I left Goldman Sachs I had to do my own immigration. I -- Pediped, somebody stole our patent, started counterfeiting our shoes. We had to sue them in the Federal Court of Southern New York, or the Southern District of New York, I believe it was called.

I've had real estate lawyers. When you do a commercial real estate transaction, you have to have a real estate lawyer, look over and do all the documents. I've had an estate attorney, I think it's just a fancy

name, he basically did our will, and also did our family trust to pass on our assets to our children.

And then regular day-to-day stuff, we, you know, like States will send you something saying, hey, you should file income tax, so we have corporate lawyers that we have to send that stuff to and say, hey, do I need to do this or not?

Q Who was the Law Firm Baker Hostetler?

A Baker & Hostetler is the law firm that pediped had used, American Grating had used them. We had a partner there, Lisa Carteen that would represent us, and sort of work our way through the other lawyers, direct us to who was needed for each thing. Like if it was customs, you know, we need to know what type of duty to pay on the goods we're importing, or it's a business contract, she would direct it. We've used them for probably 15 years.

Q How about Howard & Howard?

A Howard & Howard, a partner from Baker moved there, and she's at Howard & Howard in the LA office. So, we use them for filing trademarks. We have a whole bunch of trademarks. We have intellectual property that need to up-kept. And right now, with the new sales tax -- Supreme Court judgment about sales tax, we're using them to guide us through what we're supposed to do as an internet seller in this new environment.

Q Brian, at any time that Danny was talking about his fees, when you first established a relationship with him until the end, did he ever discuss with you whether or not his fees a bargain, hourly-wise, in

relation to the other lawyers he would hire?

A No. He never compared his fees. He basically said, this is my court-approved rate, and because you've got this clause in your contract you'll get all the money back when you win, anyway. Baker & Hostetler, we pay a variety of fees, depending on the lawyer. The same with Howard & Howard, although we've only used three or four of Howard & Howard's lawyers so far.

Q Thank you. What sorts of fee agreements, Brian, have you dealt with in your business life?

A The Crane Pomerantz one, which I'm not sure if it's a fee agreement, or an expert witness agreement. I signed that one. Angela usually deals with the fee agreements. Then some lawyers, you don't have to have them anyway, and you just call them, and they tell you how much it is, and they know your bill after they've done the task that was needed.

Q Would you describe the bulk of your hourly -- of your fee agreements. It is hourly, hybrid contingent, something different, flat fee?

A They're all hourly. I've never even got a flat fee one.

Q Do you have an understanding as to what Baker Hostetler charges per hour, amongst their --

MR. CHRISTIANSEN: Objection. Relevance --

BY MR. GREENE:

Q -- partners and attorneys?

MR. CHRISTIANSEN: -- Your Honor.

THE COURT: Mr. Greene, relevance?

MR. GREENE: Well, it's relevant to show that Brian -- well, actually, I'll withdraw that, forget that.

BY MR. GREENE:

Q At any time in the beginning of your relationship with Danny, did he ever ask for a contingency fee agreement?

A No.

Q Was it ever discussed?

A No until we started having the discussion in the airport bar.

THE COURT: In where?

THE WITNESS: The San Diego --

BY MR. GREENE:

Q And what date was that?

A August 9th, I believe, 2017.

Q Did Danny have a structure -- a structured discussion with you on what the -- what the attorney/client relationship' would be?

A No, it was -- you mean in the airport bar --

Q No, back up, I'm sorry. I'm sorry to confuse you. Let's go back to June of 2016. Did he have a structured relationship with you? There's discussion with as to what the nature of the fee agreement would be?

A Yes. I would pay him $550 an hour, and he would represent me in this case. He would file the lawsuit, and follow-up and did everything that lawyers do in cases.

Q I appreciate that.

THE COURT: And was this at the bar in San Diego?

MR. GREENE: No, Judge, I'm sorry. That was the June 10, 2016 meeting.

THE COURT: Okay.

MR. GREENE: And telephone conversation that resulted in the litigation being planned.

THE COURT: Okay.

BY MR. GREENE:

Q Did Danny ever present you with a written fee agreement to sign?

A No.

Q I'm going to show you some documents in a few minutes, one dated November 27th, 2017. It seems to be a several page document, and what's a document called a retainer agreement, do you remember receiving that?

A Yes. I was in China, I believe.

Q Let's cover that in a few minutes, just so we have everything encapsulated under that certain topic; okay Brian?

A Okay.

Q When this litigation was filed against Viking and Lange, and those related entities, did you have an understanding as to what the nature of that litigation was going to, what it was going to entail?

A I was told I could get my legal fees back, and whatever my costs were to repair the damage. I basically needed the money to repair the damage, so I could get the house on the market. That was the urgent part.

Q There've been several questions and answers, it talks about, about approximately a $500,000 repair bill. Is that your understanding --

A Yeah. All bills came in around 300,000 to $800,000, and the remediation company had billed $73,000. So, it puts you right in the 500,000 range.

Q What were the circumstances that you remember with Danny -- Mr. Simon, excuse me, discussing with you about, that you would get your fees and costs back from the litigation, how was that presented to you?

A Well, it was during the conversation that he was going to start incurring costs and needed to bill me. He told me, but in your contract you're entitled to get all your money back for your legal, so you'll get this money back.

Q Was that your expectation as well?

A Yes.

Q Do you have a recollection, Brian, what Lange's counsel and the Lange Defendant took throughout this litigation, as to whether or not they were willing to pay you attorneys' fees and costs, pursuant to that agreement?

A I don't have personal knowledge of their conversations at all.

Q Okay. Did you choose to be actively involved in this litigation, Brian?

A Yes, I did.

Q How come?

A Well, the brunt of the case didn't really begin until January of

2017, when Danny was -- Mr. Simon was filing various things, and then depositions were going to start. From the start of it, just to help everyone understand construction, some of the technical stuff, I knew a whole bunch about the sprinkler how it worked, why it went off, you know, a ton of different stuff, so I started helping out with the depositions, and then deposition questions.

The first person to go was Vince Diorio with Lange, and he sort of danced around and said a lot of things that just were blatantly untrue, if you'd ever worked in construction you would know they bordered on the ridiculous. So, from that day forward, pretty much I was involved in the case.

THE COURT: And just so we're clear, I know a lot of people are -- we're all kind of struggling with how to refer to Mr. Simon. Mr. Simon, do you have any objection to some people calling you Danny?

MR. SIMON: Call me whatever you want, Judge.

THE COURT: Okay. I just want to make sure that the record is clear, because everybody tries to catch themselves. But just whenever we say Danny we are talking about Mr. Simon; we're talking about the same person. But I know everybody has been making conscious efforts to correct themselves. But I just wanted to know, Mr. Simon, if you had any preference or any objection?

MR. SIMON: No preference, Your Honor.

THE COURT: Okay.

MR. GREENE: Just don't call you late for dinner.

BY MR. GREENE:

Q Describe some of the things that you did, Brian, that you remember, to uncover the scope of Viking's conduct or omissions in this case.

A We really didn't know this was a Viking problem until the Viking's PMK was deposed on May 3rd. It was crystal clear the guy was lying about a lot of things. And we still didn't know what, but he lied about ISO procedures, simple factory things that I happened to know because I worked in factories for so long. And from there I think everybody was on edge to look for different things.

And the first -- they gave us some documents that day. Some of them were suspicious, some of the power points didn't make sense. It's clear that they had been presenting that this was an installer's problem. And if it was so limited world-wide in scope to what the PMK was claiming, it didn't really make sense that they had executives giving power points on why this is a problem with the installers and not the manufacturers.

