

IN THE SUPREME COURT OF NEVADA

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

Appellants,

v.

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

Respondents.

Electronically Filed  
Jun 10 2021 01:04 p.m.  
Case No. 82058  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**JOINT APPELLANTS' APPENDIX  
IN SUPPORT OF ALL  
APPELLANTS' OPENING BRIEFS**

**VOLUME XIX**

**BATES NO. AA003763 - 3993**

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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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1 these zeros in here, it is possible that this bill that was handed to you at  
2 the mediation had some time on it for these days, but you don't know  
3 where the bill is and it never got duplicated, so that's why there's zeros  
4 here?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q It never got duplicated, Brian, because you asked for it, it's  
9 Exhibit 9, page 2, you asked for it and it wasn't given to you; was it?

10 A No. Nobody replied to me, no.

11 Q Okay. Let's take a look at some of Ms. Ferrel's time on  
12 this -- on this Exhibit 9, okay?

13 A Okay.

14 Q Hers is now on this right-hand portion of this; would you  
15 agree?

16 A Yes.

17 Q When did you first meet Ms. Ferrel; do you know?

18 A No, I do not.

19 Q Again, we talked about this, but any reason to dispute that  
20 the first billing entry that she included on this, on this new invoice of  
21 January 2018, was dated, backdated to December 20th of 2016?

22 A That is correct.

23 Q So Ashley could have been working -- I'm sorry -- Ms. Ferrel  
24 could have been working for Mr. Simon at this time, you just don't know,  
25 correct?

1 A Correct.

2 Q Obviously, she was because she's billing with him; can we  
3 make that assumption?

4 THE COURT: Can you make that assumption, Mr.  
5 Edgeworth?

6 THE WITNESS: Yes.

7 BY MR. GREENE:

8 Q Let's go to a couple of the boxed out items. And, again, this  
9 is going to be page 10 of Exhibit 9.

10 THE COURT: Page 10, counsel?

11 MR. GREENE: Yes. Yes, Your Honor.

12 BY MR. GREENE:

13 Q Do you see what we're looking at in this portion? You have  
14 three dates highlighted, the 14th, 15th, and 16th of July?

15 A Yes.

16 MR. VANNAH: August.

17 MR. GREENE: August. Golly.

18 BY MR. GREENE:

19 Q And what caused you to pay attention to these particular  
20 three dates in August of 2017?

21 A It's just -- it's another anomaly. The new bill is almost  
22 doubling the already paid bill. So, you're claiming that you didn't bill  
23 half of the hours that date, it seems like an anomaly. And three days in a  
24 row.

25 Q Brian, in your time spent at the law firm of Daniel S. Simon,

1 how would you describe your interactions with Ms. Ferrel once you did  
2 get introduced to her; any issues working on your case?

3 A I think we had a good interaction.

4 THE COURT: What did you say, Mr. Edgeworth?

5 THE WITNESS: I think we had a good interaction.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q At any time you were interacting with Ms. Ferrel in that good  
9 way, did she ever indicate to you, Brian, why she was able to keep track  
10 of seven hours of her time on that August 14, 2000 invoice that you paid  
11 in full, but was unable to keep track of 8.6 hours that then added to the  
12 December -- I'm sorry, the January of 2018 invoice?

13 A No.

14 MR. CHRISTIANSEN: Well, Judge, I'm going to object. He  
15 keeps asking why nobody from Mr. Simon's office explained in January  
16 of 2018 to the witness a bill. It's because Mr. Greene sent Mr. Simon's  
17 office an email saying don't talk to him ever again.

18 MR. GREENE: That's also a speaking objection. That's not  
19 what I asked him. Your Honor knows that. I'm asking at any time did  
20 Ms. Ferrel ever explain to him in their interactions why she was unable  
21 to originally write the time down and why she chose to add it on.

22 THE COURT: Well, I think you have to rephrase the question,  
23 Mr. Greene because they have -- there is the letter that says only  
24 communicate to you and Mr. Vannah that surfaced in late November --  
25 I'm sorry, I'm mixing up the dates -- between November 27th and

1 December 7th at this point. But there's that letter that surfaced. So, we  
2 can all agree, everybody in this room, that there's been those  
3 communication directly.

4 As a matter of fact, I asked your client about it. There's been  
5 no communication between Mr. Simon or any member of his firm and  
6 your client that day. So, if you could reask the question as to if she told  
7 them that when they were still talking to them without you and Mr.  
8 Vannah.

9 MR. GREENE: That's really where I'm going, Your Honor.

10 THE COURT: Okay.

11 MR. GREENE: So, I'll try and speed it up.

12 THE COURT: Okay. Yeah, if you could just rephrase the  
13 question.

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q So let me go on to the next entry. You already answered  
17 that, the communications you had regarding the August 14, two  
18 thousand -- how about August 2015 date, originally paid how much,  
19 Brian?

20 THE COURT: August 15th you mean?

21 MR. GREENE: Yes, Judge.

22 THE COURT: Okay. You said 2015.

23 MR. GREENE: Oh, man, I --

24 THE COURT: It's okay. It's late, Mr. Greene.

25 MR. GREENE: What a day, what a day.



1 THE COURT: August 15, Mr. Edgeworth.

2 THE WITNESS: Originally, I paid eight and a quarter hours.

3 BY MR. GREENE:

4 Q Did Ms. Ferrel ever explain to you why she was unable to  
5 keep full track of her time for tasks allegedly performed that day?

6 A No.

7 Q What about August 16, 2017, we have -- how much did you  
8 pay originally?

9 A Originally, I paid six and a half hours for that day.

10 Q And did she ever tell you why she was unable to keep track  
11 of that additional 8.05 hours that she added in the January 2018 invoice?

12 A No.

13 Q So we have the next entry of September 8, 2017.

14 A Could you just move the page up on the projector, please?

15 Q Of course I can. See that better?

16 A Yes, sir.

17 Q Originally paid Mr. Simon for how much of Ashley's time  
18 that date?

19 A Seven and a quarter hours.

20 Q And the new entry is for the January of 2018 bill?

21 A Thirteen and -- a little bit more than thirteen and a half more  
22 hours.

23 Q For a total of?

24 A 20.80 hours.

25 Q Did Ms. Ferrel ever explain to you at any time why she was

1 unable to properly account for all of her time from September 8, 2017?

2 A No.

3 Q Did she ever tell you at any time before December of 2017,  
4 hey, you know, and I have to add some time because I was unable to  
5 capture some of my time for September 8, 2017?

6 A No.

7 Q What if she had said something like that?

8 A If it seemed like an honest mistake, I would have told them to  
9 bill me for it.

10 Q How about July -- I'm sorry, September 13, 2017, that's the  
11 bottom entry on this, originally paid how much, Brian?

12 A Eight and three-quarter hours.

13 Q And the new invoice from January of 2018 contained what?

14 A 14.1 hours.

15 Q For a total of what?

16 A 22.85 hours.

17 Q Did you have any concerns about 22.85 hours billed in one  
18 day?

19 A Yes. That's why I circled it.

20 Q How so? What raised your ire?

21 A It's just -- it's beyond improbable that that's possible for you  
22 to have that many billable hours in a day, let alone be at work for that  
23 many hours in a day. It's very improbable.

24 Q Did she explain to you any time when you were  
25 communicating with her why that happened?

1 A No.

2 Q That she had any difficulties keeping track of her time then?

3 A No.

4 Q When you were -- did Ms. Ferrel come with you to -- and Mr.  
5 Simon to these depositions or court appearances?

6 A Many of them. Not all of them, but many of them.

7 Q Did she have any trouble that you could see with taking  
8 contemporaneous notes?

9 A No. She seemed to be an excellent note taker.

10 Q Pretty thorough; isn't she?

11 A Yes.

12 Q In looking at page 11 of Exhibit 9, what's your understanding  
13 as to the last time that Ms. Ferrel billed on the original four invoices that  
14 you paid in full?

15 MR. CHRISTIANSEN: What was the date, John? I'm sorry.

16 MR. GREENE: I'm sorry, Pete. That's -- I'm just asking --

17 THE COURT: I think that he asked him for the date, Mr.  
18 Christiansen.

19 MR. CHRISTIANSEN: Oh, I apologize. I just got lost on the  
20 chart. Those numbers are tiny.

21 THE COURT: Yeah, we're just on page 11, but he's asking the  
22 witness --

23 THE WITNESS: It appeared --

24 BY MR. GREENE:

25 Q If I scoot it down, if I do it -- leave it solid and move it down,

1 would it be easier for you?

2 A It appears in Ms. Ferrel's last billing date on the bills that I've  
3 received and paid it's September 19, 2017.

4 Q Okay. Do you believe that it's fair that Ms. Ferrel likely  
5 worked on your case beyond that date?

6 A Most definitely.

7 Q Do you believe that she's entitled to a reasonable fee?

8 A Most definitely.

9 Q You didn't include Ben Miller on this, on this flow chart. Any  
10 reason why?

11 A It was just too much work, and I was already buried, and  
12 there was only so many entries for Mr. Miller, it just didn't seem worth  
13 my time.

14 Q Okay. Let's talk about San Diego. We're going to spend  
15 some time on what the Judge wanted to start with and maybe even  
16 finish with. But explain to the Judge in your words, not by yes or no  
17 answers, what the circumstances were that led to you, and Mr. Simon  
18 meeting in San Diego in early August of 2017.

19 A After we started uncovering a bunch of this stuff and Mr.  
20 Miller had sent the hurdles for punitive damages instruction to the jury  
21 and I responded, that was August 1st I responded, and I felt --

22 THE COURT: I'm sorry, Mr. Miller had sent what?

23 THE WITNESS: He sent a large document and Mr. Simon  
24 had asked me to look at a subsection of the document which was the  
25 hurdles to get an instruction for punitive damages to a jury. It had

1 oppression, fraud, and malice.

2 THE COURT: Okay. This is Ben Miller that works for Mr.  
3 Simon?

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 THE WITNESS: Danny Simon forwarded the email. Mr.  
7 Miller was the author of it.

8 THE COURT: Okay.

9 THE WITNESS: And he had asked, can we meet this, do we  
10 have evidence of all this? That was August 1st. Then the discussion  
11 started a little bit more about hey, maybe we could change this  
12 agreement from 550 an hour to something else that would be in both our  
13 interests. I was completely open to it.

14 I think Mr. Simon was completely open to it. We never really  
15 had a discussion about it. When I kept asking when we would, we were  
16 going to have it on the trip when we went to visit the experts down in  
17 San Diego, which was the 9th of August of 2017.

18 BY MR. GREENE:

19 Q What was going on with the experts down in August -- down  
20 in San Diego in August that you needed to go pay a visit?

21 A I was frustrated with this particular expert, as was Mr. Simon.  
22 Lange had a far better expert on the same topic. And the guy just didn't  
23 seem to understand how the sprinklers functioned, like some basic stuff  
24 you would expect out of an expert. And we just went down and gave a  
25 presentation how to cut away of the sprinkler or cut into. We just gave

1 him a presentation to make sure he had a thorough understanding of the  
2 product and everything related to the product.

3 Q So, you dealt with that meeting. How long did that take?

4 A We were probably there five hours, something like that. His  
5 senior partner was in the room with us and some manufacturing expert  
6 was also there.

7 Q Is this a one day trip to San Diego, a longer business  
8 meeting, what was it?

9 A Yes.

10 Q Yes, what? I'm sorry, it was compound.

11 A We went down and back the same day.

12 Q How did you get there?

13 A Southwest Airlines.

14 Q So we've heard some discussion about a meeting in a bar  
15 over some adult beverages. Tell us about that.

16 A Well, we still hadn't discussed, you know, how we could  
17 change the contract to something better that would, you know, be a  
18 good risk reward for me, maybe put more risk on Mr. Simon. And if we  
19 prevailed, maybe he had more upside, but at least, you know, he'd have  
20 downside, also. We --

21 Q What risk did Mr. Simon have with the hourly fee  
22 agreement?

23 A None whatsoever.

24 Q How so?

25 A He was getting paid \$550 an hour for every hour that he

1 worked on the case. It's risk free.

2 Q How about invoices? You heard Mr. Christiansen talk about  
3 how Danny, Mr. Simon fronted his costs. You heard that; didn't you?

4 A Yes.

5 Q Did you have an understanding about how a typical personal  
6 injury case works when the term fronting costs is utilized?

7 A I wasn't familiar with the term fronting. When he used that, I  
8 figured he means pay, pay up front in full the bill.

9 Q Okay. And that's what you did, paid the bills that they  
10 presented; didn't you?

11 A Yes. Whenever the bills were presented, they were paid  
12 almost immediately.

13 Q Did he have any risk of loss with the invoices for the experts  
14 or the costs in this case?

15 A No. He could have submitted cost bills, as frequently as he  
16 wanted. And like I said, they were paid very quickly.

17 Q So you're in this bar in the airport in San Diego. You're  
18 sitting there waiting for your flight. Tell the Judge in detail everything  
19 that was discussed.

20 A Well, we discussed well, what else can we do; if this goes to  
21 a punitive case where we can get a big judgment, what can we change it  
22 to? You know, I gave some of my parameters.

23 Q Which are -- which were?

24 A I wanted to pay my mother-in-law back, number one. So, I  
25 wanted some of these fees back in exchange for whatever the

1 percentage was. But I was also willing to entertain any combination of  
2 the three levers so long as they worked out to reduce my exposure, my  
3 risk.

4 THE COURT: What's the three levers?

5 THE WITNESS: That would be the hourly billing rate. It  
6 could be anywhere from zero to whatever the --

7 THE COURT: I understand the hourly billing rate.

8 THE WITNESS: Yeah. The percentage of the judgment.

9 THE COURT: Okay.

10 THE WITNESS: And then whether I get money back or not of  
11 fees I already paid.

12 THE COURT: Okay.

13 THE WITNESS: Those were my three levers of risk reward.  
14 Mr. Simon said well, typically I get 40%. I said that's never going to  
15 happen, it's not a personal injury case. I've got some real expenses  
16 here. We bounced around a bunch of ideas. Like I said, hey, I'd be  
17 willing to explore even caps, you know, floors, caps, whatever you  
18 wanted where I get this amount and then we share above that amount or  
19 a cap, you know, nothing above this amount. I was willing to explore  
20 any options. Nothing really structured came out of the conversation.

21 Q What proposals, other than a straight PI contingency 40%  
22 rate did Mr. Simon present to you as you were sitting there in the bar in  
23 San Diego?

24 A He didn't present anything else. He asked me, well, have you  
25 -- I asked him, how much is this going to cost to the end, like how much



1 more? And --

2 Q In what ways? What kind of costs --

3 A The 550 an hour fees, how much is this going to accumulate  
4 to through the end of the trial? I needed an estimate. I needed to keep  
5 borrowing money, plus I needed an estimate to figure out whether I'm  
6 getting a better deal or not if we did change off the hourly fee  
7 agreement.

8 It -- you know, unless I know what I'm remaining to pay, I can't tell  
9 what I should really give up. He said, well, have you done a case like this  
10 before? I'm like nothing like this. And he's like have you ever gone to  
11 trial before? I said yeah, we went to trial, on the pediped intellectual  
12 property in New York. I told him about that case. He said how much did  
13 that cost? I said three times the last bill you just sent for the entire case  
14 and all costs, all the way to the judgment. And then he never responded.  
15 He never said much more. Started shooting the breeze about stuff and  
16 I --

17 Q As a -- as a consumer and with your education, did you have  
18 an understanding as to risk of loss; what that means?

19 A Not exactly. I understood probably around this point that I  
20 might not get all my money back from my legal fees. It was right around  
21 this time that I found out that just because you have a contract when you  
22 get a judgment, it doesn't mean you get all the money back that you paid  
23 for the lawyer. Up until near this point I was assuming that that's a done  
24 deal.

25 Q Did you have any conversations with Mr. Simon at that

1 facility in San Diego before you caught your flight as to what changes  
2 could be made to the agreement you had?

3 A He didn't really reveal his cards that much. I told him that I  
4 was open to almost anything as long as he took on some of the risk and  
5 had downside. That would align our interests through the case. If we  
6 both had downside, it would also make us focus in laser like on all of the  
7 big things coming up.

8 Q Did you ever hammer out a lower hourly rate or a hybrid or a  
9 straight contingency while you're sitting there in the bar in San Diego?

10 A No.

11 Q Did Mr. Simon get back to you in the next week, two weeks,  
12 with the proposal you had asked for?

13 A No. He never -- he didn't reply. I didn't hear anything else  
14 about it and I sent an email on the 22nd.

15 Q Let's take a look at that right now if we can, okay? This is  
16 Exhibit -- Plaintiff's Exhibit 3.

17 MR. GREENE: The first page, Judge. There's only one page  
18 of that.

19 THE COURT: Yeah. Let me just get back to it, Mr. Greene,  
20 okay?

21 BY MR. GREENE:

22 Q So I'm at -- I'm at techno dummy, at best. Up at the top left  
23 there's FW colon. What's your understanding of what that means in  
24 email terminology?

25 A It means he's forwarded the email.

1 Q To you?

2 A No. Out of -- my guess would be to James Christensen.

3 Q No, no, no.

4 THE COURT: That's what that means, Mr. Greene.

5 MR. GREENE: No. I'm am dumb, not quite that dumb.

6 BY MR. GREENE:

7 Q But is this the label that you had put on this email when you  
8 sent it to Mr. Simon?

9 A Yeah. I wrote Contingency in the subject line.

10 Q Right there?

11 A Correct.

12 Q What did Mr. Simon communicate with you, if anything, at  
13 the bar in San Diego until August 22nd of 2017 following your discussion  
14 in the bar about a contingency fee --

15 A About this --

16 Q -- or anything fee related?

17 A He hadn't -- he hadn't explained anything about this topic.

18 And I was coming up to the point where I needed to think about how to  
19 get more money, what options I was going to -- going to have to take.

20 And so, I thought I'd email him and see if this a dead deal or not.

21 Move on. If I can't do it, that's fine, I don't care. I would just keep paying  
22 the 550. I'd borrow the money. I'd likely have to sell some assets if the  
23 bills kept accumulating, but nothing was responded to.

24 Q First line, We never really had a structured discussion about  
25 how this might be done. Do you read that?

1           A     Yes.

2           Q     What were you talking about? Tell the Judge.

3           A     We had a free form discussion in the airport. I wanted a  
4 structured discussion, something like this with the levers that you could  
5 change different amounts up and down to make the same end result. I  
6 just wanted something in writing. Just put it down on the table, and we  
7 would start negotiating. As soon as I see what you are interested in, it  
8 might just be no way, we'll never come to agreement, your value is too  
9 low compared to my risk reward, but at least it would start a  
10 conversation and get this to a head.

11          Q     If Mr. Simon would have presented something in writing to  
12 you that said 250 an hour and 25 percent contingency on the outcome of  
13 the case, what would have been your response?

14          A     No, that's not the right lever. For me the risk reward at that  
15 point's not good. Give me something where I can pay more of it back is  
16 what I would have replied. But it would just start a conversation. And,  
17 you know, if we can't, we would just move on, it's fine.

18          Q     You were willing to do something, were you not, if  
19 something that was palpable would have been proposed?

20          A     Definitely. Any -- anything. I was open to discussion on it.

21          Q     But what was proposed?

22          A     Nothing.

23          Q     Do you -- have you heard the arguments that have been  
24 made, Brian, by very good lawyers on the other side that have portrayed  
25 this statement as meaning that you never had a structured discussion

1 about attorney's fees to begin with; have you heard that?

2 A Yes.

3 Q What's your response to that?

4 A I don't really follow their logic, but we have disagreements  
5 with almost every sentence. The sentence to me clearly says one thing.  
6 They're interpreting it -- I don't even see how you get that from those  
7 words.

8 Q Did you ever have -- what, if any, structured discussion did  
9 you have with Mr. Simon about fees ever?

10 A At the start of the case we had a very -- a very simple  
11 agreement that had been ongoing for two years, 550 bucks an hour, as  
12 simple as could be. This was going to be more complicated and require  
13 some negotiation and may or may not have ever got done, but I was  
14 open to negotiating.

15 Q The next sentence, I am more that -- It looks like you're  
16 having a day then like I'm having today. I am more than happy -- you  
17 probably meant to say than, right?

18 A Yes.

19 Q I am more than happy to keep paying hourly. Is that a true  
20 statement?

21 A Yes.

22 Q Is that what happened?

23 A Yes, it is.

24 Q But if we are going for punitive, we should probably explore  
25 a hybrid.

1           A     Yes.

2           Q     What did you mean by that?

3           A     Some combination of three leaders -- levers that worked for  
4 him and worked for me that, you know, get some downside if we don't  
5 get what we all would think that we got or if we had vastly different  
6 opinions on what the outcome was, that would be very valuable  
7 information for me to know because I was dumping so much money into  
8 this lawsuit, I was getting very nervous.

9           So, if my lawyer wasn't willing to do something like this, that  
10 would tell me about what he thought the judgment could be in the best  
11 case scenario. That's information, too. I was just looking for a proposal.

12          Q     What kind of hybrid were you looking for; what would have  
13 tickled your fancy? Not using the word levers, that's not -- I mean that's  
14 just maybe not as common to us in this courtroom. Do you have other  
15 words that would describe a satisfactory hybrid that would have worked  
16 if Danny would have ever proposed it back then?

17          A     Something that got me out of Margaret's first loan would  
18 have been very, very interesting to me.

19          Q     And then what?

20          A     And then what? Some percentage on the back end. I'd  
21 rather pay no fees going forward so that it would take any burden off,  
22 and it would continue to keep him involved in the case in exchange for  
23 some percentage of the judgment.

24          Q     How much did you owe Margaret, your mother-in-law, when  
25 this contingency subject was brought up in San Diego?

1           A     Three hundred and something with interest.

2           Q     So how was she going to be paid back through this hybrid  
3 agreement that you would have -- that you had at least entertained for  
4 Mr. Simon?

5           A     Well, he would give me some money back, and I would take  
6 whatever I was stealing in the kitty from my working capital, and I would  
7 pay her right off and get rid of one of the loans.

8           Q     The sentence goes on, Probably explore a hybrid of hourly  
9 on the claim and then some other structure that incents both of us to go  
10 after the appeal that these scumbags will file. What did you mean by  
11 that, Brian?

12          A     I was told around this time that most large judgments would  
13 be appealed, which scared the daylights out of me because I had no idea  
14 how long that takes. And this whole thing was timely. I needed cash to  
15 keep building houses. The whole thing with construction is you need  
16 cash; you need to convert stuff into cash.

17          So, this would get me out of the cash flow disaster of the lawsuit,  
18 paying for the lawsuit, and all the way through the appeal, which could  
19 be a year or two years. It could be anything. It would just give me a lot  
20 of financial flexibility.

21          Q     As a consumer and as the client who owns the case and the  
22 settlement, did there come a time in this case where you believed that  
23 the value of the case had increased?

24          A     Yes.

25          Q     When was that?

1           A     Right after talking to Harold Rogers I found it had gone up  
2 substantially.

3                   THE COURT: When is that, sir?

4                   THE WITNESS: July -- July 26, two thousand -- or I spoke  
5 with him on the 24th, July 24th, 2017.

6 BY MR. GREENE:

7           Q     Did that have anything to do with the number of activations,  
8 initial activations, that were revealed?

9           A     Yeah. I didn't have evidence of each of them, but I had his  
10 numbers of how many were out there, and I had a clear path on how I  
11 was going to start tracking them down to make that spreadsheet that I  
12 made.

13          Q     So when you put in here, Obviously that could not have been  
14 done earlier, since who could have thought this case would meet their  
15 hurdle of punitives at the start, what did you mean by that?

16          A     That was -- the hurdle of punitives was the email on August  
17 1st of 2017 that he had forwarded saying do we meet -- and I  
18 misunderstood it. I thought we had to meet all three hurdles; the malice,  
19 the oppression, and the fraud, I believe they were.

20          Q     Are you saying Ben Miller's email?

21          A     Correct. Ben Miller's email of August 1st. And we had it on  
22 -- I had evidence on all three of them, so I felt yeah, this can meet the  
23 hurdle because I didn't know it was an or between each one. I thought it  
24 was an and. Just my mistake.

25          Q     Okay. But things changed value-wise?



1           A     Definitely.

2           Q     As you were evaluating what to do as a consumer in this  
3 case, did those additional activations have any kind of a swaying factor  
4 with you on what to do?

5           A     As we gathered more and more evidence of the wrongdoing,  
6 it made my percentage in my head, the percentage I put on the chance of  
7 me winning, go higher and higher and higher. And then it gave a lot of  
8 credibility to at this point maybe we can get punitive damages, how are  
9 they valued, everything else, or we can force a settlement.

10          Q     Did these increased number of activations and therefore  
11 meeting the burden of punitives, did that have any bearing upon you as  
12 a consumer on what you would have been willing to entertain from Mr.  
13 Simon in this hybrid fee agreement that you asked him to give to you?

14          A     You know, on this date he would have gotten a much better  
15 deal out of me. As the avalanche of evidence against them kept coming,  
16 and then I just wouldn't have given up as much because I -- you know, at  
17 that point you paid more in the kitty, there's -- to Mr. Simon there's less,  
18 you know, fees left until the light at the end of the tunnel, so why would  
19 you give up more; you've taken all the risk.

20          Q     You mean who?

21          A     Me as Brian Edgeworth, why would I give up more of the  
22 settlement? Every day that goes by, this deal would get a little bit worse  
23 for Mr. Simon because a lot of the risk in the deal has been abated.

24          Q     Finishing up with this email, beginning with "I could," do you  
25 see that?

1           A     Yes.

2           Q     I could also swing hourly for the whole case unless I am off  
3 what this is going to cost. What did you mean before the paren, I could  
4 also swing hourly for the whole case?

5           A     Don't worry about it, keep working on my case, I can get the  
6 money and keep paying you as our original agreement.

7           Q     And did you?

8           A     Yes, I did.

9           Q     Did you have to get additional loans from the date of this  
10 email forward to pay Mr. Simon's invoices?

11          A     Yes, I did.

12          Q     About how much?

13          A     After this date I think I took one more for 200 out.

14          Q     Did you use that money to pay his invoice in full?

15          A     Yes, I did. I received an invoice approximately a month after  
16 this email for \$255,000, some of which were costs and the rest of which  
17 were fees. I don't know the breakdown. And I paid it in full.

18          Q     Let's cover that now before we finish up with this email. Did  
19 Mr. Simon ever provide you with the proposal that you asked for, hybrid  
20 or otherwise?

21          A     Never.

22          Q     What did you get instead?

23          A     A bill -- an hourly bill of \$550 an hour and \$275 per hour for  
24 his associate.

25          Q     Looking at the new superbill of January 2018, what was

1 every entry of that billed out? We already talked about that, 550?

2 A Five fifty an hour for Mr. Simon and \$275 an hour for Mr.  
3 Miller and Ms. Ferrel.

4 Q Any hybrid language in the invoice that you paid?

5 A No.

6 Q Any hybrid invoice in the superbill?

7 A No.

8 Q Any hybrid email that was sent to you?

9 A No.

10 Q Any hybrid letter that was sent to you?

11 A No.

12 Q What did you mean by unless I am off what this is going to  
13 cost; what were you concerned about there?

14 A That's my biggest frustration. He didn't answer the one  
15 question that would allow me to plan or even evaluate if he gave me a  
16 proposal how much more is this going to cost at 550 bucks an hour? I  
17 need to know. I need to plan cash flow because I'm running businesses  
18 that have to keep the working capital above a certain level. I need to  
19 plan in advance. I can't be surprised, especially at this point in time  
20 where I was already stretched.

21 Q How many employees were you employing at the time that  
22 this contingency email was sent to Mr. Simon?

23 A Two hundred and ten world-wide.

24 Q Did their wellbeing factor in at all about your concerns for  
25 knowing what this litigation was going to cost?

1 A Yes.

2 Q How so?

3 A Whenever you pull down your working capital to a certain  
4 point, you put your risk of bankruptcy very high. Most companies go  
5 bankrupt not because they had a big loss that year, it's because they ran  
6 out of money. And you can run out of money in a lot of ways. Mostly  
7 it's when you're draining your working capital. That's when you get low  
8 on working capital, you need to do detailed planning to make sure you  
9 don't run out of cash. And that's what I was trying to do. I just needed --  
10 that's why I kept asking him for bills, too, because I couldn't have  
11 surprises. I couldn't just get a huge bill and then not have the money in  
12 the bank.

13 UNIDENTIFIED SPEAKER: Can I go to the restroom?

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q You talked about borrowing some more money, the next line  
17 down, you went to borrow another 450 from Margaret. Did you read  
18 that?

19 A Yes.

20 Q Is that what happened?

21 A Yeah, except not in the order I wrote. I borrowed -- I signed a  
22 new contract for 200 and 200 for 400 total and I took the first 200 on it.

23 Q Okay. How about sell the house to pay these fees?

24 A I listed both the houses. The house that I was living in -- the  
25 house that I was living in is on the same street as the house that's the

1 spec building. They're two doors apart. So, I listed both houses. The  
2 house with no flood problems overhanging it, I was told would be likely  
3 to sell quicker. We moved out of that house to stage it and get it ready  
4 for sale and moved into the new house.

5 And I had both of them listed. I believe Mr. Simon knew. I'm  
6 basically saying I can get cash from one of these house sales to keep  
7 financing the -- the lawsuit, too. I'm just giving him an open look at my  
8 sources to pay him. And I'm giving him from a negotiation standpoint  
9 where I want to be negotiating another deal, I'm giving him a great look.  
10 I'm laying all my cards on the table. I should be the easiest person to  
11 negotiate whatsoever because you know the other steps I'm going to  
12 take if I don't get a deal with you.

13 Q Finally, well, did you sell any of those two houses?

14 A I sold the 637 St. Croix house in December of 2017 after this.  
15 I sold it for cash because the guy would close in six days and this had  
16 started, and I needed cash.

17 Q This wasn't the flood house you sold, correct?

18 A No. I sold the older house, which is 637. It's two doors down  
19 from the flood house.

20 Q If it had come to that, what would have been involved in  
21 selling the Bit Coin investment to be able to pay Mr. Simon's hourly  
22 fees?

23 A I had already gone to Roger, which was my partner and my  
24 brother and told them that I needed out. I couldn't keep on with them.  
25 And I had already taken my share out, and I sold a bunch to start

1 building the volleyball club. So that money it's like selling a stock, you  
2 can get it within days.

3 Q Is there anything else in this contingency email, Brian, that  
4 was submitted, and you communicated to, Brian, that you hoped for a  
5 response for -- that you were communicating to Mr. Simon hoped to get  
6 a response for and didn't?

7 A The last line basically I'm saying I doubt we'll get Kinsale to  
8 settle for enough to really finance this. I had a theory like maybe we can  
9 squeeze Kinsale to settle because we're doing all their subrogation work  
10 for them. They're not even putting up a fight in this.

11 So, they're paying nothing to subrogate the claim that everyone's  
12 saying they're responsible for and we're suing and enforcing the  
13 warranty for them on my dime.

14 So maybe I can squeeze them, get them to settle, and use that  
15 money to pay back some of the loans, but I'm just saying it's not enough  
16 to finance the rest of the hourly agreement because the first 750 I pay  
17 Colin and Margaret back and get rid of the two loans and Kinsale, why  
18 would they settle to us for more than a million? I believe their insurance  
19 policy was like a million bucks. It just -- it seemed unlikely.

20 Q Brian, at any time during your relationship as a client of Mr.  
21 Simon, the attorney, did he ever advise you that he wasn't billing or  
22 including all of his invoices all of the time that he was working on your  
23 case?

24 A No. That really wouldn't make sense because part of the  
25 claim against Lange was for attorney's fees. So, this is where it just

1 completely defies logic. Why would you under-bill on every bill when  
2 the claim file is being presented again and again and again to the court  
3 with attorney's fees listed on it every time it's getting submitted to the  
4 court. It doesn't make sense. It's a total opposite.

5 What you'd really do is you'd give me a bill and say that you don't  
6 have to pay it. And then the fight would be in my deposition would have  
7 been, but you haven't paid these bills. No, but I owe them, so they're  
8 true costs and damages. The exact opposite is being argued, which is  
9 counterintuitive. It's to my detriment, not to my advantage. It doesn't  
10 make sense at all.

11 Q In English, if Danny's -- Mr. Simon's invoices had been for  
12 more money and those had been produced to Lange as a consumer, as  
13 the owner of this claim, what do you believe it would have done to the  
14 value of it?

15 A The value of the claim goes up because my attorney's fees  
16 listed on the claim are higher.

17 Q At any time did Mr. Simon tell you during your course of  
18 attorney client relationship with him, that Ms. Ferrel's entries, her time in  
19 the original four invoices, were incomplete?

20 A No.

21 Q That they were going to be adding to those?

22 A No.

23 Q That more was to come?

24 A No.

25 Q Any words to that effect?

1           A     No.

2           Q     Did anybody at Mr. Simon's office ever explain to you  
3 between May of 2016 through the settlement of this Viking litigation that  
4 additional time in these original four invoices were coming, so get ready  
5 for it?

6           A     No.

7           Q     What would have been your response if that would have  
8 been something that Mr. Simon would have advised you?

9           A     This would have been a very difficult conversation because  
10 I'd want to understand exactly how we were going to go back to Viking  
11 and to Lange and say whoa, whoa, whoa, sorry, the entire claim's  
12 changing, I'm going to add in the most recent, up until the end of -- of  
13 September 22nd, 2017, he's added \$300,000 in billing.

14           So, I want to know how we're going to tell and how I'm going to be  
15 assured that I'm even going to get the money back when we just  
16 doubled our legal fees after for 14 months not having doubled our legal  
17 fees and I don't know how many filings with the court not having double  
18 our legal fees. The extra \$300,000 would essentially double the legal  
19 fees. I just -- it would be a very hard conversation.

20           Q     Brian, you've given testimony that you assisted Mr. Simon's  
21 office in preparing some of the spreadsheets for the calculation of  
22 damages; is that a fair summary of what Mr. Christiansen asked you?

23           A     Probably every spreadsheet.

24           Q     And what was the basis -- how did the conversation come up  
25 at Mr. Simon's office? Hey, Brian, would you do this for us? How did



1 that come about?

2 A At some point he told me I had to make a list of all my  
3 damages. And I put in an excel because damages were always  
4 increasing. You know, we were repairing the house, so it needed to be a  
5 live document.

6 Q You followed his advice?

7 A Correct.

8 Q You did that?

9 A Correct.

10 Q Let me show you a document, as well. It's going to be  
11 Exhibit 8 and it is --

12 MR. GREENE: I didn't have your pages.

13 MR. CHRISTENSEN: Can we see it, John?

14 MR. GREENE: Yeah, sure. That's -- that's the calculation of  
15 damages that we understand was included and I believe the eleventh  
16 supplement that was served on --

17 MR. CHRISTIANSEN: What date?

18 MR. GREENE: Yeah, the September 22nd --

19 MR. CHRISTIANSEN: Thanks.

20 MR. GREENE: -- of 2017. What I can do for ease, Your  
21 Honor, is just add bates numbers to the bottom of this, since they  
22 weren't stamped on this. This 8 under Plaintiff's exhibit with the 16.1  
23 disclosures and --

24 THE COURT: This is Plaintiff's 8?

25 MR. GREENE: Yes.

1 THE COURT: Okay.

2 MR. GREENE: And calculations of damages we left off at  
3 page 77, so if I just did 078.

4 THE COURT: Okay.

5 MR. GREENE: And 079, that will cover the two pages. Only  
6 one page is relevant, though, Judge.

7 THE COURT: Okay. Mr. Christiansen, do you have any  
8 objection to that?

9 MR. CHRISTIANSEN: I don't think so, Judge, but I didn't  
10 memorize what he was going to show.

11 [Counsel confer]

12 THE COURT: You'll just have to provide the Court with a  
13 copy of that, Mr. Greene.

14 [Counsel confer]

15 MR. GREENE: Judge, do you want me to end like right away  
16 for the day?

17 THE COURT: How much more do you have?

18 MR. GREENE: More than the five minutes.

19 THE COURT: More than the five minutes. So, I'd just like to  
20 go until 5 and get in as much as we can, so that we can --

21 MR. GREENE: Okay.

22 THE COURT: -- it's okay

23 MR. GREENE: Sorry, Your Honor.

24 [Counsel confer]

25 THE COURT: Well, are they in the binder?

1 MR. CHRISTENSEN: Your Honor, I have a copy of the  
2 Defendant's exhibits here and they appear to be -- I'm sorry, Plaintiff.

3 THE COURT: Okay.

4 MR. CHRISTENSEN: I'm getting confused. Edgeworth.

5 THE COURT: Okay.

6 MR. CHRISTENSEN: Edgeworth Exhibit 8.

7 THE COURT: 8. Okay.

8 MR. CHRISTENSEN: And I think what Mr. Greene just  
9 showed is bated Edgeworth, eliminating preceding zeros, 1774 and 1775.

10 THE COURT: Mine don't go up that far. Mine, first of all, say  
11 exhibits. They don't say Edgeworth on the bate stamps.

12 MR. CHRISTENSEN: True.

13 THE COURT: Mine say exhibits and mine only go to 77. So  
14 are we talking about something different, because my Exhibit 8 says  
15 exhibit with a bate stamp. It doesn't say Edgeworth.

16 MR. CHRISTENSEN: Well, it does say Edgeworth on -- on the  
17 one that I was provided by -- that was provided by Vannah --

18 THE COURT: Right. I'm just saying they must have given  
19 you a different one, Mr. Christensen, because the one that they gave to  
20 the Court -- Mr. Edgeworth, on the bottom of your page on Exhibit 8  
21 does it say exhibit?

22 THE WITNESS: Exhibit 08 --

23 THE COURT: Yes.

24 THE WITNESS: -- and then 000078 and 79.

25 THE COURT: Right. That's the new ones. Okay, in the

1 binder.

2 THE WITNESS: In this binder, yes.

3 THE COURT: On your Exhibit 8 it says 001? I mean it says  
4 exhibit on the bottom?

5 THE WITNESS: Yeah. It says exhibit, too. Do you want to  
6 see it?

7 THE COURT: No, no. Okay.

8 THE WITNESS: Exhibit 08.

9 THE COURT: So, mine says exhibit and so does his, so that's  
10 the one. So, I think we were reading off something different, Mr.  
11 Christensen.

12 MR. CHRISTENSEN: Well, it may very well be. They look an  
13 awful lot alike, though, but I do --

14 THE COURT: Because what I have appears to be the  
15 documents that were filed with the Court, the 16.1 disclosure?

16 MR. CHRISTENSEN: Yes. Yes, Judge.

17 THE COURT: Okay.

18 MR. GREENE: And we received these from Mr. Christensen.  
19 He was kind enough to give us all of the 16.1 disclosures. All I'm really  
20 having him talk about on this particular line of questioning was the  
21 category under lawyer. There's probably about eight times that lawyers  
22 were mentioned and the invoice dates, so.

23 THE COURT: Okay. So, do you guys have any objection to  
24 me just adding this as page 78 and 79 to what the Court has?

25 MR. CHRISTENSEN: Your Honor, subject to us confirming

1 this, we don't have an objection at this time. I think this has just been  
2 re-Bated --

3 THE COURT: Okay.

4 MR. CHRISTENSEN: -- for whatever reason, but more likely  
5 than not -- if we can have a copy of it, we'll check it tonight.

6 THE COURT: Okay. And we'll need a copy, as well, Mr.  
7 Greene --

8 MR. GREENE: Of course.

9 THE COURT: -- because the Court will need to add it to the  
10 exhibit that's officially the Court record.

11 MR. GREENE: I will do that, Judge.

12 THE COURT: Okay.

13 And so, I'll just ask, do you have like five more minutes with  
14 him about this?

15 MR. GREENE: I can just -- I can leave off on this particular or  
16 I can quit.

17 THE COURT: Okay, yeah. If you could just put it on the  
18 overhead, though, so I can see it because I don't have a copy of what  
19 you're about to show him.

20 MR. GREENE: It's probably going to take more than a couple  
21 of minutes to get through this, though. Should we just wait, and I can  
22 bring everything in.

23 THE COURT: And then we'll all have our own copies. Yeah,  
24 that's fine, Mr. Greene. And then if you could just make copies tonight  
25 for everyone and then we'll just add them in tomorrow. And I have a

1 criminal calendar tomorrow morning, so we will start at 10:30.

2 UNIDENTIFIED SPEAKER: Yes, Your Honor.

3 THE COURT: My criminal calendar will be over.

4 UNIDENTIFIED SPEAKER: See you tomorrow morning.

5 Thank you, Judge.

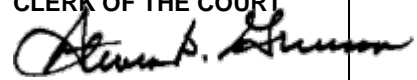
6 THE COURT: Okay. Tomorrow morning at 10:30.

7 [Proceedings concluded at 5:00 p.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
19 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

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23 \_\_\_\_\_  
Maukele Transcribers, LLC  
24 Jessica B. Cahill, Transcriber, CER/CET-708  
25



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

CASE NO. A-19-807433-C

DEPT. NO. 24

Plaintiffs,

vs.

**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 2**

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.

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 2.

Exhibit	Description	Page Numbers
C.	Recorder's Transcript of Evidentiary Hearing-Day 5 (September 19, 2018)	0181-0366
D.	Laurel Eaton v. Veterans Inc.-Order and Memorandum on Defendant's Motion to Dismiss (Docket No. 16), filed January 16, 2020.	0367-0372

DATED this 24<sup>th</sup> day of September, 2020.

**MESSNER REEVES LLP**

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**CERTIFICATE OF SERVICE**

On this 24<sup>th</sup> 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 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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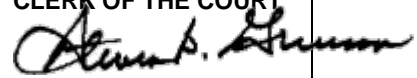
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**“EXHIBIT C”**



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C  
DEPT. X

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

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

1 Las Vegas, Nevada, Tuesday, September 18, 2018

2

3 [Case called at 11:10 a.m.]

4 THE COURT: -- Edgeworth Family Trust versus Lange  
5 Plumbing as well as Edgeworth Family Trust versus Daniel Simon.

6 Good morning, counsel. It seems like it's been so long since  
7 we were all together.

8 GROUP RESPONSE: Good morning, Your Honor.

9 THE COURT: Are you guys ready?

10 MR. CHRISTENSEN: Yes.

11 MR. VANNAH: We are.

12 THE COURT: Okay.

13 MR. CHRISTENSEN: Judge, I have one quick matter before  
14 we call -- or I think it's John's witness first, right. And that was, I don't  
15 know if the Court recalls during the course of the last hearing a couple of  
16 times with Mr. Edgeworth, I suggested to him that he was not -- he was  
17 looking to counsel for answers. And Mr. Vannah took issue with me and  
18 I told him I apologize, and I went forward.

19 I went back and actually looked at an issue that's sort of  
20 central to this case and that is the timing of what the word outset means.  
21 You remember that whole cross of what outset means?

22 THE COURT: Uh-huh.

23 MR. CHRISTENSEN: And so, I got about a 15 second clip I'd  
24 like to show the Court before we get going.

25 THE COURT: Okay.

1 MR. CHRISTENSEN: This is my cross of Mr. Edgeworth on  
2 that issue and take a look at Mr. Greene.

3 [A Videotape played at 11:11 a.m., ending at 11:11 a.m.]

4 MR. CHRISTENSEN: See him shake his head, Your Honor?

5 THE COURT: I did.

6 MR. CHRISTENSEN: And so, I just want to point that out, so  
7 we don't have a repeat today with Mrs. Edgeworth.

8 MR. VANNAH: Are we not allowed to move our heads? I'm  
9 sorry; I didn't see it. I can't see that well.

10 MR. GREENE: Let me address that. Nobody has ever called  
11 into question my integrity. I don't coach witnesses. I don't do things the  
12 wrong way. I take extreme offense to that type of depiction of me. I  
13 practice above board and that is wrong for them to have asserted that. If  
14 my head moved, whatever; I did not coach my witnesses. I will not do it  
15 in the past, the present or the future. Your Honor, please understand  
16 that.

17 THE COURT: And I do, Mr. Greene. And I mean, this is  
18 where we are. I mean, Mr. Edgeworth testified for an extremely long  
19 period of time. So today we're going to let Mrs. Edgeworth testify. Mrs.  
20 Edgeworth, you're going to answer the questions honestly, to the best of  
21 your memory, to the best of what you remember and we're going to  
22 proceed on that today, okay.

23 MR. CHRISTENSEN: Understood, Your Honor.

24 MR. GREENE: Thanks, Judge.

25 THE COURT: Okay. Are you guys ready to call her?

1 MR. GREENE: Yes.

2 MR. CHRISTENSEN: Yes, ma'am.

3 THE COURT: All right. Mrs. Edgeworth. Okay. And as she's  
4 coming up, I want to talk to you guys about timing in the sense of timing.

5 MR. CHRISTENSEN: John and I both agreed we were going  
6 to ask you about that too when you came in, Your Honor, because when  
7 you scheduled today you sort of were being helpful to me thinking I had  
8 to go back upstairs and be in the murder trial with Judge Herndon, which  
9 I'm in, but he agreed to take today dark I think at your request.

10 THE COURT: He did do that on Friday. Because I spoke with  
11 Judge Herndon about a day or two right after we finished this hearing  
12 last time and I had asked him if he would go dark with it and he said  
13 12:30. So I -- we were under the impression this would be over by 12:30,  
14 you would leave, and then there would be closing after you were gone.

15 MR. CHRISTENSEN: Yes, ma'am.

16 THE COURT: I spoke with Judge Herndon again on Friday  
17 because he was under the impression that you were doing the closing,  
18 so he was basically saying, I'll do whatever you guys want me to do. I  
19 just need to know so I can tell my jury and so I can plan accordingly. So  
20 yes. He is willing to be dark today so that you can be here.

21 But in regards to scheduling, I wanted to let you guys know,  
22 because as we were waiting for Judge Herndon, because he's in trial  
23 right now. So, I had to wait for him to take his lunch break to return my  
24 calls on Friday. I had my law clerk reach out to Mr. Vannah's office, and I  
25 said, talk to Mr. Greene or Mr. Vannah, not an assistant, because I



1 wanted some sort of timing as to whether 12:30 would work for  
2 everybody or how it was going to go. And my law clerk was under the  
3 impression that this testimony from Mrs. Edgeworth is going to take  
4 three to four hours.

5 MR. VANNAH: With cross-examination there's no doubt.

6 THE COURT: And so, I mean, this is where we are. I mean,  
7 this hearing has been going on for several days. This hearing is ending  
8 today. So, if we get up and until 4:00 -- you guys have the remainder of  
9 today. And my staff has to take a break for lunch at some point, but  
10 other than that we have the whole day. But if it's 4:30 when you guys  
11 get done questioning her, then we're going to have to close in writing,  
12 because I don't want this to keep going on. I'm not going to remember  
13 what everybody said. I'm not going to remember what happened and  
14 that's not fair to anybody.

15 So, if we don't have time to do oral closing arguments today  
16 this -- we will close in writing by the end of the week in this case.

17 MR. VANNAH: I have a suggestion anyway in that regard.

18 THE COURT: Okay.

19 MR. VANNAH: Jim and I talked about it, and I don't think we  
20 care one way or another. This is the kind of the case, there's no way  
21 we'd be able to do closings today no matter what happens. So why  
22 don't we just close in writing? Because this is a document intensive  
23 case. It's --

24 THE COURT: And either way is fine with me. I didn't know if  
25 you guys would prefer that, but I just wanted to let you know that this is

1 the only opportunity I have this week for you guys to get this done. I  
2 have hearings for every day of the remainder of the week and I don't  
3 want to pass this out until the middle of October when I have forgotten  
4 what everybody's said.

5 MR. VANNAH: It's a little more work on us, but there's no  
6 way -- there's no possible way to do it.

7 THE COURT: Okay.

8 MR. VANNAH: And so, I -- and Jim said he has no vested  
9 interest one way or another. I've prepared a closing, but I don't see how  
10 I can even close within two hours.

11 THE COURT: Well, yeah. And I'm not going to let one side  
12 go and not the other side.

13 MR. VANNAH: Right.

14 THE COURT: So, if there wasn't time for them. So, what  
15 we'll do right now is we'll plan on taking Ms. Edgeworth today -- Mr.  
16 Christensen, I'm so sorry; I didn't even hear from you. Do you have  
17 anything to add?

18 MR. CHRISTENSEN: I do, Your Honor.

19 THE COURT: Okay.

20 MR. CHRISTENSEN: I told Mr. Vannah I don't have a vested  
21 interested, but I also said let's see what happens. If we run through this  
22 thing in an hour, which agreed, may be a little, you know --

23 THE COURT: It may be a little optimistic on your part but --

24 MR. CHRISTENSEN: That may be a fantasy on my part. I  
25 don't know.

1 THE COURT: -- we can always hold that hope.

2 MR. CHRISTENSEN: But we'll just see what happens, and we  
3 can address it afterwards. I've got a closing. I can shorten it down; I can  
4 go on. You know, whatever the Court wants.

5 THE COURT: And I'm totally fine with that. I know I plan to  
6 go until like 12:30, start with her, and then we'll break for lunch, and then  
7 we'll come back. And I'm totally fine with addressing where we are  
8 when we finish with her as far as timing.

9 MR. CHRISTENSEN: Okay. Thank you, Your Honor.

10 MR. VANNAH: It just seems like we also have, you know,  
11 with the legal arguments and everything else, tying it all together, it just  
12 makes a lot of sense to -- I thought that I could -- you know, the facts are  
13 the facts --

14 THE COURT: Right.

15 MR. VANNAH: -- pretty much. I mean, there's some devil in  
16 the details as everybody's said. And there are a lot of details that need  
17 to be ferreted out. It'd take forever to do a closing on this case.

18 THE COURT: No. And I totally agree with that. And so, I'm  
19 okay with just addressing. I'm not as optimistic as Mr. Christensen that  
20 we'll get anywhere near closing today, but if for some reason we can  
21 address that this afternoon when we get there.

22 MR. VANNAH: Let's put it this way. If I did closing, I know  
23 you don't want to do that, there's no way I could -- I know how many  
24 questions he's got, I know how long it's going to take. I assume there's  
25 going to be some cross-examination. And with my closing I would leave

1 them no time at all. And I know you don't want to do that so.

2 THE COURT: No. And I appreciate -- and Mr. Greene was  
3 very candid with my law clerk. When he thought there was going to be  
4 more as he was prepping, he let her know that it would take more time.  
5 So, I'm very well aware of how long you guys estimate this is going to  
6 take, but we'll just see where we are when we finish with her.

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 THE COURT: Okay. If you can raise your right hand, ma'am.

9 ANGELA EDGEWORTH, PLAINTIFF'S WITNESS, SWORN

10 THE CLERK: Thank you. Please be seated. State and spell  
11 your name for the record.

12 THE WITNESS: Angela Edgeworth, A-N-G-E-L-A Edgeworth,  
13 E-D-G-E-W-O-R-T-H.

14 DIRECT EXAMINATION

15 BY MR. GREENE:

16 Q May I call you Angela?

17 A Yes.

18 Q Please introduce yourself to the Court and tell Judge Jones a  
19 little bit about yourself.

20 A I'm Angela Edgeworth. I live in Henderson. I've been a  
21 resident of Henderson since 2006. My husband and I are very active in  
22 the community. I'm the mother of two teenage girls. I am currently the  
23 president and cofounder of pediped Footwear.

24 Q Okay. Tell us a little about your family background if you will  
25 please.

1           A     I was born in Canada and with my parents two immigrants,  
2 and basically grew up in Canada and moved to the U.S. Lived in Taiwan  
3 for a few years and moved to the U.S. a little bit more than 20 years ago.

4           Q     Perfect. Are you are married?

5           A     Yes, I am. Happily.

6           Q     That man back there, Brian?

7           A     Yes.

8           Q     Okay. When did you guys meet?

9           A     We met in University. So, I met Brian in 1992. So, I've  
10 known him for more than 25 years.

11          Q     What did you study in college, Angela?

12          A     Business administration and actuarial science.

13          Q     What are your majors?

14          A     Business administration and actuarial science.

15          Q     Gotcha.

16          A     Yeah.

17          Q     Would you please share what your career background has  
18 been since you graduated?

19          A     Sure. I worked in California, Costa Mesa in an art gallery for  
20 a few years, and then I went to Taiwan. I started my own cosmetics  
21 company there which I sold. I came back, and I worked in the family  
22 business for about eight years. And before when we got married my  
23 husband and I took over the family business. And we also started  
24 pediped Footwear at the same time, which was around 2004. So, I've  
25 been an entrepreneur for more than 20 years.

1           Q     And what do you do for a living now?

2           A     I'm president and cofounder of Pediped Footwear. And we  
3 make children's shoes for basically newborns up to age 12. And we've  
4 been recognized by the American Podiatric Medical Association and  
5 we've won numerous awards in the industry for quality and design  
6 excellence.

7           Q     Do you have any time for hobbies and interests?

8           A     Yes. I love to spend time with my family and my friends, and  
9 I take -- I partake in all of my daughter's volleyball activities and we  
10 travel.

11          Q     An issue has arisen about what -- how you and Brian honor  
12 your obligations. So, let's describe for a moment on that topic some of  
13 your charitable work that you do.

14          A     Sure. I currently sit on three boards. So, the first board I sit  
15 on is the Moonridge Foundation. It was founded by Julie Murray and  
16 Diana Bennett. They started Three Square, and the other board  
17 members include Staci Alonso who's the highest ranking SPP for Station  
18 Casinos, Punam Mathur, Marlo Vandemore who's the CFO for Bonotel.  
19 That foundation, basically what it does is we administer funds. So, for  
20 example, the October 1 fund, Zappos Cares, Downtown Cares, and we're  
21 responsible for holding two philanthropy summits a year, one in Las  
22 Vegas and one in Reno.

23               Also, I sit on the board for the International Women's Forum,  
24 which is an amazing and a collected group of women in town. It  
25 includes -- the members include Mayor Debra March, Mayor Goodman,

1 Nancy Houssels, Diana Bennett, Chief Justice Miriam Shearing, Jeanne  
2 Jackson who was the former president of Nike and the global initiative of  
3 IWF is to promote women in basically in leadership positions in the  
4 country and around the world.

5 I'm also on the committee which awards scholarships for the  
6 Carolyn Sparks award. So, we recently awarded two scholarships. One  
7 to Kelly McMahon who's the highest ranking female police officer in LVPD  
8 and who her husband is the undersheriff. And also, Marissia Bacha  
9 (phonetic) who is the director of Las Vegas Cares.

10 I also sit on the committee for the -- basically the nominating board  
11 committee for that organization as well. We also have scholarships for  
12 WRIN, the Women's Research in Nevada. And we recently hosted a  
13 meeting to promote women on corporate boards at the Boyd School of  
14 Law.

15 Thirdly I'm on the advisory council for Vegas Aces, which is a  
16 nonprofit my husband and I started. We created that volleyball gym  
17 when our girls were young and then we were practicing basically in  
18 squash courts. So, my husband converted a gym space in our  
19 warehouse to a volleyball facility. It's always been his dream to create  
20 a --

21 MR. CHRISTENSEN: Objection as to what somebody else's  
22 dream is. your Honor, that's hearsay. And they asserted the marital  
23 privilege in the last hearing so they can't talk -- she can't now talk about  
24 what her husband and her have ever talked about. They asserted and  
25 instructed Mr. Edgeworth to not talk about anything between the two of

1     them.

2                   MR. GREENE: We didn't instruct to talk nothing between the  
3     two of them. If he wants to give a specific example as to a question that  
4     he asked --

5                   MR. CHRISTENSEN: Sure.

6                   MR. GREENE: -- that something was allegedly not provided,  
7     most assuredly then perhaps that could be limited to that. Or the option  
8     is if he wants to ask Brian about some question that he had about a  
9     marital privilege we can bring him right back up for five minutes and  
10    answer that question too.

11                  MR. CHRISTENSEN: No, Your Honor. They made the  
12    decision to assert the privilege. It was done on the 28th of August at  
13    12:25 p.m. Mr. Vannah asserted the privilege, marital privilege and  
14    instructed Mr. Edgeworth to not answer my questions about  
15    conversations between his wife and himself about her seeing attorneys.  
16    They asserted the privilege. Presumption attaches when you do that and  
17    instruct your client not to answer. And you can't use the privilege as a  
18    shield and a sword as the Court knows.

19                  MR. GREENE: It was a privilege about what communications  
20    had been happening between attorneys and clients. That's the whole  
21    gist of that conversation. Mr. Edgeworth testified numerous times as to  
22    what he and his wife were talking about. This was -- they're plaintiffs in  
23    this case. They both have a vested interest in this case.

24                  So, this case was about them. So, they've already shared  
25    information that they have talked about between each other. So, if we



1 want to limit the spousal privilege to discussions between attorneys then  
2 that's exactly what the privilege perhaps might have attached to at the  
3 time that it was raised. That's not the law.

4 MR. CHRISTENSEN: Judge, just let me read Mr. Vannah's  
5 objection. "You are not allowed to know what his wife told him." That's  
6 from Robert Vannah. That is an assertion of the privilege, instructed his  
7 client to not answer what -- Mr. Edgeworth what Mrs. Edgeworth told  
8 him. The assertion of the privilege is done once they've done it.

9 I wasn't allowed to inquire as to anything Mr. Edgeworth and  
10 his wife talked about because Mr. Vannah asserted a privilege which he  
11 has every right to do. It was a valid assertion. Marital privilege exists in  
12 Nevada. There's two kinds as the Court knows. Once they assert it they  
13 are judicially estopped from thereafter having the spouses talk about  
14 what they spoke with each other about. That's the law. I didn't assert  
15 the privilege, they did.

16 MR. GREENE: It was a limited assertion of the privilege as to  
17 discussions between attorneys. We had that conversation. That was a  
18 contested issue, Your Honor.

19 THE COURT: And. Mr. Christensen, do you have the  
20 transcript? Because I remember Mr. Edgeworth asserting the privilege,  
21 but I don't remember the question that he was asked or exactly all of the  
22 term -- the argument that was made on that.

23 MR. CHRISTENSEN: I think I have the video, Judge, that I  
24 can play for you actually.

25 THE COURT: Please do, because I --

1 MR. CHRISTENSEN: I actually have that.

2 THE COURT: -- I remember the privilege but I don't  
3 remember --

4 MR. CHRISTENSEN: And I can read it to you.

5 UNIDENTIFIED SPEAKER: Here is.

6 MR. CHRISTENSEN: You got it, Ash?

7 UNIDENTIFIED SPEAKER: Yeah.

8 MR. CHRISTENSEN: Go ahead and play it for Her Honor.

9 UNIDENTIFIED SPEAKER: Oops, I'm sorry. Hold on.

10 [A Videotape played at 11:25 a.m., ending at 11:25 a.m.]

11 MR. CHRISTENSEN: So, you see, Your Honor, I asked for  
12 communications. Mr. Vannah under the spousal privilege instructed him  
13 to not answer those communications between him and his wife. Your  
14 Honor then inquired did he have, Mr. Edgeworth, any independent  
15 knowledge separate and aside from his wife. He said no and I was  
16 forced to end my examination.

17 So that's the shield that they rightfully assert. They have a  
18 right to assert marital privilege. They now can't use it as a sword and  
19 have Mrs. Edgeworth come in to try to clean up what they wouldn't let  
20 Mr. Edgeworth talk about. Just can't do it. They're judicially estopped.

21 THE COURT: Mr. Greene.

22 MR. GREENE: Everything about that line of questioning had  
23 to do with conversations that the parties had with attorneys.

24 THE COURT: Right. But you guys weren't asserting the  
25 attorney/client privilege. You asserted the spousal privilege in regards to

1 conversations between herself and her husband about these attorneys  
2 that they talked to and what was said to these attorneys.

3 MR. GREENE: That's because he was trying to get at the  
4 discussions that Angela had with attorneys. I'm trying to shield them  
5 from being able to get into protected communications that the clients  
6 and attorneys have.

7 THE COURT: Right. And I mean and had you guys said  
8 attorney/client privilege then I totally understand that, but you guys  
9 asserted a spousal privilege, which is a conversation he had with her.  
10 That -- I mean, I understand that Mr. Christensen's line of questioning  
11 when you asserted the privilege was about attorneys, but you didn't  
12 assert an attorney/client privilege. You asserted a spousal privilege.

13 MR. GREENE: And Judge, each individual in a marriage  
14 holds the privilege. So, she doesn't need to assert the privilege and  
15 we're not asserting it on her behalf. She can prevent her husband from  
16 discussing things that they talk about if she chooses. He can prevent her  
17 if he exercises the privilege. She hasn't exercised the privilege. She  
18 does not exercise the privilege.

19 We're not invoking the privilege on her behalf. He has plenty  
20 of opportunity to cross-examine Ms. Edgeworth, and he's going to, on  
21 any topic that he wants. So, holder of the privilege is a viable issue here.  
22 She holds it too. She has not invoked it.

23 MR. CHRISTENSEN: Judge, actually in Nevada the rules  
24 regarding privilege are different than what Mr. Greene is citing to, which  
25 is the federal rule on privilege. There is the holder, and there's the

1     asserter privilege. They just across the board asserted marital privilege  
2     and ended my examination. My examination wasn't, tell me what the  
3     lawyer said. My question was, do you know one way or another if your  
4     wife talked to lawyers before she met with the Vannah firm and after you  
5     quit listening to Mr. Simon.

6                 That's not an attorney privilege question. Did she talk to  
7     lawyers and who were they? Marital privilege, don't let him answer, you  
8     saw, shut me down. Ended my cross. They cannot -- the law is  
9     abundantly clear. They are estopped from now coming in and trying to  
10    unwind what Mr. Edgeworth, at the advice of counsel, did with Mrs.  
11    Edgeworth. She can't talk about what her and her husband discussed.

12                THE COURT: So, I mean, she -- you asserted the privilege  
13    with him, so how can she talk about their conversation?

14                MR. VANNAH: She has her own privilege.

15                MR. GREENE: Yes. She holds her own privilege.

16                THE COURT: So why would he then not be able to talk?  
17    Why would you guys object to him talking about the exact same thing  
18    that you're now asking her to talk about?

19                MR. GREENE: I'm asking --

20                THE COURT: It was objectionable when Mr. Christiansen  
21    asked him about it, but now you want her to talk about?

22                MR. VANNAH: Yes.

23                MR. GREENE: Yes. And I'm also not asking her about what  
24    discussions Brian had with attorneys before we got involved in the case.  
25    It's a totally different -- that was a narrow focus, narrow pointed series of

1 questions. It has nothing to do with this line of questioning that I'm  
2 asking Angela about. Yes. She does hold the privilege. She's not  
3 invoking it.

4 MR. VANNAH: John, if there's any ambiguity -- I mean, if  
5 you want to him back on the stand and ask anything they want about  
6 what they talked about, I don't care.

7 MR. GREENE: Yeah. We presented that option as well.

8 MR. VANNAH: Well, tell her.

9 THE COURT: Well, I understand that. But you guys have  
10 already asserted the privilege with him so you can't now go back and  
11 say we're going to remove it, and we're going to call him back to testify.  
12 I mean, you asserted the privilege and now you're basically saying, we  
13 wanted you to prevent Mr. Christensen from letting him talking about  
14 this, but we want her to talk about that exact same thing.

15 MR. GREENE: No, Your Honor. I'm not asking her about  
16 conversations that Brian had with her about lawyers that he spoke to  
17 prior to the time that we got involved.

18 THE COURT: So, it's your position the privilege only applies  
19 to her talking to him about lawyers that she talked to.

20 MR. GREENE: That's the objection that we were -- we tried to  
21 get the objection sustained on attorney/client privilege. And we also  
22 invoked the privilege on attorney discussions that they had -- or  
23 discussions they had with attorneys before we got involved. That was  
24 the narrow focus of this question. That's the only aspect of the privilege  
25 that was asserted pertaining to Brian's testimony, that's it.

1 MR. CHRISTENSEN: No, Judge. They ended my  
2 examination of Mr. Edgeworth. I asked a question, and I intended to go  
3 into a slew of things he and his wife had talked about. Mr. Vannah  
4 asserted the privilege that I couldn't talk to him about it. I sat down. Mr.  
5 Vannah has that right. That was the end of it. They're judicially  
6 estopped from now unwinding that assertion.

7 THE COURT: Well, I mean, she can testify to something she  
8 has independent knowledge of, but she can't testify to something he told  
9 her because you guys have invoked that privilege. And this is about the  
10 volleyball. Wasn't this about -- I'm sorry; I forgot what the question was  
11 you asked. Wasn't this about him doing some volley -- the volleyball  
12 place?

13 MR. GREENE: It's about charitable backgrounds, talking  
14 about her background at this particular point.

15 THE COURT: Okay.

16 MR. GREENE: So --

17 THE COURT: Okay. Well, can we move on from that, Mr.  
18 Greene? Because I'm not really sure how that applies to what's owed to  
19 Mr. Simon and the legal work that he did.

20 MR. GREENE: Well, I understand that, Your Honor. But they  
21 spent time and volumes and words in their briefs for lack of a better  
22 word, slinging the Edgeworths. Calling them dishonest, that they don't  
23 pay their bills, that they're -- that they can't be trusted. Most assuredly  
24 their charitable background, their giving, their conduct towards others is  
25 certainly relevant to help unwind some of that stain that the defense put

1 on.

2 THE COURT: Well, let me -- I understand your desire to do  
3 that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging  
4 them based on whether or not they gave money to Three Square. I'm  
5 here to make a call about the legal work that was done by Mr. Simon and  
6 what is owed to him. That is the only thing I am here to pass judgment  
7 on.

8 I'm not here to pass judgment on who's passing out canned  
9 goods at Three Square. I'm doing it every other week in all reality, but  
10 that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of  
11 fact. I'm not a jury. I'm not here to discuss things that are outside the  
12 legal realm. I'm just here to decide what is going to be done with what's  
13 owed to them, what's owed to Mr. Simon, who needs to get paid.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GREENE:

16 Q Angela.

17 A Yes.

18 Q When did you come to know the Simons?

19 A I met Alaina (phonetic) when my daughter was in preschool  
20 and we've known them for quite a long time. Alaina helped me a lot  
21 when my father passed away. She was a good friend, and I considered  
22 her to be one of my closest friends. We took family vacations together  
23 and you know, our kids knew each other since preschool.

24 Q Did you ever at that time gain an understanding as to what  
25 her husband Danny did for a living?

1           A     Yes. I understood he was a personal injury attorney.

2           Q     Let's go into your understanding of, just a cliff notes version,  
3 of what happened with the flood and how you became involved in that?

4           A     Well, what happened with the flood was we came home in  
5 April of 2016 and we came home, and the house had flooded. And  
6 apparently the water ran down the house and caused damage, about  
7 \$500,000 worth.

8           Q     Did you feel that you would be able to resolve this issue  
9 without involving lawyers?

10          A     Initially we were hoping that it would, but it didn't turn out  
11 that way. So, we -- not at first. We were hoping but it didn't happen that  
12 way.

13          Q     What was the first thing that was discussed or decided upon  
14 with you with getting legal help involved to help address this flood and  
15 the ramifications?

16          A     Sure. The insurance company actually recommended that  
17 we speak to an attorney Craig Marquis.

18          Q     Did you speak with him?

19          A     Yes.

20          Q     Okay. Did you decide to go with him?

21          A     No.

22          Q     Why not?

23          A     Because I didn't like his technique first, and I didn't get a  
24 good vibe from him. And then also at the end of the day I didn't want to  
25 work with somebody that I didn't know and didn't have any experience



1 with.

2 Q What hourly rate did he quote you?

3 A \$500 an hour.

4 Q Okay. What other options were available to you as a  
5 business person for legal help following this flood?

6 A Mark Katz who's our general business attorney and Lisa  
7 Carteen who's a friend and attorney of mine for almost 20 years.

8 Q Did you consider hiring either of those attorneys to help out  
9 following this flood?

10 A Yes, we did.

11 Q What was behind the discussions or the decision making on  
12 whether or not they were going to be involved?

13 A Well, Alaina was a friend of mine, and so I suggested to Brian  
14 that he call Danny, and that's where that began.

15 Q But how about with Mark Katz and Lisa Carteen, what was --  
16 what do you recall was maybe the rule out, or the hey, maybe they're  
17 not going to be the ones that we're going to be choosing?

18 A Lisa's based out of California. And Mark was busy.  
19 Sometimes he's unavailable, and he wasn't available at that time.

20 Q What was Mark's hourly rate at that time?

21 A \$250 an hour.

22 Q How about Lisa?

23 A \$415 an hour.

24 Q Thank you.

25 MR. CHRISTENSEN: I'm sorry; I just didn't hear the last

1 number, John.

2 THE WITNESS: 415.

3 MR. CHRISTENSEN: Thank you, ma'am.

4 MR. GREENE: Yeah. But that was --

5 THE COURT: And what was Mr. Katz?

6 THE WITNESS: \$250 an hour.

7 THE COURT: 250.

8 BY MR. GREENE:

9 Q In your business lives, or life, under what circumstances have  
10 you needed to reach out and retain legal counsel in the past?

11 A Yes. On many occasions. We have occasional things come  
12 up such as business contracts, patents, trademarks, attorneys with  
13 different patents that we hold in litigation.

14 Q What law firms -- you mentioned Mark, you mentioned Lisa.  
15 What law firms have you retained in the past to assist in your business  
16 dealings?

17 A Baker Hostetler, Luis Rocha and probably 20 or more so  
18 attorneys throughout our years doing business.

19 Q Do you have an understanding as to what the highest hourly  
20 rate that you would pay an attorney or a law firm prior to getting  
21 involved in this flood litigation?

22 A Yes. The highest rate we ever paid was \$475 an hour.

23 Q And who was that for?

24 A That was for an IT litigator who was a specialist. She was  
25 based out of their St. Louis office and she was a trademark specialist in

1 litigation. And then also Gary Rinkerman who was a trademark specialist  
2 out of the D.C. office, and he worked for the U.S. Trade Commission. So,  
3 he had a lot of expertise when we were in a patent and trademark  
4 litigation case.

5 Q You've heard a lot about fee agreements as you've been  
6 sitting in the gallery in this case. What type of fee agreements have you  
7 entered into in the past with these law firms you just mentioned to the  
8 judge?

9 A All hourly.

10 Q Did you ever have a contingency fee agreement presented to  
11 you prior to this flood litigation?

12 A Never.

13 Q So when you understood from your friendship with Alaina  
14 that Danny was an attorney, walk us through the steps that led to the  
15 suggestion of Danny becoming legally involved in this case.

16 MR. CHRISTENSEN: Objection; to the extent it calls for  
17 hearsay or spousal communications.

18 BY MR. GREENE:

19 Q Do you have an independent understanding as to how  
20 Danny --

21 A I do, yes. I had suggested to Brian that he call Danny.

22 MR. CHRISTENSEN: Judge, objection. I just asserted the  
23 spousal -- we can't talk about what they instructed their other client to  
24 not talk about to me last week.

25 MR. GREENE: No, no, no, no. The spousal privilege is what

1 Brian would have said to her. That's the whole point that he just spent  
2 all the time on. She just said she has an independent understanding and  
3 she suggested to her husband.

4 THE COURT: She can testify to what she did. She suggested  
5 he call Danny.

6 BY MR. GREENE:

7 Q Is that what happened?

8 A Correct.

9 Q Do you have an understanding as to what fee was eventually  
10 reached?

11 A I do.

12 Q What is that understanding?

13 A It was \$550 an hour.

14 Q When did you gain the understanding that Danny was going  
15 to be charging 550 an hour for the work that he performed on this case.  
16 Brian and I had a conversation before the lawsuit was actually filed  
17 about the fee. And I remember it because I wasn't happy about the fee.  
18 It was high in my estimation. \$550 was really expensive in my mind, but  
19 we agreed because Alaina was a friend of mine and also because he had  
20 already started working on the case. And at the time I thought it would  
21 be maybe \$5,000, \$10,000 and then we'd be done.

22 THE COURT: This is before the original lawsuit, or the  
23 lawsuit against Danny Simon?

24 THE WITNESS: No. The very first lawsuit when we filed  
25 against Viking.

1 BY MR. GREENE:

2 Q Do you have an independent recollection Angela, as to what  
3 month and what year these concerns became up on your frontal lobe?

4 A Yeah. It was in June of 2016.

5 Q Despite those concerns what happened?

6 A Despite those concerns we decided to proceed based on  
7 friendship. And you know, I would agree with Mr. Christensen that no  
8 good deed goes unpunished. I mean, that's what we were thinking. I  
9 just thought like we would, you know, write a few letters and then we'd  
10 be done with it. And you know, we'd get our money for the damages.

11 Q Why did you believe Angela, that this was going to be  
12 resolved with spending five to tenish thousand dollars on Mr. Simon to  
13 get this thing wrapped up?

14 A I thought it would just be when you just send a few letters to  
15 the insurance company to kind of let you know that they're -- we're  
16 serious, and we wanted them to just wrap it up and that we -- you know,  
17 that we had legal representation that could help us. And so, I just  
18 thought it would be a few letters. I had no idea what was about to  
19 happen.

20 Q At any time that you had be in the presence of Danny, or  
21 received emails from Danny, did he ever suggest to you prior to  
22 November of 2017 that any work was being performed on a contingency  
23 fee basis?

24 A No, never.

25 Q If, knowing your business background and the way you work,

1 if a contingency fee would have been suggested back in June of 2016  
2 what would you have decided to do?

3 A No. There's no way.

4 Q Why not?

5 A Because it was a property damage case. There was no  
6 upside to this case. I mean, we were just hoping to get our damages  
7 claim back, which was around half a million dollars. So, it didn't make  
8 sense to do any type of contingency fee at that time.

9 Q Do you know whether -- we're so loose, sorry. Did Danny  
10 ever present an hourly fee agreement for either you or Brian to sign?

11 A He didn't, but he should have.

12 Q Why do you say that?

13 A Because usually in -- you know, when we start working with  
14 attorneys, but maybe smaller firms don't do this, but at least the large  
15 firms that I've worked at we will generally sign an engagement letter of  
16 some type and they'll go over, you know, a range of fees. So, I'm used  
17 to that. Sometimes with the smaller attorneys, if they're just one or two  
18 person offices they might just verbally tell me what the rate is, and then  
19 we agree to it, and then they send me a bill.

20 Q And then what happens?

21 A And then I get a bill, and then I pay the bill. I review it to  
22 make sure that it's okay and I pay it.

23 Q Knowing you as you know you, with your business  
24 background if -- would you have ever entered into -- or let me just strike  
25 that. Knowing you as you know and the business that you've done in the

1 past, would you have ever entered into a fee agreement where the terms  
2 were unknown?

3 A There is no way I would ever do anything like that. I like  
4 things 100 percent crystal clear. There's absolutely no way that I would  
5 ever do that.

6 Q Did Danny ever tell you in person, by email, snail mail, that  
7 we're just going to wait until the end to decide what a fair fee is?

