

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC

Petitioners,

vs.

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

Respondents.

Supreme Court Case No. 83258
Consolidated with 83260
Electronically Filed
Mar 29 2022 02:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
(District Court A-18-767242-C
Consolidated with
A-16-738444-C)

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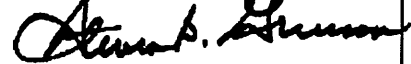
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1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

Consolidated with

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

6
7 **FINDINGS OF FACT**

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

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

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

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

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
28

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

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

22 23 ***Declaratory Relief***

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

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

4 5 *Conversion*

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

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

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

20 21 *Breach of the Implied Covenant of Good Faith and Fair Dealing*

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

1 ***Breach of Fiduciary Duty***

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

10
11 ***Punitive Damages***

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

19
20 **CONCLUSION**

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

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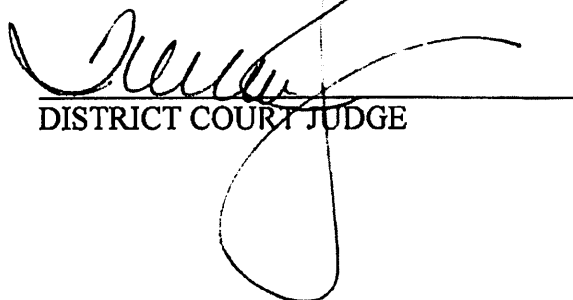
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ORDER

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

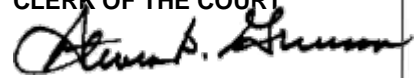
IT IS SO ORDERED this 19 day of November, 2018.


DISTRICT COURT JUDGE

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

AA02260



ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

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

Consolidated with

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

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

DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 ***Fee Agreement***

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9 10 *Implied Contract*

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ***Costs Owed***

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

15 ***Quantum Meruit***

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

23 CONCLUSION

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

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

9
10 **ORDER**

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

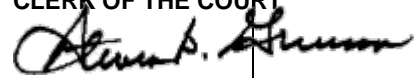
14 IT IS SO ORDERED this 19 day of November, 2018.

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

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MATF
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Daniel S. Simon

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**MOTION FOR ATTORNEY FEES
AND COSTS**

Date of Hearing:

Time of Hearing:

CONSOLIDATED WITH

Case No.: A-18-767242-C

Dept. No.: 10

1 The Law Office of Daniel Simon, Daniel Simon, individually and Simon
2 Law, by and through their attorneys, Peter Christiansen, Esq. and James R.
3 Christensen, Esq. move for Attorney's Fees and Costs pursuant to NRS 7.085,
4 NRS 18.010(2)(b), NRS 41.670 and NRCP 11.
5

6 This motion is made and based upon the papers and pleadings on file
7
8 herein, exhibits attached, the points and authorities set forth herein, and all other
9 evidence that the Court deems just and proper, as well as the arguments of
10 counsel at the time of the hearing hereon.
11

12 Dated this 7th day of December, 2018.

13
14 /s/ James R. Christensen
15 JAMES CHRISTENSEN, ESQ.
16 Nevada Bar No. 003861
17 601 S. 6th Street
18 Las Vegas, NV 89101
19 (702) 272-0406
20 (702) 272-0415
21 jim@jchristensenlaw.com
22 *Attorney for Daniel S. Simon*
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You, and each of you, will please take notice that the undersigned will bring on for hearing the Motion for Attorney's Fees and Costs before the above- entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the _____ day of _____, 2018, at 9:30 a.m./~~p.m.~~ in Department 10, Courtroom 14B.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
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Attorney for Daniel S. Simon

MEMORANDUM OF POINTS & AUTHORITIES

I. Introduction

This Court found that the attorney lien of Defendant Daniel S. Simon dba Simon Law (“Simon”) was proper and that the lawsuit brought by Plaintiffs Edgeworth Family Trust and American Grating, LLC’s (hereafter “Plaintiffs”) against Simon had no merit. Accordingly, on October 11, this Court dismissed Plaintiffs’ Complaint in its entirety and issued three decisions: Decision and Order on Motion to Dismiss NRCP 12(b)(5); Decision and Order on Motion to Adjudicate Lien and Decision; and Decision and Order on Special Motion to Dismiss Anti-SLAPP. On November 19, 2018, this Court filed an Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5) (“MTDO”), attached hereto as **Exhibit 1** and an Amended Decision and Order on Motion to Adjudicate Lien (“Lien D&O”), attached hereto as **Exhibit 2**. The Decision and Order on Special Motion to Dismiss Anti-SLAPP (“ASO”) is attached hereto as **Exhibit 3**

Plaintiffs’ complaint brought claims that were not well grounded in fact or law. For example, it is clear that the conversion claim was frivolous and filed for an improper purpose, when the Court examines the facts known to Plaintiffs when they filed the complaint on January 4, 2018; which were, Simon did not have the money and had not stolen any money. In fact, he did not even have the ability to

1 steal the money as Mr. Vannah equally controlled the account. Additionally, there
2 was no merit to Plaintiffs' claims that:

- 3 • Simon "intentionally" converted and was going to steal the settlement
4 proceeds;
- 5 • Simon's conduct warranted punitive damages;
- 6 • Daniel S. Simon individually should be named as a party;
- 7 • Simon had been paid in full;
- 8 • Simon refused to release the full settlement proceeds to Plaintiffs;
- 9 • Simon breached his fiduciary duty to Plaintiffs;
- 10 • Simon breached the covenant of good faith and fair dealing; and,
- 11 • Plaintiffs were entitled to Declaratory Relief because they had paid Simon in
12 full.

13 There are several provisions within Nevada law that favor awarding attorney
14 fees and costs when the claims asserted and maintained by a party are not well-
15 grounded in fact or warranted by existing law to deter vexatious and frivolous
16 claims. Consequently, Simon is entitled to attorney fees and costs pursuant to three
17 separate and distinct grounds under NRS 7.085, NRS 18.010(2)(b), NRS 41.670
18 and NRCP 11 as described below.
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II. Statement Of Relevant Facts

Simon represented Plaintiffs in a complex and hotly contested products liability and contractual dispute stemming from a premature fire sprinkler activation in April of 2016 which flooded Plaintiffs speculation home during its construction causing \$500,000.00 in property damage. **Exhibit 2**, Lien D&O, pp. 2-7.

In May/June of 2016, Simon helped Plaintiffs on the flood claim as a favor, with the goal of ending the dispute by triggering insurance to adjust the property damage loss. Simon and Plaintiffs never had an express written or oral attorney fee agreement.

In June of 2016, a complaint was filed. In November of 2016, a joint case conference was held.

In August/September of 2017, Simon and clients agree that the flood case dramatically changed. The case had become extremely demanding and was dominating the time of the law office precluding work on other cases. Determined to help his friend at the time, Simon and the clients made efforts to reach an express attorney fee agreement for the new case. In August of 2017, Daniel Simon and Brian Edgeworth agreed that the nature of the case had changed and had discussions about an express fee agreement based on a hybrid of hourly and contingency fees. However, an express agreement could not be reached due to the

1 unique nature of the property damage claim and the amount of work and costs
2 necessary to achieve a great result. Simon and the clients agree that the attorney
3 fee was in flux during this period.
4

5 Although efforts to reach an express fee agreement failed, Simon continued
6 to forcefully litigate Plaintiffs' claims by serving and assertively pursuing
7 discovery and dynamic motion practice, including the filing of a motion to strike
8 Vikings' answer and exclude crucial defense experts.
9

10 In mid-November of 2017, an offer was made by Viking. The first
11 meaningful Viking offer was made in the context of mediation, as a counter offer
12 to a mediator's proposal. The first Viking offer was made as several dispositive
13 motions and an evidentiary hearing on the request to strike Vikings answer were
14 pending. The first Viking offer contained contingencies and provisions which had
15 not been previously agreed to.
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19 Following the Viking offer in mid-November, Simon continued to
20 vigorously pursue the litigation against Viking pending resolution of the details of
21 settlement, and against the co-defendant, Lange Plumbing. Simon also again raised
22 the desire for an express attorney fee agreement with the clients.
23
24

25 On November 29, 2017, the Edgeworths constructively fired Simon by
26 retaining new counsel, Vannah and Vannah, and ceased all direct communications
27 with Simon.
28

1 On November 30, 2017, Vannah and Vannah provided Simon notice of
2 retention.

3 On November 30, 2017, Simon served an attorney lien pursuant to NRS
4 18.015. However, Simon continued to protect his former clients' interests in the
5 complex flood litigation, to the extent possible under the unusual circumstances.
6

7 On December 1, 2017, the Edgeworths entered into an agreement to settle
8 with Viking and release Viking from all claims in exchange for a promise by
9 Viking to pay six million dollars (\$6,000,000.00 USD).
10

11 On January 2, 2018, Simon served an amended attorney lien.
12

13 On January 4, 2018, Edgeworth's, through Vannah, sued Simon, alleging
14 Conversion (stealing) and various other causes of actions based on the assertion of
15 false allegations. At the time of this lawsuit, Vannah and Edgeworth actually knew
16 that the settlement funds were not deposited in any other account and arrangements
17 were being made at the request of Edgeworth and Vannah to set up a special
18 account so that Vannah on behalf of Edgeworth would control the funds equally
19 pending the lien dispute.
20

21 On January 8, 2018, Vannah met Simon at Bank of Nevada and deposited
22 the Viking settlement check into a special trust account opened by mutual
23 agreement for this case only. In addition to the normal safeguards for a trust
24 account, this account required signatures of both Vannah and Simon for a
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1 withdrawal. Thus, Simon stealing money from the trust account was an
2 impossibility.

