

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

PETITIONERS

VS.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE TIERRA XX JONES,
DISTRICT JUDGE, DEPT. 10,

Respondents,

DANIEL S. SIMON; THE LAW OFFICE
OF DANIEL S. SIMON,

Real Parties in Interest.

Electronically Filed
Feb 01 2022 01:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. _____

Dist. Ct. Case No. A-18-767242-C
Consolidated with A-16-738444-C

**APPENDIX IN SUPPORT OF EDGEWORTHS'
PETITION FOR WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS
IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE
COMPLETE CLIENT FILE**

**VOLUME I
P000001 – P000225**

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
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***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON***
SUPREME COURT CASE NO.

PETITIONERS' APPENDIX

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL	BATES NOS.
2017-11-30	Notice of Attorney's Lien	I	P000001 – P000005
2018-01-02	Notice of Amended Attorney's Lien	I	P000006 – P000010
	UNUSED BATES NUMBERS	I	P000011 – P000028
2018-12-13	Plaintiffs' Motion for an Order Directing Simon to Release Plaintiffs' Funds	I	P000029- P000070
2019-01-11	Opposition to Plaintiffs' Motion for Release of Funds	I	P000071- P000089
2019-01-28	Plaintiffs' Reply to Opposition to Plaintiffs' Motion for Release of Funds	I	P000090- P000123
2019-02-05	Court Minutes – Minute Order Re: Motion to Release Funds	I	P000124
2021-04-13	Excerpts of Opposition to Mot. to Reconsider	I	P000124A- P000124E
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	I	P000125- P000141
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	I/II	P000142- P000247

EDGEWORTH FAMILY TRUST, ET AL. *vs.*
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
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CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL	BATES NOS.
2021-05-13	Edgeworths' Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File	II	P000248-P000322
2021-05-20	Opposition to Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of File	II	P000323-P000371
2021-05-21	Edgeworths' Reply in Support of Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File	II	P000372-P000391
2021-05-26	Letter Re: Funds Transfers	II	P000392-P000393
2021-05-27	Recorder's Transcript of Pending Motions	II	P000394-P000422
2021-06-03	Court Minutes – Minute Order Re: Motions for Reconsideration and for Release of Funds	III	P000423-P000424
2021-06-18	Notice of Entry of Decision and Order Denying Edgeworth's Motion for Order Releasing Client Funds and Requiring Production of Complete File	III	P000425-P000432
2021-07-01	Edgeworth's Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File And Motion to Stay Execution of Judgments Pending Appeal	III	P000433-P000446

**EDGEWORTH FAMILY TRUST, ET AL. vs.
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PETITIONERS' APPENDIX

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2021-07-15	Opposition to the Third Motion to Reconsider	III	P000447-P000489
2021-07-17	Edgeworth's Reply in Support of Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File And Motion to Stay Execution of Judgments Pending Appeal	III/IV	P000490-P000705
2021-09-14	Notice of Entry of Decision and Order Denying Edgeworths' Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File and Motion to Stay Execution of Judgments Pending Appeal	IV	P000706-P000714
2021-12-13	Order Consolidating and Partially Dismissing Appeals_(Filed in Supreme Court Case No: 83258)	IV	P000715-P000719

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON***
SUPREME COURT CASE NO. _____.

PETITIONERS' APPENDIX

ALPHABETICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2019-02-05	Court Minutes – Minute Order Re: Motion to Release Funds	I	P000124
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2021-05-21	Edgeworths' Reply in Support of Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File	II	P000372- P000391
2021-07-17	Edgeworth's Reply in Support of Motion for Reconsideration of Order on Motion for Order Releasing Client Funds and Requiring the Production of Complete Client File And Motion to Stay Execution of Judgments Pending Appeal	III/IV	P000490- P000705
2021-04-13	Excerpts of Opposition to Mot. to Reconsider	I	P000124A- P000124E

***EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON***
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PETITIONERS' APPENDIX

ALPHABETICAL INDEX

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2021-05-20	Opposition to Edgeworths' Motion for Order Releasing Client Funds and Requiring Production of File	II	P000323- P000371
2019-01-11	Opposition to Plaintiffs' Motion for Release of Funds	I	P000071- P000089

**EDGEWORTH FAMILY TRUST, ET AL. vs.
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON
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PETITIONERS' APPENDIX

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	UNUSED BATES NUMBERS	I	P000011 – P000028



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8 Telephone (702) 364-1650
9 lawyers@simonlawlv.com
10 *Attorneys for Plaintiffs*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

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

20 Defendants.

21 **NOTICE OF ATTORNEY'S LIEN**

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

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

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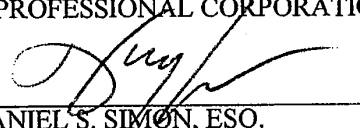
1 determined.

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

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

11 Dated this 30th day of November, 2017.

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

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

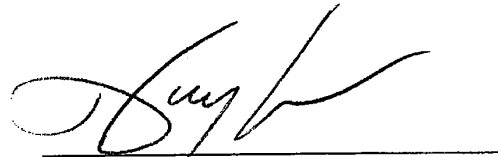
SIMON LAW
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Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

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

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

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

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

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DANIEL S. SIMON

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

25
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Notary Public

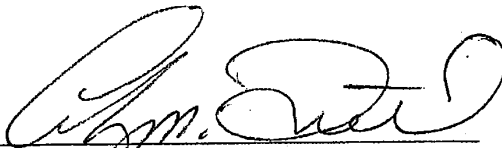


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Las Vegas, Nevada 89101
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CERTIFICATE OF MAIL

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

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


An Employee of SIMON LAW

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

CERTIFICATE OF E-SERVICE & U.S. MAIL

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

Receipt Requested:

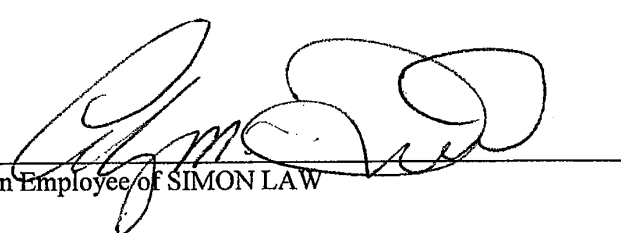
Theodore Parker, III, Esq.
PARKER NELSON & ASSOCIATES
2460 Professional Court, Ste. 200
Las Vegas, NV 89128
Attorney for Defendant
Lange Plumbing, LLC

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

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

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

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


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4 ASHLEY M. FERREL, ESQ.
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6 810 S. Casino Center Blvd.
7 Las Vegas, Nevada 89101
8 Telephone (702) 364-1650
9 lawyers@simonlawlv.com
10 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

9 EDGEWORTH FAMILY TRUST; and)
10 AMERICAN GRATING, LLC.;)
11 Plaintiffs,)
12 vs.)
13 LANGE PLUMBING, L.L.C.;)
14 THE VIKING CORPORATION,)
15 a Michigan corporation;)
16 SUPPLY NETWORK, INC., dba VIKING)
17 SUPPLYNET, a Michigan corporation;)
18 and DOES I through V and ROE)
19 CORPORATIONS VI through X, inclusive,)
20 Defendants.)