8 A Never.

9 Q If Danny would have ever told you that, what would you have  
10 done in response?

11 A I wouldn't have accepted that.

12 Q Why is that?

13 A It's unheard of. I -- how can you decide what's fair at the  
14 end? I mean, you have to know what the deal is up front. You know, we  
15 need to have an agreement right up front so everybody's 100 percent  
16 clear, so we're not stuck in the situation like we are right now.

17 Q Do you have an understanding as to how Brian conducts  
18 business?

19 A I do.

20 Q Knowing Brian as you know him, do you have an opinion  
21 whether or not he would ever enter into an agreement for the payment  
22 of a fee where it was to determine at the end what a fair fee would be?

23 MR. CHRISTENSEN: Objection. Speculation.

24 MR. GREENE: I just asked if she had an opinion of Brian as  
25 she knew him.

1 THE COURT: Well, you haven't laid the foundation as to how  
2 she knows him as a business man and what type of agreements he  
3 entered to.

4 MR. GREENE: Sure. Can I ask those questions, Judge?

5 THE COURT: Yeah.

6 BY MR. GREENE:

7 Q Have you had the opportunity in your past Angela, to gain an  
8 understanding as to how Brian conducts his business?

9 A Yes. I've known Brian for 25 years, and we started Pediped  
10 together. He was actually the one who came over and took over my  
11 father's business after my father became ill. So, we've been working  
12 together -- we work together not only, you know, at home but in our  
13 business as well. We see each other every day, so we work together in a  
14 business capacity as well.

15 Q Have you had an opportunity as you watch Brian in his  
16 business transactions have seen him or watch his negotiations with  
17 vendors?

18 A Yes. He's very tough.

19 Q Have you gained an understanding as to how he negotiates  
20 terms and payments for agreements that he enters into?

21 A Yes. They're very clear.

22 MR. GREENE: Is that a sufficient enough foundation, Your  
23 Honor?

24 THE COURT: Yes. She can have an opinion.

25 BY MR. GREENE:



1           Q     And back to that original question. Knowing Brian as you  
2 know him in his business dealings, would he have ever entered into an  
3 agreement for the payment of fees when the amount of the fees to be  
4 paid was to be determined at some later date based upon some fair  
5 amount?

6           A     Absolutely not. It's unheard of.

7           Q     Did you choose to be actively involved, or whatever word  
8 would you describe in this -- in the flood litigation, or how would you  
9 describe your involvement in the flood litigation?

10          A     I knew what was going on, but I wasn't actively involved in  
11 the day to day. I mean we -- there's no way two of us could be as  
12 involved as my husband was in this case. I have a family to run, a  
13 business to run, so I had to take care of a lot of things, but he would tell  
14 me a lot about the case, so I knew a lot about the case, although I wasn't  
15 actively involved in doing all the things that he did.

16                THE COURT: And Mr. Greene, I'm sorry. I don't mean to cut  
17 you off, but I have a question in regards to the last line of questioning, I  
18 was just waiting for you to finish.

19                MR. GREENE: I'm sorry.

20                THE COURT: You said that you would have never entered  
21 into any sort of agreement where you are going to pay later and  
22 distribute the fee, and you said there was never a fee agreement, not  
23 even for the hourly fee, is that what you testified to?

24                THE WITNESS: No.

25                THE COURT: You testified you understood that Mr. Simon

1 was going to be paid 550 an hour, but there was never a written  
2 agreement for the 550?

3 THE WITNESS: Right.

4 THE COURT: So, at any point, did you say to Danny Simon,  
5 hey, I've never done business like this before, I need you to write  
6 something down?

7 THE WITNESS: I've done business like that before with  
8 smaller attorneys.

9 THE COURT: Okay. I thought you testified that you hadn't.  
10 I'm sorry.

11 THE WITNESS: Yeah. No, I -- I have --

12 THE COURT: Okay.

13 THE WITNESS: -- with attorneys that are maybe one or two  
14 in their office. They don't send a written agreement over.

15 THE COURT: Uh-huh.

16 THE WITNESS: I mean usually the larger firms, because they  
17 want to run a check to make sure there are no conflicts of interest. So,  
18 I'm used to signing an engagement letter with a larger firm, but the  
19 smaller attorneys, if there are one or two, no, I'm -- I'm used that.

20 THE COURT: Okay.

21 THE WITNESS: So usually it's a verbal, and then I get a -- I  
22 get a fee or an invoice later, and then we pay the invoice.

23 THE COURT: Okay.

24 Sorry, Mr. Greene. I'm sorry, I had to clear that up.

25 MR. GREENE: No, please, anytime.

1 BY MR. GREENE:

2 Q So, to follow up on what the Judge just asked, at any of  
3 those instances with those one or two lawyer firms, where there's been  
4 an oral agreement for fees and an hourly rate was quoted, and an  
5 invoice is sent based upon that hourly agreement, and then it's paid, had  
6 you ever had one of those other lawyers, pursuant to the oral  
7 agreement, come back and ask to change the terms of the agreement?

8 A Never.

9 Q How many times, do you think in the past in your business  
10 life, Angela, that you had dealt with that kind of a situation where it was  
11 that one or two lawyer boutique firm, and there was simply an oral  
12 agreement for fees?

13 A I would say at least ten, ten, 15.

14 Q Those are all prior to this incident?

15 A Yes.

16 Q Any since?

17 A At least ten or 15.

18 Q Okay. Now we saw a presentation where there were a lot of  
19 boxes brought into the court -- a lot of documents in this case. Is that  
20 your understanding?

21 A Yes.

22 Q Do you have an understanding as to what -- if any,  
23 documents that you looked at throughout this litigation to keep yourself  
24 apprized?

25 A From time to time, we had a -- we had access to go shared

1 Google-dot file, and so from time to time, Brian would ask me to like look  
2 at some things and help him reference it. I didn't want to do it, but I did  
3 it just to help him out. So, from time to time, yes.

4 Q Do you have an estimation on the number of times that you  
5 actually went in and delved in to gain access to the documents that were  
6 being generated in this case?

7 A I probably went in a handful of times, but, you know, Brian  
8 would usually print things out for me, and then he would basically have  
9 it laid out, and he would say hey, can you go through these? Can you  
10 match these numbers up? Can you just look at this, because he's been  
11 looking at it too much, that just to get a fresh pair of eyeballs.

12 Q Okay. And that was a share point that -- that Danny's office  
13 kindly provided for the two of you?

14 A Yes.

15 Q Okay. Just to -- other than what you just mentioned, if  
16 there's anything in addition that you, personally, did to stay actively  
17 involved in the case, other than looking at the share point and some of  
18 the documents that -- that Brian would print out. Anything else that you  
19 can share with the Judge that you did to stay advised?

20 A I looked at the bills, because in our office, the -- the bills will  
21 come across my desk with procedure on how -- on how invoices are  
22 paid. So, Brian would sign off on the invoice. They would go get printed  
23 by the accountant, and then they would come across my desk for a final  
24 check. So, in that regard, I was involved.

25 He would, you know, he would tell me about the case all the

1 time, especially when he made discoveries or found new things, or he  
2 spoke to new people. So, along the way, I had heard a lot of new  
3 discoveries that were being made about the case.

4 Q We saw some spreadsheets earlier in this case, as well. Do  
5 you have any recollection of looking at any of the spreadsheets that were  
6 generated, activations, fees, what -- whatnot. Have you looked at those  
7 documents?

8 A Yes.

9 Q Let's talk about some of these activations for a moment  
10 about some prior testimony that was offered, okay? Did you hear Ms.  
11 Ferrel testify that she found over 90 activations in Great Britain?

12 A Yes.

13 Q Do you have an understanding of whether or not that  
14 testimony is true?

15 A I do have an understanding.

16 Q And what is your testimony on that?

17 A It's not accurate. Even I know that the activations, she's  
18 misunderstanding an email that was basically sent about 90 activations  
19 in the U.S. So, they did not occur in the U.K., and, in fact, there's only 11  
20 identified activations in the U.K., and that, like at the end of the case,  
21 there were 20. So that's not accurate.

22 Q Do you have an opinion as to who found those activations?

23 A My husband did.

24 Q And how do you know that?

25 A Because he would tell me whenever he found them.

1 MR. CHRISTIANSEN: Objection. Hearsay, then, Your Honor,  
2 it's privileged. If he's telling her stuff, they can't assert it. She can say  
3 what she knows independently, that's the rule.

4 THE COURT: Does she have any independent knowledge of  
5 this without something Mr. Edgeworth told her?

6 MR. GREENE: That was going to be my next question,  
7 Judge.

8 THE COURT: Okay. Because she was about to -- she said he  
9 said, so she was about to get into something he told her.

10 BY MR. GREENE:

11 Q So other than what your husband --

12 A Yes.

13 Q -- told you, do you have any independent knowledge as  
14 to -- as to who found these activations?

15 A He did.

16 Q And how do you know that?

17 A I saw him do all the work, and we discussed the activations  
18 every single time that there was a --

19 MR. CHRISTIANSEN: Objection.

20 THE WITNESS: -- a new activation.

21 MR. CHRISTIANSEN: Hearsay, spousal privilege. They  
22 cannot get into it.

23 BY MR. GREENE:

24 Q Other than this in-court testimony you heard from Ms. Ferrel  
25 and from Danny, did you ever hear them say that they found these

1 activations in the U.K.?

2 A Never.

3 Q Do you hear them give credit to Brian for finding these  
4 activations?

5 A I'm sorry, I didn't hear you.

6 Q Did you ever hear them outside of this courtroom, give Brian  
7 credit for the work that he was doing in finding these activations in Great  
8 Britain, Los Angeles, and, you know, other parts of this world?

9 A No.

10 Q Okay. Who is Harold Rogers?

11 A Harold Rogers is one of the largest installers of the BK457.  
12 He installed, I think, more than 50 percent of all of those heads around  
13 the world.

14 Q Did you ever have a chance to speak with him?

15 A No, I did not.

16 Q Were you aware how active Brian was --

17 A Yes.

18 Q -- in this flood litigation?

19 A Yes.

20 Q What did you observe?

21 A I observed him working all the time. He was basically  
22 consumed from January to November with this case. Weekends,  
23 weeknights, time away from family. When we went to dinner, it would  
24 be talk all about the sprinkler heads and torque and hinges. I think that's  
25 basically the entire life that we lived for those months. So -- and I saw

1 him working all the time, and we did a lot of things in the family without  
2 him during that time. I basically didn't have a husband during that time.

3 Q Let's shift gears for a moment and talk about the -- some of  
4 the invoices in this case that Mr. Simon's office generated and sent to  
5 the -- to you and Brian. Are you aware of -- you mentioned it came  
6 across your desk. Are you aware of the content of the invoices that  
7 Danny Simon's office submitted to you for payment?

8 A Yes.

9 Q Do you have any concerns with the content of the original  
10 four invoices that were submitted from December of 2000 -- or paid from  
11 2016 until September of 2017?

12 A I was concerned because there was a lot of block billing in  
13 them and not a lot of detail. The invoices that I usually received from  
14 attorneys are very, very detailed. So, for one line, they might put five  
15 different descriptions of what it was for, even if it was a 15 minutes. So,  
16 this was a little bit different than what I was used to, so I was concerned.

17 Q Any other concerns that you had about the content of the  
18 invoices that were submitted and paid by you and Brian?

19 A I just seemed like because he didn't have a billing system,  
20 maybe he might have overexaggerated not on my -- not to my benefit.

21 Q What affect, Angela, do you remember that this flood  
22 litigation had on you and your family?

23 MR. CHRISTIANSEN: Objection, relevance.

24 THE COURT: Mr. Greene?

25 MR. GREENE: It has relevance, as she's going to be



1 answering shortly, on every aspect, including their finances, including  
2 their ability to conduct other business affairs, and that Danny Simon was  
3 well aware of it.

4 MR. CHRISTIANSEN: It still has absolutely no relevance as to  
5 what money of the 1.9 million dollars is in the joint trust account is owed  
6 to Mr. Simon and owed to the Edgeworth's, that's the issue.

7 MR. GREENE: Oh, wow. The thing is, is that three days of  
8 Brian Edgeworth being on for two days on the stand recently and limited  
9 to how much Danny is owed or not owed, pursuant to the work that he  
10 did or didn't put perform went far abreast of that.

11 So, this is her chance, she was injured in this -- in this case,  
12 Your Honor. This is not a huge diversion from a relevant issue of  
13 damages that they suffered in this case.

14 MR. CHRISTIANSEN: Judge, this isn't a personal injury case,  
15 this is an adjudication of an attorney's lien, and her mental anguish  
16 because she chose to not pay Mr. Simon and sue him instead, isn't  
17 relevant.

18 MR. GREENE: Wow. He's right, it's not a personal injury  
19 case at a 40 percent fee. He's dead right about that. It is, you  
20 know --

21 THE COURT: Hold on. One minute, I think that's where  
22 we're all -- but I think we have -- we need to limit this hearing, because I  
23 think the reason that we're in Day 5 is because there have been no limits  
24 on this hearing, this three-day hearing that now we're in Day 5.

25 The question was what effect did this have on her.

1 MR. GREENE: On the family, and it's a broad question.

2 THE COURT: It's a broad -- well, she can talk about the  
3 financial aspects of that, because as I previously explained, I'm not here  
4 to judge anyone. I'm here to get to the bottom of what is owed, what's  
5 been paid, what hasn't been paid, and what people are owed. She can  
6 talk about the financial effects of how this affected her family.

7 MR. GREENE: Okay.

8 BY MR. GREENE:

9 Q What financial effects did this litigation have on you and your  
10 family?

11 A It was very stressful. It was a very stressful time for us.

12 THE COURT: And you said -- I'm sorry, Mr. Greene, I don't  
13 mean to cut you off either, but we kind of moved on. And I'm sorry, I  
14 never know when you are done with one section.

15 You said you had concerns that the billing was exaggerated.  
16 Are these concerns that you have now or are these concerns that you  
17 had when you guys received, because I thought Mr. Greene was talking  
18 about the four original bills. Did you have concerns when you received  
19 those four original bills, or are these concerns you have after the  
20 January 2018 bill?

21 THE WITNESS: I had concerns back then, Your Honor.

22 THE COURT: Did you express those to Mr. Simon?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 And I'm sorry, Mr. Greene.

1 MR. GREENE: Oh, no, Judge, this is your show.

2 THE COURT: Well, I am the trier of facts, so I think I can ask  
3 questions more than I can when we're in trial.

4 MR. GREENE: We just live in your world. No worries.

5 BY MR. GREENE:

6 Q Let's talk about the legal bills some more. Were you  
7 concerned about them?

8 A Yes, I was.

9 Q How so?

10 A I was concerned about the amount of money that we were  
11 paying. So, over the course of -- from December until November, we  
12 had paid out more than \$500,000 in legal fees, which is a lot of money to  
13 pay in legal fees. And I had no idea where the end was going to be. So,  
14 you know, at that time, when you're right in the thick of it and you have  
15 no idea where, you know, if there's an end in sight for those legal bills.  
16 So, I was really concerned about that.

17 Q To his credit, only 370'ish-thousand was legal fees, part was  
18 costs. So, if we can just focus on that. Knowing that that was the  
19 amount of the fees, what other concern did you have about them?

20 A Well, 370 -- \$330,000 over ten months, you know, it's \$33,000  
21 a month in legal fees, and it's a lot of money. I mean my greatest  
22 concern was just the financial stress that it was putting on the family at  
23 the time.

24 Q When you were seated in the gallery, Angela, did you hear  
25 Danny testify words to the effect that the payment, these invoices for

1 fees was optional?

2 A I heard this -- that, yes.

3 Q Do you have an opinion as to whether or not that's true?

4 A It's completely not true.

5 Q Did Mr. Simon ever, in person, by email, text, snail mail, ever  
6 tell you that the payment of his invoices was optional?

7 A Never.

8 Q If he had told you that, what would it be now?

9 A Of course. I mean we would have taken him up on that, that  
10 we -- Danny knew how much of a financial stress this was putting on our  
11 family, and, of course , we would have taken him up on that.

12 Q You're copied on some emails, Angela. Have you had a  
13 chance to review the emails in this case? There are a lot of them.

14 A Yes.

15 MR. CHRISTIANSEN: John, are those the ones you sent over  
16 last week?

17 MR. GREENE: Well, you know, there are some. The first  
18 ones I'm -- I'm going to show her are Bates Simon 3100 --

19 MR. CHRISTIANSEN: Exhibit?

20 MR. GREENE: Yeah, that's your --

21 MR. CHRISTIANSEN: Which exhibits are those?

22 THE COURT: So, they're in the Simon exhibits?

23 MR. CHRISTIANSEN: Which exhibit goes on that Bates  
24 number?

25 MR. GREENE: Oh, it's -- it's Simon -- Simon EH 3100.

1 MR. CHRISTIANSEN: That's -- that's the Bates stamp  
2 number. I'm asking what the exhibit number is.

3 THE COURT: Yeah, what's the exhibit number, Mr. Greene?

4 MR. GREENE: Oh, it's -- that's a super good question. I  
5 thought I was making it easy by pulling from theirs and -- and I failed.

6 MR. CHRISTIANSEN: Let me -- let me see, John, maybe I can  
7 help you.

8 MR. GREENE: Totally failed.

9 THE COURT: What's the Bates Stamp, 3000?

10 MR. GREENE: It's 3100, Judge. It starts with 3100. And I'll  
11 put it up on the ELMO here, so we can all see in a second.

12 MR. CHRISTIANSEN: I don't know -- just tell me the exhibit  
13 before I can say if I object or not, because I don't --

14 THE COURT: Yeah, I just had to get the exhibit number so I  
15 can follow you.

16 Ms. Ferrel, do you know the exhibit number?

17 MS. FERREL: Let me see what it is.

18 THE COURT: You've been pretty good at getting that.

19 MS. FERREL: This is an Exhibit 80.

20 THE COURT: 80?

21 MS. FERREL: This would be an Exhibit 80, yeah. So, this  
22 wasn't -- this would be on the CD.

23 THE COURT: Oh, okay.

24 MS. FERREL: So, yeah.

25 THE COURT: Okay. Then I'll wait for Mr. Greene to put it on

1 the ELMO.

2 MR. GREENE: Is this show and tell?

3 THE COURT: Yeah.

4 Laura, can you make sure -- did we make sure the ELMO's  
5 working?

6 MR. GREENE: I did. I did, Your Honor.

7 THE COURT: Oh, okay.

8 MR. GREENE: It's working. Well, it was an hour ago. Hold  
9 on a minute.

10 THE COURT: We just rely on Brian to do things like that.

11 MR. GREENE: Thank you.

12 MR. CHRISTIANSEN: Mr. Greene, will you tell me the Bates  
13 Stamp one more time so I can try to find my own?

14 MR. GREENE: It's Simon EH, and then 3100.

15 MR. CHRISTIANSEN: You don't happen to have an extra  
16 copy, do you?

17 MR. GREENE: I -- you know what, I'm so sorry. I do not, at  
18 least I -- oh, hold it. I do. Sorry, I'm sorry.

19 MR. CHRISTIANSEN: That's okay.

20 MR. GREENE: I got it for you.

21 MR. CHRISTIANSEN: No worries. Thank you very much.

22 MR. GREENE: It's always out. I'm going to try to zoom it in.  
23 Come on, zoomie, zoomie. Is that -- can you see that font?

24 BY MR. GREENE:

25 Q Angela, you can read that?

1 A I can read this, yes.

2 Q I can try and make it bigger and maybe break the thing at the  
3 same time. Do you recognize this email as one that you had reviewed?

4 A Yes.

5 Q This is from Brian to Daniel Simon, dated December 15th,  
6 2016. Would you agree?

7 A Yes.

8 Q Just after noon?

9 A Correct.

10 Q Focusing right here on the first question. Do you have an  
11 understanding as to whether or not this is around the time that the first  
12 invoice was paid?

13 A Yes, it is.

14 Q There's a question from your husband to Danny. Here are  
15 some things you may need to know before I leave.

16 Do you where you guys were going?

17 A Vacation.

18 Q It's pretty personal stuff?

19 A Uh-huh.

20 Q Okay. See Item Number 1?

21 A Yes.

22 Q Your bill, Send check to your house or office?

23 A Yes.

24 Q How about Number 3, do you see that?

25 A Yes.

1 Q What does that say?

2 A I'm taking another high interest loan unsecured, only covered  
3 by the lawsuit proceeds for \$300,000 from Colin Kendrick to put five  
4 percent interest.

5 Q Down further?

6 A This amount will be used by Edgeworth Family Trust to pay  
7 the invoices for the bills from the venders and the legal that are due,  
8 including American Grating and lawyer.

9 Q Did you have involvement, Angela, in the taking out of the  
10 loans from your mom and from Colin to pay the invoices in this case?

11 A Yes.

12 Q Do you have personal knowledge of that?

13 A Yes.

14 Q Down below.

15 MR. GREENE: Let me just do a little zoomie thing, Judge, to  
16 see if I can get it a little bit bigger without breaking it.

17 BY MR. GREENE:

18 Q Right here, read that.

19 A I do not know if you need to notify the lawyers again that I  
20 have done this and will need to do it again, as their client's negligence  
21 has cost me a substantial amount of money, and this put my other  
22 companies in financial jeopardy to the point where I'm forced to take out  
23 ridiculous loans to pay expenses that they are responsible for.

24 Q Let me just go to a couple more pages on that. One more  
25 page.



1 MR. CHRISTIANSEN: Your Honor, before Mr. Greene moves  
2 on, can we get an understanding for when Mrs. Edgeworth became  
3 aware of these emails? She's not copied on them, so I'm just not  
4 understanding that she knew about them back then or in preparation for  
5 now.

6 THE COURT: Okay.

7 Mr. Greene, can you clarify that with her?

8 MR. GREENE: Sure.

9 BY MR. GREENE:

10 Q You managed to gain an understanding as to the content of  
11 these?

12 A I knew that something like this existed, and you just have to  
13 find the emails, so. But I just saw it not too long ago, recently.

14 THE COURT: The email?

15 THE WITNESS: Yes.

16 THE COURT: But when you said you knew something like  
17 this existed, so does that -- are you saying that you knew that this was  
18 happening or --

19 THE WITNESS: I knew that we had an agreement to pay the  
20 bills and pay the invoices on an hourly basis. That's what I mean.

21 THE COURT: Okay.

22 THE WITNESS: Yeah.

23 THE COURT: But I mean in regards to did you know that  
24 your husband sometime -- in 2016, did you know that he had a  
25 discussion with Danny Simon about where to send the check?

1 THE WITNESS: No, I didn't know that.

2 THE COURT: Okay. So, you just found that out. Did you  
3 know about him telling Danny Simon, I got to take out another loan,  
4 these are the terms, superhigh interest. Did you know about that?

5 THE WITNESS: Yes, I did.

6 THE COURT: Okay, but you found out about -- you saw this  
7 email in its entirety recently?

8 THE WITNESS: Yes.

9 THE COURT: In preparation for this hearing?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 BY MR. GREENE:

13 Q Did you sign the checks?

14 A Yes, I did.

15 Q You sent the checks?

16 A Yes.

17 MR. GREENE: This is Bate stamped, and just two pages  
18 down, Judge. This is 3102.

19 MR. CHRISTIANSEN: You said 2, Mr. Greene?

20 MR. GREENE: Yes.

21 MR. CHRISTIANSEN: Thank you.

22 BY MR. GREENE:

23 Q This is Mr. Simon's response re: address. Do you see that  
24 down below on the bottom, Angela?

25 A Yes. So, anything regarding fees should be sent to 810

1 South Casino Center Boulevard, Las Vegas 89101.

2 Q But if you needed that information to send the check to  
3 Danny Simon for the payment of that first invoice?

4 A Yes.

5 Q Without Mr. Simon providing clarification to you, as the  
6 bookkeeper, how would you have known where to send the check?

7 A Correct.

8 Q Anywhere on here that you can see where it says that the  
9 payment of fees was optional?

10 A No.

11 Q You were again sitting in the gallery when Mr. Simon was  
12 testifying, were you not?

13 A Yes.

14 Q Did you hear all of it?

15 A Yes.

16 Q Did you hear Danny testify that your husband wanted a  
17 fourth invoice in the amount of, in essence, \$255,000 for fees and costs  
18 so he could then be able to testify at his deposition that he had paid all of  
19 the invoices in full?

20 A Yes.

21 Q You had an opinion as to whether or not that's true?

22 MR. CHRISTIANSEN: Objection, to the extent it calls for  
23 marital communications.

24 THE COURT: Mr. Greene, give me your status how she  
25 would know that?

1 BY MR. GREENE:

2 Q Did Plaintiffs have a little plan, as Mr. Simon testified, to  
3 inflate your damages against the Lange and the Viking Defendants?

4 A No. We wanted to pay the bills, and we have to know what  
5 the bills are, and, you know, we don't want to bounce any payrolls or -- I  
6 mean we need to know what we owe, and my -- we pay our bills very  
7 promptly. So as a general rule, we like to pay our bills promptly and we  
8 don't like to owe people money.

9 Q Do you have an understanding of Brian's business practices  
10 as to whether or not he seeks out the opportunity to spend money and  
11 pay bills on his own?

12 A I'm not sure I understand your question.

13 Q It's another bad question, a long line of many that I've asked.  
14 Do you have an understanding as to Brian's business practices, as to  
15 how he pays bills?

16 A Yes.

17 Q And the circumstances in which he pays bills?

18 A Yes.

19 Q Do you have an understanding as to whether or not, with  
20 your knowledge of Brian's business practices, whether he has a custom  
21 or practice of asking vendors to simply send him an invoice so he can  
22 pay it?

23 A Yes, all the time.

24 Q Okay. Would Brian, with your understanding of him, if he  
25 had been presented with an invoice, what is he going to do with it?

1           A     Pay it.

2           Q     You've heard, have you not, in the gallery from attorneys and  
3 Mr. Simon, that Brian doesn't pay bills. Have you heard that?

4           A     Yes.

5           Q     Do you have an opinion on whether or not that's true or not?

6           A     It's not true.

7           Q     And how do you know that?

8           A     Because we pay our bills.

9           Q     What impact, Angela, was the payment of invoices for fees,  
10 mediation of the house, those kind of laces, what effect was that having  
11 financially on your family?

12          A     It had a very strong effect at the time because we had just  
13 several things going on at the time and --

14          Q     Like what?

15          A     -- we plan everything. So, we had planned out the entire  
16 year's expenditures, and so we had the volleyball bill going on at the  
17 same time, and then the house damage occurred. You know, we were at  
18 basically the tail end of finishing our house and we had, you know,  
19 money set aside to finish it up and decorate, and then all of a sudden,  
20 you know, we had the repairs to do, and then we had all these legal bills  
21 that kept mounting.

22          Q     In September of 2017, did you have  
23 255-plus-thousands -- thousand dollars just setting aside in a piggybank,  
24 a slush fund, to be able to simply pay an invoice that wasn't due?

25          A     No.

1 Q What were the finances like back then, in September of 2017?

2 A It was very tight.

3 Q Knowing Brian as you know him, knowing your finances as  
4 you know them, would Brian, in his business practices, simply offer to  
5 spend \$255,000 if it wasn't expected to be paid?

6 A No.

7 Q Would you explain to the Judge, and again in that Cliff notes  
8 fashion, your understanding as to what financial resources were used to  
9 pay Danny's fees, invoices for fees and costs?

10 A Yeah, we took out loans.

11 Q Why didn't you go to U.S. Bank, Bank of Nevada, Bank  
12 of -- on every corner to do that?

13 A We tried with Wells Fargo, our bank, and they wouldn't loan  
14 us money.

15 Q Why not?

16 A Because when we told them what it was for, they said no, for  
17 litigation, they said no.

18 Q Selling some property, did you think about that?

19 A It didn't make sense to sell property. So, from just a  
20 business perspective, we decided to take out loans.

21 Q There's the general rule of don't loan money to family  
22 members, but one of the lenders was your mom. Why was she on the  
23 list of potential sources of revenue?

24 A My mom has money that she doesn't use, and so I asked her.  
25 I had never borrowed money from her before, and so when, in a time of

1 need, I asked her, and she said yes.

2 Q Who's Colin?

3 A Colin is a friend of ours.

4 Q Is he a hard money lender?

5 A No.

6 Q How did he make his way to the list of individuals who would  
7 be available to loan money?

8 A Again, he was close enough a friend that we could ask that to  
9 and felt comfortable, and so we asked that, and he said yes.

10 Q Is Danny aware of these resources --

11 A Yes.

12 Q -- that were being used?

13 A Yes.

14 Q As a business person, like you are, what financial benefit, if  
15 any, were you and your family getting from having to pay high interest  
16 on the loans that were used to pay fees and costs?

17 A None, absolutely none, we had to pay the interest.

18 Q Did you hear Danny testify where you are the other day, that  
19 you benefited from the interest?

20 A I did.

21 Q Do you have an opinion on that?

22 A We did not benefit at all from the interest payments. We had  
23 to pay them.

24 Q Do you know how much?

25 A We had to pay more that, 1.1 million dollars back, which after

1 we received the settlement, we paid right away.

2 Q So, Mr. Simon says you don't pay your bills. Did you hear  
3 that testimony?

4 A Yes.

5 Q You read that in the pleadings?

6 A Yes.

7 Q So you had principal and interest on these loans that were  
8 used to pay his fees?

9 A Yes.

10 Q And costs, correct? When did you get the undisputed funds  
11 following the Viking settlement?

12 A January 21st.

13 Q Of?

14 A 2018.

15 Q What day did you pay your mother and Colin for the principal  
16 and interest that you had borrowed and accrued?

17 A The next day. I mean to stop the interest rate from accruing  
18 more, we paid them the very next day.

19 Q Anything outstanding there? Any money still owed to the  
20 lenders?

21 A No.

22 Q Did you also hear Danny testify under oath, in that chair, that  
23 Brian wanted to pay all of Danny's invoices as part of his little strategic  
24 plan, quote, little strategic plan, to give credibility to his damages and  
25 justify his loans that he was taking out and earning all this interest on?



1 Did you hear that?

2 A Yes.

3 Q Did the Plaintiffs have a strategic little plan to ramp up your  
4 damages to justify loans that you were taking out?

5 A Absolutely not.

6 Q Did you want damages?

7 A We wanted no part of this.

8 Q Again, do you earn any interest on these loans?

9 A No.

10 Q At any time prior to -- let's just shift gears a little bit if we can.

11 At any time prior to November 17 of 2017, did Danny ever suggest to  
12 you, Plaintiffs, that hey, we should enter into a different kind of fee  
13 agreement, hybrid contingency, anything of the like?

14 A No, never.

15 THE COURT: And did you say did Danny ever suggest that  
16 Mr. Greene; is that what you said?

17 MR. GREENE: Yes. Yes.

18 THE COURT: Okay.

19 BY MR. GREENE:

20 Q As a Plaintiff in the litigation, the flood litigation, if, in July,  
21 August of 2017, if Danny had come forward with a written proposal for a  
22 hybrid-type fee agreement, what would have been your response?

23 A We would have considered it, and it would have taken some  
24 of the financial burden off of ourselves, but it would have to be  
25 something that made sense. So, again, after we got all of our costs back,

1 all of our losses, and there was some sort of upside for, you know, both  
2 parties to kind of pursue the case to the list, then we would have  
3 considered it, yes.

4 Q Did that ever happen?

5 A No.

6 Q Even though you were a Plaintiff -- well, maybe just back up  
7 a little bit. What ownership interest do you have in the underlying  
8 Plaintiffs that were in the flood litigation? Edgeworth Family Trust, and  
9 so on, etcetera, American Grating?

10 A Fifty percent.

11 Q Okay. Is it a partnership, a LLC, do you know?

12 A LLC.

13 Q Okay. Edgeworth Family Trust is a trust?

14 A Yes.

15 Q Are you a trustee?

16 A Yes, I am.

17 Q Do you share those responsibilities with anyone else?

18 A Just Brian.

19 Q Okay. When the case against Viking settled on November  
20 15th of 2017, how did you feel?

21 A I was relieved. I was happy that it was over.

22 Q It's over. What did you think was going to happen next?

23 A I thought it was --

24 Q What did you expect was going to happen next?

25 A I thought we would sign documents, and it would be over,

1 and we could put it behind us.

2 Q What effect did it have on Brian to finally get this thing  
3 settled?

4 A He was relieved as well.

5 Q Yeah. Let's go forward a couple of days of the settlement  
6 with Viking. I'm going to focus for a few minutes.

7 MR. GREENE: I'm going to spend some time on this, Judge,  
8 on the --

9 THE COURT: Would you guys like to break for lunch now,  
10 because I was going to wait -- so we'll break for lunch now and then we'll  
11 come back and you can -- so you don't have to break that up, Mr.  
12 Greene.

13 Okay. So, we're going to break for lunch now. It's 12:20,  
14 we'll be back from lunch at 1:45. So we'll come back and then Mr.  
15 Greene, you can resume.

16 MR. GREENE: Thanks, Judge.

17 THE COURT: Thank you.

18 MR. CHRISTIANSEN: Thank you, Your Honor.

19 THE COURT: Okay, Ms. Edgeworth, you are still going to  
20 remain under oath. You're not allowed to talk to anybody about your  
21 testimony over the lunchbreak. Okay? Thank you.

22 [Recess at 12:22 p.m., recommencing at 1:51 p.m.]

23 THE COURT: A-767242 and A-738444, Edgeworth Family  
24 Trust v. Lange Plumbing, Edgeworth Family Trust v. Daniel Simon.

25 Mrs. Edgeworth, if you could just approach back up to the

1 witness stand. And I'd just like to remind you that you are still under  
2 oath; you don't have to be sworn in again. So, you can have a seat,  
3 ma'am. Thank you.

4 And, Mr. Greene, whenever you are ready.

5 MR. GREENE: Thank you.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. GREENE:

8 Q Angela, let me just go back and cover something with you  
9 quickly if we can. Earlier you testified about your hope or expectation  
10 that five to \$10,000 would hopefully get this matter put in the rearview  
11 mirror or words to that effect. Do you remember testifying to that?

12 A Yes.

13 Q You had hoped that sending a few letters might get the job  
14 done basically is kind of what you were saying, correct?

15 A Yes.

16 Q Now by the time that those few letters were to be written,  
17 what's your understanding as to what the status of this whole matter  
18 was?

19 A It wasn't resolved.

20 Q And when Danny was going to get involved and the letter  
21 writing campaign ended, did you have any expectation as to what would  
22 happen next?

23 A Yes. I knew we were going to file a lawsuit.

24 Q Let's get back to kind of where we left off before we took --  
25 let me make sure this is -- this little thingy is --

1 THE COURT: Okay. I was going to say if not we'll get Brian  
2 to help you, Mr. Greene, because I couldn't begin to help you.

3 MR. GREENE: It's actually working. It's a miracle, Christmas  
4 miracle.

5 BY MR. GREENE:

6 Q Angela, when we left off at lunch we had moved up to  
7 November 17 of 2017. So, let's focus on that date for the next few  
8 minutes, okay.

9 A Yes.

10 Q Were you in a meeting with Brian and Danny in Danny's  
11 office on November 17th of 2017?

12 A Yes.

13 Q What was your understanding Angela, as to why you were  
14 going to meet with Danny at his office?

15 MR. CHRISTENSEN: Objection; to the extent it calls for  
16 communication with her spouse.

17 BY MR. GREENE:

18 Q Do you have an understanding as to -- an independent  
19 understanding as to what that meeting was about?

20 A Yes.

21 Q And what was your understanding?

22 A My understanding that we were going to talk about  
23 settlement agreement and next steps and strategy.

24 Q Strategy of?

25 A The settlement, to finish up and wrap up the settlement

1 agreement.

2 Q Okay. What time of the day was this meeting scheduled for?

3 A I believe it was 9:00 a.m.

4 Q Let's walk ourselves back then. You're arriving there. What  
5 were the circumstances that actually brought you there? Did you and  
6 Brian go together?

7 A No. I arrived separately. My girlfriend dropped me off at a  
8 donut shop downtown, and my husband picked me up and then we went  
9 over to Danny's office together.

10 Q So it has a festive mood?

11 A Yes.

12 Q What happened next?

13 A I got to his office, and I went in and brought some donuts for  
14 them, and I needed to use the restroom. So, I proceeded to use the  
15 restroom and then I walked into the room. And when I walked into the  
16 room my husband gave me a little bit of a glance, which I was  
17 wondering what that was about and then I proceeded to sit down. I sat  
18 right here, if this is Danny's desk. I sat right here. My husband sat right  
19 here and then this is Danny's desk. He leaned up against the desk and  
20 then --

21 THE COURT: Who is he?

22 THE WITNESS: Danny.

23 THE COURT: Okay.

24 THE WITNESS: Uh-huh. And then he started off by saying  
25 that well, you know, usually in these cases I receive a contingency fee.

1 And that was how he started the conversation and then I just looked --  
2 we were just looking at him. And he said, I wouldn't be being fair to  
3 myself, and I would be cheating myself if I didn't get more money out of  
4 this case is essentially what he was saying.

5 So, then he went onto tell us that he normally receives a 40  
6 percent contingency fee. And in this case it would -- that would amount  
7 to \$2.4 million. But as a, you know, basically as a favor or discount he  
8 was asking for the number that he threw out was \$1.2 million.

9 So, then I argued back, and I said well, we paid you hourly  
10 this entire time. I couldn't understand what this conversation was about.  
11 And he said that, no, normally, in this case you know, because the result  
12 was so great, he felt he deserved more. And I said well, we paid you  
13 hourly. And he said, no, normally, sometimes I might receive an hourly  
14 and a contingency fee. And my head was just spinning.

15 BY MR. GREENE:

16 Q What was your response to that comment by Mr. Simon that  
17 in some of his cases he gets a contingency and an hourly fee?

18 A I believed him. I thought that was the case. I didn't know  
19 any better. He's telling me -- this is my attorney. He's telling me that so I  
20 believed him and, but I was still arguing that we paid you hourly this  
21 entire time and that how could you expect more at this point when the  
22 settlement is done? You know, the settlement came out. It was 6 million  
23 dollars, a large sum of money.

24 And he said well, I expect you to do what's fair to me. And I said  
25 well, if -- what if we had lost? What if we had gotten zero? Would you

1 have given me all my money back that we paid you in fees? And he  
2 said, no. That's not the way this works; you don't understand. And he  
3 also said that you can ask any attorney this and any attorney would  
4 agree with him that this is -- this was customary; this was normal.

5 And then he wanted us to sign documents right then and there  
6 regarding a contingency fee, which he alluded to were behind him on the  
7 desk if we were ready to sign, if we could come to an agreement. And at  
8 some point I looked at him, and I said well, we have to discuss this.  
9 We'll think about this and we'll get back to you.

10 And he also went on to say that you know, there was still things  
11 left on the case, the settlement that were not done yet, and he would feel  
12 uncomfortable signing if we didn't come to this agreement.

13 THE COURT: Signing what?

14 THE WITNESS: Signing his contingency fee document. He  
15 wouldn't feel comfortable signing the settlement agreement if we didn't  
16 come to an agreement before the settlement case.

17 So, he made it sound that him completing the settlement  
18 agreement was contingent upon us agreeing to his contingency  
19 agreement. He also said that -- he threatened basically not to go to court  
20 for us anymore and that he wouldn't feel comfortable doing that if we  
21 didn't sign the contingency agreement.

22 THE COURT: What did he say when he threatened to not go  
23 to court for you?

24 THE WITNESS: He said basically, you know, there are still a  
25 lot of things that needed to be done, and I might not feel comfortable



1 representing you in that case if you know, you don't treat me fairly  
2 basically was what he was saying.

3 BY MR. GREENE:

4 Q Did he say anything else that brings to mind as you sit here?

5 A That was essentially what he told me that day, yeah. And --

6 Q Let's back up for just a minute. You mentioned the  
7 orientation, attorney desk, client chairs and Danny sitting in front. How  
8 far away from you was he?

9 A Probably two feet. I think the chairs were about two or three  
10 feet from his desk, and he was standing in front of his desk looking kind  
11 of down at us while we were seated.

12 THE COURT: So, he's standing in front of his desk; he's not  
13 behind the desk?

14 THE WITNESS: He's not behind the desk; he's in front of his  
15 desk.

16 THE COURT: Okay.

17 THE WITNESS: And he had his feet crossed leaning against  
18 his desk.

19 BY MR. GREENE:

20 Q You had been friends with the Simon family for how many  
21 years before this November 17, 2017 meeting?

22 A Eleven years.

23 Q How many opportunities in that 11 years had you had the  
24 opportunity to interact with Danny prior to this November 17, 2017  
25 meeting?

1           A     Many.

2           Q     What was his demeanor during that meeting in the moment  
3 that he began?

4           A     It was a little condescending and kind of saying, you know,  
5 he did such a great job on the case that he felt that he deserved more.  
6 And I felt threatened. He held all the cards. You know, at that point we  
7 didn't -- I didn't know if there was a settlement agreement in hand, or  
8 whether it was still in the negotiating phase. So, I really felt like the  
9 entire settlement agreement was hinged upon whether he could  
10 basically make or break the deal at that point.

11                   THE COURT: What did you think the status was of the  
12 settlement negotiations at that time?

13                   THE WITNESS: At that time, I thought that the settlement  
14 agreement was they had -- they put an offer out there. But the way that  
15 Danny presented it to me was that his signature was required in order  
16 for the settlement to be consummated. It -- part of the agreement was  
17 contingent upon him signing documents as well.

18                   So, I knew that there was an offer, but I did not know if there  
19 was an actual agreement that they presented to us. I know there was a  
20 verbal offer, but I didn't know if it was a done deal. So, I really felt like  
21 he could have sabotaged the deal, or said something that wasn't, you  
22 know, in our favor to you know, make the deal not happen. So, I was  
23 really concerned about that.

24 BY MR. GREENE:

25           Q     In the 11ish years that you had interacted with Danny prior to

1 this meeting had you ever seen him like that?

2 A Never.

3 Q How was it different?

4 A I didn't recognize the Danny in front of me at that time.

5 Q How long did this meeting last?

6 A I want to say it lasted about 30 minutes. Because we just  
7 went back and forth. We were sitting there talking about the fee, his  
8 contingency agreement and how he wanted us to sign. And it just was a  
9 lot of back and forth. And I just couldn't believe I was hearing what I was  
10 hearing. I was sitting there completely in disbelief of what was going on.

11 Q While you were there in that meeting with Danny, what was  
12 Brian saying?

13 A He had his own questions. He was interjecting.

14 Q Like what?

15 A I can't think of them right now.

16 MR. CHRISTENSEN: Objection. Hearsay.

17 THE WITNESS: I can't think of them right now anyhow. I  
18 mean, I remember what I said.

19 BY MR. GREENE:

20 Q Okay. Did Danny present anything at that meeting for you to  
21 sign?

22 A No. He alluded to the fact that it was behind him on the desk  
23 because he wanted us to agree first and then he was -- wanted us to sign  
24 the documents right then and there. Like he was anxious for us to sign  
25 the documents that day so that he could -- he felt that you know, how

1 could we not sign the documents. What he was asking was really fair so  
2 we should sign them right then and there and then he could proceed  
3 with the settlement of the case.

4 And that's when I said, I need some time, we need to discuss this;  
5 we need to think about it, and we'll get back to you. And then I asked  
6 him for the documents, and he wouldn't give them to me. He said well,  
7 we need to come to an agreement first.

8 Q You testified that he said, talk to anybody. What did you  
9 interpret that to mean?

10 A I needed to find an attorney.

11 Q Talk to anybody about the proposal that I have, they'll say it's  
12 fair. What were the words that he used?

13 A He said, talk to any attorney because they will tell you exactly  
14 what I told you, that this is how things work.

15 Q Okay. While you were there for that half an hour with Danny  
16 and Brian in Danny's office, did Danny ever bring up on his own the  
17 status of the Viking or the Lange settlements or prospective settlement?

18 A No. He didn't. I kept bringing it up and Brian kept bringing it  
19 up. What was the status, where were we? You know, is there a  
20 settlement in hand? And I basically pleaded with him at that meeting, I  
21 said please don't stop working on this case. I said, please proceed as if  
22 we don't have a settlement in hand, because I knew we had an  
23 evidentiary hearing coming up.

24 And so, I didn't want him to stop doing all those things because he  
25 had said well, I'm going to cancel this. We don't need to do this because

1 we have the settlement, but then I didn't know if we actually had the  
2 settlement.

3 So, I said -- I reiterated many times during that meeting I said,  
4 please don't stop working on this case. You should continue as if we  
5 don't have a settlement. Because I wasn't sure if it was still, like the  
6 details had to be negotiated or you know, what was going to happen.

7 Q So you --

8 THE COURT: I'm sorry, Mr. Greene. You said that he said I  
9 will -- he was going to cancel something. What was he going to cancel?

10 THE WITNESS: There was something coming up with an  
11 evidentiary hearing and there were -- I don't know exactly what it was,  
12 but there was either -- I don't know. But there was something coming up  
13 with an evidentiary hearing that was really critical, really important.

14 THE COURT: Uh-huh.

15 THE WITNESS: And he said that well, we don't need to do  
16 this, and we don't need to do that. And I said well, we should do that  
17 because we don't -- we still don't have the settlement in hand.

18 BY MR. GREENE:

19 Q You, as the client, with Brian as the client and Danny as the  
20 attorney, when you asked him to keep working on the Viking settlement  
21 and consummate it, what assurances did Danny, your attorney give you  
22 that he would do that?

23 A None. And in fact, he made it sound like he couldn't do  
24 those things if we didn't sign the agreement that he had prepared for us  
25 that day.

1 Q As the client how did that make you feel?

2 A I was terrified. I mean, this was a year of our life and I  
3 thought it could go down the drain right then and there. And I was  
4 really, really scared. I was shaken after the meeting. I was taken aback.  
5 I had no idea what was going on.

6 Q Have you ever had one of your lawyers, the other ones that  
7 we discussed earlier in this hearing ever come on to you as a client like  
8 that before?

9 A No.

10 Q And use that kind of demeanor with you before?

11 A Never.

12 Q And make those kind of threats before?

13 A Never.

14 Q How did that make you feel?

15 A It didn't feel like there was a friend sitting across from me at  
16 the table at that point. And I felt threatened, I felt scared, I felt worried.  
17 And I had the feeling that we were getting blackmailed at that point.

18 Q When you and Brian wouldn't sign some sort of agreement,  
19 in the midst of that November 17, 2017 meeting, what was Danny's  
20 reaction?

21 A He seemed perturbed, and he wasn't happy that we were --  
22 that we didn't sign; that we were going to leave. I think he was in  
23 disbelief that we didn't sign it right then and there.

24 Q Did he give you the names of any attorneys that perhaps you  
25 and Brian could seek out to vouch for what he had told you?

1           A     No.

2           Q     Do you recall? What did you decide to do after you walked  
3 out of Danny's office following that November 17, 2017 meeting?

4           A     I knew we had to seek counsel to figure out what my rights  
5 were as a client.

6           Q     Did you do that?

7           A     Yes.

8           Q     Go into that a little bit more and we're almost done, okay.  
9 So, what happened after this November 17, 2017 meeting? And kind of  
10 work our way up to November 27th. Did you have any additional  
11 meetings with Danny?

12          A     No. We exchanged emails, Danny and I.

13          Q     Do you know whether -- there's been testimony you heard  
14 that the Simon family went to Peru around the Thanksgiving holiday. Do  
15 you have an understanding as to when that happened?

16          A     I do. It was over the Thanksgiving weekend or week.

17          Q     I think a date might have mentioned that it was just shortly  
18 after this November 17th meeting?

19          A     I believe it was the 17th to the 25th.

20          Q     Okay. Do you know, have any personal knowledge whether  
21 or not while the time that Danny was in Peru with his family whether or  
22 not he was working on consummating the Viking settlement?

23          A     I do not.

24          Q     Was a Viking settlement agreement ever sent to you or Brian  
25 that you know of from the date of that November 17th meeting through

1 November 27th for example of 2017?

2 A No. I had asked for it many times.

3 Q Okay. We'll get into that, some email correspondence again  
4 in just a moment. Do you know if Danny and Brian communicated at all  
5 while the Simons were in Peru?

6 A Yes. I was in the room when Danny called from Machu  
7 Picchu.

8 Q And what was said that you overheard?

9 MR. CHRISTENSEN: Objection; hearsay.

10 MR. GREENE: What Danny said is hearsay?

11 MR. CHRISTENSEN: Well, unless she's sitting on the phone  
12 with him she can't hear, and she can't talk about what her husband said  
13 because that is hearsay.

14 THE COURT: Did -- were you able to hear what Mr. Simon  
15 was saying?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 MR. CHRISTENSEN: Objection; hearsay.

19 THE WITNESS: I could only hear my husband.

20 THE COURT: Then that objection is sustained.

21 MR. GREENE: Thank you, Your Honor.

22 BY MR. GREENE:

23 Q There was also testimony that Brian needed to go do  
24 business in China sometime just after or around the Thanksgiving break  
25 as well; did you hear that?



1 A Yes.

2 Q And he was gone as well?

3 A Yes.

4 Q Do you know if Brian and Danny communicated regarding  
5 the Viking settlement while Brian was in China?

6 A There was no communication.

7 Q How about you? While your husband was in China doing  
8 business did you and Danny Simon have any communications about  
9 anything?

10 A Yes, we did.

11 Q And how did you communicate?

12 A By email.

13 Q Let's take a look at some of those. And this is -- once again  
14 I'm going to fumble and Ashley's going to have to come to our rescue.  
15 This is a -- I know the bates numbers. Simon EH1669, that's an email  
16 from Danny to Brian and Angela dated the 27th of November beginning  
17 at 2:26 p.m.

18 UNIDENTIFIED SPEAKER: 1669 is going to be in Exhibit 80.

19 MR. GREENE: 80, all of these are 80?

20 UNIDENTIFIED SPEAKER: Well, not all of them. There are  
21 certain ones that are not.

22 MR. GREENE: Okay.

23 UNIDENTIFIED SPEAKER: But that specific one is.

24 MR. GREENE: There are one or two that were out of order.  
25 And Ashley, there's one that also starts with number 421.

1 UNIDENTIFIED SPEAKER: That one --  
2 MR. CHRISTENSEN: What's the date on the first one, John?  
3 MR. GREENE: Everything starts on the 27th --  
4 MR. CHRISTENSEN: Okay.  
5 MR. GREENE: -- of November.  
6 MR. CHRISTENSEN: Thank you.  
7 MR. GREENE: And it just kind of --  
8 THE COURT: Okay.  
9 MR. GREENE: -- works its way to more recent.  
10 UNIDENTIFIED SPEAKER: So, the 421 one is Exhibit 44.  
11 MR. GREENE: 44.  
12 THE COURT: That's 421?  
13 UNIDENTIFIED SPEAKER: Yes.  
14 MR. GREENE: 44 is the 421 and then 80 --  
15 THE COURT: Okay.  
16 MR. GREENE: -- begins those.  
17 THE COURT: So, you're going to start with 80, Mr. Greene?  
18 MR. GREENE: Yes, Your Honor.  
19 THE COURT: Okay. So, I can put the 44 -- and you said 44 is  
20 the other one?  
21 MR. GREENE: Yes. Correct, Your Honor. Do you have  
22 those? Those are the ones that I had sent over last week.  
23 MR. CHRISTENSEN: The Gmail ones?  
24 MR. GREENE: Yeah.  
25 MR. CHRISTENSEN: Okay.

1 MR. GREENE: But these -- but we pulled these from your  
2 exhibits, and they'd be more friendly on the --

3 MR. CHRISTENSEN: Just tell me which ones you want to  
4 use. I don't mind either way.

5 MR. GREENE: Sure. We're just going to use the ones that --  
6 this is at the bottom, it says 1669.

7 BY MR. GREENE:

8 Q Take a look at this email on your screen.

9 A Yes.

10 Q Angela, do you recognize this?

11 A I do.

12 Q What is this?

13 A It's Danny's email in response to Brian requesting something  
14 in writing.

15 Q I'll represent to you that this is where the retainer agreement  
16 is contained where a letter is contained. We've spent a lot of time on  
17 that with your husband's testimony. And when a settlement breakdown  
18 is attached.

19 MR. GREENE: Another version of it, Your Honor, I can pull  
20 up, but that's undisputed that that's what was attached to this particular  
21 email from --

22 THE COURT: And I can see the attachment listed --

23 MR. GREENE: Okay, gotcha.

24 THE COURT: -- on there, Mr. Greene.

25 BY MR. GREENE:

1 Q When you saw this email from Danny regarding these  
2 documents attached, what was your response?

3 A I read the documents.

4 Q What did you think about those documents that you read?

5 A I was really upset. I was very outraged. There were a lot of  
6 things in there that I believe weren't true in the documents.

7 Q Meaning the letter, which?

8 A The letter. The letter --

9 Q What was --

10 A -- portion of it.

11 Q -- concerning to you?

12 A Pardon me?

13 Q What was concerning to you?

14 A In the letter he had written things such as, you knew that this  
15 was not an hourly case from the beginning, which was false. He claimed  
16 that he lost money on the case, which I found incredible because we paid  
17 him an enormous amount of money. He had also in the letter mentioned  
18 about not being comfortable about continuing to work on our case if we  
19 didn't come to an agreement.

20 There were a few things that were pretty upsetting. And then in  
21 the actual retainer agreement itself he had asked for 1.5 million which  
22 was different than the 1.2 million that I understood from the November  
23 17th meeting.

24 Q As the client?

25 A Yes.

1 Q Getting this -- these three documents from your lawyer, how  
2 did that make you feel in light of that relationship?

3 A It was pretty upsetting. I mean, I just -- I didn't understand  
4 what was going on. I was completely flabbergasted and lost.

5 Q Did you expect that from your attorney?

6 A Absolutely not.

7 Q Did you respond to this email, Angela?

8 A I did.

9 Q This is same Exhibit 80, bate stamp 1667 is the next email,  
10 next in line --

11 THE COURT: Okay.

12 BY MR. GREENE:

13 Q -- same date. Looking at the one that says -- it's weird how  
14 these emails are setup. I'm such a technologically challenged human,  
15 but they don't just go from top to bottom, is that your understanding as  
16 well, Angela?

17 A Yes.

18 Q So looking at this little dot here this says from you?

19 A Yes.

20 Q To Danny?

21 A Yes.

22 Q 3:20 p.m.?

23 A Yes.

24 MR. GREENE: Your Honor, I don't think it's in dispute that  
25 the prior email that Danny sent was at 2:26 p.m. So, this is --

1 BY MR. GREENE:

2 Q Is this your first response to that letter?

3 THE COURT: And this is 3:20, correct?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Because I thought you said 2:20 though.

6 MR. GREENE: Yeah. The one that --

7 THE COURT: Danny sent was at 2:26, but this --

8 MR. GREENE: Yes.

9 THE COURT: -- is at 3:20.

10 MR. GREENE: I'm sorry. Yes, I'm sorry.

11 THE COURT: So right after, okay.

12 BY MR. GREENE:

13 Q Do you know whether or not you had sent an email to Danny  
14 in response to that earlier email that is -- that was earlier than this one  
15 that we're looking at here?

16 A No. This should be the first one.

17 Q What did you convey to Danny at that time?

18 A I conveyed to Danny that Brian was out-of-town, and we  
19 were trying to process what was going on. And I was -- said you know,  
20 kind of just said we'll try to meet when he's back. And we didn't know --  
21 in my mind I didn't know what was going on. And I reiterated to him  
22 that I would need to have an attorney to look at this agreement. And  
23 then I finally said you know, in the meantime, please send us the Viking  
24 agreement immediately so we can review it because I was very, very  
25 concerned about the status of the settlement agreement.

1 Q So it looks like a half an hour later if you go up one more  
2 subject line, that appears to be Danny's response to you. Is that your  
3 understanding as well?

4 A Yes.

5 Q And what was your understanding about his advice to you  
6 then? I haven't received the Viking agreement, he said that, correct?

7 A Correct.

8 Q And did he advise you in anything else of significance in his  
9 reply in relation to your concerns --

10 A No.

11 Q -- as a client?

12 A No. I was hoping for some reassurance, but no.

13 Q Okay.

14 THE COURT: When you sent -- just before you move that,  
15 Mr. Greene. When you sent the email that you sent at 3:20 you said, we  
16 would like to have our attorney look at this agreement before we sign.  
17 Who are you referring to?

18 THE WITNESS: I wasn't. I was referring to my -- I mean, I  
19 was referring to my girlfriend Lisa Carteen who's been my attorney for  
20 more than 20 years. So, when I said that I just wanted him to know that I  
21 wasn't going to sign anything unless I had an attorney read it. So, she's  
22 been my long-time friend and attorney.

23 THE COURT: Okay.

24 BY MR. GREENE:

25 Q Let me show you the next exhibit. This is bates number

1 1664, same of Exhibit 80. Do you recognize this email, Angela?

2 A I do.

3 Q Do you remember receiving this?

4 A Yes.

5 Q Do you remember sending this?

6 A I do.

7 Q What's your understanding as to the order? Would it be your  
8 understanding that down here at the bottom of the exhibit would be an  
9 email from Danny?

10 A Yes. But there's an email below it that was before that.

11 Q Right here?

12 A At the very bottom it says 4:14.

13 Q 4:14. This is an email that you sent to Danny?

14 A Yes.

15 Q What were you asking for?

16 A I said, did you agree to the settlement because we wanted  
17 him to. We conveyed in the November 17th meeting that we were fine  
18 with the settlement agreement as it was and just wanted to know did he  
19 agree to it, did he have it, what was the status of it. And then I was  
20 concerned, I said why have they not sent it yet and when is it coming?  
21 Please clarify.

22 Q So then what was his reply?

23 A His reply was; it appears you have a lot of questions about  
24 the process which is one reason I wanted to meet with you. If you'd like  
25 to come to the office or call me tomorrow, I'd be happy to explain



1 everything in detail. My letter also explains the status of the settlement  
2 and what needs to be done. Due to the holiday they probably weren't  
3 able to start on it. I'll reach out to the lawyers tomorrow and get a  
4 status. I'm also happy to speak to your attorney as well. Let me know,  
5 thanks.

6 And after I read that I was not about to walk in by myself into  
7 Danny's office and sit down with him and have him bully me into signing  
8 some documents that I didn't want to sign.

9 Q Let's back up for a second. This 4:14 p.m. email that you sent  
10 to Danny, did you agree to the settlement, what settlement were you  
11 referring to?

12 A The Viking settlement agreement.

13 Q And Danny's reply to you, 45ish minutes later, did he provide  
14 you any attorney advice as to the status of the Viking settlement?

15 A No.

16 Q What was the tag line -- what was he only talking about to  
17 you as a client, what did you understand it to be?

18 A The fee.

19 Q Next up, the top, a larger email. Was this your reply?

20 A Yes, it was.

21 Q What concern did you have as a client?

22 A Well, I think I was in full panic mode at that point. And so, I  
23 said, I do have a lot of questions about the process because I was  
24 confused. I said, I had no idea we were on anything but an hourly  
25 contract with you until our last meeting. And then I told him that Brian

1 was still away, and I said I wanted to get a complete understanding of  
2 what has transpired so I can consult my attorney because I'm scared. I  
3 don't -- I do not believe I have to get her involved at this time. I was  
4 hoping that he would just give me some information about the  
5 settlement agreement.

6 And then I said, please let me know what the terms of the  
7 settlement are to your knowledge at this point. And if they're -- because  
8 they're not detailed in your letter. I mean, it was just this thing  
9 overhanging us that we had just no idea whether, you know, he had  
10 mixed the deal, or you know, what was the status of it.

11 And I said, please send over whatever documentation you have or  
12 tell us what they verbally committed to, otherwise you know, I'll review  
13 the letter, meaning the settlement agreement and get back to you in a  
14 couple of days. And then in the meantime I trust we're still progressing  
15 with Lange, et al., any other immediate concerns that should be  
16 addressed, because I was concerned that he wasn't going to represent us  
17 anymore on all the other issues that were in play.

18 And then I reiterated, as I mentioned in our last meeting, the  
19 November 17th meeting, that we should still be progressing as originally  
20 planned. I would hate to see it delayed for any reason. And that was in  
21 response to Danny saying that we didn't have to do this and that. And I  
22 said, until we see an agreement there is no agreement so please let me  
23 know if there are any upcoming delays.

24 And I think everyone has been busy over the holidays and  
25 not had time to process everything. And then I -- then again, I was just

1 trying to confirm. You know, you have not yet agreed to the settlement,  
2 is that correct? Have you seen it? Is it there? You know, what's the  
3 status of the settlement?

4 Q Do you recall getting a reply email from Mr. Simon --

5 A No.

6 Q -- in reply to this, at least on the evening of November 27,  
7 2017 --

8 A No.

9 Q -- 5:32 p.m.?

10 A I didn't get a reply.

11 Q Not that evening?

12 A No.

13 Q Let's look at another email.

14 MR. GREENE: This is Exhibit 44, Your Honor.

15 THE COURT: Okay.

16 MR. GREENE: Bate stamp 421.

17 BY MR. GREENE:

18 Q Do you recognize this email, Angela?

19 A Yes, I do.

20 Q It looks like there's one to -- from Danny and there's one to  
21 Danny. Is that your understanding?

22 A Yes.

23 Q At least the ones we're focusing on from November 29th?

24 A Yes.

25 Q And looking at this Wednesday 29th email, is it your

1 understanding that this is one that you sent to Danny --

2 A Yes.

3 Q -- in the morning? Why was this email sent, Angela?

4 A I hadn't heard from Danny in more than a day. And I was  
5 panicked, scared. I had no idea what was going on, and so I sent another  
6 email and I said, Danny, Brian is on route and gets back late tonight. You  
7 know, he'll back to you shortly at a time and sit down and talk. I'd prefer  
8 if you and Brian worked this out as I did not want to be involved. When I  
9 came to your office I thought it was to talk about next steps in the case. I  
10 had no idea we were going to talk about fees. So, I would prefer to be  
11 excluded from the narrative until you two reach a resolution.

12 I said, this has been stressful and awkward. Please feel free to call  
13 me today if you'd like to discuss anything, but I have little knowledge  
14 about the case and process and prefer the two of you figure this out and  
15 move on and move forward. But that was my polite way of saying just  
16 please try to work this out.

17 Q And then he replied, of course it looks like at 10:36 a.m. that  
18 morning?

19 A Yes. He said, in light of the recent emails from you this week  
20 and that your signature is required for all documentation as well as the  
21 fact that you are principal of the parties in the lawsuit, it will be  
22 necessary for both of you to be present at any meeting we have.  
23 Therefore, please advise what time is good for both of you to come to  
24 my office and meet when he returns. Thanks.

25 Q Any other communications that you and Danny had via email

1 while Brian was still in China?

2 A Well, I felt like he wasn't answering my emails. I would ask  
3 him a direct question and he wouldn't answer me.

4 MR. CHRISTENSEN: Judge, objection; move to strike as  
5 nonresponsive. The question was, were there any other emails.

6 THE COURT: And then the question was, were there any  
7 other emails exchanged between you and Mr. Simon while your  
8 husband was away in China?

9 THE WITNESS: No. That was it, Your Honor.

10 THE COURT: Just the ones that Mr. Greene --

11 THE WITNESS: That's it.

12 THE COURT: -- has shown you?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MR. GREENE:

16 Q And as a client again and Danny Simon, the attorney in this  
17 relationship, what did you feel that your representation from him was  
18 like? What was the impact upon you upon receiving or not receiving  
19 email communications from your attorney?

20 A I was really concerned. And I wasn't sure if he was an  
21 advocate for me anymore.

22 Q Viking case settlement. What terms were acceptable to you  
23 for settling with Viking and when? And as to what terms were first and  
24 then we'll go to the when second.

25 A We were agreeable to the agreement as it was, as is.

1 Q Six million dollars?

2 A Yes.

3 Q Confidentiality?

4 A Yes.

5 Q Just didn't matter?

6 A At that point we just wanted to put it behind us.

7 Q Wanted it done. Was Danny made aware of this?

8 A Yes.

9 Q Angela, why did you and Brian hire Vannah and Vannah?

10 A I never thought in a million years that I'd have to hire an  
11 attorney to protect me from my attorney. And that's why we had to hire  
12 Vannah and Vannah to basically help us through this process because  
13 now we found ourselves in this predicament.

14 Q Angela, did you ever tell Danny to stop working on your  
15 cases against Viking and Lange?

16 A Never. In fact, at the meeting I reiterated, don't stop working  
17 on the case. And by email I also told him, please don't stop working on  
18 the case.

19 Q Did you ever stop listening to the advice of Danny Simon?

20 A No.

21 Q Following and listening, are those distinct different words to  
22 you?

23 A Yes.

24 Q When you've received advice from attorneys in your past  
25 business life and present business life, do you always follow the advice

1 that the attorneys give?

2 A No.

3 Q You have a business background?

4 A Yes.

5 Q Smart, feel you can make decisions on your own too?

6 A Absolutely.

7 Q Did you ever send anything to Danny, any form of  
8 communication that said you are no longer my lawyer?

9 A No.

10 Q There was a thing that we called a super bill that was  
11 presented to everyone on January 24th of 2018. It was included in  
12 Danny's motion to adjudicate his attorney's lien. Prior to the time that  
13 that bill saw the light of day, had you ever seen any of those billing  
14 entries before?

15 A No.

16 Q Had Danny, your lawyer, ever communicated to you prior to  
17 November 17 of 2017 that he had additional time that he was going to be  
18 billing you that he expected to be paid?

19 A Never.

20 Q Let me back that up. Did he ever tell you at any time that up  
21 -- or up until the -- even the 27th of November when the letter came and  
22 the retainer agreement came, that he had additional time that he was  
23 going to bill?

24 A Never.

25 MR. GREENE: Court's indulgence for a moment, Your Honor.

1 THE COURT: Yes.

2 BY MR. GREENE:

3 Q Nonetheless, you knew that Danny still was working on your  
4 case to wrap things up, correct?

5 A Correct.

6 Q Okay. And you probably had an understanding, did you not,  
7 that there was going to be additional time that was going to be billed  
8 that you'd be obligated to pay as a plaintiff. Is that fair to say?

9 A Yes.

10 Q Did you have the opportunity to review the super bill that  
11 was given to all of us on January 24th of 2018?

12 A Yes.

13 Q With your background and expertise in reviewing legal bills,  
14 or at least business practices, did you form opinions on the nature and  
15 content of the super bill?

16 A Yes.

17 Q And what are those opinions?

18 A I was upset. I was upset that he went back, and he found  
19 more billing. I found that it was unethical what he did. I was upset  
20 because he had written one line item for 135 hours for emails that was  
21 \$70,000. I knew that the bill came two and a half months after our  
22 meeting and that it most certainly wouldn't be in my favor. And that it  
23 was probably used to justify the higher amount -- to get him to justify the  
24 high amount that he was due. So, I felt that it was egregious.

25 Q You were here in court when Danny testified that he



1 presented a bill at the mediation on November 10 for \$72,000; were you  
2 not?

3 A Yes.

4 Q Did you hear his explanation, that it was for costs?

5 A Yes.

6 MR. CHRISTENSEN: Objection; Your Honor, misstatement of  
7 the testimony. That was never said.

8 MR. GREENE: Pretty sure it was, but it's in the transcript,  
9 Your Honor.

10 THE COURT: I'll rely --

11 MR. GREENE: We'll point that out.

12 THE COURT: -- on the transcript of what was said.

13 MR. GREENE: Okay.

14 BY MR. GREENE:

15 Q Were you here when Brian testified that it was his  
16 understanding that that invoice for \$72,000 was actually for fees?

17 A Yes.

18 Q Do you have an opinion whether or not -- well, let me back  
19 up. Do you know what the costs are that have been incurred in this case  
20 and paid to Danny Simon's office from September 28 forward?

21 A Yes.

22 Q And what's that amount?

23 A \$68,000 and change.

24 MR. GREENE: Your Honor, we've already agreed to submit  
25 all of our exhibits into evidence. We have a check that was written and

1 signed by Mr. Simon and Mr. Vannah. It does have a bates number.  
2 Once again, I'm just high maintenance and I don't know exactly which  
3 defense exhibit this comes from.

4 THE COURT: Okay.

5 MR. GREENE: But it's the actual check for \$68,000.

6 UNIDENTIFIED SPEAKER: What's the bates number, John?

7 MR. GREENE: It's 454.

8 MR. CHRISTENSEN: What's the date on it, John?

9 MR. GREENE: It's the March 1st --

10 MR. CHRISTENSEN: Thank you.

11 MR. GREENE: -- of 2018.

12 THE COURT: Okay.

13 UNIDENTIFIED SPEAKER: It's Exhibit 55.

14 THE COURT: 55.

15 MR. GREENE: Thank you.

16 BY MR. GREENE:

17 Q As a plaintiff in the flood litigation was this your  
18 understanding as the costs that were paid to Mr. Simon's office  
19 following his -- the payment of his fourth invoice?

20 A Yes.

21 Q And this represented payment and cost in full?

22 A Correct.

23 Q I'm not a math major. Is that \$72,000?

24 A No.

25 Q So the \$72,000 bill as a plaintiff in the flood litigation that

1 was handed to your husband at the mediation, could that have been for  
2 cost?

3 A No.

4 MR. CHRISTENSEN: Objection. Speculation.

5 MR. GREENE: It's a plaintiff in the litigation. She knows  
6 what the costs are. It's simple deductive reasoning.

7 THE COURT: Well, did she see the bill that was given to  
8 them at mediation?

9 MR. CHRISTENSEN: Nope.

10 THE COURT: So how does she know what the bill is for?

11 MR. GREENE: Because she has read every single piece of  
12 paper in this litigation and she -- as it relates to this motion to adjudicate  
13 the lien. This was attached the motion to adjudicate the lien.

14 THE COURT: Right.

15 MR. GREENE: It was part of the whole process. Do I need to  
16 ask a foundational question as to whether --

17 THE COURT: No. I know she can testify to what the check  
18 was for, but you keep referring to this bill that was given during the  
19 mediation. Was she there to get that bill?

20 MR. GREENE: She was not there at the mediation.

21 THE COURT: Okay. So how does she know what the bill  
22 says? Has she -- can you lay some foundation that she has seen that,  
23 and she can somehow testify to what the bill said the charges were for?

24 MR. VANNAH: Danny testified to it.

25 MR. GREENE: It's a -- Danny testified --

1 THE COURT: Right.

2 MR. GREENE: -- as we indicated -- Danny testified it was  
3 costs.

4 THE COURT: That Danny's seen the bill.

5 MR. GREENE: -- cost. Brian testified that it was for fees.

6 THE COURT: Because they've both seen the bill. But I don't  
7 know how she could clear that up if she has never seen the bill. I mean,  
8 you've got to lay some foundation that she has some sort of knowledge  
9 of this. Danny I'm assuming is the person that produced the bill so of  
10 course he's seen it. It's my understanding he gave it to Mr. Edgeworth at  
11 the mediation, so he's seen it, but how does she know?

12 MR. GREENE: Because of what she's read.

13 THE COURT: Right. But I mean, she read about it, but I could  
14 read about what it says. I mean, she has to have some sort of  
15 knowledge as to what was contained in this bill if she's going to testify to  
16 what it says.

17 BY MR. GREENE:

18 Q On the super bill Angela, do you have an opinion whether it's  
19 accurate?

20 A I don't believe it's accurate.

21 Q And how do you form that opinion?

22 A Well, there were things on it such as the 24-hour billing for  
23 Ashley Ferrel. There were phone bills. After looking at the phone bills,  
24 there were phone bills that were billed for three times the same phone  
25 call. Things like that that made me question the accuracy.

1 Q Did you see in the super bill Angela, that there was billing  
2 entries going back to the Starbucks meeting for May of 2016 going all the  
3 way forward through the last date of the invoice that I'll call it the fourth  
4 invoice?

5 A Yes.

6 Q As the client in this attorney/client relationship, how do you  
7 feel about having your attorney go back and rebill time that's already  
8 been billed and paid?

9 A I was outraged and very upset.

10 Q Why so?

11 A Because that's never happened to me ever.

12 Q Angela, do you have an opinion to share with Judge Jones  
13 as to how much you believe that plaintiffs owe Danny Simon --

14 A Yes.

15 Q -- for the work that he has -- that he performed in this matter  
16 in addition to what's already been paid?

17 A Yes.

18 Q Would you please share that with the Judge?

19 MR. CHRISTENSEN: Objection. Foundation. She's not an  
20 expert.

21 MR. VANNAH: She's a client.

22 MR. GREENE: She's a client. She's reviewed all the invoices  
23 for heaven sakes.

24 THE COURT: She's reviewed all the invoices in this case.  
25 She can testify what she thinks she owes him.

1 THE WITNESS: I believe we owe him the \$72,000 invoice  
2 that was presented, and I believe that we owe him the amount of time of  
3 work that was done from the end of that invoice to the conclusion of the  
4 settlement agreement.

5 BY MR. GREENE:

6 Q Do you have an estimation as to what that additional amount  
7 would be? Talking about the 72,000. Do you have an opinion as to what  
8 that additional time from the 10th of November of 2017 through the time  
9 that -- for the most part everything had wrapped up by early December  
10 2017?

11 A I think being generous it would be double that. We are just  
12 going by a month but --

13 THE COURT: Double what?

14 THE WITNESS: Double that bill.

15 THE COURT: The 72,000?

16 THE WITNESS: Yes.

17 BY MR. GREENE:

18 Q So 144?

19 A Correct.

20 THE COURT: And are you basing this on the \$550 an hour, or  
21 how are you coming to this figure?

22 THE WITNESS: I'm just using averages, and I know that  
23 there was work done during that period, and I know it ramped up  
24 towards the end. So, I'm just extrapolating from that bill.

25 THE COURT: Okay. So about how many hours do you think

1 that there are?

2 THE WITNESS: I don't know how many hours exactly there  
3 were.

4 THE COURT: Okay. So how are you arriving at a figure of  
5 \$144,000? Are you -- and does that figure include -- are you calculating it  
6 at \$550 an hour or what is the base -- what is the rate --

7 THE WITNESS: \$550 an hour. So just based on the \$72,000  
8 of that period and there was about the same amount of time after that  
9 from November 10th until the conclusion of the settlement.

10 THE COURT: But that's just what you believe?

11 THE WITNESS: That's just what I believe, Your Honor.

12 THE COURT: Okay.

13 BY MR. GREENE:

14 Q When we were last here for what seemed like forever, we  
15 talked about some phone bills and phone records that Danny Simon's  
16 law office produced. Do you remember us talking about that at length?

17 A Yes, I do.

18 Q Did you have a chance to review the phone records that  
19 Danny Simon's office produced?

20 A Yes.

21 Q Did you have the opportunity to review your own phone bills  
22 and phone records pertaining to the same timeline that pertained to the  
23 records from Danny Simon?

24 A Yes.

25 Q Were you able to perform any analysis comparing the

1 number of calls, time spent on those calls versus time billed?