3 On January 9, 2018, Plaintiffs served their complaint which alleged that
4 Simon stole their money-money which was safe kept in a Bank of Nevada account,
5 earning them interest. Edgeworth and Vannah both knew Simon did not and could
6 not steal the money, yet they pursued their serious theft allegations knowing the
7 falsity thereof.
8

9 Simon responded with two motions to dismiss, which detailed the facts and
10 explained the law on why the complaint was frivolous. Rather than conceding the
11 lack of merit as to even a portion of the complaint, Plaintiffs maintained the actions
12 and filed an Amended Complaint to include new causes of action for the Breach of
13 the Implied Covenant of Good Faith and Fair Dealing and Breach of Fiduciary
14 Duty and reaffirmed all the false facts in support of the conversion claims. The
15 false facts asserted alleged, among other things, extortion, blackmail, and stealing
16 by Simon, and sought punitive damages. When these allegations were made and
17 causes of actions maintained on an ongoing basis, Vannah and Edgeworth both
18 actually knew they were false and had no legal basis whatsoever because their
19 allegations were a legal impossibility.
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1 The facts elicited at the five-day evidentiary hearing further confirmed that
2 the allegations in both complaints were false and that the complaints were filed for
3 an improper purpose as a collateral attack on the lien adjudication proceeding;
4 which forced Simon to retain counsel and experts to defend the suit.
5

6 On October 11, the Court dismissed Plaintiffs amended complaint. Of
7 specific importance, the Court found that:
8

- 9 • On November 29, Simon was constructively discharged.
- 10 • On December 1, Simon appropriately served and perfected a charging
11 lien on the settlement monies.
- 12 • Simon was due fees and costs from the settlement monies subject to
13 the proper attorney lien.
- 14 • Found no evidence to support the conversion claim.
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18 The Court *did not find* that Simon converted the clients' money.

19 Based on the ruling of the Court, as a matter of law, Simon is entitled to
20 attorney fees and costs under Nevada law pursuant to NRS 7.085, NRS
21 18.010(2)(b), NRS 41.670 and NRCP 11. Because the Court found Simon properly
22 asserted a charging lien pursuant to Nevada law, Plaintiffs' claims against Simon
23 had no merit and there was no basis in law or fact for the conversion claim.
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1 The Court can grant attorney fees based solely on the most egregious cause
2 of action for conversion (and punitive damages) which was a legal impossibility
3 based on the uncontroverted facts known to Plaintiffs at the time they filed the
4 complaint. In addition, the Court may grant attorney fees based on the frivolous
5 and vexatious nature of the lawsuit which is shown by the totality of the
6 circumstances, including the wild accusations contained in the Complaints and
7 three separate affidavits of Brian Edgeworth that were confirmed as false at the
8 evidentiary hearing. The mere fact that Vannah and Edgeworth attempted to name
9 Mr. Simon personally underscores their willfulness and transparent motives.
10
11

12 **III. Argument**

13 **A. Applicable Law.**

14
15 There are several provisions within Nevada law that favor awarding attorney
16 fees and costs when the claims maintained by a party are not well-grounded in fact
17 or warranted by existing law to deter vexatious and frivolous claims. Nevada
18 Revised Statute 18.010(2)(b) and (3) state:
19
20
21

22 2. In addition to the cases where an allowance is authorized by specific
23 statute, the court may make an allowance of attorney's fees to a prevailing
24 party:

25 (b) Without regard to the recovery sought, when the court finds that
26 the claim, counterclaim, cross-claim or third-party complaint or
27 defense of the opposing party was brought or maintained without
28 reasonable ground or to harass the prevailing party. *The court shall
liberally construe the provisions of this paragraph in favor of
awarding attorney's fees in all appropriate situations.* It is the intent

1 of the Legislature that the court award attorney's fees pursuant to this
2 paragraph and impose sanctions pursuant to Rule 11 of the Nevada
3 Rules of Civil Procedure in all appropriate situations to punish for and
4 deter frivolous or vexatious claims and defenses because such claims
5 and defenses overburden limited judicial resources, hinder the timely
6 resolution of meritorious claims and increase the costs of engaging in
7 business and providing professional services to the public.

8 3. In awarding attorney's fees, the court may pronounce its decision on the
9 fees at the conclusion of the trial or special proceeding without written
10 motion and with or without presentation of additional evidence.

11 (Emphasis added.)

12 Further, Nevada Revised Statute 7.085 states:

13 1. If a court finds that an attorney has:

14 (a) Filed, maintained or defended a civil action or proceeding in any
15 court in this State and such action or defense is not well-grounded in
16 fact or is not warranted by existing law or by an argument for
17 changing the existing law that is made in good faith; or

18 (b) Unreasonably and vexatiously extended a civil action or
19 proceeding before any court in this State,

20 ~ the court shall require the attorney personally to pay the additional
21 costs, expenses and attorney's fees reasonably incurred because of
22 such conduct.

23 2. The court shall liberally construe the provisions of this section in favor
24 of awarding costs, expenses and attorney's fees in all appropriate situations.
25 It is the intent of the Legislature that the court award costs, expenses and
26 attorney's fees pursuant to this section and impose sanctions pursuant to
27 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations
28 to punish for and deter frivolous or vexatious claims and defenses because
such claims and defenses overburden limited judicial resources, hinder the
timely resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

1 Additionally, under Nevada's Anti-SLAPP statutes that protect
2 communications made to courts -- such as requesting adjudication of an attorney
3 lien -- attorney fees and costs are also provided to deter frivolous and vexatious
4 claims:
5

6 1. If the court grants a special motion to dismiss filed pursuant to NRS
7 41.660:

8 (a) The court shall award reasonable costs and attorney's fees to the
9 person against whom the action was brought, except that the court
10 shall award reasonable costs and attorney's fees to this State or to the
11 appropriate political subdivision of this State if the Attorney General,
12 the chief legal officer or attorney of the political subdivision or special
counsel provided the defense for the person pursuant to NRS 41.660.

13 (b) The court may award, in addition to reasonable costs and
14 attorney's fees awarded pursuant to paragraph (a), an amount of up to
15 \$10,000 to the person against whom the action was brought.

16 (c) The person against whom the action is brought may bring a
17 separate action to recover:

18 (1) Compensatory damages;

19 (2) Punitive damages; and

20 (3) Attorney's fees and costs of bringing the
21 separate action.
22

23 2. If the court denies a special motion to dismiss filed pursuant to NRS
24 41.660 and finds that the motion was frivolous or vexatious, the court shall
25 award to the prevailing party reasonable costs and attorney's fees incurred in
26 responding to the motion.
27
28

1 3. In addition to reasonable costs and attorney's fees awarded pursuant to
2 subsection 2, the court may award:

3 (a) An amount of up to \$10,000; and

4 (b) Any such additional relief as the court deems proper to punish and
5 deter the filing of frivolous or vexatious motions.

6 4. If the court denies the special motion to dismiss filed pursuant to NRS
7 41.660, an interlocutory appeal lies to the Supreme Court.

8
9 NRS 41.670.

10 Finally, NRCP 11 provides sanctions as follows:

11 (b) Representations to Court. By presenting to the court (whether by
12 signing, filing, submitting, or later advocating) a pleading, written
13 motion, or other paper, an attorney or unrepresented party is certifying
14 that to the best of the person's knowledge, information, and belief,
15 formed after an inquiry reasonable under the circumstances, —

16 (1) it is not being presented for any improper purpose, such as
17 to harass or to cause unnecessary delay or needless increase in the cost
18 of litigation;

19 (2) the claims, defenses, and other legal contentions therein are
20 warranted by existing law or by a nonfrivolous argument for the
21 extension, modification, or reversal of existing law or the
22 establishment of new law;

23 (3) the allegations and other factual contentions have
24 evidentiary support or, if specifically so identified, are likely to have
25 evidentiary support after a reasonable opportunity for further
26 investigation or discovery; and

27 (4) the denials of factual contentions are warranted on the
28 evidence or, if specifically so identified, are reasonably based on a
lack of information or belief.

1 c) Sanctions. If, after notice and a reasonable opportunity to respond,
2 the court determines that subdivision (b) has been violated, the court
3 may, subject to the conditions stated below, impose an appropriate
4 sanction upon the attorneys, law firms, or parties that have violated
5 subdivision (b) or are responsible for the violation.

6 (1) How initiated.

7 (A) By Motion. A motion for sanctions under this rule
8 shall be made separately from other motions or requests and
9 shall describe the specific conduct alleged to violate
10 subdivision (b). It shall be served as provided in Rule 5, but
11 shall not be filed with or presented to the court unless, within
12 21 days after service of the motion (or such other period as the
13 court may prescribe), the challenged paper, claim, defense,
14 contention, allegation, or denial is not withdrawn or
15 appropriately corrected. If warranted, the court may award to
16 the party prevailing on the motion the reasonable expenses and
17 attorney's fees incurred in presenting or opposing the motion.
18 Absent exceptional circumstances, a law firm shall be held
19 jointly responsible for violations committed by its partners,
20 associates, and employees.

21 (B) On Court's Initiative. On its own initiative, the court
22 may enter an order describing the specific conduct that appears
23 to violate subdivision (b) and directing an attorney, law firm, or
24 party to show cause why it has not violated subdivision (b) with
25 respect thereto.

26 (2) Nature of Sanction; Limitations. A sanction imposed for
27 violation of this rule shall be limited to what is sufficient to deter
28 repetition of such conduct or comparable conduct by others similarly
situated. Subject to the limitations in subparagraphs (A) and (B), the
sanction may consist of, or include, directives of a nonmonetary
nature, an order to pay a penalty into court, or, if imposed on motion
and warranted for effective deterrence, an order directing payment to
the movant of some or all of the reasonable attorney's fees and other
expenses incurred as a direct result of the violation.