Then when they started dumping documents is the term that we used, that the first drop of documents was in the thousands after the ones they had brought to the -- the May 3rd deposition. Those -- those came in -- I believe the juicy ones came in in July and Ashley put them up in drop box. She -- she went through the emails that were in there, which I was told that's a typical place where attorneys go to look for juices in the emails that are -- are turned over. And she sent a summary around two weeks later, around the 19th. At that --

Q Of?

A Of all the emails through --

Q The date being? You said the 19th.

A Of June.

Q Okay.

A 2016, I think it was. It might have been July. I apologize. July.

THE COURT: And who sent the summary?

THE WITNESS: Ashley did.

THE COURT: Okay.

THE WITNESS: And when I went into the drop box and started going through, it was clear she was never going to get through all the documents because the emails were only a small portion of what was dropped. So, then I started going through everything.

BY MR. GREENE:

Q Brian, is there a chance you could be confused about the date of the year? You just said 2016. All the emails we've had back and forth don't show that, so.

A I apologize. 2017.

Q Okay. So, what did you do once you received that bunch of information regarding Viking in that July of 2017 email?

A The -- the first things I started doing after I got access to the drop- off documents was going through them. The one person that was named in an email from -- there was talking within Viking. They were talking about a U.K. person which they have different slander laws over there, apparently, saying that this was a bigger problem in the U.S. than

it was in the U.K. And he said he had heard from someone at FSS, which is Fire Sprinkler Systems, that it -- that there was 93 activations.

I started searching under this guy's name, Harold Rogers, until I found a lawsuit where Viking actually sued Harold Rogers. And I asked Ashley if she could get me the lawsuit so I could read it, and she did. I downloaded the lawsuit. I read through it as -- you know, I'm not a lawyer, but it seemed to indicate that Viking was suing Harold Rogers and another man named Hallman [phonetic].

They own two different companies. They're the largest purchaser of the V.K. 457 in the entire world. They purchased around 55 percent of all the heads that were ever installed of this product.

Q How many did you learn that that might have been?

A Later in the case found out it was 5.5 million have been installed world-wide.

Q So go on with what you did to under -- uncover what you did.

A So then, I wanted to talk to these guys because anytime that Viking sues their largest customer of a product, obviously there's a problem. I had sent an email to Mr. Simon and Ms. Ferrel about this. They attempted to contact -- I gave them Harold's contacting information. He didn't return their calls.

Finally, I believe, I called him July 24th myself. He picked up, a super nice guy, talked to me for a long time. He was actually right in the middle of a settlement conference. In his conference room he had Viking's head counsel there, some of their management, and his

attorneys and they were reaching a settlement. And he still spent probably about an hour talking to me.

And then on July 26th, 2017, I sent an email to Mr. Simon and Ms. Ferrel just documenting what I learned from Harold.

Q Did you contact anyone else, additional activations or anything else that might have affected the value of this case?

A Over the case Harold kept leading me to other people and other people led me to other people and it just kind of grew from there. I spoke with Keith Rhoades in the U.K., who had activations in the United Kingdom, which, you know, blows away the heat defense that Viking was blaming these things were only going off because they were being exposed to heat.

Q Explain that just a bit. Again, give us a summary of why that's important.

A The heat defense by Viking was basically to say if these heads ever got exposed to over 100 Fahrenheit, 100 Fahrenheit, the -- the solder link that holds the sprinkler plugged could be damaged and then at any given time in the future could go off. This was their -- their defense and their, you know, the hill they wanted to die on.

They had a whole bunch of other defenses about heat, but the 100 Fahrenheit was the end and, you know, these -- these things were going off world-wide. It didn't matter where; they were going in the Pacific Northwest; they were going off in Pennsylvania.

And speaking with Keith, they basically had almost bankrupted him. They almost bankrupted Nigel Chandler [phonetic] in the U.K.

because they spoke up about it. And like I said, my understanding was they have different slander or libel or whatever it's called laws over there, and Viking basically threatened them, to sue them, out of existence.

He really helped me. He sent me -- he referred me to James Carver. James Carver is the El Segundo Fire Marshal. He also sits on the board of the California State Fire Suppression Council, which deals with fire suppression, which sprinklers are -- are part of. I called him. We traded calls back and forth. And he had been given a letter on Viking letterhead which he shared and was later disclosed and discovered, too, by the way, that said that there were very few activations. And at the time, Harold Rogers had documented over a hundred.

Q Let's go back for a second. Were you there at the PMK deposition of Viking in this litigation?

A Yes, I was.

Q Do you remember the number of activations that he owned up to?

A Forty-six world-wide.

THE COURT: Forty-six?

THE WITNESS: Forty-six.

BY MR. GREENE:

Q After you had done this homework, did you gain an understanding as to a different number of activations world-wide?

A By the end of this case, I had 326 with most of them have addresses, a lot of them have owners at the houses, they have the

installers, they had -- if then getting that information if I could find a discovery document, they would have the bates number of any document that -- that was applied to that. Mostly what Viking was giving us was basically a bunch of random pictures. You couldn't tell how many activations there possibly were. They had no idea of any addresses, they said. They had no idea of, you know, whether it went off or not. And I made a large excel spreadsheet documenting I believe the end count was 326.

Q Who did you provide that to?

A Danny and Ashley.

Q Did they ask for it?

A Well, as I kept updating it, they kept asking for it. Once in this courtroom they asked for it. Her Honor had asked them how many activations happened before the June 14th filing of your lawsuit. They didn't know. They didn't have the paper there. They texted me, asked me, you know, how many had happened. I just pulled out this spreadsheet. It was all numbered by date. I sorted it all by date. And you could just run your finger right down and go right across. And I forget what the number was, a hundred and some odd.

Q So over 300 are discovered by you of activations world-wide?

A Correct.

Q Is that a fair number?

A Correct.

Q Okay. Is there anything else that you did you'd like to share with the Judge to help uncover the scope of -- of your claims against

Viking in this litigation?

A So, when I spoke with James Carver, the Fire Marshal in California, he was out of budget to open an investigation on them, and he was hoping to get more budget in the next budget year, whatever. I guess states give out money every year. He had been told it was a small problem. Harold had told him it wasn't a small problem. And he asked if I would share information with him, if he would share information with -- with me. I told him I couldn't share a lot of stuff because it's still under protective order, but I'd gladly share of anything that wasn't.

He sent me an email of six more houses that were never disclosed by Viking that fire marshals in California had actually investigated, reported where the sprinkler head was, which is really important because the heat defense later on claimed oh, all these things happened in top floors of -- of houses in the desert.

So, of course, it's a heat problem. More than half of these things occurred on -- on the main floor of two story houses. So, it's completely random. It was obviously a manufacturing defect that went off randomly.

I also had letters that Zurich -- the insurance carrier in this case was Zurich Insurance. Zurich had tested this product in 2015, '15. Even though they're still defending my case, Zurich was providing the lawyers to defend my case. 2015 Zurich went to a lab called Burbone [phonetic]. And they got a report, and the report said this product is a manufacturing defect. They went back to the lab for rebuttal that it wasn't, and the lab reiterated it's a manufacturing defect.

Q Let's talk about another laboratory. What is Underwriter's Laboratory to your understanding?

A UL is an organization that certifies project -- products, excuse me. They -- they certify three billion or some unbelievable number of products. But for fire suppression you have to be UL listed, which means you have to pass a whole series of 40 tests in order to -- to be able to stamp it as UL and allow it to be used in -- in building.

There's only three people that make sprinklers. It's an oligopoly. There's Tyco, there's Reliable, and there's Viking. And all of these products have to be certified UL listed or you can't use them in buildings.