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

NOTICE OF AMENDED ATTORNEY'S LIEN

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

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

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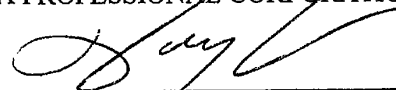
1 rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office
2 of Daniel S. Simon in the sum of \$76,535.93, which remains outstanding.

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

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

12 Dated this 2nd day of January, 2018.

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

15 

16 DANIEL S. SIMON, ESQ.
17 Nevada Bar No. 4750
18 ASHLEY M. FERREL, ESQ.
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Receipt Requested:


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

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
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Attorney for Third Party Defendant
Giberti Construction, LLC

Janet C. Pancoast, Esq.
CISNEROS & MARIAS
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Las Vegas, NV 89144
Attorney for Defendant
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet

Randolph P. Sinnott, Esq.
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& CURET, APLC
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Angela Bullock
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Senior Claims Examiner for
Kinsale Insurance Company


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CERTIFICATE OF U.S. MAIL

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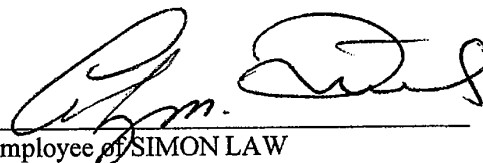
American Grating
1191 Center point Drive, Ste. A
Henderson, NV 89074

Edgeworth Family Trust
645 Saint Croix Street
Henderson, Nevada 89012

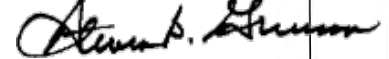
Robert Vannah, Esq.
VANNAH & VANNAH
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Claims Adjustor for
Zurich North American Insurance Company

Joel Henriod, Esq.
Lewis Roca Rothgerber Christie
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Las Vegas, NV 89169
The Viking Corporation and
Supply Network, Inc. dba Viking Supplynet


An Employee of SIMON LAW

UNUSED
P000010- P000028



1 JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
2 ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
3 **VANNAH & VANNAH**
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5 jgreene@vannahlaw.com
Telephone: (702) 369-4161
6 Facsimile: (702) 369-0104
Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 --o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE VIKING
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' MOTION FOR AN
ORDER DIRECTING SIMON TO
RELEASE PLAINTIFFS' FUNDS**

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 JOHN
3 B. GREENE, ESQ., of the law firm VANNAH & VANNAH, hereby file their Motion for an
4 Order Directing Defendants DANIEL S. SIMON and THE LAW OFFICE OF DANIEL S.
5 SIMON, A PROFESSIONAL CORPORATION (SIMON) Release Plaintiffs Funds (the Motion).

6 This Motion is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,
8 any oral argument this Court may wish to entertain.

9
10 DATED this 13th day of December, 2018.

11 VANNAH & VANNAH

12
13 *Signing*  *369 14530*
14 *For* ROBERT D. VANNAH, ESQ. *No:*

15 I.

16 SUMMARY

17 The facts of this matter are well known to this Court. The path to this intricate knowledge
18 was gained by, but not limited to, having listened to five days of comprehensive testimony; by
19 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre
20 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual
21 findings and orders. As this Court knows, on November 30, 2017, SIMON filed a Notice of
22 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an
23 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, SIMON
24 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing.

25
26
27 This honorable Court issued her Decision and Order on Motion to Adjudicate Attorney
28 Lien on November 19, 2018. In her Order, the Court found there was an implied agreement for a

1 fee of \$550 per hour between SIMON and the Edgeworths, and once SIMON started billing the
2 Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths
3 constructively discharged SIMON as their attorney on November 29, 2017, when they ceased
4 following his advice and refused to communicate with him. The Court then found SIMON was
5 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour
6 for his associates, up and until the last billing of September 19, 2017.

7
8 For the period between September 19, 2017 and November 29, 2017, the Court held
9 SIMON was entitled to his implied agreement fee of \$550 an hour, and \$275 an hour for his
10 associates, for a total amount of \$284,982.50. Further, the Court decided that for the period after
11 November 29, 2017, SIMON properly perfected his lien and is entitled to a reasonable fee for the
12 services his office rendered in quantum meruit: an amount the Court determined to be \$200,000.
13 Accordingly, SIMON is owed a total amount of \$484,982.50 in fees—taken from the net lien in
14 the sum of \$1,977,843.80—pursuant to this Court’s Order adjudicating the attorneys lien.

15
16 The Edgeworths have expressed a willingness, in writing, to accept the Court’s rulings on
17 all issues, and sign mutual global releases, but SIMON refuses to release the funds held in the
18 trust account. The same cannot be said for SIMON: even after this Court’s Order was issued,
19 SIMON has refused to release the balance of the funds held in trust: a sum of \$1,492,861.30. The
20 Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to their
21 \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their
22 money—money to which they are legally entitled. Simon’s unreasonable, inappropriate
23 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,
24 which is untoward—not to mention unconstitutional.

25
26 PLAINTIFFS respectfully request that this Court issue an Order requiring SIMON to
27 release to Plaintiff the remainder of the funds SIMON is withholding in trust.