1 (A) Monetary sanctions may not be awarded against a
2 represented party for a violation of subdivision (b)(2).

3 (B) Monetary sanctions may not be awarded on the
4 court's initiative unless the court issues its order to show cause
5 before a voluntary dismissal or settlement of the claims made
6 by or against the party which is, or whose attorneys are, to be
7 sanctioned.

8 (3) Order. When imposing sanctions, the court shall describe
9 the conduct determined to constitute a violation of this rule and
10 explain the basis for the sanction imposed.

11 NRCP 11(b) and (c).

12 **B. Attorney Fees and Costs Is Proper and Necessary.**

13 Simon properly asserted a charging lien pursuant to Nevada law. *See*
14 **Exhibit 1**, p. 8. Plaintiffs' claims *were not* maintained upon reasonable grounds.
15 *See* NRS 18.010(2)(b). The claims were not "well-grounded" in fact, "warranted
16 by existing law" or warranted "by an argument for changing the existing law that
17 [was] made in good faith." *See* NRS 7.085(1)(a). In fact, Plaintiffs and their
18 counsel openly admitted the falsity of the allegations and that conversion was a
19 legal impossibility. This is disturbing since the conversion claim is an accusation
20 of stealing and severely tarnishes the reputation of the lawyer accused.
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1 Plaintiffs did not present any “well-grounded” facts as alleged in their
2 Complaint (and also their Amended Complaint) to prove that:

- 3 • Simon “intentionally” converted and was going to steal the settlement
4 proceeds;
- 5 • Simon’s conduct warranted punitive damages;
- 6 • Daniel S. Simon individually should be named as a party;
- 7 • Simon had been paid in full;
- 8 • Simon refused to release the full settlement proceeds to Plaintiffs;
- 9 • Simon breached his fiduciary duty to Plaintiffs;
- 10 • Simon breached the covenant of good faith and fair dealing;
- 11 • Plaintiffs were entitled to Declaratory Relief because they had paid Simon in
12 full; and,
- 13 • Simon extorted, blackmailed or did anything remotely similar.

14 Plaintiffs’ claims were maintained via the Complaint, Amended Complaint,
15 and three affidavits provided by Brian Edgeworth that Simon had been paid in full
16 already; that Simon tried to steal the settlement proceeds; and that Simon tried to
17 “blackmail” the Edgeworths. *See Exhibit 4*, ¶¶ 36-37 and 40-44; and Affidavit of
18 Brian Edgeworth, dated February 2, 2018, pp. 3, ¶ 12, ll. 23-24, attached hereto as
19 **Exhibit 5**. These were false facts that were asserted to smear the reputation of
20 Simon, to harass Simon and were brought for an improper purpose to prevent
21 adjudication of the attorney lien.

1 Plaintiffs and their counsel knew the facts were false when the complaint
2 was filed and when the complaint was served. Plaintiffs and their counsel knew
3 Simon did not have possession of the settlement funds and knew that an allegation
4 that Simon had stolen the money was an impossibility. Plaintiffs and counsel knew
5 that a conversion action brought on a contractual claim was a legal impossibility
6 and knew that a conversion action against Simon when Simon did not have
7 possession of the funds was an impossibility. Yet, counsel signed the complaint
8 under NRCP 11 without any regard for the falsity of the allegations. In fact, Mr.
9 Vannah conceded in an email that he personally did not believe Simon would steal
10 the money, yet his office prepared and filed a public lawsuit on January 4, 2018
11 alleging the theft via the conversion claim.

12 Following the first Simon motion to dismiss, Mr. Edgeworth reaffirmed the
13 false and impossible allegations in his three affidavits. Rather than acknowledging
14 that Simon did not and could not steal or convert the settlement money as a matter
15 of law, Plaintiffs and counsel continued to assert these facts in pleading after
16 pleading. Even at the most recent reconsideration motion, Mr. Vannah told this
17 court that the money in the trust account was all of the Edgeworth's. This is
18 baffling in light of the representations by Mr. Vannah and Edgeworth during the
19 evidentiary hearing when they both admitted "we always knew we owed Mr.
20 Simon money for his work" and at the time the complaint for conversion was filed
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1 he was owed in excess of \$68,000 for costs alone. By maintaining the frivolous
2 and serious claim of theft, this conduct compelled Simon to vigorously defend
3 these false accusations incurring substantial fees and costs.
4

5 Simon followed the law for asserting an attorney lien. There was no
6 blackmail, stealing or conversion. Yet, Plaintiffs and their counsel asserted those
7 false claims beginning with the filing of the Complaint on January 4, 2018, through
8 the Amended Complaint on March 15, 2018; and, in three affidavits by Brian
9 Edgeworth -- all the way up to the Evidentiary Hearing. *See Exhibits 4 and 6* and
10 Affidavits of Brian Edgeworth, dated February 12, 2018 and March 15, 2018,
11 attached respectively hereto as **Exhibits 7 and 8**.
12
13
14

15 In addition to being false, the claims were made for an improper purpose.
16 The Court should recall that at every opportunity, Plaintiffs and their counsel
17 argued against this Court adjudicating the lien, a remedy provided by statute, based
18 solely on the nature of their fallacious conversion claim.
19

20 It was only at the evidentiary hearing, and upon thorough cross examination,
21 that Plaintiffs conceded that Plaintiffs owe Simon money and that was never in
22 dispute. Mr. Vannah also conceded this crucial fact only at the time of the
23 evidentiary hearing when the plaintiffs and their counsel all stated “We never
24 disputed that we have always owed Simon money.” This confirms the frivolous
25 nature of the complaints at the time of the filing in January and again in March,
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1 2018. Further, there were no contentions, much less actual evidence, of Simon's
2 "reckless disregard" of Plaintiffs' rights that rose to the level of fraud, malice and
3 oppression to support Plaintiffs' claims for punitive damages.
4

5 Plaintiffs and their attorneys' conduct is clear evidence of maintaining
6 claims that had no grounding in fact or law. Their actions warped a lien
7 adjudication matter into vexatious false claims of blackmail and oppressive
8 conduct that were directed both personally and professionally against Daniel
9 Simon which necessitated hiring counsel and experts to vigorously defend against
10 those claims.
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12

13 Simon can certainly adjudicate his lien without counsel as he had done on
14 other occasions, but in light of the serious nature of the false claims filed by
15 Plaintiffs, Simon had to hire his own legal team at great expense. Plaintiffs should
16 be held accountable for the consequences of their decision to pursue frivolous
17 claims against Simon.
18
19

20 **3. Nevada law favors the award of attorney's fees and costs.**
21

22 The Nevada Supreme Court addressed awarding attorney fees for frivolous
23 claims directly in *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993)
24 (*superseded* by statute on other grounds). In *Bergmann*, Fred and Harriet Boyce
25 consulted their former attorney, Roger Bergmann, for advice regarding investment
26 strategies. *Id.* at 673. Bergmann mentioned an investment brokerage firm named
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28

1 Lemons & Associates during the consultation, and the Boyces invested a
2 significant amount of money with Lemons & Associates. *Id.* Subsequently,
3 Lemons & Associates became insolvent and Steve Lemons was incarcerated. *Id.*
4
5 The Boyces then sued Bergmann, alleging six causes of action, including fraud and
6 misrepresentation; breach of the implied covenant of good faith and fair dealing;
7 intentional and negligent infliction of emotional distress; attorney malpractice;
8 negligent misrepresentation; and a claim for the Boyce's daughter's losses. *Id.* The
9 Boyces also sought punitive damages against Bergmann. *Id.*
10
11

12 Bergmann filed a motion for attorney's fees pursuant to NRS 18.010(2)(b),
13 NRCP 11 and NRCP 68. The district court denied Bergmann's motion for fees,
14 finding that the Boyce's claims had survived the NRCP 12(b)(5) motion and that
15 only some of the claims had been dismissed pursuant to NRCP 41(b) during the
16 trial. *Id.*
17
18

19 The Nevada Supreme Court concluded that the district court abused its
20 discretion and remanded the case back to the district court to conduct the proper
21 analysis for awarding attorney's fees. The *Bergmann* Court stated that "[i]n
22 assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must
23 determine whether the plaintiff had reasonable grounds for its claims. **Such an**
24 **analysis depends upon the actual circumstances of the case rather than a**
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1 **hypothetical set of facts favoring plaintiff's averments."** *Id.* at 675 (emphasis
2 added). Further, the Court specifically noted:

3 [T]he fact that the Boyce's complaint survived a 12(b)(5) motion to dismiss
4 was irrelevant to the trial court's inquiry as to whether the claims of the
5 complaint were groundless. The trial court could not base its refusal to
6 award attorney's fees upon the 12(b)(5) ruling. The trial court also based its
7 refusal to award fees upon the fact that it dismissed only a few of the
8 Boyce's claims for failure to present sufficient evidence. In fact, only one of
9 the Boyce's claims survived at trial. **The prosecution of one colorable
claim does not excuse the prosecution of five groundless claims.**

10 *Id.* (Emphasis added) (citing *Trus Joist Corp. v. Safeco Ins. Co. of Am.*, 153 Ariz.

11 95, 735 P.2d 125, 140 (Ariz. Ct. App. 1986) (case remanded for trial court to

12 apportion attorney's fees between grounded and groundless claims); *Department of*

13 *Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98, 101 (Ariz. Ct. App. 1986) ("The fact

14 that not all claims are frivolous does not prevent an award of attorneys' fees.");

15 *Fountain v. Mojo*, 687 P.2d at 501 ("[A] prevailing party must be afforded an

16 opportunity to establish a reasonable proration of attorney fees incurred relative to

17 the defense of a frivolous or groundless claim.")).