Q Do you have any opinion whether or not the Underwriters Laboratory testing standards or lack thereof had any bearing at all upon this case?

A I --

MR. CHRISTIANSEN: Objection. Speculation, Your Honor. He's not a lawyer.

MR. GREENE: I just asked if he knows.

MR. CHRISTIANSEN: He's not a lawyer.

MR. GREENE: One doesn't need to be a lawyer to be able to have an understanding. With all the work and scope of work he's done to research this, one doesn't need to be an expert to go to a class to determine this. He -- if I can set a foundation, he's spent hundreds upon hundreds of hours studying this issue, speaking with experts who have been testifying in other cases, but he has at least as much knowledge about this as anybody out there.

THE COURT: And what was your question again; what did you ask him to say?

MR. GREENE: If he had -- yes, I'm sorry. If he had an opinion whether the Underwriters Laboratory testing or lack thereof had any bearing upon the value of this case; if he had an opinion about it.

MR. CHRISTIANSEN: My objection is speculation. He can no more guess what Underwriter, the UL, had a value on this case, if he complied -- it's a guess. It' s speculation.

MR. GREENE: And maybe I asked a horrible question.

THE COURT: Because I mean he can talk about the research and everything he did, but I don't know how he could say what the Underwriters value -- what the Underwriters did, how that added value to this case. I think only the people from Viking and Lange can come in on that.

MR. GREENE: Then I asked an absolutely horrible --

THE COURT: Okay. Because the way I read the question, I think we would have to have somebody here from Viking or somebody here from Lange to say how they valued the case and what they paid, because I don't know how he would know.

MR. GREENE: Then I apologize for asking a bad question.

BY MR. GREENE:

Q Do you have an understanding whether this sprinkler product, if installed in your home, underwent any Underwriter Laboratory testing?

A Yes. In order to be installed in a home it has to be UL listed.

Not to be mistaken with an underwriter of an insurance policy. It's a laboratory. It's on your lightbulbs, it's on everything. It has to be UL listed; it has to pass the test. This product was never tested by Underwriters Laboratory, and thus it never should have been listed for sale.

Q How did you learn that, Brian?

A Over the course of a long period of finding the documents were missing. Within discovery, the Underwriter Lab documents were never there. When we kept asking for them, they gave us the wrong documents.

At one point they -- when I had asked for I need the actual test data on this head, because the actual test data that they had provided was on all different heads. But it had a whole bunch of mechanical properties of the heads, and I clearly didn't believe what they were saying that 100 degree Fahrenheit heat exposure would set this thing off.

And the UL testing would prove that it didn't. They never gave us the actual test results. They kept refusing, they kept refusing, up until late in the trial they started admitting -- I think Pancoast first admitted in September that some of the tests may not have been done on the actual product, but UL Laboratories allows you to grandfather in if products are substantially similar.

And to answer your question, Mr. Simon, here's the heat test that you're asking for. I was always asking for this heat test. The heat test she attached was for cover plates. That's the little white plate right there up on the ceiling that falls off when it gets to 135 and exposes the

sprinkler. It had nothing to do with the VK 457 at all.

When we kept pushing on this, she admitted that it's never been tested, and it was grandfathered in because of the VK 456. The -- the thing that sets a sprinkler off is the fusible link. And when the solder melts, these arms pop and all the water comes out. It just opens a hole in it.

The VK 456 has about a half dollar size fusible link. The VK 457 has a fusible link that looks like this [indicating]. If you hold your two fingers together, it's two soldered joints, completely different surface area, completely different heat rating, too. There's no way that you can --

THE COURT: Okay, Mr. -- I'm sorry. What is the question?

MR. GREENE: It was back, I know, kind of coming on.

THE COURT: I don't mean to interrupt, counsel, but I've sat through every one of these arguments. When I struck the heat expert, that was me. That wasn't Bonnie, that was me. So, I've heard all of it, but I'm just -- I mean I'm lost. I don't know what the question is that he's supposed to be answering.

MR. GREENE: Well, we asked about whether this -- this product that was -- basically, his understanding of this product that was installed in his home underwent any of these Underwriter Laboratory testing, tests, and what effect is his understanding that had on the damages in this case. That's what we're hoping to get at.

THE COURT: Oh, okay, I'm sorry. I just -- I just had no idea what the question was that he was answering.

THE WITNESS: So, basically, to sum it up and be quicker,

I'm sorry --

MR. CHRISTIANSEN: Judge, and I renew my objection. As the Court's pointed out, unless they've got somebody from Viking or Lange here to say how they valued the Underwriter Laboratories testing or lack thereof and factored it into what they put a value on the case, this witness doesn't know. He's just guessing. Speculation.

THE COURT: Well, I mean like I previously said, Mr. Greene, I mean he can't talk about what to put to the value of this case. I don't know how he would know that.

MR. GREENE: I'm only asking him what his understanding is after his voluminous research as to the defective nature of these sprinklers, what Viking knew or didn't know, what they disclosed and didn't know ultimately, how he understood the defected -- the posture of this case.

THE COURT: Okay. But how would he understand that, because I'm pretty sure that calls for some sort of hearsay statement as to something that somebody told him.

So, how is it that he would understand that; because somebody from Viking or Lange would have had to have told him that, how they -- because how -- how this affects how they value the case because I'm 110 percent aware of Viking and the discovery violations. And we were one step away from having a hearing about striking that answer when this case settled.

So, I'm aware of all that, but that -- what Pancoast admitted and everything down in front of the Discovery Commissioner, that all

goes into Viking's understanding of what this case is worth. How does he know that without saying Pancoast told him?

MR. GREENE: Judge, and I'm happy to move on. I originally started with the scope of his work, what they had done, so.

THE COURT: Yeah. And I mean he can discuss that, but I just wasn't sure what the question was. That's the reason I stopped the -- he can discuss that, but when we jump to how that made Viking and Lange value this case, I don't know how he would know that without Viking or Lange telling him that.

MR. GREENE: Gotcha.

BY MR. GREENE:

Q We'll go right back to where we started then. We're kind of going on what work you had performed in this case to assist in its prosecution. Is there anything else that you've not talked about that you did to help uncover the number of activations globally?

A I think I've covered a lot of it. I spoke to people in the U.K., I gathered documents from them. Some of the documents have been shredded, apparently. None of them were in the discovery. They -- like I said, they stated the product was defective, and they were paid for by the insurance company. I spoke with Harold. I knew what was going on with his settlement, and how he was removing and replacing all of the existing VK 457's in -- in southern California as fast as humanly possible. Thorpe Design was doing the exact same thing.

I also made an analysis of how much it would cost to recall five-and-a-half million based on what they were doing when they're

changing them out because five-and-a-half million VK457's is about 110,000 homes.

Q How did you gain an understanding as to what costs it would take even to replace one of those sprinklers like the one that failed in your home?

A Replacing one is fairly easy to figure out. Their list price is like $80, but the ball price of them is only about $10. When you get into a scale of five-and-a-half million that are defective, though, $10 is a lot. And then there was bids on other companies that were doing the removal and replacement had set rates for houses. It was like $1700.

You had to pull a permit, get the fire department out there, put in plans that the new sprinkler heads that Viking had created could be replaced and do just as well as the old, the 457's, and you had to get the homeowners to agree to let you in their house. It wasn't as simple as the original installation, but it was still fairly cheap. And --

Q What's the bottom line number you came to?

A About $25 million to -- well, if it was a forced recall, it could be as high as $200 million, but if they kept going through, the entire -- the entire process the way they were doing, it'd be around $25 million a year. And it's going to take years.