28
II.

ARGUMENTS

A. SIMON'S WITHHOLDING OF PLAINTIFF'S MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT.

The importance of procedural fairness is engrained into the fabric of our country's Constitution. The 14th Amendment is clear: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. §1. Due process rules are designed to protect persons from the unjustified deprivation of life, liberty, or property. *Carey v. Phipus*, 435 US 247, 259 (1978). Due process requires notice: interested parties must be apprised of any action aimed at depriving them of property and must be afforded the opportunity to present their objections. *Mullane v. Central Hanover Bank & Treust Co.*, 339 U.S. 306, 314 (1950). Additionally, due process requires individuals be given an adequate hearing before they are deprived of their property interests; this requirement is designed to prevent arbitrary encroachment on an individual's property interests. *Carey v. Phipus*, 435 U.S. 247, 259 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The United States Supreme Court has held that garnishment procedures marred by procedural unfairness violate the 14th Amendment due process clause: they are unconstitutional. *See Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969). In *Sniadach*, the Supreme Court reviewed the constitutionality of a Wisconsin garnishment statute which allowed for a creditor's lawyer to initiate garnishment procedures—freeze wages and deprive the garnishee of money—simply by serving the garnishee. *Id.* at 339. Under that regime, only if the trial on the suit occurs and the garnishee wins, the wages may be unfrozen; however, *during the interim*, the wage earner is deprived of his/her money. *Id.* The Supreme Court held that **this prejudgment garnishment** violates the fundamental principles of due process because the individual is deprived of his/her money without any opportunity to be heard and without the opportunity to tender any defense. *Id.*

Further, Nevada law mandates certain procedures must be followed before a garnishment takes place. See generally Nev. Rev. Stat. § 31. To comply with the Due Process Clause of the 14th Amendment and Supreme Court precedent, Nevada law includes multiple due process protections in favor of garnishees in its statutory scheme. See NRS 31.240; NRS 31.249; NRS 31.260; See also *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57 (2008). As a threshold matter, to garnish someone's money and/or property, the garnishor must obtain a writ of garnishment from the court—which may only issue at the same time or after the order directing a writ of attachment is issued. NRS 31.240. Next, the writ of garnishment must be served in the same manner as a summons in a civil action. *Frank Settelmeyer & Sons, Inc.*, 197 P.3d at 1056; NRS 31.270; NRS 31.340. Then, once served, the garnishee has twenty days to answer statutorily specified interrogatories. *Id.*; NRS 31.290. The law then requires that the garnishee be given a fair hearing: “if the garnishment is contested, the matter must be tried and judgment rendered, in a manner similar to civil cases.” *Id.* at 1056. Providing further protection still, even after the garnishment action is adjudicated, the garnishee may appeal under NRAP 3A(a) and (b)(1). *Id.*

Here, SIMON is holding in trust a huge sum of money: \$1,977,843.80 despite this Court's Order stating that he is entitled *only* to \$484,982.50. He has effectively seized, garnished, Plaintiff's money—the remainder of the funds held in trust— by refusing to release the funds to Plaintiff's counsel. SIMON has withheld these funds for over two weeks now in contravention of Nevada's strict garnishment statutes. He did not secure a writ of attachment per NRS 31.240. He did not serve Plaintiffs in same manner as a summons in a civil action per NRS 31.270. He did not allow Plaintiffs to have twenty days to answer statutorily specified interrogatories per NRS 31.290. In fact, SIMON has made no effort to comply with the procedures and mandates of NRS Chapter 31 whatsoever.

1 Most importantly, before SIMON decided to withhold Plaintiffs' money, Plaintiffs did not
2 get a fair hearing and did not get a trial per NRS 31.340. There was no judgment mandating that
3 the money be withheld. Au contraire, after listening to five days of comprehensive testimony,
4 reviewing the evidence, and reading pre and post hearing briefing, this Court decided *Plaintiff* is
5 entitled to the \$1,492,861.30 held in trust—not Simon. (See pg. 22 of Court's November 19, 2018
6 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). Despite this
7 Court's Order, SIMON has taken matters into his own hands and has illegally—deliberately—
8 withheld Plaintiffs' money and still continues to do so.
9

10 SIMON'S behavior is particularly troubling—even sad—in light of the fact Plaintiffs
11 anticipated SIMON might pull a stunt like this. As this Court acknowledged in her Order, as far
12 back as December 26, 2017, Plaintiffs were fearful SIMON would misappropriate funds. (See pg.
13 11, lines 7-9 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien
14 attached hereto as "Exhibit 1")(See also, Email dated December 26, 2018, 12:18 p.m., attached
15 hereto as "Exhibit 2"). Plaintiffs' Counsel Robert Vannah explained in an email "[Plaintiffs] have
16 lost all faith and trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into
17 his trust account. Quite frankly, they are fearful that he will steal the money." Mr. Vannah's
18 words were not only just a description of client's feelings at the time, but a foreshadowing of S
19 SIMON'S behavior to come. SIMON has been holding Plaintiffs' money hostage for over two
20 weeks now.
21

22 Not only does SIMON'S withholding of funds violate Nevada statutes, his behavior is
23 wholly unconstitutional under United States Supreme Court precedent. His actions are
24 tantamount to an unconstitutional prejudgment garnishment as contemplated by the *Sniadach*
25 court. The Supreme Court was clear in *Sniadach*: the Wisconsin garnishment statutory regime—
26 which allowed for attorney-instituted garnishment procedures and permitted confiscation of funds
27
28

1 without any opportunity to be heard and without the opportunity to tender any defense—is an
2 unconstitutional violation of Due Process.

3 SIMON'S behavior in this case is similar to—but more abusive than—the procedures
4 permitted by the now-unconstitutional Wisconsin statute. Like the *Sniadach* statute, Simon's
5 purported garnishment efforts are wholly attorney-initiated. He did not seek leave from this Court
6 to retain the funds, yet he has flatly refused to release Plaintiffs' money. And in terms of its overt
7 deprivation of due process rights, SIMON'S behavior goes much, much further than the statute in
8 *Sniadach*. The *Sniadach* statute at the very least required the garnishor to serve the garnishee
9 before garnishment procedures were to be initiated.
10

11 Here, SIMON has shown nothing but disdain for Plaintiffs' due process rights: SIMON
12 did not follow any of Nevada's garnishment requirements or comply with Nevada statutory
13 garnishment procedures. Simon did not first obtain a court order issuing a writ of attachment.
14 Plaintiff has not been formally served with a writ of garnishment, has not had a chance to object
15 to the withholding of money, and has not been given a hearing to address his objections to
16 SIMON'S behavior. His outright refusal to release the remaining funds held in trust is wholly
17 inappropriate. Even worse still, as discussed above, this Court decided this very issue *in Plaintiffs*
18 *favor*: Plaintiffs are entitled to the vast majority of the money at issue: the balance held in trust
19 minus the amount awarded to SIMON if fees—not SIMON. Essentially, SIMON thinks he
20 answers to no one. But he does need to answer to this Court—and as such, it is the aim of this
21 Motion to move this Court for an Order requiring Simon to release the funds to which Plaintiff is
22 legally entitled.
23