1 The *Bergmann* Court also found that the lower court abused its discretion in
2 denying attorney's fees under NRCP 11: "NRCP 11 sanctions *should* be imposed
3 for frivolous actions." *Id.* at 676 (emphasis added). The Court stated as follows:
4

5 A frivolous claim is one that is 'both baseless and made without a reasonable
6 and competent inquiry.' Thus, a determination of whether a claim is
7 frivolous involves a two-pronged analysis: (1) the court must determine
8 whether the pleading is 'well-grounded in fact and is warranted by existing
9 law or a good faith argument for the extension, modification, or reversal of
10 existing law'; and (2) whether the attorney made a reasonable and competent
11 inquiry.

12 The first prong of the test has a component which is similar to the analysis
13 required under NRS 18.010(2)(b): The trial court must examine the actual
14 circumstances surrounding the case to determine whether the suspect claims
15 were brought without reasonable grounds. As we noted previously, the trial
16 court did not base its decision upon such an examination, but instead upon
17 the fact that the complaint survived a Rule 12(b)(5) motion to dismiss. The
18 legal standard applied to a rule 12(b)(5) motion to dismiss differs from the
19 legal standard applied to a Rule 11 motion for sanctions. Thus, the trial court
20 abused its discretion by applying an incorrect legal standard to the question
21 whether Bergmann could recover fees as a sanction under NRCP 11.

22 *Id.* at 676-77 (citations omitted).

23 When applying the foregoing analysis, the *Bergmann* Court noted that the
24 record contained "ample evidence" for which the trial court could have concluded
25 that the Boyce's attorney failed to make a reasonable and competent inquiry, and,
26 therefore, the trial court's error "may well have affected Bergmann's substantial
27 rights." *Id.* at 677.
28

1 The facts in the present case are much stronger than in *Bergmann*, and the
2 evidence is more than substantial. Plaintiffs filed their lawsuit and included claims
3 for Conversion and punitive damages. This Court found that Simon had not even
4 received the settlement proceeds until after Plaintiffs had filed their lawsuit:
5
6 “When the Complaint was filed on January 4, 2018, Mr. Simon was not in
7 possession of the settlement proceeds as the checks were not endorsed or deposited
8 in the trust account.” *See, Exhibit 1*, pp. 7:15-16. In fact, this was conceded and
9 known to Plaintiffs when filing the complaint. Plaintiffs had actual knowledge of
10 the when and how the settlement money was deposited into a special trust account
11 controlled by Vannah. Thus, Plaintiffs and their counsel had actual knowledge that
12 no money was stolen or converted. Rather than correcting the wild accusations,
13 Vannah maintained the frivolous theft claims in pleading after pleading.
14
15 Additionally, there was no breach of contract; no breach of fiduciary duty; no
16 breach of the covenant of good faith and fair dealing; and Plaintiffs were not
17 entitled to Declaratory Relief, much less punitive damages. *Id.*, pp.6-8. Instead,
18 Simon followed the law in asserting an attorney lien and aggressively represented
19 his former clients throughout the entire process.
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25 Plaintiffs and their counsel knew the facts of this case and that this was a fee
26 dispute and nothing more. Nevertheless, they chose to pursue their claims through
27 a separate action asserting wild accusations in multiple pleadings, oppositions and
28

1 affidavits, despite admitting at the start of the evidentiary hearing that Simon was
2 always owed money. It is undisputed that there were not any reasonable grounds to
3 file a lawsuit.
4

5 Nevada law on this matter is clear. Courts must “*liberally construe*” the
6 provisions “*in favor*” of awarding attorney fees against parties who maintain
7 claims without reasonable grounds for doing so. *See* NRS 18.010(2)(b) and NRS
8 7.085(2) (emphasis added). Here, the Court must determine if Plaintiffs’ claims
9 were well-grounded in fact or existing law or they had made a good faith argument
10 for a change in the existing law. *See Bergmann*, 109 Nev. at 675-77; *see also Iorio*
11 *v. Check City P’ship, LLC*, 2015 Nev. Unpub. LEXIS 658, *9-10 (affirming the
12 lower court’s *Bergmann* analysis and upholding the court’s award of attorney fees
13 and sanctions pursuant to NRCP 11 and NRS 18.010(2)(b)); and *Ginena v. Alaska*
14 *Airlines, Inc.*, 2013 U.S. Dist. LEXIS, *13-14 (holding that plaintiffs’ voluntarily
15 dismissed claims right before trial were groundless and weighed in favor of
16 awarding fees). In *Bennett v. Baxter Group*, 224 p.3d 230 (Ariz 2010), a lawyer
17 was sanctioned for holding onto a claim long after he should have dropped it and
18 then the lawyer dropped it on the eve of trial.
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25 In Edgeworth, they should not have pursued the impossible claim of theft
26 initially and certainly should have dropped the theft claim from the amended
27 complaint.
28

1 This Court has found that Plaintiffs and their counsel did not show that their
2 claims were well-grounded in fact or existing law, as was established in the
3 evidentiary hearing and concluded in the Court's ruling on Simon's Motion to
4 Dismiss pursuant to NRCP 12(b)(5). *See Exhibit 1.*

6 Consequently, NRCP 11 and NRS 7.085 sanctions are appropriate, and
7 attorney fees and costs for Simon are proper pursuant to NRS 18.010(2)(b), NRS
8 7.085, NRCP 11, and NRS 41.670.

10 While Simon recognizes that the Court determined the Anti-SLAPP Motion
11 to Dismiss to be moot as the NRCP 12(b)(5) motion was granted, the same facts
12 can still apply within NRS 41.670 to provide attorney's fees and costs to Simon.
13 The attorney lien was a communication to the court and was protected via
14 Nevada's Anti-SLAPP statutes; therefore, Plaintiffs' claims were – once again –
15 not grounded in fact or law to allow prosecution against Simon. This was made
16 clear to Plaintiffs in the initial special motion to dismiss –Anti-SLAPP, yet they
17 continued to maintain the frivolous action, which is the exact conduct the
18 legislature intended to deter. Therefore, Simon respectfully requests that its Motion
19 be granted and that the Court award attorney's fees and costs as detailed below.
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1 **C. Simon’s Attorney’s Fees and Costs**

2 As discussed above, Simon has adjudicated liens in the past without
3 retaining counsel. This usually involves a simple motion hearing and the Court
4 decides based on the pleadings and argument. Instead, Plaintiffs’ lawsuit asserting
5 false and wild accusations necessitated retaining counsel to defend himself and his
6 firm against their frivolous claims. Simon retained James Christensen, Esq. and
7 Peter Christiansen, Esq. to defend the wild accusations and litigate all of the issues
8 and claims within the Evidentiary Hearing. Thus, Simon has incurred the following
9 attorney’s fees and costs:
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13	1. James Christensen, Esq. Legal Fees	\$ 62,604.48 ¹
14		
15	2. Peter Christiansen, Esq. Legal Fees	\$199,495.00 ²
16		
17	3. Total Costs	\$ 18,434.73 ³
18	a. Will Kemp, Esq. Expert Fees	\$ 11,498.15
19	b. David Clark, Esq.	\$ 5,000.00
20	c. Miscellaneous Costs	\$ 1,936.58
21		
22	TOTAL ATTORNEY’S FEES AND COSTS	\$280,534.21
23		
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26		

27 ¹ James Christensen’s Invoices, attached hereto as Exhibit 9

28 ² Peter Christiansen’s Invoices, attached hereto as Exhibit 10

³ Costs Summary and supporting documentation attached hereto as Exhibit 11

1 Please note that these fees and costs do not include substantial time
2 expended by Simon and his firm in defending the frivolous claims that were filed
3 solely to harass Simon in a vexatious manner to destroy his reputation. The effects
4 of the theft claim of conversion still remain unknown on his practice and
5 reputation, but are clearly substantial. The fees and costs are the reasonable
6 expenses Simon incurred in defending Plaintiffs' claims that went far beyond an
7 attorney lien adjudication.
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10 Our Supreme Court has also adopted the view in stating that the trial court
11 should "either ... award attorney's fees or ... state the reasons for refusing to do
12 so." *Pandelis Const. v. Jones-Viking Assoc.*, 103 Nev. 129, 734 P.2d 1239
13 (1987). Accordingly, if attorney's fees and costs are not allowed there should be
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15 very compelling reasons supporting such a decision.
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1 **IV. Conclusion**

2 Simon respectfully requests that the Motion for Attorney Fees and Costs be
3 GRANTED, in the sum of **\$280,534.21** (\$262,099.48 in attorney's fees and
4 \$18,434.73 in costs).
5

6 Dated this 7th day of December, 2018.
7

8 /s/ James R. Christensen
9

10 JAMES R. CHRISTENSEN, ESQ.

11 Nevada Bar No. 003861

12 601 S. 6th Street

13 Las Vegas, NV 89101

14 Phone: (702) 272-0406

15 Facsimile: (702) 272-0415

16 Email: jim@jchristensenlaw.com

17 *Attorney for Daniel S. Simon*
18

19 **CERTIFICATE OF SERVICE**

20 I CERTIFY SERVICE of the foregoing **MOTION FOR ATTORNEY**
21 **FEES AND COSTS** was made by electronic service (via Odyssey) this 7th day
22 of December, 2018, to all parties currently shown on the Court's E-Service List.
23

24 /s/ Dawn Christensen
25

26 an employee of
27 JAMES R. CHRISTENSEN, ESQ.
28

Exhibit 1

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

Consolidated with

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

22 **AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**
23

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

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

6
7 **FINDINGS OF FACT**

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

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

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

22 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
23 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
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19 or if things get really bad, I still have a couple million in bitcoin I could sell.
20 I doubt we will get Kinsale to settle for enough to really finance this since I
21 would have to pay the first \$750,000 or so back to Colin and Margaret and
22 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

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25 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
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27 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
28 hour. Id. The invoice was paid by the Edgeworths on Decembcr 16, 2016.