Q Did your research indicate or your discussions with any of these other individuals you've talked about indicate that any other entity, other than Viking, was the manufacturer of these sprinkler heads?

A This wasn't happening to anyone else. In Harold's trial --

MR. CHRISTIANSEN: Objection. Hearsay.

BY MR. GREENE:

Q It's okay. Just -- you can just give the Judge an understanding as to whether you became aware of whether any other entity, corporate entity, other than Viking was found in your research to be responsible for these failures, other than with Viking?

A No. Viking was the manufacturer, and Viking was involved in the entire cover-up.

Q Did you have the opportunity, then, to send an email to -- to Danny Simon? Look at this -- this Exhibit 9 on page 1 of Plaintiff's. This is the email dated July --

THE COURT: It's Plaintiff's 9, counsel?

MR. GREENE: Yes, Judge.

THE COURT: Okay.

BY MR. GREENE:

Q And that's Page 1. We've seen this under a different number. Can you take a glance at this email, Brian. You've seen this before; haven't you?

A Yes.

Q We talked about this earlier, correct?

A Yes.

Q Would it be a fair statement that this is the email you sent to Mr. Simon and copied Ms. Ferrel about what you had uncovered?

THE COURT: Okay. And this is -- oh, never mind. All right, keep going.

THE WITNESS: Yes, I sent this to Mr. Simon and Ms. Ferrel.

BY MR. GREENE:

Q Would it be a fair statement, too, this contains a good summary of -- a complete summary of what you did?

A No. This is a good summary of what I did up until July 25th.

Q Sure.

A This mess got bigger and bigger and bigger as we progressed. But this showed what I had found out and obviously the 46 activations are completely false because on this page you have 157 listed and you have the U.K.

Q Do you have an understanding, Brian, that before this -- this email was sent in July of 2017 from the first bit of work that Mr. Simon did on your case until this email, what efforts he had undertaken to undercover the scope of these activations or failures?

A None.

Q And how do you know that?

A He never told me about any. I was keeping the spreadsheet of all the activations. I was adding them that we were using in court. He never added any.

Q What information did he share with you, if any, about what he was doing to undercover the scope of these activations or failures of Viking's product?

A Nothing.

Q How about Ms. Ferrel, the same -- the same question. What is your understanding of what she did to undercover the scope of these failures or activations?

MR. CHRISTIANSEN: Judge, I'm just going to object. I don't understand the question; what did they do to undercover? He's asked it three or four times to undercover something.

THE COURT: I think he means to uncover; is that what you mean?

MR. GREENE: Undercover? Oh, my goodness. Sorry, Judge.

THE COURT: Yeah. Did you mean what did they do to uncover?

BY MR. GREENE:

Q What did they do to discover it?

A Ashley summarized the emails prior to this email that had somebody insinuating that there was 93 in California. After this she helped out. When I was looking for documents, she would point me in the right direction of where they were in drop box or a lot of times they weren't in drop box, maybe they didn't upload on the computer or whatever. And then she would -- when I wanted more documents, I would email her about hey, this is missing, we need this. She also helped with some of the motions.

When the bigger data dumps came, I kept complaining that the documents were the same with different bates numbers, and it was very confusing to go through them, Mr. Simon and Ms. Ferrel asked me to prove it.

I put together a bunch of them that were the exact same documents in different positions. And they started protesting about this.

And there was further and further protests ending with Ms. Pancoast actually redoing the documents. And Ms. Pancoast in mid-September said hey, here's the new redone documents with the nice easy searchable list. There used to be 67,000, now there's 40,000 unique ones, that the other 27,000 were duplicates. So, she helped with a lot of that stuff.

THE COURT: And when you said she helped with the motions, what motions?

THE WITNESS: Well, when they start -- when I first started finding stuff missing in this discovery, they would solicit it back from Viking. Motion's probably the wrong word. Interrogatory, is it, I think is the correct word. I can't say --

THE COURT: Interrogatory?

THE WITNESS: I'm sorry, I can't say the word properly.

THE COURT: Okay. So, you don't mean that you have any knowledge of her filing any motions?

THE WITNESS: No, she didn't file. Danny Simon filed the motions.

THE COURT: Okay.

THE WITNESS: She typed them up. And we edited them together lots of times.

THE COURT: And you would what?

THE WITNESS: We would edit them together a lot of times. They would send them to me. I would correct any malapropisms or typos. There was a lot of technical terms in this that all the lawyers on

the case kept confusing. The biggest one was load versus strength, which is a really important --

THE COURT: Okay, Mr. Edgeworth, we don't need to get into that.

You edited some motions that were typed by Ms. Ferrel?

THE WITNESS: When they were filing stuff with the Court, they would send it to me to see if it was proper what they were saying.

THE COURT: Okay.

THE WITNESS: I would add things, I would supplement, I would give them listings of houses. I gave them tons of PDF's showing the whole duplicated document thing. And then the worst part that they had done is not just did they duplicate documents, but in -- in series of documents that appeared to be duplicates, there was one document missing from the other discovery dump, which was serious in some cases.

The picture that I found that was missing from one bates number dump from the other bates number dump actually had a picture that they were using to show bad insulation as the reason for the activation, and there was a message saying Adrienne moved aside all the insulation to take this photograph. And that wasn't in the other series. It was tons of little stuff like this that came up. I wrote summaries and emailed.

BY MR. GREENE:

Q All right. Let's move to a different topic for a few minutes, okay? The case settles November 15th of 2017 against Viking. What led

up to you as the client deciding to settle that claim?

A Just there was -- the whole case was overwhelming. The number was good, it was fair. And I just wanted the whole thing to end, you know. Right after I said I'd accept, I had remorse. I thought we could get them to pay fifteen million because they had subrogated the 326 claims that I found and stuffed other insurance companies with the payments.

So that alone to them is worth 25 million that they're covering up just from the spreadsheet; because they made all the homeowners' insurance pay for it and then they would pay the fee that you pay with an insurance company, you know; what's it called? You pay like $1,000 and then the insurance company fixes your house, pays for the rest of it.

THE COURT: A deductible?

MR. GREENE: Is that deductible?

THE WITNESS: Deductible. I'm sorry, I couldn't think of the term. Viking and Zurich would pay the deductibles and then leave the other insurance companies with all the damage. And I've been told that that would --

MR. CHRISTIANSEN: Objection. Hearsay.

THE COURT: Okay. Sir, can we get back to the point?

THE WITNESS: Sorry.

THE COURT: The question was, how did you settle this case?

MR. GREENE: Yeah.

BY MR. GREENE:

Q What were the primary considerations and what went

through your mind as a client to settle this case?

A I wanted it over. I just wanted to put it behind me, just get on, you know, back to construction and do what I wanted to do.

Q Because Mr. Simon had given you good counsel to settle for six million; hadn't he?

A Yes, definitely.

Q Followed that counsel?

A Yes, I did.

Q Glad you followed that counsel?

A Yes, I am.

Q This case was your life; wasn't it?

A For that period, yes.

Q Closure's good; isn't it?

A I don't know. I'll let you know when I have closure, but yes, closure's good.

Q Let's talk about the invoices for a moment now that the primary case is settled. We'll get into Lange again in a few moments. What role did you have in paying the invoices in this case, Brian?

A I looked them over, I signed off on them, and I gave them to our accountant, and he would cut the check; everything except the first invoice I just cut the check myself.

Q So, Brian, the Judge has seen evidence who knows how many times and at this hearing, as well, that there were four invoices for fees and costs presented to you beginning in December of 2016 going through September of 2017. Do you have an understanding whether any

other -- during that timeframe were there any other invoices sent to you from Mr. Simon's office for you to pay?

A No.

Q Did you review those invoices before you paid them?