24
25 ///

26 ///

27 ///

**B. THIS COURT HAS JURISDICTION TO ADJUDICATE THIS
ATTORNEYS LIEN; SIMON'S LIEN RIGHTS HAVE BEEN
EXHAUSTED, AND SIMON CANNOT HOLD ONTO PLAINTIFF'S
MONEY PENDING APPEAL**

A Nevada court that presided over a client's underlying action has jurisdiction to adjudicate an attorney-client fee dispute if either: *an enforceable charging lien exists*; if a retaining lien has been asserted by the attorney and the client asks the court to determine the value of the attorney's services in order to post adequate or substitute security in order to recover the file; or if the client otherwise consents. See *Argentina Consol. Min. Co. v. Jolley Urga*, 216 P. 3d 779 (2009).

Here, an enforceable charging lien exists, so this Court had jurisdiction to adjudicate SIMON'S attorney lien. (See pg. 6 of Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien attached hereto as "Exhibit 1"). This Court did so. In her November 19, 2018 Order, this Court adjudicated SIMON'S attorneys lien and issued her judgment, which clearly laid out findings with respect to the entitlements of all parties. SIMON'S lien rights have been exhausted in light of this Court's Order. SIMON got his fair hearing and chance to be heard: his lien adjudication rights are *finished*.

For his part, SIMON may argue that he wishes to hold onto the subject funds in trust while he appeals this Court's Order. Plaintiffs do acknowledge SIMON may intend to appeal this Court's November 19, 2018 Decision Adjudicating the Attorney Lien. However, SIMON should not be allowed to withhold Plaintiffs' funds while he appeals. As discussed above, if this Court allows SIMON to hold onto Plaintiffs' funds held in trust, it would be tantamount to an unconstitutional pre-judgment garnishment as contemplated by the *Sniadach* court. Just as the *Sniadach* Court struck down a statute for allowing a garnishee to be deprived of money *during the interim*—between service of the action and a trial on the suit—this Court should strike down SIMON'S attempt to deprive Plaintiffs of their money *during the interim*—between the issuance

1 of the Court's November 19, 2018 Order and the final resolution of this matter on appeal.
2 Plaintiffs should not be deprived of his money for months and months—perhaps even years—
3 especially where SIMON'S withholding of these funds is inapposite in light of the Court's
4 substantive ruling with regard to these entitlements. This Court should put an end to SIMON'S
5 ill-advised attempt to circumvent the Court's judgment. Accordingly, Plaintiffs respectfully
6 request this Court issue an Order requiring the release of the funds SIMON is withholding in trust.

7
8 **C. SIMON MUST COMPLY WITH THIS COURT'S NOVEMBER 19, 2018 ORDER, WHICH IS CLEAR AND UNAMBIGUOUS.**

9 The Court's Order is clear as day: "the reasonable fee due to the Law Office of Daniel Simon
10 is \$484,982.50." (See pg. 22 of Court's November 19, 2018 Order on Motion to Adjudicate
11 Attorneys Lien attached hereto as "Exhibit 1"). SIMON has been—and currently is—retaining the
12 full \$1,977,843.80 in trust. SIMON'S withholding of \$1,492,861.30 from Plaintiffs is in direct
13 contravention this Court's Order. Given that SIMON'S behavior directly violates this Court's
14 Order, the Court must take remedial action and issue an Order for the release of the remainder of
15 the funds to Plaintiffs that SIMON is withholding in trust.

16
17 It is worth noting that Plaintiffs have tried on multiple occasions to resolve this lien issue
18 without wasting judicial time and resources but have repeatedly been ignored by SIMON. (See
19 Plaintiffs' Letters to James Christensen dated October 31, 2018 and November 19, 2018 attached
20 hereto as "Exhibit 3" and "Exhibit 4" respectively). Despite Plaintiffs' efforts to resolve the
21 matter, Simon continues to drag his heels on this issue. Now that this Court has adjudicated his
22 attorneys lien, SIMON has *zero grounds* to withhold Plaintiffs' money. As such, Plaintiffs
23 respectfully request that this Court issue an Order for the release of Plaintiffs' funds.

24
25 ///

26 ///

27 ///

III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs' Motion for Release of Funds, as indicated in this Motion.

DATED this 13th day of December, 2018.

VANNAH & VANNAH


Bar No: 14530
SIGNED FOR → ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.
CHRISTIENSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, Nevada 89101

Traditional Manner:
None

DATED this 13 day of December, 2018.



An employee of the Law Office of
Vannah & Vannah

Exhibit 1

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16
17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

1 • Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast
2 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v.
3 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
2017 Nev. Unpubl. LEXIS 472.

4 • Taking actions that preventing effective representation creates constructive discharge.
5 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

15 Client retains Attorneys to represent him as his Attorneys regarding
16 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
17 ENTITIES and all damages including, but not limited to, all claims in this
18 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:

- 19 a) ...
20 b) ...
21 c) Client agrees that his attorneys will work to consummate a settlement of
22 \$6,000,000 from the Viking entities and any settlement amount agreed to be
23 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.

24 Id.

25 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
26 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
27 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
28

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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.

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

27 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.

28 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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

23 CONCLUSION

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

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

9
10 **ORDER**

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

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


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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

12/28/2017

Vannah & Vannah Mail - Edgeworth v. Viking

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

Bob,

Mr. Simon is out of town, returning after the New Year. As I understand it, Mr. Simon had a discussion with Mr. Greene on December 18. Mr. Simon was trying to facilitate deposit into the Simon Law trust account before he left town. Mr. Simon was informed that the clients were not available until after the New Year. The conversation was documented on the 18th via email. Given that, I don't see anything happening this week.

Simon Law has an obligation to safe keep the settlement funds. While Mr. Simon is open to discussion, I think the choice at this time is the Simon Law trust account or interplead with the Court.

Let's stay in touch this week and see if we can get something set up for after the New Year.