2 A Yes.

3 MR. CHRISTENSEN: Objection; Your Honor, they haven't  
4 produced her phone bills, and so this analysis is trial by ambush. If they  
5 wanted to do an analysis they owed me her phone bills when I gave  
6 them Mr. Simon's phone bills.

7 MR. GREENE: They never asked for them ever.

8 THE COURT: Right. But I mean, the issue came up when Ms.  
9 Ferrel testified that she started talking about what was in her phone  
10 records, and Mr. Vannah jumped up out of his seat and demanded that  
11 we get the phone records. And I mean, we all didn't have them and so  
12 we got them.

13 So, she can't now do some sort of comparison from her own  
14 phone records if you guys haven't handed those over. Because Ms.  
15 Ferrel was required to hand over her phone records after she testified to  
16 them.

17 BY MR. GREENE:

18 Q In reviewing Danny's phone records and Ashley's phone  
19 records and comparing them to the times on the invoices that you were  
20 billed for, did you determine that there were any discrepancies?

21 A Yes. They were overstated.

22 Q To what extent were Danny Simon's charges where his bill  
23 said, X number of minutes per a phone call versus what you as the client  
24 were billed, what discrepancy percentage did you find?

25 A For Danny it was 166 percent and for Ashley it was 218



1 percent.

2 THE COURT: And just so you can translate that for me, I  
3 mean, what does that mean? Does that mean that you took Danny  
4 Simon's phone records, the ones that were provided, put them together  
5 -- is this the January bill or is this the previous bills?

6 THE WITNESS: This is the super bill.

7 THE COURT: They're in the super bill. So, you put them  
8 together. And when you -- how do you arrive at 166 percent?

9 THE WITNESS: So, when you look at all the phone bills and  
10 the minutes that were billed, and this includes the one minute calls that  
11 are usually just you don't reach somebody, or you get a voicemail.  
12 When you add all of those up on his phone records and then you add up  
13 all the time that was billed for the phone records.

14 So, for example, if there was ten minutes on the one bill it  
15 would have been 28 minutes on the, you know, the billed phone bill. So,  
16 it was 200 -- or for Ashley, I'm sorry; for 218 percent more over and  
17 above what the actual phone records were.

18 THE COURT: Okay.

19 MR. VANNAH: You want to show some examples, John?

20 MR. GREENE: No, no.

21 MR. VANNAH: Okay.

22 MR. CHRISTENSEN: I wouldn't do that.

23 MR. VANNAH: Well, you know what --

24 THE WITNESS: Actually --

25 MR. VANNAH: -- he's challenging them.

1 THE WITNESS: -- it would be 21.8 minutes, Your Honor. I  
2 think I did that math wrong.

3 MR. GREENE: You know, I don't chirp during your exam, but  
4 that's fine. If you want to chirp, that's fine. Whatever. Goodness.

5 BY MR. GREENE:

6 Q Let's move onto another topic, okay. Do you remember Mr.  
7 Christensen examining your husband on Coach Ruben email issue?

8 A I do.

9 Q Who is he?

10 A I'm sorry?

11 Q Who is Coach Ruben?

12 A Coach Ruben is the director of Vegas Aces Volleyball, our  
13 nonprofit.

14 Q Did you become aware that an email was sent by Danny to  
15 Coach Ruben?

16 A Yes.

17 Q Did you hear Mr. Christensen say that you and Brian and  
18 Coach Ruben, being the Board are just self-examining, self-investigating?

19 A Yes.

20 Q Is that true?

21 A No.

22 Q How so?

23 A This is a non-profit, and we take allegations of any  
24 impropriety very seriously. And so, it's important that we protect the  
25 club, we protect the girls, the athletes that play at the club. And we

1 protect the reputation of the club.

2 So, we decided to do the USAB checks after that because Danny  
3 had basically disparaged us to Coach Ruben who is a friend of ours. So,  
4 I can imagine what he was saying to other people that we didn't know.  
5 And so, we wanted to protect our reputation and protect the integrity of  
6 the volleyball facility, the nonprofit.

7 Q Do you plan on being involved in that nonprofit forever?

8 A Not necessarily.

9 Q Do you plan on that nonprofit organization outlasting you?

10 A Yes.

11 Q Did you have any idea or any indication that a corporate  
12 culture needed to be established?

13 A Yes.

14 Q Did that have anything to do or not with you and Brian and  
15 Ruben decided that this type of allegation warranted an investigation?

16 A Absolutely. If it was me or anybody we would require the  
17 same thing.

18 Q I'm just going to a couple of topics that shouldn't take too  
19 long that deal with bill pay.

20 MR. GREENE: Just about five minutes on this, Judge. I'm  
21 getting close.

22 THE COURT: Okay.

23 MR. GREENE: Scouts' honor.

24 BY MR. GREENE:

25 Q Danny has stated in a court filing in his motion to adjudicate

1 and in his reply that you and Brian don't pay your bills; have you read  
2 that?

3 A Yes.

4 Q He indicated there was a 20 -- there was an outstanding  
5 obligation to Lange in the amount of \$22,000ish. Do you remember that  
6 discussion?

7 A Yes. But in the motion it was for 24,000.

8 Q Twenty-four thousand. What's your understanding as to the  
9 truth or falsity of that allegation made by Danny that you didn't pay --  
10 you plaintiffs didn't pay your obligations to either Lange or United  
11 Restorations in this flood litigation?

12 A It's completely false. And I think it was Danny's attempt to  
13 disparage us and make it seem like we don't pay our bills.

14 MR. CHRISTENSEN: Judge, objection. Speculation. She  
15 can't say what somebody's attempt is, or intent is. Rank speculation,  
16 move to strike.

17 THE COURT: We'll strike that comment. She can -- I'll keep  
18 the comment that she says it was false.

19 MR. GREENE: Okay.

20 BY MR. GREENE:

21 Q Why do you know it was false?

22 A Because the amount owed was actually to Lange which was  
23 \$22,000. And all those dealings were frozen, and that money was paid  
24 out, and Danny signed the check for that check to go to Lange after the  
25 settlement was done. So, there was \$100,000 owed to us, 22,000 owed

1 to Lange. The United Restorations matter was a completely separate  
2 matter. And the reason that that bill wasn't paid was because they didn't  
3 present the mold certificate at the time. And what happened was that  
4 they -- United Restorations didn't pay the mold certificate company.

5 So, we had to negotiate that on our own and pay United  
6 Restorations a certain amount, 19,000 and then pay the mold company  
7 \$5,000 to finally get the mold certificate release, which wasn't presented  
8 to us until May of 2018.

9 Q So the deal with United Restorations, they're cleaning up  
10 water damage, right?

11 A Correct.

12 Q Water causes mold, right?

13 A Correct.

14 Q So they were to remediate, correct?

15 A Yes.

16 Q Until you can get occupancy in your home what did you need  
17 first?

18 A The mold certificate.

19 Q And they hadn't given you that, had they?

20 A Correct.

21 Q And that was part of the deal?

22 A Yes.

23 Q Once it was given to you?

24 A We paid. Well, we paid before that, and then we got the  
25 certificate actually.

1 Q After Danny invited you on November 17th of 2017 and the  
2 letter of November 27th of 2017 to speak with attorneys --

3 A Yes.

4 Q -- what did you do?

5 A I reached out.

6 Q To?

7 A Lisa Carteen and Chief Justice Miriam Shearing.

8 Q Sometimes when we tell stories we give the varnished  
9 opinion, kind of the one that smells the best, tastes the best.

10 MR. CHRISTENSEN: Objection. Is this a question, Judge, or  
11 an argument?

12 BY MR. GREENE:

13 Q What facts did you tell Lisa about this conflict with Danny?

14 MR. CHRISTENSEN: I just want to make sure he understands  
15 he's now waiving the privilege by getting into this privilege they've  
16 asserted.

17 BY MR. GREENE:

18 Q So you spoke with her as a friend, and she happens to be an  
19 attorney. Did you retain Lisa?

20 A No.

21 Q Speak with her in what capacity?

22 A As a friend.

23 THE COURT: Okay.

24 BY MR. GREENE:

25 Q So what did you tell her about what had happened between

1 you and Brian and Danny with this dispute?

2 A I said we had an hourly fee agreement with our attorney to  
3 represent us in the Viking and Lange case. And then when the  
4 settlement came down he decided to change the deal and ask for a  
5 contingency fee.

6 Q Did the counsel that you received from your friend Lisa have  
7 any bearing on your decisions on how to proceed going forward?

8 A Yes.

9 Q How so?

10 A We're here.

11 Q Did you speak with anyone else about -- who has a legal  
12 background about the dispute with Danny?

13 A Yes. I spoke to Chief Justice Miriam Shearing.

14 Q Did you retain her as an attorney?

15 A No. I spoke to her as a friend.

16 Q And what facts did you tell Justice Shearing about this  
17 dispute with Danny?

18 A The same as I told Lisa.

19 Q Did the -- did she provide any response?

20 MR. CHRISTENSEN: Objection. Hearsay.

21 MR. GREENE: Hang on.

22 THE WITNESS: Yes.

23 BY MR. GREENE:

24 Q Did the advice that you received from Miriam Shearing have  
25 any bearing on how you proceeded from that time forward?

1           A     Yes.

2                   THE COURT: And what time -- when did you talk to Justice  
3 Shearing?

4                   THE WITNESS: February of 2018.

5                   THE COURT: And the advice you got from her determined  
6 how you proceeded after that?

7                   THE WITNESS: It was a long time between November 19th  
8 until now. So, there was -- I mean, the case was still ongoing. We're  
9 here, it's nine months later or ten months later so yes.

10                  THE COURT: Okay. I'm so confused. When did you talk to  
11 Justice Shearing?

12                  THE WITNESS: February 20 -- 2018.

13                  THE COURT: So, you talked to her in February of 2018?

14                  THE WITNESS: Yes.

15                  THE COURT: And did you just testify that the advice she  
16 gave you --

17                  THE WITNESS: Uh-huh.

18                  THE COURT: -- determined how you proceeded after that?

19                  THE WITNESS: Yes. I feel her advice, you know --

20                  THE COURT: Determined how --

21                  THE WITNESS: -- gave me confidence in what we were  
22 doing and that we were in the right.

23                  THE COURT: After February?

24                  THE WITNESS: Correct.

25                  THE COURT: Okay.



1 BY MR. GREENE:

2 Q What did she say?

3 MR. CHRISTENSEN: Objection. Hearsay.

4 MR. GREENE: It's effect on the hearer, Your Honor. It's a  
5 non hearsay purpose. I'm not offering to the truth of the matter  
6 asserted.

7 THE COURT: I'll let in for the effect on the listener.

8 THE WITNESS: I've known Chief Justice for five or six years.  
9 I approached her as a friend, and I told her what happened, and she was  
10 outraged for me. She said that she couldn't believe that that happened,  
11 and she suggested I report it to the bar as the first step and then said that  
12 this was a case that was destined for the Supreme Court because it  
13 should set precedence for any other case that happens like this in the  
14 future. And she said she felt sorry that I was in this situation. And in her  
15 entire career she's never heard of anything like this happening ever.

16 MR. GREENE: Your Honor, that's all I have.

17 THE COURT: Okay, thank you. Mr. Christensen, do you need  
18 a short break before you start or --

19 MR. CHRISTENSEN: If you don't mind, Judge.

20 THE COURT: Yeah. We'll do --

21 MR. CHRISTENSEN: Maybe we could use --

22 THE COURT: We're only going to do like ten --

23 MR. CHRISTENSEN: -- a restroom break real quick.

24 THE COURT: Yeah. We'll take a restroom break. We're only  
25 going to take like ten minutes because I want you to be able to wrap it up

1 today.

2 MR. CHRISTENSEN: I'm going to be not so long as I was  
3 with her husband, Your Honor.

4 THE COURT: Yeah. We don't have two days.

5 [Recess at 2:54 p.m., recommencing at 3:04 p.m.]

6 THE COURT: -- Plumbing, Edgeworth Family Trust v. Daniel  
7 Simon. Mrs. Edgeworth, if you could approach the witness stand. And  
8 ma'am, I'll just remind you, you're still under oath. You may be seated.

9 THE WITNESS: Sure.

10 THE COURT: Mr. Christiansen, whenever you're ready.

11 MR. CHRISTIANSEN: Sure.

12 CROSS-EXAMINATION

13 BY MR. CHRISTIANSEN:

14 Q Good afternoon, Ms. Edgeworth.

15 A Good afternoon.

16 Q Ms. Edgeworth, I'm going to ask you some follow up  
17 questions to those that were posed to you this morning and then after  
18 lunch break by Mr. Greene and the topics sort of that he covered with  
19 you, okay?

20 A Yes.

21 Q This is cross-examination, so my questions are going to call  
22 for yes or no answers, and I'd just appreciate it if you'd answer that way,  
23 all right?

24 A All right.

25 Q Ms. Edgeworth, I'm going to jump around a bit, because we

1 started from -- or sorry -- we ended today -- one of the last topics was  
2 this proposition that you all -- you -- I'm going to stick with you. You pay  
3 your bills?

4 A Yes, sir.

5 Q You pay them when you get them?

6 A Yes.

7 Q You don't wait for a court order to pay them?

8 A No.

9 Q All right. So, let's look at what's been entered --

10 MR. CHRISTIANSEN: It's Bates stamp 80, John.

11 BY MR. CHRISTIANSEN:

12 Q You've seen this before. April 18th, 2017 correspondence,  
13 where your husband says, We don't have a contract and I'll pay him  
14 what the Court tells me to, right? Those are my highlights and  
15 underlines, correct?

16 A Correct.

17 Q Because your husband owed money at this time to this  
18 contractor, correct?

19 A I don't know. I don't know this case and I don't know the --

20 Q Wait a second. Wait a second.

21 A -- outstanding --

22 Q Wait a second. You just told Mr. Greene that when you get a  
23 bill, you pay it, right?

24 A Yes.

25 Q And you just told me you don't wait for a court order. You

1 get a bill and you pay it, right?

2 A Correct.

3 Q That email from your husband says I'm not paying it,  
4 because they don't have a contract, and I'll give them what the Court  
5 awards them, right?

6 A Yes, Mr. Christiansen, but --

7 Q Okay. That's all I asked you.

8 A -- I don't understand what this is about.

9 Q You don't understand?

10 THE COURT: It's okay, ma'am.

11 BY MR. CHRISTIANSEN:

12 Q You don't understand what that's about?

13 A No, Mr. Christiansen, I don't.

14 Q Right. And that's a bit indicative, ma'am, of sort of the  
15 historical -- your, Mrs. Edgeworth's historical approach to this case.  
16 Sometimes you know everything about the case and other times you  
17 don't know anything about the case, fair?

18 MR. GREENE: Objection. Is he just going to belittle her or is  
19 he going to ask a question? Show some respect.

20 THE COURT: Mr. Christiansen, can you rephrase the  
21 question?

22 MR. CHRISTIANSEN: Sure.

23 BY MR. CHRISTIANSEN:

24 Q Ma'am, on -- at different moments throughout -- and we'll  
25 just use the last one. I show you an exhibit about a matter you just

1 testified to with Mr. Greene and when Mr. Greene asked you questions,  
2 you know everything. You knew all the answers to his questions, right?

3 A Yes.

4 Q Yet, I show you an exhibit and now you don't know the  
5 answer, correct?

6 A I --

7 Q That's what we just did back and forth.

8 A I don't know what this email is about, Mr. Christiansen.

9 Q Okay. You told the Court today to start with that you knew in  
10 June of 2016 that Danny Simon was going to bill you 550 an hour?

11 A Yes.

12 Q You never talked to Danny in June of 2016, did you?

13 A No.

14 Q Danny Simon never told you that, did he?

15 A No.

16 Q In fact, ma'am, up until November the 17th in Danny Simon's  
17 office, you never had a conversation with Danny Simon about how he  
18 was going to bill this case, correct?

19 A No.

20 Q That's not correct or that is correct?

21 A It is correct.

22 Q Okay. That's okay. Cross is a little bit dicey sometimes. So,  
23 from the moment Danny agree -- you got to listen to your husband, Mr.  
24 Edgeworth testify. I think it's been a few weeks now, over the course of  
25 a series of days. Do you remember that testimony?

1 A Yes.

2 Q And Mr. Edgeworth and you are 50/50 owners -- I may be  
3 using the incorrect word -- in both the Plaintiffs that Danny represented  
4 in the underlying litigation against Lange and Viking, correct?

5 A Yes.

6 Q You agree with everything your husband testified to?

7 A Yes. I've heard it. I don't know what you're referring to  
8 specifically, Mr. Christiansen.

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

12 A Yes.

13 Q And you remember me talking -- questioning your husband,  
14 correct?

15 A Yes.

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

19 A Yes.

20 Q You further remember your husband presenting to the Court  
21 that spreadsheet he had created, correct?

22 A The activation spreadsheet?

23 Q No.

24 A Is that what you're referring to?

25 Q No, ma'am. The spreadsheet he created to criticize the bills,

1 to come in and say he'd been overbilled. Do you remember that?

2 A I do not.

3 Q You probably -- I'll refresh your recollection, if I remind you.

4 This is the spreadsheet that Her Honor caught your husband in a  
5 mistake. Do you remember that?

6 A No. Could you explain it to me?

7 Q Sure. Were you here when the Judge questioned Mr.  
8 Edgeworth about these entries that he put in the spreadsheet that he  
9 proffered as proof that he'd been overbilled?

10 A I was here, yes.

11 Q Do you remember your husband admitting that he -- to the  
12 Judge -- she caught him -- that he'd made a mistake?

13 A I do not remember that.

14 Q Do you remember if we look down here to August 20th of the  
15 year 2017 and August 21st, your husband testified that he thought he'd  
16 been billed twice for the same batch of emails. Do you remember that?

17 A I don't remember that specific comment.

18 Q Well, you were here?

19 A Yes.

20 Q Okay. I was asking him questions about what these boxes  
21 meant. Do you remember?

22 A No.

23 Q Okay. Do you remember Mr. Edgeworth testifying that he  
24 thought he'd been double-billed for those two sets of emails on the  
25 consecutive dates in August?

1           A     I don't remember that specific testimony.

2           Q     And the emails aren't a secret, Mrs. Edgeworth, right?

3     Everybody's got them. Fair?

4           A     I'm sorry. Could you say --

5           Q     The --

6           A     -- that again?

7           Q     The emails aren't a secret. In other words, Mr. Greene gave  
8     me your emails. They kind of come out a little bit different than if I print  
9     them off Mr. Simon's. Yours say Gmail. Mr. Simon's say Simon Law,  
10    but you all physically possess all the emails that went back and forth  
11    between you and Danny, right?

12          A     Yes.

13          Q     All right. And so, it would have been super easy, would it  
14    not, for Mr. Edgeworth to look at these dates, August 20th and August  
15    21st and say hey, I did or didn't send X emails on those dates, right?  
16    That would have been simple.

17          A     Sure.

18          Q     And rather than do that -- because remember, I had to show  
19    him that on one day, he'd sent 10 and on another day he'd sent 12 and  
20    they were totally separate emails. Not double-billed. Do you remember  
21    that?

22          A     No. I'm sorry I don't, Mr. Christiansen.

23          Q     Okay. And he could have gone and done that, right?

24          A     Yes.

25          Q     And it's a little bit like your -- and I want to make sure I get it



1 right. Like the percentage of overbilling you accused Mr. Simon and Mr.  
2 Ferrel of. Right? Because what you did -- and you didn't bring any work  
3 product. You don't have a spreadsheet to show me about that, do you?

4 A I do.

5 Q You do?

6 A Mr. John Greene has it.

7 Q Okay. And what you did is went and compared total amount  
8 of time on a phone call to total amount of time billed, correct?

9 A Correct.

10 Q And ma'am, you know, don't you -- somebody that's a Har --  
11 are you Harvard educated as well or is that Just Brian?

12 A That's just Brian.

13 Q Okay. But you have a background in business. It sounds like  
14 you've been super successful in your own right in your career?

15 A Yes.

16 Q Dozens of lawyers?

17 A Fair.

18 Q Bills all the time?

19 A Yes.

20 Q You know lawyers bill in incremental amounts, correct?

21 A I do.

22 Q So if I do something for two minutes as a lawyer and I bill  
23 0.1, that's actually six minutes, right? It's a tenth of an hour.

24 A Yes, but sometimes you don't -- for example, if you've made  
25 back to back phone calls, I wouldn't expect to be billed six minutes, six

1 minutes and six minutes for each one minute call.

2 Q Okay, ma'am. I simply --

3 A My attorneys wouldn't do that.

4 Q -- asked you a question, very simple question. Lawyers bill in  
5 increments, right?

6 A Yes.

7 Q All right. And so, when you try to tell Her Honor that these  
8 telephone calls are inflated by the percentages you assign to Mr. Simon  
9 and Ms. Ferrel, that does not take into account at all the incremental  
10 billing of lawyers. True?

11 A True.

12 Q All right. So that figure, by its very nature, is inflated. True?

13 A I would think it would go --

14 Q That's --

15 A -- up and down, Your Honor. Up and down. It should be  
16 pretty fair. It shouldn't always be against my favor.

17 Q I got you. And Ms. Edgeworth, do you remember -- if I get  
18 back -- I'm sorry. I skipped a little bit. In June of 2016, you knew Danny  
19 was billing you at 550 an hour, not from Danny, but from your husband.  
20 Fair?

21 A Yes.

22 Q Okay. Remember your husband said that was June the 10th.  
23 Do you remember that?

24 A Around --

25 Q Did he --

1           A     -- that date.

2           Q     Did you know Danny was working for free from May the 27th  
3 to June the 10th?

4           A     I did not know that.

5           Q     Brian didn't tell you that? Fair?

6           A     I did not know that.

7           Q     In fairness to you, ma'am, I think you said you've not been  
8 involved -- I think you told Mr. Greene this morning -- in every aspect of  
9 the case. Is that a fair statement?

10          A     Fair.

11          Q     And in fairness to you, you only know to a certain degree  
12 what you've been told by your husband. True?

13          A     Well, I've seen documents, yes, but the --

14          Q     I --

15          A     -- other stuff, you're right. I know what Brian has told me.

16          Q     Right. And you weren't privy to the phone call that occurred  
17 on June the 10th. Is that fair?

18          A     Fair.

19          Q     You weren't billed for any phone call on June the 10th by Mr.  
20 Simon of 2016. Is that fair?

21          A     I don't know. I'd have to look at the bill to see if there was a  
22 charge for that on the invoice.

23          Q     Okay. So, if you weren't billed for it, either Mr. Simon  
24 underbilled you or it didn't happen. One of the two.

25          A     I don't know.

1 Q Okay. I got you. You don't know. I'm with you. Do you  
2 know what the register of actions looks like?

3 A I do not.

4 Q I showed it to your husband a little bit. It's just sort of all the  
5 filings that happened in you all's case.

6 MR. CHRISTIANSEN: And this is Exhibit 63, John. I'm sorry.

7 THE COURT: Okay.

8 BY MR. CHRISTIANSEN:

9 Q It's just the register of everything that was done in the  
10 underlying case. Have you ever looked at that, Ms. Edgeworth?

11 A I didn't see it. Could you put it --

12 Q Sure.

13 A -- back up again, please?

14 Q There you go. Have you ever looked at --

15 A Can I see the whole thing, please? I may have seen this a  
16 long time ago, but I don't recall.

17 Q Anything in this register of actions, any of the filings, any of  
18 the motion work, any of the courtroom work, was any of it done by you  
19 or Brian?

20 A I don't know what's in that document, Mr. Christiansen. I  
21 don't understand your question.

22 Q Okay. I'll move on, Ms. Edgeworth. Ms. Edgeworth, when  
23 you get billed by lawyers, they bill you every month, right?

24 A No.

25 Q So you go six months at a time without billing?

1 A Yes, they do.

2 Q Wow. And that was your agreement with Mr. Simon that he  
3 would go six months at a time without billing. Is that what you're telling  
4 the Judge?

5 A No.

6 Q You don't know what the agreement was, correct?

7 A I know the agreement was hourly.

8 Q You don't know what the interim payment schedule was for,  
9 correct?

10 A I know there wasn't much work done for the first six months.

11 Q Ma'am, it's an easy question.

12 MR. GREENE: I'm --

13 BY MR. CHRISTIANSEN:

14 Q Do you know what -- do you know when he was supposed --  
15 how often you were supposed to get billed and pay Mr. Simon? Yes or  
16 no?

17 A No.

18 Q All right. That's a term you're just unfamiliar with, correct?

19 A Which term? I'm sorry.

20 Q The incremental timing of the bills and paying them.

21 A I'm not familiar with that term, no.

22 Q Do you remember having your deposition taken --

23 A I do.

24 Q -- in the underlying matter? The Lange lawsuit?

25 A I do.

1 Q Mr. Simon went with you to your deposition?

2 A Yes.

3 Q And in your deposition, do you remember your husband  
4 answering questions relative to the portion of his deposition he cites in  
5 all his affidavits in the complaint, where he claims that his testimony was  
6 that all the bills as of his depo in September for the case had been  
7 submitted, and there were no other bills?

8 A I do.

9 Q And do you remember me having to show Brian -- Mr.  
10 Edgeworth. I apologize. Your husband. That he'd sort of forgotten to  
11 cite the second part, the latter part of the deposition, where he testified  
12 that the bills were still accruing?

13 A I'll take your word that he did, but I don't remember  
14 specifically.

15 Q But you do recall that that's nowhere in any of his affidavits  
16 or the complaint Edgeworth v. Simon, correct?

17 A I don't know.

18 Q All right. Well, the Judge has all that and we'll let her see it.  
19 And I asked it that way, because your deposition -- I'll show you.

20 MR. CHRISTIANSEN: John, it's Exhibit 86, Mr. Greene.

21 BY MR. CHRISTIANSEN:

22 Q Is Monday, September the 18th, 2017. Do you remember  
23 going for your deposition, Mrs. Edgeworth?

24 A Yes.

25 Q Do you remember the oath you took?

1 A Yes.

2 Q The same oath you took here in court?

3 A Yes.

4 Q And do you remember being asked questions in your  
5 deposition relative to attorney's fees?

6 A Yes.

7 Q And your deposition is -- let me think -- 14 or 15 months after  
8 you came to this understanding that Mr. Simon was billing at 550 an  
9 hour, right?

10 A Okay.

11 Q True?

12 A Yes.

13 Q Okay. And yet when you're asked, Mrs. Edgeworth, how  
14 much you've paid your attorney's fees and costs to date, you don't know.

15 A I don't know the full amount. That's -- I didn't know the full  
16 amount.

17 Q Okay.

18 A I know the hours and rates.

19 Q Okay. Let's just read.

20 "Q Can you tell me how much you've paid in attorney's fees and  
21 costs to date?

22 "A I don't know. That would be a question for my husband.

23 "Q Okay. All right.

24 "A I don't think I want to know.

25 Did I get that right?

1           A     That's a joke.

2           Q     Oh, I just mean did I read it correctly?

3           A     Yes, you did.

4           Q     Okay. And this is some 14 or 15 months after you had this  
5 firm understanding between you and your husband about what your  
6 husband told you Mr. Simon agreed to be paid, correct?

7           A     I knew the rate, Mr. Christiansen. I didn't know the exact  
8 amount that we'd paid Danny to that date.

9           Q     Well ma'am, you told Mr. Greene this morning that you were  
10 the person that reviewed the bills. You had an internal procedure where  
11 Mr. Edgeworth would check off on a bill and you would check off on a  
12 bill and an accountant or a maybe a bookkeeper or somebody would  
13 actually sign the bill?

14          A     Yes.

15          Q     All right. So, by September, you'd submitted three or four  
16 invoices, right? Over 18 months?

17          A     I couldn't tell you right now, at that particular time how much  
18 we had paid. I don't remember the exact dates of all the payments, so I  
19 couldn't tell you the exact amount that we had paid at that time.

20          Q     Right. But today in preparation for the hearing, you knew  
21 back in June of 2016, based on not conversations with my client, Danny  
22 Simon, that you were going to pay Danny Simon 550 an hour?

23          A     Yes.

24          Q     All right. So, if Mr. Greene and you agree how much I'm  
25 going to get paid, does that bind me?



1           A     I'm sorry. Could you repeat that?

2           Q     If you and Mr. Greene agree to what my rate is, but you don't  
3 tell me about it, am I bound by that?

4           A     I don't understand your question.

5           Q     I think probably the Judge does. This is further in your  
6 deposition.

7                     MR. CHRISTIANSEN: Page 48, Mr. Greene. I'm sorry.

8 BY MR. CHRISTIANSEN:

9           Q     Why did you need to borrow the money? Question.

10          "A     The ongoing lawsuit and repairs.

11          "Q     So was this money used to pay the attorney's fees?

12          "A     Correct.

13          "Q     Okay. Because you guys have paying the attorney's fees as  
14 you've gone?

15          "A     Correct.

16          "Q     Okay. So, on a monthly basis, you'll pay those fees?

17          "A     I don't know. I don't know. You have to ask my husband  
18 that.

19 Did I get that all right?

20          A     Yes.

21          Q     So, in September of '18 -- '17. I'm sorry. Your deposition  
22 testimony accurately reflects how familiar you were with the agreement  
23 with Danny Simon, correct?

24          A     Yes.

25          Q     And can we agree that that's drastically different than your

1 testimony this morning as to how familiar you were with the financial  
2 arrangement with Danny Simon?

3 A No.

4 Q No. Okay. Remember when I objected at one point this  
5 morning and said can we get some context when Mrs. Edgeworth  
6 learned about the things she's testifying to? And your -- I think you told  
7 the Judge in preparation of this hearing; you learned a lot of things?

8 A Yes.

9 Q And that's because, in all fairness to you, you were taking  
10 care of your family. I think you have a couple of daughters that are  
11 active young ladies, and you're a busy woman yourself?

12 A Yes.

13 Q And most of what you knew about the Edgeworth v. Viking  
14 and Lange lawsuit came from Brian?

15 A Yes.

16 Q Like a simple example. Remember Mr. Greene showed you  
17 that check for 68 grand? Remember the check that you got paid in March  
18 for 68,000 and change?

19 THE COURT: Exhibit 55, Mr. Christiansen?

20 MR. CHRISTIANSEN: I think that's right, Your Honor.

21 THE WITNESS: Is that for the costs?

22 MR. CHRISTIANSEN: Yes, ma'am.

23 THE WITNESS: Yes, ma'am.

24 BY MR. CHRISTIANSEN:

25 Q And those costs were paid in March. Fair?

1           A     Yes.

2           Q     I'm sorry. I didn't -- my fault. Bad question. I didn't finish.

3     March of 2018?

4           A     Yes.

5           Q     Right. That's about two months after you sued Mr. Simon,  
6     correct?

7           A     Yes.

8           Q     And I'll show you. Let me see if I can blow it up for you Ms.  
9     Edgeworth. \$68,844. And that's signed by -- I think that's Mr. Vannah's  
10    signature.

11                   MR. VANNAH: It is.

12    BY MR. CHRISTIANSEN:

13           Q     I'm not sure.

14                   MR. VANNAH: I will stipulate that's my signature.

15                   THE COURT: Okay. That's a [indiscernible] symbol saying  
16    Robert Vannah.

17    BY MR. CHRISTIANSEN:

18           Q     That's Mr. Vannah's signature and Mr. Simon's on that joint  
19    trust account that was created to deposit the \$6 million Viking  
20    settlement?

21           A     Yes.

22           Q     Is that right?

23           A     Yes.

24           Q     Okay. And you suggested to the Court that you are guessing  
25    that this is the amount that Danny had in attorney's fees that he gave --

1 72,000 is the amount Danny had in attorney's fees he gave to Brian at the  
2 mediation -- Mr. Edgeworth at the mediation?

3 MR. GREENE: I'll object. That mischaracterizes her  
4 testimony. She never said guessing. That's Mr. Christiansen's hope.

5 MR. CHRISTIANSEN: Well, actually I think it was the Judge  
6 that pinned that down. I'll rephrase.

7 BY MR. CHRISTIANSEN:

8 Q You never saw whatever bill or invoice or whatever it was  
9 that your husband received at the November mediation. Fair?

10 A No, but I believe it was there, because I believe my husband,  
11 yes. But --

12 Q I --

13 A -- no, I didn't see it.

14 Q Okay. I'm not -- I recognize that you believe your husband,  
15 all right? And the amount that Danny was owed in costs is just a few  
16 grand less than this -- that bill your husband got in November, right?

17 A You're referring to this check?

18 Q Yes. Yes, ma'am.

19 A Yes.

20 Q And did you know immediately before this check was cut that  
21 Mr. Simon had found an accounting error, a cost that had been put into  
22 your client -- your case file and they talked to your lawyers and that  
23 backed out of it and -- from the 72 grand in costs, this was actually the  
24 total? Did you know that?

25 A I did.

1 Q Okay. So, the 72 grand that Brian saw was more likely than  
2 attorney fees billed as a cost bill, right?

3 A No.

4 Q Just magically 72 grand was both, right?

5 A It's possible.

6 Q Okay. The truth is, you just don't know?

7 A I'm sorry.

8 Q The truth is, you just don't know?

9 A I don't know.

10 Q Right. And that was true also of you in your deposition. You  
11 didn't know lots of things about the lawsuit. Fair?

12 A I feel like I know lots of things about the lawsuit.

13 Q Did you know what an interrogatory was in your deposition?

14 A No.

15 Q Did you know what your cost itemization of losses were in  
16 your deposition?

17 A I'd seen the sheet before, but I couldn't rattle them off to you.

18 Q Okay. Those are questions better asked to your husband, I  
19 think is the short version of what is sort of testified to?

20 A That's correct.

21 Q Fair?

22 A Fair.

23 Q Brian is the -- Mr. Edgeworth. I apologize. I keep --  
24 everybody's started using first names in this case, and it's making me  
25 nuts. Mr. Edgeworth is the genesis of much, if not -- well, much of the

1 information you have -- you had going through this case until that  
2 meeting at Danny's office November 17th?

3 A Fair.

4 Q Is that a fair statement? All right. And the meeting. You  
5 didn't testify today that Mr. Simon was dropping F bombs, correct?  
6 Using the F word, curse word at that meeting? You didn't testify to that,  
7 did you?

8 A My husband told me and I --

9 Q Well, that's -- my question is you did not testify to that,  
10 correct?

11 A Today, no.

12 Q Right.

13 A But I know about that.

14 Q You didn't hear it, correct?

15 A I heard it from my husband, because I was not in the room at  
16 the time.

17 Q Right. And you believe your husband, right?

18 A I do.

19 Q All right. Have you seen the emails where your husband is  
20 using F bombs all over the place?

21 A He uses them frequently.

22 Q Okay. Nobody's getting offended by the F word, right?  
23 Between Mr. Simon and your husband, right?

24 A No. It just --

25 Q And you've --

1           A     -- seemed out of place at the moment.

2           Q     How would you know, if you didn't hear it?

3           A     I'm sorry?

4           Q     How would you know it was out of place, if you didn't hear it,  
5     ma'am?

6           A     Because we went there to talk about the case. It didn't seem  
7     the appropriate place to drop F bombs.

8           Q     Ma'am, you didn't hear it. How would you know whether it  
9     was appropriate or not?

10          A     My husband told me about it after.

11          Q     Okay. Do you remember your husband testifying about this  
12     meeting in Danny's office?

13          A     Yes.

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

17          A     I do not remember that.

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

22          A     I remember it like it was yesterday.

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

1 A I don't recall.

2 Q Okay. And do you remember Mr. Edgeworth telling me that  
3 you felt threatened?

4 A Yes.

5 Q And you know, if we were to compare sizes, Mr. Simon's  
6 probably closer to you than to Brian's size, right?

7 A Fair.

8 Q So Danny Simon wasn't physically threatening anybody, was  
9 he?

10 A Physically, no.

11 Q All right. And the words. I wrote down -- you had lots of  
12 words for that meeting and let me get to them. Terrified. I'm just going  
13 to go through them with you, okay? Terrified. Fair?

14 A Fair.

15 Q Shocked?

16 A Yes.

17 Q Shaken?

18 A Yes.

19 Q Taken aback?

20 A Yes.

21 Q Threatened?

22 A Yes.

23 Q Worried?

24 A Yes.

25 Q Blackmailed?



1 A Yes.

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

4 A Yes.

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

7 A I wasn't worried about conversion at the time, because I was  
8 more -- I was worried about the settlement deal not happening.

9 Q Flabbergasted?

10 A Yes.

11 Q This another word? And can we agree that nowhere in the  
12 email communications between November the 17th and when Mr.  
13 Simon is notified on November the 30th that the Vannah firm is involved,  
14 do you use any of those words --

15 A That's how I felt --

16 Q -- in any of your email?

17 A -- inside.

18 Q No -- ma'am, just listen to my question. It's a very particular  
19 question. Can we agree all of those words, none of them make their way  
20 to any email you typed?

21 A I was being polite.

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

23 A Correct.

24 Q In fact, in your emails -- and we'll go through them. But in  
25 your emails are these promises that you're going to sit down and meet

1 with Danny, right?

2 A Yes.

3 Q At the time you put that in the email, you knew you weren't  
4 going to, correct?

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

6 Q Ma'am, that's not what you told the Judge this morning.  
7 You told the Judge you made the determination after you talked to your  
8 friend on the 17th or 18th of November -- I forgot that lady's name. The  
9 out of state lawyer.

10 A Lisa Carteen [phonetic].

11 Q Carteen. T with a T? Carteen?

12 A Uh-huh.

13 Q Ms. Carteen -- that you were in no way going to sit in  
14 Danny's office without a lawyer, right?

15 A No. I said I wasn't going to go there by myself and sit in  
16 front of Danny Simon and get bullied into signing something.

17 Q Okay. Bullied. That's another term you used, right? Do you  
18 remember Brian -- Mr. Edgeworth's testimony that he was never shown  
19 a document on that day of the 17th that he was to sign? Do you  
20 remember that?

21 A Yes.

22 Q Okay. Do you remember your testimony? Yes?

23 A Yes.

24 Q Tell me what the document Mr. Simon presented to you to  
25 sign looked like?

1           A     I didn't see the document. He alluded to the document  
2 behind him on a desk like this that he was -- he had it, if we were ready  
3 to sign it, so I didn't see the actual document.

4           Q     So in the opening -- you were here for the opening?

5           A     Yes.

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

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

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

13          A     Yes.

14          Q     Outset means the beginning, correct?

15          A     Correct.

16          Q     Correct. You saw all of Brian's affidavits, correct?

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

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

21          A     I've seen them at some point.

22          Q     And you know that in each one of them, he said at the outset  
23 of the arrangement with Mr. Simon, Danny agreed to 550 an hour,  
24 correct?

25          A     Correct.

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

3 A He thought outset meant --

4 Q Ma'am, just answer --

5 A -- the very first day.

6 Q -- my question. Did you -- were you hear when he didn't  
7 understand my questions what the word outset meant?

8 A Yes.

9 Q Okay. Outset, you know, means the first day, right?

10 A I would interpret it to mean the beginning, which meant at  
11 the beginning of the case, so the outset to me, would be at the beginning  
12 of the case, so sometime at the beginning of the case. The outset  
13 doesn't necessarily mean the very first day.

14 Q Okay. Is that kind of like revisiting history, when your  
15 husband says I retained Danny on the 27th of May and from the outset,  
16 he agreed to 550 an hour? That's what all those affidavits said?

17 A The outset means the beginning and that was the beginning.

18 Q Ma'am, isn't it true that it's not until I confront your husband  
19 with the email from Danny Simon that says let's cross that bridge when  
20 we come to it, relative to what he's going to get paid, that Mr. Edgeworth  
21 and you then have to change your story to -- for the outset to become  
22 June 10th, as opposed to May 27th?

23 A No.

24 Q Prior to me confronting Mr. Edgeworth with the email that  
25 said we'll cross that bridge when we come to it, had he ever in writing

1 said June 10th is the day Danny Simon told him 550 an hour?

2 A I don't know.

3 Q Okay. The words you used, ma'am -- and I won't go through  
4 them all -- when you talked to Ms. Carteen -- did I get that right?

5 A Yes.

6 Q Were those the words you used to her when describing Mr.  
7 Simon?

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

9 Q Terrified, blackmailed, extorted.

10 A I used blackmailed, yes.

11 Q You used those words to her.

12 A And I used extortion, yes.

13 Q Similarly, when you talked to Justice Shearing in February of  
14 2018, were those the words you used?

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

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

20 A Correct.

21 Q Okay. If I get the gist of what you were saying is that you  
22 were of the belief that if you didn't sign the document you'd never  
23 seen -- because you told me you never saw the document on the 17th,  
24 Mr. Simon would blow up the \$6 million settlement?

25 A I didn't know. That was a possibility at that time, when I was

1 sitting there, yes.

2 Q All right. And so, the -- if it's a possibility and from that  
3 possibility, you feel extorted, blackmailed, terrified, spooked, all the  
4 words -- isn't that -- I mean, can we agree that's a little bit like when you  
5 and your husband as the board of the volleyball team make you as  
6 individuals to do those applications? It's a bit histrionic, right?

7 A No.

8 Q All right. It's a bit of self-imposed drama, isn't it?

9 A No, it's not.

10 Q I mean, it's not contained in any correspondence between  
11 you and a long-time friend that hey man, you're spooking me, Mr.  
12 Simon?

13 A I wrote that I was stressed --

14 Q And it was awkward.

15 A -- and it was awkward and that is pretty -- for me, that's  
16 pretty powerful.

17 Q Okay. Did you use any --

18 A I was being polite.

19 Q -- of the words you used today, ma'am?

20 A Excuse me?

21 Q Did you use any of the words you used today for Her Honor?  
22 Terrified, extorted, blackmailed, in any of your emails?

23 A No.

24 Q All right. And this is your friend, right?

25 A Yes.

1 Q A guy that was working for free for at least part of the -- even  
2 to believe Brian, for at least two weeks he was working for free as a  
3 favor, right?

4 A For two weeks, yes.

5 Q Right. He was working for free.

6 A Certainly wasn't working for free later.

7 Q And you told the Judge this morning that you agreed -- kind  
8 of a gratuitous mention of my name. You said you agreed with me that  
9 no good deed goes unpunished. Remember that?

10 A I agree with you 100 percent on that, Mr. Christiansen.

11 Q Right. And you guys had a \$500,000 property claim, correct?

12 A Correct.

13 Q You got \$4 million already, correct?

14 A Correct.

15 Q And you don't want to pay your lawyer as much as you paid  
16 interest to your mom and your husband's best friend, right?

17 A I want to pay Danny what we owe him.

18 Q Okay. And let's just sort of back up. When you go talk to  
19 that Ruben, is that the coach? That -- the charities coach, Ruben, he's an  
20 employee of the Aces, Volleyball Aces? I've forgotten the name of it.

21 A Yes.

22 Q And so he works for the board?

23 A I'm sorry. He works for the --

24 Q The board.

25 A Board. Yes.

1 Q Works for you and your husband, correct?

2 A Yes.

3 Q And when you went to him and told him, you used those  
4 same words. You'd been blackmailed or you felt like you were being  
5 blackmailed by Danny Simon, correct?

6 A I didn't speak to Coach Ruben about those things, no.

7 Q Do you know if Coach Ruben ever called Mr. Simon and said  
8 hey, let's get to the bottom of this? What's the big deal?

9 A I'm sorry. Could you repeat that?

10 Q Do you know one way or another, did Coach Ruben call Mr.  
11 Simon?

12 A I don't know.

13 Q All right. Back to your November 17th meeting. I've been in  
14 the same office with Mr. Simon off and on for 25 years. Are you really  
15 telling the Judge -- and I want to make sure I'm understanding just the  
16 physics of it, all right? I'm not trying to get closer to you. I'm just going  
17 to use. This is the front of Mr. Simon's desk. He's between you and his  
18 two client chairs that are right here leaning against the desk?

19 A Yes.

20 Q That's about four inches.

21 A The chairs --

22 Q Right? There's nothing underneath Danny's desk, right?  
23 There's like a big gap, correct?

24 A That's how I remember it.

25 Q And those chairs are about four inches from the front of that



1 desk, right?

2 A Not at that time, they weren't.

3 Q Okay. When you told your husband -- let me start back at the  
4 beginning a little bit with you -- that Mr. Simon was a lawyer, husband of  
5 your friend, Elaina, you told -- and I wrote it down. You told Mr. Greene  
6 that you knew that Danny was a personal injury attorney?

7 A Yes.

8 Q You knew that he took cases on a percentage fee  
9 arrangement?

10 A I didn't know his arrangement, but I would assume that he  
11 did.

12 Q You knew he didn't bill clients, correct?

13 A I didn't know that for sure, no.

14 Q Okay. Has Mr. Simon ever told you -- I don't want to know  
15 what your husband told you -- Mr. Simon ever told you he has any other  
16 billable clients?

17 A No.

18 Q Mr. Simon ever indicated that you'd get an hourly bill every  
19 month with you?

20 A I'm sorry. Say that again.

21 Q Did Mr. Simon ever tell you what period time he would bill  
22 you?

23 A No.

24 Q Did Mr. Simon ever tell you how much Ashley would bill for?

25 A I saw it in the invoices.

1 Q So the answer is no?

2 A No.

3 Q All right. Did Mr. Simon ever tell you what costs he would  
4 front as opposed to you all paying?

5 A No.

6 Q Did Mr. Simon -- I mean, these are all like pretty important  
7 terms in an arrangement, right? Yes.

8 A Sure, yes.

9 Q I mean, those are terms that in your experience, lawyers  
10 work out with clients, right?

11 A Sure.

12 Q And you didn't work any of those out with Danny Simon,  
13 correct?

14 A My husband was handling those.

15 Q So the answer is yes, you didn't work any of those out with  
16 Mr. Simon, correct?

17 A Correct.

18 Q All right. And you talked about -- you told the Judge that you  
19 felt as if the initial four invoices were exaggerated. That was your word,  
20 correct?

21 A I felt that they were unclear and that they were, yes, I did.

22 Q Ma'am, your was --

23 A Yes.

24 Q -- exaggerated, right?

25 A Yes.

1 MR. CHRISTIANSEN: Let me see those pictures, Ash.  
2 Rather than bring all the boxes back in, I took a picture so Mr. Vannah  
3 wouldn't get irritated with me.

4 MR. VANNAH: Oh, I'm still irritated with you.

5 MR. CHRISTIANSEN: Story of my life, Judge.

6 THE COURT: Okay.

7 MR. VANNAH: I'm being irrational here.

8 BY MR. CHRISTIANSEN:

9 Q This is -- we'll use this as Exhibit 92, I think is next in line.

10 MR. CHRISTIANSEN: Is that right?

11 THE CLERK: Yes.

12 MR. CHRISTIANSEN: Ms. Clerk?

13 THE CLERK: Yes.

14 MR. CHRISTIANSEN: How do you say 92 in New York?

15 THE CLERK: 92.

16 (Plaintiff's Exhibit 92 marked for identification)

17 BY MR. CHRISTIANSEN:

18 Q Ma'am, in those four invoices, can we agree that you were  
19 not billed for reviewing all the documents that went in these boxes?

20 A No.

21 Q You think the amount of hours contained in those four  
22 invoices includes bills for all these boxes and the paper included there,  
23 160 some thousand pages worth of documents?

24 A I don't believe all those documents were reviewed.

25 Q Okay. So, you were, or you weren't billed for them? I'm

1 asking you.

2 A I was billed for all the work that they did, yes.

3 Q Okay, well, no you weren't, ma'am and you know you  
4 weren't. Exhibit 93 are the emails. You know in those first four invoices,  
5 you're not billed for all those emails, right? You know that.

6 A No.

7 Q What do you mean, no? How is it you don't know that you're  
8 not billed for all the emails? You got the emails, right?

9 A Yes.

10 Q You got the invoices, right?

11 A Yes.

12 Q You're telling the Judge with a straight face that there are  
13 time entries equivalent to the number of emails in Exhibit 93 contained  
14 in your bills?

15 A Mr. Christensen --

16 Q Yes or no --

17 A -- the bills were so --

18 Q -- ma'am? Is that what you're telling? You have --

19 A There were --

20 Q -- to answer. You don't get to just --

21 A -- big blocks --

22 Q -- look at the Judge and start talking. You have to answer my  
23 questions.

24 A I'm sorry. Say the -- please say it again.

25 Q Sure. You're telling the Court, yes or no, that in the first

1 invoices, there are time entries for which you paid Mr. Simon for his time  
2 for all the emails your husband caused to be sent back and forth, which  
3 are depicted in Exhibit 93?

4 A Yes.

5 Q Well, you disagree with your husband then, right?

6 A I'm sorry?

7 Q You disagree with Mr. Edgeworth then, correct?

8 A I don't know what you're referring to, Mr. Christiansen.

9 Q Well, you heard him testify, didn't you?

10 A About? I don't know --

11 Q Emails. Yes?

12 A Yes.

13 Q You heard him say he knew all the bills for emails were  
14 included in those first four invoices, correct?

15 A I don't know that, Mr. Christiansen.

16 Q That's not what I asked you, ma'am. I asked you did your  
17 husband say yes, I Brian, know that I didn't get billed for all the emails?  
18 Did you hear him say that?

19 A I don't recall that.

20 Q Well, we'll let the Judge look at the transcript. Were you  
21 familiar, ma'am, with the calculation of damages in your case? The  
22 underlying case?

23 A Yes.

24 Q You knew that was something that your husband and Mr.  
25 Simon worked on together, correct?

1 A Yes, Brian put it together.

2 Q He did those spreadsheets you saw me show him three  
3 weeks ago?

4 A Yes.

5 Q All right. And the calculation included line items like John  
6 Olivas' [phonetic] \$1.5 million for stigma damage to the house?

7 A Yes.

8 Q You heard your husband say that was a line item that Mr.  
9 Simon was solely responsible for, correct?

10 A Correct.

11 Q Do you agree with that?

12 A Yes.

13 Q Now, do you agree with \$4 million for a \$500,000 property  
14 claim as being made whole?

15 A Yes.

16 Q Okay. So, you've been made whole, correct?

17 A Yes.

18 Q All right. And once you were made whole or about the same  
19 time you were made whole, you sued Mr. Simon rather than pay him,  
20 correct?

21 A No.

22 Q When were you made whole? When did you get the check?  
23 Tell me the date. You knew it earlier.

24 A January 21st.

25 Q You sued Mr. Simon what date? January 4th?

1 A Yes.

2 Q So before you even had your money, you sued Mr. Simon?

3 Yes?

4 A Yes.

5 Q You accused him of converting your money, correct?

6 A Yes.

7 Q Before you even had the money, correct?

8 A Yes.

9 Q Before the money was in a bank account, right?

10 A Yes.

11 Q Okay. And in that lawsuit, you sought to get from him  
12 personally and individually, from his and his wife Elaina, your friend, you  
13 want punitive damages, right?

14 A Yes. I didn't --

15 Q Just yes.

16 A -- ask to be in this position.

17 Q Just yes.

18 A Yes.

19 MR. GREENE: Your Honor, object. We didn't --

20 MR. CHRISTIANSEN: Sure -- most certainly did.

21 MR. GREENE: Elaina wasn't sued.

22 MR. CHRISTIANSEN: Well, it was his family.

23 MR. GREENE: Well --

24 THE COURT: Well, I mean, if Danny Simon as an individual  
25 and the Law Office of Danny Simon, isn't it?

1 MR. GREENE: Yes, but we didn't name his wife --

2 MR. VANNAH: That's not his wife.

3 MR. GREENE: -- as a defendant.

4 THE COURT: Okay.

5 BY MR. CHRISTIANSEN:

6 Q Is Elaina married to Danny?

7 A Yes.

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

10 MR. GREENE: Same objection.

11 THE COURT: Mr. Christiansen, the lawsuit is against Danny  
12 Simon as an individual and the Law Office of Danny Simon, so that's  
13 who they sued.

14 BY MR. CHRISTIANSEN:

15 Q You made an intentional choice to sue him as an individual,  
16 as opposed to just his law office. Fair?

17 A Fair.

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

20 A Fair.

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

23 A Yes.

24 Q And he hadn't even cashed a check yet, correct?

25 A No.



1           Q     Right. He couldn't cash the check, because Mr. Vannah and  
2 him had to make an agreement. Mr. Vannah figured out to do it, I think  
3 at a bank, right? How to do like a joint --

4           MR. VANNAH: Yeah, we -- it's just we opened a trust  
5 account --

6           THE COURT: Right.

7           MR. VANNAH: -- that both he and I are on, so neither one of  
8 our trust accounts got it, but it went into a trust account to comply with  
9 the Bar rules.

10          THE COURT: Okay.

11          MR. CHRISTIANSEN: So --

12          MR. VANNAH: If that helps.

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

14          MR. VANNAH: Sure.

15          BY MR. CHRISTIANSEN:

16          Q     That's what happened, right? That's where the money got  
17 deposited?

18          A     Yes.

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

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

22          MR. GREENE: Me, too, but go ahead, Bob.

23          THE COURT: Okay.

24          MR. VANNAH: The 6 million dollars went into the trust  
25 account.

1 THE COURT: Okay.

2 MR. VANNAH: Mr. Simon said this is how much I think I'm  
3 owed. We took the largest number that he could possibly get --

4 THE COURT: Okay.

5 MR. VANNAH: -- and then we gave the clients the remainder.

6 THE COURT: So, the 6 --

7 MR. VANNAH: In other words, he chose a number that -- in  
8 other words, we both agreed that look, here's the deal. Obviously can't  
9 take and keep the client's money, which is about 4 million dollars, so we  
10 -- I asked Mr. Simon to come up with a number that would be the largest  
11 number that he would be asking for. That money is still in the trust  
12 account.

13 THE COURT: Okay.

14 MR. VANNAH: And the remainder of the money went to the  
15 Edgeworth's.

16 THE COURT: Okay. So, there's about \$2.4 million or  
17 something along those lines --

18 MR. VANNAH: Yeah.

19 THE COURT: -- in the trust account.

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

22 THE COURT: Okay.

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

24 THE COURT: Okay. Just so --

25 MR. CHRISTIANSEN: Oh, that's true --

1 THE COURT: Yeah. Just so --

2 MR. CHRISTIANSEN: -- Mr. Kimball said --

3 THE COURT: -- I was sure about what happened. I mean, the  
4 rest of the money was disbursed, because I heard her testifying about  
5 paying back the in-laws and all this stuff. So, they paid that back out of  
6 their portion, and the disputed portion is in the trust account?

7 MR. VANNAH: Right. So, they took that money and paid  
8 back the in-laws, so they wouldn't keep that interest running --

9 THE COURT: Right.

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

11 THE COURT: Is in the trust account.

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

13 THE COURT: Okay.

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

17 THE COURT: Okay.

18 MR. VANNAH: That's correct.

19 MR. CHRISTENSEN: Any -- and, also, any interest that  
20 accrues on the money held in the trust inures to the benefit of the clients.

21 THE COURT: Right. I was aware of that, yes. It would go to  
22 the Edgeworth's, right?

23 MR. VANNAH: Exactly.

24 MR. CHRISTENSEN: That's correct.

25 MR. VANNAH: That's what we all agreed to, yes.

1 THE COURT: Okay. Yes, I was aware of that.

2 MR. VANNAH: Yes, that's accurate.

3 BY MR. CHRISTIANSEN:

4 Q Ms. Edgeworth, in time, timing wise, when was the first time  
5 you ever looked at one of your husband's spreadsheets for the  
6 calculation of damages?

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

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

12 A No.

13 Q You looked at them before then?

14 A Yes.

15 Q Did you see on them -- and I can show you -- I'm trying to  
16 kind of move it along -- where you husband leaves blank spaces that he  
17 still owes money for attorney's fees in October and November?

18 A Yes.

19 Q All right. And so that's leading up to when you guys hired  
20 Mr. Vannah. And I'll show you just --

21 MR. CHRISTIANSEN: By way of ease, this is 90, John.

22 BY MR. CHRISTIANSEN:

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

25 A That's Brian.

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

2 A Yes.

3 Q And this is before the Viking -- just in time -- this is before the  
4 Viking settlement agreement is executed by you and your husband,  
5 correct?

6 A Yes, the day before.

7 Q Okay. And the Viking settlement agreement says that you're  
8 being advised on that agreement by Vannah & Vannah, correct?

9 A Correct.

10 Q And you signed it after you hired Vannah & Vannah, correct?

11 A Correct.

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

15 A Yes.

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

18 A No.

19 Q You were just leading Danny along until you got a new  
20 lawyer you could listen to and disregard his advice, correct?

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

23 Q Right. And you stopped listening to Danny in terms of  
24 following his advice, correct?

25 A No.

1 Q Okay. You choose to settle the Lange case for 100 grand  
2 minus the 22 you still owed Lange, right?

3 A Yes.

4 Q That wasn't Danny's advice, was it?

5 A No.

6 Q You -- so you stopped listening to Danny's advice and started  
7 listening to Mr. Vannah's advice right?

8 A No. Brian and I made that decision together.

9 Q Okay. I'm not disputing that. That -- but the decision was to  
10 disregard Mr. Simon's advice and to follow or heed the advice of Vannah  
11 & Vannah?

12 A They had different pieces of advice. We weren't following  
13 anybody. We were deciding for ourselves.

14 Q And the decision you made was inconsistent with the advice  
15 Mr. Simon was giving you, correct?

16 A Yes, correct.

17 Q And that decision was made on the 7th, that consent to settle  
18 was dated the 7th and that's two days after Mr. -- oh, I'm sorry. It's Mr.  
19 Edgeworth that sends the email to Danny saying just called John, just  
20 call Mr. Greene, right?

21 A Yes.

22 Q And you heard your husband testify that he never spoke to  
23 Danny Simon once -- I think you said he lost it and told Danny to put  
24 something in writing, correct?

25 A Yes.

1 Q And the -- you understood, did you not, ma'am, that the  
2 attorney's fees were a line item of damages against Lange, the plumber?

3 A Yes, if you say so.

4 Q Well, I just want to know, did you understand that during the  
5 case?

6 A I understood -- can you please rephrase that question?

7 Q Sure. You understood, did you not, during the litigation of  
8 Edgeworth v. Viking that attorney's fees were a line of damages against  
9 the Lange defendant?

10 A Yes.

11 Q Similarly, you understood that the loan and the interest  
12 rates -- they went from about 2 to 3 percent interest a month, were line  
13 items of damages in Lange or the Viking case, correct?

14 A Yes.

15 Q And you talked -- you told the Judge about the hardship that  
16 you went through, and it was trying times and financially difficult. And  
17 one of the emails where you're have this tough time is you're taking off  
18 on vacation the day the inquiry is where should we send the bill, right?

19 A Yes.

20 Q Okay. You all are very sophisticated business folks. True?

21 A Yes.

22 Q You knew that by borrowing money from your mom and  
23 your husband's buddy at these usury rates or 25, 30 percent interest a  
24 year, that you could increase your property damage in a property  
25 damage claim against Lange and Viking, correct?

1 A No.

2 Q You didn't know that?

3 A That's not why we did it, if that's what you're --

4 Q I asked you did you know it?

5 A Yes.

6 Q Right. It --

7 A Though not necessarily that we would get it back, Mr.

8 Christiansen.

9 Q Okay. Ma'am, could you just listen to my question? You  
10 knew you were trying to increase your damage calculation against Lange  
11 and Viking, correct?

12 A Yes.

13 Q Okay. Because it's not as if you couldn't have got the money  
14 other places, true?

15 A No, that's not true.

16 Q Your husband could have sold his bitcoin.

17 A There were a lot of business ramifications for that and that  
18 was not --

19 Q Ma'am, that's not what --

20 A -- something we wanted to do.

21 Q I recognize, ma'am, that you made a business choice, a smart  
22 people choice to borrow money. My question to you is, that wasn't your  
23 only option. Fair? You had other options. That just -- was the smartest  
24 one in Brian's prudent decision making as he described it for me.

25 A Sure.



1 Q Okay. You borrowed money from your mom?

2 A Sure.

3 Q You're mom's not going to sue you, if you didn't pay you  
4 back, was she?

5 A No.

6 Q Right. Colin wasn't going to sue Brian if he didn't pay him  
7 back, was he?

8 A I can't answer for Colin.

9 Q So all this risk that we've been hearing about for weeks on  
10 end that you guys wore all this risk, and it was so stressful. You're not  
11 stressed that your mom's going to do something bad to you, are you?

12 A No. I'm not --

13 Q Okay.

14 A -- stressed about my mom.

15 Q All right. Do you remember ever writing -- do you remember  
16 in Mr. Vannah's consent to settle document, the one dated December  
17 7th, where you all agreed that you'd been made more than whole?

18 A Yes.

19 Q Okay. And you agreed to that then and I think you told me  
20 you agree to that now?

21 A Yes.

22 Q And that's whole with the 4 million you've already taken and  
23 put it your own bank account and paid back your relatives and friends  
24 and done the rest with whatever folks do with their money?

25 A Yes.

1 Q Okay. And earlier you said, in response to Mr. Greene's  
2 questions, that you got the check, I think January 21st, and the very next  
3 day, you paid everybody back, to the tune of I think, 1.1 million bucks.

4 A Yes.

5 Q Okay. So, you had 1.1 million bucks already sitting in your  
6 bank accounts?

7 A No. We took the proceeds from the money that we received  
8 from the trust and paid them back.

9 Q So you're telling the Judge you got a cashier's check or some  
10 type of check that your bank negotiated for you in 24 hours and you  
11 wrote checks out to other people?

12 A I don't know the exact circumstances --

13 Q Yeah, you do.

14 A -- but yes.

15 Q You knew them this morning. You knew and you said under  
16 oath you had a check on day one. On day two, you paid everybody back.  
17 True?

18 A We received the money on the 21st and we paid them back  
19 on the 22nd, yes.

20 Q So where are the checks?

21 A Mr. Greene has them.

22 MR. GREENE: Do you want to see them, Pete?

23 BY MR. CHRISTIANSEN:

24 Q Haven't been produced. Are you telling the Court that the  
25 checks can clear in one day or are you telling the Court that you had 1.1

1 million bucks sitting in your --

2 A I don't think the checks cleared that day, because they  
3 needed to be mailed, and so they weren't cleared the same day, so there  
4 was probably sometime in between the depositing of the funds from the  
5 trust and the checks.

6 THE COURT: Can I see them, Mr. Greene?

7 MR. GREENE: Absolutely, Your Honor.

8 THE COURT: Mr. Christiansen, if you could approach.

9 MR. VANNAH: Should we mark them as exhibits?

10 MR. GREENE: I haven't seen them. Sure.

11 MR. CHRISTIANSEN: I would see them, sure. Looks great.

12 THE WITNESS: I think there's a date on there, where it  
13 shows that it actually cleared.

14 [Counsel confer]

15 BY MR. CHRISTIANSEN:

16 Q I'll ask her. I would just ask her. Did they clear the same  
17 day? Do you know? Mr. Vannah is whispering that they did clear the  
18 same day.

19 A I don't know.

20 Q All right.

21 MR. VANNAH: I could help with that. Do you want to know?

22 MR. CHRISTIANSEN: I hear --

23 MR. VANNAH: Our banks called each other, and they cleared  
24 the funds the same day.

25 THE COURT: Okay.

1 MR. CHRISTIANSEN: Okay.

2 BY MR. CHRISTIANSEN:

3 Q Ms. Edgeworth, let's back up. Remember the cross that  
4 bridge when we come to it email?

5 A Was that about the fee in the beginning, Mr. Christiansen?

6 Q It was.

7 A Yes.

8 MR. VANNAH: Should we mark those and put them in  
9 exhibits?

10 THE COURT: Do you guys want these admitted?

11 MR. GREENE: Please.

12 MR. VANNAH: Please, yes. I'd like to make those exhibits.

13 THE COURT: Okay. Just next in line?

14 MR. GREENE: Please.

15 MR. CHRISTIANSEN: Which numbers would they be, Your  
16 Honor, just so I can write them down? 92 and 3 maybe or something  
17 like.

18 MR. GREENE: Probably more than that.

19 [Court and Clerk confer]

20 MR. GREENE: 94 and 5 maybe.

21 [Court and Clerk confer]

22 THE COURT: Okay. So, 92 will be the \$437 check.

23 MR. GREENE: Judge --

24 THE CLERK: We just assigned 92 and 93.

25 MR. GREENE: -- I think 92 might have been the photos of the

1 boxes of the exhibits.

2 MR. CHRISTIANSEN: They were, Judge.

3 MR. GREENE: And then the photos of the emails might have  
4 been 93.

5 THE CLERK: Correct.

6 THE COURT: So -- but there was two -- well, there were two  
7 photos of the boxes, so did you want both of those? So that would be  
8 92 --

9 MR. CHRISTIANSEN: Judge, one was a photo of what would  
10 have been the production and one was a photo of just the emails.

11 THE COURT: The emails. So, 92 -- can we have those, Mr.  
12 Christen --

13 UNIDENTIFIED SPEAKER: And I have tabs for the Clerk when  
14 we take a break.

15 THE COURT: Okay. 92 --

16 MR. CHRISTIANSEN: May I approach your Clerk, Your  
17 Honor?

18 THE COURT: -- yes. Will be the photos of the boxes.

19 (Defendant's Exhibit 92 marked for identification)

20 THE COURT: 93 will be the emails.

21 (Defendant's Exhibit 93 marked for identification)

22 THE COURT: 94 is the \$437,000 check.

23 (Plaintiff's Exhibit 94 marked for identification)

24 THE COURT: And 95 is the \$728,000 check.

25 (Plaintiff's Exhibit 95 marked for identification)

1 MR. VANNAH: So, since I interjected, somebody is still  
2 taking this down, I -- as an officer of the Court, that is what happened is  
3 the two banks did talk to each other and -- because with the -- they did  
4 clear the checks the same day.

5 THE COURT: Okay. Thank you, Mr. Vannah. Mr.  
6 Christiansen.

7 BY MR. CHRISTIANSEN:

8 Q Ma'am, before the beginning of the hearing, where I put your  
9 husband as the first witness, did you ever -- you had never seen Exhibit  
10 80, Bates stamp 3557, the we'll cross that bridge when we come to it or  
11 let's cross that bridge later email. True?

12 A True.

13 Q Yes?

14 A Yes.

15 THE COURT: So, you had never seen that before this  
16 hearing?

17 THE WITNESS: No.

18 THE COURT: Okay.

19 BY MR. CHRISTIANSEN:

20 Q And three different times after you and your husband sued  
21 Danny Simon, your -- he signed affidavits saying that Mr. Simon agreed  
22 from the outset to 550 an hour?

23 A Yes.

24 Q And on all three of those affidavits, he also stated that he  
25 hired Danny Simon on May 25th -- 27th, 2016, correct?

1 A Correct.

2 Q At a Starbucks out in Henderson?

3 A Yes.

4 Q And I can show you, just so you. This is Exhibit 80.

5 MR. CHRISTIANSEN: Bates stamp 3552 and 3, John. Mr.  
6 Greene. I'm sorry.

7 MR. GREENE: Thank you. That's okay. I am what I am.

8 THE COURT: Can you make that a little bit bigger, Mr.  
9 Christiansen?

10 MR. CHRISTIANSEN: I sure will try, Your Honor.

11 MR. VANNAH: I'm glad you asked. I can't see it.

12 THE COURT: Yeah, I can't see it. Okay. Thank you.

13 MR. CHRISTIANSEN: Better, Bob?

14 MR. VANNAH: Yeah, that helps. Thanks.

15 MR. CHRISTIANSEN: Sure.

16 BY MR. CHRISTIANSEN:

17 Q That was -- this email just reflects that that meeting was out  
18 there at the Starbucks in Green Valley someplace?

19 A Yes.

20 Q In all the emails -- and I count 2,000-ish emails. Believe me, I  
21 wish I didn't, but I did count them. Can you find me an email, just one,  
22 that shows your husband or you saying to Danny Simon here's 550  
23 bucks and hour? That's what we're going to pay you?

24 A That I said it to Danny?

25 Q Sure.

1           A     I'd have to look through all the emails.

2           Q     Did you see your husband show anybody an email when he  
3 testified that he said this is what we agreed to?

4           A     Could you say that again, please?

5           Q     Sure. Brian didn't -- Mr. Edgeworth didn't show the Judge  
6 an email he wrote reflecting the June 10th meeting, where this phone  
7 call or this 550 bucks and hour occurred, correct?

8           A     No.

9           Q     And in fact, as of June, your husband doesn't even know  
10 who's writing the promissory notes.

11                   MR. CHRISTIANSEN: This is Exhibit 80 Bates stamp 3505.

12 BY MR. CHRISTIANSEN:

13           Q     Whether it's Mark Katz or Danny, correct?

14           A     Correct.

15           Q     I mean, they far from cemented any type of attorney-client  
16 relationship. Can we agree on that?

17           A     No.

18           Q     Well, what was Danny going to get paid for writing the  
19 promissory note?

20           A     550 an hour.

21           Q     Hadn't agreed to it yet, ma'am. This is June 5th.

22           A     Oh. June 5th. I didn't know that.

23           Q     So 550 is the number you and your husband agreed upon,  
24 right?

25           A     Yes.



1 Q That's what I thought. And can we agree that on June 10th,  
2 Mr. Simon's sending emails. And -- with Brian, and there's no mention  
3 of 550 bucks an hour? Right. This is June 10th. I'll move it up.

4 A Okay. Yeah. I --

5 MR. CHRISTIANSEN: Sorry, Mr. Greene. That's --

6 THE WITNESS: -- just reading the whole thing.

7 MR. CHRISTIANSEN: -- Exhibit 80.

8 MR. GREENE: Thank you.

9 MR. CHRISTIANSEN: 3499.

10 THE WITNESS: Could you scroll it up, please?

11 BY MR. CHRISTIANSEN:

12 Q Scroll it up? Yes, ma'am.

13 A Yeah. So, I can read it.

14 Q Yep. I'm sorry. I was trying to keep it large so the Judge  
15 can -- all of us could see.

16 A Correct. I don't see 550 an hour there.

17 Q And this is your Harvard, Masters in Business husband,  
18 right? He graduated from Harvard?

19 A Yes.

20 Q Multinational businessman, right?

21 A Sure.

22 Q And you're a multinational business woman. Sounds like  
23 you had -- you went to Taiwan at some point and had a cosmetics line?

24 A Yes.

25 Q Hired dozens of lawyers?

1 A Yes.

2 Q Just asked you -- did you ever put in an email that you  
3 thought Mr. Simon had exaggerated his four first invoices?

4 A No, that would be rude, no.

5 Q Did you ever put in an email that you thought Mr. Simon's  
6 rate was too high?

7 A No.

8 Q Did you ever acknowledge in your testimony that Mr. Simon  
9 told you all that his rate of 550 an hour was a reduced rate?

10 A I don't recall him telling me that, but --

11 Q Well, you looked at all the bills, right?

12 A Yes.

13 Q And I'll just show you the bottom of bill number --

14 MR. CHRISTIANSEN: Exhibit 8, John. Mr. Greene. I'm sorry.

15 BY MR. CHRISTIANSEN:

16 Q See where it says 550 an hour, reduced?

17 A Yes, I've seen that before.

18 Q Okay. So, you knew right from the first bill that Mr. Simon  
19 was giving you guys a break on the bill, correct?

20 A It didn't feel like the friends and family rate, Mr. Christiansen.

21 Q Ma'am, I'm not asking what it felt like. I'm asking you what it  
22 said on the bill. It said reduced, right?

23 A Yes.

24 Q And in fairness, the initial work done on this case, you heard  
25 your husband testify, is for a property damage claim, right?

1 A Yes.

2 Q I mean, at first, Mr. Edgeworth thought it was just going to  
3 be a favor. Danny was going to work for free, right?

4 A I don't think he thought Danny was going to work for free.

5 Q Well, that's what he testified to ma'am. So --

6 A Well --

7 Q -- do you accept what he says is true or not? That's what he  
8 said.

9 A Okay. Well, I'm just saying what I believe.

10 Q You don't believe him now?

11 A I'm sorry?

12 Q Well, you've been telling me all along you believe your  
13 husband. You believe your --

14 A I do believe, yes.

15 Q -- well, he's testified from that witness stand with you in the  
16 courtroom that he Danny was going to do him a favor.

17 A Okay. Fair. Yes.

18 Q That's work for free.

19 A Okay.

20 Q Okay.

21 A Sure.

22 Q That changed as the nature of the case changed, correct?

23 A Yes.

24 Q Right. And when the case got into sort of hard and heavy  
25 litigation, it was no longer a claim case, correct? It wasn't a friends and

1 family rate property damage claim anymore.

2 A It was still a claims case up until later on, when the  
3 discoveries started being made.

4 Q When was that?

5 A I want to say July or August. Somewhere around that time.  
6 July of 2016.

7 Q And you --

8 A '17. I'm sorry.

9 Q -- you became aware of that in preparation for this hearing,  
10 as opposed to knowing it back then, right?

11 A No. I knew about it then, because my husband told me about  
12 the -- all the cases that he had discovered, so.

13 Q Right. And it's your testimony that your husband found  
14 everything, right?

15 A Yes.

16 Q And Ms. Ferrel, she was fabricating what she found and the  
17 work she did. I think that -- I think the word you used was exaggerating  
18 this morning, right?

19 A With regards to the 90 activations.

20 Q And this chart that Ms. Ferrel testified from, have you ever  
21 seen it before?

22 A Can you please --

23 Q There you go.

24 A -- minimize it, just so I can see the whole thing? I think I saw  
25 this a long time ago, yes.

1 Q Okay. Ashley did this before your husband found anything,  
2 right? In time --

3 A I don't know.

4 Q Right. Well, ma'am, you know, that's the concerning thing.  
5 Remember when your husband said, I think I've been overbilled, and  
6 then I presented him his little chart and he said well, I really don't know.  
7 I don't have any evidence of it. Do you remember that testimony?

8 A We can't prove it.

9 Q Okay. That's a little bit like you saying your husband found  
10 everything. You don't know, and you can't prove it, right?

11 A That I can prove.

12 Q Okay. I just showed you a chart Ms. Ferrel prepared, showed  
13 a cover letter to the judge last week that --

14 A Can I --

15 Q -- that predates --

16 A -- I can --

17 Q -- listen to my question -- that predates in time any of your  
18 husband's discoveries. Do you remember that?

19 A No, I don't.

20 Q All right. I didn't think so.

21 MR. VANNAH: You know, I'd move -- I don't think so is kind  
22 of -- it's cute in front of a jury, but it's getting old. He's good at that,  
23 though.

24 BY MR. CHRISTIANSEN:

25 Q Have you seen this July confidential production from July

1 6th?

2 A What is the contents of that?

3 Q It's production by Viking. Have you -- had you seen it?

4 A Yes.

5 Q Did you see the email where Ms. Ferrel, before you husband  
6 and you -- before your husband is given the information, puts in big  
7 letters can you say punitive damages?