A Yes.

Q Did you pay them in full?

A Yes, I did.

Q How long did it take for you to pay those after you received them?

A Sometimes the same day.

Q Did you have an opportunity to review those invoices, Brian, what the hourly rate was for Danny?

A Yes.

Q Sorry. Mr. Simon.

A Yes.

Q And what was that each time?

A Five hundred and fifty dollars an hour.

Q Did you ever see any of Mr. Simon's entries in which he billed anything other than $550 per hour?

A No, I did not.

Q Did you ever get bored and count the number of billing entries that Mr. Simon put on those first four invoices?

A No, I did not.

Q Okay. Did you get an understanding as to what Ms. Ferrel's hourly rate was in each of those invoices where her time was contained?

A Two hundred and seventy-five dollars an hour.
Q Every entry?
A Every entry.
Q Did you pay that invoice in full, all those invoices in full in which her time was on?
A Yes.
Q How about Ben Miller, he hasn't been all that involved in the handling of this case, so he prepared almost $6,000 worth of time; is that your understanding, as well?
A Yes.
Q Did you gain an understanding as to what his hourly rate was?
A Two hundred and seventy-five dollars an hour.
Q Did he ever bill at any other rate?
A No.
Q Did you pay those invoices in full?
A Yes.
Q Brian, we talked about this Exhibit 5. Again, the Judge has seen this a bazillion times. That's the invoice that was produced towards late January of 2018. Did you take the opportunity to review that invoice?
A I'm sorry, I don't know which invoice it was. Can I just see it?
Q Of course you can. It's kind of thick. I'm not sure if we have the witness binder up there, but.
A Oh, is this --

Q This is what we -- this is the January 24, 25 --
A 24th. I'm sorry. I thought you said January 5th.
Q No, I just said January of 2018.
A Okay. I apologize. Yes, I know this invoice.
Q You've reviewed it front to end?
A Not really.
Q Okay.
A I scanned it.
Q Did you gain an understanding after reviewing this exhibit, which is Plaintiff's -- I'm sorry, the Edgeworth Exhibit 5, beginning at page 1, going all the way through page 183? Did you get an understanding as to what Mr. Simon's hourly rate was that he billed on Exhibit 5?
A Five hundred and fifty dollars per hour.
Q Did you see any, any entry on this invoice regarding Mr. Simon's time in which he billed any other rate than $550 per hour?
A No.
Q What's your understanding as to the first date that Mr. Simon had a billing entry in this Exhibit 5?
A Can I just see the first page again, please?
Q Sure. That's page 1 of it.
A May 27th of 2016.
Q Do you have a remembrance as to what the last date for his billing entry was or would you care if I showed you that instead?
A I'd appreciate the same.

Q I'll do that.

THE COURT: Are you just referring to Mr. Simon, counsel?

MR. GREENE: Yes, right now, Judge.

THE COURT: Okay.

MR. GREENE: This is page 79 of Exhibit 5. Sticky fingers.

BY MR. GREENE:

Q In reviewing that, Brian, what's your understanding as the client is the last day that you were billed by Mr. Simon?

A It's a little confusing because there's a line item for 135.8 hours that has no date, but it appears to be January 8th, 2018, the last dated entry.

Q Did Mr. Simon ever explain to you what date this one hundred and thirty-five hours and eight tenths of a minute were spent reviewing these emails?

A No. That's actually something I went looking for through the filings and I haven't found how that breaks up at all. It has no date. It's just a line item for 135 hours. I can find no other explanation.

Q In your review of the four invoices you paid, do you recall being billed for and paying for review of emails?

A It's listed in many, many of the invoices already paid, yes.

Q But no explanation?

A No, sir.

Q Did you gain an understanding after reviewing Exhibit 5, turning to Ms. Ferrel now again --

A Okay.

Q -- when her work on this case began?
A If I could see the document, it would help me.
Q Of course. Not a memory test, except when it is. I'm trying to find that.
A December 20th of 2016.
Q Do you remember speaking with Ms. Ferrel back in December of 2016 about her involvement in this case?
A No.
Q Was it ever communicated to you as to when she began working on your case?
A No, I don't remember. The first time I met her, probably in January, I would think.
Q Nonetheless, she did good work --
THE COURT: January of what year?
THE WITNESS: I apologize. 2017.
BY MR. GREENE:
Q Nonetheless, she did good work, too, for you; didn't she?
A Yeah. I think she did a very admirable job.
Q Do you know when the last day she pulled on your file as a client?
A If I could see the invoice.
Q Of course you can.
A I'm sorry, I went over these and I just don't remember the last days. January 2nd of 2018.
Q Brian, last off, did you ever have any communications with

him about his involvement in your case?

A No. I was forwarded an email of research that he did, though, in August 1st of 2017 it was a Word document about punitive damages, and Mr. Simon asked me to look at a page on it and see if I had evidence on three factors; oppression, malice, and fraud, I believe it was. And that was Mr. Miller had -- his name was on that document.

Q Do you know Mr. Miller personally?

A I think I spoke with him. I think he's the guy that's a Batman fan. He had an office with a lot of Batman stuff, I believe.

Q Well, that's quite a way to be known. He billed about $5995; is that correct?

A Yes.

Q You don't have any beef with the work that Ben did; do you?

A No, not at all.

Q He did a good job; didn't he?

A No. Or yes, he did a good job. I have no complaints.

Q Brian, we talked a little bit earlier under cross-examination the choices you made to pay these legal fees not out of your own pocket, but by getting loans. You said that was prudent.

A Yes.

Q I'm financially dumb, so help us out. Is the -- what was your decision-making process to determine that that was -- that was prudent?

A There's concepts in finance that you should match your -- the debt that you take out with the asset that it is. You know, I think the simplest explanation of this is, should I mortgage my house to buy a car?

And the answer's no. The two assets don't match in duration, the car doesn't last, you know, 30 to 100 years, the house does. And you put your house at risk of being homeless.

So that would be a non-prudent decision. So, it is prudent to basically match the debt with the purpose of the debt. In this case the purpose of the debt was to repair the house and pursue the claim.

Q So you had choices how to get loans. Tell the Judge briefly, because again she's familiar with this case, who were the choices that you went to for loans to pay your fees and costs?

A I went to Wells Fargo. They originally -- they've been our bank for 20 years in business. We've been a great client. And I told my personal banker the entire situation, and he said this will never get through underwriting, don't even bother.

My other choices were to sell long-term investments, some of which were tied up in partnerships with my brother and another minority investor. He was a smaller investor, but still a partner in the business. And asking them to dividend me out my money or I could take debt. And I borrowed money from my mother-in-law and from my high school friend who runs American Grating, Colin Kendrick.

Q Were these loans or did the interest you were paying on them have any impact upon your wellbeing during the litigation?

A The loans would be paid back at the end of the litigation. And if the litigation failed, obviously I would be scrounging around to figure out how to pay them off. But it created a lot of stress, yes.

Q Did the existence of these loans or maybe the existence of

the specific lenders of the loans have any bearing upon your decision as the client to resolve your claim against Viking -- I'm sorry, Viking.

A Yes. Sorry. Yes. Yes, they did.

Q And how so?

A Well, it was causing stress and tension and it was something overhanging me, and it was one reason that the relief of the settlement I could pay them all off.

Q When the case did settle and undisputed funds were released to you, did you pay these loans off?

A Yeah. Wells Fargo released the funds the same day. I believe it's called Bank of Nevada the check was written on and Wells Fargo said we would -- they would release it the same day. I paid both my mother-in-law and Colin off the same day with all the interest accrued on the loans.

Q Brian, let's shift gears.