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19 done in the litigation of this case. There were several motions and oppositions filed, several
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5 stating that the fee for legal services would be \$1,500,000 for services rendered to date. (Plaintiff's
6 Exhibit 4).

7 17. On November 29, 2017, the Edgeworths met with the Law Office of Vannah &
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13 "Please let this letter serve to advise you that I've retained Robert D. Vannah,
14 Esq. and John B. Greene, Esq., of Vannah & Vannah to assist in the litigation
15 with the Viking entities, et.al. I'm instructing you to cooperate with them in
16 every regard concerning the litigation and any settlement. I'm also instructing
17 you to give them complete access to the file and allow them to review
18 whatever documents they request to review. Finally, I direct you to allow
19 them to participate without limitation in any proceeding concerning our case,
20 whether it be at depositions, court hearings, discussions, etc."

21 (Def. Exhibit 43).

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

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

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3 reasonable value of his services when the case concluded. There is a dispute over the reasonable fee
4 due to the Law Office of Danny Simon.

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

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

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

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

14 15 **CONCLUSION OF LAW**

16 ***Breach of Contract***

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

22 23 ***Declaratory Relief***

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

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

5 *Conversion*

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

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

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

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

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

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

Punitive Damages

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

CONCLUSION

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

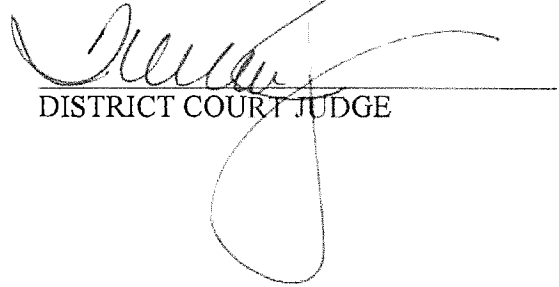
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ORDER

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

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


DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 2

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

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

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

22
23 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

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

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

7 8 **FINDINGS OF FACT**

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

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

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

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
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14 Lien with an attached invoice for legal services rendered. The amount of the invoice was
15 \$692,120.00. The Court set an evidentiary hearing to adjudicate the lien.

16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 ***Fee Agreement***

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

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

1 “We never really had a structured discussion about how this might be done. I
2 am more than happy to keep paying hourly but if we are going for punitive we
3 should probably explore a hybrid of hourly on the claim and then some other
4 structure that incents both of us to win and go after the appeal that these
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11 doubt we will get Kinsale to settle for enough to really finance this since I
12 would have to pay the first \$750,000 or so back to Colin and Margaret and
13 why would Kinsale settle for \$1MM when their exposure is only \$1MM?”

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

13 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 ***Costs Owed***

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

14
15 ***Quantum Meruit***

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

23 CONCLUSION

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

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

9
10 **ORDER**

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

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


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

AA02347

Exhibit 3



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

Consolidated with

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

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

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

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

1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**
7
8

9 **FINDINGS OF FACT**

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

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

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

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

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

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

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

15 It reads as follows:

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

(Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Def. Exhibit 43).

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

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

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

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

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

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

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

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

2 **CONCLUSION OF LAW**

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

7
8 **CONCLUSION**

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

12
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14 **ORDER**

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

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


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22 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

Electronically served to:

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

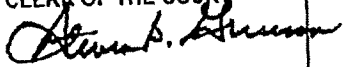


Tess Driver
Judicial Executive Assistant
Department 10

Exhibit 4

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

Electronically Filed
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CLERK OF THE COURT



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8 Las Vegas, Nevada 89101
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11 jgreene@vannahlaw.com

12 *Attorneys for Plaintiffs*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

22 Defendants.

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

23 COMPLAINT

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

3 16. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP
4 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS
5 suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS
6 paid. There is nothing in the computation of damages signed by and served by SIMON to reflect
7 fees and costs other than those contained in his invoices that were presented to and paid by
8 PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures
9 in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let
10 alone those in excess of \$1,000,000.00.
11

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

23 18. Despite SIMON'S requests and demands for the payment of more in fees,
24 PLAINTIFFS refuse, and continue to refuse, to alter or amend the terms of the CONTRACT.
25

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

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

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

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

15 **SECOND CLAIM FOR RELIEF**

16 **(Declaratory Relief)**

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

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

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

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

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

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

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

18
19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

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

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

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

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

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

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

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

18 45. As a result of SIMON'S intentional conversion of PLAINTIFFS' property,
19 PLAINTIFFS have been required to retain an attorney to represent their interests. As a result,
20 PLAINTIFFS are entitled to recover attorneys' fees and costs.
21

22 **PRAYER FOR RELIEF**

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

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

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

1 5. Costs of suit; and,

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

3 DATED this 3 day of January, 2018.

4 VANNAH & VANNAH

5
6 
7 ROBERT D. VANNAH, ESQ. (4272)
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Exhibit 5

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

21 10. Plus, SIMON didn't express an interest in taking what amounted to a property
22 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
23 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
24 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
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26
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1 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
2 of loss in the LITIGATION was gone.

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

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

24 13. Following that meeting, SIMON would not let the issue alone, and he was
25 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
26 agreed on any terms to alter, modify, or amend our fee agreement. Knowing SIMON as I do, if
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28

1 we had agreed to modify our fee agreement, SIMON would have attached that agreement in large
2 font to his Motion as Exhibit 1.

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

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

22 16. Another reason why we were so surprised by SIMON’S demands is because of the
23 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
24 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
25 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
26 flooding event. Since SIMON hadn’t presented these “new” damages to defendants in the
27
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1 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
2 be presented at trial.

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Kostadinus Boneva
Notary Public in and for said County and State

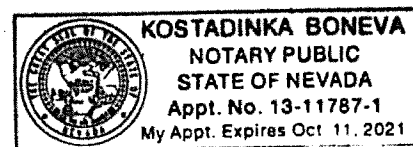
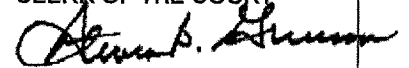


Exhibit 6



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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 EDGEWORTH FAMILY TRUST; AMERICAN
16 GRATING, LLC,

17 Plaintiffs,

18 vs.

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

24 Defendants.

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

Consolidated with

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

AMENDED COMPLAINT

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

23
24 **THIRD CLAIM FOR RELIEF**

25 **(Conversion)**

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

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

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

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

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

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

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

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

26
27 ///

28 ///

FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH

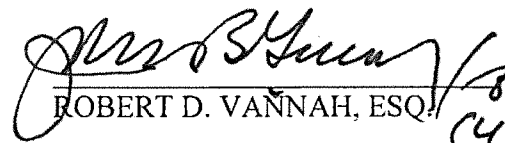

ROBERT D. VANNAH, ESQ. (4279)

Exhibit 7

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over \$7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee was ever brought up at that time, let alone ever agreed to.

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

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

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

23 10. Plus, SIMON didn't express an interest in taking what amounted to a property
24 damage claim with a value of \$500,000 on a contingency basis. Easy math shows that 40% of
25 \$500,000 is \$200,000. SIMON billed over twice that in fees in the invoices that he disclosed in
26
27
28

1 the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted
2 what amounts to a bonus after he'd received \$500,000 in fees and costs from me and after the risk
3 of loss in the LITIGATION was gone.

4 11. Please understand that I was incredibly involved in this litigation in every respect.
5 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
6 good work SIMON performed, I was the one who dug through the thousands of documents and
7 found the trail that led to the discovery that Viking had a bad history with these sprinklers, and
8 that there was evidence of a cover up. I was the one who located the prior case involving Viking
9 and these sprinklers, a find that led to more information from Viking executives, Zurich (Viking's
10 insurer), and from fire marshals, etc. I was also the one who did the research and made the calls
11 to the scores of people who'd had hundreds of problems with these sprinklers and who had
12 knowledge that Viking had tried to cover this up for years. This was the work product that caused
13 this case to grow into the one that it did.
14

15 12. Around August 9, 2017, SIMON and I traveled to San Diego to meet with an
16 expert. This was around the time that the value of the case had blossomed from one of property
17 damage of approximately \$500,000 to one of significant and additional value due to the conduct
18 of one of the defendants. On our way back home, and while sitting in an airport bar, SIMON for
19 the first time broached the topic of modifying our fee agreement from a straight hourly contract to
20 a contingency agreement. Even though paying SIMON'S hourly fees was a burden, I told him
21 that I'd be open to discussing this further, but that our interests and risks needed to be aligned.
22 Weeks then passed without SIMON mentioning the subject again.
23

24 13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email
25 was to make it clear to SIMON that we'd never had a structured conversation about modifying the
26 existing fee agreement from an hourly agreement to a contingency agreement. I also told him that
27
28

1 if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to
2 borrow money to pay his hourly fees and the costs.

3 14. SIMON scheduled an appointment for my wife and I to come to his office to
4 discuss the LITIGATION. This was only two days after Viking and PLAINTIFFS had agreed to
5 a \$6,000,000 settlement. Rather than discuss the LITIGATION, SIMON'S only agenda item was
6 to pressure us into modifying the terms of the CONTRACT. He told us that he wanted to be paid
7 far more than \$550.00 per hour and the \$486,453.09 he'd received from us for the preceding
8 eighteen (18) months. The timing of SIMON'S request for our fee agreement to be modified was
9 deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had
10 been completely extinguished and the appearance of a large gain from a settlement offer had
11 suddenly been recognized. SIMON put on a full court press for us to agree to his proposed
12 modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable.
13 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to
14 this or else."
15

16 15. Following that meeting, SIMON would not let the issue alone, and he was
17 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
18 agreed on any terms to alter, modify, or amend our fee agreement.
19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 FURTHER AFFIANT SAYETH NAUGHT.