8 A Yes.

9 Q And that was before Brian even had the information to go  
10 through, right?

11 A What do you mean the information to go through? I don't  
12 understand what you're asking.

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

15 A The Viking productions. I don't understand that.

16 Q Okay. Well, I'll move on to a different area with you. Do you  
17 remember in -- well -- do you agree with all of the assertions made by  
18 Mr. Edgeworth and all of the affidavits on behalf of the two entities that  
19 sued Mr. Simon?

20 A Could you please --

21 Q Sure.

22 A -- repeat that question?

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

1 A Yes.

2 Q Did you read those?

3 A Yes.

4 Q He signed those as a co-owner of the two entities that sued  
5 Mr. Simon, correct?

6 A Correct.

7 Q Now, you were the other co-owner, correct?

8 A Yes.

9 Q Do you agree with all those statements?

10 A Yes.

11 Q You've ratified those statements, correct?

12 A Yes.

13 Q All right. Do you agree with the statement he put in the third  
14 one that as of September, Mr. Simon had been paid in full for all of his  
15 work?

16 A I bel -- yes.

17 Q Do you agree with him in -- that he put in his third affidavit  
18 that Mr. Simon -- I want to tell you exactly right. Let me stop and back  
19 up to -- the 17th is the uncomfortable meeting of November and that's  
20 my word, not yours. I'm sorry. I'm just trying to make it easy. Is that  
21 fair?

22 A Yes.

23 Q And after the 17th, you're texting Elaina Simon, right? You  
24 texted her on November the 23rd and said Happy Thanksgiving.

25 A I did.

1 Q And you're so upset, you're so threatened, you're so  
2 extorted, you're such a victim of blackmail that you're talking nicely to  
3 Mrs. Simon, correct?

4 A I'm trying to keep the peace, yes.

5 Q And ma'am, were you here in -- when I say here, I mean  
6 physically in court, when your husband testified that Danny Simon's  
7 November 27th letter was sent at his request? At Brian's request?

8 A Yes.

9 Q So do you remember telling the Judge you -- the letter made  
10 you feel terrified and you thought all kinds of untoward things were  
11 going on?

12 A Yes.

13 Q And I think the word you used over and over and over is you  
14 were stunned to receive the letter?

15 A Yes.

16 Q How can you be stunned to receive a letter your husband  
17 requested?

18 A I was stunned at the contents of the letter, Mr. Christiansen.

19 Q All right. Because we're not going to dispute that Brian  
20 directed Danny to put in writing what Danny put in writing and you  
21 received November the 27th, correct?

22 A Correct.

23 Q That was something he did at Brian's request after Brian sent  
24 him an estimation of damages, correct?

25 A Could you please repeat that?



1 Q Sure. Brian on November the 21st gave Mr. Simon an  
2 estimation of what he thought his hard damages were?

3 A Yes.

4 Q They were less than \$4 million, correct?

5 A Yes.

6 Q And that was with the 1.5 stigma that Danny had found an  
7 expert to attest to, correct?

8 A Yes.

9 Q That was with 220,000 in prejudgment interest, correct?

10 A Yes.

11 Q I mean, it was with a whole bunch of money to fluff it up as  
12 high as it could get and it was still not \$4 million, correct?

13 A Those were the costs, yes.

14 Q And that's why the 4 million you received made you more  
15 than whole, right?

16 A Sure.

17 Q And Mr. Simon's the lawyer that did the work that got you  
18 the 4 million, right?

19 A Yes.

20 Q And I couldn't put my finger on it, but Mr. Simon handed to  
21 me. On page 6 paragraph 21, last sentence says, since we've already  
22 paid him for his work to resolve the litigation, can't he at least finish  
23 what he has been retained and paid for?

24 Did I read that correctly?

25 A Can you tell me what -- in what context this is? What

1 document are we looking at?

2 Q This is your husband's affidavit signed under penalty of  
3 perjury dated --

4 A Which affidavit? Can I see --

5 Q Number 1. February 2, 2018, about a month after you sued  
6 Mr. Simon, rather than pay him.

7 A Okay. Yes.

8 Q Do you agree with that statement?

9 A Since we've already paid him for this work to resolve the  
10 litigation, can't he at least finish what he has been retained and paid for?  
11 I think it's taken in the wrong context. We still owe him money for work  
12 that he's done.

13 Q Where does it say that?

14 A I don't see --

15 Q Let me make it easy for you. Isn't it true that until your  
16 testimony today, you've never conceded you owe Danny Simon money?

17 A No. That's completely wrong.

18 Q Well, before your husband agreed he owed him somewhere  
19 between 350 and 450 grand on my cross, did you ever agree you owed  
20 him money?

21 A Yes, we owe Danny money.

22 Q Ma'am, your husband signed an affidavit saying, quote,  
23 "Since we've already paid him for this work and this work is to resolve  
24 the litigation, can't he at least finish what he has been retained and paid  
25 for?"

1 Did I read that correctly? Did I read that right, ma'am?

2 A I was trying to read the whole paragraph.

3 Q All right.

4 MR. CHRISTIANSEN: I'll move on, Judge.

5 BY MR. CHRISTIANSEN:

6 Q And I'll just show you the complaint, so we'll be consistent.

7 This was the complaint filed January the 4th by you all and the  
8 highlighted portions, it says that, Plaintiffs are entitled to declaratory  
9 judgment setting forth the terms of the contract as alleged herein that  
10 the contract has been fully satisfied by the Plaintiff and that Simon is in  
11 material breach of the contract and that Plaintiffs are entitled to the full  
12 amount of the settlement proceeds.

13 Did I read that correctly?

14 A Yes.

15 Q Okay. So as of January, when you sued Mr. Simon, you  
16 thought you were entitled to all of the 1.9 million and change, correct?

17 A Yes.

18 Q And he was entitled to nothing else, correct?

19 A He was entitled to whatever we owed him to finish up the  
20 case as a separate issue.

21 Q As a separate issue. Do you remember in the affidavits when  
22 your husband -- all three of them -- was savvy, and he uses the word  
23 savvy enough to know that if Mr. Simon hadn't presented damages, he  
24 couldn't make a claim for damages?

25 A I don't recall that.

1 Q Okay. You were unfamiliar -- I'll just show it to you, and I  
2 think you're going to say you were -- with the agreement with Lange, Mr.  
3 Teddy Parker, between him and Mr. Simon to continue out all the dates?  
4 Right?

5 A Unfamiliar with it, yes.

6 Q You were unfamiliar with it at the time. Is that true?  
7 November 29th.

8 A What do you mean unfamiliar with at the time?

9 Q Did you know it --

10 A I knew that there was a settlement.

11 Q No. This is an agreement with the Lange -- Lange hired a  
12 new lawyer, an African-American man named Teddy Parker.

13 A Yes. I was here.

14 Q Member, your husband's scared of Teddy?

15 A I was in the courtroom with Teddy Parker.

16 Q Okay. Do you know Teddy on the 29th agreed with Danny,  
17 your lawyer, to extend all the deadlines to produce damage calculations,  
18 get experts, et cetera? Did you know that?

19 A Can you say that again? I don't understand.

20 Q Had you ever seen this letter, ma'am, on the 29th of  
21 November?

22 A I believe I've seen it before.

23 Q No, ma'am. On the 29th of November, did you know it  
24 existed?

25 A No.

1 Q When you hired Mr. Vannah did you know it existed? Same  
2 day, 29th.

3 A No.

4 Q Okay. When your husband signed the affidavit saying he  
5 was savvy enough to know certain things, isn't it true he didn't know this  
6 existed?

7 A I don't understand your question, Mr. Christiansen.

8 Q Very simple. When you're sign -- when your husband's  
9 signed the affidavit saying he was savvy enough to know that damages  
10 hadn't been put in the calculation spreadsheet, so they couldn't be  
11 pursued, isn't it true he didn't know? He -- Brian didn't know that Lange  
12 had agreed to extend all the deadlines?

13 A I don't know.

14 Q Just touch on a couple of emails and I'll probably sit down  
15 with you. Exhibit 42 is an email sent to you on Monday the 27th. And  
16 just so we're clear, the 27th is the day after the Thanksgiving weekend.  
17 Is that right?

18 A Two days, I believe.

19 MR. VANNAH: It says Monday.

20 THE WITNESS: 25th is Monday.

21 BY MR. CHRISTIANSEN:

22 Q Monday would be -- Sunday would be the end of the  
23 weekend?

24 A Okay. Yes.

25 Q That's okay.

1           A     Sure.

2           Q     No problem. Mr. Simon's saying, Please review and advise  
3 me of your position at your earliest possible convenience. If you'd like to  
4 discuss please call me anytime. Thanks.

5           A     Yes.

6           Q     And it's this email that I wrote it down, you felt outrage from.  
7 Right? Outrage was your word. You got this email. You got his  
8 proposal and you were outraged?

9           A     After I read the proposal, yes.

10          Q     And then it's in response to this email as the day goes on  
11 and Mr. Greene did it with you sort of chronologically that you're telling  
12 him hey, we're going to come sit with you. We're going to come sit with  
13 you when Brian gets back and then ultimately, rather than that, you go  
14 hire Vannah & Vannah?

15          A     I was stalling for some time to figure out what to do.

16          Q     Just -- I'm just meaning chronologically that's what  
17 happened. In August of 2017, was there any money on the table to settle  
18 your case against Viking?

19          A     August 2017, no.

20          Q     So why did your husband sign an affidavit saying that after a  
21 substantial sum of money was offered, Mr. Simon wanted to change the  
22 contract?

23          A     He was referring to the 6 million dollar of the settlement  
24 agreement.

25          Q     Okay. That didn't happen until November, right?

1           A     Yes.

2           Q     And you and I can agree -- probably not on much -- but that  
3 your husband authored an email unsolicited. There's no email saying --  
4 from Danny saying tell me what you want to do. Brian wrote an email  
5 entitled contingency, right?

6           A     Yes.

7           Q     And that email says what it says. I'm not going to get into it  
8 with you. You didn't write it?

9           A     Correct.

10          Q     You didn't read it?

11          A     I read it.

12          Q     You didn't read it at the time.

13          A     Not the day it was written.

14          Q     You likely didn't read it until this fee dispute occurred. Fair?

15          A     No. I've heard about that email, because Brian and I spoke  
16 about the contingency fee, that conversation that he had with Danny at  
17 the San Diego meeting.

18          Q     Right. And that's when everybody agreed the case had  
19 changed, right? It was a different beast.

20          A     Sure.

21          Q     Your husband -- I'm paraphrasing -- said nobody could have  
22 predicted this when we started. Fair?

23          A     Sure. Fair.

24          Q     Nobody had an agreement about this new beast? Right?  
25 That the case had become, it had become a beast. To use your words, it

1 was consuming your husband?

2 A Yes.

3 Q Okay. Nobody had ever contemplated a friends and family  
4 favor to be something consuming everybody's life. Fair?

5 A Fair.

6 Q And if it was consuming your husband, it likely was  
7 consuming Elaina's husband. True?

8 A I don't know.

9 Q I mean, you got to see your husband, right? He's calling  
10 Danny on the weekends, at night, on vacation, from different countries.  
11 True?

12 A My husband read thousands and thousands of pages of  
13 documents and discoveries and talked to all the key people involved, so I  
14 saw him working a lot on the case.

15 Q And you heard Mr. Kemp testify, right? Our expert?

16 A Yes.

17 Q And you don't have an expert. Fair?

18 A Correct.

19 Q And you heard Mr. Kemp say there was, in his view, no  
20 contract for -- at any time, but much -- for sure not about the new beast  
21 that your husband memorialized in the August 22nd email, correct?

22 A He's wrong.

23 Q You heard Mr. Kemp say it. That's all I asked you. True?

24 A Correct.

25 Q All right. And since you don't have an expert, if there's no --



1 you're not a lawyer, right?

2 A No.

3 Q All right. You don't know when an agreement exists, do  
4 you?

5 A I'm sorry. Say that again, please.

6 Q You don't know the legal requirements for an agreement, a  
7 meeting of the minds? True?

8 A True.

9 Q Okay. And so, you don't have any evidence to dispute Mr.  
10 Kemp's opinions, right? Evidence. Not what you think and how you feel  
11 and all that other stuff. You don't have any evidence, right?

12 A No.

13 Q Essentially what you're asking the Court to do, if you agree  
14 you were made whole with a \$4 million settlement that you've already  
15 received is to give you monies that were earmarked as lawyer fees in the  
16 settlement, right?

17 A No.

18 Q And you heard Mr. Kemp say he talked to the mediator, who  
19 knew and told Will Kemp --

20 MR. GREENE: Object to hearsay on that as well.

21 MR. CHRISTIANSEN: She sat through the trial, Your Honor.  
22 She heard the testimony.

23 THE COURT: Are you asking her to testify to a hearsay  
24 statement or are you asking her what Mr. Kemp said?

25 MR. CHRISTIANSEN: The latter, Your Honor.

1 THE COURT: Okay. You can ask her what Mr. Kemp said,  
2 because he already --

3 BY MR. CHRISTIANSEN:

4 Q You heard Mr. Kemp say --

5 THE COURT: -- testified to it.

6 MR. CHRISTIANSEN: I'm sorry.

7 BY MR. CHRISTIANSEN:

8 Q -- that Mr. Floyd, the gentleman who mediated the \$6 million  
9 settlement told him 2.4 of that money was earmarked as attorney's fees,  
10 right?

11 A No.

12 Q I mean, Mr. Vannah is the one he did it to and Bob and him  
13 got up and they talked back and forth with each other. Do you  
14 remember that?

15 MR. GREENE: Mischaracterizes testimony. It's also hearsay.

16 BY MR. CHRISTIANSEN:

17 Q You don't remember that?

18 THE COURT: Well, she said she doesn't remember, and I  
19 remember Mr. Kemp's testimony. I remember what he said.

20 BY MR. CHRISTIANSEN:

21 Q And Exhibit 61, these are photos of your home, ma'am. Is  
22 that right?

23 A Yes.

24 Q This is the home that you guys now own outright, as I  
25 understand Mr. Edgeworth's testimony, correct?

1           A     Yes.

2           Q     From the money that Mr. Simon got from Viking for you all  
3 from a \$500,000 property damage claim, correct?

4           A     No.

5           Q     Who got the money for you?

6           A     I'm sorry. Could you rephrase your question?

7           Q     Sure.

8           A     I didn't understand the question. Whether --

9           Q     The money you used to pay your house off and own it free  
10 and clear came from the Viking settlement?

11          A     No, that's wrong. We built it with our own cash. It never had  
12 a mortgage on it, if that's what your -- I understand your question, Mr.  
13 Christiansen.

14          Q     Well, I thought you needed to borrow money from people to  
15 build the house.

16          A     Yes.

17          Q     But you didn't need to borrow money from people to build  
18 up your damage?

19          A     We plan everything, Your Honor. Okay. So, we had certain  
20 monies set aside for the volleyball gym, certain money set aside to finish  
21 up our house, to furnish it. And then the damage came, which was half a  
22 million dollars plus our mountain legal fees. We did not anticipate that.

23               THE COURT: Okay. So, you guys did not use the Viking  
24 settlement to pay off this house?

25               THE WITNESS: No.

1 THE COURT: Okay. How was the house paid off?

2 THE WITNESS: We paid for it in cash. We built it slowly over  
3 time with cash.

4 THE COURT: And then after the sprinkler busted, you guys  
5 did what?

6 THE WITNESS: I'm sorry?

7 THE COURT: After the sprinkler busted, then this litigation  
8 occurred.

9 THE WITNESS: Yeah.

10 THE COURT: So, while you guys are in this litigation, are  
11 you -- you're borrowing money from your mom --

12 THE WITNESS: Yes.

13 THE COURT: -- and this friend and then you use the Viking  
14 settlement to pay them back?

15 THE WITNESS: Yes.

16 THE COURT: But you used all of your own money to redo  
17 the stuff in the house?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. CHRISTIANSEN:

21 Q Just by ease of example, wasn't there an line item for a  
22 couple hundred grand to replace all your cabinets in your kitchen?

23 A Yes.

24 Q At least in this photograph, those cabinets have yet to be  
25 replaced, correct?

1           A     No. They were -- I think they were -- I don't know when this  
2 picture is, Mr. Christiansen, so they were replaced at some point.

3           Q     Okay. The house that you told the Judge was going to -- you  
4 were going to live in really is a spec house you guys were building --

5           A     Correct.

6           Q     -- as an investment, correct?

7           A     Yes.

8           Q     And during the litigation, you finished the house and actually  
9 listed it for 5 and a half million bucks?

10          A     Yes.

11          Q     And then just chose to move, I think -- if I get the geography  
12 down, you all live down -- used to live down the street and moved up  
13 into this 5 and a half million dollar house that you own outright?

14          A     Yes.

15               MR. CHRISTIANSEN: Court's indulgence.

16                               [Pause]

17               MR. CHRISTIANSEN: Judge, your preference. Do you need  
18 me to go through the volleyball emails or has the Court seen enough of  
19 them?

20               THE COURT: I've seen plenty of volleyball emails.

21               MR. CHRISTIANSEN: Okay. That concludes cross-  
22 examination, Your Honor.

23               THE COURT: Okay.

24               MR. CHRISTIANSEN: Even I know when I'm irritating  
25 somebody.

1 THE COURT: Mr. Greene, do you have redirect?

2 MR. GREENE: Just briefly. I promise this time.

3 MR. CHRISTIANSEN: We're all going to finish today, right  
4 John?

5 MR. GREENE: Yes.

6 THE COURT: Oh, we're finishing today.

7 REDIRECT EXAMINATION

8 BY MR. GREENE:

9 Q Let's talk about evidence of a contract, okay?

10 A Yes.

11 MR. GREENE: This is Exhibit 2.

12 THE COURT: 2. Okay.

13 BY MR. GREENE:

14 Q Page 1. This is the first invoice that Danny Simon and his  
15 law firm sent to you?

16 A Yes.

17 Q Do you see any dates on here?

18 A No.

19 Q He didn't get dates going on until the 8th of August -- sorry,  
20 the 19th of August 2016, correct?

21 A Correct.

22 Q You see the first entry?

23 A Yes, initial meeting with client.

24 Q What did he charge you guys for that?

25 A \$550 an hour.

1 Q For how much time?

2 A 1.75 hours.

3 Q Very first meeting, correct?

4 A Correct.

5 Q This is the Starbucks meeting, isn't it?

6 A It is.

7 Q Fourth entry down. We don't have any dates on these, so we  
8 don't know when these happened. You as the client don't know when  
9 these happened, do you?

10 A No.

11 Q You don't know when Danny is keeping track of his time or  
12 when he's actually marking that a discussion with the client took place,  
13 correct?

14 A Correct.

15 Q But you are seeing on the fourth entry down, he's billing you  
16 4.25 hours for discussion with client, correct?

17 A Yes.

18 Q You're also seeing that second line down. Review file. We  
19 don't have a date on that one, either, do we?

20 A No.

21 Q Review file. Several discussions with clients at how many  
22 hours?

23 A 4.75.

24 Q And what did he bill you at -- per hour at 4.75 hours?

25 A \$550 an hour.

1 Q How about 4.25 hours?

2 A \$550 an hour.

3 Q From the very beginning -- let's look at the very end, okay?

4 This is part of the superbill, Exhibit 5, page 79. See the very last dated  
5 entry for Mr. Simon?

6 A I do.

7 Q Dated what?

8 A January 8th, 2018.

9 Q Travel to Bank of Nevada to X re trust deposit. Do you see  
10 that?

11 A Yes.

12 Q Number of hours?

13 A Two and a half.

14 Q What did Mr. Simon bill you, the client per hour for that 2.5  
15 hours?

16 A \$550 an hour.

17 Q From the initial meeting with client that we know took place  
18 in May of 2016 -- nobody disputes that -- to January 8th of 2018, what  
19 has every entry for Mr. Simon been billed at?

20 A \$550 an hour.

21 Q Did he ever send any of the fee checks back to you?

22 A No.

23 Q Did he ever offer to send any of the fee checks that you had  
24 sent to him back to you?

25 A No.



1 Q Did they all clear?

2 A Yes.

3 MR. GREENE: I have nothing else, Your Honor.

4 THE COURT: Thank you, Mr. Greene. Mr. Christiansen, do  
5 you have any follow up?

6 MR. CHRISTIANSEN: Just one question.

7 THE COURT: Okay.

8 RECROSS-EXAMINATION

9 BY MR. CHRISTIANSEN:

10 Q Ms. Edgeworth, on -- I showed you the first bill. If I were to  
11 show you the last line of bills 2, 3 and 4, could we agree that the word  
12 reduced is all four -- all three of those bills?

13 A If you say that they are, Mr. Christiansen, yes.

14 Q Okay.

15 MR. GREENE: I just have one more then.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. GREENE:

18 Q Let's take a look at the very last line of Mr. Simon's very last  
19 bill, okay?

20 THE COURT: This is the superbill, Mr. Greene?

21 MR. GREENE: This is the superbill.

22 THE COURT: Okay.

23 MR. GREENE: This is page 79.

24 BY MR. GREENE:

25 Q Total fees at 550 per hour. Do you see that, Angela?

1 A I do.

2 Q Where does it say reduced?

3 A It does not.

4 Q Anywhere, does it?

5 A No.

6 Q That's all I have.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. CHRISTIANSEN:

9 Q Just -- Ms. Edgeworth, do you know the date of your first  
10 bill? Just the date?

11 A December 6th or 16. Somewhere in December, '16.

12 Q Thank you, ma'am.

13 THE COURT: Anything else, Mr. Greene?

14 MR. GREENE: No, Your Honor.

15 THE COURT: Mr. Christiansen?

16 MR. CHRISTIANSEN: No, ma'am.

17 THE COURT: Okay. This witness may be excused. Ms.  
18 Edgeworth, thank you very much for your testimony again today.

19 THE WITNESS: Thank you, Your Honor.

20 MR. GREENE: I think your estimation of time of Mr. Vannah's  
21 was more accurate than Mr. Christensen.

22 THE COURT: Me and Mr. Vannah just aren't as optimistic as  
23 Mr. Christensen.

24 MR. CHRISTENSEN: I did use the word fantasy, and I know  
25 what it means.

1 MR. VANNAH: I'm outraged. I'm outraged and shocked.

2 THE COURT: Okay. So --

3 MR. GREENE: Please don't tell us how you know that.

4 THE COURT: -- it's 4:25. I think everybody has an  
5 understanding and nobody is going to close today.

6 MR. VANNAH: I'm too tired.

7 MR. CHRISTIANSEN: No, ma'am.

8 THE COURT: I understand, Mr. Vannah. So, what we're  
9 going to do is I'm going to get your closing arguments in writing.  
10 They're going to be blindly done. We're not going to do a closing and  
11 then a response and a reply. They're going to be blindly done by both  
12 parties. If you could submit those to chambers by Friday at 5:00.

13 MR. CHRISTIANSEN: Perfect.

14 MR. VANNAH: Could you give us like until Monday, so we  
15 can have the weekend?

16 THE COURT: Mr. Vannah. Yeah, Monday at 5:00 is fine.

17 MR. VANNAH: Monday at 5:00.

18 THE COURT: Yes.

19 MR. VANNAH: Yeah. That way we have a little more time.

20 THE COURT: Okay.

21 MR. CHRISTIANSEN: Thank you, Your Honor.

22 MR. GREENE: Thank you, Your Honor.

23 MR. CHRISTENSEN: Thanks for all you're accommodating  
24 me, Judge. I really appreciate it.

25 THE COURT: No, I appreciate it. It's fine. I just have to not

1 get Judge Herndon mad at me.

2 MR. CHRISTIANSEN: Oh, he'll take it out on me. Don't worry  
3 about it.

4 THE COURT: Yeah. My goal is to not get Judge Herndon  
5 mad at me. I was very nice to him when I called him.

6 [Proceedings concluded at 4:29 p.m.]

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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

21

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Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

**“EXHIBIT D”**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**LAUREL EATON,**

Plaintiff,

V.

**VETERANS INC.,**

**Defendant.**

**CIVIL ACTION  
NO. 4:19-40124-TSH**

**ORDER AND MEMORANDUM ON DEFENDANT’S MOTION TO DISMISS (Docket  
No. 16)**

**January 16, 2020**

HILLMAN, D.J.

Laurel Eaton (“Plaintiff”) filed this action against Veterans Inc. (“Defendant”), alleging defamation and tortious interference with contractual or advantageous business relations and seeking declaratory judgment invalidating her non-competition and non-solicitation agreement with Defendant. Defendant moves to dismiss her claims on privilege and mootness grounds. (Docket No. 16). For the following reasons, the Court *denies* the motion.

## Background<sup>1</sup>

Plaintiff earned her Master's Degree in Social Work from Boston College Graduate School of Social Work in May 2014<sup>2</sup> and began working for Defendant as a Grant Writer shortly thereafter. (Docket No. 13 at 2). On Plaintiff's first day of work, Defendant required Plaintiff to sign a non-competition and non-solicitation agreement (the "Non-Compete Agreement") that

<sup>1</sup> The following facts are taken from the Plaintiff's Amended Complaint (Docket No. 13) and assumed true for the purposes of this motion.

<sup>2</sup> The Commonwealth of Massachusetts issued Plaintiff a license to practice social work by March 2015. (Docket No. 13 at 4).

prevented her from “engag[ing] or assist[ing] others in engaging in any business or enterprise . . . that is competitive with [Defendant’s] business” in the two years following the end of her employment with the company. (Docket No. 13-1 at 2).

As a Grant Writer, Plaintiff’s primary responsibilities included researching, developing, and writing grant proposals to secure funding for Defendant’s programs and projects. (Docket No. 13 at 2). Within months of her start date, however, Defendant began to assign Plaintiff additional responsibilities. (Docket No. 13 at 2, 4). Defendant, for example, asked Plaintiff to coordinate the development and licensure of a new inpatient treatment program; track and monitor grant applications; and assume some of her supervisor’s duties. (Docket No. 13 at 5). To recognize her new responsibilities, Defendant promoted Plaintiff to the position of Program Development Coordinator on September 28, 2015. (Docket No. 13 at 5). It did not require Plaintiff to sign a new non-competition and non-solicitation agreement as a condition of her promotion. (Docket No. 13 at 5).

Over the course of the next year, Plaintiff “began to feel increasingly uncomfortable with the working environment and financial management of Veterans Inc.” (Docket No. 13 at 6). She decided to leave and, in the fall of 2016, accepted a job from Team Red, White and Blue (“Team RWB”) as a Grant Manager. (Docket No. 13 at 6). Her last day with Defendant was October 5, 2016, and she began working at Team RWB on October 17, 2016. (Docket No. 13 at 7).

Within a few days of starting at Team RWB, Plaintiff received a call from Defendant asking if it was true that she had accepted a position there. (Docket No. 13 at 7). Plaintiff confirmed that she had, and Defendant stated that it “takes non-compete agreements seriously.” (Docket No. 13 at 7). During this call, Defendant “made no effort to inquire whether [Plaintiff] was in a position at [Team RWB] to use or disclose [Defendant’s] conditional and proprietary information (if any),



or to trade upon its good will.” (Docket No. 13 at 7). Nor did Defendant “identify any legitimate business reason that would support the enforcement of the non-compete agreement so as to preclude Ms. Eaton from continuing her work at [Team RWB].” (Docket No. 13 at 7–8).

Within an hour of calling Plaintiff, Defendant called Team RWB and threatened to take legal action to enforce the Non-Compete Agreement if Team RWB “did not sever its relationship with her.” (Docket No. 13 at 11). Plaintiff alleges that Defendant made this communication knowing that it had no legitimate business reason to enforce the Non-Compete Agreement, knowing that the Non-Compete Agreement was unenforceable, and “with the malicious intent of having [Plaintiff] fired.” (Docket No. 13 at 8–11, 12). As a result of this call, Team RWB terminated Plaintiff’s employment on October 24, 2016. (Docket Nos. 13 at 12, 13-6 at 2).

Plaintiff filed a complaint with this Court on October 2, 2019. (Docket No. 1). She amended her complaint on November 20, 2019. (Docket No. 13). Defendant moved to dismiss the amended complaint on December 13, 2019. (Docket No. 16).

### **Legal Standard**

In evaluating a Rule 12(b)(6) motion to dismiss, the court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Langadinos v. American Airlines, Inc.*, 199 F.3d 68, 69 (1st Cir. 2000). To survive the motion, the complaint must allege “a plausible entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555. “The relevant inquiry focuses on the reasonableness of the inference of liability that the plaintiff is asking the court to draw from the facts alleged in the complaint.” *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 13 (1st Cir. 2011). “[W]here the well-pleaded



facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting Fed. R. Civ. P. 8(a)(2)).

### Discussion

#### *1. Litigation Privilege*

Defendant argues that we must dismiss Plaintiff’s tortious interference and defamation claims because she premises these claims on communications protected by the litigation privilege. (Docket No. 17 at 7–12). “It is well established that statements made by a witness or party during trial, if pertinent to the matter in hearing, are protected with an absolute privilege against an action for defamation.” *Correllas v. Viveiros*, 410 Mass. 314, 320 (1991). This privilege extends “to communications made preliminary to proposed judicial proceedings if judicial proceedings are contemplated in good faith and under serious consideration.” *Shirokov v. Dunlap, Grubb & Weaver, PLLC*, No. 10-12043, 2012 WL 1065578, at \*22 (D. Mass. Mar. 27, 2012); *see also Sriberg v. Raymond*, 370 Mass. 105, 109 (1976). The party asserting the litigation privilege bears the burden of establishing entitlement to it, *see Meltzer v. Grant*, 193 F. Supp. 2d 373, 381 (D. Mass. 2002), and we assess whether that burden has been met “on a case-by-case basis, after a fact-specific analysis, with a proper consideration of the balance between a plaintiff’s right to seek legal redress for injuries suffered and the public policy supporting the application of such a strong protection from the burdens of the litigation,” *Fisher v. Lint*, 69 Mass. App. Ct. 360, 365–66 (2007).

Here, Defendant has not shown that the allegations in Plaintiff’s amended complaint demonstrate its entitlement to the litigation privilege. *See Shirokov*, 2012 WL 1065578, at \*23 (“[A] motion to dismiss on the basis of the litigation privilege only succeeds when the

entitlement to the privilege is demonstrated by the complaint itself.”). Plaintiff pleads that: (1) Defendant knew or should have known that it lacked any legitimate business reason to enforce the Non-Compete Agreement (Docket No. 13 at 7–10); (2) Defendant knew or should have known that the Non-Compete Agreement was unenforceable (Docket No. 13 at 10–11); (3) Defendant knew or should have known that its statements to Team RWB regarding the enforceability of the Non-Compete Agreement were false (Docket No. 12 at 11–12); and (4) Defendant made these statements with the malicious intent of getting Plaintiff fired (Docket No. 13 at 12). These allegations, which the Court must accept as true at this stage in the proceedings, create the reasonable inference that Defendant threatened legal action in bad faith and did not seriously consider initiating any judicial proceeding against Plaintiff or Team RWB. It would thus be inappropriate for the Court to determine the applicability of the litigation privilege at this juncture. *See Hayes v. Mirick*, 378 F. Supp. 3d 109, 114 (D. Mass. 2019). The Court accordingly denies the motion to dismiss Counts I and II.

## 2. Mootness

Defendant argues that Plaintiff’s declaratory judgment claim, which seeks a declaration of the parties’ “respective legal rights and obligations at the time that [Plaintiff] left her employer with [Defendant] and accepted employment with [Team RWB]” (Docket No. 13 at 15), is moot because the two-year prohibition period created by the Non-Compete Agreement has expired. (Docket No. 17 at 13). “For declaratory relief to withstand a mootness challenge, the facts alleged must ‘show that there is a substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” *Am. Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 53–54 (1st Cir. 2013) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975)). Here, the controversy between the parties is still live. Plaintiff

alleges that she has “yet to obtain employment in her chosen field” and that the reputational harm caused by Defendant “has left a continuing cloud over [her] professional reputation, particularly in the field of veterans services.” (Docket No. No. 13 at 13, 15). Because the Court can reasonably infer from these allegations that the validity of the Non-Compete Agreement has impacted, and will continue to impact, her ability to gain employment in the field of veterans services, the Court declines to find the claim moot at this stage in the proceedings. The Court thus denies the motion to dismiss Count III.

**Conclusion**

For the reasons stated above, Defendant’s motion is denied. (Docket No. 16).

**SO ORDERED**

/s/ Timothy S. Hillman  
**TIMOTHY S. HILLMAN**  
**DISTRICT JUDGE**

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 XX

**BATES NO. AA003994 - 4222**

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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**

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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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2020-09-25	Edgeworth Defs.' Joinder to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Mot. to Dismiss Pls.' Am. Complaint	XX	AA004181 – 4183
2020-05-14	Edgeworth Defs. Mot. to Dismiss Pls.' Complaint	IV	AA000819 – 827
2020-04-06	Edgeworth Defs. Opp'n to Pls.' "Emergency" Mot. to Preserve ESI	I	AA000057 – 64
2020-07-01	Edgeworth Defs.' Renewed Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.	XII	AA002370 – 2400
2020-09-24	Edgeworth Defs.' Reply iso Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XX	AA003994 – 4024
2020-08-27	Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVII	AA003489 – 3522
2020-06-05	Edgeworth Family Trust, and Brian and Angela Edgeworth Joinder to American Grating, LLC's, and Vannah Defs.' Mot. s. to Dismiss Pls.' Am. Complaint	XII	AA002303 – 2305

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-05-20	Edgeworth Family Trust, and Brian and Angela Edgeworth's Joinder to American Grating, LLC's. and Vannah Defs.' Special Mot. s. to Dismiss Pls.' Complaint	V	AA000990 – 992
2020-07-09	Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Joinder to American Grating LLC's Mot. s. to Dismiss Pls.' Complaint and Am. Complaint	XIII	AA002410 – 2412
2020-05-18	Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Mot. by to Dismiss Pls.' Complaint Pursuant to NRS 41.637 – Anti SLAPP	V	AA000924 – 937
2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Reply to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: anti-SLAPP	XV	AA002873 – 2875
2020-07-31	Edgeworth Family Trust; American Grating, LLC; Brian Edgeworth and Angela Edgeworth, Individually, and as Husband and Wife's Joinder to Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XV	AA002876 – 2878
2020-07-23	Edgworth Family Trust, Brian Edgeworth, Angela Edgeworth, and American Grating, LLC's Reply ISO Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	XIV	AA002625 – 2655
2020-08-13	Minute Order ordering refiling of all MTDs.	XV	AA002878A-B
2021-04-13	Nevada Supreme Court Clerk Judgment in <i>Simon I</i>	XXI	AA004255 – 4271

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-11-03	Notice of Appeal (Edgeworths)	XXI	AA004252 – 4254
2020-11-02	Notice of Appeal (Vannah)	XXI	AA004250 – 4251
2020-10-27	Notice Of Entry of Order Denying Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP and Order re same	XXI	AA004241 – 4249
2020-10-27	Notice of Entry of Order Denying the Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 and Order re same	XXI	AA004232 – 4240
2020-10-27	Notice of Entry of Order Denying Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint and Order re same	XXI	AA004223 – 4231
2020-07-02	Order Granting in Part, and Denying in Part Pls.' Mot. for Leave to Supp. Pls.' Opp'n to Mot. to Associate Lisa Carteen, Esq. and to Preclude Her Review of Case Materials on OST	XIII	AA002401 – 2409
2020-07-15	Pls.' Opp'n to American Grating LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XIII	AA002413 – 2435
2020-07-15	Pls.' Opp'n to Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC's Renewed Special Mot. to Dismiss Pursuant to NRS 41.637 Anti-SLAPP	XIII	AA002465 – 2491
2020-05-28	Pls.' Opp'n To Defs. Edgeworth Defs.' Mot. To Dismiss Pls.' Complaint and Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	VIII-IX	AA001422 – 1768

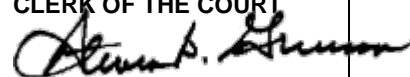
DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-15	Pls.' Opp'n to Defs.' Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Initial Complaint	XIII	AA002492 – 2519
2020-09-10	Pls.' Opp'n to Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637	XVIII	AA003523 – 3553
2020-07-15	Pls.' Opp'n to Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002436 – 2464
2020-05-29	Pls.' Opp'n to Special Mot. of Vannah Defs.' Dismiss Pls.' Complaint: Anti-SLAPP and Leave to file Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	X - XI	AA001840 – 2197
2020-09-10	Pls.' Opp'n to Vannah Defs.' 12(b)(5) Mot. to Dismiss Pls.' Am. Complaint	XVIII	AA003554 – 3584
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002520 – 2549
2020-05-26	Pls.' Opp'n to Vannah Defs.' Mot. To Dismiss Pls.' Complaint, and Mot. in the Alternative for a More Definite Statement and Leave to File Mot. in Excess Of 30 Pages Pursuant to EDCR 2.20(A)	VI-VII	AA001023 – 1421
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Initial Complaint, and Mot. in the Alternative For a More Definite Statement	XIII	AA002594 – 2624
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XIII	AA002550 – 2572
2020-09-10	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XVIII	AA003585 – 3611



DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Initial Complaint; Anti-SLAPP	XIII	AA002573 – 2593
2020-10-01	Transcript of Videotaped Hearing on All Pending Mot. to Dismiss	XX	AA004184 – 4222
2020-06-08	Vannah Defs.' Joinder to Edgeworth Defs.' Mot. to Dismiss Pls.' Am. Complaint and Renewed Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002306 – 2307
2020-09-25	Vannah Defs.' Joinder to Edgeworth Defs.' Reply re Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004176 – 4177
2020-05-20	Vannah Defs.' Joinder to Edgeworth Defs.' Special Mot. to Dismiss Pls.' Complaint; Anti-SLAPP		AA000993 – 994
2020-05-29	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	IX	AA001769 – 1839
2020-08-26	Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XV	AA002983 – 3056
2020-04-30	Vannah Defs. Mot. to Dismiss Pls.' Complaint and Mot. in the Alternative for a More Definite Statement	IV	AA000765 – 818
2020-04-06	Vannah Defs. Opp'n to Pls.' Erroneously Labeled Emergency Mot. to Preserve Evidence	I – IV	AA000065 – 764
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to the Vannah Defs.' Mot. to Dismiss Pls.' Complaint	XIV	AA002800 – 2872
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIV	AA002723 – 2799
2020-09-24	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Mot. to Dismiss Pls.' Am. Complaint	XX	AA004025 – 4102

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	XIV	AA002656 – 2709
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	XIV	AA002656 – 2709
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175


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**DISTRICT COURT  
 CLARK COUNTY, NEVADA**

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

CASE NO. A-19-807433-C

DEPT. NO. 24

Plaintiffs,

vs.

**REPLY IN SUPPORT OF  
 EDGEWORTH DEFENDANTS'  
 SPECIAL ANTI-SLAPP MOTION TO  
 DISMISS PLAINTIFFS' AMENDED  
 COMPLAINT PURSUANT TO NRS  
 41.637**

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,

**Hearing Date:** October 1, 2020 at 9:00am

Defendants.

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 REPLY IN SUPPORT OF BRIAN EDGEWORTH,  
 ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC  
 SPECIAL ANTI-SLAPP MOTION TO DISMISS PURSUANT TO NRS 41.637.

1 This Reply is based upon the attached Memorandum of Points and Authorities, NRS sections  
2 41.635-670, the pleadings and papers on file herein, the Declarations of Brian Edgeworth and Angela  
3 Edgeworth, and any oral argument which this Honorable Court may entertain at time of hearing on this  
4 matter.

5 DATED this 24<sup>th</sup> day of September, 2020.

6 **MESSNER REEVES LLP**

7 /s/ Renee M. Finch

8 M. Caleb Meyer, Esq.

9 Nevada Bar No. 13379

10 Renee M. Finch, Esq.

11 Nevada Bar No. 13118

12 Christine L. Atwood, Esq.

13 Nevada Bar No. 14162

14 *Attorneys for the Edgeworth Defendants*  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiffs' Opposition to the Edgeworths' Special Anti-SLAPP Motion to Dismiss the Amended Complaint<sup>1</sup> fails to demonstrate that the Edgeworths are not entitled to the relief requested within their Motion.<sup>2</sup> Based upon the evidence as presented, Plaintiffs cannot demonstrate that their Amended Complaint is anything other than an unlawful SLAPP suit which must be dismissed. First, Plaintiffs' Opposition wholly fails to demonstrate that the speech at issue, as pled within the Amended Complaint, is not protected by the absolute litigation privilege and Nevada's Anti-SLAPP statute. Second, Plaintiffs have failed to demonstrate by prima facie evidence that there is a possibility they may prevail upon their claims for relief. Third, Plaintiffs have failed to demonstrate that the Edgeworths did not have a good faith basis for their Complaints. Plaintiffs' Opposition fails to demonstrate that the Edgeworths' Anti-SLAPP Motion does not fulfill the prongs of Nevada's Anti-SLAPP jurisprudence. Therefore, the Edgeworths respectfully request that this Honorable Court grant their Special Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint pursuant to Nevada's Anti-SLAPP laws, as codified within 41.635-670.<sup>3</sup>

### **II. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS**

Resolution of the Edgeworths' Anti-SLAPP Motion is scrutinized 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

<sup>1</sup> The Edgeworths argued at length that the filing of the Amended Complaint by Plaintiffs' was improper based upon Nevada's Anti-SLAPP law and its reliance upon California law, which does not allow an amended complaint to be filed by a plaintiff following a defendant filing a Special Anti-SLAPP Motion to Dismiss. *See, Shapiro v. Welt*, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017) (quoting *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009) (abrogated on other ground by *Shapiro*) (comparing NRS 41.637(4), with Cal. Civ. Proc. Code § 425.16(e)(West 2016)); *Salma v. Capon*, 161 Cal.Rptr.3d 873, 888-89 (Cal.App.1st, 2008) (supporting automatic dismissal of the amended claims because "[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.") (emphasis added). The Edgeworths therefore reserve any and all rights and/or objections in this regard, including, but by no means limited to, the right to seek review of this Court's decision to allow Plaintiffs' Amended Complaint through a Writ of Mandamus and/or Prohibition.

<sup>2</sup> Plaintiffs' contention that the Edgeworths have waived their right to file a Motion to Dismiss pursuant to NRCP 12 in this matter is without merit. The Edgeworths' Special Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint is not a pleading pursuant to NRCP 8, nor a responsive pleading under NRCP 12, but instead is a Special Appearance Response. As such, should this Court deny the Edgeworths' Anti-SLAPP Motion, the Edgeworths would still have the ability to file a 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint. The Edgeworths reserve any and all rights and/or objections in this regard.

<sup>3</sup> Plaintiffs meritless claim that the endnotes as presented within the Edgeworths' Anti-SLAPP are allegedly outside of the page limitations set by this Court should not be considered by this Court as it is unsupported by any citation to any rule or law. The Edgeworths reserve any and all rights and/or objections in this regard.

1 moving party is entitled to a judgment as a matter of law.<sup>4</sup> The substantive law will identify which facts  
2 are material. Only disputes over facts that might affect the outcome of the suit under the governing law  
3 will properly preclude the entry of summary judgment.”<sup>5</sup>

4 To properly support contentions under a motion under a summary judgment standard, NRCP  
5 56(c)(1)(A) states:

6 A party asserting that a fact cannot be or is genuinely disputed must support  
7 the assertion by:

8 (A) citing to particular parts of materials in the record, including  
9 depositions, documents, electronically stored information, affidavits or  
10 declarations, stipulations (including those made for purposes of the motion  
11 only), admissions, interrogatory answers, or other materials[.]

12 Further, when, as here, a party does not comply with NRCP 56(c)(1)(A), NRCP 56(e) is  
13 controlling, and states:

14 If a party fails to properly support an assertion of fact or fails to properly  
15 address another party’s assertion of fact as required by Rule 56(c), the court  
16 may:

- 17 (1) give an opportunity to properly support or address the fact;
- 18 (2) consider the fact undisputed for purposes of the motion;
- 19 (3) grant summary judgment if the motion and supporting  
20 materials — including the facts considered undisputed — show that the  
21 movant is entitled to it; or
- 22 (4) issue any other appropriate order.

23 Here, Plaintiffs have not only been inappropriately afforded the opportunity to file an Amended  
24 Complaint, but they have also had three (3) separate opportunities to file oppositions, yet continue to fail  
25 to support many of their alleged “facts” with citation to the record. Plaintiffs attempt to create a material  
26 question of fact by making countless unsupported factual assertions. Of note to this case, in an attempt  
27 to convince this Court to dispose of the Edgeworths’ Anti-SLAPP Motion, Plaintiffs attempt to turn the  
28 Edgeworths’ supported facts into disputed issues of fact, but offer no relevant affidavits filed in support  
of their Opposition.<sup>6</sup> Plaintiffs have failed to demonstrate that the Edgeworths’ speech was not good faith  
communications made within the context of a judicial proceeding or protected under some other privilege,  
that Plaintiffs have any ability to prevail upon their alleged “Counts[,]” nor that the Edgeworths did not

<sup>4</sup> Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005).

<sup>5</sup> Id. at 1031.

<sup>6</sup> “[T]he opposing party shall serve and file his written opposition ... and supporting affidavits, if any, stating facts showing why the motion should be denied.” Nev. St. Dist. Ct. R. 13(3).

1 have a good faith basis for bringing and maintaining their conversion claim against Plaintiffs following  
2 Simon's wrongful exercise of dominion and control over the Viking Settlement funds. The undisputed  
3 facts in this matter show that Plaintiffs' Amended Complaint is a SLAPP suit which must be dismissed  
4 in its entirety as a matter of law pursuant to Nevada's Anti-SLAPP laws.

### 5 **III. REBUTTAL TO PLAINTIFFS' PURPORTED FACTUAL STATEMENTS**

#### 6 **A. Plaintiffs' Unsupported Factual Assertions Cannot Be Considered**

7 Plaintiffs have presented this Court with a litany of improper arguments. The Edgeworths  
8 respectfully request this Court to disregard the unsupported assertions and arguments for the following  
9 reasons. First, Plaintiffs recognize that an Anti-SLAPP Motion to Dismiss is reviewed under a summary  
10 judgment standard, yet they repeatedly make unsupported statements without citations to the record. As  
11 this Court is aware, citation to Plaintiffs' own complaint does not constitute a citation to the record.<sup>7</sup> It  
12 is well established under Nevada Law that facts not supported by citation to the record cannot be properly  
13 considered when resolving a motion under a summary judgment standard, as each fact claimed to be  
14 undisputed must be supported by the factual record or affidavit/declaration.<sup>8</sup> As such, none of the facts  
15 within Plaintiffs' Opposition which are not supported by citation, nor those purported facts which cite to  
16 Plaintiffs' Amended Complaint, should be considered in this Court's resolution of the instant motion,  
17 leaving Plaintiffs without the ability to support their arguments.<sup>9</sup>

18 Second, Plaintiffs failed to provide an affidavit or declaration from Simon or anyone else in  
19 support of the Opposition.<sup>10</sup> Pursuant to NRCP 56(C)(1), (3) and (4), Plaintiffs' Opposition is deficient  
20 under the summary judgment standard, making the facts as presented within the Edgeworths' Anti-SLAPP  
21 Motion undisputed for purposes of this Court's resolution of same. Plaintiffs have also misquoted many  
22 portions of the record, making their purported factual statements suspect at best. Thus, the Edgeworths  
23 strongly urge this Court to see through Plaintiffs' mischaracterizations and not consider same, nor those  
24 purported facts not supported by citation to the record.

25 ///

26 <sup>7</sup> See NRCP 56.

<sup>8</sup> *Id.*

27 <sup>9</sup> See Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP Motion to Dismiss Amended Complaint, (hereinafter "OPPS  
Edgeworth Anti-SLAPP Mtn Am Comp") at 2-14.

28 <sup>10</sup> *Id.*



**B. The Edgeworths' Speech Should Be Protected Under Nevada's Anti-SLAPP Statute**

Plaintiffs argue that the Edgeworths have ignored the principle that only good faith communications are afforded Anti-SLAPP protection.<sup>11</sup> This allegation is directly contrary to the truth. The communications at issue were all made in good faith as discussed in detail *supra*. Plaintiffs further contend that the filing of an amicus brief by the NTLA somehow demonstrates that the Edgeworths' conversion claim was outrageous.<sup>12</sup> The amicus brief, however, does not demonstrate any legal precedence upon which Plaintiffs can rightfully base argument in their Opposition. While the amicus brief does recognize that attorney liens are an issue of public interest and importance, it does not provide a blanket protection for the unlawful lien filed in this case. As such, any argument that the NTLA brief supports Plaintiffs' position should not be considered.

**C. Issue and Claim Preclusion do not Apply to the Instant Motion**

Plaintiffs claim that issue and claim preclusion prevent the Edgeworths from arguing that the conversation claim was brought in good faith. This argument is entirely without merit.<sup>13</sup> Issue and claim preclusion simply do not apply to this scenario. The Edgeworths are not attempting to re-litigate these issues, as Plaintiffs claim. Rather the Edgeworths have demonstrated to the Court that, at the time their Complaints were filed, the Edgeworths had a good faith belief that they were entitled to relief under causes of action recognized and accepted under Nevada law.

**D. Simon Was Not Entitled to Compensation Outside of or in Addition to the Implied in Fact Hourly Fee Agreement**

Throughout the Opposition, Plaintiffs misstate, misquote, and misrepresent the undisputed facts in this case. The record in this matter cannot be altered by claiming it says something it does not. As such, the Edgeworths move to clarify for the Court what is contained in the record so that the Court can make the appropriate determination of the issues of law as they pertain to the actual facts in this matter. First, Plaintiffs claim that Simon "agreed to determine a fair fee at the end of the case."<sup>14</sup> Unfortunately, Plaintiffs have mischaracterized the facts including the testimony of Simon to assert this claim.<sup>15</sup> Simon's

<sup>11</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at page 2, on-file herein.

<sup>12</sup> *Id.* at page 2, FN 4.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 5 and Exhibit 7 to Plaintiffs' Master Appendix.

1 testimony was not that Simon agreed to determine a fair fee, but instead that Brian and Simon had  
2 discussed a fair fee.<sup>16</sup> Interestingly, this does not in any way indicate that the \$550.00 per hour that Simon  
3 was being paid was not a fair fee in and of itself. In reality, the undisputed facts demonstrate that Simon  
4 required the hourly fee when he took the case, and that he was paid the full \$367,606.25 amount of his  
5 fees. Simon took no risk in litigating the case because the Edgeworths were paying him on an hourly  
6 basis for his work and covered all litigation costs along the way.<sup>17</sup>

7 Plaintiffs' attempt to relitigate the issue of whether or not there is an express contract is also  
8 misplaced.<sup>18</sup> Plaintiffs focus on the concept of an "express contract" and a "bonus" when this is not at  
9 issue before this Court. Here, the Edgeworths had an implied in fact contract to pay Simon an hourly rate  
10 for his services. For eighteen months, the parties operated under the hourly fee arrangement until the  
11 Edgeworths entered into the \$6 million settlement with Viking. It was at that point that Simon pressed  
12 the Edgeworths for an agreement that would entitle Plaintiffs to additional compensation.<sup>19</sup>

13 In their discussions, the Edgeworths never agreed to a new fee agreement that would entitle Simon  
14 to a contingency fee, bonus, or any other compensation outside of the implied in fact hourly fee agreement.  
15 Simon then sent the November 27, 2017 Letter, which included the new fee agreement.<sup>20</sup> The November  
16 27, 2017 Letter required the Edgeworths to agree to the new fee arrangement for Simon to continue to  
17 represent them and finalize the Viking Settlement.<sup>21</sup> Notably, this new fee agreement entitled Simon to  
18 \$1.5 million, less the \$367,606.25 in legal fees already paid over the course of the 18-month litigation.  
19 The November 27, 2017 Letter conclusively demonstrates that Simon did in fact tell the Edgeworths that  
20 they needed to sign the Retainer Agreement and Settlement Breakdown attached to Simon's Letter in  
21 order for him to continue representing them.<sup>22</sup> Specifically, in the letter Simon stated "if you are not  
22 agreeable, then I cannot continue to lose money to help you."<sup>23</sup>

23  
24 <sup>16</sup> *Id.*

25 <sup>17</sup> See Declaration of Angela Edgeworth, attached hereto as **Exhibit A**; see also Declaration of Brian Edgeworth attached as  
Exhibit A to the Edgeworths' Anti-SLAPP Motion.

26 <sup>18</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at page 6, on-file herein.

<sup>19</sup> See **Exhibit A**; see also November 27, 2017 Letter, attached as Exhibit D to the Edgeworth's Anti-SLAPP Motion.

<sup>20</sup> See Declaration of Brian Edgeworth attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

<sup>21</sup> See, **Exhibit A**; see also November 27, 2017 Letter, attached as Exhibit D to the Edgeworth's Anti-SLAPP Motion.

27 <sup>22</sup> *Id.*; see also Retainer Agreement and Settlement Breakdown, as attached to Simon's November 27, 2017 Letter, attached as  
Exhibit E to the Edgeworth's Anti-SLAPP Motion.

28 <sup>23</sup> *Id.*

**E. The Invoices Presented to the Edgeworths Were Paid in Full, And the Edgeworths Acknowledge that they Owed a Final Invoice to Simon for Legal Services Rendered Under the Hourly Fee Agreement**

Plaintiffs continue to mischaracterize facts and testimony in an effort to demonstrate that the Edgeworths made false statements regarding payment.<sup>24</sup> Plaintiffs assert that the Edgeworths contradicted themselves when stating Plaintiffs had been “paid in full” and that they also owed additional money for the fees and costs incurred.<sup>25</sup> When the Edgeworths stated that Plaintiffs had been paid in full, they were referring to the payment of the invoices with which they had been presented.<sup>26</sup> The Edgeworths have always acknowledged that a final invoice would be presented for the remainder of the attorney’s fees and costs, but as their several requests to Simon for the final invoice were ignored, the Edgeworths were simply acknowledging that they never refused to pay.<sup>27</sup> It follows that both the Edgeworths’ statements that Plaintiffs had been paid in full for the invoices actually provided AND the statement that some amount was still owed to Plaintiffs for services rendered, are not mutually exclusive or contradictory as Plaintiffs allege.<sup>28</sup>

**F. Reference to Exhibits to Motions Rendered Moot by this Court is Improper**

As this Court is aware, the parties engaged in extensive motion practice on the issues detailed herein prior to the instant Motion being filed. At the hearing on August 13, 2020, this Court rendered all prior motion practice moot and issued a new briefing schedule for the parties. In their Opposition, Plaintiffs cite to Angela’s declaration dated June 4, 2020, as the basis for their argument that the Edgeworths have changed their story.<sup>29</sup> This claim is untrue and should not be considered by this Court. The Edgeworths are entitled to utilize the exhibits that they deem necessary to support their Motion as it is written. To imply any malice or mischievous intent is a red herring to distract the Court from the issues at hand.

This distortion of facts continues throughout Plaintiffs’ Opposition. Plaintiffs’ unsupported or mischaracterized purported facts are not substantive or admissible evidence this Court can consider,

<sup>24</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 13-14, on-file herein.

<sup>25</sup> *Id.*

<sup>26</sup> See **Exhibit A**; see also Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworth’s Anti-SLAPP Motion.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; see also OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 13-14, on-file herein.

<sup>29</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at page 9, n. 9, on-file herein.

and/or do not support Plaintiffs' contention that the undisputed facts demonstrate that the Edgeworths are not entitled to Anti-SLAPP protection. Rather, the undisputed facts of this matter demonstrate that the speech at issue within Plaintiffs' Amended Complaint is all protected and/or privileged, such that Plaintiffs' Amended Complaint is nothing more than an unlawful SLAPP Complaint, which must be dismissed.

#### IV. PLAINTIFFS' OPPOSITION FAILS TO DEMONSTRATE THAT THE EDGEWORTHS' ANTI-SLAPP MOTION SHOULD NOT BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

##### A. Plaintiffs' Opposition Fails to Present Undisputed Evidence to Rebut That The Edgeworths Satisfy the First Prong of the Anti-SLAPP Analysis<sup>30</sup>

Plaintiffs repeatedly argue that the Edgeworths made false statements by mischaracterizing facts and testimony. However, nothing within Plaintiffs' Opposition demonstrates that the Edgeworths knowingly made false statements regarding their dispute with Plaintiffs, regarding Simon or his business and, as such, Plaintiffs' Opposition fails to rebut the fact that the Edgeworths satisfy the first prong of Nevada's Anti-SLAPP standard.

##### i. The Edgeworths had a Good Faith Belief that Plaintiffs Committed Conversion

Plaintiffs again center their argument around the red herring that there was allegedly no good faith basis for the underlying suit because Simon did not physically steal the Viking Settlement funds, so the Edgeworths allegedly knew that conversion was a factual impossibility.<sup>31</sup> This red herring is rooted in a misunderstanding of the tort of conversion. The tort of conversion in Nevada in no way requires a physical taking or stealing.<sup>32</sup> Rather, this tort requires a wrongful act of dominion and control over the property of another.<sup>33</sup> It is disingenuous for Plaintiffs to claim that the Edgeworths had no good faith basis to bring a claim for conversion, when Plaintiffs seem to misunderstand the very definition of the tort itself. At the time of the filing of the Edgeworths' Complaint, on January 4, 2018, the Edgeworths had a good faith

<sup>30</sup> Plaintiffs curiously break up their purported argument regarding prong 1 with argument regarding agency in the context of AMG and the Trust. *See OPPS Edgeworth Anti-SLAPP Mtn Am Comp*, at 15-17, on-file herein. While the Edgeworths believe this is a tactic by Plaintiffs to distract the Court's attention from the wholly deficient nature of Plaintiffs' Opposition, the Edgeworths do address these arguments below, in Section IV(E) of this Reply.

<sup>31</sup> *See OPPS Edgeworth Anti-SLAPP Mtn Am Comp*, at 21, on-file herein.

<sup>32</sup> *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).

<sup>33</sup> *Id.*

1 belief that Plaintiffs had no lawful basis upon which to file the attorney's liens because Plaintiffs did not  
2 provide the Edgeworths with the requested final invoice, nor allow the Edgeworths the opportunity to pay  
3 the final invoice as same was never provided, prior to Plaintiffs' filing of the attorney's liens. Further, it  
4 is irrelevant that Simon claims he did not have physical possession of the funds until after the Complaint  
5 was filed, because his unlawful exercise of dominion and control began when he unilaterally inserted the  
6 provision into the settlement terms that his name would be on the check, and continued when he insisted  
7 that the funds be held in a trust account instead of being released to the Edgeworths.<sup>34</sup>

8 Plaintiffs contend that Simon's name being included on the settlement checks was a term of the  
9 Viking settlement as indicated on the release.<sup>35</sup> While it is true that the final settlement agreement  
10 included a term that required Simon's name be included on the checks, what Simon chooses to ignore is  
11 that he himself unilaterally added this term to the settlement agreement without the input or consent of  
12 the Edgeworths.<sup>36</sup> It was wholly unnecessary for Simon's name to be on the checks for any other reason  
13 than for the ability to control the funds.

14 Simon had been paid on an hourly basis to this point and the Edgeworths had requested the final  
15 invoice for his hourly fees and any litigation costs so that they could be paid.<sup>37</sup> Plaintiffs had no reason  
16 to believe that the final invoice would not be paid because all invoices for fees and costs had been promptly  
17 paid.<sup>38</sup> It is uncontested in the Opposition that the Edgeworths had requested and Plaintiffs had failed to  
18 provide a final invoice.<sup>39</sup> Further, while in a contingency case where the attorney is entitled to a portion  
19 of the settlement it is common place to include the attorney or law firm name on the settlement check in  
20 care of the client, that was simply not the case here. The Edgeworths never agreed to nor signed the new  
21

22 <sup>34</sup> The question of when Simon received the checks is not before this court because it is wholly irrelevant to the Edgeworth's  
23 Anti-SLAPP Motion to Dismiss, however, because Plaintiffs have asserted that the fact that they did not have the funds until  
24 after the Edgeworth Complaint was filed brings into question when the funds were received. In emails attached to the  
25 Edgeworth's Motion to Dismiss Janet Pancoast indicates that she has the checks on December 12, 2017, and requests that Simon  
26 exchange the checks for a signed release of claims. The release of claims is signed by Pancoast and Simon on December 18,  
27 2018, indicating that it is most likely that the exchange took place that day, and Simon was in possession of the settlement  
28 checks beginning December 18, 2017. This date is notably before the Amended Lien was filed on January 2, 2018, and prior to  
the filing of the Edgeworth Complaint on January 4, 2018. The Edgeworths note this discrepancy as yet another factual fallacy  
presented by Plaintiffs, but ask this Court only to consider it as to the veracity of Plaintiffs complaints, and not for the truth of  
the matter asserted.

<sup>35</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at pages 9-10, on-file herein.

<sup>36</sup> See Exhibit A; see also Declaration of Brian Edgeworth attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

1 fee agreement, and Simon had no reason to believe that the Edgeworths would not pay the final invoice  
2 for hourly fees and costs.

3 In the November 27, 2017 Letter, Simon sought compensation in addition to the hourly fee  
4 agreement.<sup>40</sup> It does not matter if you call the additional compensation he was seeking a contingency fee,  
5 bonus, fair compensation, or any other name, the fact of the matter is that the Edgeworths and Plaintiffs  
6 had been operating under an implied in fact hourly fee agreement, and no other agreement existed between  
7 the parties. Under this set of facts, and as confirmed by Judge Jones in the order resulting from the lien  
8 adjudication hearing, Plaintiffs had no entitlement to any compensation other than what they were due  
9 under the hourly fee agreement.<sup>41</sup> Thus, Plaintiffs were not entitled to the settlement proceeds, and did  
10 not need to sign for their deposit.<sup>42</sup> As such, but for Simon's insistence that his name was on the checks,  
11 there was no functional purpose for the inclusion of this term except to control where the money went.<sup>43</sup>

12 In the Opposition, Plaintiffs claim that Simon could not have converted the Viking Settlement  
13 funds because the funds were placed into a special trust account agreed to by the Edgeworths and their  
14 counsel, Vannah.<sup>44</sup> Specifically, Simon continues on his quest to morph the tort of conversion in Nevada  
15 to a criminal act. Notably the tort of conversion has no criminal element to it. Rather it is defined as a  
16 distinct act of dominion wrongfully exerted over another's personal property in denial of, or  
17 inconsistent with, his title or rights therein or in derogation, exclusion, or defiance of such title or  
18 rights."<sup>45</sup> This definition is noticeably different from the crime of theft or, more specifically, a physical  
19 taking, as Plaintiffs claim they have been accused.<sup>46</sup>

20 A series of events in this case, when combined, constitute conversion under Nevada law. These  
21 facts include, but are not limited to, the fact that Simon unilaterally placed his name upon the settlement  
22 checks when there was admittedly no contingency fee agreement, Simon refused to tell the Edgeworths

23  
24 <sup>40</sup> See Retainer Agreement and Settlement Breakdown, as attached to Simon's November 27, 2017 Letter, attached as Exhibit E to the Edgeworths' Anti-SLAPP Motion.

25 <sup>41</sup> See Order on Lien Adjudication Hearing attached as Exhibit B to the Edgeworths' Anti-SLAPP Motion.

26 <sup>42</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at page 7:9-11, on-file herein; see also Exhibits A-B, D-E, as attached to the Edgeworths' Anti-SLAPP Motion.

27 <sup>43</sup> *Id.*

28 <sup>44</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at pages 9-10, on-file herein

<sup>45</sup> *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).

<sup>46</sup> See Amended Simon Complaint at ¶ 21.



1 what the final invoice amount would be and what the undisputed amounts were, Simon refused to allow  
2 the Edgeworths to deposit the settlement checks in their own account, Simon refused to provide his  
3 signature for funds to be released from the joint account, Simon refused to provide a final invoice for fees  
4 and costs and Simon asserted two unfounded attorney liens.<sup>47</sup> These acts combined created wrongful  
5 dominion and control over the Viking Settlement funds in denial of, and inconsistent with, the  
6 Edgeworths' rights to same.<sup>48</sup> It follows that the Edgeworths' conversion claims as forwarded within the  
7 Edgeworth Complaints, as well as any and all filings and conversations regarding same, were good faith  
8 communications protected by the absolute litigation privileged and Nevada's Anti-SLAPP statute,  
9 requiring a finding that the Edgeworths have satisfied the first prong of Nevada's Anti-SLAPP test.<sup>49</sup>

10 Plaintiffs attempt to distract this Court by stating that a lawful attorney lien cannot constitute  
11 conversion. While this may be a factual statement in some cases, it does not accurately reflect the facts  
12 at hand. The liens asserted against the Viking Settlement funds in conjunction with the facts identified  
13 *infra* together constitute conversion in this matter.

14 Plaintiffs filed their unlawful attorney's liens on November 30, 2017 and January 2, 2018,  
15 respectively.<sup>50</sup> Plaintiffs now attach a Declaration from Will Kemp, Esq., in a meritless attempt to support  
16 the alleged legality of their attorney's liens.<sup>51</sup> Plaintiffs' attempt to support their unlawful attorney's liens  
17 with the *ex post facto* written opinion of Mr. Kemp, provided in the underlying case, is wholly without  
18 merit and should not be countenanced by this Court.<sup>52</sup> Significantly, Mr. Kemp's Declaration is dated  
19 January 31, 2018, nearly two months after Plaintiffs filed their Original Lien and approximately one  
20 month after Plaintiffs filed their Amended Lien, and in no context whatsoever are Mr. Kemp's opinions  
21 relevant or legally binding upon this Court.<sup>53</sup> The issue before this Court in prong 1 of the Anti-SLAPP  
22 statute is whether the Edgeworths had a good faith basis to file the claims in the Edgeworth Complaints

23 <sup>47</sup> See Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

24 <sup>48</sup> *Id.*; see also Plaintiffs' Attorney's Liens, filed November 30, 2017 and January 2, 2018, respectively, attached as Exhibits J & K to the Edgeworths' Anti-SLAPP Motion.

25 <sup>49</sup> See The Edgeworth Complaints, dated January 4, 2018 and March 15, 2018, respectively, attached as Exhibits L & M to the Edgeworths' Anti-SLAPP Motion.

26 <sup>50</sup> See Plaintiffs' Attorney's Liens, filed November 30, 2017 and January 2, 2018, respectively, attached as Exhibits J & K to the Edgeworths' Anti-SLAPP Motion.

27 <sup>51</sup> See Exhibit 9 to Plaintiffs' Master Appendix, dated September 10, 2020, on-file herein.

28 <sup>52</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 18, on-file herein.

<sup>53</sup> *Id.*; see also Exhibit 9 to Plaintiffs' Master Appendix, dated September 10, 2020, on-file herein; see also, NRS 48.015 and 48.025

1 at the time the Complaints were filed. Mr. Kemp's opinion from after the Edgeworth Complaints were  
2 filed is wholly irrelevant to the determination of that question of law.

3 **ii. The Speech in Question is Protected by Absolute Litigation Privilege**

4 Plaintiffs' Amended Complaint alleges damages that stem from speech that occurred within the  
5 underlying lawsuit, for which the absolute litigation privilege applies.<sup>54</sup> Simon believed he was entitled  
6 to compensation in addition to the hourly fee agreement and the Edgeworths believed he was entitled only  
7 to his hourly rate for the work performed plus incurred costs. This disagreement does not alter the absolute  
8 litigation privilege protection the Edgeworths were afforded when bringing their lawful claims in the  
9 Edgeworth Complaints. Statements in judicial filings are absolutely privileged and are protected under  
10 Nevada's Anti-SLAPP law.<sup>55</sup> Plaintiffs' disagreement with the Edgeworths does not automatically  
11 concede the good faith basis for the Edgeworth Complaints. Likewise, whether the \$1.5 million in  
12 attorney's fees was 25% or 40% of the amount of the Viking Settlement is wholly irrelevant and does not  
13 negate the fact that Simon asserted unlawful attorney liens against the Viking Settlement funds because  
14 he believed he was entitled to additional compensation (in the form of a portion of the settlement funds)  
15 in addition to the hourly agreement he was being paid.<sup>56</sup> The Edgeworths have always wanted to pay the  
16 final invoice for fees and costs for the legal services they received, as evidenced by their multiple requests  
17 for the final invoice and offer to pay the \$484,982.50 awarded in fees by Judge Jones after the lien  
18 adjudication hearing.<sup>57</sup> The Edgeworths had a good faith basis to believe that they were entitled to the  
19 Viking Settlement funds in their entirety and that Plaintiffs did not have a right to assert a lien against  
20 those funds. It follows, therefore, that the Edgeworths had a good faith basis for the claims they asserted  
21 within the Edgeworth Complaints, including but not limited to, their conversion claim.<sup>58</sup>

22 Plaintiffs' continued assertion that their attorney's liens were lawful simply because they followed  
23 the procedure set forth in NRS 18.015, finds no support in the facts as they exist in this case.<sup>59</sup> NRS  
24 18.015(5) states that "[a] lien pursuant to paragraph (b) of subsection 1 **must not be construed as**

25 <sup>54</sup> *Id.* at 18-20.

26 <sup>55</sup> *See* NRS 41.650.

27 <sup>56</sup> *See* Exhibits A, D-E and J-K, as attached to the Edgeworths' Anti-SLAPP Motion.

28 <sup>57</sup> *See* **Exhibit A.**

<sup>58</sup> *Id.*; *see also* The Edgeworth Complaints attached as Exhibits L & M to the Edgeworths' Anti-SLAPP Motion.

<sup>59</sup> *See* OPPS Edgeworth Anti-SLAPP Mtn Am Comp. at 20-21, on-file herein.



1 inconsistent with the attorney's professional responsibilities to the client." (Emphasis added). The  
2 November 27, 2017 Letter required that the Edgeworths sign the Retainer Agreement and Settlement  
3 Breakdown in order for Plaintiffs to continue their representation of the Edgeworths or risk the Viking  
4 Settlement falling apart, when Plaintiffs had been paid in full for every invoice presented to the  
5 Edgeworths. The Nevada Rules of Professional Conduct prohibit this behavior in a multitude of provisions  
6 including, but not limited to, NRPC 1.3, NRPC 1.4(a) & (b), (3), NRPC 1.5, (4) NRPC 1.16, and (5)  
7 NRPC 3.2. As Simon's conduct as described herein was in violation of the Nevada Rules of Professional  
8 Conduct, said conduct could not have supported that Plaintiffs' attorney's liens were allegedly lawful,  
9 because said conduct was in violation of NRS 18.015(5). These actions not only could be construed as  
10 inconsistent with Simon's professional obligations, but were in direct violations of no less than five  
11 independent sections of the Nevada Rules of Professional Conduct.

12 **iii. Brian's Statements to Herrera, and Angela's Conversations with**  
13 **Attorney Lisa Carteen and Justice Miriam Shearing are Protected**  
14 **Speech**

15 Plaintiff next contends that the Edgeworths present a "bizarre" argument regarding statements  
16 they made about the litigation and their relationship with Simon.<sup>60</sup> However, Plaintiffs' contention that  
17 the Edgeworths' statements are not protected speech is wholly without merit and unsupported by Nevada  
18 law.<sup>61</sup> Although Plaintiffs claim that the Edgeworths believe they can defame anyone they want as long  
19 as it is in a public forum, this claim is inconsistent with the facts in this case. The Edgeworths' argument  
20 that their statements are privileged are specific to the speech Simon identifies in the Amended Simon  
21 Complaint as a basis for his claims. All of the statements relied upon by Plaintiffs within their Opposition  
22 are also privileged, as same are opinions or claims made regarding an issue of public concern. *See,*  
23 *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d at 1064. Specifically, "[a] person who engages in a  
24 good faith communication in furtherance of the right to petition or the right to free speech in direct  
25 connection with an issue of public concern is immune from any civil action for claims based upon the  
26 communication." NRS 41.650 (emphasis added). Here, the opinions of the Edgeworths are protected  
27 speech and cannot support the allegations made within the Plaintiffs' Amended Complaint.

28 <sup>60</sup> *Id.* at 21.

<sup>61</sup> *Id.*

1 *Shapiro v. Welt* adopted California law, stating that one of the factors for a court to look at when  
 2 determining if speech should be afforded anti-SLAPP protection is whether “the focus of the speaker’s  
 3 conduct should be the public interest rather than a mere effort to gather ammunition for another round of  
 4 private controversy.”<sup>62</sup> *Shapiro* demonstrates that the Edgeworths’ speech should be afforded Anti-  
 5 SLAPP protection.<sup>63</sup> In fact, the Edgeworths have demonstrated extensively that their speech was either  
 6 made in the course of a judicial proceeding, made to attorneys for the purpose of legal advice, or made to  
 7 rebut Simon’s own statements to Herrera insinuating wrongdoing on the part of the Edgeworths.

8 Plaintiffs’ reliance upon *Jacobs v. Adelson*,<sup>64</sup> is misplaced for several reasons. Unlike this case,  
 9 *Jacobs* involved statements made to the media, and is simply inapplicable to the case at hand.<sup>65</sup> Further,  
 10 *Jacobs* supports the Edgeworths’ arguments regarding statements made to Herrera following Simon’s  
 11 emails which implicated some alleged wrongdoing on the part of the Edgeworths. Specifically, the *Jacobs*  
 12 Court found that a person can respond to defamatory statements made about them, stating:

13 The common law conditional privilege of reply “grants those who are  
 14 attacked with defamatory statements a limited right to reply.” *State v.*  
 15 *Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 149, 42 P.3d 233,  
 16 239 (2002). To illustrate the conditional privilege of reply, this court has  
 17 previously explained that “ ‘[i]f I am attacked in a newspaper, I may write  
 18 to that paper to rebut the charges, and I may at the same time retort upon  
 19 my assailant, when such retort is a necessary part of my defense, or fairly  
 20 arises out of the charges he has made against me.’ ” *Id.* at 149, 42 P.3d at  
 21 239 (quoting *Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1559 (4th  
 22 Cir.1994)). This privilege is not absolute, however. It may be lost “if the  
 23 reply: (1) includes substantial defamatory matter that is irrelevant or non-  
 24 responsive to the initial statement; (2) includes substantial defamatory  
 25 material that is disproportionate to the initial statement; (3) is excessively  
 26 publicized; or (4) is made with malice in the sense of actual spite or ill  
 27 will.” *Anzalone*, 118 Nev. at 149–50, 42 P.3d at 239.

28 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)).<sup>66</sup>

29 In Plaintiffs’ filings with the Nevada Supreme Court requesting *En Banc* review of their Writ,  
 30 Plaintiffs concede that the matter underlying the issue between the Edgeworths and Plaintiffs is one of

<sup>62</sup> 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)).

<sup>63</sup> *Id.*

<sup>64</sup> 130 Nev. 408, 325 P.3d 1282 (2014).

<sup>65</sup> *Id.* at 414-15, 325 P.3d at 1286.

<sup>66</sup> *Id.* at 417-18, 325 P.3d at 1288.