MR. GREENE: Would now be a good time to shift gears? Do you need to take a break, Judge?

THE COURT: Probably. We should probably just take our afternoon recess at this time. Okay. So, we're going to just take our afternoon recess for 15 minutes and we will be back at 20 to, okay?

COUNSEL: Thank you, Your Honor.

THE COURT: Okay.

[Recess at 3:25 p.m., recommencing at 3:43 p.m.]

THE COURT: All right. So, we'll go back on the record in Edgeworth Family Trust v. Lange Plumbing and Edgeworth Family Trust

vs. Daniel Simon.

Mr. Greene, whenever you're ready.

MR. GREENE: Thank you, Judge. Yes, thank you.

BY MR. GREENE:

Q I need to go back to your -- these invoices that you paid and the ones that were presented, as well, and wrap up on that, okay, Brian?

A Yes.

Q Do you have an understanding as to how much you paid Mr. Simon in attorney's fees in the original first four invoices that were presented to you throughout the litigation of those -- we'll call them the four?

A Three hundred and eighty-seven thousand.

Q And change?

A And some change, yeah.

Q Okay. Were any other invoices for fees ever presented to you by Mr. Simon?

A At the mediation, November 10th, the second mediation, I was given an invoice for approximately $72,000 that was for fees. And then when we left mediation, I couldn't find it. I assume somebody just picked it up with all the papers on the table.

Q I'm going to show you Exhibit -- Plaintiff's Exhibit 9. And that is page 2 of 9. It's an email to you -- from you, excuse me, to Danny Simon copying Peter Shin. Who's Peter Shin?

A He's an accountant that pays invoices for my companies.

Q Let me show you this exhibit. Do you recognize this email,

Brian?

A Yes, I do.

Q Describe this email to the Judge. First read it for her, if you would, please, and then describe the circumstances.

A I know I have an open invoice that you were going to give me at a mediation a couple weeks ago and then didn't leave with me. Could somebody in your office send Peter [copied here] any invoices that are unpaid, please.

Q So, as of November 15th, you acknowledge you owed more fees to Mr. Simon, correct?

A Yes, correct.

Q Has that always been your position?

A Yes.

Q What does November 15th coincide with ,Brian?

A That night is when the mediator's settlement agreement, Floyd Hale, the mediator, said the whole settlement was -- the mediator's agreement was settled on by both parties. So, it's basically the Viking settlement day.

Q Did Mr. Simon ever hit reply and type in a response to you?

A No.

Q Did Mr. Shin, your accountant, ever receive another invoice?

A No.

Q Did you ever receive another invoice in November from Mr. Simon?

A No.

Q December of 2017, either?
A No.
Q If you would have received one as you had asked, what would you have done?
A I would have checked it over. If everything was in order I would have scribbled my signature on it and give it to Peter to pay.
Q Which you had done each of the four times previously?
A Correct.
Q Paid it?
A Correct.
Q In full?
A Correct.
Q I'm going to look at Exhibit 9, pages 7 through 12, Your Honor, and Brian.
THE COURT: Okay.
BY MR. GREENE:
Q Brian, this is a side-by-side comparison of new bills, new bill hours, paid bills hours, daily total. Do you recognize this document if I just put it on here?
A Yes, I do.
Q And how do you recognize this document?
A I scanned the bills that were presented in late January of 2018 attached to a motion of some sort. I scanned them in and then I summed them and then I sorted them by date.
Q Would it be a fair assessment to -- to say that you compared

the entries on the original four invoices that you had paid with the entries on the new invoice that was attached to Mr. Simon's motion to adjudicate?

A Yes. I took the hours that had appeared on the motion to adjudicate in January of 2018. I put them all in the column that says New Bill Hours. And then the bills I had paid previously, the four bills that we had discussed, is in the next column. And then I just summed them by date how many hours for each lawyer. I did it for Daniel Simon, and I did it for Ashley Ferrel.

Q Brian, how long did it take you to do this comparison contrast and to prepare this document that's now Exhibit 9?

A Probably 20 or 30 hours because the problem was it was just scanned in a lawsuit instead of presented in a way that you could get the data out. So, in hindsight I shouldn't have tried to salvage the document, I should have just hand-typed them all in, but I tried to change the PDF back into an excel file.

Q In comparing the invoices, the four that you had been presented by Mr. Simon and paid in full for his fees and the costs reimbursed, did you make any comparisons at all as to what these -- this new invoice from January of 2018 did or didn't do in relation to all those prior billing dates that had been covered on those four invoices?

A Yes. The original invoices that have already been paid summed around $387,000. For those same days, the new bill was adding around another $300,000, approximately. And then from the date of the last bill I received in late September 2017 through the end of this

billing statement there's about $400,000 in new additional fees, including that one huge one for 135.8. I put that in the new date billing because it didn't have a date on it.

Q So just to be clear, was the 135 hours reviewing emails without a date, was that in the original four emails -- I mean, sorry, the four invoices or was that in the new superbill?

A That was in the new superbills.

Q In looking at this document, I'd like to highlight a few of the days that -- that you also highlighted, okay?

A Okay.

Q Going to page 10 of Exhibit 9, so just to get a roadmap, fair to say that this column on the left pertains to Danny Simon, Daniel Simon?

A Yes.

Q The one on the right Ashley Ferrel? Sorry, I'll bring that down.

A Correct.

Q Okay. So, let's look at Mr. Simon's hours for August 15th. In preparing this did you review August 15th on both the original invoices, I guess the original invoice --

A Correct.

Q -- for this date, together with the new January of 2018 bill?

A Yes, I did.

Q And what did you notice on August 15th, 2017, Mr. Simon did?

A I noticed that day he had already billed and been paid for seventeen and a half hours. And then on the new bill that was submitted on 2018, January, there was another hour, almost two hours, 1.9 hours.

Q Did Mr. Simon ever give you an explanation on August 15, 2017, or any day thereafter as to why he was adding another 1.9 hours to the 17.5?

A No.

Q The next date, a couple of dates, August 20th of 2017 and August 21 of 2017, do you see those?

A Yes.

Q On the August 20 of 2017 there is nothing -- nothing charged on the original invoice, correct?

A Correct.

Q That's what the middle column represents?

A Correct.

Q And then on that -- on that left-hand new bill hours, that's 5.65; do you see that?

A Yes.

Q Off to the left it says same work; do you see that?

A Yes.

Q Explain that to the Judge, please.

A The descriptions on those two days, if you look at the 5.65, that's on the new January 2018 presented bill. And the 675 on the old already paid bill, the descriptions are quite similar, so to me it looks like a dup. I don't know.

THE COURT: Well, the 675 goes with August 21st, right? That's a different day.

THE WITNESS: Yes, ma'am.

THE COURT: Okay. I'm confused.

BY MR. GREENE:

Q So, yeah, make sure that's not unclear for us. Are you saying that the entry for -- the new entry for 8/20/2017 looks the same as the one that was previously billed and paid for 8/21/2017?

A Yes. The second column is the previous paid bill. So, if you look at the description of the work on the bill, it seems quite similar to the description of the work on the new bill on the previous day. So, it seems like it's been -- it's the same work already been billed for, but it's being billed again in the January 2018 bill.

THE COURT: So, it appears to be the same work?

THE WITNESS: The descriptions are very similar.

THE COURT: Okay.

BY MR. GREENE:

Q Let me move this page aside, this document aside, Brian, and just go ahead and take a look at this is --

THE COURT: Well, before you do that, Mr. Greene --

MR. GREENE: I'm sorry, Judge.

THE COURT: -- I do have a question. Why do some of these have boxes around them and other ones don't?