Jim

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

From: Robert Vannah <rvannah@vannahlaw.com>

Sent: Saturday, December 23, 2017 10:10:45 PM

To: James R. Christensen

Cc: John Greene; Daniel Simon

[Quoted text hidden]

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com>

Tue, Dec 26, 2017 at 12:18 PM

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

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

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

Sent from my iPad

[Quoted text hidden]

Robert Vannah <rvannah@vannahlaw.com>

Tue, Dec 26, 2017 at 12:26 PM

Exhibit 3

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

October 31, 2018

VIA FACSIMILE & EMAIL: (702) 272-0415; jim@jchristensenlaw.com

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

Re: Edgeworth Family Trust, et.al. v. Daniel S. Simon, et.al.

Dear Mr.  Christensen:

The Edgeworth Plaintiffs are willing to accept the rulings of the Court "as is", with the exception of the cost award in the amount of \$71,594.94, as we all agree that Danny Simon has been reimbursed in full for all costs advanced in this matter. If Danny is willing to forego appealing any of the orders of Judge Jones, Bob Vannah is willing to meet Danny at the bank, cut him a check for \$484,982.50 (\$556,577.43 minus \$71,594.93), cut a check to the Edgeworth's for the balance of funds in the account, and put an end to this. It's also advisable for our clients to sign a mutual release.

Please let us know if Danny is also willing to accept the rulings of Judge Jones, namely the amount awarded in the Decision and Order on Motion to Adjudicate Lien, minus the cost award of \$71,594.93, and put this behind him at this time.

Sincerely,

VANNAH & VANNAH


ROBERT D. VANNAH, ESQ.

RDV/jg



Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent1 message

RingCentral <service@ringcentral.com>
To: Jessie Romero <jromero@vannahlaw.com>

Wed, Oct 31, 2018 at 4:18 PM

Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number (702) 369-4161, Ext. 302:

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Wednesday, October 31, 2018 at 04:18 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-10-31 Edgeworth .pdf	Success

Exhibit 4

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

November 19, 2018

VIA FACSIMILE & EMAIL: (702) 272-0415; jim@jchristensenlaw.com

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

Re: Edgeworth Family Trust, et.al. v. Daniel S. Simon, et.al.

Dear Mr. Christensen:

Again, the Edgeworths are willing to accept the amended orders of the Court "as is." If Danny is willing to forego appealing any of the orders of Judge Jones, Bob Vannah is willing to meet Danny at the bank, cut him a check for \$484,982.50, cut a check to the Edgeworths for the balance of funds in the account, and put an end to this. It remains advisable for our clients to sign a mutual release.

Please let us know if Danny is also willing to accept the amended orders of Judge Jones, namely the amount awarded in the Decision and Order on Motion to Adjudicate Lien.

Sincerely,

VANNAH & VANNAH



ROBERT D. VANNAH, ESQ.

RDV/jg



Jessie Romero <jromero@vannahlaw.com>

Fax Message Transmission Result to +1 (702) 2720415 - Sent

1 message

RingCentral <service@ringcentral.com>
To: Jessie Romero <jromero@vannahlaw.com>

Mon, Nov 19, 2018 at 3:44 PM

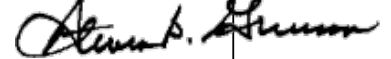
Fax Transmission Results

Here are the results of the 2-page fax you sent from your phone number (702) 369-4161, Ext. 302:

Name	Phone Number	Date and Time	Result
	+1 (702) 2720415	Monday, November 19, 2018 at 03:43 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
18-11-19 Letter to Christensen .pdf	Success



OPPS
James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for SIMON

Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

OPPOSITION TO PLAINTIFFS'
MOTION FOR RELEASE OF FUNDS

Date of Hearing: 2.5.19

Time of Hearing: 9:30 am

Case No.: A-18-767242-C

Dept. No.: 26

1 **I. Introduction**

2 An attorney *must* safekeep disputed funds in trust. NRPC 1.15. The
3 Edgeworths filed a notice of appeal, to which Simon had to respond with a notice
4 of cross appeal. Both parties provided notice of appeal of the decision and order
5 adjudicating the attorney lien. Thus, there is a continuing dispute over the amount
6 of money due Simon, and the disputed funds *must* be held in trust.
7

8 There is a second compelling ground to deny the Edgeworths' motion. The
9 Edgeworths seek to force Simon to act in conformance with this Court's order
10 adjudicating the attorney lien. However, when the Edgeworths filed their notice of
11 appeal of the adjudication order, the Edgeworths divested this Court of jurisdiction
12 to enforce the adjudication order. The adjudication order is on appeal, and this
13 Court no longer has jurisdiction over the order.
14
15

16 **II. Facts**

17 The history of this case is well known to the Court, only the most relevant
18 events are described.
19

20 On December 27, 2017, Simon counsel requested that the parties work
21 collaboratively to resolve the fee and cost dispute. (Exhibit A.)

22 On January 4, 2018, the Edgeworths sued Simon for conversion.

23 On October 11, 2018, this Court issued a decision and order adjudicating the
24 Simon attorney lien and dismissed the conversion case.
25

1 Simon filed a Rule 52 motion. Following, on November 19, 2018, this
2 Court issued an amended decision and order adjudicating the Simon attorney lien.

3 *On December 7, 2018, the Edgeworths filed a notice of appeal.* The
4 Edgeworths gave notice of their appeal from the decision and order adjudicating
5 the Simon attorney lien. (Exhibit B.)
6

7 On or around December 13, 2018, the Edgeworths filed the subject motion.
8 The motion was filed without a notice of motion. The motion was not set on
9 hearing calendar.
10

11 On December 17, 2018, Simon filed a notice of cross appeal in response to
12 the Edgeworth notice of appeal. Simon gave notice of an appeal from the decision
13 and order adjudicating the Simon attorney lien. (Exhibit C.)
14

15 On December 28, 2018, the Edgeworths filed a notice of hearing for the
16 subject motion. The Edgeworths did not amend the motion to reflect the appeals.

17 **III. Argument**

18 The Edgeworths forced Simon to hold the disputed funds in the trust account
19 when the Edgeworths filed a notice of appeal, and the notice of appeal also
20 divested this Court of jurisdiction over the order.
21

22 The Edgeworths are not unduly prejudiced. The trust account is interest
23 bearing, and the Edgeworths earn interest on all the funds in trust, including
24 whatever amount is due Simon for fees.
25

1 **A. An attorney cannot payout money that is in dispute.**

2 An attorney *must* safekeep disputed funds. NRPC 1.15(e) states:

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

9 The Edgeworths dispute the Court’s adjudication finding and filed a notice of
10 appeal to obtain appellate review. In response, Simon filed a notice of cross
11 appeal. Thus, the ownership of the money held in trust is still in dispute.