1 such public interest that it required a panel of seven Justices to consider it.<sup>67</sup> As such, there is no doubt  
2 the issues involved in the underlying litigation between Plaintiffs and the Edgeworths are of the utmost  
3 public importance, as same specifically affect the interest of anyone who retains counsel for legal  
4 representation, as well as all attorneys, as same affects the practice of law, how it is perceived by the  
5 public and an attorney's ability to lawfully institute an attorney's lien in justified circumstances.

6 Issues concerning attorneys and their representation of clients have very recently been confirmed  
7 by the Nevada Supreme Court as being issues of public interest, as that Court recently held "statements  
8 criticizing attorney's courtroom conduct and practices [are] directly connected with issue of  
9 public interest."<sup>68</sup> The issue of an attorney changing the fee agreement, attempting to assert entitlement  
10 to a percentage of a settlement, and failing to have an agreement in writing reflecting same when filing  
11 an attorney's lien against proceeds of a client's settlement is of interest to the public who may seek  
12 attorney services at some time, and attorneys who have requirements under the rules of professional  
13 conduct for how fee agreements must be handled.

14 Whether the statements Brian made to Herrera are privileged under *Shapiro*, is a question of law  
15 for the Court.<sup>69</sup> Here, following *Shapiro*, the statements made by Brian to Herrera are privileged on  
16 several independent grounds, the first of which is under NRS 41.637(4). Under this rule, communications  
17 made in direct connection with an issue of public interest in a place open to the public or in a public forum,  
18 which were truthful or ... made without knowledge of their falsehood are protected. Here, Brian met  
19 Herrera at a Ventano's to discuss the issue between the Edgeworths and Plaintiffs.<sup>70</sup>

20 Plaintiffs have mischaracterized statements made by Brian in his evidentiary hearing testimony  
21 and affidavits. Plaintiffs claim Brian told Coach Herrera that he was being extorted by Simon, citing  
22 Brian's 2018 affidavit.<sup>71</sup> However, contrary to this position, Brian's statement in his March 15, 2018,  
23 Affidavit was a recounting and summary of Brian's opinions as to how he felt regarding Simon's  
24 actions.<sup>72</sup> It is undisputed that the conversation between Brian and Herrera stemmed from implications

25 <sup>67</sup> See Plaintiffs' Motion for En Banc Review, dated January 28, 2020, attached as Exhibit V to the Edgeworths' Anti-SLAPP Motion.

26 <sup>68</sup> See, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020) (emphasis added).

27 <sup>69</sup> *Id.* at 417-18, 325 P.3d at 1288.

28 <sup>70</sup> See Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

1 within Simon's emails to Herrera regarding some unknown, alleged wrongdoing on the part of the  
2 Edgeworths, that Simon insinuated made him fearful to have his daughter on the volleyball team.<sup>73</sup> Brian  
3 clearly indicated in his Declaration attached to the Edgeworths' Anti-SLAPP Motion that he discussed  
4 the case and how he felt, but that he never used the word extort when speaking to Herrera.<sup>74</sup> Interestingly,  
5 Plaintiffs' asking of rhetorical questions within the Opposition simply does not make an undisputed fact  
6 disputed.<sup>75</sup>

7 Brian testified at the evidentiary hearing that he did not use the words "extortion" "blackmail"  
8 "theft" and/or "steal" when talking to Herrera.<sup>76</sup> Brian specifically testified that he used the term "extort"  
9 in his several Affidavits filed with the Court for the specific purpose of it accurately defining his  
10 perception and opinion of Simon's actions.<sup>77</sup> Brian has consistently maintained that his statements were  
11 opinions of his perceptions of what had occurred between Plaintiffs and the Edgeworths which have been  
12 specifically held to be privileged.<sup>78</sup>

13 For similar reasons, statements made by Angela were also privileged on several individual  
14 grounds. Plaintiffs appear to take issue with statements made by Angela to Attorney Lisa Carteen and  
15 Justice Miriam Shearing; however, their exact position is unclear because no actual argument is presented  
16 in this regard, outside of a recounting of testimony. First, any statements Angela made to Carteen and/or  
17 Justice Shearing were privileged pursuant to NRS 41.637(3) and (4) because they were made either in the  
18 context of the Edgeworths' serious consideration of instituting litigation or during the pendency of the  
19 underlying litigation. As stated in the attached declaration, Angela's statements about what was  
20 happening contained opinions about how she felt during the litigation.<sup>79</sup> Further, her statements are  
21 afforded the protection of privilege because they were made in a place open to the public regarding an  
22 issue which Plaintiffs have already admitted and/or conceded is of public interest, as well as her opinion  
23 as to how she felt.<sup>80</sup> While this element of privilege would not afford protection to any statement made

24 <sup>73</sup> See Email String Between Simon and Ruben Herrera, attached as Exhibit I to the Edgeworths' Anti-SLAPP Motion.

25 <sup>74</sup> See Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

26 <sup>75</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 11, on-file herein.

27 <sup>76</sup> See Transcript of August 28, 2018, Evidentiary Hearing (Day 2), at 49:12 – 53:25, attached hereto **Exhibit B**.

28 <sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> See **Exhibit A**.

<sup>80</sup> 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 hereto as **Exhibit C**.

1 in a public setting, the Edgeworths contend that their statements meet the element of the privilege analysis,  
2 including that the statements were made in a public place regarding a matter of public interest and  
3 therefore are afforded protection.<sup>81</sup>

4 Plaintiffs have also mischaracterized the citations to Angela's testimony in their opposition.<sup>82</sup>  
5 Angela testified that Lisa Carteen had been her attorney for years, and although she responded to counsel's  
6 question that she was speaking to Lisa Carteen as a friend, the established, long-standing, attorney-client  
7 relationship between Angela and Carteen does not simply vanish when one speaks to a friend who is also  
8 an attorney regarding a legal issue, as claimed by Plaintiffs.<sup>83</sup> Plaintiffs have presented no legal authority  
9 that would suggest that friendship and legal representation are mutually exclusive. Here, Carteen has  
10 represented the Edgeworths since 2006, and they are entitled to seek legal advice from her on any matter,  
11 including but not limited to the underlying litigation that is the subject of this lawsuit, and any statements  
12 made to Carteen regarding legal matters are protected by attorney-client privilege.<sup>84</sup>

13 To the extent that Plaintiffs may attempt to argue that this privilege was waived when Angela  
14 testified regarding the conversation with Carteen, Nevada law indicates otherwise. Under these facts,  
15 Angela did not waive privilege because she revealed nothing more than minimal information regarding  
16 her conversation with her attorney, Lisa Carteen. According to the Nevada Supreme Court, "for waiver  
17 [of the attorney/client privilege] to occur, the witness's answers must be wide enough in scope and deep  
18 enough in substance to constitute a significant part of the communication." *Manley v. State*, 115 Nev.  
19 114, 120–21 (1999) (*emphasis added*). "Merely acknowledging the fact that the witness discussed a  
20 subject with his attorney does not waive the privilege." *Id.* (*emphasis added*). Similarly, the "mere  
21 acknowledgment of the fact that [plaintiff] had discussed warnings about [subject matter of lawsuit] with  
22 her attorney" was insufficient to "disclose any of the actual substance or content of those discussions."  
23 *Mitchell v. Superior Court*, 37 Cal. 3d 591, 603 (1984) (*cited by Manley*, 115 Nev. At 121). In *Manley*,  
24 the Nevada Supreme Court reversed a finding that defendant had waived privilege. Even though

25 <sup>81</sup> *Id.*; see also **Exhibits A through C**; see also Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

26 <sup>82</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at pages 12-13, on-file herein.

27 <sup>83</sup> *Id.*, at 12-13 and Exhibit 8. The Edgeworths again note that Plaintiffs' citation to Angela's declaration dated June 4, 2020 – which was attached to prior motion work which this Court deemed moot – is inappropriate and, as such, should not be countenanced by this Court. The Edgeworths reserve any and all rights and/or objections in this regard.

28 <sup>84</sup> See **Exhibit A & C**.

1 defendant revealed limited information about his conversation with his attorney during live testimony, the  
2 Court there held that his statements were limited and did not touch upon the substance of the case even  
3 though the subject of the conversation may have been revealed. As such, there was no waiver.

4 Regarding Angela's discussion about the case, the testimony regarding what Angela stated to  
5 Justice Sheering, as presented by Plaintiffs, demonstrates that it is undisputed that Angela did not state to  
6 Justice Sheering that Simon was extorting her.<sup>85</sup> Angela specifically testified that she did nothing more  
7 than tell Justice Sheering what had occurred and did not use the word extortion.<sup>86</sup>

8 Brian met Herrera at a restaurant to discuss the emails Plaintiff sent Herrera disparaging the  
9 Edgeworths.<sup>87</sup> Angela spoke to Carteen at I love Sushi on December 21, 2017.<sup>88</sup> Notably this is after the  
10 date that Vannah was retained to assist with the fee agreement on November 30, 2017. Angela spoke  
11 with Justice Sheering at a luncheon at Lago in Bellagio on February 8, 2018.<sup>89</sup> These restaurants were  
12 open to the public and doing business on the day of the conversations. These discussions were privileged  
13 pursuant to NRS 41.637(3) and (4) because they were made in the context of the underlying litigation,  
14 were opinions and/or were made in a place open to the public regarding an issue, which Plaintiffs have  
15 already conceded is of public interest.<sup>90</sup> This speech is clearly protected speech, and cannot therefore be  
16 the basis for the causes of action in Plaintiffs' Amended Complaint. The undisputed facts, when not  
17 taking Plaintiffs' unsupported, uncited facts as true, show that all of the speech alleged in the Amended  
18 Simon Complaint is protected by the litigation privilege and should be afforded Anti-SLAPP protection.

19 Here, the speech at issue was made in good faith based upon Simon's own words and actions, but  
20 it is also afforded protection under the absolute litigation privilege and Nevada's Anti-SLAPP law.  
21 Plaintiffs exercised dominion and control over the settlement funds in lieu of presenting a final invoice  
22 for the attorney's fees and costs that were owed. This dominion and control was wrongful and provided  
23 a good faith basis for the Edgeworths to file the Edgeworth Complaint.<sup>91</sup>

24 <sup>85</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp., at pages 12-13 and Exhibit 8, on-file herein.

25 <sup>86</sup> *Id.*

26 <sup>87</sup> See Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion.

27 <sup>88</sup> See Exhibits A & C.

28 <sup>89</sup> *Id.*

<sup>90</sup> *Id.*; see also Plaintiffs' Motion for En Banc Review, dated January 28, 2020, attached as Exhibit V to the Edgeworths' Anti-SLAPP Motion; see also Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths' Anti-SLAPP Motion..

<sup>91</sup> 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



1 In this case, the Edgeworths have demonstrated at length that the statements within the Edgeworth  
2 Complaints and regarding the dispute with Plaintiffs were never knowingly false. They had a good faith  
3 belief that Simon was exercising wrongful dominion and control over the Viking Settlement funds, to  
4 which the Edgeworths believed Simon had no legal right, which is consistent with the tort of conversion  
5 as recognized in Nevada. Further, given this good faith basis for the lawsuit, all of the statements made  
6 regarding Simon's conduct within the Edgeworth Complaints are protected by the absolute litigation  
7 privilege and, thus, cannot properly be the basis of the claims forwarded within Plaintiffs' Amended  
8 Complaint. Based upon the foregoing, the Edgeworths have satisfied prong 1 of the Anti-SLAPP analysis,  
9 and Plaintiffs' Amended Complaint must therefore be dismissed pursuant to Nevada's Anti-SLAPP law.  
10 The Edgeworths' statements regarding the underlying controversy were all protected speech which are all  
11 afforded protection under the absolute litigation privilege and Nevada's Anti-SLAPP law. The  
12 Edgeworths, thus, respectfully request that this Court grant their Anti-SLAPP Motion to effectuate the  
13 protections of such free speech afforded to Nevadans under Nevada's Anti-SLAPP law.

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

16 The burden now shifts to Plaintiffs to show by prima facie evidence, a probability of prevailing  
17 on their claims.<sup>92</sup> Within Plaintiffs' Opposition, they fail to analyze the specific claims brought within  
18 their Amended Complaint, and instead, present generalized arguments which are not sufficient to  
19 demonstrate by prima facie evidence that they will prevail upon their claims.<sup>93</sup> Based upon this basis  
20 alone, Plaintiffs failed to establish prong 2 and the Edgeworths' Anti-SLAPP Motion should be granted.  
21 Even if this Court finds Plaintiffs' argument sufficient – a point not conceded by the Edgeworths – the  
22 arguments presented therein are insufficient to demonstrate that Plaintiffs have satisfied their burden of  
23 proof, requiring the granting of the Edgeworths' Anti-SLAPP Motion.

24 Plaintiffs provide no legal authority for their proposition that Judge Jones' findings are  
25 purportedly prima facie evidence of bad faith.<sup>94</sup> Plaintiffs further fail to acknowledge that it is wholly

26 quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes.”).

27 <sup>92</sup> NRS 41.660(3)(a).

<sup>93</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 22-24, on-file herein.

28 <sup>94</sup> *Id.* at 22.

1 appropriate to bring a claim and seek punitive damages when one of several purposes for bringing a  
2 lawsuit is to punish someone who you believed has wronged you for their unlawful conduct.<sup>95</sup> The idea  
3 that a lawful cause of action brought in a complaint is brought in bad faith because it seeks punitive  
4 damages to punish the bad actor for their conduct is wholly unsupported by Nevada law. In fact, NRS  
5 42.005 specifically states that punitive damages exist to create an example to others and to punish very  
6 bad actors.

7 It further appears that Plaintiffs have misconstrued the difference between the prongs of Nevada's  
8 Anti-SLAPP jurisprudence. Plaintiffs merely provide argument regarding statements made during the  
9 underlying litigation and do not properly analyze whether Plaintiffs have any possibility of prevailing  
10 upon the claims presented within Plaintiffs' Amended Complaint.<sup>96</sup> This misstep leaves Plaintiffs without  
11 any actual or incorporated argument within Plaintiffs' Opposition to the Edgeworths' Anti-SLAPP  
12 Motion in opposition to argument presented by the Edgeworths regarding the likelihood of prevailing on  
13 specific claims alleged within Plaintiffs' Amended Complaint. This failure requires that the Edgeworth  
14 Anti-SLAPP Motion be granted under the summary judgment standard.<sup>97</sup>

15 In this case, Plaintiffs' arguments are just the ringing of the same faulty bell regarding conversion  
16 and what the Edgeworths allegedly knew when they brought the Edgeworth Complaints. As discussed  
17 *supra*, Plaintiffs' contention that the Edgeworths knew that Simon could not convert the Viking  
18 Settlement funds is a red herring which should not be countenanced by this Court, especially in light of  
19 the actual elements of a claim for conversion under Nevada law, which in no way requires a physical  
20 taking or exclusive control.

21 Plaintiffs' reliance upon *Delucchi v. Songer*, 133 Nev. 290, 396 P.3d 826 (2017), is misplaced.  
22 Here the rulings of Judge Jones, currently on appeal with the Nevada Supreme Court, do not *carte blanche*  
23 demonstrate that Plaintiffs have made a prima facie showing of evidence supporting all of their claims  
24 without any further discussion regarding same. Plaintiffs analogize the lien adjudication hearing in this  
25 case to the fact-finding arbitration in *Delucchi*. This analogy is misplaced. Unlike *Delucchi*, where the  
26

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27 <sup>95</sup> *Id.* at 22.

28 <sup>96</sup> *Id.* at 22-24.

<sup>97</sup> *See*, EDCR 2.20(e) and (i).



1 arbitration evaluated the facts of the case, the evidentiary hearing held in the underlying case by Judge  
2 Jones was only held to adjudicate the lien.<sup>98</sup> Here, the facts of *Delucchi* are simply not analogous to the  
3 facts as presented. This is especially true because all of the statements Plaintiffs utilize were made after  
4 the institution of the Edgeworth Complaints and were either made to attorneys regarding the litigation or  
5 regarding a matter of public importance in a place open to the public. This fact affords protection under  
6 Nevada's Anti-SLAPP law, as specifically held by the Court in *Delucchi*.<sup>99</sup> Therefore, Plaintiffs' attempt  
7 to utilize *Delucchi* to show that the Edgeworths' Anti-SLAPP Motion should be denied simply because  
8 the Nevada Supreme Court allowed a SLAPP plaintiff to defeat an Anti-SLAPP motion in *Delucchi* is  
9 misplaced.

10 Following the misapplication of the *Delucchi* case, Plaintiffs make one statement that "the recent  
11 case *Nielsen v. Wynn*, 2020 Nev. Unpub. Lexis 821, re-confirms the analysis in *Delucchi* that supports  
12 Simon when applied to the facts of this case."<sup>100</sup> This statement is not accompanied with a synopsis of  
13 the *Wynn* case, nor any explanation of how that case applies. Interestingly, the *Wynn* case was decided  
14 only on prong 1 of the Anti-SLAPP analysis, and is presented in support of Plaintiffs' attempt to satisfy  
15 prong 2 in their Opposition. Further, *Wynn*, citing *Delucchi*, supports the Edgeworths' position stating:

16 Furthermore, we conclude that Nielsen demonstrated that the gist of his  
17 communication was truthful or made without knowledge of its falsehood. In  
18 an affidavit, Nielsen declared that the allegedly defamatory statements  
19 attributed to him were fairly accurate and truthful, explaining that the only  
20 discrepancy was that he did not tell ABC News that Wynn chased a manager.  
21 *See Delucchi v. Songer*, 133 Nev. 290, 300, 396 P.3d 826, 833 (2017)  
(holding that a defendant demonstrated that his communication was true or  
made without knowledge of its falsehood when, in a declaration, he stated  
that the information contained in his communication "was truthful to the best  
of his knowledge, and he made no statements he knew to be false."<sup>101</sup>

22 Plaintiffs make a generalized contention that the Edgeworths believe they are excused because  
23 their "defamatory" statements were opinions. This meritless contention is nothing more than another red  
24 herring to distract this Court's attention from the fact Plaintiffs provided no argument or analysis (or even

25 <sup>98</sup> See Decision and Order on Motion to Adjudicate Lien, dated November 19, 2018, attached as Exhibit B to the Edgeworths' Ant-SLAPP Motion.

26 <sup>99</sup> 133 Nev. 290, 297-99, 396 P.3d 826, 831-33 (2017) (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.'").

27 <sup>100</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 23-24, on-file herein.

28 <sup>101</sup> *Nielsen v. Wynn*, 2020 Nev. Unpub. Lexis 821.

1 identification of the elements) of the “Counts” actually forwarded within Plaintiffs’ Amended  
 2 Complaint.<sup>102</sup> The Edgeworths are not only entitled to hold opinions about their experiences, but they are  
 3 also entitled to express those opinions. The Nevada Supreme Court very recently held that “[b]ecause  
 4 ‘there is no such thing as a false idea,’ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82,  
 5 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without  
 6 knowledge of their falsehood under Nevada’s anti-SLAPP statutes.”<sup>103</sup> As demonstrated *infra*, and by  
 7 the affidavits of Brian and Angela, Brian’s statements to Herrera, as well as Angela’s statements to  
 8 Carteen and Justice Shearing, were opinions based upon their good faith belief about the situation with  
 9 Simon.<sup>104</sup> These opinions are protected by Nevada’s Anti-SLAPP statutes.<sup>105</sup> Contrary to Simon’s  
 10 repeated allegation that the Edgeworths are expressing their opinions to avoid paying him for his work,  
 11 the Edgeworths have indicated in sworn testimony that they are willing to pay the final invoice for  
 12 Simon’s attorney’s fees and incurred costs under the implied in fact hourly contract, and the conversations  
 13 Simon refers to only expressed how they were feeling at the time they occurred.<sup>106</sup>

14 Simon himself initiated the conversation with Herrera in an email where he implied some non-  
 15 existent wrong-doing on the part of Brian and Angela, and specifically referenced the “on-going issues”  
 16 between the parties, mere hours after Simon was first informed by Vannah of the formal dispute.<sup>107</sup> As a  
 17 result of Simon making false insinuations of some non-existent wrongdoing and/or threats by Brian and  
 18 Angela, Herrera approached Brian regarding the issue, which in turn required Brian to have frank and  
 19 honest conversations regarding the issue with Herrera.<sup>108</sup> Brian testified at the evidentiary hearing that  
 20 he did not use the words “extortion” “blackmail” “theft” or “steal” when talking to Herrera.<sup>109</sup> Brian  
 21 specifically testified that he used the term “extort” in his several Affidavits filed with the Court for the  
 22 specific purpose of it accurately defining his perception and opinion of Simon’s actions.<sup>110</sup> Plaintiffs  
 23 are now asking this Court to find that Brian being forced to respond to false insinuations of some non-

24 <sup>102</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 24-27, on-file herein.

25 <sup>103</sup> *Abrams v. Sanson*, 136 Nev. Ad. Op. 9, 458 P.3d 1062, 1064 (2020).

26 <sup>104</sup> See Exhibit A; see also Declaration of Brian Edgeworth, attached as Exhibit A to the Edgeworths’ Anti-SLAPP Motion.

27 <sup>105</sup> *Id.*

28 <sup>106</sup> *Id.*

<sup>107</sup> See Herrera Emails attached as Exhibit I to the Edgeworths’ Anti-SLAPP Motion.

<sup>108</sup> See Declaration of Brian Edgeworth, attached as Exhibit A.

<sup>109</sup> See Exhibit B, at 49:12 – 53:25.

<sup>110</sup> *Id.*

1 existent wrongdoing was not protected speech. Adopting this position would specifically endorse curbing  
2 of the exercise of free speech in the context of responding to allegations of wrongdoing. This position is  
3 wholly in contravention of the purpose behind Nevada's Anti-SLAPP law and, as such, should not be  
4 countenanced by this Court.

5 Plaintiffs' Opposition fails to show any evidence, let alone prima facie evidence, that they can  
6 prevail on the counts forwarded in their Amended Complaint. Such failure allows this Court to take the  
7 Edgeworths' argument in this regard as uncontested and construe said failure as a consent by Plaintiffs to  
8 grant the Edgeworths' Anti-SLAPP Motions. Even if this Court resolves to consider each of Plaintiffs'  
9 claims for relief individually, Plaintiffs have failed to demonstrate they have any probability of prevailing  
10 on each of their claims, requiring that the Edgeworths' Anti-SLAPP Motion be granted. The Edgeworths  
11 therefore respectfully request that this Honorable Court grant them such relief.

### 12 **C. Absolute Litigation Privilege Applies to the Speech In Question**

13 Plaintiffs' apparent unsupported contention that the litigation privilege is not applicable here is  
14 without merit and in no way demonstrates that the Edgeworths did not have a good faith basis upon which  
15 to file the Edgeworth Complaints. Plaintiffs concede in the Amended Complaint that the basis for their  
16 claims arises from four things: (1) the underlying lawsuit initiated by the Edgeworth Complaints; (2)  
17 Brian's conversation with Herrera; (3) Angela's conversation with Carteen; and (4) Angela's conversation  
18 with Justice Shearing.<sup>111</sup> The conversations with Herrera, Justice Shearing, and Carteen have been  
19 discussed at length *infra*, and the Edgeworths have been demonstrated that these conversations are  
20 protected speech. Further, in her conversations with Justice Shearing and Carteen, Angela sought legal  
21 advice regarding whether what Plaintiffs had done was legally justified and confirming the Edgeworths'  
22 good faith belief that the Edgeworths were legally justified in filing the Edgeworth Complaints.<sup>112</sup> The  
23 discussions assisted the Edgeworths in formulating a plan of action for next steps in the litigation  
24 process.<sup>113</sup> This leaves only the speech involved in the underlying litigation to be discussed herein.

25  
26  
27 <sup>111</sup> See Amended Simon Complaint, on file herein.

<sup>112</sup> See **Exhibit A**.

28 <sup>113</sup> *Id.*

1 The Edgeworths have demonstrated at length, as discussed *infra*, that they had a good faith basis  
 2 to bring the claims within the Edgeworth Complaints. The absolute litigation privilege bars Plaintiffs  
 3 from alleging civil claims against the Edgeworths based on any statements or arguments made within the  
 4 context of litigation, because the speech is absolutely privileged and immunized from civil liability. It is  
 5 a long-standing common law rule that communications made in the course of judicial proceedings, even  
 6 if known to be false, are absolutely privileged, and therefore cannot be the basis for this cause of action.<sup>114</sup>

7 Under Nevada law, “communications uttered or published in the course of judicial proceedings  
 8 are absolutely privileged, rendering those who made the communications immune from civil liability.”<sup>115</sup>  
 9 The privilege also applies to “conduct occurring during the litigation process.”<sup>116</sup> It is an absolute  
 10 privilege that, “bars any civil litigation based on the underlying communication.”<sup>117</sup> The privilege, which  
 11 even protects an individual from liability for statements made with knowledge of falsity and malice,  
 12 applies “so long as [the statements] are in some way pertinent to the subject of controversy.”<sup>118</sup> Moreover,  
 13 the statements “need not be relevant in the traditional evidentiary sense, but need have only ‘some relation  
 14 to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is  
 15 absolutely privileged.”<sup>119</sup>

16 Because all of the speech identified as a basis for the Amended Simon Complaint is protected, it  
 17 follows that Plaintiffs’ Amended Complaint is a SLAPP suit which must be dismissed pursuant to  
 18 Nevada’s Anti-SLAPP laws. Plaintiffs’ citation to extra-jurisdictional caselaw when there is Nevada law  
 19 on point is misplaced, as is the fact that the case cited by Plaintiffs, *Eaton v. Veterans, Inc.*<sup>120</sup>, dealt with  
 20 a motion brought pursuant to FRCP 12(b)(6) [failure to state a claim upon which relief could be granted]  
 21  
 22

23 <sup>114</sup> *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)).

24 <sup>115</sup> *Greenberg Taurig, 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).

25 <sup>116</sup> *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).

26 <sup>117</sup> *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).

27 <sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 61, 657 P.2d at 104.

28 <sup>120</sup> 2020 U.S. Dist. LEXIS 7569, \*5-6 (U.S. Dist. Ct. Mass., Jan. 16, 2020), a copy of which is attached hereto as **Exhibit D** for  
 this Court’s convenience.

1 and not under an Anti-SLAPP statute.<sup>121</sup> *Eaton* is simply inapplicable here and the Edgeworths urge this  
2 Court to apply binding Nevada precedent when resolving the Edgeworths' Anti-SLAPP Motion.

3 Likewise inapplicable here is the Nevada Supreme Court's recognition in *Jacobs* of an exception  
4 to the absolute litigation privilege, relied upon by Plaintiffs.<sup>122</sup> The *Jacobs* Court recognized that an  
5 attorney's statements to someone who is not directly involved with the actual or anticipated judicial  
6 proceeding will be covered by the absolute privilege only if the recipient of the communication is  
7 significantly interested in the proceeding.<sup>123</sup> In *Jacobs*, the exception applies to attorneys, not to lay  
8 persons, and therefore the exception is not applicable to the Edgeworths, who are not attorneys.<sup>124</sup>  
9 Further, even if the exception were applicable to the non-attorney Edgeworths – which it is not – Plaintiffs  
10 cannot demonstrate that the exception applies. Plaintiffs have failed to demonstrate that the absolute  
11 litigation privilege does not apply.

12 The Edgeworths have thus demonstrated that they had a good faith basis to bring the Edgeworth  
13 Complaints and that the speech related to the underlying suit is protected by the absolute litigation  
14 privilege. Therefore, the Edgeworths respectfully request this Court grant their Anti-SLAPP Motion  
15 pursuant to Nevada's Anti-SLAPP law in order to protect their freedom of speech upon which Plaintiffs  
16 are seeking to infringe by way of their SLAPP Complaint.

17 **D. Plaintiffs Failed To Properly Plead Agency Law to Potentially Implicate AMG and the Trust**

18 Plaintiffs' argument regarding agency in the context of AMG and the Trust misses the point and  
19 appears to be another inappropriate attempt to distract this Court's attention from the deficient nature of  
20 Plaintiffs' Opposition.<sup>125</sup> Plaintiffs' contention that the fact they pled that AMG allegedly ratified the  
21 conduct of Brian and Angela in their Amended Complaint is not only non-sensical – as AMG is not a  
22 person who can affirmatively ratify conduct – but is misplaced and simply does not demonstrate that  
23 Plaintiffs have pled facts sufficient to allegedly demonstrate an agency relationship.<sup>126</sup>

24  
25  
26 <sup>121</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 29, on-file herein.

<sup>122</sup> *Id.* at 21.

<sup>123</sup> *Jacobs* at 413, 325 P.3d at 1285 (citing *Fink*, 118 Nev. at 436, 49 P.3d at 645–46).

<sup>124</sup> *Id.*

<sup>125</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 15-17, on-file herein.

<sup>126</sup> *Id.* at 15.

1 Plaintiffs continue to misunderstand what must be pled in order for them to potentially  
2 demonstrate an agency relationship, a condition precedent to Plaintiffs potentially being able to satisfy  
3 prong two as it concerns AMG and the Trust. When pleading claims based in defamation or business  
4 disparagement against the agent of a company, a plaintiff must allege that the agent was authorized to  
5 make the defamatory statement by the corporation and the agent made the defamatory statement within  
6 the scope of the agent's authority.<sup>127</sup> The caselaw cited by Plaintiffs, while general in nature and not  
7 specifically related to defamation, still requires that it be demonstrated – or at least pled in a complaint –  
8 that the agent's alleged conduct was within the scope of the authority granted to that agent by the  
9 principal.<sup>128</sup> However, despite Plaintiffs specifically citing this requirement, they still appear to  
10 misunderstand its application, as they cite to nothing within their Amended Complaint which  
11 demonstrates they pled that the alleged conduct of Angela and/or Brian in the claims for business  
12 disparagement, negligence, defamation, and IIPEA was within the scope of the authority granted to them  
13 by AMG or the Trust.

14 Plaintiffs' misunderstanding of the law of agency in this context becomes even clearer when  
15 Plaintiffs forward the wholly mischaracterized and meritless argument that the Edgeworths allegedly  
16 argued in their Anti-SLAPP Motion that Brian and Angela did not have the authority to sue Simon for  
17 conversion on behalf of AMG.<sup>129</sup> Plaintiffs have failed to plead facts within their Amended Complaint  
18 demonstrating an agency relationship as required under the agency law. As such, there is no merit to  
19 Plaintiffs' argument regarding agency and, most importantly, without the proper pleading of an agency  
20 relationship within Plaintiffs' Amended Complaint, Plaintiffs have no possibility of prevailing upon their  
21 claims therein as forwarded against AMG and the Trust, requiring that the Edgeworths' Anti-SLAPP  
22 Motion be summarily granted as to those entities as a matter of law.

23 ///

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>127</sup> *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.

28 <sup>128</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 16-17, on-file herein.

<sup>129</sup> *Id.* at 17.



**E. Plaintiffs' Opposition Fails To Demonstrate That Additional Discovery Is Required Prior To This Court's Resolution of the Anti-SLAPP Motion**

In an attempt to kick the metaphorical can down the road, Plaintiffs' request to conduct discovery as a subsection of their Opposition. NRS 41.660 allows a party to take limited discovery "[u]pon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery."<sup>130</sup> This is not a free-wheeling fishing expedition license, however; a party must affirmatively file a motion for discovery, specify the discovery needed and why the party has, thus far, been unable to acquire it.<sup>131</sup> Plaintiffs have failed to do so.

Plaintiffs make their request for discovery as a subcategory of their Opposition, rather than as a separate motion, as required.<sup>132</sup> Further, Plaintiffs wholly fail to indicate what specific discovery they require and why they have been unable to acquire it to date. Contrary to Plaintiffs' contention otherwise,<sup>133</sup> 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 have again provided nothing but broad sweeping statements requesting discovery with little detail or explanation.

Additionally, requests for discovery before the resolution of a special anti-SLAPP motion to dismiss are regarded with suspicion.<sup>134</sup> Further concern is created because the discovery requested is regarding issues that are already clear in the record and require no further explanation. Specifically, as has been discussed at length herein, the Edgeworths had a good faith belief that Simon's actions amounted to conversion of the Viking Settlement funds when the Edgeworth Complaints were filed.<sup>135</sup> The research allegedly done by Vannah regarding the conversion claim – an unsupported, purported factual averment

<sup>130</sup> NRS 41.660(4).

<sup>131</sup> See, Cal. Code of Civ. Pro. § 425.16(g), which states, in pertinent part, "[t]he court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision [regarding special anti-SLAPP Motions to Dismiss]." (Emphasis added). Nevada looks to California 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)), and this is especially so in the context of Nevada's Anti-SLAPP Statute. See e.g., NRS 41.665(2), stating "[w]hen a plaintiff must demonstrate a probability of success of prevailing on a claim pursuant to NRS 41.660, the Legislature intends that in determining whether the plaintiff 'has demonstrated with prima facie evidence a probability of prevailing on the claim' the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015." (Emphasis added).; *Shapiro v. Welt*, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017) (quoting *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009) (abrogated on other ground by *Shapiro*) (comparing NRS 41.637(4), with Cal. Civ. Proc. Code § 425.16(e)(West 2016))).

<sup>132</sup> *Id.*

<sup>133</sup> See *OPPS Edgeworth Anti-SLAPP Mtn Am Comp*, at 27-29, on-file herein.

<sup>134</sup> *Supple v. Foundation for Nat'l Progress*, 71 Cal.App.4th 226, 83 Cal.Rptr.2d 677 (1999).

<sup>135</sup> See **Exhibit A**; see also Exhibit A, D-E and J-M as attached to the Edgeworths' Anti-SLAPP Motion.

1 without any citation to anything, which should not be considered – has no bearing upon the Edgeworths’  
2 good faith belief.<sup>136</sup>

3 Brian’s testimony regarding what he said to Mr. Herrera in response to Simon’s emails, Brian’s  
4 Declaration, Angela’s Declaration, the fact that no other witnesses have been pled as being told anything  
5 in Plaintiffs’ Amended Complaint, and the fact that neither Simon nor anyone else representing Plaintiffs  
6 has submitted an affidavit or declaration in support of the Opposition, demonstrates that there is no need  
7 for discovery on the claims actually asserted by Plaintiffs in their Amended Complaint.

8 The declarations already provided to this Court demonstrate that the Edgeworths believed that  
9 Simon had no legal right to the impossibly exorbitant amount of attorney’s fees sought by way of the  
10 Amended Lien (especially when the Edgeworths had repeatedly asked for a final invoice and were never  
11 provided same) and, Simon’s actions in filing of the Original and Amended Lien, unilaterally requiring  
12 his name be on the settlement checks when no contingency fee agreement had been entered into, refusing  
13 to allow the Edgeworths to deposit the settlement checks as they saw fit, requiring that the funds be placed  
14 in a special trust account which required Simon’s signature for withdrawal, and refusing to release all of  
15 the Viking Settlement funds to the Edgeworths, was a wrongful exercise of dominion and control over  
16 the Edgeworths’ property, a proper underlying basis for the conversion claims within the Edgeworth  
17 Complaints.

18 Plaintiffs again reference “the new Edgeworth affidavits attached to their Special Motion to  
19 Dismiss: Anti-SLAPP” in the context of addressing what was told to others. However, as argued *infra*,  
20 Plaintiffs’ reference to Angela’s Declaration dated June 4, 2020, is inappropriate as said document was  
21 rendered moot by ruling of this Court.<sup>137</sup> Plaintiffs assert in their Opposition that Angela’s June 4, 2020  
22 declaration is contradictory to her prior testimony because it is the first time she is indicating that her  
23 statements to Carteen and Shearing were with regard to how she felt at the time.<sup>138</sup> This assertion is  
24 patently false, and entirely contrary to the evidence in the record of this case. In fact, Angela testified in  
25  
26

27 <sup>136</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 28, on-file herein.

28 <sup>137</sup> *Id.*

<sup>138</sup> See OPPS Edgeworth Anti-SLAPP Mtn Am Comp, at 12, on-file herein.



1 response to questions from both John Green and Peter Christiansen that what she had expressed to Carteen  
2 and Justice Shearing were her feelings.<sup>139</sup>

3 Plaintiffs' reliance upon the Declaration of James R. Christensen is wholly misplaced and should  
4 not be considered by this Court.<sup>140</sup> As was the case with Mr. Kemp, the declared opinions of an attorney  
5 (especially one interested in the litigation) are not legal authority upon which this Court may properly  
6 base a decision regarding whether discovery is needed prior to this Court's resolution of the Edgeworths'  
7 Anti-SLAPP Motion.

8 There are no allegations in Plaintiffs' Amended Complaint that would require additional discovery  
9 and Plaintiffs have not demonstrated that there is anything in the possession of the Edgeworths – or any  
10 other named person – which is necessary for this Court to resolve the Edgeworths' Anti-SLAPP  
11 Motion.<sup>141</sup> As such, there is simply no basis under which additional discovery to determine whether  
12 Plaintiffs have any potential possibility of prevailing on their claims would be necessary, as it has been  
13 clearly established by undisputed evidence that there is no possibility of Plaintiffs prevailing upon their  
14 claims, requiring that the Edgeworths' Anti-SLAPP Motion be granted without the need for additional  
15 discovery.

16 **V. CONCLUSION**

17 Plaintiffs brought this lawsuit against the Edgeworths and Vannah in direct contravention of  
18 Nevada's Anti-SLAPP statute. Therefore, the Edgeworths respectfully request that this Court grant the  
19 Edgeworths' Anti-SLAPP Motion to Dismiss Plaintiffs' Amended Complaint pursuant to Nevada's Anti-  
20 SLAPP statute, and dismiss Plaintiffs' Amended Complaint as to the Edgeworths with prejudice.

21 DATED this 24<sup>th</sup> day of September, 2020.

22 **MESSNER REEVES LLP**

23 /s/ Renee M. Finch

24 M. Caleb Meyer, Esq.  
25 Nevada Bar No. 13379  
Renee M. Finch, Esq.

26 <sup>139</sup> See **Exhibit C**, at 68:1-17, 126:2-12, 127:2-15, 131:3-20, 132:1-23, 134:3-6.

27 <sup>140</sup> See **OPPS Edgeworth Anti-SLAPP Mtn Am Comp**, at 28, on-file herein.

28 <sup>141</sup> See, NRS 41.660(4) (stating "[u]pon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.").

Nevada Bar No. 14162  
*Attorneys for the Edgeworth Defendants*

**CERTIFICATE OF SERVICE**

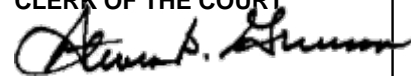
On this 24<sup>th</sup> day of September, 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **REPLY IN SUPPORT OF EDGEWORTH DEFENDANTS' SPECIAL ANTI-SLAPP MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO NRS 41.637** to be transmitted to the person(s) 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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**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**  
**MOTION 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 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'

1 Amended Complaint, the Memorandum of Points and Authorities set forth in VANNAH'S  
2 Special Motion (and Reply) to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP, NRPC  
3 12(b)(5), NRS Sections 41.635-670, EDCR 2.20(e), Nevada Rules of Professional Conduct  
4 (NRPC) 1.2 and 1.5, the pleadings and papers on file herein, the Points and Authorities raised in  
5 the underlying action which are now on appeal before the Nevada Supreme Court, Appellants'  
6 Appendix (attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion  
7 to Preserve Evidence as Exhibit A), the record on appeal (*Id.*), all of which VANNAH adopts  
8 and incorporates by this reference, and any oral argument this Court may wish to entertain.  
9

10 DATED this 24<sup>th</sup> day of September, 2020.

11 **PATRICIA A. MARR, LTD.**

12 /s/Patricia A. Marr, Esq.

13 

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PATRICIA A. MARR, ESQ.  
14

15 **I. PREFATORY STATEMENT**

16 SIMON has not made one allegation in his Amended Complaint (referred to as a  
17 SLAPP), or made even one argument in his Opposition, that either Mr. Vannah or Mr. Greene  
18 said anything to anyone about SIMON outside of court papers or proceedings. Therefore, as  
19 VANNAH'S Motion demonstrated, and as this Reply reiterates, every allegation, Count, and  
20 claim that SIMON has made against the VANNAH Defendants is barred by the absolute  
21 litigation privilege, making VANNAH immune from all civil liability. Nothing that SIMON  
22 says or does can alter that irrevocable legal reality.  
23

24 SIMON, in trying to salvage his SLAPP, states the following: "We know theft was the  
25 basis for the conversion at the outset based on Vannah's email...." However, there is no  
26 evidence offered by SIMON whatsoever that the VANNAH Defendants ever stated in writing,  
27 or orally, that SIMON engaged in extortion, blackmail, stealing, intimidation, unethical conduct  
28

1 or threats. In fact, SIMON actually admits in his opposition that no such evidence exists  
2 against VANNAH. SIMON also knows that his own Exhibit 20 has specific statements from  
3 Mr. Vannah to SIMON and his team: "I'm not suggesting I have concerns over Danny stealing  
4 the money. I'm simply relaying his clients' statements to me." It is up to the Bar Association  
5 and the Supreme Court to determine if what SIMON has done to his clients, the Edgeworths,  
6 breaches his ethical and legal duties to them. Even if the VANNAH Defendants had stated  
7 such a thing, which they didn't, the *Bull* case discussed throughout provides undisputed  
8 coverage and application of the absolute litigation privilege to the VANNAH Defendants.  
9

10 In SIMON'S lingo, the "conversion complaint" does clearly ask for "punitive  
11 damages," which is designed to both punish and make an example of the offender. Ironically,  
12 SIMON is asking for the same type of damages against his own clients, as well as VANNAH,  
13 in this very case. That does not somehow equate to admitting "to filing the conversion claim  
14 for the ulterior purpose of punishing SIMON and his firm for stealing, converting their money."  
15 As mentioned above, SIMON'S Opposition admits that Mr. Vannah told SIMON'S lawyers in  
16 an email that Mr. Vannah never believed that SIMON would steal the money. What SIMON  
17 attempts is to equate the conversion claim, which is limited to SIMON exercising dominion  
18 over \$1,000,000 of his clients' funds (conversion) to "stealing the funds," which could not  
19 happen in any event because it requires both Mr. Vannah's and SIMON'S signatures to remove  
20 funds from the trust account.  
21  
22

23 In any event, all communications by VANNAH about this entire subject is strictly  
24 limited to written complaints, filed with the court, to papers and pleadings filed with the court,  
25 and to oral arguments made in the courtroom. SIMON admits that the "Vannah Defendants"  
26 have never published any comment about Simon—to anyone—outside the courtroom. That is  
27 precisely why the litigation privilege is absolute in this case. The purpose of the litigation  
28

1 privilege is to allow the attorneys to fulfill their ethical obligations to their clients without fear  
2 that the opposition will later sue them. The cases (*Jacobs*, primarily) that SIMON relies upon  
3 to state that the litigation privilege requires “good faith” are limited to instances of where there  
4 is an out of court statement or “press release,” which just doesn’t apply at all to the “Vannah  
5 Defendants” in this case.  
6

7 Furthermore, Judge Jones’ dismissal of the Edgeworths’ Amended Complaint pursuant  
8 to NRCP 12(b)(5) was, in fact, limited to accepting SIMON’S argument that conversion  
9 required proof that SIMON physically possessed the funds, which has never been an allegation  
10 of the “Vannah Defendants,” and therefore the Amended Complaint was dismissed. It’s just  
11 that simple. The Judge did not hear 5 days of evidence on that issue. In fact, there never was  
12 even an answer, much less any discovery, on that issue.  
13

14 She further found that the Amended Complaint was not filed in “good faith” because  
15 SIMON, in the opinion of Judge Jones, had to physically possess the clients’ funds in order to  
16 have converted them. Again, it’s just that simple. Maybe she’s right, maybe she’s wrong,  
17 though the law governing conversion and NRCP 12(b)(5) strongly favor the latter. That is the  
18 primary issue on appeal.  
19

20 As for the Trial Lawyers amicus brief, they seem to want a finding by the Supreme  
21 Court that “tying the client’s money up” by filing an attorney’s lien can never be actionable, no  
22 matter how egregious the attorney’s lien claim may be. That’s a great thing for trial lawyers  
23 who file exorbitant liens based on bizarre theories of quantum meruit. As we’ve said before,  
24 maybe the Supreme Court will agree, maybe they will not. That doesn’t mean that SIMON can  
25 sue the “Vannah Defendants” for their proper advocacy regardless of how the Supreme Court  
26 eventually rules on these rather important issues.  
27

28 ///

1           **II.     ARGUMENTS**

2           **A. VANNAH CORRECTLY APPLIED LONG-STANDING (FOR 62 YEARS)**  
3           **NEVADA LAW IN BRINGING AND MAINTAINING THE CLAIM FOR**  
4           **CONVERSION IN GOOD FAITH ON BEHALF OF THE EDGEWORTHS,**  
5           **WHILE SIMON FAILED TO DO SO**

6           SIMON’S Opposition is ineffective and fails to counter the arguments raised and law  
7           cited in VANNAH’S Motion to Dismiss SIMON’S Amended Complaint and all of the  
8           Counts/claims brought against them. Rather, it remains abundantly clear that *all* of SIMON’S  
9           arguments hinge on the unfounded assertion that there wasn’t a basis, good faith or otherwise,  
10          for the Edgeworths’ claim for conversion under Nevada law. SIMON said as much repeatedly  
11          in his Opposition.

12          Under Nevada law, “conversion is a distinct act of dominion and control wrongfully  
13          exerted over another’s personal property in denial of, or inconsistent with, his title or rights  
14          therein or in derogation, exclusion, or defiance of such title or rights.” *Evans v. Dean Witter*  
15          *Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196,  
16          326 P.2d 413 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)(“We  
17          conclude that it was permissible for the jury to find that a conversion occurred when Bader  
18          refused to release their brand.”) Nevada law also holds that conversion is an act of general  
19          intent, which does not require wrongful intent and is not excused by care, good faith, or lack of  
20          knowledge. (*Id.*)

21          To put a finer point on it, footnote 1 in *Bader* states as follows, “Conversion does not  
22          require a manual taking. Where one makes an unjustified claim of title to personal property, or  
23          asserts an unfounded lien to said property which causes actual interference with the owner’s  
24          rights of possession, a conversion exists.” (*Id.*)(Emphasis added.) That’s exactly what SIMON  
25          has done here when he asserted his liens in amounts that he knew he had no reasonable basis to  
26          assert. (Please see Appellants’ Appendix attached to VANNAH’S Opposition to Plaintiff’s  
27          assert. (Please see Appellants’ Appendix attached to VANNAH’S Opposition to Plaintiff’s  
28          assert.

1 previously filed Emergency Motion to Preserve Evidence as Exhibit A.) SIMON asserted the  
2 first of his two liens on November 30, 2017, and the second on January 2, 2018. (*Id.*)

3 This is the law of Nevada regarding conversion. There is nothing in the opinions that  
4 states that they are fact-specific, as SIMON seems to assert by attempting to parse what are  
5 instead very clear mandates. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043,  
6 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); and, *Bader v. Cerri*,  
7 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). SIMON had every opportunity in his Opposition  
8 to cite a case or a statute that states that a lawyer can't be liable under Nevada law for  
9 conversion under these facts. Of course, no such law exists, as there isn't a reasonable or  
10 politically viable basis to treat lawyers differently from non-lawyers with this particular claim  
11 for relief. Instead, SIMON failed to cite any authority that would undermine the law of  
12 conversion that's been on the books in Nevada for 62 years, law that implicates SIMON.  
13

14 In short, the amount of the amended lien was "unfounded," as it's in an amount that is  
15 unsupported by the facts, including those created by, and known by, SIMON in the underlying  
16 matter. (Please see Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's  
17 previously filed Emergency Motion to Preserve Evidence as Exhibit A.) Even now, SIMON  
18 continues to exercise dominion and control via an amended lien of over \$1 million dollars of  
19 the Edgeworths' funds with no reasonable factual or legal basis to do so. (*Id.*) That's  
20 conversion of the Edgeworths' property. See, *Evans v. Dean Witter Reynolds*, 116 Nev. 598,  
21 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958));  
22 and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). And that serves as a basis for  
23 the claims for relief against SIMON.  
24

25 It's clear that, contrary to SIMON'S assertions, to prevail on their claim for conversion,  
26 the Edgeworths only need to prove that SIMON, through his unfounded lien, exercised, and  
27  
28



1 continues to exercise, dominion and control over the Edgeworths' money without a reasonable  
2 basis to do so. (*Id.*) It doesn't require proof of theft, a manual taking, or ill intent, as SIMON  
3 wants everyone to believe. (*Id.*) Rather, the conversion is his unreasonable claim to an  
4 excessive amount of the Edgeworths' money that SIMON knew and had every reason to  
5 believe that he had no reasonable basis to lay claim to. (*Id.*; and, please see Appellants'  
6 Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency  
7 Motion to Preserve Evidence as Exhibit A.)

9         While it is true that the National Trial Lawyers Association filed an Amicus Curie Brief,  
10 there is nothing in its content that states or implies that it was done because the conversion claim  
11 was deemed "outrageous" or that they were "compelled to voice their opinion." (See Brief  
12 attached to SIMON'S Appendix as Exhibit 35.) That's SIMON'S narrative, stated without  
13 authority or citation.

15         Hypothetically, even if VANNAH'S reading of and interpretation of Nevada law of the  
16 tort of conversion is deemed incorrect by the Nevada Supreme Court, it's still based on a good  
17 faith interpretation of the law. (Please see Affidavits of Robert D. Vannah, Esq., and John B.  
18 Greene, Esq., attached to the Motion as Exhibits A & B, respectively.) In short, it doesn't  
19 change the necessary outcome, which is to grant the Motion to Dismiss.

21         Since VANNAH followed the law as set forth in *Evans*, *Wantz*, and *Bader* in bringing  
22 claims for conversion on behalf of the Edgeworths against SIMON, VANNAH clearly had and  
23 has a solid, law and fact-based basis to bring and maintain this claim. (*Id.*) Since VANNAH  
24 clearly had and has a solid, law and fact-based basis to bring and maintain the claim for  
25 conversion under Nevada law, the basis for all of SIMON'S Counts/claims for relief clearly  
26 brought against VANNAH (Wrongful Use of Civil Proceedings; Intentional Interference with  
27 Prospective Economic Advantage; Abuse of Process; Negligent Hiring, Supervision, and  
28

1 Retention; and, Civil Conspiracy) must be dismissed since, "...it appears beyond a doubt that it  
2 could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of*  
3 *N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

4 **B. ALL OF SIMON'S COUNTS/CLAIMS ARE ADMITTEDLY FOUNDED ON**  
5 **PROTECTED COMMUNICATIONS ALLEGEDLY SAID AND DONE BY**  
6 **VANNAH IN THE COURSE OF LITIGATION AND IN VARIOUS**  
7 **JUDICIAL PROCEEDINGS. THEREFORE, VANNAH'S**  
8 **COMMUNICATIONS ARE ALL PROTECTED BY THE TIME-HONORED**  
9 **AND ABSOLUTE LITIGATION PRIVILEGE, RENDERING VANNAH**  
10 **IMMUNE FROM ALL CIVIL LIABILITY**

11 As argued in the Motion, the basis for all of SIMON'S allegations against VANNAH are  
12 communications allegedly made in the course of litigation and during various judicial  
13 proceedings, together with the filing of pleadings, briefs, and other legal materials. (Please  
14 see SIMON'S Amended Complaint attached to the Motion to Dismiss as Exhibit A.) Under  
15 Nevada law, "communications uttered or published in the course of judicial proceedings are  
16 absolutely privileged, rendering those who made the communications immune from civil  
17 liability." *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014);  
18 *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903  
19 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643  
20 (2002); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

21 The privilege also applies to "conduct occurring during the litigation process." *Bullivant*  
22 *Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381  
23 P.3d 597 (2012)(unpublished)(emphasis omitted); see also *Bull v. McCuskey*, 96 Nev. 706, 711-  
24 713, 615 P.2d 957 (1980). Contrary to SIMON'S assertions, it is an absolute privilege that,  
25 "bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev.  
26 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.  
27 224, 181 P.3d 670 (2008). It is clear that the litigation privilege as set forth in these controlling  
28 cases is *absolute*, not qualified as SIMON asserts in his Opposition.

1 Since all of SIMON'S allegations against VANNAH are based solely on VANNAH'S  
2 communications made **in the course of litigation** and during various judicial proceedings,  
3 together with the filing of pleadings, briefs, and other legal materials, the time-honored and  
4 absolute litigation privilege applies, regardless of what VANNAH allegedly said or did in these  
5 proceedings. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014);  
6 *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903  
7 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643  
8 (2002); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*,  
9 128 Nev. 885, 381 P.3d 597 (2012); *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002),  
10 abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); and,  
11 *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).  
12

13  
14 With that said, VANNAH, on behalf of the Edgeworths, has asserted from the outset that  
15 the facts support the claims which were brought. (Please see Appellants' Appendix attached to  
16 VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence  
17 as Exhibit A.) Furthermore, the law pertaining to the claim for conversion provides for the  
18 remedies, as well. The law in Nevada pertaining to the tort of conversion supports the specific  
19 remedies sought in the underlying matter. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5  
20 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); and, *Bader*  
21 *v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).  
22

23 SIMON is completely incorrect that VANNAH got anything wrong in the application of  
24 the absolute litigation privilege, that the cases VANNAH cited are inapplicable, and/or that the  
25 litigation privilege is qualified by some good faith requirement for things said or done in the  
26 course of litigation and during various judicial proceedings, together with the filing of pleadings,  
27 briefs, and other legal materials. See, *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282,  
28

1 1285-1286 (2014); *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67,  
2 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49  
3 P.3d 640, 643 (2002); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel.*  
4 *Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012); *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438,  
5 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670  
6 (2008); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

8 On that note, SIMON is also wrong to state that either *Jacobs v. Adelson*, 130 Nev. 408,  
9 325 P.3d 1282 (2014), and/or *Herzog v. "a" Co.*, 138 Cal. App. 3d 656, 188 Cal. Rptr. 155 (Cal.  
10 Ct. App. 4<sup>th</sup> Dist. 1982), requires some "good faith" test to determine whether the absolute  
11 litigation privilege applies to VANNAH'S communications made **in the course of litigation** and  
12 during various judicial proceedings, together with the filing of pleadings, briefs, and other legal  
13 materials. (*Id.*) These cases say nothing to minimize the time-honored and absolute litigation  
14 privilege for *the* conduct alleged by SIMON against VANNAH in the Amended Complaint.  
15 (*Id.*). There isn't any such language or directive in either case to support anything that SIMON  
16 is asserting. (*Id.*)

18 In *Jacobs v. Adelson*, 130 Nev. 408, 325 P.3d 1282 (2014), it is undisputed that Mr.  
19 Adelson gave a press release to the Wall Street Journal, a third party, concerning Mr. Jacobs.  
20 (*Id.*) Mr. Jacobs then amended his complaint to bring a claim for defamation per se against Mr.  
21 Adelson. (*Id.*) The court in *Jacobs* reiterated that the absolute litigation privilege applies to  
22 communications made in the course of litigation, such as all of the communications SIMON  
23 alleged against VANNAH. (*Id.*) The *Jacobs* court was very clear in its ongoing mandate that,  
24 "When the communications are made in this type of litigation setting and are in some way  
25 pertinent to the subject of the controversy, the absolute privilege protects them even when the  
26 motives behind them are malicious and they are made with knowledge of the communications'  
27  
28

1 falsity.” *Jacobs*, 130 Nev. at 412-413, 325 P.3d at 1285-1286 (2014).

2       The conceptual dilemma confronting the court in *Jacobs* was how far the absolute  
3 litigation privilege should apply when one makes what is alleged to be a defamatory statement to  
4 a disinterested third party such as a reporter for the Wall Street Journal in a setting that is outside  
5 of the courtroom. *Jacobs*, 130 Nev. at 412-413, 325 P.3d at 1285-1286. In addressing that novel  
6 issue, the court in *Jacobs* stated, “This court has not previously addressed whether the absolute  
7 privilege applies when the media is the recipient of the statement. We have, however,  
8 recognized that communications are not sufficiently related to judicial proceedings when they are  
9 made to someone without an interest in the outcome.” (*Id.*, citing *Fink*, 118 Nev. At 436, 49  
10 P.3d 645-46.) The court declined to automatically extend the absolute litigation privilege in that  
11 setting. *Jacobs*, 130 Nev. at 415, 325 P.3d at 1287. That’s not what SIMON has alleged against  
12 VANNAH. (Please see Exhibit A to the Motion.)  
13

14       Here, since VANNAH’S communications as alleged by SIMON were all admittedly  
15 made in the course of litigation and during various judicial proceedings, together with the filing  
16 of pleadings, briefs, and other legal materials, they are “are absolutely privileged” and  
17 VANNAH “is immune from civil liability.” *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325  
18 P.3d 1282, 1285-1286 (2014); *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev.  
19 Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev.  
20 428, 432-33, 49 P.3d 640, 643 (2002); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d  
21 957 (1980).  
22

23       The privilege also applies to “conduct occurring during the litigation process.” *Bullivant*  
24 *Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381  
25 P.3d 597 (2012)(unpublished)(emphasis omitted). It is an absolute privilege that, “bars any civil  
26 litigation based on the underlying communication.” *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438,  
27  
28

1 440 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670  
2 (2008); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

3 SIMON is also wrong to repeatedly lean for support on *Bull v. McCuskey*, 96 Nev. 706,  
4 615 P.2d 957 (1980) for any of his propositions. The court in *Bull* makes a series of statements  
5 that eviscerate SIMON'S use of this case, yet supports each argument of VANNAH. *Bull*  
6 reiterated the rule that, "As a general proposition an attorney at law is *absolutely privileged* to  
7 publish defamatory matter concerning another...in which he participates as counsel, if it has  
8 some relation to the proceeding." (*Id.*, at 711-12; emphasis added.) *Bull* stated further: "The  
9 privilege rest upon a public policy of securing to attorneys as officers of the court the utmost  
10 freedom in their efforts to obtain justice for their clients." (*Id.*, at 712.)

11  
12 *Bull* went on to state: "Attorney Bull's comments may be understood to pertain to either  
13 Dr. McCuskey's competence or his credibility, and therefore, are privileged." (*Id.*) Finally, the  
14 court stated: "Although the denigrating comments of attorney Bull regarding Dr. McCuskey  
15 were privileged, *and alone would not supply a basis for liability in damages*, it does not follow  
16 that an attorney may so conduct himself without fear of discipline." (*Id.*, emphasis added.) No  
17 "basis for liability in damages" means no duty of care owed, plain and simple. (*Id.*) And, the  
18 discipline referred to by the court in *Bull* was before the State Bar, not a judge or jury of one's  
19 peers. (*Id.*)

20  
21 Therefore, the law in Nevada is crystal clear in its mandate that all of the allegations  
22 SIMON made against VANNAH, even if they're factually correct (which VANNAH disputes),  
23 SIMON'S Counts/claims are all barred by the absolute litigation privilege, as they clearly all  
24 pertain to communications allegedly made **in the course of litigation and during various**  
25 **judicial proceedings, together with the filing of pleadings, briefs, and other legal materials.**  
26 (*Id.*; see also SIMON'S Amended Complaint attached to the Motion to Dismiss as Exhibit A.)  
27  
28

1 Finally, when the proverbial shoe was on the other foot, SIMON argued to Judge Jones in  
2 a Special Motion to Dismiss: Anti-SLAPP, that “The litigation privilege is absolute and applies  
3 to any communication uttered or published in a judicial proceeding.” (Please see excerpts of  
4 SIMON’S Special Motion to Dismiss: Anti-SLAPP, at page 21, attached to this Reply as Exhibit  
5 A.) SIMON stated further that, “As a matter of law, the law office is immune, and the  
6 Edgeworths cannot prevail.” (*Id.*) This conceptual shift from SIMON on such a pivotal issue  
7 such as the absolute litigation privilege that *he* has now raised is akin to the John Kerry moment  
8 from March of 2004, where he famously told a crowd at Marshall University: “I actually did vote  
9 for the \$87 billion, before I voted against it.”

11 Regardless, VANNAH is clearly entitled to the full benefits of the time-honored and  
12 absolute litigation privilege as to *all* of the allegations contained in SIMON’S SLAPP, and the  
13 immunity from all civil litigation that goes along with it. *Jacobs v. Adelson*, 130 Nev. 408, 412-  
14 413, 325 P.3d 1282, 1285-1286 (2014); *Greenberg Traurig, LLP v. Frias Holding Company*, 130  
15 Nev. Adv. Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118  
16 Nev. 428, 432-33, 49 P.3d 640, 643 (2002); *Bullivant Houser Bailey PC v. Eighth Judicial Dist.*  
17 *Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis  
18 omitted); *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew, LLC*  
19 *v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); and, *Bull v. McCuskey*, 96 Nev. 706,  
20 711-713, 615 P.2d 957 (1980).

22 As a result, SIMON’S SLAPP must be dismissed pursuant to NRCP 12(b)(5).

23  
24 **C. NEITHER CLAIM PRECLUSION NOR ISSUE PRECLUSION HAVE ANY**  
25 **APPLICATION TO THE MOTION OR TO THIS MATTER**

26 SIMON is simply incorrect that claim preclusion has any bearing in this matter, as  
27 discussed in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008), and its  
28 predecessors. The court in *Five Star*, and in all of the cases discussed in *Five Star*, stated that

1 for either claim preclusion or issue preclusion to be triggered and applied—the procedural  
2 equivalent of a condition precedent—two lawsuits must have been filed by the offending party,  
3 one after the other, and after the initial suit was dismissed or adjudicated on the merits, with  
4 both suits seeking the same or similar relief. (*Id.*)

5  
6 In *Five Star*, two sets of counsel on two separate occasions failed to appear for final  
7 pretrial calendar calls, resulting in dismissal of the initial complaint on the merits pursuant to  
8 EDCR 2.69(c). (*Id.*) Thereafter, the second set of counsel filed a new (second) complaint  
9 based on the same contract, or same basic facts. (*Id.*) A motion for summary judgment was  
10 then brought to get the new, or second, suit dismissed on the basis of claim preclusion. (*Id.*)  
11 The court agreed that since the first suit was dismissed on the merits under EDCR 2.69(c), the  
12 new, or second, suit was barred by the doctrine of claim preclusion. (*Id.*) Those were the facts  
13 and that was the law. (*Id.*)

14  
15 Here, neither the facts nor the law jive with *Five Star*, or any on the cases cited therein.  
16 The Edgeworths did not file a new suit, as was done in *Five Star* (and all cases cited therein),  
17 after an initial complaint was dismissed on the merits. Rather, the Edgeworths appealed the  
18 wrongful dismissal of their Amended Complaint. Thus, there isn't the necessary tangible  
19 second filing—the necessary condition precedent—by the Edgeworths for the doctrine of claim  
20 preclusion to apply. Also, since the Decision and Order dismissing the Amended Complaint is  
21 on appeal, there isn't a final judgment, as there was in *Five Star*. (*Id.*) These are critical  
22 distinctions that preclude any application of the doctrine of claim preclusion under *Five Star*.  
23 (*Id.*) If there was a temptation to expand *Five Star* well beyond its intended boundaries here,  
24 public policy reasons and common sense should halt any such step backwards.

25  
26 As argued throughout the Motion and the papers and pleadings on file, the facts are  
27 clear that SIMON'S own words and deeds throughout this long ordeal demonstrate that he  
28



1 knew that he had no reasonable basis to claim a lien in an amount that is striking similar to a  
2 40% contingency fee of the Edgeworths' settlement. (Please see Appellants' Appendix  
3 attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to  
4 Preserve Evidence as Exhibit A.) SIMON stated as much in his letter of November 27, 2017;  
5 he admitted as much at the evidentiary hearing to adjudicate his lien; and, *his* hourly super bill  
6 totaled \$692,120, not 40%, etc. (*Id.*)  
7

8 Also, the law did not and does not support the findings of Judge Jones, who erroneously  
9 believed that physical possession of the settlement proceeds by SIMON was a necessary  
10 element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to  
11 VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve  
12 Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require  
13 physical possession of the settlement proceeds by SIMON for a claim for conversion to be  
14 brought and maintained by the Edgeworths. *Evans v. Dean Witter Reynolds*, 116 Nev. 598,  
15 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958));  
16 *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)  
17

18 Instead, under Nevada law, "conversion is a distinct act of dominion and control  
19 wrongfully exerted over another's personal property in denial of, or inconsistent with, his title  
20 or rights therein or in derogation, exclusion, or defiance of such title or rights." (*Id.*)  
21 Additionally, under Nevada law, "where one makes an unjustified claim of title to personal  
22 property, or asserts an unfounded lien to said property which causes actual interference with the  
23 owner's rights of possession, a conversion exists." (*Bader*, at 356.) (Emphasis added.)  
24

25 That's exactly what SIMON has done here when he asserted (and continues to assert)  
26 his liens in amounts that he knew he had no reasonable basis to assert. And that's why the  
27 factual and legal basis for the Decision and Order of Judge Jones is fundamentally incorrect  
28

1 and on appeal. (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to  
2 Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

3 Finally, the court in *Five Star* held that claim preclusion *may* be applied, thus bestowing  
4 discretion to the judge on whether to extinguish a second, or new, suit. *Five Star Capital Corp.*  
5 *v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Since neither the facts nor the law support the  
6 consideration of claim preclusion here, since Judge Jones was clearly wrong in the application  
7 of the facts to the law of conversion, and since the Orders are not deemed final, being on  
8 appeal, there isn't a factual or legal basis to either consider or expand claim preclusion to this  
9 matter or Motion.  
10

11 **D. THE BALANCE OF SIMON'S ARGUMENTS ARE EITHER: 1.)**  
12 **IRRELEVANT TO THE ISSUES; 2.) BELIED BY THE FACTS; 3.)**  
13 **UNSUPPORTED BY THE RECORD; 4.) COUNTER TO THE LAW; AND,**  
14 **AMONG OTHER THINGS, 5.) OPPOSITE OF SIMON'S PRIOR POSITIONS**

15 SIMON'S Oppositions are an effort to distract this Court—a walk in the tall weeds, if  
16 you will—from the factual and legal reality that ALL of SIMON'S claims are barred by the  
17 absolute litigation privilege. One of those tall weeds is his employment status. For what it's  
18 worth, SIMON was never fired by anyone, let alone the Edgeworths, he never withdrew, and  
19 VANNAH did not substitute in his place. (Please see Appellants' Appendix, Vol 2,  
20 000363:15-17, namely Judge Jones' Decision and Order on Motion to Adjudicate Lien attached  
21 to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve  
22 Evidence as Exhibit A.) For SIMON to allege or state in his Opposition that he was "fired" is  
23 false and does a disservice to the integrity of these proceedings.

24 Another example is when SIMON states (without citing any legal authority) that  
25 VANNAH adopted allegedly defamatory statements allegedly made by others. EDCR 2.20(e)  
26 requires "...an opposition thereto, together with a memorandum of points *and authorities* why  
27 the motion...should be denied." (Id., emphasis added.) In failing to include any legal *authority*  
28

1 in his Opposition in support of this argument, SIMON has given this Court the liberty to  
2 construe this material omission "...as an admission that the motion...is meritorious and a  
3 consent to granting the same." (*Id.*) The VANNAH Defendants are attorneys and advocates,  
4 not, under the Rules, an adoption agency of arguments or otherwise of others. (NRPC 1.2(b).)

5  
6 Even if VANNAH adopted something from someone, SIMON admits that all of his  
7 allegations against VANNAH are directly related to communications allegedly made **in the**  
8 **course of litigation and during various judicial proceedings, together with the filing of**  
9 **pleadings, briefs, and other legal materials.** (*Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325  
10 P.3d 1282, 1285-1286 (2014); *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980);  
11 see also SIMON'S Amended Complaint attached to the Motion as Exhibit A.) Therefore,  
12 VANNAH "is immune from civil liability" for any statements allegedly adopted. (*Id.*)

13  
14 In a disservice to the facts, SIMON argues that VANNAH didn't contest the amount of  
15 SIMON'S liens. In Appellants' Appendix, Vol. 2, at 000353-000375, attached as Exhibit A to  
16 VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve  
17 Evidence as Exhibit A., the Notice of Appeal of the Decision and Order of Judge Jones on the  
18 Motion to Adjudicate Lien indicates the exact opposite. In appealing the D&O on Motion to  
19 Adjudicate Attorneys Lien, the findings of Judge Jones were clearly challenged, which  
20 included the finding of the amount of the lien. (*Id.*, at 000353-000374.)

21  
22 The Edgeworths' Amended Complaint (attached to VANNAH'S Special Motion to  
23 Dismiss: Anti-SLAPP as Exhibit C) alleges that SIMON committed the tort of conversion.  
24 (*Id.*) In SIMON'S Opposition, he uses the words "blackmail, extortion, and theft." There are  
25 no allegations in the Edgeworths' Amended Complaint that SIMON committed theft, extortion  
26 or blackmail, though VANNAH acknowledges that the Edgeworths were initially concerned  
27 with theft when SIMON proposed to deposit the settlement funds into his account. (*Id.*) Yet,  
28

1 what SIMON fails to ever acknowledge in any pleading is what he said in writing to the  
2 Edgeworths, SIMON'S clients, in his letter dated November 27, 2017 (attached to VANNAH'S  
3 Special Motion to Dismiss: Anti-SLAPP, as Exhibit E).

4 In SIMON'S own words, this is how he presented his drop-dead demand to *his* clients:  
5 "I have thought about this and this is the lowest amount I can accept...If you are not agreeable,  
6 then I cannot continue to lose money and help you...I will need to consider all options  
7 available to me." (*Id.*, emphasis added.) These words were interpreted to clearly mean that if  
8 the Edgeworths didn't acquiesce and sign a new retainer agreement that would give SIMON an  
9 additional \$1,114,000 in fees, he would no longer be their lawyer. (*Id.*; See also Exhibits A &  
10 B attached to the Special Motion.) Meaning SIMON would **quit**, despite the looming reality  
11 that the litigation against the Lange defendant was set for trial early in 2018. (*Id.*)

12  
13 SIMON'S threat to quit may mean nothing to him now, or back then, but SIMON'S  
14 words had and have meaning. On the one hand, he giveth by stating in the top paragraph on  
15 page 4, "If you are going to *hold me to an hourly arrangement* then I will have to review the  
16 entire file for my time spent from the beginning to include all time for me and my staff at my  
17 full hourly rates to avoid an unjust outcome." (*Id.*, emphasis added.) This, of course, is also  
18 direct evidence from SIMON'S own hand acknowledging that an hourly fee agreement existed  
19 with the Edgeworths, the same agreement/arrangement that SIMON now states in his  
20 Opposition was "invented" by Defendants here. That's a remarkable position for SIMON to  
21 now take, in light of these facts created by his own hand. (*Id.*)

22  
23 On the other hand, just a page later, SIMON taketh away when he threatens to **quit** if  
24 the Edgeworths won't agree to pay SIMON another \$1,114,000 in fees (\$1.5 million, minus  
25 fees and costs paid to date at the hourly rate of \$550 per hour). (*Id.*) Isn't the noun of  
26 "extortion" defined as the practice of obtaining something, especially money, through force or  
27  
28

1 threats? A reasonable recipient of Exhibit E (to the Motion to Dismiss) could easily reach that  
2 exact conclusion, and do so in good faith.

3         Again, even if VANNAH adopted SIMON'S narrative and actually used the words,  
4 extortion, blackmail, theft, or the insults raised in the *Bull* case (which VANNAH denies), all  
5 of these statements directly relate to communications allegedly made **in the course of**  
6 **litigation and during various judicial proceedings, together with the filing of pleadings,**  
7 **briefs, and other legal materials.** (*Id.*; see also SIMON'S Amended Complaint attached to  
8 the Motion as Exhibit A.) Therefore, VANNAH "is immune from civil liability" for any  
9 statements allegedly made. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-  
10 1286 (2014); *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

11  
12         SIMON blames VANNAH of ill will in the refusal to withdraw the claim for  
13 conversion, or to provide the explicit basis for the claim for conversion, thus exacerbating the  
14 injuries and damages in this matter, including fees. However, as argued in VANNAH'S  
15 Opposition to SIMON'S Emergency Motion, in several Motions to Dismiss and Special  
16 Motions, and what will soon be many Replies, the facts that make up the basis for the  
17 Edgeworths' Amended Complaint (Please see Appellants' Appendix attached to VANNAH'S  
18 Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit  
19 A; and Exhibit C to VANNAH'S Special Motion to Dismiss Amended Complaint: Anti-  
20 SLAPP), as well as well-established Nevada law, provide a good faith basis to bring and  
21 maintain the claim for conversion against SIMON. *Evans v. Dean Witter Reynolds*, 116 Nev.  
22 598, 607, 5 P.3d 1043, 1049 (2000)(citing, *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413  
23 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).

24  
25  
26         Frankly, it is very odd for SIMON to openly complain that Mr. Vannah, as an opposing  
27 counsel, wronged him somehow in failing to provide a list of authorities and basis for the  
28

1 claims being brought. SIMON failed to present any authority to support an argument that Mr.  
2 Vannah was under some obligation to do so. Of course, there isn't any such obligation or  
3 requirement in litigation, or SIMON would have cited to it. Rather, what SIMON'S counsel  
4 was asking Mr. Vannah for was a favor, and it wasn't granted. Refusing a favor isn't  
5 actionable, either, or SIMON would have cited to that authority, too.  
6

7 As for why we are still litigating this matter, as one can clearly read in Exhibit B to  
8 VANNAH'S Opposition to SIMON'S Emergency Motion, on October 31, 2018, SIMON  
9 received the first of two letters from VANNAH agreeing not seek any appeal and to pay the  
10 fees to SIMON that were awarded in the Decision and Order Adjudicating Lien in exchange for  
11 SIMON agreeing to release the balance of the Edgeworth's funds. (See Exhibit 2.) It's the  
12 functional equivalent of a "stand down" order. (*Id.*) A second, identical letter was sent on  
13 November 19, 2018. (*Id.*) As the affidavit of Mr. Vannah states, SIMON refused to respond to  
14 either letter, thus causing the appeals to be filed. (Please see Exhibit A to VANNAH'S Special  
15 Motion to Dismiss: Anti-SLAPP.) These two letters were sent and received over one year  
16 before SIMON asked VANNAH to withdraw the claims for conversion. (*Id.*) Thus, we see  
17 that it is SIMON'S actions and inactions that continue to cause the fees and costs to accumulate  
18 in two cases at an astounding rate.  
19

20 SIMON asserts it was wrong to sue him personally, yet he did the same here, suing  
21 everyone personally—Mr. Vannah, Mr. Greene, Mr. Edgeworth, and Mrs. Edgeworth.  
22 Where's the logic in that argument when SIMON'S actions here are directly to the contrary? In  
23 any event, it seems elementary to state the obvious, that lawyers, not legal entities such as law  
24 firms or law corporations, are the primary focus of the Nevada Rules of Professional Conduct.  
25 When was the first or the last time the Nevada Lawyer published a Supreme Court opinion that  
26 reprimanded or disciplined a law firm as opposed to *the* lawyer who performed (or didn't  
27  
28

1 perform) the acts that triggered the reprimand or discipline?