19 
20 BRIAN EDGEWORTH

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

23 
24 Notary Public in and for said County and State

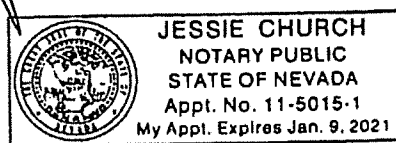


Exhibit 8

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

5. When it became clear the litigation was likely, I had options on who to retain. However, I asked SIMON if he wanted to represent PLAINTIFFS. In his Motion, SIMON seems to liken our transaction as an act of charity performed by him for a friend = me. Hardly. Agreeing to pay and receive \$550 per hour is a business agreement, not an act of charity. Also, those "few letters" mentioned above were not done for free by SIMON, either. I paid over \$7,500 in hourly fees to SIMON for his services for these tasks alone.

6. At the outset of the attorney-client relationship, SIMON and I orally agreed that SIMON would be paid for his services by the hour and at an hourly rate of \$550 and that we'd reimburse him for his costs. No other form or method of compensation such as a contingency fee

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4 performed them accordingly. For example, SIMON billed us at an hourly rate of \$550, his
5 associate billed us at \$275 per hour, costs incurred were billed to us, and I paid SIMON all of the
6 invoices in full in less than one week from the date they were received.

7 8. For example, SIMON sent invoices to me dated December 16, 2016, May 3, 2017,
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9 those invoices totaled \$486,453.09. There were hundreds of entries in these invoices. The hourly
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6 11. Please understand that I was incredibly involved in this litigation in every respect.
7 Regrettably, it was and has been my life for nearly two years. While I don't discount some of the
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11 deeply troubling to us, too, for it came at the time when the risk of loss in the LITIGATION had
12 been completely extinguished and the appearance of a large gain from a settlement offer had
13 suddenly been recognized. SIMON put on a full court press for us to agree to his proposed
14 modifications to our fee agreement. His tone and demeanor were also harsh and unacceptable.
15 We really felt that we were being blackmailed by SIMON, who was basically saying "agree to
16 this or else."
17

18 15. Following that meeting, SIMON would not let the issue alone, and he was
19 relentless to get us to agree to pay him more. Despite SIMON'S persistent efforts, we never
20 agreed on any terms to alter, modify, or amend our fee agreement.
21

22 16. On November 27, 2017, SIMON sent a letter to us describing additional fees in the
23 amount of \$1,114,000.00, and costs in the amount of that \$80,000.00, that he wanted to be paid in
24 light of a favorable settlement that was reached with the defendants in the LITIGATION. We
25 were stunned to receive this letter. At that time, these additional "fees" were not based upon
26 invoices submitted to us or detailed work performed. The proposed fees and costs were in
27
28

1 addition to the \$486,453.09 that we had already paid to SIMON pursuant to the fee agreement, the
2 invoices that SIMON had presented to us, the evidence that we understand SIMON produced to
3 defendants in the LITIGATION, and the amounts set forth in the computation of damages that
4 SIMON was required to submit in the LITIGATION. We agree and want to reimburse SIMON
5 for the costs he spent on our case. But, he'd never presented us with the invoices, a bill to keep
6 and review, or the reasons.

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

21 18. Another reason why we were so surprised by SIMON'S demands is because of the
22 nature of the claims that were presented in the LITIGATION. Some of the claims were for breach
23 of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the
24 fees and costs we were compelled to pay to SIMON to litigate and be made whole following the
25 flooding event. Since SIMON hadn't presented these "new" damages to defendants in the
26 LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to
27
28

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

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

21 20. Despite SIMON'S requests and demands on us for the payment of more in fees, we
22 refused to alter or amend the terms of the fee agreement. When we refused to alter or amend the
23 terms of the fee agreement, SIMON refused to agree to release the full amount of our settlement
24 proceeds. Instead, he served two attorneys liens and reformulated his billings to add entries and
25 time that he'd never previously produced to us and that never saw the light of day in the
26 LITIGATION. The settlement proceeds are ours, not SIMON'S. To us, what SIMON did was
27
28

1 nothing short of stealing what was ours.

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

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

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

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

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

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

2 26. SIMON in his motion, and in open court, made claims that he was effectively fired
3 from representation by citing Mr. Vannah's conversation telling SIMON to stop all contact with
4 us. This assertion is beyond disingenuous as SIMON is very well aware the reason he was told to
5 stop contacting us was a result of his despicable actions of December 4, 2017, when he made false
6 accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club
7 Director at a non-profit for children we founded and funded. In an email string, SIMON chooses
8 his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if
9 it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is
10 responsible for making contact about absences (that had already been outlined at the mandatory
11 start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls.
12 SIMON sent the follow-up email, again carefully worded, with the clear accusation that
13 SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths.
14 His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable
15 position of confronting me about it. I read the email, and was forced to have a phone
16 conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell
17 Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars
18 from me. I emphasized that SIMON'S accusation was without substance and there was nothing
19 in my past to justify SIMON stating I was a danger to children. I also said I will fill in the
20 paperwork for another background check by USA Volleyball even though I have no coaching or
21 any contact with any of the athletes for the club. My involvement is limited to sitting on the
22 board of the non-profit, providing a \$2.5 million facility for the non-profit to use and my two
23 daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined.
24 Mr. Herrera states that he did not believe the accusation but since all of the children that benefit
25
26
27
28

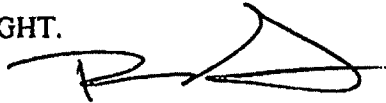
1 from the charity are minors, an accusation of this severity. from someone he assumed I was
2 friends with and further from my own attorney could not be ignored. While I was embarrassed
3 and furious that someone who was actively retained as my attorney and was billing me would
4 attempt to damage my reputation at a charity my wife and I founded and have poured millions of
5 dollars into. I politely sent SIMON an email on December 5, 2017, telling him that I had not
6 received his voicemail he referenced in an email and directed SIMON to call John Greene if he
7 needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a
8 reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied
9 ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told
10 him to not send anything like that again. Simon claimed he did not intend the meaning
11 interpreted. I think it speaks volumes to Simon's character that after being caught trying to
12 damage our reputation and trying to smear our names with accusations that are impossible to
13 disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera
14 to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon
15 further attempts to bill us hundreds of thousands of dollars for “representing” us during this
16 period. In short, we never fired SIMON, though we asked him to communicate to us through an
17 intermediary. Rather, we wanted and want him to finish the work that he started and billed us
18 hundreds of thousands of dollars for, which is to resolve the claims against the parties in the
19 LITIGATION.

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

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

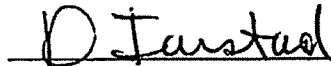
1 present our claims against SIMON before a jury.

2 FURTHER AFFIANT SAYETH NAUGHT.

3 

4 BRIAN EDGEWORTH

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

7 

8 Notary Public in and for said County and State

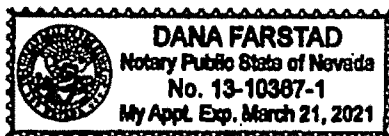


Exhibit 9

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

November/December 2017 Billing Statement

I. ATTORNEY

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

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

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

II. PARALEGAL

N/A

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

III. COSTS

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

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

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

January – February 2018 Billing Statement

I. ATTORNEY

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

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

2.15.18	Edit supplement to motion to adjudicate. T/C with client	1.0
2.19.18	Review email from J. Greene	.20
2.20.18	Prep for, travel to and attend hearing	1.0
2.20.18	Multiple emails (#11) regarding 100k check and MSC. Related T/C with client	.50
2.26.18	T/c with client (x2)	.20
	Emails to Vannah (x2). Email to client	.20

TOTAL Attorney Time: 48.9 hours @ \$400.00 = \$19,560.00

II. PARALEGAL

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

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

III. COSTS

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

IV. TOTAL DUE THIS INVOICE	\$20,648.29
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V. RETAINER SUMMARY

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

VI. BALANCE DUE	\$13,610.49
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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

March - April 2018 Billing Statement

I. ATTORNEY

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

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

II. PARALEGAL

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

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

III. COSTS

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

TOTAL Costs \$97.20

IV. TOTAL DUE THIS INVOICE \$7,202.20

V. RETAINER SUMMARY

Beginning balance	\$1,389.51
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Retainer applied to this invoice	\$1,389.51
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RETAINER BALANCE	\$ -0-
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VI. BALANCE DUE \$5,812.69

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

May - June 2018 Billing Statement

I. ATTORNEY

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

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

II. PARALEGAL

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

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

III. COSTS

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

TOTAL Costs \$67.30

IV. TOTAL DUE THIS INVOICE \$2,627.30

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

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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

July - August 2018 Billing Statement

I. ATTORNEY

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

8.30.18	Hearing preparation and attendance – Day 4	8.0
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8.31.18	Work on Offer of Judgment	.20
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TOTAL Attorney Time: 43.80 hours @ \$400.00		= \$17,520.00
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II. PARALEGAL

N/A

III. COSTS

N/A

IV.	TOTAL DUE THIS INVOICE	\$17,520.00
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V.	BALANCE DUE	\$17,520.00
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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

September - October 2018 Billing Statement

I. ATTORNEY

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

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

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

II. PARALEGAL

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

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

III. COSTS

Wiznet	\$ 14.00
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IV. TOTAL DUE THIS INVOICE	\$11,124.00
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V. BALANCE DUE	\$11,124.00
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SIMON LAW GROUP – EDGEWORTH FEE DISPUTE