12 Accordingly, the money *shall* be held in the trust account “until the dispute is
13 resolved”.¹

14 An attorney’s obligation to hold disputed funds in trust is long settled law.

15 The Edgeworth motion is not “warranted by existing law, or by a nonfrivolous
16 argument for the extension, modification or reversal of existing law or the
17 establishment of new law”.² The law of garnishment does not apply on its face.

18 Simon has not garnished money from a third party, which the third party owed to
19 the Edgeworths, to secure Simon’s fee claim. The attempt to apply the law of
20 garnishment to this case is plainly frivolous, no garnishment took place, the
21 garnishment to this case is plainly frivolous, no garnishment took place, the
22 garnishment to this case is plainly frivolous, no garnishment took place, the
23 garnishment to this case is plainly frivolous, no garnishment took place, the
24 garnishment to this case is plainly frivolous, no garnishment took place, the

25 ¹ NRPC 1.15.

² NRCP 11.

1 Edgeworths ignored NRPC 1.15, the Edgeworths ignored their own notice of
2 appeal, and ignored Simon's cross notice of appeal.

3 The Edgeworths attachment of a settlement proposal to their motion breaks
4 convention, if not the law. Suffice to say, Simon responded to the take it or leave
5 it offer but did not gain traction on his counter proposal to begin a collaborative
6 discussion.

8 In the same vein, the Edgeworths' repeated attacks and name calling is
9 beyond the norm. Simon's compliance with the safekeeping property rule is not a
10 stunt, it is the law.

12 **B. The Edgeworths divested this Court of jurisdiction over the**
13 **adjudication order.**

14 It is well settled law that "the timely filing of a notice of appeal 'divests the
15 district court of jurisdiction to act and vests jurisdiction in this court.'" *Foster v.*
16 *Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 454-55 (2010); *citing*, *Mack-Manley v.*
17 *Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006); *quoting*, *Rust v. C.C.S.D.*,
18 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). The *Dingwall* Court reiterated
19 that
20

21 [W]hen an appeal is perfected, the district court is divested of jurisdiction to
22 revisit issues that are pending before this court, [but] the district court retains
23 jurisdiction to enter orders on matters that are collateral to and independent
24 from the appealed order, i.e., matters that in no way affect the appeal's
25 merits.

Id.; *quoting*, *Mack-Manley*, 122 Nev. at 855, 138 P.3d at 529-30.

1 The adjudication order has been appealed by the Edgeworths, and then by
2 Simon. The Court does not have jurisdiction over the order.

3 **IV. Conclusion**

4 The Edgeworths escalated this fee dispute by suing Simon for conversion,
5 then continued the fee dispute by filing a notice of appeal, in response to which,
6 Simon was obligated to file a notice of cross appeal. The appeal and cross appeal
7 establish beyond question that the amount of fees due Simon are still in dispute.
8 Because the fees are still in dispute, the safekeeping property rule requires that the
9 settlement money must be held in trust “until the dispute is resolved”.
10
11

12 Further, the adjudication order is on appeal. Therefore, this Court no longer
13 has jurisdiction over the order.

14 The Edgeworths’ motion has no reasonable factual or legal basis. It must be
15 denied.
16

17 DATED this 11th day of January 2019.

18 /s/ James R. Christensen

19 James R. Christensen Esq.
20 Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
21 601 S. 6th Street
Las Vegas NV 89101
22 (702) 272-0406
(702) 272-0415 fax
23 jim@jchristensenlaw.com
Attorney for SIMON
24
25

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing OPPOSITION TO PLAINTIFFS' MOTIN FOR RELEASE OF FUNDS was made by electronic service (via Odyssey) this 11th day of January, 2019, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen

an employee of
JAMES R. CHRISTENSEN, ESQ

EXHIBIT A

P000078

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com
Admitted in Illinois and Nevada

December 27, 2017

Via E-Mail

Robert D. Vannah
400 S. 7th Street
Las Vegas, NV 89101
rvannah@vannahlaw.com

Re: Edgeworth v. Viking

Dear Bob:

I look forward to working with you to resolve whatever issues may exist concerning the disbursement of funds in the Edgeworth case. To that end, I suggest we avoid accusations or positions without substance.

This letter is in response to your email of December 26, 2017. I thought it best to provide a formal written response because of the number of issues raised.

Please consider the following time line:

- On Monday, December 18, 2017, Simon Law picked up two Zurich checks in the aggregate amount of \$6,000,000.00. (Exhibit 1; copies of checks.)
- On Monday, December 18, 2017, immediately following check pick-up, Mr. Simon called Mr. Greene to arrange check endorsement. Mr. Simon left a message.

- On Monday, December 18, 2017, Mr. Greene returned the call and spoke to Mr. Simon. (Exhibit 2; confirming email string.)
- During the Monday call, Mr. Simon advised that he would be on a holiday trip and unavailable beginning Friday, December 22, 2017, until after the New Year. Mr. Simon asked that the clients endorse the checks prior to December 22nd. (Exhibit 2.)
- During the Monday call, Mr. Greene told Mr. Simon that the clients would not be available to sign checks until after the New Year. (Exhibit 2.)
- During the Monday call, Mr. Greene stated that he would contact Simon Law about scheduling endorsement. (Exhibit 2.)
- On Friday, December 22, 2017, the Simon family went on their holiday trip.
- On Saturday, December 23, 2017, at 10:45 p.m., an email was sent which indicated that delay in endorsement was not acceptable. The email also raised use of an escrow account as an alternative to the Simon Law trust account. (Exhibit 2.)
- On Tuesday, December 26, 2017, I responded by email and invited scheduling endorsement after the New Year, and discounted the escrow account option. (Exhibit 2.)

In response to your December 26, 2017 email, please consider the following:

1. The clients are available until Saturday. This is new information and it is different from the information provided by Mr. Greene. Regardless, Mr. Simon is out of town until after the New Year.
2. Loss of faith and trust. This is unfortunate, in light of the extraordinary result obtained by Mr. Simon on the client's behalf. However, Mr. Simon is still legally due a reasonable fee for the services rendered. NRS 18.015.
3. Steal the money. We should avoid hyperbole.