2       SIMON is wrong that VANNAH, as adverse counsel, owes an independent duty to  
3 SIMON here. The basis for this argument from SIMON is his constant and thoroughly  
4 unfounded position on the merits of the conversion claim. As argued above, Nevada law, with  
5 *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), is right on point and provides the  
6 Edgeworths with a good faith basis for a claim for conversion under the facts and  
7 circumstances presented. (Please see Appellants' Appendix attached to VANNAH'S  
8 Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit  
9 A.) SIMON also continues to be misguided in his reliance on *Bull v. McCuskey*, 96 Nev. 706,  
10 711-713, 615 P.2d 957 (1980) for any help here.

12       Among many other key points for VANNAH, *Bull* reiterated the rule that, "As a general  
13 proposition an attorney at law is *absolutely privileged* to publish defamatory matter concerning  
14 another...in which he participates as counsel, if it has some relation to the proceeding." (*Id.*, at  
15 711-12; emphasis added.) Finally, the court stated: "Although the denigrating comments of  
16 attorney Bull regarding Dr. McCuskey were privileged, *and alone would not supply a basis for*  
17 *liability in damages*, it does not follow that an attorney may so conduct himself without fear of  
18 discipline." (*Id.*, emphasis added.) Without a basis for liability, there is no duty owed. (*Id.*)

20       It belies all common sense and the evidence for SIMON to assert that the amount of his  
21 lien was never contested by the Defendants at the hearing to adjudicate the amount of SIMON'S  
22 lien, or that the purpose of the hearing was to litigate the claim for conversion, etc. That hearing  
23 was all about the adjudication of SIMON'S lien and how much Judge Jones was going to award  
24 him. How do we know this? At a hearing on February 20, 2018, James R. Christensen, Esq.,  
25 told the court that: "We move for adjudication under a statute. The statute is clear. The case law  
26 is clear." (Please see excerpts of the transcript of that hearing attached as Exhibit B, at p. 13:5-  
27  
28

1 6.)

2 He went on to state that: "If you look through literally every single case in which there's  
3 a lien adjudication in the State of Nevada, in which there is some sort of dispute...the Court can  
4 take evidence...or set an evidentiary hearing...This is the way you resolve a fee dispute under  
5 the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set  
6 a date for an evidentiary hearing...Let's get this done...But there's nothing to stop that lien  
7 adjudication at this time." (Id., at 14:8-12.) The court then ordered the parties to attend a  
8 settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a  
9 status check to be held on April 3, 2018. (Please see Excerpts from Transcript attached as  
10 Exhibit C, at p. 15:18-19.)

12 At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to  
13 Dismiss and ordered that SIMON'S Motion to Adjudicate Lien be: "Set for Evidentiary Hearing  
14 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."  
15 (Please see minutes of the court attached as Exhibit D.) What hearing was the court referring to?  
16 The evidentiary hearing for SIMON'S Motion to Adjudicate Lien, a proceeding that this Court  
17 deemed "...very, very important...." (See Exhibit B, at p. 2:19-20.) The court also ordered the  
18 parties to submit briefs prior to the hearing.

20 On that note, how much ink did SIMON devote in his Brief re: Evidentiary Hearing to  
21 discuss the merits of PLAINTIFFS' Amended Complaint and whether or not it should be  
22 dismissed pursuant to NRCP 12(b)(5)? Absolutely none. (Please see SIMON'S Brief re:  
23 Evidentiary Hearing, attached as Exhibit E.) Rather, every argument made focused solely on  
24 reasons for SIMON to get either a contingency fee via quantum meruit, or another \$692,120 in  
25 fees on an hourly basis via his super bill. (Id.)

27 How did Judge Jones view that issues to be resolved at the evidentiary hearing on  
28



1 SIMON'S Motion to Adjudicate Lien? Attached to this Reply as Exhibit F are excerpts from  
2 the transcript of the evidentiary hearing. On the first day of the evidentiary hearing, Judge  
3 Jones stated at page 4, lines 13-14: "Okay. So, this is the date and time set for the evidentiary  
4 hearing in regards to the lien that was filed in this case...." At page 14:15-17, the Court further  
5 stated: "So, this is the motion to – in regards to the adjudicating the lien. The motion was filed  
6 by you Mr. Christensen. Are you ready to call your first witness?"

7  
8 Mr. Christensen then stated to the Court as follows, at page 18:18-24: "Secondly, this is  
9 a lien adjudication hearing. This is not an opening statement. We don't have a jury. This is  
10 being presented to the Court in order for the Court to have a full understanding of the  
11 facts...There's really no rules governing what you can say or can't say in an introductory  
12 statement to a court in an adjudicatory – in a adjudication hearing."

13  
14 On day #5, and at page 20, lines 17-19, while Mr. Greene was working to establish the  
15 background of Mrs. Edgeworth, the court stated: "Okay. Well, can we move on from that, Mr.  
16 Greene? Because I'm not really sure how that applies *to what's owed to Mr. Simon and the*  
17 *legal work that he did.*" (*Id.*, emphasis added.)

18  
19 After an explanation as to why this line of questions was relevant, the court added the  
20 following at page 21:2-13: "...I understand your desire to do that, Mr. Greene, but this isn't a  
21 jury, this is me...*I'm here to make a call about the legal work that was done by Mr. Simon, and*  
22 *what is owed to him. That is the only thing I am here to pass judgment on.*" (*Id.*, emphasis  
23 added.) The court added further at page 21:12-13: "*I'm just here to decide* what is going to be  
24 done with what's owed to them, *what's owed to Mr. Simon*, who needs to get paid." (*Id.*,  
25 emphasis added.)

26  
27 What did SIMON believe back then (when the matter was much fresher in his mind)  
28 regarding the basis was of the evidentiary hearing on his motion to adjudicate his lien? At page

1 39:4-6, Peter S. Christiansen, Esq., one of SIMON'S attorneys, stated and objected as follows:  
2 "It still has absolutely no relevance as to what money of the 1.9 million dollars in the joint trust  
3 account is owed to Mr. Simon and owed to the Edgeworth's, *that's the issue.*" (*Id.*, emphasis  
4 added.) Mr. Christiansen went further in an objection by stating: "Judge, this isn't a personal  
5 injury case, *this is an adjudication of an attorney's lien....*" (*Id.*, emphasis added.)  
6

7 The court's response was consistent with prior rulings and is as follows (at page 40:3-  
8 5): "...as I previously explained, I'm not here to judge anyone. *I'm here to get to the bottom of*  
9 *what is owed, what's been paid, what hasn't been paid, and what people are owed.*" (*Id.*,  
10 emphasis added.) It is clear to any reader of the record that the purpose of the evidentiary  
11 hearing was SIMON'S motion to adjudicate his lien, not the issue raised in this collateral  
12 argument by SIMON. (*Id.*) It can't get any clearer that the amount of the lien was all that  
13 concerned the judge over the five days of hearings. (Please see Exhibit F.)  
14

### 15 **III. CONCLUSION.**

16 The basis for all of SIMON'S allegations in the Amended Complaint/SLAPP against  
17 VANNAH, and as admitted in his Opposition, are communications allegedly made **in the**  
18 **course of litigation and during various judicial proceedings, together with the filing of**  
19 **pleadings, briefs, and other legal materials.** (Please see SIMON'S Amended Complaint  
20 attached to the Motion as Exhibit A.) As such, all of the Counts/claims are barred by the time-  
21 honored and absolute litigation privilege. *Jacobs v. Adelson*, 130 Nev. 408, 412-413, 325 P.3d  
22 1282, 1285-1286 (2014); *Greenberg Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv  
23 Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v. Oshins*, 118 Nev. 428,  
24 432-33, 49 P.3d 640, 643 (2002); *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of*  
25 *State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597 (2012)(unpublished)(emphasis  
26 omitted); *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440 (2002), abrogated by *Buzz Stew*,  
27  
28

1 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); and, *Bull v. McCuskey*, 96  
2 Nev. 706, 711-713, 615 P.2d 957 (1980).

3 They are also protected communications pursuant to NRS Sections 41.635 through  
4 41.670, Nevada's Anti-SLAPP statutes, and "immune from any civil action for claims based  
5 upon the communication." (*Id.*, at 41.650.) See also, *Abrams v. Sanson*, 136 Nev. Adv. Op. 9,  
6 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde*  
7 *Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 Calif. 2017) (unpublished); *Baral v.*  
8 *Schnitt*, 1 Cal.5th 376, 384, 205 Cal.Rptr.3d 475, 376 P.3d 604 (2016); *Gotterba v. Travolta*,  
9 228 Cal.App. 4th 35, 41, 175 Cal.Rptr.3d 47 (2014); *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1048,  
10 1063, 37 Cal.4th 1000, 1063, 39 Cal.Rptr. 516, 128 P.3d 713 (2006); and, *Finton Construction,*  
11 *Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 210, 190 Cal.Rptr.3d 1 (2015). Since  
12 SIMON filed his Complaint to punish the VANNAH and the Edgeworths for using the  
13 judiciary to resolve a legal dispute, SIMON'S Amended Complaint, which is a SLAPP, must  
14 be dismissed, as there isn't either a factual or legal basis for any of his Counts/claims.  
15

16  
17 In addition to the preceding fatal defects, SIMON'S claims for abuse of process and  
18 wrongful use of civil proceedings must also be dismissed on the additional grounds that they  
19 are either procedurally premature and/or there is no set of facts that SIMON could prove that  
20 would entitle him to a remedy at law. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,  
21 227-28, 181 P.3d 670, 672 (2008). SIMON'S Opposition did nothing to change that. Since  
22 these Counts/claims are based exclusively on privileged and protected communications that are  
23 immune from civil liability *and* unsupported by the facts, and since they are neither ripe nor  
24 legally appropriate for consideration under the law, these Counts/claims must be dismissed.  
25

26 SIMON'S Count/claim for Intentional Interference with Prospective Economic  
27 Advantage must also be dismissed, as there is no set of facts that SIMON could present or  
28

1 prove that would entitle him or his firm to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124  
2 Nev. 224, 181 P.3d 670 (2008). The caselaw governing this tort in Nevada, the plaintiff had  
3 (and identified) an actual or a real prospective contractual relationship that was allegedly and/or  
4 actually interfered with by a defendant. *Wichinsky v. Moss*, 109 Nev. 84, 88, 847 P.2d 727,  
5 729-30 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1225 (1987).  
6

7 Furthermore, “the intention to interfere is the sine qua non of this tort.” *M&R Inv. Co.*,  
8 *v. Goldsberry*, 101 Nev. 620, 622-23, 707 P.2d 1143, 1144 (1985)(citing *Lekich v.*  
9 *International Bus.Mach.Corp.*, 469 F. Supp 485 (E.D. Pa. 1979); *Local Joint Exec. Bd. Of Las*  
10 *Vegas v. Stern*, 98 Nev. 409, 651 P.2d 637, 638 (1982). Rather than meeting that high burden,  
11 the facts alleged in SIMON’S Count/claim (as are all of the claims/counts in SIMON’S  
12 SLAPP) mere “might have beens” as opposed to actual facts. (Please see Exhibit A to the  
13 Motion.) However, SIMON fails in his SLAPP to identify any actual prospective contractual  
14 relationship between SIMON and any third party. (Please see Exhibit A.) Instead, SIMON’S  
15 SLAPP speaks in generalities, speculation, and conjecture. (*Id.*) Who are the third parties and  
16 what prospective contractual relationships that VANNAH allegedly interfered with? SIMON  
17 doesn’t—and can’t—say. (*Id.*) Again, nothing from SIMON’S Opposition provides anything  
18 but speculation and nothing he stated or implied changes these facts.  
19

20 Most importantly here, the facts alleged in SIMON’S Count/claim are immune from  
21 civil liability pursuant to NRS 41.650, and are barred by the litigation privilege. *Greenberg*  
22 *Traurig, LLP v. Frias Holding Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en  
23 banc); *Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002); *Bullivant Houser Bailey*  
24 *PC v. Eighth Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597  
25 (2012)(unpublished)(emphasis omitted); and, *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440  
26 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670  
27  
28

1 (2008); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).

2       The basis for SIMON'S allegations contained in Count IV (Negligent Hiring,  
3 Supervision, and Retention) and Count VIII (Civil Conspiracy) are also based exclusively on  
4 privileged and protected communications that are immune from civil liability *and* unsupported  
5 by the alleged facts. Furthermore, they are brought by SIMON as an admitted adversary of the  
6 Edgeworths due to actions allegedly taken in the underlying judicial action by the Edgeworths  
7 and their attorneys, VANNAH. The law is clear that VANNAH, as attorneys, do not owe a  
8 duty of care to SIMON, an adversary of a client in the underlying litigation. *Dezzani v. Kern &*  
9 *Associates, Ltd.*, 134 Nev.Adv.Op. 9, 12, 412 P.3d 56 (2018); See also *Fox v. Pollack*, 226  
10 Cal.Rptr. 532, 536 (Ct. App. 1986). The policy that supports the law is set forth in *Bull v.*  
11 *McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980), which states: "The privilege rest upon  
12 a public policy of securing to attorneys as officers of the court the utmost freedom in their  
13 efforts to obtain justice for their clients." *Id.*, at 712. SIMON'S Opposition failed to overcome  
14 this insurmountable obstacle.

15  
16  
17       SIMON'S Count/claim of civil conspiracy are also based exclusively on privileged and  
18 protected communications that are immune from civil liability. Plus, they are unsupported by  
19 the facts and fail as a matter of law, since SIMON did not, and cannot, allege or argue  
20 sufficient facts to meet the essential elements of that claim. Nevada law states that a civil  
21 conspiracy is a combination of two or more persons by some concerted action to accomplish  
22 some criminal or unlawful purpose or to accomplish some purpose not in itself criminal or  
23 unlawful, but by criminal or unlawful means. *Eikelberger v. Tolotti*, 96 Nev. 525, 528, 611  
24 P.2d 1086, 1088 (1980)(emphasis added); *Sunderland v. Gross*, 105 Nev. 192, 772 P.2d 1287  
25 (1989).  
26

27       Here, VANNAH (the attorney) met with, advised, and counseled clients—the  
28

1 Edgeworths. (See, Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's  
2 previously filed Emergency Motion to Preserve Evidence as Exhibit A; see also NRPC 1.2.) In  
3 furtherance of the role as attorney under the Rules, VANNAH prepared and filed a complaint  
4 and an amended complaint against SIMON, and thereafter participated in public judicial  
5 proceedings to further the representation of the Edgeworths' interests and claims. (See,  
6 Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed  
7 Emergency Motion to Preserve Evidence as Exhibit A.) These acts are not criminal or  
8 unlawful. Rather, they are exactly what attorneys do and are required to do, under the Nevada  
9 Rules of Professional Conduct. These acts are also protected and immune from civil liability  
10 under NRS 41.635-670, Nevada's Anti-SLAPP statutes and case law.  
11

12       Clearly, what VANNAH did for the Edgeworths as their lawyers is an open book,  
13 conducted in a judicial forum, designed and intended to seek and obtain a legal remedy for  
14 clients, and available to any reader of this public record. (Please see Appellants' Appendix  
15 attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to  
16 Preserve Evidence as Exhibit A; see also NRS Sections 41.635-670, and NRPC 1.2.) There is  
17 no legal authority or rule that SIMON can cite that could possibly deem that these legal,  
18 customary, and protected actions and communications as criminal or improper under the law,  
19 thus failing to rise to the level of a civil conspiracy. *Eikelberger v. Tolotti*, 96 Nev. 525, 528,  
20 611 P.2d 1086, 1088 (1980)(emphasis added); *Sunderland v. Gross*, 105 Nev. 192, 772 P.2d  
21 1287 (1989). SIMON's Opposition again failed on every front.  
22

23       To paraphrase SIMON from the underlying matter on appeal, none of his allegations  
24 against VANNAH "rise to the level of a plausible or cognizable claim for relief." All are barred  
25 by the litigation privilege, others by a lack of procedural ripeness (and a lack of merit), others  
26 still by the absence of any duty owed or legal remedy afforded, and all by Nevada's Anti-SLAPP  
27  
28

1 laws. Since none of SIMON'S claims are left unscathed, they all should be dismissed pursuant  
2 to NRCP 12(b)(5).

3 Since SIMON'S Counts/claims are all based on communications that are "absolutely  
4 privileged," there is no set of facts...which would entitle SIMON to any relief. See, *Buzz Stew,*  
5 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). These acts and  
6 communications are also protected and immune from civil liability under NRS 41.650.  
7 SIMON'S Amended Complaint and Opposition failed to present any set of allegations or facts  
8 that would entitle him to relief. (*Id.*) Therefore, these claims must be dismissed pursuant to  
9 NRCP 12(b)(5), as they do not state a claim upon which relief could ever be granted. As a result,  
10 VANNAH'S Motion to Dismiss SIMON'S Amended Complaint must be granted.  
11

12 DATED this 24<sup>th</sup> day of September, 2020.

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

15 /s/Patricia A. Marr, Esq.

16 PATRICIA A. MARR, ESQ.  
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**Electronically:**

Patricia Lee, Esq.  
**HUTCHINSON & STEFFEN, PLLC**  
 Peccole Business Park  
 10080 West Alta Dr., Ste. 200  
 Las Vegas, NV 89145

**Traditional Manner:**  
*None*

An employee of the Patricia A. Marr, Ltd.



EXHIBIT A

EXHIBIT A



MTD  
James R. Christensen Esq.  
Nevada Bar No. 3861  
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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.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

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

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 26

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

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

4 /s/ James R. Christensen

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

13 **NOTICE OF MOTION**

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

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

20 10.

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

22 /s/ James R. Christensen

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

1 On February 6, 2018, Mr. Vannah acknowledged in open court that this was  
2 a fee dispute case. To quote Mr. Vannah: "This is a fee dispute."<sup>28</sup> The law office  
3 agrees. Adjudication of the attorney lien is the Legislature approved method to  
4 resolve a fee dispute. The law office cannot be sued for following the law.  
5

#### 6 IV. Argument

7 The Nevada Anti-SLAPP statute allows a defendant to file a special motion  
8 to dismiss claims based on protected communication; such as, asking this Court to  
9 resolve a fee dispute by lien adjudication.  
10

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

---

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

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

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

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

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

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

21 ...

22 ...

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

10 The privilege, which even protects an individual from liability for statements  
11 made with knowledge of falsity and malice, applies “so long as [the  
12 statements] are in some way pertinent to the subject of  
13 controversy.” *Id.* Moreover, the statements “need not be relevant in the  
14 traditional evidentiary sense, but need have only ‘some relation to the  
15 proceeding; so long as the material has some bearing on the subject matter of  
16 the proceeding, it is absolutely privileged.” (Internal citations omitted.)  
17 *Blaurock*, 2015 WL 3540903.  
18

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

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

1 **V. CONCLUSION**

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

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

8 /s/ James R. Christensen

9 James R. Christensen Esq.  
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16 jim@jchristensenlaw.com  
17 Attorney for SIMON

18 **CERTIFICATE OF SERVICE**

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

24 /s/ Dawn Christensen

25 an employee of JAMES R. CHRISTENSEN

**EXHIBIT B**

**EXHIBIT B**



1 **RTRAN**

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

4  
5 **EDGEWORTH FAMILY TRUST,**

6 **Plaintiff,**

7 **vs.**

8 **LANGE PLUMBING, LLC,**

9 **Defendant.**

**CASE NO. A-16-738444-C**

**DEPT. X**

10 **BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE**

11 **TUESDAY, FEBRUARY 20, 2018**

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

17 **APPEARANCES:**

18 **For the Plaintiff:**

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

19 **For the Defendant:**

**THEODORE PARKER, ESQ.**

20 **For Daniel Simon:**

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

21 **For the Viking Entities:**

**JANET C. PANCOAST, ESQ.**

22 **Also Present:**

**DANIEL SIMON, ESQ.**

23  
24  
25 **RECORDED BY: VICTORIA BOYD, COURT RECORDER**

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

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

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

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

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

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

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

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

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

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

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

24           Mister –

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

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

7 THE COURT: Okay.

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

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

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

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

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

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

23 THE COURT: Okay --


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

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



EXHIBIT C

EXHIBIT C



RTRAN

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

EDGEWORTH FAMILY TRUST,	)	
	)	CASE NO. A-16-738444-C
Plaintiff,	)	
	)	DEPT. NO. X
vs.	)	
	)	(CONSOLIDATED WITH:
LANGE PLUMBING, LLC,	)	CASE NO. A-18-767242-C)
	)	
Defendant.	)	
<u>And related matter/cases.</u>		

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

1                   LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

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

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

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

9                   THE COURT:  Okay.

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

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

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

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

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

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

8 THE COURT: Okay.

9 MR. CHRISTENSEN: Thank you, Your Honor.

10 THE COURT: Thank you, counsel.

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

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

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

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

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

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

8 THE COURT: Not the new one.

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

11 THE COURT: Yeah.

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

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

21 THE COURT: Okay.

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

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

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

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

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

12 THE COURT: Okay.

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

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

17 MR. VANNAH: Right.

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

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

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

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

17           MR. CHRISTENSEN: That's correct.

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

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

24           MR. VANNAH: Well --

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

# EXHIBIT D

# EXHIBIT D



## EVENTS &amp; 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 Counter-motion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Counter-motion 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 8:00 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. 05/28/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 8:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties PresentReturn 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.

1 **I. PREFACE**

2 This brief is submitted for the evidentiary hearing being held by the Court to  
3 adjudicate the Law Office attorney lien pursuant to NRS 18.015. This brief is  
4 limited primarily to adjudication issues.  
5

6 **II. INTRODUCTION**

7 The Edgeworth and Simon families were close friends for many years.  
8 When a flood occurred in a speculation home being built by Brian Edgeworth,  
9 Brian turned to his friend Daniel Simon for help. Mr. Simon agreed to help, and  
10 worked for his friend without a fee agreement.  
11

12 The flood was caused by a defective fire sprinkler built by Viking and  
13 installed by Lange. Mr. Simon filed a case against Viking and Lange.  
14

15 The entire law office worked for Brian Edgeworth; and, Mr. Simon obtained  
16 an amazing result. Mr. Simon recovered over \$6M (\$6,000,000.00) in a case with  
17 a property damage cost of repair of about five hundred thousand, and on a home  
18 with a total build budget of about 3.3M.  
19

20 Shortly prior to trial, after Viking made a \$6M settlement offer, Brian  
21 Edgeworth ended communication with the Law Office, stopped taking litigation  
22 advice from Mr. Simon, and hired the Vannah firm to sue the Law Office. In so  
23 doing, Mr. Edgeworth constructively discharged Mr. Simon from any alleged fee  
24 agreement; and, took the advice of Mr. Vannah over Mr. Simon when Mr.  
25

1 Edgeworth abandoned a valuable contract based claim against Lange for attorney  
2 fees spent in pursuit of Viking.

3 This Court is tasked with settling the amount of the outstanding fee owed the  
4 Law Office for its excellent work. As detailed below, whether the Court uses the  
5 *quantum meruit* analysis suggested by the Law Office or the hourly rate of \$550.00  
6 an hour preferred by Edgeworth, the outstanding fee owed is substantial.  
7

### 8 **III. THE LAW OFFICE IS DUE A SUBSTANTIAL FEE**

9 This Court will necessarily find that the Law Office is due a substantial fee.  
10 As the two main arguments go; either, the Law Office is due a reasonable fee  
11 under *quantum meruit*, or the Law Office is due \$550.00 an hour for unpaid work.  
12

#### 13 **A. The weight of the evidence establishes that there was an implied-** 14 **in-fact contract with a missing attorney fee term.**

15 A charging lien is a “creature of statute”. *Argentina Consolidated Mining, v.*  
16 *Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009). NRS  
17 18.015(2) states that the attorney can recover the contract rate; or, if no contract  
18 rate, then a “reasonable fee”-that is, *quantum meruit*.  
19

20 2. A lien pursuant to subsection 1 is for the amount of any fee which has  
21 been agreed upon by the attorney and client. In the absence of an agreement,  
22 the lien is for a reasonable fee for the services which the attorney has  
23 rendered for the client.  
24  
25

1 In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme

2 Court found:

3 In the absence of a fee agreement, NRS 18.015(a) allows an attorney's lien  
4 to be "for a reasonable fee." **When an express fee agreement exists**, NRS  
5 18.015 does not specify whether the district court must similarly examine an  
attorney fees award for reasonableness. (Emphasis added.)

6 An *express* contract can be oral or written; an *implied* contract is inferred by  
7 conduct. Black's Law Dictionary explains:

8 *Express and implied.* An express contract is an actual agreement of the  
9 parties, the terms of which are openly uttered or declared at the time of  
10 making it, being stated in distinct and explicit language, either orally or in  
11 writing.

12 An implied contract is one not created or evidenced by the explicit  
13 agreement of the parties, but inferred by the law, as a matter of reason and  
14 justice from their acts or conduct, the circumstances surrounding the  
15 transaction making it a reasonable, or even a necessary, assumption that a  
contract existed between them by tacit understanding. (Italics in original.)

16 Black's Law Dictionary, Fifth Edition, at 292-93.

17 NRS 18.015(2) follows basic Nevada contract law. If there is an express  
18 (written or oral) contract, then the contract terms are applied. If there is an implied  
19 in fact contract - that is, a contract implied by conduct; then, *quantum meruit* is  
20 used to determine the missing payment term. See, e.g., *Certified Fire Protection v.*  
21 *Precision Construction*, 283 P.3d 250, 256 (Nev. 2012).

23 1. There is no express written agreement.

24 The parties agree that there is no express written agreement.  
25

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- 1                   • The billings sent were incomplete and did not reflect all work  
2                   performed. Mr. Edgeworth is a sophisticated business person with  
3                   experience with hourly attorneys. Mr. Edgeworth was aware the bills  
4                   were incomplete.  
5  
6                   • On August 22, 2017, Mr. Edgeworth admitted no express oral  
7                   agreement had been reached on the amount of the fee. Mr. Edgeworth  
8                   wrote:

9                               We never really had a structured discussion about how this  
10                              might be done... I could also swing hourly for the whole case  
11                              (unless I am off what this is going to cost). I would likely  
12                              borrow another \$450k from Margaret in 250 and 200  
13                              increments and then either I could use one of the house sales for  
14                              cash or if things get really bad, I still have a couple million in  
15                              bitcoin I could sell.”

16                   (Ex. 2, 8.22.2017 email.)

17                   If there was an agreement to pay Mr. Simon \$550.00 an hour in place, the  
18                   above statements would not have been made by Mr. Edgeworth. Instead, Mr.  
19                   Edgeworth’s own words confirm that his friend was not fully billing the case to  
20                   ease the strain on Mr. Edgeworth, and because of an expectation of a fee based on  
21                   results and not time. Mr. Simon does contingency fee work, he is comfortable  
22                   sharing risk on a case.

23                   The Edgeworth claims do not survive the weight of the evidence.  
24  
25



1           3.     There was an implied-in-fact contract, with a missing fee term.

2           There was an implied-in-fact contract between the Law Office and the  
3 Edgeworths. The parties agree the Law Office performed excellent legal work,  
4 obtained an amazing result, and the work was not done for free.  
5

6           The weight of the evidence establishes that the Law Office fee was not  
7 agreed upon. (*See, e.g.*, Ex. 1 & 2.) Under the lien statute and Nevada contract  
8 law, when there is a missing payment term in an implied-in-fact contract, *quantum*  
9 *meruit*-that is, a reasonable fee, is used to determine what is owed. NRS  
10 18.015(2); and, *Certified Fire Protection*, 283 P.3d at 256.  
11

12           4.     The contract analysis is moot, because the Edgeworths' constructively  
13 discharged the Law Office.

14           When a lawyer is discharged by the client, the lawyer is no longer  
15 compensated under the discharged/breached/repudiated contract, but is paid based  
16 on *quantum meruit*. *See, e.g., Golightly v. Gassner*, 281 P.3d 1176 (Nev.  
17 2009)(unreported)(discharged contingency attorney paid by *quantum meruit* rather  
18 than by contingency fee pursuant to agreement with the client); *citing, Gordon v.*  
19 *Stewart*, 324 P.3d 234 (1958)(attorney paid in *quantum merit* after client breach of  
20 agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees awarded in  
21 *quantum meruit* when there was no contingency agreement).  
22  
23  
24  
25

1 In this case, the clients constructively discharged the Law Office:

- 2 • The clients stopped all communication with the Law Office-even
- 3 though vital legal decisions had to be made.
- 4 • The clients did not follow the advice of the Law Office on the Lange
- 5 attorney fee claim; and, abandoned a certain contract claim worth over
- 6 one million dollars.
- 7 • The clients accused Mr. Simon of an intent to steal six million dollars.
- 8 • The clients' new lawyer accused the Law Office of billing fraud.
- 9 • The clients' new lawyer threatened an increased damage claim unless
- 10 the Law Office continued to work for the client, despite being sued.
- 11 • The client has not paid the Law Office any amount for undisputed
- 12 time.
- 13 • The clients sued the Law Office.
- 14 • The clients sued the Law Office for conversion before there were any
- 15 funds to convert.
- 16 • The clients filed two complaints against the Law Office, seek a jury
- 17 trial and want punitive damages.
- 18
- 19
- 20
- 21
- 22

23 In *Rosenberg v. Calderon Automation*, 1986 Ohio App. LEXIS 5460 (Jan.

24 31, 1986), a lawyer provided services to the client without a contract. As the case

25 was ready to be resolved the client did not want to pay the lawyer because there

1 was no contract. The client stopped all communication with the lawyer. The Ohio  
2 Appellate Court found that the client refusal to communicate with their lawyer was  
3 a constructive termination of services; and, that the lawyer was due compensation  
4 by *quantum meruit*.

5  
6 Constructive termination can occur in other ways. In *McNair v.*  
7 *Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court found constructive  
8 termination of a lawyer when the client placed "counsel in a position that precluded  
9 effective representation and thereby constructively discharged his counsel or (2)  
10 through his obstructionist behavior, dilatory conduct, or bad faith, the defendant de  
11 facto waived counsel."

12  
13 Failure to pay attorney fees is constructive termination. See e.g., *Christian*  
14 *v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997)  
15 ("Further, the court considers Sewer's failure to pay attorneys' fees as a  
16 constructive termination of the attorney-client relationship between Sewer and  
17 D'Anna.").

18  
19 Suit between an agent and a principal is constructive discharge. See *Tao v.*  
20 *Probate Court for the Northeast Dist.* #26, 2015 Conn. Super. LEXIS 3146, \*13-  
21 14, (Dec. 14, 2015). See also *Maples v. Thomas*, 565 U.S. 266 (2012); *Harris v.*  
22 *State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*, 2017 Nev. Unpubl. LEXIS  
23 472.  
24  
25

1 When a client stops talking to their lawyer, threatens their lawyer, sues their  
2 lawyer, refuses to pay their lawyer, and hires a new lawyer, there has been a  
3 constructive discharge of the lawyer by the client.

4 **B. The Outstanding Fee Owed to the Law Office.**

5 The Law Office did excellent work and obtained an amazing result. The  
6 Law Office is due a fee. The Law Office submits it is due a reasonable fee under  
7 *quantum meruit*. The Edgeworths argue that the Law Office should be paid  
8 \$550.00 an hour. Under either scenario, the Law Office is due a substantial fee.  
9

10 **1. Reasonable Fee under *Quantum Meruit*.**

11 When there is no express (oral or written) contract, an attorney is due a  
12 reasonable fee under the Nevada attorney lien statute, NRS 18.015(2). The Court  
13 has wide discretion on the method of calculation of the attorney fee. *Albios v.*  
14 *Horizon Communities, Inc.*, 132 P.3d 1022, 1034 (Nev. 2006). Whatever method  
15 of calculation is used by the Court, the amount of the attorney fee must be  
16 reasonable under the *Brunzell* factors. *Id.* The Court should enter written findings  
17 of the reasonableness of the fee under the *Brunzell* factors. *Argentina*  
18 *Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d  
19 779, at fn2 (Nev. 2009).  
20  
21  
22  
23  
24  
25

1       The *Brunzell* factors are:

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

7       *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

8           The Declaration of William Kemp is attached at Exhibit 3. Mr. Kemp is one  
9       of the top product liability attorneys in the United States. Mr. Kemp is also very  
10      experienced in the determination of the reasonable fee of an attorney in a product  
11      liability case. In his Declaration, Mr. Kemp describes his experience in detail,  
12      including his work on the determination of a reasonable attorney fee. Mr. Kemp  
13      then reviews and applies the *Brunzell* factors to find a reasonable fee for the Law  
14      Office for the amazing work performed on behalf of the Edgeworths. Mr. Kemp  
15      reaches a reasonable attorney fee value of \$2,440,000.00.

16           Mr. Kemp used the market approach (fair market value) to calculate the  
17      reasonable fee. The fair market value, or market price, is an accepted method to  
18      calculate a fee. Restatement Third, The Law Governing Lawyers, §39.

19

20

21

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25

1 The Law Office seeks a reasonable fee of \$1,977,843.80 as stated in the  
2 Amended Lien of January 2, 2018. The Law Office number is net of \$367,606.25  
3 already paid. The Law Office seeks a total fee below the market rate set by Mr.  
4 Kemp.

5  
6 2. The hourly rate.

7 The Law Office provided comprehensive billings which documented all  
8 work, including previously unbilled work and work performed since the last  
9 Edgeworth payment.

10  
11 The hours were provided for several reasons. First, Courts can be critical of  
12 attorneys-even those with a written contingency fee agreement-that seek fees  
13 without providing a time record. *See, e.g., Golightly*, 281 P.3d 1176. Second, the  
14 comprehensive bill provides a record of the time spent and work done on the file,  
15 which is helpful for the Court. Third, the Law Office is aware that the Court may  
16 choose to calculate the fee due on an hourly basis. While the Law Office believes  
17 the facts call for a reasonable fee following the analysis of Mr. Kemp, the Law  
18 Office is not going to ignore the alternate possibility. Fourth, the time record  
19 provides additional evidence of constructive discharge-in that, the record supports  
20 the value of the contract claim against Lange which the Edgeworths abandoned  
21 against the advice of Mr. Simon.  
22  
23  
24  
25

1           Lastly, the hours submitted demonstrate the amount of risk Mr. Simon  
2 shared with the clients. As explained by Mr. Edgeworth in his August 2017 email,  
3 if Brian Edgeworth paid an hourly for the "whole case", he would need to take out  
4 more loans and/or sell a house to pay the Law Office. (Ex. 2.) (Mr. Edgeworth is  
5 a knowledgeable person, he understood that paying hourly for the whole case could  
6 cost more than an additional \$450,000.00. Ex. 2.) The Law Office did not force  
7 Mr. Edgeworth to sell a house or his Bitcoin. Instead, the Law Office took a  
8 milder approach for Mr. Simon's friend, and balanced the utility of demonstrating  
9 fees with the goal of easing financial strain on Brian Edgeworth.  
10  
11

12           All hours should be considered. The previous billings were plainly  
13 incomplete, which was known to Mr. Edgeworth as many calls/emails and  
14 meetings with the Law Office were not previously billed; and, because he did not  
15 have to take out more loans or sell Bitcoin to pay the bills. And, until the Viking  
16 case settled, the number of hours and final amount of the attorney fee claim against  
17 Lange was unknown.  
18  
19

20           There is no estoppel or other argument which prevents the submission and  
21 payment of a complete bill for services in this case. Mr. Edgeworth clearly  
22 understands that money is owed, but has made the decision not to pay his lawyer.  
23 Mr. Edgeworth explicitly understood that an hourly rate for the whole case would  
24 cost considerably more than what he had already paid (Ex. 2).  
25

1 Of course, the rate of \$550.00 an hour was used for illustrative purposes. If  
2 the Court decides to apply *quantum meruit*, and calculate a reasonable fee using an  
3 hourly approach, the Court is not limited to \$550.00 an hour. Using \$550.00 an  
4 hour (for Mr. Simon), the outstanding fee due the Law Office is \$692,120.00.  
5 However, considering the result, a higher rate of \$700-800 an hour is more than  
6 reasonable, if the Court chooses to use an hourly approach.  
7

#### 8 IV. CONCLUSION

9 The Law Office did exemplary work. Mr. Simon and the Law Firm  
10 committed all their time and effort to bringing home a fantastic result for the  
11 Edgeworth family. The Law Office is due a reasonable fee for its work.  
12

13 DATED this 18<sup>th</sup> day of May, 2018.  
14

15 James R. Christensen  
16 James R. Christensen Esq.  
17 Nevada Bar No. 3861  
18 James R. Christensen PC  
19 601 S. Sixth Street  
20 Las Vegas NV 89101  
21 (702) 272-0406  
22 (702) 272-0415 fax  
23 jim@jchristensenlaw.com  
24 Attorney for LAW OFFICE OF  
25 DANIEL S. SIMON, P.C.



EXHIBIT F

EXHIBIT F

4 THE COURT: -- Family Trust, American Grating, LLC v. Daniel  
5 Simon Law, Daniel Simon, d/b/a Simon Law. Okay.  
6 So, this is the date and time set for an evidentiary hearing.  
7 Can we have everyone's appearances for the record?  
8 MR. VANNAH: Yes. Robert Vannah and John Greene on  
9 behalf of the Edgeworth Trust and the Edgeworth family.  
10 Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon  
11 and his law firm.  
12 MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.  
13 THE COURT: Okay. So, this is the date and time set for the  
14 evidentiary hearing in regards to the lien that was filed in this case, but I  
15 also have Mr. Simon's Law Office filed a trial brief regarding the  
16 admissibility of a fee agreement. Did you guys get that?  
17 MR. VANNAH: Yes, Your Honor.  
18 THE COURT: Okay. Are you guys prepared to respond to  
19 that or --  
20 MR. VANNAH: We are, Your Honor.

15 THE COURT: Okay. So, this is the motion to -- in regards to  
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are  
17 you ready to call your first witness?  
18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not  
19 quite as fast a reader as I used to be.  
20 THE COURT: It's okay. Me either.  
21 [Pause]  
22 MR. CHRISTENSEN: Okay. We do have an opening  
23 PowerPoint --  
24 THE COURT: Okay.  
25 MR. CHRISTENSEN: -- that we'd like to go through --

3 quote from the email. And that was in May of 2016. And from then on,  
4 the case progressed until it was filed in June, and then when it became  
5 active really in late 2016 through 2017 before Your Honor.

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

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

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

21           Q     What affect, Angela, do you remember that this flood  
22 litigation had on you and your family?

23           MR. CHRISTIANSEN: Objection, relevance.

24           THE COURT: Mr. Greene?

25           MR. GREENE: It has relevance, as she's going to be

- 38 -

1     answering shortly, on every aspect, including their finances, including  
2     their ability to conduct other business affairs, and that Danny Simon was  
3     well aware of it.

4           MR. CHRISTIANSEN: It still has absolutely no relevance as to  
5     what money of the 1.9 million dollars is in the joint trust account is owed  
6     to Mr. Simon and owed to the Edgeworth's, that's the issue.

7           MR. GREENE: Oh, wow. The thing is, is that three days of  
8     Brian Edgeworth being on for two days on the stand recently and limited  
9     to how much Danny is owed or not owed, pursuant to the work that he  
10    did or didn't put perform went far abreast of that.

11           So, this is her chance, she was injured in this -- in this case,  
12    Your Honor. This is not a huge diversion from a relevant issue of  
13    damages that they suffered in this case.

14           MR. CHRISTIANSEN: Judge, this isn't a personal injury case,  
15    this is an adjudication of an attorney's lien, and her mental anguish  
16    because she chose to not pay Mr. Simon and sue him instead, isn't  
17    relevant.

1 MR. CHRISTENSEN: No, Judge. They ended my  
2 examination of Mr. Edgeworth. I asked a question, and I intended to go  
3 into a slew of things he and his wife had talked about. Mr. Vannah  
4 asserted the privilege that I couldn't talk to him about it. I sat down. Mr.  
5 Vannah has that right. That was the end of it. They're judicially  
6 estopped from now unwinding that assertion.

7 THE COURT: Well, I mean, she can testify to something she  
8 has independent knowledge of, but she can't testify to something he told  
9 her because you guys have invoked that privilege. And this is about the  
10 volleyball. Wasn't this about -- I'm sorry; I forgot what the question was  
11 you asked. Wasn't this about him doing some volley -- the volleyball  
12 place?

13 MR. GREENE: It's about charitable backgrounds, talking  
14 about her background at this particular point.

15 THE COURT: Okay.

16 MR. GREENE: So --

17 THE COURT: Okay. Well, can we move on from that, Mr.  
18 Greene? Because I'm not really sure how that applies to what's owed to  
19 Mr. Simon and the legal work that he did.

20 MR. GREENE: Well, I understand that, Your Honor. But they  
21 spent time and volumes and words in their briefs for lack of a better  
22 word, sliming the Edgeworths. Calling them dishonest, that they don't  
23 pay their bills, that they're -- that they can't be trusted. Most assuredly  
24 their charitable background, their giving, their conduct towards others is  
25 certainly relevant to help unwind some of that stain that the defense put

1 on.

2 THE COURT: Well, let me -- I understand your desire to do  
3 that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging  
4 them based on whether or not they gave money to Three Square. I'm  
5 here to make a call about the legal work that was done by Mr. Simon and  
6 what is owed to him. That is the only thing I am here to pass judgment  
7 on.

8 I'm not here to pass judgment on who's passing out canned  
9 goods at Three Square. I'm doing it every other week in all reality, but  
10 that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of  
11 fact. I'm not a jury. I'm not here to discuss things that are outside the  
12 legal realm. I'm just here to decide what is going to be done with what's  
13 owed to them, what's owed to Mr. Simon, who needs to get paid.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GREENE:

16 Q Angela:

17 A Yes.

18 Q When did you come to know the Simons?

19 A I met Alaina (phonetic) when my daughter was in preschool  
20 and we've known them for quite a long time. Alaina helped me a lot  
21 when my father passed away. She was a good friend, and I considered  
22 her to be one of my closest friends. We took family vacations together  
23 and you know, our kids knew each other since preschool.

24 Q Did you ever at that time gain an understanding as to what  
25 her husband Danny did for a living?

1 answering shortly, on every aspect, including their finances, including  
2 their ability to conduct other business affairs, and that Danny Simon was  
3 well aware of it.

4 MR. CHRISTIANSEN: It still has absolutely no relevance as to  
5 what money of the 1.9 million dollars is in the joint trust account is owed  
6 to Mr. Simon and owed to the Edgeworth's, that's the issue.

7 MR. GREENE: Oh, wow. The thing is, is that three days of  
8 Brian Edgeworth being on for two days on the stand recently and limited  
9 to how much Danny is owed or not owed, pursuant to the work that he  
10 did or didn't put perform went far abreast of that.

11 So, this is her chance, she was injured in this -- in this case,  
12 Your Honor. This is not a huge diversion from a relevant issue of  
13 damages that they suffered in this case.

14 MR. CHRISTIANSEN: Judge, this isn't a personal injury case,  
15 this is an adjudication of an attorney's lien, and her mental anguish  
16 because she chose to not pay Mr. Simon and sue him instead, isn't  
17 relevant.

18 MR. GREENE: Wow. He's right, it's not a personal injury  
19 case at a 40 percent fee. He's dead right about that. It is, you  
20 know --

21 THE COURT: Hold on. One minute, I think that's where  
22 we're all -- but I think we have -- we need to limit this hearing, because I  
23 think the reason that we're in Day 5 is because there have been no limits  
24 on this hearing, this three-day hearing that now we're in Day 5.

25 The question was what effect did this have on her.

1 MR. GREENE: On the family, and it's a broad question.

2 THE COURT: It's a broad -- well, she can talk about the  
3 financial aspects of that, because as I previously explained, I'm not here  
4 to judge anyone. I'm here to get to the bottom of what is owed, what's  
5 been paid, what hasn't been paid, and what people are owed. She can  
6 talk about the financial effects of how this affected her family.

7 MR. GREENE: Okay.

8 BY MR. GREENE:

9 Q What financial effects did this litigation have on you and your  
10 family?

11 A It was very stressful. It was a very stressful time for us.

12 THE COURT: And you said -- I'm sorry, Mr. Greene, I don't  
13 mean to cut you off either, but we kind of moved on. And I'm sorry, I  
14 never know when you are done with one section.

15 You said you had concerns that the billing was exaggerated.  
16 Are these concerns that you have now or are these concerns that you  
17 had when you guys received, because I thought Mr. Greene was talking  
18 about the four original bills. Did you have concerns when you received  
19 those four original bills, or are these concerns you have after the  
20 January 2018 bill?

21 THE WITNESS: I had concerns back then, Your Honor.

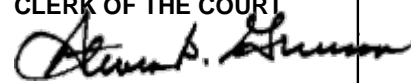
22 THE COURT: Did you express those to Mr. Simon?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 And I'm sorry, Mr. Greene.





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*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

**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: 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 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

1 Memorandum of Points and Authorities previously submitted and filed in support of the Special  
2 Motion to Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP, NRS Sections 41.635-670, the  
3 Memorandum of Points and Authorities set forth in VANNAH'S Motion (and Reply) to Dismiss  
4 Plaintiffs' Amended Complaint, Nevada Rules of Professional Conduct (NRPC) 1.2 and 1.5, the  
5 pleadings and papers on file herein, the Points and Authorities raised in the underlying action  
6 which are now on appeal before the Nevada Supreme Court, Appellants' Appendix (attached to  
7 VANNAH'S Opposition to Plaintiffs' previously filed Emergency Motion to Preserve Evidence  
8 as Exhibit A), the record on appeal (*Id*), all of which VANNAH adopts and incorporates by this  
9 reference, the Affidavit of Robert D. Vannah, Esq., the Affidavit of John B. Greene, Esq.  
10 (attached to the Special Motion as Exhibits A & B, respectively), and any oral arguments this  
11 Court may wish to entertain.  
12

13  
14 DATED this 24<sup>th</sup> day of September, 2020.

15 PATRICIA A. MARR, LTD.

16 /s/Patricia A. Marr, Esq.

17  
18 PATRICIA A. MARR, ESQ.

19  
20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. PREFATORY STATEMENT**

22 SIMON has not made one allegation in his SLAPP, or made even one argument in his  
23 Opposition, that either Mr. Vannah or Mr. Greene said anything to anyone about SIMON  
24 outside of court papers or proceedings. Rather, SIMON has admitted that all of his allegations  
25 against the VANNAH Defendants are based on statements allegedly made in court filings and  
26 court proceedings. And all of SIMON'S Counts/claims are centered solely on the claim for  
27 conversion brought against him. As the affidavits of Mr. Vannah and Mr. Greene state, the  
28

1 Amended Complaint was prepared and filed against Mr. Simon and his law firm was based on  
2 the good faith belief that the amount of his Amended Lien, coupled with the facts and evidence  
3 of this case, constituted conversion under Nevada law, as well as a breach of contract and  
4 breach of the covenant of good faith and fair dealing. And that the VANNAH Defendants are  
5 all being sued for making, in good faith, written and oral communications in judicial  
6 proceedings on behalf of clients. (*Id.*) NRS 41.637(3).  
7

8 Therefore, these clearly are protected communications under Nevada's Anti-SLAPP  
9 laws. As this Reply will show, SIMON took a similar position on this type of communication  
10 being protected speech under Nevada's Anti-SLAPP laws in the underlying case when it  
11 favored him. As VANNAH'S Motion further demonstrated, and as this Reply reiterates, every  
12 allegation, Count, and claim that SIMON has made against the VANNAH Defendants is barred  
13 by the absolute litigation privilege, making VANNAH immune from all civil liability. Nothing  
14 that SIMON says or does can alter that irrevocable legal reality. This means that SIMON can't  
15 and didn't meet his burden under the law. NRS 41.665(2).  
16

17 SIMON, in trying to salvage his SLAPP, states the following: "We know theft was the  
18 basis for the conversion at the outset based on Vannah's email...." However, there is no  
19 evidence offered by SIMON whatsoever that the VANNAH Defendants ever stated in writing,  
20 or orally, that SIMON engaged in extortion, blackmail, stealing, intimidation, unethical conduct  
21 or threats. In fact, SIMON actually admits in his opposition that no such evidence exists  
22 against VANNAH. SIMON also knows that his own Exhibit 20 has specific statements from  
23 Mr. Vannah to SIMON and his team: "I'm not suggesting I have concerns over Danny stealing  
24 the money. I'm simply relaying his clients' statements to me." It is up to the Bar Association  
25 and the Supreme Court to determine if what SIMON has done to his clients, the Edgeworths,  
26 breaches his ethical and legal duties to them. Even if the VANNAH Defendants had stated  
27  
28

1 such a thing, which they didn't, the *Bull* case discussed throughout provides undisputed  
2 coverage and application of the absolute litigation privilege to the VANNAH Defendants.

3 In SIMON'S lingo, the "conversion complaint" does clearly ask for "punitive  
4 damages," which is designed to both punish and make an example of the offender. Ironically,  
5 SIMON is asking for the same type of damages against his own clients, as well as VANNAH,  
6 in this very case. That does not somehow equate to admitting "to filing the conversion claim  
7 for the ulterior purpose of punishing SIMON and his firm for stealing, converting their money."  
8 As mentioned above, SIMON'S Opposition admits that Mr. Vannah told SIMON'S lawyers in  
9 an email that Mr. Vannah never believed that SIMON would steal the money. What SIMON  
10 attempts is to equate the conversion claim, which is limited to SIMON exercising dominion  
11 over \$1,000,000 of his clients' funds (conversion) to "stealing the funds," which could not  
12 happen in any event because it requires both Mr. Vannah's and SIMON'S signatures to remove  
13 funds from the trust account.  
14  
15

16 In any event, all communications by VANNAH about this entire subject is strictly  
17 limited to written complaints, filed with the court, to papers and pleadings filed with the court,  
18 and to oral arguments made in the courtroom. SIMON admits that the "Vannah Defendants"  
19 have never published any comment about Simon—to anyone—outside the courtroom. That is  
20 precisely why the litigation privilege is absolute in this case. The purpose of the litigation  
21 privilege is to allow the attorneys to fulfill their ethical obligations to their clients without fear  
22 that the opposition will later sue them. The cases (*Jacobs*, primarily) that SIMON relies upon  
23 to state that the litigation privilege requires "good faith" are limited to instances of where there  
24 is an out of court statement or "press release," which just doesn't apply at all to the "Vannah  
25 Defendants" in this case.  
26

27 Furthermore, Judge Jones' dismissal of the Edgeworths' Amended Complaint pursuant  
28

1 to NRCP 12(b)(5) was, in fact, limited to accepting SIMON'S argument that conversion  
2 required proof that SIMON physically possessed the funds, which has never been an allegation  
3 of the "Vannah Defendants," and therefore the Amended Complaint was dismissed. It's just  
4 that simple. The Judge did not hear 5 days of evidence on that issue. In fact, there never was  
5 even an answer, much less any discovery, on that issue.  
6

7 She further found that the Amended Complaint was not filed in "good faith" because  
8 SIMON, in the opinion of Judge Jones, had to have physically possessed the clients' funds, in  
9 order to have converted them. Again, it's just that simple. Maybe she's right, maybe she's  
10 wrong, though the law governing conversion and NRCP 12(b)(5) strongly favor the latter. That  
11 is the primary issue on appeal.  
12

13 As for the Trial Lawyers amicus brief, they seem to want a finding by the Supreme  
14 Court that "tying the client's money up" by filing an attorney's lien can never be actionable, no  
15 matter how egregious the attorney's lien claim may be. That's a great thing for trial lawyers  
16 who file exorbitant liens based on bizarre theories of quantum meruit. As we've said before,  
17 maybe the Supreme Court will agree, maybe they will not. That doesn't mean that SIMON can  
18 sue the "Vannah Defendants" for their proper advocacy regardless of how the Supreme Court  
19 eventually rules on these rather important issues.  
20

## 21 II. ARGUMENTS

### 22 A. VANNAH CORRECTLY APPLIED LONG-STANDING (FOR 62 YEARS) 23 NEVADA LAW IN BRINGING AND MAINTAINING THE CLAIM FOR 24 CONVERSION IN GOOD FAITH ON BEHALF OF THE EDGEWORTHS, 25 WHILE SIMON FAILED TO DO SO

26 SIMON'S Opposition is ineffective and fails to counter the arguments raised and the  
27 law cited in VANNAH'S Special Motion to dismiss all of the Counts/claims brought against  
28 them in SIMON'S Amended Complaint. Rather, it remains abundantly clear that *all* of

1 SIMON'S arguments hinge on the unfounded assertion that there wasn't a basis, good faith or  
2 otherwise, for the Edgeworths' claim for conversion under Nevada law. (*Id.*) He said as much  
3 scores of times in his Opposition. (*Id.*) He's wrong, and he failed to correct that status in his  
4 Opposition.

5 Pursuant to the clear law of Nevada that has been on the books for 62 years,  
6 "conversion is a distinct act of dominion and control wrongfully exerted over another's  
7 personal property in denial of, or inconsistent with, his title or rights therein or in derogation,  
8 exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds*, 116 Nev. 598,  
9 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958));  
10 *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)("We conclude that it was  
11 permissible for the jury to find that a conversion occurred when Bader refused to release their  
12 brand.") Nevada law also holds that conversion is an act of general intent, which does not  
13 require wrongful intent and is not excused by care, good faith, or lack of knowledge. (*Id.*)

14 To put a finer point on it, footnote 1 in *Bader* states as follows, "Conversion does not  
15 require a manual taking. Where one makes an unjustified claim of title to personal property, or  
16 asserts an unfounded lien to said property which causes actual interference with the owner's  
17 rights of possession, a conversion exists." (*Id.*)(Emphasis added.) That's exactly what SIMON  
18 has done here when he asserted his "unfounded" liens in amounts that he knew he had no  
19 reasonable basis to assert, the first lien served on November 30, 2017, and the second on  
20 January 2, 2018. (Please see Appellants' Appendix attached to VANNAH'S Opposition to  
21 Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit A.)

22 SIMON knew he couldn't charge or collect a contingency fee without the written fee  
23 agreement that he'd failed to draft or obtain. (*Id.*) SIMON also knew that the additional work  
24 he performed at his full hourly rate of \$550 was never going to exceed the amount of his super  
25

1 bill of \$692,120, yet he still continued to assert an amended lien in the amount of  
2 \$1,977,843.80. (*Id.*) In short, the amount of the amended lien was “unfounded,” as it’s in an  
3 amount that is unsupported by the facts, including those created by, and known by, SIMON in  
4 the underlying matter. (*Id.*)

5 Even now, SIMON continues to exercise dominion and control via an unfounded  
6 amended lien to well over \$1 million dollars of the Edgeworths’ funds with no reasonable  
7 factual or legal basis to do so. (*Id.*) That’s conversion of the Edgeworths’ property. See,  
8 *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v.*  
9 *Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); and, *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d  
10 314, 317 (1980). And that serves as a basis for the claims for relief against SIMON.

11 It’s clear that, contrary to SIMON’S assertions, to prevail on their claim for conversion,  
12 the Edgeworths only need to prove that SIMON exercised, and continues to exercise, dominion  
13 and control over the Edgeworths’ money without a reasonable basis to do so. (*Id.*) It doesn’t  
14 require proof of theft, a manual taking, or ill intent, as SIMON wants everyone to believe. (*Id.*)  
15 Rather, the conversion is his unreasonable and unfounded claim to an excessive amount of the  
16 Edgeworths’ money that SIMON knew and had every reason to believe that he had no  
17 reasonable basis to lay claim to. (*Id.*; and, please see Appellants’ Appendix attached to  
18 VANNAH’S Opposition to Plaintiff’s previously filed Emergency Motion to Preserve  
19 Evidence as Exhibit A.)

20 This is the law of Nevada regarding conversion. There is nothing in the opinions that  
21 states that they are fact-specific, as SIMON seems to assert by attempting to parse what are  
22 instead very clear mandates. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043,  
23 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); and, *Bader v. Cerri*,  
24 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). SIMON had every opportunity in his Opposition  
25

1 to cite a case or a statute that states that a lawyer can't be liable under Nevada law for  
2 conversion under these facts. Of course, no such law exists, as there isn't a reasonable or  
3 politically viable basis to treat lawyers differently from non-lawyers with this particular claim  
4 for relief. Instead, SIMON failed to cite any authority that would undermine the law of  
5 conversion that's been on the books in Nevada for 62 years, law that implicates SIMON.  
6

7 On the other hand, VANNAH followed the well-established law as set forth in *Evans*,  
8 *Wantz*, and *Bader* in bringing claims for conversion in good faith on behalf of the Edgeworths  
9 against SIMON, VANNAH clearly has met the first prong of the Anti-SLAPP test. NRS  
10 41.660(3)(a).  
11

12 **B. NEITHER CLAIM PRECLUSION NOR ISSUE PRECLUSION HAVE ANY**  
13 **APPLICATION TO THE SPECIAL MOTION OR TO THIS MATTER**

14 As argued in the Special Motion, the claim for conversion was brought and maintained  
15 in good faith in accordance with Nevada law. SIMON is incorrect that claim preclusion has  
16 any bearing in this matter, as discussed in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194  
17 P.3d 709 (2008), and its predecessors. As clearly discussed in *Five Star*, and in all of the cases  
18 discussed in *Five Star*, for claim preclusion to be triggered and applied, two lawsuits must have  
19 been filed by the offending party, one after the other and after the initial suit was dismissed or  
20 adjudicated on the merits, with both suits seeking the same or similar relief. (*Id.*)  
21

22 In *Five Star*, two sets of counsel on two separate occasions failed to appear for pretrial  
23 calendar calls, resulting in dismissal of the initial complaint on the merits pursuant to EDCR  
24 2.69(c). (*Id.*) Thereafter, the second set of counsel filed a new (second) suit based on the same  
25 contract, or basic facts. (*Id.*) A motion was then brought to get the new, or second, suit  
26 dismissed on the basis of claim preclusion. (*Id.*) The court agreed that since the first suit was  
27 dismissed on the merits under EDCR 2.69(c), the new, or second, suit was barred by the  
28



1 doctrine of claim preclusion. (*Id.*) Those were the facts and that was the law. (*Id.*)

2 Here, neither the facts nor the law jive with *Five Star*. The Edgeworths did not file a  
3 new suit, as was done in *Five Star*, after an initial suit was dismissed on the merits. Rather, the  
4 Edgeworths appealed the wrongful dismissal of their Amended Complaint. (Please see  
5 Appellants' Appendix attached to VANNAH'S Opposition to Plaintiff's previously filed  
6 Emergency Motion to Preserve Evidence as Exhibit A.) Thus, there isn't the necessary tangible  
7 second filing—the necessary condition precedent—by the Edgeworths for the doctrine of claim  
8 preclusion to apply. Also, since the Decision and Order dismissing the Amended Complaint is  
9 on appeal, there isn't a final judgment, as there was in *Five Star*. (*Id.*) These are critical  
10 distinctions that preclude any application of the doctrine of claim preclusion under *Five Star*.  
11 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). If there was a  
12 temptation to expand *Five Star* well beyond its intended boundaries here, public policy reasons  
13 and common sense should halt any such step backwards.  
14

15 As argued throughout the Motion and the papers and pleadings on file, the facts are  
16 clear that SIMON'S own words and deeds throughout this long ordeal demonstrate that he  
17 knew that he had no reasonable basis to claim a lien in an amount that is striking similar to a  
18 40% contingency fee of the Edgeworths' settlement. (Please see Appellants' Appendix  
19 attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to  
20 Preserve Evidence as Exhibit A.) SIMON stated as much in his letter of November 27, 2017;  
21 he admitted as much at the evidentiary hearing to adjudicate his lien; and, *his* hourly super bill  
22 totaled \$692,120, not 40%, etc. (*Id.*)  
23

24 Also, the law did not and does not support the findings of Judge Jones, who erroneously  
25 believed that physical possession of the settlement proceeds by SIMON was a necessary  
26 element of a claim for conversion. (Please see *AA Vol. 2* 000497-000483, attached to  
27  
28

1 VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve  
2 Evidence as Exhibit A.) That's wrong, as the well-established law in Nevada does *not* require  
3 physical possession of the settlement proceeds by SIMON for a claim for conversion to be  
4 brought and maintained by the Edgeworths. *Evans v. Dean Witter Reynolds*, 116 Nev. 598,  
5 607, 5 P.3d 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958));  
6 *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980)  
7

8         Instead, under Nevada law, "conversion is a distinct act of dominion and control  
9 wrongfully exerted over another's personal property in denial of, or inconsistent with, his title  
10 or rights therein or in derogation, exclusion, or defiance of such title or rights." *Id.*  
11 Additionally, under Nevada law, "where one makes an unjustified claim of title to personal  
12 property, or asserts an unfounded lien to said property which causes actual interference with the  
13 owner's rights of possession, a conversion exists." (*Bader*, at 356)(Emphasis added.) That's  
14 exactly what SIMON has done here when he asserted (and continues to assert) his liens in  
15 amounts that he knew he had no reasonable basis to assert. And that's why the factual and  
16 legal basis for the Decision and Order of Judge Jones is fundamentally incorrect and on appeal.  
17 (Please see *AA Vol. 2* 000497-000483, attached to VANNAH'S Opposition to Plaintiff's  
18 previously filed Emergency Motion to Preserve Evidence as Exhibit A.)  
19

20         Finally, the court in *Five Star* held that claim preclusion *may* be applied, thus bestowing  
21 discretion to the judge on whether to extinguish a second, or new, suit. *Five Star Capital Corp.*  
22 *v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). Since neither the facts nor the law support the  
23 consideration of claim preclusion here, since Judge Jones was clearly wrong in the application  
24 of the facts to the law of conversion, and since the Orders are not deemed final, being on  
25 appeal, there isn't a factual or legal basis to either consider or expand claim preclusion to this  
26 matter or Special Motion.  
27  
28

1           **C. SIMON DOES NOT HAVE ANY LIKELIHOOD OF PREVAILING, AS**  
2           **SIMON’S COMPLAINT IS CLEARLY AND SOLELY FOUNDED ON GOOD**  
3           **FAITH COMMUNICATIONS MADE TO A JUDICIAL BODY BY VANNAH**

4           Contrary to SIMON’S assertion, filing a complaint and an amended complaint by  
5           VANNAH in good faith on behalf of the Edgeworths to seek redress for wrong committed by  
6           SIMON pursuant to well-founded claims for relief are two examples of petitions to the judicial  
7           body, as well as issues of public concern. *See, Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458  
8           P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019); *Kattuah v. Linde Law*  
9           *Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017)) (unpublished). There is nothing in  
10          SIMON’S Opposition that refutes this as the law in Nevada. As such, the complaint and  
11          amended complaint that VANNAH filed on behalf of the Edgeworths qualify as protected  
12          communications pursuant to NRS 41.637(3), which states:

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

15                   ...

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

18                   ...

19          A plain reading of SIMON’S SLAPP reveals that the basis for *all* of SIMON’S  
20          Counts/claims are pleadings filed and statements allegedly made by one or more of the  
21          Defendants in the course of the underlying litigation and judicial proceedings. (*See*, Exhibit D to  
22          the Special Motion.) SIMON admits to these facts in his Opposition. In other words, SIMON  
23          has not made one allegation in his SLAPP, or made even one argument in his Opposition, that  
24          either Mr. Vannah or Mr. Greene said anything to anyone about SIMON outside of court papers  
25          or proceedings. (*Id.*) Instead, SIMON continues to wrongly assert again and again that there  
26          wasn’t a good faith basis for VANNAH to bring the claim for conversion on behalf of the  
27          Edgeworths. He’s still wrong.

28          As discussed throughout the papers and pleadings before this Court, the facts of

1 SIMON'S conduct in asserting his unfounded amended lien in the amount that he did when he  
2 knew and had every reason to know that he had no factual or legal basis amounts to conversion  
3 under well-established Nevada law. *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d  
4 1043, 1049 (2000)(citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); and, *Bader v.*  
5 *Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980). (Please also see Appellants' Appendix  
6 attached to VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to  
7 Preserve Evidence as Exhibit A.)

8  
9 Even if the Nevada Supreme Court eventually determines that either the laws governing  
10 conversion don't apply to attorneys who assert liens, regardless of the amount or the facts, or that  
11 VANNAH'S interpretation of the law of conversion is incorrect, the plain language of the  
12 caselaw cited above is ample evidence that VANNAH'S reading of and interpretation of the law  
13 was done in good faith, based in truth, and done without any knowledge of falsehood. NRS  
14 41.637(3); *Evans v. Dean Witter Reynolds*, 116 Nev. 598, 607, 5 P.3d 1043, 1049 (2000)(citing  
15 *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958)); and, *Bader v. Cerri*, 96 Nev. 352, 356,  
16 609 P.2d 314, 317 (1980). (See also the Affidavits of Robert D. Vannah, Esq., and John B.  
17 Greene, Esq., attached to the Special Motion as Exhibits A & B, respectively.)

18  
19 Furthermore, as discussed above, the doctrine of claim preclusion has no application to  
20 this matter, as none of the necessary prerequisites of *Five Star Capital Corp. v. Ruby*, 124 Nev.  
21 1048, 194 P.3d 709 (2008) and its predecessors, have been met. Therefore, VANNAH has  
22 presented sufficient evidence to show that their communications in the underlying matter were  
23 true, or were made without knowledge of falsehood. (*Id.*; please also see the Affidavits of  
24 Robert D. Vannah, and John B. Greene, attached to the Special Motion as Exhibits A & B.) As a  
25 result, VANNAH has met their burden on the first prong of Anti-SLAPP analysis to establish by  
26 preponderance of the evidence that SIMON'S claim is based on a good faith communication  
27  
28

1 made in furtherance of the right to petition the courts. NRS 41.660(3)(a).

2 The burden then shifted to SIMON, who failed in his Opposition to establish, by prima  
3 facie evidence, a likelihood of prevailing on anything. NRS 41.665(2). If the plaintiff does not  
4 establish a likelihood of prevailing, then the special motion to dismiss must be granted. *Abrams*  
5 *v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020); *Rosen v. Tarkanian*, 135 Nev. Adv. Op.  
6 59 (2019); *Kattuah v. Linde Law Firm*, 2017 WL3933763 (C.A. 2nd Dist. Div. 1 (Calif. 2017))  
7 (unpublished). Here, SIMON did not meet his burden as there isn't a set of facts, or a body of  
8 law, that supports any of the Counts/claims in his Amended Complaint/SLAPP.  
9

10 Here, all of SIMON'S Counts/claims in his SLAPP are based on written and oral  
11 communications and statements that are "absolutely privileged." *Jacobs v. Adelson*, 130 Nev.  
12 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *Greenberg Traurig, LLP v. Frias Holding*  
13 *Company*, 130 Nev. Adv Op. 67, 331 P.3d 901, 903 (2014)(en banc)(quotation omitted); *Fink v.*  
14 *Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 643 (2002); *Bullivant Houser Bailey PC v. Eighth*  
15 *Judicial Dist. Court of State ex rel. Cnty of Clark*, 128 Nev. 885, 381 P.3d 597  
16 (2012)(unpublished)(emphasis omitted); *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 440  
17 (2002), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670  
18 (2008); and, *Bull v. McCuskey*, 96 Nev. 706, 711-713, 615 P.2d 957 (1980).  
19

20 Furthermore, it is undisputed that all of SIMON'S Counts/claims against VANNAH  
21 pertain exclusively to statements made in court filings and arguments made to the court. (See  
22 Exhibit D to the Special Motion.) In other words, there isn't any allegation in any of the five (5)  
23 Counts/claims made against VANNAH that points to a statement allegedly made by VANNAH  
24 that was either out of court or to a third party. (*Id.*) Nothing in SIMON'S Opposition, either.  
25

26 Since all of the Counts/claims in SIMON'S SLAPP are based on written and oral  
27 communications and statements that are "absolutely privileged", there is no set of facts...which  
28

1 would entitle SIMON to any relief, or to prevail. *See, Buzz Stew, LLC v. City of N. Las Vegas*,  
2 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). VANNAH is also “immune from any civil  
3 liability for claims based upon the communication.” (*Id.*; see also *NRS 41.650*.) Therefore,  
4 SIMON does not have any prima facie evidence to support any of the Counts/claims in his  
5 Amended Complaint/SLAPP upon which relief could ever be granted. Therefore, SIMON  
6 cannot meet his burden under the law. *NRS 41.660(3)(b)*.

8 Interestingly, when the proverbial shoe was on the other foot, SIMON argued to Judge  
9 Jones in a Special Motion to Dismiss: Anti-SLAPP, that “The litigation privilege is absolute and  
10 applies to any communication uttered or published in a judicial proceeding.” (Please see  
11 excerpts of SIMON’S Special Motion to Dismiss: Anti-SLAPP, at page 21, attached to this  
12 Reply as Exhibit A.) SIMON stated further that, “As a matter of law, the law office is immune,  
13 and the Edgeworths cannot prevail.” (*Id.*) This conceptual shift from SIMON on such a pivotal  
14 issue such as the absolute litigation privilege that *he* has now raised is akin to the John Kerry  
15 moment from March of 2004, where he famously told a crowd at Marshall University: “I actually  
16 did vote for the \$87 billion, before I voted against it.”

18 With all of SIMON’S Counts/claims clearly barred by the absolute litigation privilege;  
19 with VANNAH being immune from civil liability under *NRS 41.650*; with all claims and  
20 statements based on true statements, made without knowledge of falsehood, and justified by the  
21 good faith basis to bring the claims and arguments that VANNAH brought and made on behalf  
22 of the Edgeworths; then, all the Counts/claims in SIMON’S SLAPP must be dismissed as a  
23 matter of law pursuant to *NRS 41.635-670*. *See, also Wichinsky v. Moss*, 109 Nev. 84, 88, 847  
24 P.2d 727, 729-30 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1225  
25 (1987). With all of his Counts/claims against VANNAH being legally and factually deficient  
26 in material respects, SIMON cannot meet his burden under *NRS 41.660(3)(b)*.  
27  
28

1 As a result, VANNAH'S Special Motion must be granted.

2 **D. THE BALANCE OF SIMON'S ARGUMENTS ARE EITHER: 1.)**  
3 **IRRELEVANT TO THE ISSUES; 2.) BELIED BY THE FACTS; 3.)**  
4 **UNSUPPORTED BY THE RECORD; 4.) COUNTER TO THE LAW; AND,**  
5 **AMONG OTHER THINGS, 5.) OPPOSITE OF SIMON'S PRIOR**  
6 **POSITIONS**

7 SIMON'S Oppositions are a concentrated effort to detract this Court—a walk in the tall  
8 weeds, if you will—from the factual and legal reality that ALL of SIMON'S claims are barred  
9 by the absolute litigation privilege. Meaning, SIMON has no factual or legal path to meet his  
10 burden under prong two of Nevada's Anti-SLAPP statute. NRS 41.665(2). One of those tall  
11 weeds is SIMON'S odd statements to the effect that there was never an express agreement for  
12 fees and that the Defendants fabricated the existence of a fee agreement. That's remarkable for  
13 at least two reasons.

14 First, SIMON, as the lawyer, had the obligation under the Nevada Rules of Professional  
15 Conduct (NRPC) to explain the scope of the representation to the Edgeworths, including the  
16 fee, prepare the fee agreement, and get it signed, yet he said that he failed to do so. NRPC  
17 1.5(b). Second, in a letter SIMON drafted to the Edgeworths, SIMON'S clients, dated  
18 November 27, 2017 (attached to VANNAH'S Special Motion as Exhibit E), this is what  
19 SIMON said in the top paragraph on page 4, "If you are going to *hold me to an hourly*  
20 *arrangement* then I will have to review the entire file for my time spent from the beginning to  
21 include all time for me and my staff at my full hourly rates to avoid an unjust outcome." (*Id.*,  
22 emphasis added.)  
23

24 This is a prime example of direct evidence from SIMON himself acknowledging that an  
25 hourly fee "arrangement" or agreement existed with the Edgeworths, one that they were going to  
26 "hold (SIMON) to", and the same agreement/arrangement that SIMON now states in his  
27 Opposition was "invented" by Defendants here. Isn't one of the definitions of "arrangement" in  
28

1 the Cambridge Dictionary, “a formal agreement between two companies, groups, or people  
2 which provides an advantage to each”? Isn’t the fair and reasonable interpretation SIMON’S  
3 statement of “holding” SIMON “to an hourly arrangement” the act of enforcing an hourly fee  
4 agreement that was already in existence? Yes, but in any event, that’s a remarkable position for  
5 SIMON to now take, in light of these facts created by his own hand. (*Id.*)  
6

7 Similarly, what David Clark, Esq., thought or said is meaningless to the fact that the  
8 absolute litigation privilege provides complete immunity to VANNAH for all of the  
9 Counts/claims raised by SIMON. Even if it wasn’t meaningless, SIMON’S admissions refute  
10 the findings of Mr. Clark. On the one hand, SIMON says in essence that Mr. Clark could find no  
11 wrong in the actions of SIMON towards his clients, the Edgeworths. Yet, on the other hand,  
12 SIMON has stated/admitted throughout his Oppositions and in the Appellate record (attached to  
13 VANNAH’S Opposition to Plaintiff’s previously filed Emergency Motion to Preserve Evidence  
14 as Exhibit A)—with the VERY notable exception of Exhibit E that was just discussed—that,  
15 among other things, he: 1.) never had any sort of fee agreement with the Edgeworths; 2.) never  
16 discussed the fee with the Edgeworths, though he collected and cashed nearly \$400,000 in fees  
17 from them through September of 2017; 3.) never explained the scope of his representation to his  
18 clients; 4.) received an email from Brian Edgeworth on November 15, 2017, that asked for the  
19 final open (hourly) fee invoice from SIMON, and that SIMON never replied or provided that  
20 invoice; and, 5.) sent the November 27, 2017, letter to the Edgeworths (Exhibit E to the Special  
21 Motion) where, among many other things, SIMON threatened to quit if the Edgeworths didn’t  
22 pay over a million dollars in fees that were not based on hourly work, but instead were based on  
23 a percentage of 25% of the overall recovery, all without a fee agreement of any sort, per SIMON.  
24 (*Id.*; see also Exhibit E to the Special Motion.)  
25  
26  
27  
28



1 Despite possessing all of these facts, SIMON says that Mr. Clark apparently couldn't find  
2 any wrongdoing, despite admitted violations by SIMON of NRPC 1.5(b) and 1.5(c). Regardless,  
3 Mr. Clark's mostly myopic opinions were not subjected to the refining process of discovery, as  
4 Judge Jones did not allow any to be conducted. (Please see the Affidavits of Mr. Vannah and  
5 Mr. Greene attached as Exhibits A and B to the Special Motion.)  
6

7 Other "tall weeds" examples are SIMON'S arguments to the effect that everyone agreed  
8 how the settlement check was to be made out, and how much in disputed funds would be kept on  
9 deposit. As set forth in the Motion, the settlement proceeds had to be deposited, or the checks  
10 would become stale and worthless. If they were made out to the Edgeworths, to VANNAH, or  
11 whomever, the key point was to get the funds from the flood defendants so they could be  
12 distributed. Furthermore, Mr. Vannah never agreed whether any amount that SIMON would  
13 claim in disputed funds was reasonable. Rather, as SIMON'S Exhibit 20 shows (at p. 01165),  
14 Mr. Vannah merely asked SIMON to "...expeditiously, determine exactly what his lien claim is  
15 going to be." He never validated the amount, and it's wrong for SIMON to state or imply  
16 anything to the contrary. (*Id.*)  
17

18 In another example, SIMON blames VANNAH of ill will in the refusal to withdraw the  
19 claim for conversion, or to provide the explicit basis for the claim for conversion, thus  
20 exacerbating the injuries and damages in this matter, including fees and costs. However, as  
21 argued in VANNAH'S Opposition to SIMON'S Emergency Motion, in several Motions and  
22 Special Motions to Dismiss, and what will soon be many Replies, the facts that make up the  
23 basis for the Edgeworths' Amended Complaint (Please see Appellants' Appendix attached to  
24 VANNAH'S Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence  
25 as Exhibit A; and Exhibit C to VANNAH'S Special Motion to Dismiss Amended Complaint:  
26 Anti-SLAPP), as well as well-established Nevada law, provide a compelling basis to bring and  
27  
28

1 maintain the claim for conversion against SIMON. *Evans v. Dean Witter Reynolds*, 116 Nev.  
2 598, 607, 5 P.3d 1043, 1049 (2000)(citing, *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413  
3 (1958)); *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980).