Through November 15, 2018 Billing Statement

I. ATTORNEY

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

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

II. PARALEGAL

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

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

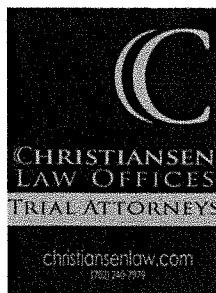
III. COSTS

N/A

IV.	TOTAL DUE THIS INVOICE	\$1,910.00
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V.	BALANCE DUE	\$1,910.00
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Exhibit 10



INVOICE

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

Christiansen Law Offices

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810 S. Casino Center Boulevard
Las Vegas, NV 89101

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

Simon adv Edgeworth

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

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

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

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

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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15648	12/29/2018	\$199,495.00	\$0.00	\$199,495.00
Outstanding Balance				\$199,495.00
Total Amount Outstanding				\$199,495.00

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

Exhibit 11

EDGEWORTH
COSTS FOR FEE DISPUTE

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

LAW OFFICE OF DANIEL S. SIMON A PROFESSIONAL CORPORATION GENERAL ACCOUNT 810 S. CASINO CENTER BLVD. LAS VEGAS, NV 89101		23437 <small>W-111/1121</small> <small>2131</small> <small>1/16/2018</small>
PAY TO THE ORDER OF Lipson Neilson Cole Seltzer & Garin, P.C.		\$ 5,000.00
Five Thousand and 00/100*		DOLLARS
Lipson Neilson Cole Seltzer & Garin, P.C. David Clark, Esq. 9900 Covington Cross Dr #120 Las Vegas, NV 89144		 AUTHORIZED SIGNATURE
MEMO Retainer Fee / Edgeworth		Photo Safe Deposit Results on Back

INVOICE

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

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

RATE: 24-hour Expedite

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

PD. 2/14/18
ack # 23517

Invoice Date: January 31, 2018

Invoice Number: 267865

Billing Fax: (702) 364-1655

Bill To:

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



Global Legal Demand Center

Phone: 1-800-635-6840

Fax: 1-888-938-4715

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

REF #

Invoice

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

Federal Tax ID: 91-1379052

Subtotal: \$85.00

Payments Received: - \$0.00

Total Due: \$85.00

Cost dispute

pd 2/15/18
OK# 23523

JM

AA02437

INVOICE

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

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

RATE: Ordinary

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

pd. 3/1/18
Clt# 23564



Invoice

Date	Invoice #
4/18/2018	2239

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

Terms	Due Date
Due on receipt	4/18/2018

Description		Qty	Rate	Amount
Transcript of Hearing held on 4/3/2018 Motions Hearing In Re Edgeworth Family Trust, et al. v. Lange Plumbing, LLC, et al. Case No. A-16-738444-C District Court, Clark County, Nevada 				

AA02439

OW

KC INVESTIGATIONS, LLC

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

Invoice

Date	Invoice #
5/24/2018	6723

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

Client
EDGEWORTH FAMILY TRUST

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

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

TRANSCRIBER'S BILLING INFORMATION

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

Handwritten notes: 9/19/18, OK # 24147

Kemp, Jones & Coulthard, LLP

3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, NV 89169

September 21, 2018

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

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

REGARDING: Lange Plumbing

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

Total Current Charges	\$11,498.15

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

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

AA02442

02160 00002

Invoice # 65151

Page 2

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

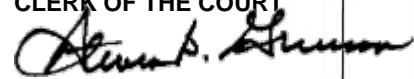
EXPENSE SUMMARY

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

TIMEKEEPER SUMMARY

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

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



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

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

CASE NO.: A-16-738444-C

DEPT. NO.: X

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

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

CASE NO.: A-18-767242-C

DEPT. NO.: XXIX

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

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

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

13 DATED this 17 day of December, 2018.

14
15 VANNAH & VANNAH

16 
17 ROBERT D. VANNAH, ESQ.

18
19
20 I.

21 SUMMARY

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

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

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

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

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

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

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

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

II.

ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. SIMON WAS NOT AND IS NOT THE PREVAILING PARTY OF ANYTHING OF MERIT.

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

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

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

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

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

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

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

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

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

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

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

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III.

CONCLUSION

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

DATED this 17 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:
None

DATED this 17 day of December, 2018.

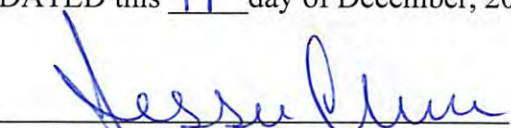
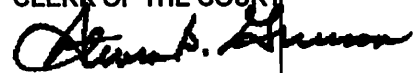

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-16-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

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

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.

For Daniel Simon:

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

For the Viking Entities:

JANET C. PANCOAST, ESQ.

Also Present:

DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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

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

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

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

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

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

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

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

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

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

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

24 Mister --

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

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

7 THE COURT: Okay.

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

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

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

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

17 MR. VANNAH: Me too.

18 MR. CHRISTENSEN: And --

19 MR. VANNAH: About 40 years.

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

23 THE COURT: Okay --

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

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

Exhibit 2

Exhibit 2



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 3

Exhibit 3

EVENTS & ORDERS OF THE COURT

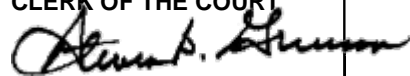
04/03/2018 All Pending Motions (9:30 AM) (Judicial Officer Jones, Tierra)

Minutes

04/03/2018 9:30 AM

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

Parties PresentReturn to Register of Actions



1 JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
2 ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

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

NOTICE OF ENTRY OF ORDERS

19 EDGEWORTH FAMILY TRUST; AMERICAN
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27
28

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

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

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

DATED this 27 day of December, 2018.

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

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

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

Traditional Manner:
None

DATED this 27 day of December, 2018.

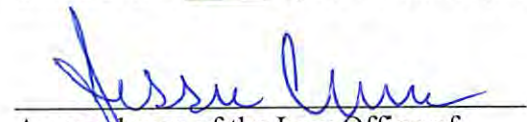

An employee of the Law Office of
Vannah & Vannah

Exhibit 1

Exhibit 1

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

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

14 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

22
23 **DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN**

24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
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1 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James
2 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
3 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
4 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
5 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
6 advised of the matters herein, the **COURT FINDS:**

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

13 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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

9
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

26
27 ²There are no billing amounts from December 2 to December 4, 2016.
28

1 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to
2 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This
3 amount has already been paid by the Edgeworths on May 3, 2017.

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has
8 been paid by the Edgeworths on August 16, 2017.³

9 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
10 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
11 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
12 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
13 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
14 paid by the Edgeworths on September 25, 2017.

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
16 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
21 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

24 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.

25
26 ³ There are no billings from July 28 to July 30, 2017.

27 ⁴ There are no billings for October 8th, October 28-29, and November 5th.

28 ⁵ There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,
November 21, and November 23-26.

⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
2 by the Edgeworths, so the implied fee agreement applies to their work as well.

3 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period
4 of September 19, 2018 to November 29, 2017 is \$284,982.50.

6 *Costs Owed*

7 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
8 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
9 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
10 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
11 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
12 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
13 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

15 *Quantum Meruit*

16 When a lawyer is discharged by the client, the lawyer is no longer compensated under the
17 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*
18 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*
19 *quantum meruit rather than by contingency fee pursuant to agreement with client*); citing, *Gordon v.*
20 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);
21 and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*
22 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on
23 November 29, 2017. The constructive discharge terminated the implied contract for fees. William
24 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award
25 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
26 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
27 of the Law Office's work on this case.

1 In determining the amount of fees to be awarded under quantum meruit, the Court has wide
2 discretion on the method of calculation of attorney fee, to be “tempered only by reason and
3 fairness”. Albios v. Horizon Communities, Inc., 132 P.3d 1022 (Nev. 2006). The law only requires
4 that the court calculate a reasonable fee. Shuette v. Beazer Homes Holding Corp., 124 P.3d 530
5 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee
6 must be reasonable under the Brunzell factors. Id. The Court should enter written findings of the
7 reasonableness of the fee under the Brunzell factors. Argentena Consolidated Mining Co., v. Jolley,
8 Urga, Wirth, Woodbury Standish, 216 P.3d 779, at fn2 (Nev. 2009). Brunzell provides that
9 “[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors
10 may be equally significant. Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

11 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
12 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the
13 Court notes that the majority of the work in this case was complete before the date of the
14 constructive discharge, and the Court is applying the Brunzell factors for the period commencing
15 after the constructive discharge.

16 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
17 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

18 *1. Quality of the Advocate*

19 Brunzell expands on the “qualities of the advocate” factor and mentions such items as
20 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
21 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
22 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
23 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
24 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s
25 work product and results are exceptional.

26 *2. The Character of the Work to be Done*

27 The character of the work done in this case is complex. There were multiple parties,
28

multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the gamut from product liability to negligence. The many issues involved manufacturing, engineering, fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp testified that the quality and quantity of the work was exceptional for a products liability case against a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a substantial factor in achieving the exceptional results.

3. The Work Actually Performed

Mr. Simon was aggressive in litigating this case. In addition to filing several motions, numerous court appearances, and deposition; his office uncovered several other activations, that caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the other activations being uncovered and the result that was achieved in this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case.

4. The Result Obtained

The result was impressive. This began as a \$500,000 insurance claim and ended up settling for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they

1 were made more than whole with the settlement with the Viking entities.