4. Time to determine undisputed amount. The time involved is a product of the immense amount of work involved in the subject case, which is clearly evident from the amazing monetary result, and the holidays. And, use of a lien is not “inconsistent with the attorney’s professional responsibilities to the client.” NRS 18.015(5).
5. Time to clear. The checks are not cashier’s checks. (Exhibit 1.) Even a cashier’s check of the size involved would be subject to a “large deposit item hold” per Regulation CC.
6. Interpleader. The interpleader option - deposit with the Court - was offered as an alternative to the Simon Law trust account, to address the loss of faith issue. The cost and time investment is also minimal.
7. Escrow alternative. Escrow does not owe the same duties and obligations as those that apply to an attorney and a trust account. Please compare, *Mark Properties v. National Title Co.*, 117 Nev. 941, 34 P.3d 587 (2001); with, Nev. Rule of Professional Conduct 1.15; SCR 78.5; etc. The safekeeping property duty is also typically seen as non-delegable.

To protect everyone involved, the escrow would have to accept similar duties and obligations as would be owed by an attorney. That would be so far afield from the usual escrow obligations under *Mark*, that it is doubtful that an escrow could be arranged on shorter notice, if at all; and, such an escrow would probably come at great cost.

We are not ruling out this option, we simply see it as un-obtainable. If you believe it is viable and wish to explore it further, please do so.

8. File suit ourselves. An independent action would be far more time consuming and expensive than interpleader. However, that is an option you will have to consider on your own.

9. Fiduciary duty. Simon Law is in compliance with all duties and obligations under the law. *See, e.g.*, NRS 18.015(5).

10. Client damages. I can see no discernable damage claim.

Please let me know if you are willing to discuss moving forward in a collaborative manner.

Sincerely,

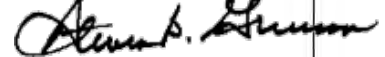
JAMES R. CHRISTENSEN, P.C.

/s/ *James R. Christensen*

JAMES R. CHRISTENSEN

JRC/dmc
cc: Daniel Simon
enclosures

EXHIBIT B



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/Appellants

7
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.

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

NOTICE OF APPEAL

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 NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants EDGEWORTH FAMILY
2 TRUST and AMERICAN GRATING, LLC, hereby appeal to the Supreme Court of Nevada from
3 the Decision and Order on Motion to Adjudicate Lien and from the Amended Decision and Order
4 on Motion to Dismiss NRCP 12(B)(5), both of which were entered on November 19, 2018.
5

6 DATED this 7 day of December, 2018.

7 VANNAH & VANNAH

8
9 
10 ROBERT D. VANNAH, ESQ.
11 Nevada Bar No. 002503
12 JOHN B. GREENE, ESQ.
13 Nevada Bar No. 004279
14 400 S. Seventh Street, 4th Floor
15 Las Vegas, Nevada 89101
16 jgreene@vannahlaw.com
17 Telephone: (702) 369-4161
18 Facsimile: (702) 369-0104
19 Attorneys for Plaintiffs/Appellants
20
21
22
23
24
25
26
27
28

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 7th day of December, 2018.

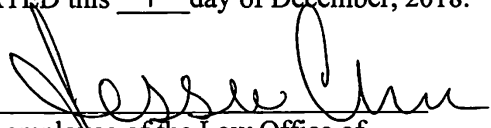
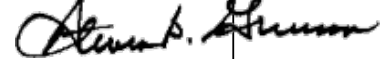

An employee of the Law Office of
Vannah & Vannah

EXHIBIT C



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; THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE entities 1
through 10;

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

NOTICE OF CROSS APPEAL

CONSOLIDATED WITH

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

1 NOTICE IS HEREBY GIVEN that Defendants/Appellants DANIEL S.
2 SIMON and THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL
3 CORPORATION, hereby appeal to the Supreme Court of Nevada from the
4 Decision and Order on Special Motion to Dismiss Anti-Slapp, which was entered
5 on October 11, 2018; and, appeals to the Supreme Court of Nevada from the
6 Decision and Order on Motion to Adjudicate Lien, which was entered on
7 November 19, 2018.
8
9

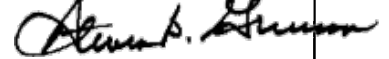
10 DATED this 17th day of December 2018.
11

12 /s/ James R. Christensen
13 JAMES CHRISTENSEN, ESQ.
14 Nevada Bar No. 003861
15 601 S. 6th Street
16 Las Vegas, NV 89101
17 (702) 272-0406
18 (702) 272-0415
19 jim@jchristensenlaw.com
20 Attorney for Daniel S. Simon

21 **CERTIFICATE OF SERVICE**

22 I CERTIFY SERVICE of the foregoing **NOTICE OF CROSS APPEAL**
23 was made by electronic service (via Odyssey) this 17th day of December, 2018, to
24 all parties currently shown on the Court's E-Service List.
25

26 /s/ Dawn Christensen
27 an employee of
28 JAMES R. CHRISTENSEN



1 JOHN B. GREENE, ESQ.
Nevada Bar No. 004279
2 ROBERT D. VANNAH, ESQ.
Nevada Bar No. 002503
3 **VANNAH & VANNAH**
400 S. Seventh Street, 4th Floor
4 Las Vegas, Nevada 89101
5 jgreene@vannahlaw.com
6 Telephone: (702) 369-4161
Facsimile: (702) 369-0104
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
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' REPLY TO
OPPOSITION TO PLAINTIFFS'
MOTION FOR RELEASE OF FUNDS**

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 Reply to
4 Opposition to Plaintiffs' Motion for Release of Funds.
5

6 This Reply is based upon the attached Memorandum of Points and Authorities; the
7 pleadings and papers on file herein; the Findings of Fact and Orders entered by this Court; and,
8 any oral argument this Court may wish to entertain.

9 DATED this 28th day of January, 2019.

10 VANNAH & VANNAH

11 
12
13 ROBERT D. VANNAH, ESQ.