4 Frankly, it is very odd for SIMON to openly complain that Mr. Vannah, as an opposing  
5 counsel, wronged him somehow in failing to provide a list of authorities and basis for the  
6 claims being brought. SIMON failed to present any authority to support an argument that Mr.  
7 Vannah was under an obligation to do so. Of course, there isn't any such obligation or  
8 requirement in litigation, or SIMON would have cited to it. Rather, what SIMON'S counsel  
9 was asking Mr. Vannah for was a favor, and it wasn't granted. Refusing a favor isn't  
10 actionable, either, or SIMON would have cited to that authority, too.

11  
12 In yet another example, SIMON is still wrong to argue that VANNAH, as adverse  
13 counsel, owes an independent duty to SIMON here. The basis for this argument from SIMON  
14 is his constant and thoroughly unfounded position on the merits of the conversion claim. As  
15 argued above, Nevada law, with *Bader v. Cerri*, 96 Nev. 352, 356, 609 P.2d 314, 317 (1980), is  
16 right on point and provides the Edgeworths with the basis for a claim for conversion under the  
17 facts and circumstances presented. (Please see Appellants' Appendix attached to VANNAH'S  
18 Opposition to Plaintiff's previously filed Emergency Motion to Preserve Evidence as Exhibit  
19 A.)  
20

21 SIMON is also in error to repeatedly lean for support on *Bull v. McCuskey*, 96 Nev. 706,  
22 615 P.2d 957 (1980) for any of his propositions. The court in *Bull* makes a series of statements  
23 that eviscerate SIMON'S use of this case, yet supports each argument of VANNAH. *Bull*  
24 reiterated the rule that, "As a general proposition an attorney at law is *absolutely privileged* to  
25 publish defamatory matter concerning another...in which he participates as counsel, if it has  
26 some relation to the proceeding." (*Id.*, at 711-12; emphasis added.) *Bull* stated further: "The  
27  
28

1 privilege rest upon a public policy of securing to attorneys as officers of the court the utmost  
2 freedom in their efforts to obtain justice for their clients.” (*Id.*, at 712.)

3 *Bull* went on to state: “Attorney Bull’s comments may be understood to pertain to either  
4 Dr. McCuskey’s competence or his credibility, and therefore, are privileged.” (*Id.*) Finally, the  
5 court stated: “Although the denigrating comments of attorney Bull regarding Dr. McCuskey  
6 were privileged, *and alone would not supply a basis for liability in damages*, it does not follow  
7 that an attorney may so conduct himself without fear of discipline.” (*Id.*, emphasis added.) The  
8 discipline referred to by the court in *Bull* was before the State Bar, not a judge or jury of one’s  
9 peers. (*Id.*) No “basis for liability in damages” means no duty of care owed, plain and simple.  
10  
11 (*Id.*)

12 Therefore, the law in Nevada is crystal clear in its mandate that all of the allegations  
13 SIMON made against VANNAH, even if they’re factually correct such as “presenting false  
14 witnesses” (which VANNAH disputes and denies), SIMON’S Counts/claims are all barred by  
15 the absolute litigation privilege, as they clearly all pertain to communications allegedly made in  
16 **the course of litigation and during various judicial proceedings, together with the filing of**  
17 **pleadings, briefs, and other legal materials.** (*Id.*; see also SIMON’S Amended Complaint  
18 attached to the Motion as Exhibit A.) (*Id.*) There is nothing that provides support for an alleged  
19 independent duty owed by VANNAH to SIMON. (*Id.*) In short, there is no law that SIMON  
20 could cite that could hold VANNAH, as adverse counsel, liable to SIMON on any of the  
21 Counts/claims raised in his Amended Complaint/SLAPP. (*Id.*)

22  
23  
24 Finally, the last “tall weeds” argument to address is one where SIMON states and implies  
25 that the evidentiary hearing to adjudicate his lien was about something other than to adjudicate  
26 his lien. That hearing was all about the adjudication of SIMON’S lien and how much Judge  
27 Jones was going to award him. How do we know this? At a hearing on February 20, 2018,  
28

1 James R. Christensen, Esq., told the court that: "We move for adjudication under a statute. The  
2 statute is clear. The case law is clear." (Please see excerpts of the transcript of that hearing  
3 attached as Exhibit B, at p. 13:5-6.)

4 He went on to state that: "If you look through literally every single case in which there's  
5 a lien adjudication in the State of Nevada, in which there is some sort of dispute...the Court can  
6 take evidence...or set an evidentiary hearing...This is the way you resolve a fee dispute under  
7 the lien." (Id., at p 13:11-15; and, 14:1-2.) Mr. Christensen also said: "If the Court wants to set  
8 a date for an evidentiary hearing...Let's get this done...But there's nothing to stop that lien  
9 adjudication at this time." (Id., at 14:8-12.) The court then ordered the parties to attend a  
10 settlement conference, which failed to resolve the amount of SIMON'S lien, followed then by a  
11 status check to be held on April 3, 2018. (Please see Excerpts from Transcript attached as  
12 Exhibit C, at p. 15:18-19.)

13  
14  
15 At that hearing on April 3, 2018, the Court denied SIMON'S Anti-SLAPP Motion to  
16 Dismiss and ordered that SIMON'S Motion to Adjudicate Lien to be: "Set for Evidentiary  
17 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  
18 a.m." (Please see minutes of the court attached as Exhibit D.) What hearing was the court  
19 referring to? The evidentiary hearing for SIMON'S Motion to Adjudicate Lien, a proceeding  
20 that this Court deemed "...very, very important..." (See Exhibit B, at p. 2:19-20.) The court  
21 also ordered the parties to submit briefs prior to the hearing.

22  
23 On that note, how much ink did SIMON devote in his Brief re: Evidentiary Hearing to  
24 discuss the merits of PLAINTIFFS' Amended Complaint and whether or not it should be  
25 dismissed pursuant to NRCP 12(b)(5), or any other case or statute? Absolutely none. (Please  
26 see SIMON'S Brief re: Evidentiary Hearing, attached as Exhibit E.) Rather, every argument  
27 made focused solely on reasons for SIMON to get either a contingency fee via quantum meruit,  
28

1 or another \$692,120 in fees on an hourly basis via his super bill. (*Id.*)

2 How did Judge Jones view that issues to be resolved at the evidentiary hearing on  
3 SIMON’S Motion to Adjudicate Lien? Attached to this Reply as Exhibit F are excerpts from  
4 the transcript of the evidentiary hearing. On the first day of the evidentiary hearing, Judge  
5 Jones stated at page 4, lines 13-14: “Okay. So, this is the date and time set for the evidentiary  
6 hearing in regards to the lien that was filed in this case....” At page 14:15-17, the Court further  
7 stated: “So, this is the motion to – in regards to the adjudicating the lien. The motion was filed  
8 by you Mr. Christensen. Are you ready to call your first witness?”

10 Mr. Christensen then stated to the Court as follows, at page 18:18-24: “Secondly, this is  
11 a lien adjudication hearing. This is not an opening statement. We don’t have a jury. This is  
12 being presented to the Court in order for the Court to have a full understanding of the  
13 facts...There’s really no rules governing what you can say or can’t say in an introductory  
14 statement to a court in an adjudicatory – in a(n) adjudication hearing.”

16 On day #5, and at page 20, lines 17-19, while Mr. Greene was working to establish the  
17 background of Mrs. Edgeworth, the court stated: “Okay. Well, can we move on from that, Mr.  
18 Greene? Because I’m not really sure how that applies *to what’s owed to Mr. Simon and the*  
19 *legal work that he did.*” (*Id.*, emphasis added.)

21 After an explanation as to why this line of questions was relevant, the court added the  
22 following at page 21:2-13: “...I understand your desire to do that, Mr. Greene, but this isn’t a  
23 jury, this is me...*I’m here to make a call about the legal work that was done by Mr. Simon, and*  
24 *what is owed to him. That is the only thing I am here to pass judgment on.*” (*Id.*, emphasis  
25 added.) The court added further at page 21:12-13: “*I’m just here to decide* what is going to be  
26 done with what’s owed to them, *what’s owed to Mr. Simon*, who needs to get paid.” (*Id.*,  
27 emphasis added.)

28

1           What did SIMON believe back then (when the matter was much fresher in his mind)  
2 regarding the basis was of the evidentiary hearing on his motion to adjudicate his lien? At page  
3 39:4-6, Peter S. Christiansen, Esq., one of SIMON'S attorney's, stated and objected as follows:  
4 "It still has absolutely no relevance as to what money of the 1.9 million dollars in the joint trust  
5 account is owed to Mr. Simon and owed to the Edgeworth's, *that's the issue.*" (*Id.*, emphasis  
6 added.) Mr. Christiansen went further in an objection by stating: "Judge, this isn't a personal  
7 injury case, *this is an adjudication of an attorney's lien....*" (*Id.*, emphasis added.)  
8

9           The court's response was consistent with prior rulings and is as follows (at page 40:3-  
10 5): "...as I previously explained, I'm not here to judge anyone. *I'm here to get to the bottom of*  
11 *what is owed, what's been paid, what hasn't been paid, and what people are owed.*" (*Id.*,  
12 emphasis added.) It is clear to any reader of the record that the purpose of the evidentiary  
13 hearing was SIMON'S motion to adjudicate his lien, not the issue raised in this collateral  
14 argument by SIMON. (*Id.*) It can't get any clearer that the amount of the lien was all that  
15 concerned the judge over the five days of hearings. (Please see Exhibit F.)  
16

17           There is nothing in SIMON'S Opposition that can change the irrevocable truth that his  
18 Amended Complaint is a SLAPP that lacks any factual or legal change for survival in light of  
19 Nevada's Anti-SLAPP statutes, the case law, and VANNAH'S Special Motion. VANNAH'S  
20 Special Motion and this Reply make this clear, and SIMON failed in his efforts to refute this  
21 reality. The appropriate result is to grant VANNAH'S Special Motion to Dismiss: Anti-  
22 SLAPP.  
23

### 24 **III. CONCLUSION.**

25           VANNAH has presented sufficient evidence to show that their communications in the  
26 underlying judicial matter were petitions to the judicial body, as well as issues of public concern,  
27 that were true, or were made without knowledge of falsehood. (See the Affidavits of Mr.  
28

1 Vannah & Mr. Greene, attached as Exhibits A & B to the Special Motion.) As a result,  
2 VANNAH has met their burden on the first prong of Anti-SLAPP analysis to establish by  
3 preponderance of the evidence that SIMON'S claim is based on a good faith communication  
4 made in furtherance of the right to petition the courts. NRS 41.660(3)(a).  
5

6 With the burden shifted to SIMON, he was required to establish, by prima facie  
7 evidence, a likelihood of prevailing. NRS 41.665(2). He failed, as SIMON did not and cannot  
8 meet his burden, since there isn't a set of facts, or a body of law, that supports any of the  
9 Counts/claims in his Amended Complaint, as the basis for all of SIMON'S allegations against  
10 VANNAH are communications allegedly made in the course of litigation and during various  
11 judicial proceedings, together with the filing of pleadings, briefs, and other legal  
12 materials.  
13

14 In fact, there isn't one argument made or fact cited in SIMON'S SLAPP, or in his  
15 Opposition for that matter, that either Mr. Vannah or Mr. Greene said anything about or against  
16 SIMON outside of court proceedings or filings. Since these statements are "absolutely  
17 privileged," there is no set of facts...which would entitle SIMON to any relief. See, *Buzz Stew,*  
18 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Jacobs v.*  
19 *Adelson*, 130 Nev. 408, 412-413, 325 P.3d 1282, 1285-1286 (2014); *Bull v. McCuskey*, 96 Nev.  
20 706, 711-713, 615 P.2d 957 (1980).  
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

Since SIMON'S Amended Complaint is a SLAPP, since VANNAH met their burden, and since SIMON failed to meet his, VANNAH'S Special Motion to Dismiss: Anti-SLAPP must be granted.

DATED this 24<sup>th</sup> day of September, 2020.

**PATRICIA A. MARR, LTD.**

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.



1 **CERTIFICATE OF SERVICE**

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

3 Electronically:

4 Peter S. Christiansen, Esq.  
5 **CHRISTIANSEN LAW OFFICES**  
6 810 S. Casino Center Blvd., Ste. 104  
7 Las Vegas, Nevada 89101

8 Patricia Lee, Esq.  
9 **HUTCHINSON & STEFFEN, PLLC**  
10 Peccole Business Park  
11 10080 West Alta Dr., Ste. 200  
12 Las Vegas, NV 89145

13 M. Caleb Meyer, Esq.  
14 Renee M. Finch, Esq.  
15 Christine L. Atwood, Esq.  
16 **MESSNER REEVES LLP**  
17 8945 W. Russell Road, Ste 300  
18 Las Vegas, Nevada 89148

19 Traditional Manner:  
20 *None*

21 DATED this 24<sup>th</sup> day of September, 2020.

22 /s/Patricia A. Marr

23 An employee of the Patricia A. Marr, Ltd.

EXHIBIT A

EXHIBIT A

*Steven D. Grierson*

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

Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

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

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 26

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

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

4 /s/ James R. Christensen

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

13 **NOTICE OF MOTION**

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

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

20 10.

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

22 /s/ James R. Christensen

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

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

#### 5 6 IV. Argument

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

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

---

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

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

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

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

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

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

21 ...

22 ...

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

...

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

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

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

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

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

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

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

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

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

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

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



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

9  
10  
11 The California cases cited above all hold that suing a lawyer for filing a lien  
12 is subject to Anti-SLAPP dismissal. In other words, a lawyer (or a client) gets to  
13 resolve a fee dispute by court adjudication of a lien, without getting sued.

14  
15 The opposite side of the coin was examined in *Drell v. Cohen*, 232  
16 Cal.App.4<sup>th</sup> 24 (2014). *Drell* involved a lien dispute between two lawyers. One  
17 lawyer asked the Court to resolve the lien dispute, and the other filed a special  
18 motion to dismiss the lien adjudication. The court denied the motion, because  
19 court adjudication of the lien was the legal method to resolve the fee dispute. (No  
20 one was sued for conversion in *Drell*.)

21  
22 As background, the California Legislature has not provided attorneys with a  
23 statutory process to adjudicate an attorney lien, as the Nevada Legislature has  
24 done. See, e.g., *Carroll v. Interstate Brands*, 99 Cal. App. 4<sup>th</sup> 1168 (2002) (the  
25

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

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

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

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

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

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

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

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

17 *Blaurock*, 2015 WL 3540903.  
18

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

---

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

1 **V. CONCLUSION**

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

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

8 /s/ James R. Christensen

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

18 **CERTIFICATE OF SERVICE**

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

24 /s/ Dawn Christensen

25 an employee of JAMES R. CHRISTENSEN

# EXHIBIT B

# EXHIBIT B



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-16-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 20, 2018

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

17 APPEARANCES:

18 For the Plaintiff:

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

19 For the Defendant:

THEODORE PARKER, ESQ.

20 For Daniel Simon:

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

21 For the Viking Entities:

JANET C. PANCOAST, ESQ.

22 Also Present:

DANIEL SIMON, ESQ.

23  
24  
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

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

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

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

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

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

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

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

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

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

24           Mister –

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



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

7 THE COURT: Okay.

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

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

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

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

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

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

23 THE COURT: Okay --

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

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

EXHIBIT C

EXHIBIT C

*Steven D. Grierson*

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

1                   LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

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

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

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

9                   THE COURT:  Okay.

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

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

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

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

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

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

8 THE COURT: Okay.

9 MR. CHRISTENSEN: Thank you, Your Honor.

10 THE COURT: Thank you, counsel.

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

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

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

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

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

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

8 THE COURT: Not the new one.

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

11 THE COURT: Yeah.

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

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

21 THE COURT: Okay.

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

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

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

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

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

12 THE COURT: Okay.

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

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

17 MR. VANNAH: Right.

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

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

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

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

17           MR. CHRISTENSEN: That's correct.

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

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

24           MR. VANNAH: Well --

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



EXHIBIT D

EXHIBIT D

## EVENTS &amp; 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 Plaintiff's Complaint Pursuant to NRCP 12(b)(5)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Counter-motion to Amend Complaint (Consolidated Case No. A767242)...Plaintiffs Edgeworth Family Trust and American Grating, LLC's Opposition to Defendant's Motion to Dismiss and Counter-motion 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 it will rule on the Motion to Dismiss at the conclusion of the hearing. COURT FURTHER ORDERED, Counsel to submit briefs by 5-18-18 and courtesy copy chambers. 05/29/18 11:00 A.M. EVIDENTIARY HEARING 05/30/18 10:30 A.M. CONTINUED EVIDENTIARY HEARING 05/31/18 9:00 A.M. CONTINUED EVIDENTIARY HEARING

Parties PresentReturn to Register of Actions

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.

1 **I. PREFACE**

2 This brief is submitted for the evidentiary hearing being held by the Court to  
3 adjudicate the Law Office attorney lien pursuant to NRS 18.015. This brief is  
4 limited primarily to adjudication issues.  
5

6 **II. INTRODUCTION**

7 The Edgeworth and Simon families were close friends for many years.  
8 When a flood occurred in a speculation home being built by Brian Edgeworth,  
9 Brian turned to his friend Daniel Simon for help. Mr. Simon agreed to help, and  
10 worked for his friend without a fee agreement.  
11

12 The flood was caused by a defective fire sprinkler built by Viking and  
13 installed by Lange. Mr. Simon filed a case against Viking and Lange.  
14

15 The entire law office worked for Brian Edgeworth; and, Mr. Simon obtained  
16 an amazing result. Mr. Simon recovered over \$6M (\$6,000,000.00) in a case with  
17 a property damage cost of repair of about five hundred thousand, and on a home  
18 with a total build budget of about 3.3M.  
19

20 Shortly prior to trial, after Viking made a \$6M settlement offer, Brian  
21 Edgeworth ended communication with the Law Office, stopped taking litigation  
22 advice from Mr. Simon, and hired the Vannah firm to sue the Law Office. In so  
23 doing, Mr. Edgeworth constructively discharged Mr. Simon from any alleged fee  
24 agreement; and, took the advice of Mr. Vannah over Mr. Simon when Mr.  
25

1 Edgeworth abandoned a valuable contract based claim against Lange for attorney  
2 fees spent in pursuit of Viking.

3 This Court is tasked with settling the amount of the outstanding fee owed the  
4 Law Office for its excellent work. As detailed below, whether the Court uses the  
5 *quantum meruit* analysis suggested by the Law Office or the hourly rate of \$550.00  
6 an hour preferred by Edgeworth, the outstanding fee owed is substantial.  
7

### 8 **III. THE LAW OFFICE IS DUE A SUBSTANTIAL FEE**

9 This Court will necessarily find that the Law Office is due a substantial fee.  
10 As the two main arguments go; either, the Law Office is due a reasonable fee  
11 under *quantum meruit*, or the Law Office is due \$550.00 an hour for unpaid work.  
12

#### 13 **A. The weight of the evidence establishes that there was an implied-** 14 **in-fact contract with a missing attorney fee term.**

15 A charging lien is a “creature of statute”. *Argentina Consolidated Mining, v.*  
16 *Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009). NRS  
17 18.015(2) states that the attorney can recover the contract rate; or, if no contract  
18 rate, then a “reasonable fee”-that is, *quantum meruit*:  
19

20 2. A lien pursuant to subsection 1 is for the amount of any fee which has  
21 been agreed upon by the attorney and client. In the absence of an agreement,  
22 the lien is for a reasonable fee for the services which the attorney has  
23 rendered for the client.  
24  
25

1 In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme  
2 Court found:

3 In the absence of a fee agreement, NRS 18.015(a) allows an attorney's lien  
4 to be "for a reasonable fee." **When an express fee agreement exists**, NRS  
5 18.015 does not specify whether the district court must similarly examine an  
6 attorney fees award for reasonableness. (Emphasis added.)

7 An *express* contract can be oral or written; an *implied* contract is inferred by  
8 conduct. Black's Law Dictionary explains:

9 *Express and implied.* An express contract is an actual agreement of the  
10 parties, the terms of which are openly uttered or declared at the time of  
11 making it, being stated in distinct and explicit language, either orally or in  
12 writing.

13 An implied contract is one not created or evidenced by the explicit  
14 agreement of the parties, but inferred by the law, as a matter of reason and  
15 justice from their acts or conduct, the circumstances surrounding the  
16 transaction making it a reasonable, or even a necessary, assumption that a  
17 contract existed between them by tacit understanding. (Italics in original.)

18 Black's Law Dictionary, Fifth Edition, at 292-93.

19 NRS 18.015(2) follows basic Nevada contract law. If there is an express  
20 (written or oral) contract, then the contract terms are applied. If there is an implied  
21 in fact contract - that is, a contract implied by conduct; then, *quantum meruit* is  
22 used to determine the missing payment term. See, e.g., *Certified Fire Protection v.*  
23 *Precision Construction*, 283 P.3d 250, 256 (Nev. 2012).

24 1. There is no express written agreement.

25 The parties agree that there is no express written agreement.

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- 1           • The billings sent were incomplete and did not reflect all work  
2 performed. Mr. Edgeworth is a sophisticated business person with  
3 experience with hourly attorneys. Mr. Edgeworth was aware the bills  
4 were incomplete.  
5
- 6           • On August 22, 2017, Mr. Edgeworth admitted no express oral  
7 agreement had been reached on the amount of the fee. Mr. Edgeworth  
8 wrote:

9                       We never really had a structured discussion about how this  
10 might be done... I could also swing hourly for the whole case  
11 (unless I am off what this is going to cost). I would likely  
12 borrow another \$450k from Margaret in 250 and 200  
13 increments and then either I could use one of the house sales for  
14 cash or if things get really bad, I still have a couple million in  
15 bitcoin I could sell.”

16                       (Ex. 2, 8.22.2017 email.)

17           If there was an agreement to pay Mr. Simon \$550.00 an hour in place, the  
18 above statements would not have been made by Mr. Edgeworth. Instead, Mr.  
19 Edgeworth’s own words confirm that his friend was not fully billing the case to  
20 ease the strain on Mr. Edgeworth, and because of an expectation of a fee based on  
21 results and not time. Mr. Simon does contingency fee work, he is comfortable  
22 sharing risk on a case.

23           The Edgeworth claims do not survive the weight of the evidence.  
24  
25

1           3.     There was an implied-in-fact contract, with a missing fee term.

2           There was an implied-in-fact contract between the Law Office and the  
3 Edgeworths. The parties agree the Law Office performed excellent legal work,  
4 obtained an amazing result, and the work was not done for free.  
5

6           The weight of the evidence establishes that the Law Office fee was not  
7 agreed upon. (*See, e.g.,* Ex. 1 & 2.) Under the lien statute and Nevada contract  
8 law, when there is a missing payment term in an implied-in-fact contract, *quantum*  
9 *meruit*-that is, a reasonable fee, is used to determine what is owed. NRS  
10 18.015(2); and, *Certified Fire Protection*, 283 P.3d at 256.  
11

12           4.     The contract analysis is moot, because the Edgeworths' constructively  
13 discharged the Law Office.

14           When a lawyer is discharged by the client, the lawyer is no longer  
15 compensated under the discharged/breached/repudiated contract, but is paid based  
16 on *quantum meruit*. *See, e.g., Golightly v. Gassner*, 281 P.3d 1176 (Nev.  
17 2009)(unreported)(discharged contingency attorney paid by *quantum meruit* rather  
18 than by contingency fee pursuant to agreement with the client); *citing, Gordon v.*  
19 *Stewart*, 324 P.3d 234 (1958)(attorney paid in *quantum merit* after client breach of  
20 agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees awarded in  
21 *quantum meruit* when there was no contingency agreement).  
22  
23  
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1 In this case, the clients constructively discharged the Law Office:

- 2 • The clients stopped all communication with the Law Office-even  
3 though vital legal decisions had to be made.
- 4 • The clients did not follow the advice of the Law Office on the Lange  
5 attorney fee claim; and, abandoned a certain contract claim worth over  
6 one million dollars.
- 7 • The clients accused Mr. Simon of an intent to steal six million dollars.
- 8 • The clients' new lawyer accused the Law Office of billing fraud.
- 9 • The clients' new lawyer threatened an increased damage claim unless  
10 the Law Office continued to work for the client, despite being sued.
- 11 • The client has not paid the Law Office any amount for undisputed  
12 time.
- 13 • The clients sued the Law Office.
- 14 • The clients sued the Law Office for conversion before there were any  
15 funds to convert.
- 16 • The clients filed two complaints against the Law Office, seek a jury  
17 trial and want punitive damages.

18 In *Rosenberg v. Calderon Automation*, 1986 Ohio App. LEXIS 5460 (Jan.  
19 31, 1986), a lawyer provided services to the client without a contract. As the case  
20 was ready to be resolved the client did not want to pay the lawyer because there

1 was no contract. The client stopped all communication with the lawyer. The Ohio  
2 Appellate Court found that the client refusal to communicate with their lawyer was  
3 a constructive termination of services; and, that the lawyer was due compensation  
4 by *quantum meruit*.

5  
6 Constructive termination can occur in other ways. In *McNair v.*  
7 *Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court found constructive  
8 termination of a lawyer when the client placed "counsel in a position that precluded  
9 effective representation and thereby constructively discharged his counsel or (2)  
10 through his obstructionist behavior, dilatory conduct, or bad faith, the defendant de  
11 facto waived counsel."

12  
13 Failure to pay attorney fees is constructive termination. See e.g., *Christian*  
14 *v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997)  
15 ("Further, the court considers Sewer's failure to pay attorneys' fees as a  
16 constructive termination of the attorney-client relationship between Sewer and  
17 D'Anna.").

18  
19 Suit between an agent and a principal is constructive discharge. See *Tao v.*  
20 *Probate Court for the Northeast Dist.* #26, 2015 Conn. Super. LEXIS 3146, \*13-  
21 14, (Dec. 14, 2015). See also *Maples v. Thomas*, 565 U.S. 266 (2012); *Harris v.*  
22 *State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*, 2017 Nev. Unpubl. LEXIS  
23 472.  
24  
25

1 When a client stops talking to their lawyer, threatens their lawyer, sues their  
2 lawyer, refuses to pay their lawyer, and hires a new lawyer, there has been a  
3 constructive discharge of the lawyer by the client.

4 **B. The Outstanding Fee Owed to the Law Office.**

5 The Law Office did excellent work and obtained an amazing result. The  
6 Law Office is due a fee. The Law Office submits it is due a reasonable fee under  
7 *quantum meruit*. The Edgeworths argue that the Law Office should be paid  
8 \$550.00 an hour. Under either scenario, the Law Office is due a substantial fee.  
9

10  
11 1. Reasonable Fee under *Quantum Meruit*.

12 When there is no express (oral or written) contract, an attorney is due a  
13 reasonable fee under the Nevada attorney lien statute, NRS 18.015(2). The Court  
14 has wide discretion on the method of calculation of the attorney fee. *Albios v.*  
15 *Horizon Communities, Inc.*, 132 P.3d 1022, 1034 (Nev. 2006). Whatever method  
16 of calculation is used by the Court, the amount of the attorney fee must be  
17 reasonable under the *Brunzell* factors. *Id.* The Court should enter written findings  
18 of the reasonableness of the fee under the *Brunzell* factors. *Argentina*  
19 *Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d  
20 779, at fn2 (Nev. 2009).  
21  
22  
23  
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1       The *Brunzell* factors are:

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

7       *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

8           The Declaration of William Kemp is attached at Exhibit 3. Mr. Kemp is one

9       of the top product liability attorneys in the United States. Mr. Kemp is also very

10      experienced in the determination of the reasonable fee of an attorney in a product

11      liability case. In his Declaration, Mr. Kemp describes his experience in detail,

12      including his work on the determination of a reasonable attorney fee. Mr. Kemp

13      then reviews and applies the *Brunzell* factors to find a reasonable fee for the Law

14      Office for the amazing work performed on behalf of the Edgeworths. Mr. Kemp

15      reaches a reasonable attorney fee value of \$2,440,000.00.

16

17

18           Mr. Kemp used the market approach (fair market value) to calculate the

19      reasonable fee. The fair market value, or market price, is an accepted method to

20      calculate a fee. Restatement Third, The Law Governing Lawyers, §39.

21

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1 The Law Office seeks a reasonable fee of \$1,977,843.80 as stated in the  
2 Amended Lien of January 2, 2018. The Law Office number is net of \$367,606.25  
3 already paid. The Law Office seeks a total fee below the market rate set by Mr.  
4 Kemp.

5  
6 2. The hourly rate.

7 The Law Office provided comprehensive billings which documented all  
8 work, including previously unbilled work and work performed since the last  
9 Edgeworth payment.

10  
11 The hours were provided for several reasons. First, Courts can be critical of  
12 attorneys-even those with a written contingency fee agreement-that seek fees  
13 without providing a time record. *See, e.g., Golightly*, 281 P.3d 1176. Second, the  
14 comprehensive bill provides a record of the time spent and work done on the file,  
15 which is helpful for the Court. Third, the Law Office is aware that the Court may  
16 choose to calculate the fee due on an hourly basis. While the Law Office believes  
17 the facts call for a reasonable fee following the analysis of Mr. Kemp, the Law  
18 Office is not going to ignore the alternate possibility. Fourth, the time record  
19 provides additional evidence of constructive discharge-in that, the record supports  
20 the value of the contract claim against Lange which the Edgeworths abandoned  
21 against the advice of Mr. Simon.  
22  
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1           Lastly, the hours submitted demonstrate the amount of risk Mr. Simon  
2 shared with the clients. As explained by Mr. Edgeworth in his August 2017 email,  
3 if Brian Edgeworth paid an hourly for the "whole case", he would need to take out  
4 more loans and/or sell a house to pay the Law Office. (Ex. 2.) (Mr. Edgeworth is  
5 a knowledgeable person, he understood that paying hourly for the whole case could  
6 cost more than an additional \$450,000.00. Ex. 2.) The Law Office did not force  
7 Mr. Edgeworth to sell a house or his Bitcoin. Instead, the Law Office took a  
8 milder approach for Mr. Simon's friend, and balanced the utility of demonstrating  
9 fees with the goal of easing financial strain on Brian Edgeworth.  
10  
11

12           All hours should be considered. The previous billings were plainly  
13 incomplete, which was known to Mr. Edgeworth as many calls/emails and  
14 meetings with the Law Office were not previously billed; and, because he did not  
15 have to take out more loans or sell Bitcoin to pay the bills. And, until the Viking  
16 case settled, the number of hours and final amount of the attorney fee claim against  
17 Lange was unknown.  
18  
19

20           There is no estoppel or other argument which prevents the submission and  
21 payment of a complete bill for services in this case. Mr. Edgeworth clearly  
22 understands that money is owed, but has made the decision not to pay his lawyer.  
23 Mr. Edgeworth explicitly understood that an hourly rate for the whole case would  
24 cost considerably more than what he had already paid (Ex. 2).  
25



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 18<sup>th</sup> day of May, 2018.

*James R. Christensen*  
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Attorney for LAW OFFICE OF  
DANIEL S. SIMON, P.C.

EXHIBIT F

EXHIBIT F

4 THE COURT: -- Family Trust, American Grating, LLC v. Daniel  
5 Simon Law, Daniel Simon, d/b/a Simon Law. Okay.  
6 So, this is the date and time set for an evidentiary hearing.  
7 Can we have everyone's appearances for the record?  
8 MR. VANNAH: Yes. Robert Vannah and John Greene on  
9 behalf of the Edgeworth Trust and the Edgeworth family.  
10 Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon  
11 and his law firm.  
12 MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.  
13 THE COURT: Okay. So, this is the date and time set for the  
14 evidentiary hearing in regards to the lien that was filed in this case, but I  
15 also have Mr. Simon's Law Office filed a trial brief regarding the  
16 admissibility of a fee agreement. Did you guys get that?  
17 MR. VANNAH: Yes, Your Honor.  
18 THE COURT: Okay. Are you guys prepared to respond to  
19 that or --  
20 MR. VANNAH: We are, Your Honor.

15 THE COURT: Okay. So, this is the motion to -- in regards to  
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are  
17 you ready to call your first witness?  
18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not  
19 quite as fast a reader as I used to be.  
20 THE COURT: It's okay. Me either.  
21 [Pause]  
22 MR. CHRISTENSEN: Okay. We do have an opening  
23 PowerPoint --  
24 THE COURT: Okay.  
25 MR. CHRISTENSEN: -- that we'd like to go through --

3 | quote from the email. And that was in May of 2016. And from then on,  
4 | the case progressed until it was filed in June, and then when it became  
5 | active really in late 2016 through 2017 before Your Honor.

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

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

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

21           Q     What affect, Angela, do you remember that this flood  
22 litigation had on you and your family?

23           MR. CHRISTIANSEN: Objection, relevance.

24           THE COURT: Mr. Greene?

25           MR. GREENE: It has relevance, as she's going to be

- 38 -

1     answering shortly, on every aspect, including their finances, including  
2     their ability to conduct other business affairs, and that Danny Simon was  
3     well aware of it.

4           MR. CHRISTIANSEN: It still has absolutely no relevance as to  
5     what money of the 1.9 million dollars is in the joint trust account is owed  
6     to Mr. Simon and owed to the Edgeworth's, that's the issue.

7           MR. GREENE: Oh, wow. The thing is, is that three days of  
8     Brian Edgeworth being on for two days on the stand recently and limited  
9     to how much Danny is owed or not owed, pursuant to the work that he  
10    did or didn't put perform went far abreast of that.

11           So, this is her chance, she was injured in this -- in this case,  
12    Your Honor. This is not a huge diversion from a relevant issue of  
13    damages that they suffered in this case.

14           MR. CHRISTIANSEN: Judge, this isn't a personal injury case,  
15    this is an adjudication of an attorney's lien, and her mental anguish  
16    because she chose to not pay Mr. Simon and sue him instead, isn't  
17    relevant.

1           MR. CHRISTENSEN: No, Judge. They ended my  
2 examination of Mr. Edgeworth. I asked a question, and I intended to go  
3 into a slew of things he and his wife had talked about. Mr. Vannah  
4 asserted the privilege that I couldn't talk to him about it. I sat down. Mr.  
5 Vannah has that right. That was the end of it. They're judicially  
6 estopped from now unwinding that assertion.

7           THE COURT: Well, I mean, she can testify to something she  
8 has independent knowledge of; but she can't testify to something he told  
9 her because you guys have invoked that privilege. And this is about the  
10 volleyball. Wasn't this about -- I'm sorry; I forgot what the question was  
11 you asked. Wasn't this about him doing some volley -- the volleyball  
12 place?

13           MR. GREENE: It's about charitable backgrounds, talking  
14 about her background at this particular point.

15           THE COURT: Okay.

16           MR. GREENE: So --

17           THE COURT: Okay. Well, can we move on from that, Mr.  
18 Greene? Because I'm not really sure how that applies to what's owed to  
19 Mr. Simon and the legal work that he did.

20           MR. GREENE: Well, I understand that, Your Honor. But they  
21 spent time and volumes and words in their briefs for lack of a better  
22 word, sliming the Edgeworths. Calling them dishonest, that they don't  
23 pay their bills, that they're -- that they can't be trusted. Most assuredly  
24 their charitable background, their giving, their conduct towards others is  
25 certainly relevant to help unwind some of that stain that the defense put

1 on.

2 THE COURT: Well, let me -- I understand your desire to do  
3 that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging  
4 them based on whether or not they gave money to Three Square. I'm  
5 here to make a call about the legal work that was done by Mr. Simon and  
6 what is owed to him. That is the only thing I am here to pass judgment  
7 on.

8 I'm not here to pass judgment on who's passing out canned  
9 goods at Three Square. I'm doing it every other week in all reality, but  
10 that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of  
11 fact. I'm not a jury. I'm not here to discuss things that are outside the  
12 legal realm. I'm just here to decide what is going to be done with what's  
13 owed to them, what's owed to Mr. Simon, who needs to get paid.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GREENE:

16 Q Angela:

17 A Yes.

18 Q When did you come to know the Simons?

19 A I met Alaina (phonetic) when my daughter was in preschool  
20 and we've known them for quite a long time. Alaina helped me a lot  
21 when my father passed away. She was a good friend, and I considered  
22 her to be one of my closest friends. We took family vacations together  
23 and you know, our kids knew each other since preschool.

24 Q Did you ever at that time gain an understanding as to what  
25 her husband Danny did for a living?

1 answering shortly, on every aspect, including their finances, including  
2 their ability to conduct other business affairs, and that Danny Simon was  
3 well aware of it.

4 MR. CHRISTIANSEN: It still has absolutely no relevance as to  
5 what money of the 1.9 million dollars is in the joint trust account is owed  
6 to Mr. Simon and owed to the Edgeworth's; that's the issue.

7 MR. GREENE: Oh, wow. The thing is, is that three days of  
8 Brian Edgeworth being on for two days on the stand recently and limited  
9 to how much Danny is owed or not owed, pursuant to the work that he  
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11 So, this is her chance, she was injured in this -- in this case,  
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13 damages that they suffered in this case.

14 MR. CHRISTIANSEN: Judge, this isn't a personal injury case,  
15 this is an adjudication of an attorney's lien, and her mental anguish  
16 because she chose to not pay Mr. Simon and sue him instead, isn't  
17 relevant.

18 MR. GREENE: Wow. He's right, it's not a personal injury  
19 case at a 40 percent fee. He's dead right about that. It is, you  
20 know --

21 THE COURT: Hold on. One minute, I think that's where  
22 we're all -- but I think we have -- we need to limit this hearing, because I  
23 think the reason that we're in Day 5 is because there have been no limits  
24 on this hearing, this three-day hearing that now we're in Day 5.

25 The question was what effect did this have on her.



1 MR. GREENE: On the family, and it's a broad question.

2 THE COURT: It's a broad -- well, she can talk about the  
3 financial aspects of that, because as I previously explained, I'm not here  
4 to judge anyone. I'm here to get to the bottom of what is owed, what's  
5 been paid, what hasn't been paid, and what people are owed. She can  
6 talk about the financial effects of how this affected her family.

7 MR. GREENE: Okay.

8 BY MR. GREENE:

9 Q What financial effects did this litigation have on you and your  
10 family?

11 A It was very stressful. It was a very stressful time for us.

12 THE COURT: And you said -- I'm sorry, Mr. Greene, I don't  
13 mean to cut you off either, but we kind of moved on. And I'm sorry, I  
14 never know when you are done with one section.

15 You said you had concerns that the billing was exaggerated.  
16 Are these concerns that you have now or are these concerns that you  
17 had when you guys received, because I thought Mr. Greene was talking  
18 about the four original bills. Did you have concerns when you received  
19 those four original bills, or are these concerns you have after the  
20 January 2018 bill?

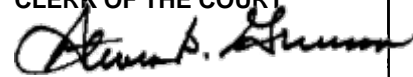
21 THE WITNESS: I had concerns back then, Your Honor.

22 THE COURT: Did you express those to Mr. Simon?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 And I'm sorry, Mr. Greene.



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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' REPLY  
RE SPECIAL MOTIONS 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 Reply of the 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.

///

1 DATED this 25<sup>th</sup> day of September, 2020.

2 PATRICIA A. MARR, LTD.

3  
4 /s/Patricia A. Marr, Esq.

5 PATRICIA A. MARR, ESQ.  
6

7 **CERTIFICATE OF SERVICE**

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

9 Electronically:

10  
11 Peter S. Christiansen, Esq.  
12 **CHRISTIENSEN LAW OFFICES**  
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15 Patricia Lee, Esq.  
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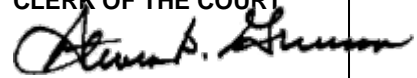
20 M. Caleb Meyer, Esq.  
21 Renee M. Finch, Esq.  
22 Christine L. Atwood, Esq.  
23 **MESSNER REEVES LLP**  
24 8945 W. Russell Road, Ste 300  
25 Las Vegas, Nevada 89148

26 Traditional Manner:  
27 *None*

28 DATED this 25<sup>th</sup> day of September, 2020.

/s/Patricia A. Marr

An employee of the Patricia A. Marr, Ltd.

**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 BRIAN  
EDGEWORTH, ANGELA  
EDGEWORTH, EDGEWORTH  
FAMILY TRUST AND AMERICAN  
GRATING, LLC'S JOINDER TO  
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**

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, herby

1 submit this joinder to the Reply of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and  
2 Robert D. Vannah, CHTD., d/b/a Vannah & Vannah, to Plaintiffs' Opposition to Vannah's Special  
3 Motion to Dismiss Plaintiffs' Amended Complaint: Anti-Slapp, e-filed September 24, 2020.

4 DATED this 25<sup>th</sup> day of September, 2020.

5 **MESSNER REEVES LLP**

6 /s/ Christine Atwood

7 M. Caleb Meyer, Esq.

8 Nevada Bar No. 13379

9 Renee M. Finch, Esq.

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15 *Attorneys for Defendants American Grating,*

16 *LLC Edgeworth Family Trust; Brian Edgeworth*

17 *and Angela Edgeworth*

**CERTIFICATE OF SERVICE**

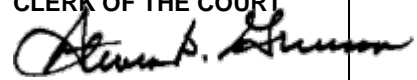
On this 25<sup>th</sup> day of September 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC'S JOINDER TO REPLY OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, 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** 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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*Attorney for Defendants Robert Darby  
Vannah, Esq., John B. Greene, Esq., and  
Robert D. Vannah, CHTD., dba Vannah  
& Vannah*

/s/ Nicholle Pendergraft  
Employee of MESSNER REEVES LLP



**JOIN**

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*Attorneys for Defendants American Grating, LLC  
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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 BRIAN  
 EDGEWORTH, ANGELA  
 EDGEWORTH, EDGEWORTH  
 FAMILY TRUST AND AMERICAN  
 GRATING, LLC'S JOINDER TO  
 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  
 MOTION TO DISMISS PLAINTIFF'S'  
 AMENDED COMPLAINT**

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, hereby

1 submit this joinder to the Reply of Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and  
2 Robert D. Vannah, CHTD., d/b/a Vannah & Vannah, to Plaintiffs' Opposition to Vannah's Motion  
3 to Dismiss Plaintiff's Amended Complaint, e-filed September 24, 2020.

4 DATED this 25<sup>th</sup> day of September, 2020.

5 **MESSNER REEVES LLP**

6 /s/ Christine Atwood

7 M. Caleb Meyer, Esq.

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15 *Attorneys for Defendants American Grating,*

16 *LLC Edgeworth Family Trust; Brian Edgeworth*

17 *and Angela Edgeworth*



**CERTIFICATE OF SERVICE**

On this 25<sup>th</sup> day of September 2020, pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused the foregoing **DEFENDANTS BRIAN EDGEWORTH, ANGELA EDGEWORTH, EDGEWORTH FAMILY TRUST AND AMERICAN GRATING, LLC'S JOINDER TO 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 MOTION TO DISMISS PLAINTIFF'S' AMENDED COMPLAINT** 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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Kendele L. Works, Esq.  
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*Attorney for Defendants Robert Darby  
Vannah, Esq., John B. Greene, Esq., and  
Robert D. Vannah, CHTD., dba Vannah  
& Vannah*

/s/ Nicholle Pendergraft  
Employee of MESSNER REEVES LLP



1 RTRAN

2  
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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 LAW OFFICE OF DANIEL S.  
9 SIMON,

10 Plaintiffs,

11 vs.

12 EDGEWORTH FAMILY TRUST,

13 Defendants.

CASE#: A-19-807433-C

DEPT. XXIV

14 BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE  
15 THURSDAY, OCTOBER 1, 2020

16 **RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE VIA**  
17 **BLUEJEANS HEARING**  
18 **ALL PENDING MOTIONS**

19 APPEARANCES:

20 For the Plaintiff:  
21 (Law Office of Daniel S. Simon)

PETER S. CHRISTIANSEN,  
ESQ.  
KENDELEE L. WORKS, ESQ.

22 For the Defendants:  
23 (American Grating, LLC and Angela  
24 and Brian Edgeworth)

RENEE M. FINCH, ESQ.  
CHRISTINE L. ATWOOD, ESQ.

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APPEARANCES (CONTINUED):

For the Defendants:  
(Robert D. Vannah, CHTD, Robert  
Darby, Esq., and John Buchanan  
Greene)

PATRICIA A. MARR, ESQ.

RECORDED BY: NANCY MALDONADO, COURT RECORDER

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1 Las Vegas, Nevada, Thursday, October 1, 2020

2  
3 [Case called at 9:51 a.m.]

4 THE COURT RECORDER: Pages 7 through 8, A807433,  
5 Law Office of Daniel S. Simon versus Edgeworth Family Trust.

6 THE COURT: All right, and who do we have on line here for  
7 Plaintiff?

8 MR. CHRISTIANSEN: Pete Christiansen and Kendelea  
9 Works for the Plaintiffs, Your Honor.

10 THE COURT: All right. Thank you.

11 And I see other parties that I wonder if they're really still  
12 actively involved in this litigation. American Grating, are they still really a  
13 Defendant in the case?

14 MR. CHRISTIANSEN: They are, Your Honor.

15 MS. FINCH: Yes, Your Honor. Yes.

16 THE COURT: Okay, so who do we have on behalf of  
17 American Grating?

18 MS. FINCH: Good morning, Your Honor, this is Attorney  
19 Renee Finch, along with Attorney Christine Atwood.

20 THE COURT: All right.

21 MS. FINCH: And we're appearing on behalf of American  
22 Grating, but also Defendants Brian and Angela Edgeworth and the  
23 Edgeworth Family Trust.

24 THE COURT: Okay. All right, thank you.

25 And then, who do we have on behalf of the Vannah and

1 Buchanan Defendants?

2 MS. MARR: Good morning, Your Honor, this is Attorney  
3 Patricia Marr appearing on behalf of John Buchanan Greene, Robert  
4 Darby Vannah, and Robert D. Vannah Charter doing business as  
5 Vannah and Vannah.

6 THE COURT: Okay, so we have a series of motions here, but  
7 to state it succinctly, we have a special anti-SLAPP Motion to Dismiss  
8 from Defendants Edgeworth and a special anti-SLAPP Motion to  
9 Dismiss from Defendants Vannah. And then, we have the conventional,  
10 I'll call it to make the distinction, Motion to Dismiss also filed by  
11 Defendants Vannah.

12 These motions also refer to two appendices that were filed  
13 August 27th of 2020. One is 234 pages and the second is 197 pages.

14 On September 10th, the Plaintiff filed an opposition to all of  
15 Defendant's motions and contemporaneously filed a -- an appendix of  
16 1,459 pages.

17 Originally, there were motions in this case that were ostensibly  
18 calendared from consideration on August 13th, 2020, calendar tort  
19 consideration, but the pleadings that had been filed ignored the 30-page  
20 limitation and were a chaotic hodgepodge of filings.

21 So the Court instructed counsel to start over and present their  
22 motions and briefs in compliance with the Rules. The Court gave a  
23 briefing schedule August 27th to correctly file motions, September 10th  
24 to file an opposition, and September 24th to file any reply. The parties  
25 complied with these deadlines.

1           The suit which is alleged to be a SLAPP suit, Strategic  
2 Lawsuit Against Public Participation, is the suit that was filed by Simon  
3 against Edgeworth and Vannah. I'm just going to give you my  
4 impressions of what I have read. And then, we will discuss further.

5           The special motion of Robert Darby Vannah, et al was filed  
6 first on August 25th, so it will be considered first. The thrust of this anti-  
7 SLAPP motion is that Simon's suit was brought in response to the legal  
8 use of the courts by Defendants here to redress wrongs.

9           And Defendant contends that all of the communications in and  
10 connected to the litigation were completely protected and immune from  
11 legal action.

12           At page 13, Defendant says that Plaintiff's suit is clearly a  
13 SLAPP suit, because its allegations all arise from protected  
14 communications made in direct connection with an issue under  
15 consideration by a judicial body.

16           At pages 15 and 16, Defendant quotes excerpts from Simon's  
17 complaint in which Simon alleges as a basis for his suit the protected  
18 allegations and assertion of claims for relief in the suit that was filed by  
19 Vannah on behalf of Edgeworth against Simon.

20           So the Defendant concludes we have met our initial burden to  
21 demonstrate that the communications would form the basis of Simon's  
22 suit are protected communications under NRS 41.637.

23           At pages 17 through 20, Defendant's argument changes  
24 focus, shifting into a more conventional motion to dismiss analysis. The  
25 thrust of the arguments that since the claims by Simon are all, according

1 to the Defendant, based upon privileged communications and pleadings  
2 and judicial proceedings, Simon has little to no chance of succeeding on  
3 the merits.

4 At page 19, Defendant says the language in Simon's claim for  
5 wrongful use of civil proceedings is nothing more, either factually or  
6 legally, than one couched in malicious prosecution and/or abuse of  
7 process and lacks sufficient and/or legal support to -- sufficient factual  
8 and/or legal support to meet his burden on these counts either.

9 The Vannah then excerpts multiple paragraphs from Simon's  
10 complaint. And all of them are indeed couched in terms of the  
11 allegations, assertions, and actions taken in pursuing litigation against  
12 Simon.

13 The tenor of Simon's complaint is that Vannah's actions are  
14 perceived by Simon as audacious, even though they are in fact  
15 privileged and protected actions and were so long before anti-SLAPP  
16 litigation was even contemplated.

17 The Court will not recount the paragraphs in language here,  
18 but they are found in Vannah's Special Motion to Dismiss at pages 15  
19 through 16.

20 The language excerpted there from Simon's complaint  
21 unmistakably references the protected communications as the basis for  
22 Simon's claims against Vannah, inherently unsustainable as causes of  
23 action.

24 The Court is curious as to whether or not these claims were  
25 ever raised by Simon in the initial litigation commenced by the



1 Edgeworths against Simon.

2 And so, I was wondering if any of these same claims were  
3 raised either as affirmative defenses or counterclaims in that underlying  
4 litigation, because if they were or should have been, then I think that  
5 issue preclusion is a relevant thing to discuss in this case.

6 If they were not, I wonder why not. In Part B --

7 MR. CHRISTIANSEN: Judge, Pete Christiansen.

8 THE COURT: Hold on.

9 MR. CHRISTIANSEN: Are you asking now or you waiting?

10 THE COURT: No.

11 MR. CHRISTIANSEN: You want me to wait first?

12 THE COURT: Yes, please wait. I want to let you know the  
13 innermost processes that are going on in my mind, so that you can --

14 MR. CHRISTIANSEN: Understood.

15 THE COURT: -- provide focused arguments.

16 MR. CHRISTIANSEN: Thank you, Your Honor.

17 THE COURT: In Part B of Vannah's Special Motion to  
18 Dismiss, Vannah addresses the unlikelihood of success on Simon's  
19 claims.

20 Vannah says a plain reading of Simon's SLAPP suit reveals  
21 that the basis for all of Simon counts or claims are pleadings filed and  
22 statements allegedly by made by one or more of the Defendants in the  
23 course of the underlying litigation and judicial proceedings, referencing  
24 Exhibit D.

25 Since these written and oral communications and statements

1 allegedly made by Vannah are absolutely privileged, there is no set of  
2 facts which would entitle Simon to any relief from Vannah or to prevail.

3 Vannah is also immune from any civil liability for claims based  
4 upon the communications, citing to NRS 41.650. Therefore, Simon does  
5 not have any prima facie evidence to support any of its -- any of his  
6 counts or claims upon which relief against Vannah could ever be  
7 granted.

8 Therefore, Vannah continues, Simon cannot meet his burden  
9 under the law, citing to NRS 41.660(3)(b). The Court is inclined to agree  
10 with that at least on its face.

11 Next, Vannah argues that there is also no cognizable claim for  
12 abuse of legal process or misuse of civil proceedings as alleged by  
13 Simon because one of the conditions precedent is favorable resolution  
14 of the claim in a plaintiff's favor.

15 And the suit in question, the underlying litigation that preceded  
16 before Judge Tierra Jones, has not been resolved in Plaintiff's favor with  
17 finality.

18 Vannah then returns to what this Court sees as the missing  
19 link in Simon's claims for relief. It says, and I don't have the page  
20 reference, but Vannah says most importantly here, the facts alleged in  
21 Simon's counts and claims, as are all of the claims and counts in  
22 Simon's suit, are immune from civil liability pursuant to NRS 41.650 and  
23 are barred by the absolute litigation privilege. Simon's claims for relief,  
24 paragraph -- IV and XIII do not make any sense in this controversy.

25 The basis for Simon's allegations contained in fourth claim for

1 relief, Roman numeral -- negligent hiring, supervision, and retention and  
2 claim Roman numeral VIII, civil conspiracy, are factually and legally  
3 defective as well, Vannah says.

4           There is no reasonable question, Vannah continues, that an  
5 attorney-client relationship never existed. Vannah acted on behalf of his  
6 client in filing suit against Simon, a legal action that was entirely  
7 protected. And two or more people combining to do a legal act can not  
8 form the basis for a conspiracy.

9           Vannah then provides an interlocutory summary. To  
10 paraphrase Simon in a motion he brought in the matter now on appeal,  
11 none of his allegations against Vannah rise to the level of a plausible or  
12 cognizable claim for relief.

13           All are barred by the absolute litigation privilege, others by a  
14 lack of procedural rightness, some by the failure to allege all conditions  
15 precedent having occurred, others still by the clear absence of any duty  
16 owed or remedy afforded. And all combined of that is anti-SLAPP laws.

17           So Vannah concludes that the lawsuit filed by Simon against  
18 Vannah is a SLAPP suit and should be dismissed by this special Motion  
19 to Dismiss accordingly.

20           In opposition, Simon says that in order for the Defendant to  
21 prevail, Defendant must show that the communications were made in  
22 good faith, that is to say that the statements were true or made without  
23 knowledge of their falsity.

24           However, Simon is speaking of extrajudicial statements in that  
25 regard, which typically form the basis of a SLAPP suit. The statements,

1 that is to say the communications at issue here, were made in pleadings  
2 and judicial proceedings.

3 And there is nothing in Nevada's anti-SLAPP law that changes  
4 the privileged nature afforded to statements made in judicial proceedings  
5 and pleadings.

6 And, yes, I'm aware that there's separate consideration to be  
7 given to the alleged communications had with a former Supreme Court  
8 justice and some other people outside the context of judicial proceeding.

9 Simon's opposition then kind of devolves and loses sight of  
10 the anti SLAPP issues that needed to be addressed and avoids  
11 discussing the privileged nature of the communications made and  
12 pleadings and judicial proceedings, as opposed to extrajudicial  
13 communications of a quote public concern. And I didn't see anything  
14 that fitted to the public concern issue here.

15 In Defendant's Reply, filed September 24th, Vannah takes the  
16 bait offered by Simon and starts chasing issues about claim preclusion  
17 and *res judicata* and issue preclusion, but those have nothing to do with  
18 an anti-SLAPP Special Motion to Dismiss.

19 NRS 41.637 says that good faith communications in  
20 furtherance of the right to petition or the right to free speech in direct  
21 connection with an issue of public concern are then defined.

22 And item 2, sub 2, has to do with communication of  
23 information in a -- I'm sorry, number 3, written or oral statements made  
24 in direct connection with an issue under consideration by a legislative,  
25 executive, or judicial body or any official proceeding authorized by law.

1 And that's what we're talking about with regard to those  
2 aspects of Simon's suit against Vannah that are based on the  
3 allegations that were made in the underlying suit by Edgeworths against  
4 Simon.

5 Those are privileged and protected. And they can't form the  
6 basis of a lawsuit, because to do so, would in fact countenance a  
7 Strategic Lawsuit Against Public Participation, not that public  
8 participation is an issue here, but because it's privileged under NRS  
9 41.637(3) and really always had been.

10 I think this means that with pleadings and judicial proceedings,  
11 which is to say the Edgeworth suit which forms the basis for Simon's  
12 suit, we stop with the inquiry if we determine that the basis of Simon's  
13 suit is Edgeworths' suit filed by Vannah against Simon because it's  
14 protected communication and that's the end of the inquiry.

15 There doesn't need to be any issue of public concern because  
16 that is not part of the protection afforded by NRS 41.637(3). I think  
17 Simon's suit, at least for the most part, fits the profile of a SLAPP suit.

18 Then, I'm going to turn my attention to Edgeworths' special  
19 anti-SLAPP motion. It falls into the same analysis as the Vannah  
20 Defendants.

21 The statements were privileged because they were made in  
22 the course of judicial proceedings. As Vannah's clients and the Plaintiff  
23 litigants in that suit, they are afforded the same immunity as their  
24 Attorney Vannah.

25 And that underlying immunity renders Simon's lawsuit, at least

1 those claims which are clearly based upon the allegations of the  
2 Edgeworth versus Simon suit, just as ineffective and legally deficient  
3 and -- as it does with regard to Vannah.

4 So at this point, I'm leaning in favor of granting the special  
5 anti-SLAPP Motions to Dismiss. I haven't made up my mind, but I want  
6 you to know what my leanings are.

7 And then, finally, with regard to Vannah's conventional  
8 nonspecial Motion to Dismiss, the same analysis that Vannah used to  
9 argue the unlikelihood of Simon prevailing on his suit applies to that  
10 nonspecial Motion to Dismiss and would warrant granting the  
11 conventional Motion to Dismiss, even if the special anti-SLAPP Motion to  
12 Dismiss was not considered.

13 I also had a question about the lawsuit for conversion. And  
14 so, my understanding is that after the Edgeworths' claim was settled with  
15 the entities that had been sued, there was argument back and forth.  
16 Let's deposit the money in Simon's trust account. No, let's deposit the  
17 money in Vannah's trust account.

18 And my understanding is that, ultimately, there was a  
19 compromise made, so that the funds were to be deposited in an  
20 independently established escrow account, we'll call it, where the funds  
21 could not be released without both signatures of a Vannah  
22 representative or Edgeworth representative and a Simon representative.

23 If that's true, that would seem to me that the parties had  
24 reached an accord and satisfaction as to how the funds were to be  
25 handled pending resolution of the underlying dispute.

1 And, again, I'm just obviously thinking out loud here, that  
2 would negate the existence of conversion, because it would have been a  
3 consented to displacement of the funds in an agreed-upon custodial  
4 account.

5 Hence, no unconsented to exercise of dominion and control  
6 over the proceeds. I don't know the answer to that. That's something  
7 else you can answer for me.

8 So those are my thoughts. And please keep in mind that I did  
9 read your briefs. And so, I know what you said in your briefs.

10 I have shared with you the impressions you've created in my  
11 mind, so that you know where you can perhaps steer my thinking in a  
12 different direction that supports your point of view or re-enforces it, but  
13 please do not regurgitate and re-state things that you said in your  
14 pleadings.

15 And if you hear yourself saying, well, as we said, Your Honor,  
16 please don't go any further. You're just announcing the fact that you're  
17 about to say something that's redundant and repetitive. And it's taken  
18 long enough for me to deliver my remarks. I don't want to waste time  
19 having you do that.

20 So let me first say that since my leaning is in favor of Vannah  
21 and Edgeworths, let me hear from counsel for Simon, Mr. Christiansen,  
22 as to your thoughts in light of what I have said.

23 MR. CHRISTIANSEN: Sure, Your Honor. Pete Christiansen  
24 on behalf of the Simon Plaintiffs. I guess I'll try to start in reverse order  
25 for the Court, because I think it makes some sense in light of your

1 leanings.

2 And that is to tell you I think your last comments relative to  
3 conversion of being a legal and factual impossibility prior to the  
4 Edgeworths -- Mr. Vannah's office filing not just an initial complaint, but  
5 then a amended complaint and multiple oppositions to motion work,  
6 where affidavits were attached, furthering that argument, to and  
7 including an appeal of Judge Tierra Jones' final decision to dismiss the  
8 conversion and find it, and I'm quoting from her order, Your Honor, to  
9 have no reasonable basis for the conversion.

10 And in that order, she sanctioned -- and that is just for ease of  
11 the Clerk because I recognize there's lots of documents here. Exhibit 3  
12 in our appendix, that is Tierra Jones' order where she sanctioned the  
13 Edgeworths via Vannah on November the 19th, 2018 for filing a  
14 conversion claim, that as Your Honor has properly analyzed, could not  
15 have under any set of circumstances when it was filed, amended and  
16 filed again, and litigated over and over and over, have existed. And I  
17 misspoke, Judge. It's Exhibit 1, not Exhibit 3.

18 So Judge Jones found, as Your Honor has found, that that  
19 could not have existed. And, frankly, Your Honor, Mr. Vannah, and this  
20 segues into something for you, Mr. Vannah, knew it could not have  
21 existed because in emails that he sent prior to filing, which are Exhibits  
22 27 and Exhibit -- one second, Your Honor, 20, Mr. Vannah to Mr.  
23 Christiansen, James Christiansen who represented Mr. Simon,  
24 articulated in his own words that he didn't think Mr. Simon would steal  
25 the money.



1           And he knew he couldn't -- he, Mr. Simon, couldn't convert the  
2 money because again, Your Honor, Judge Jones found that on  
3 November the 29th, that Ms. -- the Edgeworths terminated Mr. Simon  
4 and hired Mr. Vannah.

5           And Exhibit 26 is the release for the \$6 million that was settled  
6 on behalf -- by Mr. Simon on behalf of the Edgeworths that Mr. Vannah  
7 reviewed, Your Honor.

8           And if you'll look at specifically subsection 3, paragraph (a),  
9 Mr. Vannah was at this point the lawyer for the Edgeworths. Danny  
10 Simon was not.

11           That's been determined by Judge Tierra Jones. And as the  
12 Court alludes under Five Star, the issue of issue preclusion is one of  
13 some import in this case.

14           And that is executed December the 1st, two days  
15 after -- executed December the 1st by the Edgeworths with the advice of  
16 Vannah, not Simon, Vannah not Simon, two days after the Edgeworths  
17 terminated Simon and about a month before Mr. Vannah for the  
18 Edgeworths filed legally and factually impossible claims accusing a  
19 lawyer of stealing.

20           And I would point out to the Court, Your Honor, I guess I'll say  
21 weigh into your question for me, Your Honor, which was whether the  
22 matters were litigated, the issue of conversion as affirmative defenses,  
23 et cetera.

24           Mr. Simon -- the case against Mr. Simon was dismissed on a  
25 12(b)(5) motion after he was awarded, you know, upwards of \$500,000

1 in additional attorneys' fees by Judge Tierra Jones in what she found to  
2 be a properly filed attorney lien, ethically pursued attorney lien, et cetera.

3 So the matters were pursued, but they were pursued by way  
4 of a motion to dismiss, which was granted. The entire lawsuit was  
5 dismissed. Mr. Vannah filed an appeal from that dismissal.

6 And as part of the dismissal, the Edgeworths were sanctioned  
7 \$55,000 for filing the frivolous and factually impossible claims of  
8 conversion against the lawyer, who as the Court pointed out, could  
9 never have converted the funds today, you know, three years ago, or  
10 any other time when their lawyer, Mr. Vannah, had to sign off on any  
11 withdraw [sic] from an account which he suggested frankly. And that is  
12 cited in our opposition, Your Honor.

13 THE COURT: All right, let me ask you a question.

14 MR. CHRISTIANSEN: The quote --

15 THE COURT: Hold on, let me ask you a question.

16 MR. CHRISTIANSEN: Yes, sir, go ahead, Judge.

17 THE COURT: That sounds like there was a summary  
18 resolution of the wrongful claim for conversion?

19 MR. CHRISTIANSEN: There was a punishment meted out for  
20 the wrongful claim of conversion that doesn't -- for an award of attorneys'  
21 fees that Mr. Simon suffered or had to incur for those, Your Honor.  
22 There was no compensatory award given for that, which is what is  
23 sought in the complaint in question.

24 He was awarded a portion of his attorneys' fees for having to  
25 defend against a frivolous claim. And that is --

1 THE COURT: I get that. I get that. I guess I'm just -- I'm  
2 wrestling with why wasn't this -- I mean, all the information was there.  
3 Why wasn't this asserted as a counterclaim, vexatious litigation under I  
4 think it's 18.010? I'm sure it was -- it had to have been pled as an  
5 affirmative defense otherwise --

6 MR. CHRISTIANSEN: No answer was filed, Your Honor.

7 THE COURT: The --

8 MR. CHRISTIANSEN: The Motion to Dismiss was granted  
9 before an answer was filed, Judge.

10 So procedurally, after the lien adjudication hearing took place,  
11 then a motion was filed. And the finding of facts, conclusions of law  
12 were rendered by Judge Tierra Jones in favor of Mr. Simon and against  
13 the Edgeworths.

14 Then a Motion to Dismiss was brought to dismiss the entire  
15 lawsuit filed by Mr. Vannah for properly filing an attorneys' fee or an  
16 attorneys' lien.

17 Your Honor, to kind of bring you full circle, Judge Tierra Jones  
18 denied the anti-SLAPP Motion filed by Mr. Simon in the underlying  
19 matter and said there was enough evidence to go forward and actually  
20 adjudicate an attorneys' lien.

21 Under the exact same analysis that the Court has indicated is  
22 leaning towards dismissing a complaint against a lawyer and clients who  
23 filed a completely -- a frivolous and it has been found to be frivolous.

24 Under Five Star, Your Honor is stuck with that ruling. It was  
25 without any reasonable basis that the clients and the lawyer filed a

1 conversion claim.

2 Your Honor, the litigation for the anti-SLAPP privilege,  
3 privileges for defamation, not privileges against abuse of process in the  
4 Ball versus McCluskey [phonetic] case specifically allowed an abuse of  
5 process claim to be brought against the lawyer who vexatiously sued a  
6 doctor in order to try to obtain, you know, nuisance value.

7 The doctor won the case and turned around and sued the  
8 lawyer. And that's been upheld as good law in the state of Nevada for  
9 abuse of process, which is what -- Vannah is not sued for defamation in  
10 your complaint, Your Honor.

11 He is sued for abuse of process in the other claims for which  
12 the anti-SLAPP provision does not provide a privilege, doesn't extend to  
13 it.

14 And even if it did, Judge, the good faith communication, that's  
15 the first prong, good faith, that it is true or you have no ability to know the  
16 absence of knowing that it's untrue.

17 Both the Edgeworths in their testimony, remember, Judge, this  
18 is -- I lived this case, like I litigated. I did the five day trial in front of  
19 Judge Jones. I put the Edgeworths on the stand. Both of them admitted  
20 they knew Mr. Simon was owed money when they sued him.

21 In both of their lawsuits, they claim that they were entitled to  
22 all the money and Mr. Vannah was entitled to none of the -- in  
23 Edgeworth, Brian Edgeworth's affidavit, he wanted to know why Mr.  
24 Simon didn't do the work he had been hired paid in full to do. And that's  
25 Exhibit 14, Judge, paragraph 23.

1               Since we've -- quoting here from line 11 and 12, since we've  
2 already paid him for his work to resolve the litigation, can't he at least  
3 finish what he's been retained and paid for?

4               And that is throughout. And I quoted throughout both the  
5 complaint and the amended complaint filed by Vannah for the  
6 Edgeworths, but they were entitled to all of the money of -- and that  
7 being all of the \$6 million.

8               And then, Your Honor, you're forced -- you've got to -- they  
9 need to contend it is [indiscernible] with their testimony, both Angela and  
10 Brian Edgeworth, at the adjudication hearing where they acknowledge  
11 Mr. Simon was entitled to a portion of those proceeds because they still  
12 owed him money.

13              And they sued him. And this is -- I quoted it from Ms.  
14 Edgeworth's testimony, they sued him to punish him. They sued -- so  
15 they filed a lawsuit. And Mr. Vannah did it for them, knowing the facts  
16 could never amount to conversion, legally or factually.

17              And they did it to punish Mr. Simon, knowing the allegations  
18 contained in the lawsuit, both Mr. Vannah and with the Edgeworths,  
19 were false.

20              He could never have converted that funds -- those funds  
21 because Mr. Vannah was their lawyer at the time and he came up with  
22 the idea to put in a joint trust account specially created for those  
23 proceeds.

24              So Mr. Simon had no exclusive dominion and control, had no  
25 ability to convert the money. And that fact, which is established by

1 Judge Tierra Jones' order that this claim was brought without reasonable  
2 basis for the conversion claim and was brought by the Edgeworths  
3 without reasonable basis, who got sanctioned for \$55,000, and was  
4 brought by Vannah, knowing it couldn't happen because he's the person  
5 who came up with the idea to create the account.

6 THE COURT: Okay, well, we're starting to --

7 MR. CHRISTIANSEN: And --

8 THE COURT: We're starting to circle back on ourselves now.  
9 What else did you want to say?

10 MR. CHRISTIANSEN: What else I wanted to say to Your  
11 Honor is as much as the Court may lean in favor of, as the Court says,  
12 historically disallowing claims against lawyers in the course of litigation,  
13 this is not a normal case, Your Honor.

14 This is a case where a lawyer, on behalf of clients, all of whom  
15 knew what they were doing was wrong, filed a piece of litigation to  
16 punish a lawyer, Simon, who had filed a proper, and it's been found to  
17 be proper, attorneys' lien to adjudicate fees owed to him that they knew  
18 they owed, and that rather than pay, they accuse a lawyer of stealing.

19 And not only did Vannah do it in judicial proceedings, but the  
20 Edgeworths went out and did it extrajudicially to people that were not  
21 lawyers for them.

22 Ms. Carteen was her friend, according to Angela Edgeworth,  
23 when she told her that Danny Simon was extorting her and blackmailing  
24 her, and so was Justice Shearing, her friend, not her lawyer.

25 So as much as the Court leans that way under Five Star, and

1 I'll bring it you back to where you started, Your Honor, through Five Star,  
2 the Court is precluded from reaching a different conclusion from a sister  
3 court.

4 And I'll quote from Five Star, because the Vannah reply  
5 seems to suggest --

6 THE COURT: Well, hold on, though. I don't reach a different  
7 conclusion than Judge Jones. It's not my province to do that.

8 MR. CHRISTIANSEN: That's right. And so because, Your  
9 Honor --

10 THE COURT: The -- I would never do that. It's not even  
11 legally possible to do that.

12 MR. CHRISTIANSEN: That's right, Judge, and I --

13 THE COURT: The case that was pursued -- the case --

14 MR. CHRISTIANSEN: And that's why the motions have to be  
15 denied because all of the findings of Judge Jones binds the Court. And  
16 the finding that the claim for conversion was made without reasonable  
17 basis makes the anti-SLAPP or litigation privilege fail, because they  
18 can't meet the first prong, which is good faith belief or reasonable basis.

19 It failed as a matter of law because Judge Tierra Jones found  
20 that there was no reasonable basis for the conversion. So for that  
21 reason alone, the motions to dismiss must be denied. And we should be  
22 allowed to go conduct discovery.

23 THE COURT: All right, Ms. Marr?

24 MS MARR: Okay, Your Honor, my concern was is that the  
25 Plaintiff would lead the Court to a field of weeds and that's exactly what

1 it has done.

2 And I'm going to encourage the Court that we come out of the  
3 weeds and see this case for what -- and I actually agree with the Court  
4 and it should be leaning towards granting the Defendants' motions,  
5 particularly the anti-SLAPP Motion.

6 It is of no moment, the claim for conversion, because it's pretty  
7 simple. First and foremost, the Defendants have an absolute privilege.  
8 That's recognized by this Court. And that's a subset of the anti-SLAPP  
9 statutes. And they're there for a reason. I mean --

10 THE COURT: Well, all right, excuse me one moment, though.  
11 The -- my question early on was how could there legally ever be a  
12 conversion when there was some kind of a pre-litigation accord and  
13 satisfaction reached between the parties about how dominion and  
14 control over the funds was to be exercised --

15 MS. MARR: Sure.

16 THE COURT: Once that happened, didn't that legally  
17 preclude either side from claiming that the other side was exercising  
18 unauthorized dominion and control over the proceeds?

19 MS. MARR: No, no, absolutely not. And I tell you why is  
20 because the Vannah Defendants or the Edgeworths didn't have any  
21 choice.

22 And so, some agreement had to be reached to prevent that  
23 settlement check from going stale. To this day, as we speak in this  
24 hearing, the Edgeworths still do not have -- they don't have access to  
25 those funds.



1           And I don't want to get into them. If the Court wants me to get  
2 into the merits of that case, and how there wasn't a contingency fee, and  
3 how Simon billed hourly and was paid, and then created a super bill, I  
4 mean --

5           THE COURT: No, I'm familiar with all the back and forth on  
6 that, but --

7           MS. MARR: Okay.

8           THE COURT: -- if two parties have a corpus of funds out  
9 there, and each of them is laying claim to the proceeds, and one of them  
10 says, well, we'll just put in my trust account till we resolve it. The other  
11 person says no, no, no, let's put it in my trust account, then we'll resolve  
12 it.

13           And they realize that they're at a, speaking of stale, a  
14 stalemate. And they say, all right, let's put it in a third vehicle that would  
15 require the signatures of both sides to release it. They've just solved  
16 their problem regarding the issue of funds and how they're going to be  
17 handled.

18           So that is a huge issue for me. I don't see how you get  
19 around that. And apparently --

20           MS. MARR: Well --

21           THE COURT: -- Judge Jones didn't either.

22           MS. MARR: Well, in that regard, Your Honor, there was  
23 absolutely no way, other way, to obtain the monies. And it was just a  
24 trust account decision. And, again, the Edgeworths still don't have  
25 access to that money still.

1           And my concern is that we would go down this path of  
2 conversion. And I would invite the Court --

3           THE COURT: Okay, but it's true that they still don't have  
4 access to the funds. Really, nobody does. And that's because the legal  
5 issues haven't been resolved. And so, those funds are going to sit in  
6 limbo under the joint control of both sides until that issue is resolved and  
7 it hasn't been.