THE WITNESS: I just put boxes around the ones where I actually searched through the bills to get the description of the work

performed. On the new bill that was attached to the lawsuit and the old bills that were already paid; because this new bill that was presented in --

THE COURT: No, I understand that, Mr. Edgeworth. What's the purpose of the boxes? So that's the ones where you actually looked into the purpose of the work?

THE WITNESS: Yes.

THE COURT: Okay.

And then how -- what is day two, what does that mean? Because some of these there's like a one day difference, some of them there's a couple days difference from day one and day two on the same line. What is the purpose of day two?

THE WITNESS: Of why I boxed them, Your Honor?

THE COURT: No. Like if you look at the one from July 9th, there's July 9th on date one and then on date two it says July 10th. Mr. Greene, can you move that down so he can see that?

MR. GREENE: You bet.

THE WITNESS: July 9?

THE COURT: See on July 9, right next to it, it says July 10th. But then the next line underneath July 9th also says July 10th. What is the purpose for the dates that are in the box labeled day two?

THE WITNESS: Yes, Your Honor. On some of the bills, the old bills, it had from 7-9 to 7-10. In this case, the one you inquired about, there's a range on the bills of dates. It doesn't define the exact date that the hours were performed. So, I put in just to match up with

the actual descriptive bills where they have all the line items of the hours.

THE COURT: But then on 7-10 there's a new entry, the box -- the line right underneath that?

THE WITNESS: Yes. Yes. On the bill it says 7-9 to 7-10. So, I assume it's work performed on those two days.

THE COURT: Right. But if you look right below the 7-9, you have another line for 7-10. So, is there a different bill that only describes 7-10?

THE WITNESS: There might be, or it might be a typo on my part, ma'am.

THE COURT: No, but I mean you do that a lot because on the 7-11, 7-12 you do the same thing. So, what does that mean? Like what is the difference I guess is my question? See, you got 7-11 to 7-12 and then right by 7-11 you got 7-12 again.

THE WITNESS: It might be a merging problem when I merged the sheets together because the one sheet might have had the range of dates and then the new bill might have only had a single date. And so, it put in an additional line where I should have moved it back up. It's probably an error.

THE COURT: So, but I mean that's done several times throughout this document. So, is it an error on all those lines?

THE WITNESS: On all the lines that would be duplicated problems in error, yes, Your Honor.

THE COURT: Okay. And then my next question -- sorry, Mr.

Greene, but I just have some questions about this.

Like for instance if you look at the line at the top that says 630, you have paid bills, 4.25 hours, new bills 1.35. Is that 1.35 extra or does the new bill have 1.35 and then the bill that you paid had 4.25 for the same work?

THE WITNESS: The old bill that I already paid at 4.25, the new bill presented in January of 2018 was putting an additional 1.35 on that same date.

THE COURT: So, everything under the new bill hours is additional time that was on the January bill that you got?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay.

MR. GREENE: Any other questions, Judge?

THE COURT: No, no. I just had that.

MR. GREENE: Okay.

BY MR. GREENE:

Q Let's put a couple of these side-by-side, Brian, okay? We're looking at that August 20 and August 21, those two dates, okay?

A Okay.

Q This is Exhibit 5, page 38. That is the August 20 day. You can see that the entries start a little bit above that punch hole in the middle of the page, correct?

A Yes.

Q Does this particular --

THE COURT: Can you move that down a little bit, Mr.

Greene --

MR. GREENE: Of course.

THE COURT: -- because mine starts at 8/18, and he can't see that?

MR. GREENE: Sure.

THE COURT: Okay. There you go.

BY MR. GREENE:

Q It starts right up there --

MR. GREENE: I'm sorry. The actual date for the 20th, Judge --

THE COURT: Okay. I thought -- I thought you were talking about the whole page. I'm sorry.

MR. GREENE: I'm sorry.

MR. VANNAH: What are we looking at? I'd like to know what we're looking at. I have no idea.

THE COURT: I think we're starting on August 20th.

MR. VANNAH: Of what? What is this, a new bill, the old bill?

THE COURT: Exhibit 5, Mr. Vannah.

MR. GREENE: Exhibit 5 is the new bill.

MR. VANNAH: Thank you.

MR. GREENE: You bet.

MR. VANNAH: New bill meaning the one from January 2018.

THE COURT: Yes.

MR. GREENE: Exactly.

MR. VANNAH: In addition to what the old bill was?

MR. GREENE: Exactly.

MR. VANNAH: All right.

BY MR. GREENE:

Q Brian, in looking at this -- at this bill and nicely cross-examined by your boss, in looking at this exhibit on this page, do you see that duplication that you had mentioned in your prior testimony to the Judge with the same work versus old, new?

A Yeah. The descriptions you'd have to hold the two bills side by each, the old one that's already paid. The descriptions seem very similar in my opinion to the ones that were already paid.

MR. GREENE: Judge, I brought by a witness binder just because we have limited space on this Elmo.

THE COURT: Okay.

MR. GREENE: Do you think we could give him the witness binder that I'm hoping that my office staff dropped by?

THE COURT: Do we have a witness binder? I know we got the admitted version and then we got a copy. Is it supposed to be my copy?

MR. GREENE: Well, yes, you have one. I thought we left one for the --

THE COURT: Right. We got one delivered for me and one delivered that you guys wanted admitted. I don't think we got an additional one.

MR. GREENE: This is -- this is Plaintiff's or the Edgeworth's exhibit binder.

THE COURT: Okay.

MR. GREENE: It has the Exhibits 2 and 5 that we're looking at and 9.

THE COURT: Okay.

MR. GREENE: Any objection to having --

THE COURT: Mr. Christensen, any objection to him giving the witness this binder?

MR. CHRISTENSEN: No, ma'am.

THE COURT: Okay. That would actually help. Thank you, Mr. Greene. Sorry, I just didn't realize. I just didn't know we had one.

MR. GREENE: So many pages going about.

BY MR. CHRISTENSEN:

Q So listen to the page numbers that are given to you, Mr. Edgeworth, and then we can go from there, okay?

A Yes.

Q So we're looking at Exhibit 5 of the new bill. And we're looking at pages 38 and 39. Those are the two pages of Exhibit 5 that cover the billing entries on -- that are listed for August 20th and August 21st.

[Pause]

Q And then if you look at Exhibit 2, Brian --

A Exhibit 2.

Q -- at page 24, that's the only page of that original invoices that has an entry for August 21st.

A I'm sorry, I can't find the page numbers.

Q They're so small, it's annoying, I know.

MR. GREENE: May I approach, Judge?

THE COURT: Yes, please.

THE WITNESS: Okay. So, this is the page here?

BY MR. GREENE:

Q Yeah. You're in Exhibit --

A 24, Exhibit 2?

Q Uh-huh. And you can look off to the side with the dates.

A Can I open the binder and take the page out?

Q Of course you can. Make sure you don't get them out of order.

A Okay. Okay.

Q So, you indicated on Exhibit 9, page 10, that there was the same work on the August 20th line and then old/new on the August 21 line. And we're curious as to what duplicative old or same or new work that you had seen that were included on the new January 2018 bill that you'd already paid from the prior invoice.

A Yes. If you look on Exhibit 5, page 38, you can see that on the 20th all of the descriptions are reviewing and -- receiving, reviewing, and analyzing emails from client. And then if you look back to the already paid bill, it just appears that it was already billed for. It says on 8-21, finalize, reply to opposition to motion to compel client emails, Pancoast emails, discussion with client.

THE COURT: What is the already paid bill, what exhibit number is that?

MR. GREENE: Judge, that is Exhibit 2 --

THE COURT: 2.