2 In determining the amount of attorney's fees owed to the Law Firm of Daniel Simon, the
3 Court also considers the factors set forth in Nevada Rules of Professional Conduct – Rule 1.5(a)
4 which states:

5
6 (a) A lawyer shall not make an agreement for, charge, or collect an
7 unreasonable fee or an unreasonable amount for expenses. The factors to be
8 considered in determining the reasonableness of a fee include the following:

9 (1) The time and labor required, the novelty and difficulty of the
10 questions involved, and the skill requisite to perform the legal service
11 properly;

12 (2) The likelihood, if apparent to the client, that the acceptance of the
13 particular employment will preclude other employment by the lawyer;

14 (3) The fee customarily charged in the locality for similar legal
15 services;

16 (4) The amount involved and the results obtained;

17 (5) The time limitations imposed by the client or by the
18 circumstances;

19 (6) The nature and length of the professional relationship with the
20 client;

21 (7) The experience, reputation, and ability of the lawyer or lawyers
22 performing the services; and

23 (8) Whether the fee is fixed or contingent.

24 NRCP 1.5. However, the Court must also consider the remainder of Rule 1.5 which goes on to state:

25 (b) The scope of the representation and the basis or rate of the fee and
26 expenses for which the client will be responsible shall be communicated to the
27 client, preferably in writing, before or within a reasonable time after
28 commencing the representation, except when the lawyer will charge a
regularly represented client on the same basis or rate. Any changes in the
basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the
service is rendered, except in a matter in which a contingent fee is prohibited
by paragraph (d) or other law. A contingent fee agreement shall be in writing,
signed by the client, and shall state, in boldface type that is at least as large as
the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the
percentage or percentages that shall accrue to the lawyer in the event of
settlement, trial or appeal;

(2) Whether litigation and other expenses are to be deducted from the
recovery, and whether such expenses are to be deducted before or after the
contingent fee is calculated;

1 (3) Whether the client is liable for expenses regardless of outcome;

2 (4) That, in the event of a loss, the client may be liable for the
3 opposing party's attorney fees, and will be liable for the opposing party's
4 costs as required by law; and

5 (5) That a suit brought solely to harass or to coerce a settlement may
6 result in liability for malicious prosecution or abuse of process.

7 Upon conclusion of a contingent fee matter, the lawyer shall provide the client
8 with a written statement stating the outcome of the matter and, if there is a
9 recovery, showing the remittance to the client and the method of its
10 determination.

11 NRCP 1.5.

12 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
13 the Edgeworths, the character of the work was complex, the work actually performed was extremely
14 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
15 factors justify a reasonable fee under NRCP 1.5. However, the Court must also consider the fact
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
17 responsible were never communicated to the client, within a reasonable time after commencing the
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
27 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
28 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
Simon as their attorney, when they ceased following his advice and refused to communicate with

1 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
2 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
3 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
4 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
5 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
6 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
7 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
8 constructively discharged, under quantum meruit, in an amount of \$200,000.

9
10 **ORDER**

11 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
12 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
13 Office of Daniel Simon is \$484,982.50.

14 IT IS SO ORDERED this 19 day of November, 2018.

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18 DISTRICT COURT JUDGE
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Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.

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Exhibit 2

Exhibit 2

1 **ORD**

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 EDGEWORTH FAMILY TRUST; and
7 AMERICAN GRATING, LLC,

8 Plaintiffs,

9 vs.

10 LANGE PLUMBING, LLC; THE VIKING
11 CORPORATION, a Michigan Corporation;
12 SUPPLY NETWORK, INC., dba VIKING
13 SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through

14 Defendants.

15 EDGEWORTH FAMILY TRUST; and
16 AMERICAN GRATING, LLC,

17 Plaintiffs,

18 vs.

19 DANIEL S. SIMON; THE LAW OFFICE OF
20 DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

21 Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

**DECISION AND ORDER ON MOTION
TO DISMISS NRCP 12(B)(5)**

22
23 **AMENDED DECISION AND ORDER ON MOTION TO DISMISS NRCP 12(B)(5)**

24 This case came on for an evidentiary hearing August 27-30, 2018 and concluded on
25 September 18, 2018, in the Eighth Judicial District Court, Clark County, Nevada, the Honorable
26 Tierra Jones presiding. Defendants and movant, Daniel Simon and Law Office of Daniel S. Simon
27 d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or "Mr. Simon") having appeared in
28 person and by and through their attorneys of record, Peter S. Christiansen, Esq. and James

1 Christensen, Esq. and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
2 "Edgeworths") having appeared through Brian and Angela Edgeworth, and by and through their
3 attorneys of record, the law firm of Vannah and Vannah, Chtd. Robert Vannah, Esq. and John
4 Greene, Esq. The Court having considered the evidence, arguments of counsel and being fully
5 advised of the matters herein, the **COURT FINDS:**

6
7 **FINDINGS OF FACT**

8 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,
9 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and
10 American Grating v. Viking, et al., case number A-16-738444-C. The representation commenced on
11 May 27, 2016 when Brian Edgeworth and Daniel Simon Esq. met at Starbucks. This representation
12 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.
13 Simon and his wife were close family friends with Brian and Angela Edgeworth.

14 2. The case involved a complex products liability issue.

15 3. On April 10, 2016, a house the Edgeworths were building as a speculation home
16 suffered a flood. The house was still under construction and the flood caused a delay. The
17 Edgeworths did not carry loss insurance if a flood occurred and the plumbing company and
18 manufacturer refused to pay for the property damage. A fire sprinkler installed by the plumber, and
19 within the plumber's scope of work, caused the flood; however, the plumber asserted the fire
20 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,
21 Viking, et al., also denied any wrongdoing.

22 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
23 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
24 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
25 resolve. Since the matter was not resolved, a lawsuit had to be filed.

26 5. On June 14, 2016, a complaint was filed in the case of Edgeworth Family Trust; and
27 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,
28

1 dba Viking Supplynet, in case number A-18-738444-C. The cost of repairs was approximately
2 \$500,000. One of the elements of the Edgeworth's damages against Lange Plumbing LLC ("Lange")
3 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

4 6. On August 9, 2017, Mr. Simon and Brian Edgeworth traveled to San Diego to meet
5 with an expert. As they were in the airport waiting for a return flight, they discussed the case, and
6 had some discussion about payments and financials. No express fee agreement was reached during
7 the meeting. On August 22, 2017, Brian Edgeworth sent an email to Simon entitled "Contingency."
8 It reads as follows:

9 We never really had a structured discussion about how this might be done.
10 I am more that happy to keep paying hourly but if we are going for punitive
11 we should probably explore a hybrid of hourly on the claim and then some
12 other structure that incents both of us to win an go after the appeal that these
13 scumbags will file etc.
14 Obviously that could not have been doen earlier snce who would have though
15 this case would meet the hurdle of punitives at the start.
16 I could also swing hourly for the whole case (unless I am off what this is
17 going to cost). I would likely borrow another \$450K from Margaret in 250
18 and 200 increments and then either I could use one of the house sales for cash
19 or if things get really bad, I still have a couple million in bitcoin I could sell.
20 I doubt we will get Kinsale to settle for enough to really finance this since I
21 would have to pay the first \$750,000 or so back to Colin and Margaret and
22 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

23 (Def. Exhibit 27).

24 7. During the litigation, Simon sent four (4) invoices to the Edgeworths. The first
25 invoice was sent on December 2, 2016, seven (7) months after the original meeting at Starbucks.
26 This invoice indicated that it was for attorney's fees and costs through November 11, 2016. (Def.
27 Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per
28 hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and
costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per
hour. (Def. Exhibit 9). This invoice was paid by the Edgeworths on May 3, 2017. There was no

1 indication on the first two invoices if the services were those of Mr. Simon or his associates; but the
2 bills indicated an hourly rate of \$550.00 per hour.

3 9. A third invoice was sent to the Edgeworths on July 28, 2017 for attorney's fees and
4 costs through July 28, 2017 totaling of \$142,080.20. (Def. Exhibit 10). This bill identified services
5 of Daniel Simon Esq. for a "reduced" rate of \$550 per hour totaling \$104,021.20; and services of
6 Ashley Ferrel Esq. for a "reduced" rate of \$275 per hour totaling \$37,959.00. Id. This invoice was
7 paid by the Edgeworths on August 16, 2017.

8 10. The fourth invoice was sent to the Edgeworths on September 19, 2017 in an amount
9 of \$255,186.25 for attorney's fees and costs; with \$191,317.50 being calculated at a "reduced" rate
10 of \$550 per hour for Daniel Simon Esq., \$60,981.25 being calculated at a "reduced" rate of \$275 per
11 hour for Ashley Ferrel Esq., and \$2,887.50 being calculated at a "reduced" rate of \$275 per hour for
12 Benjamin Miller Esq. (Def. Exhibit 11). This invoice was paid by the Edgeworths on September
13 25, 2017.

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and
15 \$118,846.84 in costs; for a total of \$486,453.09.¹ These monies were paid to Daniel Simon Esq. and
16 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and
17 costs to Simon. They made Simon aware of this fact.

18 12. Between June 2016 and December 2017, there was a tremendous amount of work
19 done in the litigation of this case. There were several motions and oppositions filed, several
20 depositions taken, and several hearings held in the case.

21 13. On the evening of November 15, 2017, the Edgeworth's settled their claims against
22 the Viking Corporation ("Viking").

23 14. Also on November 15, 2017, Brian Edgeworth sent an email to Simon asking for the
24 open invoice. The email stated: "I know I have an open invoice that you were going to give me at a
25 mediation a couple weeks ago and then did not leave with me. Could someone in your office send
26

27 ¹ \$265,677.50 in attorney's fees for the services of Daniel Simon; \$99,041.25 for the services of Ashley Ferrel; and
28 \$2,887.50 for the services of Benjamin Miller.