8           MS. MARR: Right. And I would submit, Your Honor, that the  
9 Plaintiff has not relinquished his control over those funds. If he were to  
10 do so, we may have a different story, but he continues to exercise  
11 wrongfully, we assert, dominion and control over those funds, because it  
12 cannot be released without his approval.

13           And I would invite -- we've cited the Bader court -- the Bader  
14 case. And it's conversion is not a specific intent tort. It's a general  
15 intent. And it doesn't require an actual physical taking. I think that's  
16 quite notable.

17           THE COURT: Well, I know that, I know that.

18           MS. MARR: Okay, and --

19           THE COURT: That's not the issue.

20           MS. MARR: And at no point whatsoever did -- and I'll refer to  
21 them, all three Defendants, as the Vannah Defendants, at no point in  
22 time ever did they ever make statements outside of the pleadings ever.

23           And the Ball case only helps the Vannah Defendants. At no  
24 point in time did the Vannah Defendants accuse Simon of theft ever.

25           And I would encourage the Court not to get caught up in this

1 issue of conversion, because it's subsumed by the anti-SLAPP motion.

2 No matter how you turn this on its head, you can't get past the  
3 facts and the law. And the law being that the Vannah Defendants have  
4 an absolute privilege, absolute. It -- that doesn't even require good faith,  
5 but it's an absolute privilege.

6 And I would submit to the Court that it's leaning in the right  
7 direction in granting the Defendants' Motion based upon the facts, and I  
8 know the Court has read all the pleadings painfully so, and the law. You  
9 just can't -- no matter how you look at this, you can't get past that.

10 THE COURT: Okay.

11 MS. MARR: And I would also submit that Judge Tierra  
12 Jones -- and I don't even want to go down this road because it's just  
13 going into that field of weeds, but they weren't sanctions. They were  
14 attorneys' fees that were assessed to the Edgeworths. And also --

15 THE COURT: The only justification for awarding attorneys'  
16 fees would have been for sanctions for wrongful conduct.

17 MS. MARR: Right, but I would also note for the Court that the  
18 Vannah Defendants were not a party to that prior litigation, the  
19 underlying litigation.

20 And that's notable. And again, it's on appeal. We don't know  
21 what the Supreme Court is going to do with that.

22 THE COURT: No, we don't.

23 MS. MARR: And for these purposes, though, for this lawsuit  
24 filed by Simon, the Vannah Defendants, again I can't say it enough, I  
25 know that -- I don't want to beat a dead horse for the Court, but they're

1 absolutely protected by the absolute litigation privilege and the anti-  
2 SLAPP. This is a classic example and this is why the statutes were  
3 codified specifically for cases like this.

4 THE COURT: Okay, understood. So let me ask about the  
5 extrajudicial comments. There were extrajudicial comments allegedly  
6 made in a conversation involving Retired Justice Miriam Shearing and  
7 who?

8 MS. MARR: Your Honor, I can't speak to that. That would  
9 probably be better suited for the Edgeworths' counsel.

10 THE COURT: Yeah, I'm asking Mr. Christiansen.

11 MS. MARR: Oh, I'm sorry.

12 THE COURT: Who was alleged to have communicated with  
13 Justice Shearing in a way that was not connected properly under  
14 41.637(3)?

15 MR. CHRISTIANSEN: Judge, Angela Edgeworth testified  
16 under oath that she spoke to both Retired Justice Shearing and Lisa  
17 Carteen, not as lawyers, as friends.

18 I quoted that and told them -- and I gave you the exact quote  
19 in the oppositions that she was being extorted or blackmailed, and I'm  
20 paraphrasing it now, and by Simon -- and that all the money was their  
21 money.

22 In addition, Mr. Edgeworth spoke to the volleyball coach. And  
23 that's referenced in his Exhibit 17, which is the 3/15, March 15 of '18  
24 affidavit that Mr. Simon was extorting him.

25 So there were extrajudicial comments by both Angela and

1 Brian Edgeworth to persons not affiliated in any way whatsoever with the  
2 litigation, not any -- and not as lawyers either.

3 In these new affidavits that Ms. Edgeworth, Mrs. Edgeworth  
4 signs and replies, which are improper procedural matter, because then I  
5 don't get to respond to them --

6 THE COURT: And yet, you will.

7 MR. CHRISTIANSEN: -- she changes her story -- she  
8 changes her story, Your Honor, from what she testified to under oath.

9 Under oath, she said she did not talk to Miriam Shearing or  
10 Lisa Carteen as lawyers. She talked to them as friends. I asked her that  
11 question specifically.

12 And Mr. Edgeworth was talking to a volleyball coach. She  
13 wasn't ask him -- and he put it in an affidavit that he told the volleyball  
14 coach that Mr. Simon was extorting millions of dollars from him.

15 THE COURT: Okay, so I made it clear the direction in which I  
16 was leaning, but to those who think that it is impossible for me to be re-  
17 directed, take note.

18 I found Mr. Christiansen's arguments persuasive. They gave  
19 me a different perspective through which to view this information in the  
20 Motions to Dismiss, both special and nonspecial, and the Oppositions.  
21 And so, I am now ruling that I'm denying --

22 MS. FINCH: Your Honor?

23 THE COURT: No, no, no, we only have a certain amount of  
24 time available.

25 MS. FINCH: It's Ms. --

1 THE COURT: And we have reached it in this case.

2 MS. FINCH: I --

3 THE COURT: No, counsel, please.

4 MS. FINCH: I understand, Your Honor, but it's Ms. -- I haven't  
5 been given an opportunity to speak on behalf of the Edgeworths at all --

6 THE COURT: Well --

7 MS. FINCH: Because Patricia Marr is only [indiscernible].

8 THE COURT: That doesn't necessarily mean that I can't  
9 make this ruling. You have to keep in mind that I don't need to actually  
10 hear from everybody, okay. So --

11 MS. FINCH: I understand that, Your Honor. I just wanted to  
12 make that clear before you rule, so in case there's something extra that  
13 Your Honor would like from Edgeworths' counsel, because Ms. Marr  
14 couldn't represent a few things based on who she represents versus  
15 who I represent. I just wanted to make that clear on the record so that  
16 we --

17 THE COURT: All right.

18 MS. FINCH: -- you know, we have that opportunity.

19 THE COURT: So go ahead, Ms. Finch. I'll allow you a brief  
20 opportunity to make remarks.

21 MS. FINCH: Thank you, Your Honor. And I don't want to  
22 waste Your Honor's time. I just want to talk quickly about what I think  
23 Your Honor --

24 THE COURT: Counsel, you're not wasting my time. I'm just  
25 trying to manage it for the calendar. You're not wasting my time.

1 MS. FINCH: I appreciate that, Your Honor. Very quickly, one  
2 of the major issues I believe Your Honor is being persuaded by Mr.  
3 Christiansen on is this issue of conversion.

4 And in order to speak about that issue, a few things for the  
5 record. First and foremost, the issue of conversion was in the underlying  
6 case, which was brought by counsel, Mr. Vannah, and the Edgeworths  
7 after having been given counsel by their very highly-esteemed lawyers  
8 that this is a proper claim, which we assert it still is.

9 Because, Your Honor, although Mr. Simon and Mr. Vannah  
10 have a joint trust account, Mr. Simon is exercising control of over \$2  
11 million that have been previously adjudicated to not be his. And those  
12 still remain in the account. So there's is a good faith basis on the part of  
13 the Defendants or the Plaintiffs in the underlying case to maintain that  
14 claim.

15 Now, I understand that Judge Tierra Jones ruled in the  
16 underlying action essentially pursuant to NRS 18.012(b) that that claim  
17 was brought without merit and that was adjudicated.

18 In the underlying claim, albeit we disagree with her opinion  
19 and it is on appeal, they have given the sanctions that were previously  
20 done. That -- the issue for those claims to be brought, the issue for Mr.  
21 Simon's redress is being handled in the underlying claim.

22 To you file a separate Plaintiff's claim, as he has done in this  
23 case, goes in direct contravention with what our Nevada legislature has  
24 specifically stated should be protected.

25 And as a lawyer and as a Nevada constituent, we should be

1 very concerned when these types of things are filed because it -- this  
2 lawsuit has brought the Edgeworths back into tens of thousands of  
3 dollars of attorneys' fees on a case -- a separate case, to continue to  
4 adjudicate what's being adjudicated on the underlying case and now in  
5 the Nevada Supreme Court.

6 And frankly, there's no place. Everything that was done in the  
7 underlying motion was done with good faith.

8 And the Nevada law even says if it was not, so long as it was  
9 done in the procedure of a lawsuit, that any issue with respect to that  
10 can be handled in the underlying case, which was adjudicated by Tierra  
11 Jones. So preclusion here is important if that's the direction Your Honor  
12 is leaning.

13 As for the comment with respect to the underlying case being  
14 brought to punish Simon, that's in the context of damages claimed. The  
15 underlying case had punitives sought, no different than what Mr. Simon  
16 is seeking in this case.

17 And as Your Honor knows, and as has been the case for  
18 decades, and hundreds of years, that punitive damages are made for  
19 the purpose to punish.

20 So to suggest that that's what's happening, that is what's  
21 happening. That's what Simon is attempting to do in this case. That's  
22 what litigants do when they believe they have a basis for a punitive  
23 damages claim, which is what happened here.

24 So to suggest otherwise is to suggest that Simon is in the  
25 same issue. He has the same punishment motive here in this case that



1 they're suggesting Angela did in the underlying case. It's simply in  
2 relation to damages.

3 And finally, Your Honor, every extra -- quote extrajudicial  
4 comment, there are apparently three that Mr. Simon is relying upon, two  
5 of which Angela got friendship advice from lawyers.

6 So whether you want to couch that as attorney-client privilege  
7 or you want to couch that as her asking friends whom she knows are  
8 respected lawyers for legal advice and guidance on a claim worth  
9 millions of dollars to their family, that is protected.

10 It is also in connection with the litigation that was about to  
11 happen. To seek an additional opinion about whether or not you should  
12 do this is perfectly acceptable and not outside of the anti-SLAPP  
13 protection or privilege in that regard.

14 And as Your Honor knows, Mr. Edgeworth's conversation with  
15 the volleyball coach was in defense of Simon's email to him alleging  
16 wrongdoing. Nothing that was said was anything meant to be  
17 defamatory. Nothing was anything outside of the issues here.

18 THE COURT: All right, Ms. Finch, you realize though that  
19 what you're arguing is the factual justification for things. Those are  
20 questions of fact. They cannot be determined as a matter of law.

21 MS. FINCH: But, Your Honor, I would then say this is a  
22 motion for summary judgment. And in opposition to our motions, Mr.  
23 Christiansen and Mr. Simon Plaintiffs did not present, pursuant to EDCR  
24 2.21, any reliable evidence on their behalf to substantiate their factual  
25 contentions, which means that any factual contentions that we have pled

1 by way of declaration go unchallenged.

2 And that does not lead them to discovery to --

3 THE COURT: It's not a motion for summary judgment. And  
4 there isn't a summary judgment determination to be made in this case.

5 MS. FINCH: Well, Your Honor, respectfully, I would disagree  
6 under prong 2 of the anti-SLAPP statute. The case law suggests that it  
7 switches the burden to a plaintiff once we establish prong 1, which we  
8 argue we have, which then leads to a motion for summary judgment  
9 standard.

10 They have to come forward with admissible evidence, Your  
11 Honor, based on a preponderance that they can meet the burden on  
12 every single one of their causes of action.

13 And first and foremost, everything that they're relying upon to  
14 do that is privileged, number one.

15 But even if you want to look beyond that, they have provided  
16 Your Honor with nothing by way of admissible evidence to overcome a  
17 motion for summary judgment standard, which is the law in the state of  
18 Nevada on a SLAPP motion.

19 THE COURT: Okay.

20 MS. FINCH: So I would suggest to you because of that, that  
21 just on the basis of that alone, EDCR 2.21 precludes them from  
22 prevailing.

23 THE COURT: All right. Thank you.

24 I have nevertheless in spite of Ms. Finch's cogent and well-  
25 reasoned arguments had my mind changed about this. And so, I think

1 the anti-SLAPP -- special anti-SLAPP motions filed by Vannah and  
2 Edgeworth need to be denied.

3 And I think the conventional Motion to Dismiss filed by Vannah  
4 must be denied.

5 And I -- in terms of justification for the Motion to Dismiss, I  
6 would return to the remarks made about me by the -- about the  
7 conversion and my concerns about the extrajudicial discussions had with  
8 Justice -- former Justice of the Supreme Court Miriam Shearing,  
9 Attorney Carteen, and the volleyball coach.

10 It is clearly a question of fact as to whether or not what took  
11 place there really was in direct connection with the lawsuit or not. And  
12 that cannot be resolved as a matter of law by me at this stage.

13 So because I'm denying all of these motions, I think that we  
14 can either have a single order or perhaps it would be better to have  
15 three separate orders.

16 I'm open to hearing from counsel about whether or not there's  
17 any procedural reason to use three separate orders as opposed to one  
18 single order.

19 Now Mr. Christiansen, any thoughts on that?

20 MR. CHRISTIANSEN: Your Honor, I think just for the sake of  
21 being extra careful, maybe we could prepare three orders, one for each  
22 of the motions and run them by Defense counsel before we submit them  
23 to Your Honor?

24 THE COURT: All right, and keep in mind I would appreciate it  
25 if they would be approved as to form and content. I always get a kick

1 out of it when somebody who had a ruling go against them refuses to  
2 sign it, even though it does correctly state what took place, but being  
3 petulant and child-like, counsel doesn't want to sign it approved as to  
4 form and content.

5 Don't conflate the two. You're not conceding that you agree  
6 with the ruling or the decision, just that it accurately reflects what was  
7 said. And I -- if you knew how difficult it was to compare competing  
8 orders, you'd know why they are greatly disfavored.

9 And so, my inclination is when I direct counsel to prepare an  
10 order, and they submit it, my inclination is to sign the order that was  
11 submitted by counsel who was directed to prepare it.

12 If it turns out that there are mistakes made in that order, then  
13 somebody's going to have to move to amend the order, but I do not like  
14 having competing orders when there's no need to do that.

15 So I need the orders submitted within 14 days per EDCR 7.21.  
16 They will, of course, come to the TPO system. And I will review and sign  
17 them within 24 to 48 hours of when they're submitted.

18 And then, we'll set this out for October 29th on the chambers  
19 calendar, just to make sure that the orders have in fact been filed.

20 Anything else --

21 MS. MARR: And --

22 THE COURT: -- from anybody?

23 MS. MARR: Your Honor, I just had a clarification. You had  
24 just made a statement that your decision was based on the conversion  
25 issue and statements made outside of Court.

1 I just wanted to clarify that you were not referring to the  
2 Vannah Defendants with respect to statements made outside of Court,  
3 correct? Because there haven't been any -- hasn't been any allegations  
4 of that by the Plaintiff.

5 THE COURT: Well, if there haven't been any allegations --

6 MS. MARR: Or [indiscernible.]

7 THE COURT: -- then I wouldn't be referring to them.

8 MS. MARR: Okay, just wanted to clarify. Thank you.

9 THE COURT: All right. Anything else?

10 MR. CHRISTIANSEN: Thank you, Your Honor. No  
11 [indiscernible], Your Honor.

12 THE COURT: Ms. Finch?

13 MS. FINCH: Sorry, Mr. Christiansen.

14 Ms. Finch just wants a clarification for purposes of the order. I  
15 understand your ruling is based on the conversion issue and  
16 extrajudicial.

17 Is it simply that you believe that those two claims require  
18 discovery because they are factual in nature is why you're denying the  
19 motion? Is that the basis? I just want to make sure I clearly articulate  
20 your basis on those issues.

21 THE COURT: No, it's because -- first of all, I don't think it can  
22 be set as a matter of law that either of those claims, a conversion or the  
23 extrajudicial, fall within SLAPP.

24 They don't appear to be strategic litigation against public  
25 participation. And the -- so therefore, they're not protected in that

1 regard.

2 With regard to the conversion, I think that -- I mean, my initial  
3 question was, wait a minute, if you agreed to this, how can you claim  
4 that that was conversion? So I'm not making a ruling as to whether it  
5 was or wasn't.

6 The question that was put to me is can you say as a matter of  
7 law that there's no way that that claim -- there's no set of circumstances  
8 where a claim of conversion could have been supported? And it  
9 appears to me that that is true that at the time, there was no way a claim  
10 of conversion could be supported.

11 So for the -- Simon to sue on the basis of that claim being  
12 pursued unsuccessfully, that is a valid basis for him to make the claim.

13 Can he prove it? Will it factually prove out to be true? I don't  
14 know, but it's a legitimate claim to make, that is not strategic litigation  
15 against public participation.

16 With regard to the extrajudicial comments, if it's true that there  
17 were comments made that were not directly connected to the litigation,  
18 which is a factual inquiry to former Supreme Court Justice Shearing,  
19 Attorney Carteen, and/or the volleyball coach, then those are legitimate  
20 claims to pursue by Mr. Simon.

21 Any other questions?

22 MS. FINCH: Okay. Thank you.

23 MS. MARR: Your Honor?

24 THE COURT: I'm sorry, go ahead.

25 MS. MARR: Your Honor, I just wanted to clarify that your

1 finding given that the appeal regarding the claim for conversion and the  
2 dismissal of that action is still being looked at by the Nevada Supreme  
3 Court?

4 THE COURT: I have nothing to say about --

5 MS. MARR: So --

6 THE COURT: -- that. That is a totally separate action. That  
7 is on its own path and nothing that I say or do here today is intended to  
8 have, nor can it have, any effect upon that litigation. That's a totally  
9 separate piece of litigation.

10 MS. MARR: Right, because that was the argument is that it's  
11 premature to bring any action against anybody with that Supreme Court  
12 ruling still pending.

13 THE COURT: That was one of the arguments with regard to  
14 abuse of legal process or malicious prosecution is that there hadn't been  
15 a resolution of the case with finality, but that is a claim that goes to the  
16 merits.

17 If somebody were to file an abuse of legal process and  
18 somebody filed a motion to dismiss, the issue that would come up is has  
19 there been a final resolution made with regard to this case?

20 The case itself is still ongoing, the underlying lawsuit. Has  
21 there been a resolution that would be considered final? I don't know. I  
22 have no opinion on that.

23 MS. MARR: Right, well, right, and that was the bases for the  
24 argument in our motion, so --

25 THE COURT: Okay. Understood.

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MS. MARR: -- with that being said.

THE COURT: Understood. All right, anything else?

MR. CHRISTIANSEN: No, Your Honor, from the Plaintiffs.  
We understand the Court's ruling and we'll prepare the appropriate  
orders and run it by Defense counsel.

THE COURT: All right, Ms. Finch?

MS. FINCH: I think that's it, Your Honor.

THE COURT: Okay. Ms. Marr?

MS. MARR: For now, that's all.

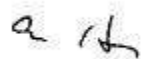
THE COURT: All right, thank you.

MS. FINCH: Thank you.

[Proceedings concluded at 10:54 a.m.]

\* \* \* \* \*

**ATTEST:** I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.



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Chris Hwang  
Transcriber



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,

V.

Respondents.

**BATES NO. AA004223 - 4271**

*Attorneys for Appellants Edgeworth  
Family Trust, American Grating,  
LLC, Brian Edgeworth and Angela  
Edgeworth*

***EDGEWORTH FAMILY TRUST, ET AL. v. LAW OFFICE OF DANIEL S. SIMON, ET AL., CASE NO. 82058***  
**JOINT APPELLANTS' APPENDIX**  
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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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2019-12-23	Complaint	I	AA000038 – 56
2020-04-06	Edgeworth Defs. Opp'n to Pls.' "Emergency" Mot. to Preserve ESI	I	AA000057 – 64
2020-04-06	Vannah Defs. Opp'n to Pls.' Erroneously Labeled Emergency Mot. to Preserve Evidence	I – IV	AA000065 – 764
2020-04-30	Vannah Defs. Mot. to Dismiss Pls.' Complaint and Mot. in the Alternative for a More Definite Statement	IV	AA000765 – 818
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2020-05-20	American Grating, LLC's Joinder to Defs. Edgeworth Family Trust, Brian Edgeworth, and Angela Edgeworth's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	V	AA000984 – 986

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	American Grating, LLC's Joinder to Special Mot. of Vannah Defs. to Dismiss Pls.' Complaint: Anti-SLAPP	V	AA000987 – 989
2020-05-20	Edgeworth Family Trust, and Brian and Angela Edgeworth's Joinder to American Grating, LLC's. and Vannah Defs.' Special Mot. s. to Dismiss Pls.' Complaint	V	AA000990 – 992
2020-05-20	Vannah Defs.' Joinder to Edgeworth Defs.' Special Mot. to Dismiss Pls.' Complaint; Anti-SLAPP		AA000993 – 994
2020-05-21	Amended Complaint	V	AA000995 – 1022
2020-05-26	Pls.' Opp'n to Vannah Defs.' Mot. To Dismiss Pls.' Complaint, And Mot. in the Alternative for a More Definite Statement and Leave to File Mot. in Excess Of 30 Pages Pursuant to EDCR 2.20(A)	VI-VII	AA001023 – 1421
2020-05-28	Pls.' Opp'n To Defs. Edgeworth Defs.' Mot. To Dismiss Pls.' Complaint and Leave to File Mot. in Excess of 30 Pages Pursuant to EDCR 2.20(a)	VIII-IX	AA001422 – 1768
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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-06-08	Vannah Defs.' Joinder to Edgeworth Defs.' Mot. to Dismiss Pls.' Am. Complaint and Renewed Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002306 – 2307
2020-07-01	American Grating, LLC's Am. Mot. to Dismiss Pls.' Am. Complaint (Am.)	XII	AA0002308 – 2338
2020-07-01	American Grating, LLC's Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.)	XII	AA002339 – 2369
2020-07-01	Edgeworth Defs.' Renewed Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637 (Am.)	XII	AA002370 – 2400
2020-07-02	Order Granting in Part, and Denying in Part Pls.' Mot. for Leave to Supp. Pls.' Opp'n to Mot. to Associate Lisa Carteen, Esq. and to Preclude Her Review of Case Materials on OST	XIII	AA002401 – 2409
2020-07-09	Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Joinder to American Grating LLC's Mot. s. to Dismiss Pls.' Complaint and Am. Complaint	XIII	AA002410 – 2412
2020-07-15	Pls.' Opp'n to American Grating LLC, Edgeworth Family Trust, Brian Edgeworth and Angela Edgeworth's Special Mot. to Dismiss Pls.' Initial Complaint: Anti-SLAPP	XIII	AA002413 – 2435
2020-07-15	Pls.' Opp'n to Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002436 – 2464
2020-07-15	Pls.' Opp'n to Brian Edgeworth, Angela Edgeworth, Edgeworth Family Trust and American Grating, LLC's Renewed Special Mot. to Dismiss Pursuant to NRS 41.637 Anti-SLAPP	XIII	AA002465 – 2491

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2020-07-15	Pls.' Opp'n to Defs.' Edgeworth Family Trust, American Grating, LLC, Brian Edgeworth and Angela Edgeworth's Mot. to Dismiss Pls.' Initial Complaint	XIII	AA002492 – 2519
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint	XIII	AA002520 – 2549
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint; Anti-SLAPP	XIII	AA002550 – 2572
2020-07-15	Pls.' Opp'n to Vannah Defs.' Special Mot. to Dismiss Pls.' Initial Complaint; Anti-SLAPP	XIII	AA002573 – 2593
2020-07-15	Pls.' Opp'n to Vannah Defs.' Mot. to Dismiss Pls.' Initial Complaint, and Mot. in the Alternative For a More Definite Statement	XIII	AA002594 – 2624
2020-07-23	Edgworth Family Trust, Brian Edgeworth, Angela Edgeworth, and American Grating, LLC's Reply ISO Special Anti-SLAPP Mot. to Dismiss Pursuant to NRS 41.637	XIV	AA002625 – 2655
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	XIV	AA002656 – 2709
2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
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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
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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
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DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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2020-10-01	Transcript of Videotaped Hearing on All Pending Mots. to Dismiss	XX	AA004184 – 4222
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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
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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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2020-10-27	Notice of Entry of Order Denying the Edgeworth Defs.' Special Anti-SLAPP Mot. to Dismiss Pls.' Am. Complaint Pursuant to NRS 41.637 and Order re same	XXI	AA004232 – 4240
2020-10-27	Notice of Entry of Order Denying Vannah Defs.' Mot. to Dismiss Pls.' Am. Complaint and Order re same	XXI	AA004223 – 4231
2020-07-02	Order Granting in Part, and Denying in Part Pls.' Mot. for Leave to Supp. Pls.' Opp'n to Mot. to Associate Lisa Carteen, Esq. and to Preclude Her Review of Case Materials on OST	XIII	AA002401 – 2409
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2020-05-20	Vannah Defs.' Joinder to Edgeworth Defs.' Special Mot. to Dismiss Pls.' Complaint; Anti-SLAPP		AA000993 – 994
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2020-07-23	Vannah Defs.' Reply to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XIV	AA002710 – 2722
2020-05-29	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XII	AA002198 – 2302
2020-08-25	Vannah Defs.' Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XV	AA002879 – 2982
2020-05-15	Vannah Defs. Special Mot. to Dismiss Pls.' Complaint: Anti-SLAPP	IV	AA000828 – 923
2020-09-24	Vannah Defs.' to Pls.' Opp'n to Vannah's Special Mot. to Dismiss Pls.' Am. Complaint: Anti-SLAPP	XX	AA004103 – 4175





1 **NEOJ**  
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11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **LAW OFFICE OF DANIEL S. SIMON, A**  
15 **PROFESSIONAL CORPORATION;**  
16 **DANIEL S. SIMON;**

17 **Plaintiffs,**

18 **vs.**

19 **EDGEWORTH FAMILY TRUST;**  
20 **AMERICAN GRATING, LLC; BRIAN**  
21 **EDGEWORTH AND ANGELA**  
22 **EDGEWORTH, INDIVIDUALLY, AS**  
23 **HUSBAND AND WIFE; ROBERT DARBY**  
24 **VANNAH, ESQ.; JOHN BUCHANAN**  
25 **GREENE, ESQ.; and ROBERT D.**  
26 **VANNAH, CHTD. d/b/a VANNAH &**  
27 **VANNAH, and DOES I through V and ROE**  
28 **CORPORATIONS VI through X, inclusive,**

**Defendants.**

**CASE NO.: A-19-807433-C**  
**DEPT NO.: XXIV**

**NOTICE OF ENTRY OF ORDER**  
**DENYING 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**

PLEASE TAKE NOTICE, that an Order on Defendants Robert Darby Vannah, Esq., John  
Buchanan Greene, Esq., and Robert D. Vannah, Chtd. d/b/a Vannah & Vannah's Motion to

///

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**AA004223**

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

1 Dismiss Plaintiffs' Amended Complaint, was entered in the above-entitled matter on the 26<sup>th</sup> day  
2 of October, 2020, a copy of which is attached hereto.

3 DATED this 27<sup>th</sup> day of October, 2020.

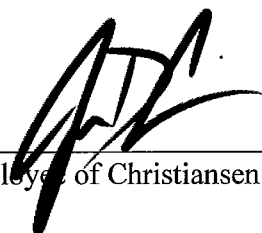
4 **CHRISTIANSEN LAW OFFICES**

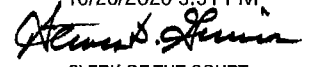
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7 PETER S. CHRISTIANSEN, ESQ.  
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8 KENDELEE WORKS, ESQ.  
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9 810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101  
10 *Attorneys for Plaintiffs*

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702-240-7979 • Fax 866-412-6992

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 27<sup>th</sup> day of October, 2020 I caused the foregoing document entitled ***NOTICE OF ENTRY OF ORDER DENYING 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

  
CLERK OF THE COURT

**ORDR**

**PETER S. CHRISTIANSEN, ESQ.**

Nevada Bar No. 5254

**KENDELEE L. WORKS, ESQ.**

Nevada Bar No. 9611

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*Attorneys 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

**ORDER DENYING 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**

This matter having come before the Honorable Jim Crockett on October 1, 2020, regarding 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 August 26, 2020, with Peter S. Christiansen, Esq. and Kendelea L. Works, Esq. of CHRISTIANSEN LAW OFFICES appearing on behalf of Plaintiffs LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION and DANIEL S. SIMON, Patricia A. Marr,

**AA004226**

**CHRISTIANSEN LAW OFFICES**  
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702-240-7979 • Fax 866-412-6992

Esq. of PATRICIA A. MARR, LTD, appearing on behalf of Defendants ROBERT DARBY VANNAH ESQ., JOHN B. GREENE, ESQ., and ROBERT D. VANNAH, CHTD., dba VANNAH & VANNAH, and Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES, LLP. and Patricia Lee, Esq., of HUTCHISON & STEFFEN, PLLC, appearing on behalf of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH and ANGELA EDGEWORTH, the Court having heard the arguments of the parties and considering the moving papers and oppositions filed thereto, NOW THEREFORE, for good cause appearing as follows:

1. THIS COURT FINDS that in Case No. A-16-738444-C in the Eighth Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones entered orders, which included dismissing the underlying lawsuit against Simon and finding that the conversion claims against him, which give rise to the instant lawsuit, were not filed and/or maintained on reasonable grounds. In awarding attorney's fees and costs for Simon having to defend the groundless claims, Judge Jones expressly found "it was an impossibility for Mr. Simon to have converted the Edgeworths' property." This court will not disturb the findings of a sister court on this issue. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008).
2. THE COURT FURTHER FINDS based on the evidence and briefings before it, that there could not be any good faith legal or factual basis for the underlying conversion claim against Simon when there was a pre-litigation accord and satisfaction reached between the parties about how dominion and control over the funds was to be exercised pending resolution of the attorney lien dispute.
3. THE COURT FURTHER FINDS that All Defendants did not meet their burden and lacked good faith in filing and maintaining the underlying conversion allegations against Simon and therefore, the litigation privilege does not apply.
4. THE COURT FURTHER FINDS that even if the litigation privilege was deemed to apply, it would not bar a claim for abuse of process under the facts as alleged in this case.

1 5. THE COURT FURTHER FINDS that Plaintiffs have properly pled all of the causes  
2 of actions in the amended complaint.

3 6. IT IS HEREBY ORDERED that Defendants Robert Darby Vannah, Esq., John  
4 Buchanan Greene, Esq., and Robert D. Vannah, Chtd. d/b/a Vannah & Vannah's  
5 Motion to Dismiss Plaintiffs' Amended Complaint, is DENIED. <sup>Dated this 26th day of October, 2020</sup>

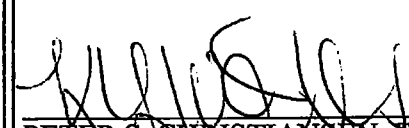
6 DATED this \_\_\_\_\_ day of October, 2020.

7  
8   
9 \_\_\_\_\_  
DISTRICT COURT JUDGE

10 Respectfully submitted:

11 **CHRISTIANSEN LAW OFFICES**

9F9 938 4AA3 8EB5  
Jim Crockett  
District Court Judge

12   
13 \_\_\_\_\_  
PETER S. CHRISTIANSEN, ESQ.  
14 Nevada Bar No. 5254  
KENDELEE WORKS, ESQ.  
15 Nevada Bar No. 9611  
810 S. Casino Center Blvd., Ste. 104  
16 Las Vegas, Nevada 89101  
Attorneys for Plaintiffs

17  
18 Approved as to Form and Content:

19 **PATRICIA A. MARR, LTD.**

20  
21 /s/Patricia A. Marr, Esq.  
22 PATRICIA A. MARR, ESQ.  
23 Nevada Bar No. 8846  
24 2470 St. Rose Parkway, Ste. 110  
25 Henderson, Nevada 89074  
26 Attorneys for Defendants Robert Darby  
27 Vannah, Esq.; John B. Greene, Esq.; and  
28 Robert D. Vannah, Chtd., dba Vannah & Vannah

From: **Kendeleee Works** [kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)  
Subject: **Re: Proposed order denying Vannah 12(b)(5) MTD**  
Date: **October 15, 2020 at 1:37 PM**  
To: [patricia@marrlawlv.com](mailto:patricia@marrlawlv.com)  
Cc: **Patricia Lee** [plee@hutchlegal.com](mailto:plee@hutchlegal.com), **Christine L. Atwood** [catwood@messner.com](mailto:catwood@messner.com), **Carteen, Lisa I.** [lisa.carteen@tuckerellis.com](mailto:lisa.carteen@tuckerellis.com),  
**Peter S. Christiansen** [pete@christiansenlaw.com](mailto:pete@christiansenlaw.com), **Jonathan Crain** [jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)  
Bcc: **Daniel Simon** [dan@simonlawlv.com](mailto:dan@simonlawlv.com), **Ashley Ferrel** [Ashley@SIMONLAWLV.COM](mailto:Ashley@SIMONLAWLV.COM)

Thanks Patricia. We cannot agree to remove paragraph 8. Although not expressly stated at the time of the hearing, the transcript contains numerous references to there being issues of fact such that the court could not rule as a matter of law at this juncture - implicitly finding discovery is required which goes directly to prong 2 of the analysis. In particular, please reference the transcript at 34:5-12, 36:21-23 and 37:13-20.

We will affix your electronic signature to the 12(b)(5) order and submit that to the court today. Please let us know if you can agree on paragraph 8 and if not, we will submit our proposed order with a cover letter confirming that the parties conferred but were unable to agree as to that paragraph in particular.

Thank you,  
Kendeleee

On Oct 15, 2020, at 11:30 AM, Patricia Marr <[patricia@marrlawlv.com](mailto:patricia@marrlawlv.com)> wrote:

Dear Ms. Works:

The Order for the 12(b)(5) Motion is appropriate and you may affix my electronic signature to the same. However, I have reviewed the record of the hearing in this matter and will sign off as to form and content with respect to the Anti-SLAPP Order IF you will remove paragraph 8 from the proposed order in its entirety. I find that the Judge never said anything about the second prong. Let me know your intentions as to that paragraph or alternatively tell me in writing where you find this comment

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](mailto:patricia@marrlawlv.com)

CONFIDENTIALITY NOTE: This transmission and any documents accompanying this transmission contain information from PATRICIA A. MARR, LTD. which is confidential and/or privileged. The information is intended to be for the use of the individual or entity named as the intended recipient of this transmission. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is PROHIBITED. If you received this transmission in error, please notify us by telephone immediately so that we can arrange for the retrieval of the original documents at no cost to you.

On Wednesday, October 14, 2020, 05:55:06 PM PDT, Kendeleee Works  
<[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)> wrote:

Draft order attached for review. Please let us know if you are willing to sign off as to form and content.

Thank you,  
Kendeleee

**AA004229**

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Law Office of Daniel S Simon,  
Plaintiff(s)

CASE NO: A-19-807433-C

7 vs.

DEPT. NO. Department 24

8  
9 Edgeworth Family Trust,  
Defendant(s)  
10

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 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:

15 Service Date: 10/26/2020

16 Peter Christiansen	pete@christiansenlaw.com
17 Whitney Barrett	wbarrett@christiansenlaw.com
18 Kendele Leascher Works	kworks@christiansenlaw.com
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22 Renee Finch	rfinch@messner.com
23 Caleb Meyer	cmeyer@messner.com
24 Suzanne Morehead	smorehead@hutchlegal.com
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AA004230



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5	Patricia Lee	plee@hutchlegal.com
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7	Daniel Simon	lawyers@simonlawlv.com
8	Robert Vannah	rvannah@vannahlaw.com
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1 **NEOJ**  
2 **PETER S. CHRISTIANSEN, ESQ.**  
3 Nevada Bar No. 5254  
4 **KENDELEE L. WORKS, ESQ.**  
5 Nevada Bar No. 9611  
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8 810 South Casino Center Blvd., Suite 104  
9 Las Vegas, Nevada 89101  
10 Telephone: (702) 240-7979  
11 *Attorney for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **LAW OFFICE OF DANIEL S. SIMON, A**  
15 **PROFESSIONAL CORPORATION;**  
16 **DANIEL S. SIMON;**

17 **Plaintiffs,**

18 **vs.**

19 **EDGEWORTH FAMILY TRUST;**  
20 **AMERICAN GRATING, LLC; BRIAN**  
21 **EDGEWORTH AND ANGELA**  
22 **EDGEWORTH, INDIVIDUALLY, AS**  
23 **HUSBAND AND WIFE; ROBERT DARBY**  
24 **VANNAH, ESQ.; JOHN BUCHANAN**  
25 **GREENE, ESQ.; and ROBERT D.**  
26 **VANNAH, CHTD. d/b/a VANNAH &**  
27 **VANNAH, and DOES I through V and ROE**  
28 **CORPORATIONS VI through X, inclusive,**

**Defendants.**

**CASE NO.: A-19-807433-C**  
**DEPT NO.: XXIV**

**NOTICE OF ENTRY OF ORDER**  
**DENYING THE EDGEWORTH**  
**DEFENDANTS' SPECIAL ANTI-SLAPP**  
**MOTION TO DISMISS PLAINTIFFS'**  
**AMENDED COMPLAINT PURSUANT**  
**TO NRS 41.637**

PLEASE TAKE NOTICE, that an Order on the Edgeworth Defendants' Special Anti-Slapp Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRS 41.637, was entered

///

///

///

**AA004232**

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Las Vegas, Nevada 89101  
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1 in the above-entitled matter on the 26<sup>th</sup> day of October, 2020, a copy of which is attached hereto.  
2 DATED this 27<sup>th</sup> day of October, 2020.  
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**CHRISTIANSEN LAW OFFICES**

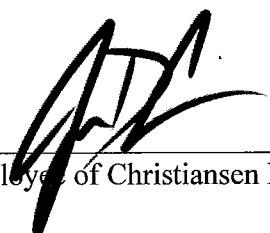


PETER S. CHRISTIANSEN, ESQ.  
Nevada Bar No. 5254  
KENDELEE WORKS, ESQ.  
Nevada Bar No. 9611  
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Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

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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 27<sup>th</sup> day of October, 2020 I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER DENYING THE 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.

  
An employee of Christiansen Law Offices

*Heather S. Simon*  
CLERK OF THE COURT

**CHRISTIENSEN LAW OFFICES**  
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Las Vegas, Nevada 89101  
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**ORDR**

**PETER S. CHRISTIANSEN, ESQ.**

Nevada Bar No. 5254

**KENDELEE L. WORKS, ESQ.**

Nevada Bar No. 9611

pete@christiansenlaw.com

**CHRISTIENSEN LAW OFFICES**

810 South Casino Center Blvd., Suite 104

Las Vegas, Nevada 89101

Telephone: (702) 240-7979

*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

**ORDER DENYING THE EDGEWORTH  
DEFENDANTS' SPECIAL ANTI-SLAPP  
MOTION TO DISMISS PLAINTIFFS'  
AMENDED COMPLAINT PURSUANT  
TO NRS 41.637**

This matter having come before the Honorable Jim Crockett on October 1, 2020, regarding the Edgeworth Defendants' Special Anti-Slapp Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRS 41.637, filed on August 27, 2020, with Peter S. Christiansen, Esq. and Kendelea L. Works, Esq. of CHRISTIANSEN LAW OFFICES appearing on behalf of Plaintiffs LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION and

**AA004235**

1 DANIEL S. SIMON, Patricia A. Marr, Esq. of PATRICIA A. MARR, LTD, appearing on behalf  
2 of Defendants ROBERT DARBY VANNAH ESQ., JOHN B. GREENE, ESQ., and ROBERT D.  
3 VANNAH, CHTD., dba VANNAH & VANNAH, and Renee M. Finch, Esq. and Christine L.  
4 Atwood, Esq., of MESSNER REEVES, LLP. and Patricia Lee, Esq., of HUTCHISON &  
5 STEFFEN, PLLC, appearing on behalf of Defendants EDGEWORTH FAMILY TRUST,  
6 AMERICAN GRATING, LLC, BRIAN EDGEWORTH and ANGELA EDGEWORTH  
7 (hereinafter collectively referred to as the “Edgeworth Parties”), the Court having heard the  
8 arguments of the parties and considering the moving papers and oppositions filed thereto, NOW  
9 THEREFORE, for good cause appearing, hereby finds:

- 10 1. When a party files a special motion to dismiss under Nevada’s anti-SLAPP statutes,  
11 NRS 41.635-NRS 41.670, that party bears the initial burden of production and  
12 persuasion. Here, the Edgeworth Defendants as the moving party, must first make a  
13 threshold showing that Plaintiffs’ claims against them are based on “[g]ood faith  
14 communication[s] in furtherance of the right to free speech in direct connection with  
15 an issue of public concern...which is truthful or made without knowledge of its  
16 falsehood.” NRS 41.637.
- 17 2. If an anti-SLAPP motion is filed, a court “shall” first ‘[d]etermine whether the moving  
18 party has established, by a preponderance of the evidence, that the claim is based upon  
19 a good faith communication in furtherance of the right to petition or the right to free  
20 speech in direct connection with an issue of public concern... which is truthful or is  
21 made without knowledge of its falsehood.” NRS 41.660(3)(a). “No communication  
22 falls withint the purview of NRS 41.660 unless it is truthful or made without  
23 knowledge of its falsity.” *Shapiro v. Welt*, 133 Nev. 35, 40, 389 P.3d 262, 268  
24 (2017)(internal citations omitted).
- 25 3. If a court finds “the moving party has met the burden pursuant to paragraph(a),” the  
26 court shall then “determine whether the plaintiff[s] ha[ve] demonstrated with prima  
27 facie evidence a probability of prevailing on the claim.”(NRS 41.660(3)(b), as defined  
28 in NRS 41.665(2).

**CHRISTIANSEN LAW OFFICES**

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Las Vegas, Nevada 89101  
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- 1 4. THIS COURT FINDS that in Case No. A-16-738444-C in the Eighth Judicial  
2 District Court, Clark County, Nevada, the Honorable Tierra Jones entered orders,  
3 which included dismissing the underlying lawsuit against Simon and finding that the  
4 conversion claims against him, which give rise to the instant lawsuit, were not filed  
5 and/or maintained on reasonable grounds. In awarding attorney's fees and costs for  
6 Simon having to defend the groundless claims, Judge Jones expressly found "it was  
7 an impossibility for Mr. Simon to have converted the Edgeworths' property." This  
8 court will not disturb the findings of a sister court on this issue. *See Five Star Capital*  
9 *Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008).
- 10 5. THE COURT FURTHER FINDS based on the evidence and briefings before it, that  
11 there could not be any good faith legal or factual basis for the underlying conversion  
12 claim against Simon when there was a pre-litigation accord and satisfaction reached  
13 between the parties about how dominion and control over the funds was to be  
14 exercised pending resolution of the attorney lien dispute.
- 15 6. THE COURT FURTHER FINDS, in light of the foregoing, that the Edgeworth Parties  
16 did not meet their burden under the first prong of the anti-SLAPP analysis because  
17 they cannot show, based on a preponderance of the evidence, that the underlying  
18 conversion claims against Simon were good faith communications, which were  
19 truthful and/or made without knowledge of falsity.
- 20 7. THE COURT FURTHER FINDS that it must only advance to the second prong of the  
21 Anti-SLAPP analysis in the event that the Edgeworth Parties met their burden to show  
22 by a preponderance of the evidence that their underlying claims against Simon were  
23 based upon good faith communications made in furtherance of the right to free speech  
24 in direct connection with an issue of public concern. Only then would the burden  
25 shift to Plaintiffs to show with prima facie evidence, a probability of prevailing on  
26 their claims. Because the Edgeworth Parties have not met their burden, this Court  
27 need not consider the second prong of the anti-SLAPP analysis.  
28

**CHRISTIANSEN LAW OFFICES**

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Las Vegas, Nevada 89101  
702-240-7979 • Fax 866-412-6992

8. THE COURT FURTHER FINDS however, that if it reached the second prong of the Anti-SLAPP analysis, which it does not, Simon has shown prima facie evidence of a probability of prevailing on Plaintiffs' claims and that there are genuine issues of material fact at this stage in the litigation, which require discovery.

9. THE COURT FURTHER FINDS there are questions of fact as to whether or not what took place during the Edgeworth Parties' extrajudicial discussions with outside third parties, in particular, former Justice Miriam Shearing, Attorney Lisa Carteen and volleyball coach Rueben Herrera, were in direct connection with the lawsuit or not.


10. In light of the foregoing, IT IS HEREBY ORDERED that the Edgeworth Defendants' Special Anti-Slapp Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Dated this 26th day of October, 2020 NRS 41.637, is DENIED.

DATED this \_\_\_\_\_ day of October, 2020.

  
DISTRICT COURT JUDGE

Respectfully submitted:

**CHRISTIANSEN LAW OFFICES**

  
PETER S. CHRISTIANSEN, ESQ.  
Nevada Bar No. 5254  
KENDELEE WORKS, ESQ.  
Nevada Bar No. 9611  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

OCB F33 6FA2 EDF2  
Jim Crockett  
District Court Judge

Approved as to Form and Content  
**MESSNER REEVES, LLP**

\_\_\_\_\_  
RENEE M. FINCH, ESQ.  
Nevada Bar No. 13118  
8945 W. Russel Road, Ste. 300  
Las Vegas, Nevada 89148  
*Attorneys for Defendants Edgeworth Family Trust; American Grating; Brian Edgeworth and Angela Edgeworth*



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Law Office of Daniel S Simon,  
Plaintiff(s)

CASE NO: A-19-807433-C

7 vs.

DEPT. NO. Department 24

8  
9 Edgeworth Family Trust,  
Defendant(s)

10  
11 AUTOMATED CERTIFICATE OF SERVICE

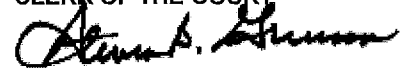
12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/26/2020

16 Peter Christiansen	pete@christiansenlaw.com
17 Whitney Barrett	wbarrett@christiansenlaw.com
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19 R. Todd Terry	tterry@christiansenlaw.com
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23 Caleb Meyer	cmeyer@messner.com
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**AA004239**

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6	Daniel Simon	lawyers@simonlawlv.com
7	Robert Vannah	rvannah@vannahlaw.com
8	Esther Barrios Sandoval	esther@christiansenlaw.com
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10	Jackie Olivo	jolivo@messner.com
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1 **NEOJ**  
2 **PETER S. CHRISTIANSEN, ESQ.**  
3 Nevada Bar No. 5254  
4 **KENDELEE L. WORKS, ESQ.**  
5 Nevada Bar No. 9611  
6 pete@christiansenlaw.com  
7 **CHRISTIANSEN LAW OFFICES**  
8 810 South Casino Center Blvd., Suite 104  
9 Las Vegas, Nevada 89101  
10 Telephone: (702) 240-7979  
11 *Attorney for Plaintiffs*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **LAW OFFICE OF DANIEL S. SIMON, A**  
15 **PROFESSIONAL CORPORATION;**  
16 **DANIEL S. SIMON;**

17 **Plaintiffs,**

18 **vs.**

19 **EDGEWORTH FAMILY TRUST;**  
20 **AMERICAN GRATING, LLC; BRIAN**  
21 **EDGEWORTH AND ANGELA**  
22 **EDGEWORTH, INDIVIDUALLY, AS**  
23 **HUSBAND AND WIFE; ROBERT DARBY**  
24 **VANNAH, ESQ.; JOHN BUCHANAN**  
25 **GREENE, ESQ.; and ROBERT D.**  
26 **VANNAH, CHTD. d/b/a VANNAH &**  
27 **VANNAH, and DOES I through V and ROE**  
28 **CORPORATIONS VI through X, inclusive,**

**Defendants.**

**CASE NO.: A-19-807433-C**  
**DEPT NO.: XXIV**

**NOTICE OF ENTRY OF ORDER**  
**DENYING THE SPECIAL MOTION OF**  
**ROBERT DARBY VANNAH, ESQ.,**  
**JOHN BUCHANAN GREENE, ESQ.,**  
**AND ROBERT D. VANNAH, CHTD.**  
**d/b/a VANNAH & VANNAH, TO**  
**DISMISS PLAINTIFFS' AMENDED**  
**COMPLAINT: ANTI-SLAPP**

PLEASE TAKE NOTICE, that an Order on Defendants Robert Darby Vannah, Esq., John Buchanan Greene, Esq., and Robert D. Vannah, Chtd. d/b/a Vannah & Vannah's Motion to

///

///

///

**AA004241**

**CHRISTIANSEN LAW OFFICES**  
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Las Vegas, Nevada 89101  
702-240-7979 • Fax 866-412-6992

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

1 Dismiss Plaintiffs' Amended Complaint: Anti-SLAPP, was entered in the above-entitled matter  
2 on the 26<sup>th</sup> day of October, 2020, a copy of which is attached hereto.

3 DATED this 27<sup>th</sup> day of October, 2020.

4

CHRISTIANSEN LAW OFFICES

5

6



7

PETER S. CHRISTIANSEN, ESQ.

8

Nevada Bar No. 5254

9

KENDELEE WORKS, ESQ.

10

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*Attorneys for Plaintiffs*

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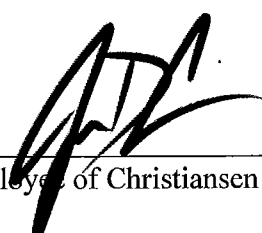
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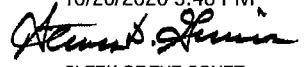
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIENSEN LAW OFFICES, and that on this 27<sup>th</sup> day of October, 2020 I caused the foregoing document entitled ***NOTICE OF ENTRY OF ORDER DENYING THE SPECIAL MOTION OF ROBERT DARBY VANNAH, ESQ., JOHN BUCHANAN GREENE, ESQ., AND ROBERT D. VANNAH, CHTD. d/b/a VANNAH & VANNAH, TO DISMISS PLAINTIFFS' 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

  
CLERK OF THE COURT

**ORDR**

**PETER S. CHRISTIANSEN, ESQ.**

Nevada Bar No. 5254

**KENDELEE L. WORKS, ESQ.**

Nevada Bar No. 9611

pete@christiansenlaw.com

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Telephone: (702) 240-7979

*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

**ORDER DENYING THE SPECIAL  
MOTION OF ROBERT DARBY  
VANNAH, ESQ., JOHN BUCHANAN  
GREENE, ESQ., AND ROBERT D.  
VANNAH, CHTD. d/b/a VANNAH &  
VANNAH, TO DISMISS PLAINTIFFS'  
AMENDED COMPLAINT:  
ANTI-SLAPP**

This matter having come before the Honorable Jim Crockett on October 1, 2020, regarding 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: Anti-SLAPP, filed on August 25, 2020, with Peter S. Christiansen, Esq. and Kendele L. Works, Esq. of CHRISTIANSEN LAW OFFICES appearing on behalf of Plaintiffs LAW OFFICE OF

**AA004244**

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

DANIEL S. SIMON, A PROFESSIONAL CORPORATION and DANIEL S. SIMON, Patricia A. Marr, Esq. of PATRICIA A. MARR, LTD, appearing on behalf of Defendants ROBERT DARBY VANNAH ESQ., JOHN B. GREENE, ESQ., and ROBERT D. VANNAH, CHTD., dba VANNAH & VANNAH, (hereinafter collectively referred to as the “Vannah Defendants”), and Renee M. Finch, Esq. and Christine L. Atwood, Esq., of MESSNER REEVES, LLP. and Patricia Lee, Esq., of HUTCHISON & STEFFEN, PLLC, appearing on behalf of Defendants EDGEWORTH FAMILY TRUST, AMERICAN GRATING, LLC, BRIAN EDGEWORTH and ANGELA EDGEWORTH (hereinafter collectively referred to as the “Edgeworth Defendants”), the Court having heard the arguments of the parties and considering the moving papers and oppositions filed thereto, NOW THEREFORE, for good cause appearing, hereby finds:

1. When a party files a special motion to dismiss under Nevada’s anti-SLAPP statutes, NRS 41.635-NRS 41.670, that party bears the initial burden of production and persuasion. Here, the Vannah Defendants as the moving party, must first make a threshold showing that Plaintiffs’ claims against them are based on “[g]ood faith communication[s] in furtherance of the right to free speech in direct connection with an issue of public concern...which is truthful or made without knowledge of its falsehood.” NRS 41.637.
2. If an anti-SLAPP motion is filed, a court “shall” first “[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon 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... which is truthful or is made without knowledge of its falsehood.” NRS 41.660(3)(a). “No communication falls within the purview of NRS 41.660 unless it is truthful or made without knowledge of its falsity.” *Shapiro v. Welt*, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017)(internal citations omitted).
3. If a court finds “the moving party has met the burden pursuant to paragraph(a),” the court shall then “determine whether the plaintiff[s] ha[ve] demonstrated with prima

1           facie evidence a probability of prevailing on the claim.”(NRS 41.660(3)(b), as defined  
2           in NRS 41.665(2).

- 3           4. THIS COURT FINDS that in Case No. A-16-738444-C in the Eighth Judicial  
4           District Court, Clark County, Nevada, the Honorable Tierra Jones entered orders,  
5           which included dismissing the underlying lawsuit against Simon and finding that the  
6           conversion claims against him, which give rise to the instant lawsuit, were not filed  
7           and/or maintained on reasonable grounds. In awarding attorney’s fees and costs for  
8           Simon having to defend the groundless claims, Judge Jones expressly found “it was  
9           an impossibility for Mr. Simon to have converted the Edgeworths’ property.” This  
10          court will not disturb the findings of a sister court on this issue. *See Five Star Capital*  
11          *Corp. v. Ruby*, 124 Nev. 1048. 194 P.3d 709 (2008).
- 12          5. THE COURT FURTHER FINDS based on the evidence and briefings before it, that  
13          there could not be any good faith legal or factual basis for the underlying conversion  
14          claim against Simon when there was a pre-litigation accord and satisfaction reached  
15          between the parties about how dominion and control over the funds was to be  
16          exercised pending resolution of the attorney lien dispute.
- 17          6. THE COURT FURTHER FINDS, in light of the foregoing, that the Vannah  
18          Defendants did not meet their burden under the first prong of the anti-SLAPP analysis  
19          because they cannot show, based on a preponderance of the evidence, that the  
20          underlying conversion claims against Simon were good faith communications, which  
21          were truthful and/or made without knowledge of falsity.
- 22          7. THE COURT FURTHER FINDS that it must only advance to the second prong of the  
23          Anti-SLAPP analysis in the event that the Vannah Defendants met their burden to  
24          show by a preponderance of the evidence that their underlying claims against Simon  
25          were based upon good faith communications made in furtherance of the right to free  
26          speech in direct connection with an issue of public concern. Only then would the  
27          burden shift to Plaintiffs to show with prima facie evidence, a probability of prevailing  
28



on their claims. Because the Vannah Defendants have not met their burden, this Court need not consider the second prong of the anti-SLAPP analysis.

8. THE COURT FURTHER FINDS however, that if it reached the second prong of the Anti-SLAPP analysis, which it does not, Simon has shown prima facie evidence of a probability of prevailing on Plaintiffs' claims and that there are genuine issues of material fact at this stage in the litigation, which require discovery.

9. In light of the foregoing, IT IS HEREBY ORDERED that the Vannah Defendants' Special Anti-Slapp Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRS 41.637, is DENIED.

Dated this 26th day of October, 2020


DATED this \_\_\_\_ day of October, 2020.

  
DISTRICT COURT JUDGE

Respectfully submitted:


**CHRISTIANSEN LAW OFFICES**

819 FCF DFB7 1E8F  
Jim Crockett  
District Court Judge

  
PETER S. CHRISTIANSEN, ESQ.  
Nevada Bar No. 5254  
KENDELEE WORKS, ESQ.  
Nevada Bar No. 9611  
810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

Approved as to Form and Content:

**PATRICIA A. MARR, LTD.**

  
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Henderson, Nevada 89074  
*Attorneys for Defendants Robert Darby Vannah, Esq.; John B. Greene, Esq.; and Robert D. Vannah, Chtd., dba Vannah & Vannah*

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Law Office of Daniel S Simon,  
7 Plaintiff(s)

CASE NO: A-19-807433-C

8 vs.

DEPT. NO. Department 24

9 Edgeworth Family Trust,  
10 Defendant(s)

11 AUTOMATED CERTIFICATE OF SERVICE

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

15 Service Date: 10/26/2020

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**AA004248**

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9 patricia@marrlawlv.com  
10 *Counsel for Defendants*  
11 *Robert Darby Vannah, Esq.,*  
12 *John B. Greene, Esq., and*  
13 *Robert D. Vannah, Chtd., dba Vannah & Vannah*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

13 Plaintiffs,

14 vs.

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

24 Defendants.

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

**DEFENDANTS ROBERT DARBY  
VANNAH, ESQ., JOHN BUCHANAN  
GREENE, ESQ., and, ROBERT D.  
VANNAH, CHTD., d/b/a VANNAH &  
VANNAH, NOTICE OF APPEAL**

25 NOTICE IS HEREBY GIVEN that Robert Darby Vannah, Esq., John B. Greene, Esq.,  
26 and, Robert D. Vannah, Chtd., d/b/a Vannah & Vannah (collectively referred to as Vannah),  
27 Defendants above named, hereby appeal to the Supreme Court of Nevada from:

28 1. Order Denying the Vannah Defendant's Special Anti-SLAPP Motion to Dismiss  
Plaintiffs' Amended Complaint Pursuant to NRS 41.637, entered October 26, 2020 and noticed  
on October 27, 2020.

1 2. All rulings made appealable by the foregoing.

2 DATED this 2<sup>nd</sup> day of November, 2020.

3 PATRICIA A. MARR, LLC

4  
5 /s/Patricia A. Marr, Esq.

6 PATRICIA A. MARR, ESQ.  
7  
8  
9

10 **CERTIFICATE OF SERVICE**

11  
12 I hereby certify that the following parties are to be served as follows:

13 Electronically:

14 Peter S. Christiansen, Esq.  
15 **CHRISTIANSEN LAW OFFICES**  
16 810 S. Casino Center Blvd., Ste. 104  
Las Vegas, Nevada 89101

17 M. Caleb Meyer, Esq.  
18 Renee M. Finch, Esq.  
19 Christine L. Atwood, Esq.  
**MESSNER REEVES LLP**  
8945 W. Russell Road, Ste 300  
Las Vegas, Nevada 89148

20 Traditional Manner:

21 *None*

22 DATED this 2<sup>nd</sup> day of November, 2020.

23 /s/Patricia A. Marr

24 An employee of the Patricia A. Marr, LLC  
25  
26  
27  
28



1 **NOA**

2 M. Caleb Meyer, Esq.  
3 Nevada Bar No. 13379

4 Renee M. Finch, Esq.  
5 Nevada Bar No. 13118

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12 Facsimile: (702) 363-5101

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14 rfinch@messner.com

15 *Attorneys for Defendants American Grating, LLC*

16 *Edgeworth Family Trust; Brian Edgeworth and Angela Edgeworth*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

Defendants.

CASE NO. A-19-807433-C

DEPT. NO. 24

**DEFENDANTS AMERICAN  
GRATING, LLC; EDGEWORTH  
FAMILY TRUST; BRIAN  
EDGEWORTH AND ANGELA  
EDGEWORTH'S NOTICE OF  
APPEAL**

26 NOTICE IS HEREBY GIVEN that American Grating, LLC; Edgeworth Family  
27 Trust; Brian Edgeworth and Angela Edgeworth, Defendants above named, hereby appeal to the  
28 Supreme Court of Nevada from:

1           1. Order Denying the Edgeworth Defendant's Special Anti-Slapp Motion to Dismiss  
2 Plaintiffs' Amended Complaint Pursuant to NRS 41.637, entered October 26, 2020 and noticed on  
3 October 27, 2020.

4           2. All rulings made appealable by the foregoing.

5                       DATED this 3<sup>rd</sup> day of November, 2020.

6   **MESSNER REEVES, LLP**

7  
8   /s/ Lauren D. Calvert  
9 M. Caleb Meyer, Esq.  
10 Nevada Bar No. 13379  
11 Renee M. Finch, Esq.  
12 Nevada Bar No. 13118  
13 Lauren D. Calvert, Esq.  
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20 rfinch@messner.com  
21 lcalvert@messner.com  
22 *Attorneys for Defendants*  
23  
24  
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/s/ Michelle Ordway  
An employee of MESSNER REEVES LLP



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.

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

Supreme Court No. 77678  
District Court Case No. A738444

**FILED**

APR 13 2021

*Elizabeth A. Brown*  
CLERK OF COURT

Supreme Court No. 78176  
District Court Case No. A738444

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgement of the district court AFFIRMED in part and VACATED in part AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 30 day of December, 2020.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

A-16-738444-C  
CCJR  
NV Supreme Court Clerks Certificate/Judgm  
4961019



Judgment, as quoted above, entered this 18 day of March, 2021.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
April 12, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze  
Administrative Assistant

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.

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

vs.

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

No. 77678

**FILED**

DEC 30 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

No. 78176

**ORDER AFFIRMING IN PART, VACATING IN PART AND  
REMANDING**

These consolidated matters include two appeals and a cross-appeal that challenge district court orders dismissing a complaint under NRCP 12(b)(5), adjudicating an attorney lien, and granting in part and denying in part a motion for attorney fees and costs.<sup>1</sup> Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.<sup>2</sup>

Brian and Angela Edgeworth are business owners and managers. A fire sprinkler malfunctioned and flooded a home they were constructing, causing \$500,000 in damages. Both the fire-sprinkler

<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

<sup>2</sup>The Honorable Abbi Silver, Justice, did not participate in the decision of this matter.

manufacturer and plumbing company refused to pay for the damage. Daniel Simon, a Las Vegas attorney and close friend of the Edgeworths, offered to help. There was no written fee agreement, as Simon only planned to send a few letters. However, Simon eventually sued the responsible parties on the Edgeworths' behalf, billing the Edgeworths a "reduced" rate of \$550 per hour through four invoices totaling \$367,606, which the Edgeworths paid in full. Eventually, Simon helped secure a \$6 million settlement agreement, and when the Edgeworths asked Simon to provide any unpaid invoices, Simon sent them a letter with a retainer agreement for \$1.5 million beyond what they had already paid him for his services. The Edgeworths refused to pay and retained new counsel. Simon then filed an attorney lien. The Edgeworths responded by suing him for breach of contract and conversion.

Simon moved to dismiss the Edgeworths' complaint under both NRCPC 12(b)(5) and Nevada's anti-SLAPP statutes and he moved for adjudication of the lien. The district court consolidated the cases. The district court first addressed Simon's attorney lien and held an extensive evidentiary hearing. After the hearing, the district court found that Simon and the Edgeworths did not have an express oral contract. Although the district court found that Simon and the Edgeworths had an implied contract for the hourly rate of \$550 per hour for Simon and \$275 per hour for Simon's associates, it also determined that the Edgeworths constructively discharged Simon when they retained new counsel. Therefore, the district court awarded Simon roughly \$285,000 for attorney services rendered from September 19 to November 29, 2017, and \$200,000 in quantum meruit for the services he rendered after November 29, the date of the constructive

discharge.<sup>3</sup> Relying on the evidence presented at the hearing adjudicating the attorney lien, the district court dismissed the Edgeworths' complaint and awarded Simon \$55,000 in attorney fees and costs for defending the breach of contract action. It then denied Simon's anti-SLAPP motion as moot.

*The constructive discharge for purposes of adjudicating attorney lien and \$200,000 quantum meruit award*

We review a "district court's findings of fact for an abuse of discretion" and "will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence." *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004) (internal quotation marks omitted). The Edgeworths argue that substantial evidence does not support the district court's constructive discharge finding because Simon never withdrew from the case, continued working on it through its conclusion, and billed them after the date of the constructive discharge. We disagree.

A constructive discharge occurs when a party's conduct "dissolves the essential mutual confidence between attorney and client," *Brown v. Johnstone*, 450 N.E.2d 693, 695 (Ohio Ct. App. 1982) (holding that a client terminated the attorney-client relationship when he initiated grievance proceedings against and stopped contacting his attorney), or the client takes action that prevents the attorney from effective representation, *McNair v. Commonwealth*, 561 S.E.2d 26, 31 (Va. Ct. App. 2002) (explaining that in the criminal context, constructive discharge can occur where "the defendant place[s] his counsel in a position that precluded effective

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<sup>3</sup>On appeal, the Edgeworths challenge only the \$200,000 award in quantum meruit.

representation"). Substantial evidence in the record demonstrates that the Edgeworths hired new counsel; stopped directly communicating with Simon; empowered their new counsel to resolve the litigation; and settled claims against Simon's advice at the urging of new counsel. Accordingly, we conclude that the district court acted within its sound discretion by finding that the Edgeworths constructively discharged Simon on November 29, 2017.

Although we conclude that the district court correctly found that Simon was entitled to quantum meruit for work done after the constructive discharge, *see Gordon v. Stewart*, 74 Nev. 115, 119, 324 P.2d 234, 236 (1958) (upholding an award in quantum meruit to an attorney after breach of contract), *rejected on other grounds by Argentina Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 537-38, 216 P.3d 779, 786 (2009), we agree with the Edgeworths that the district court abused its discretion by awarding \$200,000 in quantum meruit<sup>4</sup> without making findings regarding the work Simon performed after the constructive discharge. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014) (reviewing district court's attorney fee decision for an abuse of discretion).

A district court abuses its discretion when it bases its decision on an erroneous view of the law or clearly disregards guiding legal principles. *See Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017). "[T]he proper measure of damages under a *quantum meruit* theory

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<sup>4</sup>The Edgeworths do not contest the validity of the attorney lien or the district court's jurisdiction to adjudicate it.

of recovery is the reasonable value of [the] services." *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (alteration in original) (internal quotation marks omitted). A district court must consider the *Brunzell* factors when determining a reasonable amount of attorney fees. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Those factors are: (1) the quality of the advocate; (2) the character of the work, e.g., its difficulty, importance, etc.; (3) the work actually performed by the advocate; and (4) the result. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Edgeworths challenge the third factor, arguing that the district court's order did not describe the work Simon performed after the constructive discharge. While the district court stated that it was applying the *Brunzell* factors for work performed only after the constructive discharge, much of its analysis focused on Simon's work throughout the entire litigation. Those findings, referencing work performed before the constructive discharge, for which Simon had already been compensated under the terms of the implied contract, cannot form the basis of a quantum meruit award. Although there is evidence in the record that Simon and his associates performed work after the constructive discharge, the district court did not explain how it used that evidence to calculate its award. Thus, it is unclear whether \$200,000 is a reasonable amount to award for the work done after the constructive discharge. Accordingly, we vacate the district court's grant of \$200,000 in quantum meruit and remand for the district court to make findings regarding the basis of its award.

*The NRCP 12(b)(5) motion to dismiss*

Following the evidentiary hearing regarding the attorney lien, the district court dismissed the Edgeworths' complaint. In doing so, the district court relied on the evidence presented at the evidentiary hearing to

find that there was no express contract and thus dismissed the breach of contract, declaratory relief, and breach of covenant of good faith and fair dealing claims. It further found that Simon complied with the statutory requirements for an attorney lien and therefore dismissed the conversion and breach of fiduciary duty claims, as well as the request for punitive damages.

The Edgeworths argue that the district court failed to construe the allegations in the amended complaint as true and instead considered matters outside the pleadings—facts from the evidentiary hearing. In effect, the Edgeworths argue that, under the NRCP 12(b)(5) standard, the district court was required to accept the facts in their complaint as true regardless of its contrary factual findings from the evidentiary hearing. Under the circumstances here, we are not persuaded that the district court erred by dismissing the complaint.

While the district court should have given proper notice under NRCP 12(d) that it was converting the NRCP 12(b)(5) motion to one for summary judgment, it did not err by applying its findings from the evidentiary hearing when ruling on the NRCP 12(b)(5) motion, as it had told the parties it was waiting to rule on this motion until after the lien adjudication hearing. Under the law-of-the-case doctrine, a district court generally should not reconsider questions that it has already decided. See *Reconstruct Co., N.A. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (“The law-of-the-case doctrine ‘refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.’”) (quoting *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995)); see also *United States v. Jingles*, 702 F.3d 494, 499 (9th Cir. 2012) (“Under the law of the case doctrine, a court is



ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.”) (internal quotation marks omitted). The doctrine applies where “the issue in question [was] ‘decided explicitly . . . in [the] previous disposition.’” *Jingles*, 702 F.3d at 499 (second alteration in original) (quoting *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000)).

Because it was necessary for the district court to determine if there was an express contract when adjudicating the attorney lien, its finding that there was no express oral contract between Simon and the Edgeworths became the law of the case in the consolidated action. See NRS 18.015(6) (requiring the court where an attorney lien is filed to “adjudicate the rights of the attorney, client or other parties and enforce the lien”); NRCP 42(a) (allowing consolidation where actions “involve a common question of law or fact”). As it was the law of the case, that finding bound the district court in its adjudication of the NRCP 12(b)(5) motion.<sup>5</sup> See *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 623, 173 P.3d 707, 714 (2007) (upholding a district court’s decision where the district court held a bench trial to resolve equitable claims and then applied those findings to dismiss the remaining legal claims). Similarly, the district court’s finding that Simon properly perfected the attorney lien became the law of the case and thus bound the district court during its adjudication of the NRCP 12(b)(5) motion. Accordingly, because the district court properly applied its past

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<sup>5</sup>The Edgeworths do not argue that the district court’s finding of an implied contract could have formed the basis of their breach of contract and good faith and fair dealing claims.

findings to the present motion, it did not err in granting the NRCP 12(b)(5) motion.<sup>6</sup>

*The \$50,000 attorney fee award under NRS 18.010(2)(b)*

The Edgeworths argue that the district court abused its discretion by awarding attorney fees to Simon in the context of dismissing their conversion claim because their claim was neither groundless nor brought in bad faith and the district court failed to consider the *Brunzell* factors.

The district court awarded attorney fees under NRS 18.010(2)(b) for the Edgeworths' conversion claim alone because it found that the Edgeworths' conversion claim was not maintained upon reasonable grounds. Once Simon filed the attorney lien, the Edgeworths were not in exclusive possession of the disputed fees, see NRS 18.015(1), and, accordingly, it was legally impossible for Simon to commit conversion, see *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 911, 193 P.3d 536, 543 (2008) (holding that to prevail on a conversion claim, the plaintiff must have an exclusive right to possess the property). We perceive no abuse of discretion in this portion of the district court's decision. See NRS 18.010(2)(b) (authorizing courts to award attorney fees for claims "maintained without reasonable ground or to harass the prevailing party"). As to the amount of the award, however, we conclude that the district court's order lacks support. The district court need not explicitly mention each

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<sup>6</sup>In his cross-appeal in Docket No. 77678, Simon argues that the district court erred by denying his anti-SLAPP special motion to dismiss as moot. However, Simon failed to present cogent arguments and relevant authority in his opening brief. Accordingly, we do not consider his argument. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

*Brunzell* factor in its order so long as the district court “demonstrate[s] that it considered the required factors, and the award [is] supported by substantial evidence.” *Logan*, 131 Nev. at 266, 350 P.3d at 1143 (mandating that a district court consider the *Brunzell* factors, but explaining that “express findings on each factor are not necessary for a district court to properly exercise its discretion”).

While the district court did not make explicit *Brunzell* findings, it satisfied the first prong under *Logan* by noting that it “[had] considered all of the factors pertinent to attorney’s fees.” However, the district court did not provide sufficient reasoning explaining how it arrived at \$50,000, and it is not obvious by our review of the record. Accordingly, we vacate the district court’s order awarding attorney fees and remand for further findings.

*The costs award*

The Edgeworths challenge the award of costs, arguing that the district court failed to explain or justify the amount. Having considered the record and the parties’ arguments, we conclude that the district court acted within its sound discretion in awarding Simon \$5,000 in costs. *Logan*, 131 Nev. at 267, 350 P.3d at 1144 (explaining that this court reviews an award of costs for an abuse of discretion). Here, the district court explained that it awarded \$5,000 of the requested \$18,434.74 because Simon only requested an award for work performed on the motion to dismiss, not the adjudication of the attorney lien. As Simon’s counsel acknowledged, only \$5,000 of the requested costs related to the motion to dismiss and thus only that \$5,000 is recoverable. Because the cost award is supported by an invoice and memorandum of costs, we conclude that the district court acted within its sound discretion when it awarded \$5,000 in costs to Simon.

In sum, as to the Edgeworths' appeal in Docket No. 77678, we affirm the district court's order granting Simon's motion to dismiss as well as the order awarding \$5,000 in costs. However, we vacate the district court's order awarding \$50,000 in attorney fees and \$200,000 in quantum meruit and remand for further findings regarding the basis of the awards. As to Simon's cross-appeal in Docket No. 78176, we affirm the district court's order denying Simon's anti-SLAPP motion as moot.

For the reasons set forth above, we

ORDER the judgment of the district court **AFFIRMED** in part and **VACATED** in part **AND REMAND** this matter to the district court for proceedings consistent with this order.

Pickering C.J.  
Pickering

Gibbons J.  
Gibbons

Hardesty J.  
Hardesty

Parraguirre J.  
Parraguirre

Stiglich J.  
Stiglich

Cadish J.  
Cadish

cc: Hon. Tierra Danielle Jones, District Judge  
Dana Jonathon Nitz, Settlement Judge  
James R. Christensen  
Vannah & Vannah  
Christiansen Law Offices  
Eighth District Court Clerk

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.

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

vs.

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

No. 77678

**FILED**

MAR 18 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

No. 78176

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.

*[Signature]* C.J.  
Hardesty

*[Signature]* J.  
Parraguirre

*[Signature]* J.  
Cadish

*[Signature]* J.  
Pickering

*[Signature]* J.  
Stiglich

*[Signature]* J.  
Silver

*[Signature]* J.  
Herndon

cc: Hon. Tierra Danielle Jones, District Judge  
Vannah & Vannah  
James R. Christensen  
Christiansen Law Offices  
Eighth District Court Clerk

**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. A738444

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

**Supreme Court No. 78176**  
District Court Case No. A738444

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc (without enclosures):

Hon. Tierra Danielle Jones, District Judge  
Vannah & Vannah  
James R. Christensen  
Christiansen Law Offices \ Peter S. Christiansen



**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on APR 13 2021.

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED  
APPEALS**

**APR 13 2021**

**CLERK OF THE COURT**

## CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 2nd day of September, 2020, a true and correct copy of the foregoing **JOINT APPELLANTS' APPENDIX (Vols. I – XXI) IN SUPPORT OF ALL APPELLANTS' OPENING BRIEFS** was served by the following method(s):

- ☒ Supreme Court's EFlex Electronic Filing System:
- ☒ United States Postal Service (Electronic Copy of Appendix)

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*Attorneys for Respondent Law Office of Daniel S. Simon, A Professional Corporation; and Daniel S. Simon*

Dated this 10th day of June, 2021.

By: /s/ Traci K. Baez