MR. GREENE: -- page 24.

MR. VANNAH: Can you show what he's talking about so we can all look at it together, the right date and the right entry?

THE COURT: Can you put that -- can you put that on the screen, Mr. Greene?

MR. GREENE: I just did, Judge, yes.

THE COURT: Okay. Okay. So, on the 20th -- the 21st, you mean? I'm sorry, what page, did you say 24?

MR. GREENE: Yes, Judge.

THE COURT: In Exhibit 2?

MR. GREENE: Yes.

THE COURT: Mine doesn't have an entry for 8-20. It goes to 8-21.

MR. GREENE: Correct. And that's what Mr. Edgeworth is telling you, that the entry that was put on 8-20 --

MR. CHRISTIANSEN: Objection to counsel testifying, Judge. He can ask a question.

MR. GREENE: Well, if you want it clarified for me, Judge, if you want to ask the witness, that's fine. I'm just trying to help out here.

THE COURT: Okay, I see it. So, he -- on 8-21 the finalized reply to the opp to the motion to compel client emails, Pancoast emails, discussion with client, and then you have him review the file is what he took to be duplicative of something on 8-20? Of what on 8-20, Mr.

Edgeworth?

THE WITNESS: Of the new bill --

THE COURT: Of the new bill.

THE WITNESS: -- that was presented.

THE COURT: Where does that duplicate what's in the old bill?

THE WITNESS: All the new entries are received, reviewed, and analyzing from client or the vast majority, draft and sending note to client, receive, review, analyzing from client.

THE COURT: Okay. So, you think that that's a duplicate of client emails?

THE WITNESS: It appears to be.

THE COURT: Okay.

THE WITNESS: But I can't know for sure.

THE COURT: Okay.

MR. CHRISTIANSEN: I'm sorry, Judge, I just didn't hear the last part of what he said.

THE COURT: He said he can't know for sure.

THE WITNESS: I cannot know for sure.

MR. CHRISTIANSEN: Oh, thank you. That's what I suspected.

BY MR. GREENE:

Q Brian, looking down at Exhibit 9, your summary, the easier way to look at these, page 10, there's an entry of 9-11-2017.

MR. VANNAH: Can't see it.

BY MR. GREENE:

Q Do you see that?

A Yes.

Q You also have a note in the margin; you're referencing with the same notes, question mark.

A The similar situation to as above. I just audited random things, and it appears that the two of these, if you look kitty-corner, the 540 on 9-11, seems to have the very similar notes to the already paid portion on 9-12 of 2017 on the other bill.

Q Did Mr. Simon ever explain to you why on his original invoice for this date that you had paid four hours and seventy-five minutes' worth of time -- sorry -- 4.75 hours' worth of time, why an additional 5.4 hours were added to that date that weren't on the original invoice?

A When the new invoice was submitted, there really was no information provided whatsoever, so you couldn't reference anything. That's why I'm saying I don't know. The same notes, it seems very similar. I'd like to know more. You know, this is generally when you get a bill and you see stuff like this, you'd say hey, I think you might have made a mistake here, guys, and then they would come back to you and say oops, sorry, we did, or no, no, we didn't, that's separate.

Q Just while we're on this, Brian, we've heard that Mr. Simon's office doesn't have billing software. We get that. They're not an insurance defense firm. You didn't think they were; did you?

A No.

Q But did he take notes at the depositions in which you were present with him on?

A Yes.

Q Did he take notes in court?

A Yes.

Q What other opportunities did he take notes with you when you were present?

A Sometimes in his office when he was on a call with the other attorneys he would write on a pad or in a book.

Q Was he making notes of things as they were said?

A I believe so.

Q Did you ever try to get a challenge doing that?

A No. No information was provided on the new bill or the sources of how they compiled it or anything. The most information we ever got was about the costs. When I asked for the old invoices of the costs, you informed me that -- well, you forwarded Mr. Christensen's email saying that when we went to get the invoices that you requested, we discovered a $2750 error, the new costs are 68,800 and change.

But then he wouldn't tell us what the $2750 were, which made reconciling the costs even difficult. And just last week I found an invoice for $1700 of the costs that had already been paid that has another case's name on it and it's addressed to Ben Miller, not to Daniel Simon, who we already paid that. So, when you don't get clarification or a little bit of guidance or notes on how you do stuff, you can only assume.

Q Thank you. Let me turn to page 11 of Exhibit 9, the next --

the next three boxes that you have highlighted regarding Mr. Simon. You see the October 17, 2017 date?

A Yes.

Q How much did he bill you originally on that -- on that date?

A I'll never know. The bill that I was presented at the mediation to was never given back to me when I requested it, so I'll never know what he billed me originally.

Q Would it be fair to say did anything happen -- tell me, what is your understanding as to the last billing entries that was included in the invoice that you would pay for Mr. Simon?

A I'd have to look at the final bill because they didn't match attorneys, so that the September, the late September bill, will have a couple different dates on it.

Q Do you remember when you paid that late September of 2017 bill?

A No, but I would have paid it immediately. It was a large one.

Q There have been some representations and court filings that that included time through November 22nd, 2017. Do you have any reason to dispute that that's the last billing date for one of the original four invoices that you had paid Mr. Simon in full for?

A I believe you misspoke. I think you meant September that had billing entries. You said November.

MR. GREENE: If I said November, Your Honor --

THE COURT: You did.

MR. GREENE: -- sorry. Sorry, Judge.

THE COURT: You did. I was confused, as well.

THE WITNESS: So, no, I don't have any reason to dispute that the last billing entry was probably September 22nd. We could actually look at this because you just find where the zeros end and that's where it would be.

THE COURT: And that was going to be my question --

MR. GREENE: Sure.

THE COURT: -- Mr. Edgeworth. It appears that about September 20th you start putting zeros. And you just testified that you don't know how much you were billed for October 17. So, when you put a zero in here, where did that number come from?

THE WITNESS: Well, because I didn't have a bill --

THE COURT: Okay.

THE WITNESS: -- so the left column is --

THE COURT: No, I get that Mr. Edgeworth. Can you -- Mr. Edgeworth --

THE WITNESS: Yes.

THE COURT: -- we're asking very simple questions --

THE WITNESS: Okay. Sorry, ma'am.

THE COURT: -- if you could just stick to that, otherwise we're going to be here until Friday with you testifying. So, when you put a zero, that's because you don't know because you never got a bill?

THE WITNESS: Well, I did receive a bill for that date, but --

THE COURT: October 17th?

THE WITNESS: Yes. And the mediation, the second mediation on November 10th I was given a bill at the start of the mediation to put in the damages spreadsheet, but at the end of the day it wasn't there. That's the bill I'm emailing Mr. Simon and Ms. Ferrel about on the 15th of November saying hey, you gave me a bill a couple weeks ago at the mediation, I don't have it, can you please send it to Peter.

THE COURT: Okay. So, you have never -- so the reason you have zero in here is because that was on the bill you got at the mediation, but you didn't receive it?

THE WITNESS: No. I received a bill at the mediation. When I left, it wasn't with my papers.

THE COURT: Okay. So, you don't know what happened to it?

THE WITNESS: Exactly. So, I have no idea on that date what might have been there.

THE COURT: So, when you put zeros, though, on these columns leading all the way to January 8th of 2018, when did the bill that you gave at the mediation, when did it stop?

THE WITNESS: I think it stopped, I don't know, like a few days before the mediation is usually -- the earlier mediation I got a bill just before, too. Usually when I got a bill --

THE COURT: Okay. Do you know what date it stopped, Mr. Edgeworth?

THE WITNESS: No, no.

THE COURT: You don't know. Okay. So, when you put