BAR
No: 14530

14 I.

15 SUMMARY

16 The facts of this matter are well known to this Court. The path to this intricate knowledge
17 was gained by, but not limited to, having listened to five days of comprehensive testimony; by
18 having reviewed the totality of the evidence presented; by having read hundreds of pages of pre
19 and post hearing briefing, exhibits, notes, and arguments; and, by having carefully crafted factual
20 findings and orders. As this Court knows, on November 30, 2017, Simon filed a Notice of
21 Attorneys Lien for the reasonable value of his services pursuant to NRS 18.015 and then filed an
22 amended attorneys lien with a net lien in the sum of \$1,977,843.80. On January 24, 2018, Simon
23 filed a Motion to Adjudicate Lien, and this Court set an evidentiary hearing. This honorable Court
24 issued her Decision and Order on Motion to Adjudicate Attorney Lien on November 19, 2018. In
25 her Order, the Court found there was an implied agreement for a fee of \$550 per hour between
26 attorney Daniel S. Simon (hereafter "Simon) and the Edgeworths, and once Simon started billing
27
28

1 the Edgeworths this amount, the bills were paid. The Court also found that the Edgeworths
2 constructively discharged Simon as their attorney on November 29, 2017, when they ceased
3 following his advice and refused to communicate with him. The Court then found Simon was
4 compensated at the implied agreement rate of \$550 per hour for his services, and \$275 per hour
5 for his associates, up and until the last billing of September 19, 2017. For the period between
6 September 19, 2017 and November 29, 2017, the Court held Simon was entitled to his implied
7 agreement fee of \$550 an hour, and \$275 an hour for his associates, for a total amount of
8 \$284,982.50. Further, the Court decided that for the period after November 29, 2017, Simon
9 properly perfected his lien and is entitled to a reasonable fee for the services his office rendered in
10 quantum meruit: an amount the Court determined to be \$200,000. Accordingly, Simon and his
11 law office are owed a total amount of \$484,982.50 in fees—taken from the net lien in the sum of
12 \$1,977,843.80—pursuant to this Court’s Order adjudicating the attorneys lien.

14 The Edgeworths have expressed a willingness, in writing, to accept the Court’s rulings on
15 all issues, and sign mutual global releases, but Simon refuses to release the funds held in the trust
16 account. The same cannot be said for Simon and his law firm: even after this Court’s Order was
17 issued, Simon has refused to release the balance of the funds held in trust: a sum of
18 \$1,492,861.30. The Court issued its Judgment—which was unambiguous. Plaintiffs are entitled to
19 their \$1,492,861.30. It has now been over two weeks, and Plaintiffs have not seen a dime of their
20 money—money to which they are legally entitled. Simon’s unreasonable, inappropriate
21 withholding of the remaining funds held in trust is tantamount to a pre-judgment garnishment,
22 which is untoward—not to mention unconstitutional.

24 PLAINTIFFS respectfully request that this Court issue an Order requiring Simon to
25 release to Plaintiff the remainder of the funds Simon is withholding in trust.

27 ///

28 ///

II.

ARGUMENTS

A. **SIMON'S WITHOLDING OF PLAINTIFFS' MONEY HELD IN TRUST IS AN UNCONSTITUTIONAL PRE-JUDGMENT GARNISHMENT: SIMON'S OPPOSITION FAILS TO CITE LEGAL AUTHORITY THAT INDICATES OTHERWISE**

Simon declares that application of the law of garnishment to this case is "plainly frivolous" and the law of garnishment "does not apply on its face." See Simon's Opposition, p. 4. Lines 18-22. Unsurprisingly, Simon fails to cite any statute, case—or any law whatsoever—in support of these sweeping claims. Simon merely asserts "no garnishment took place" and "Simon has not garnished money from a third party." *Id.* Simon's conclusory assertion that there has been no garnishment does not strengthen his position. In fact, the conspicuous absence of legal citation, references, and authorities in Simon's Opposition *speaks volumes*.

In reality, the law is not on Simon's side. He failed to address, distinguish—or even mention—the cases and authorities cited in Plaintiff's Motion: *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969)(holding prejudgment garnishments may violate the fundamental principles of due process); *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.* 197 P.3d 1051, 1056-57 (2008) (which lays out the procedural formalities required before Nevada garnishments may take place); Nev. Rev. Stat. § 31(laying out the multiple due process protections in favor of garnishees in Nevada's statutory scheme).

While Simon did formally oppose the totality of Plaintiffs' Motion in writing, Simon's failure to address—his failure to oppose—Plaintiffs' legal authorities and arguments with respect to this garnishment issue can be construed as "an admission that the motion . . . is meritorious and consent to granting the same." EDCR 2.20(e). The Court would have authority to grant the portion of Plaintiffs' Motion with respect to this garnishment issue as unopposed under this

1 Court's local rules. But even if the Court were to consider the issue on the merits, Simon's hardly
2 compelling statement that "no garnishment took place" does not hold water.

3 As explained in Plaintiffs' Motion, Simon's withholding of Plaintiffs' money is
4 unconstitutional under the 14th Amendment of the United States Constitution. Simon did not
5 follow any of Nevada's garnishment requirements or comply with Nevada statutory garnishment
6 procedures. He did not first obtain a court order issuing a writ of attachment. Plaintiff has not
7 been formally served with a writ of garnishment, has not had a chance to object to the
8 withholding of money, and has not been given a hearing to address his objections to Simon's
9 behavior. Simon's vigilantism is in direct contravention of Nevada law. See NRS 31.240; NRS
10 31.249; NRS 31.260.

12 Coincidentally, the only "frivolous" argument is Simon's—which is conclusory and
13 unsupported by the law. This Court should find that Simon's withholding of funds is an
14 unconstitutional, prejudgment garnishment and grant Plaintiffs' Motion for Release of Funds in
15 its entirety.

17 **B. NRPC 1.15 DOES NOT APPLY TO THE FUNDS IN THIS CASE BECAUSE**
18 **THEY ARE NOT DISPUTED, THEY WERE HANDLED DIRECTLY BY**
19 **THIS COURT'S NOVEMBER 19, 2018 ORDER ON MOTION TO**
20 **ADJUDICATE ATTORNEYS LIEN, AND SIMON WAS NEVER**
21 **ENTITLED TO THE 1,977,843.80 HE IS NOW WITHHOLDING**

22 Simon's Motion cites Nevada's professional rule regarding safekeeping of client funds in
23 an attempt to justify his wrongdoing: his withholding of 1,977,843.80 . The rule Simon refers to
24 reads as follows:

25 (e) When in the course of representation a lawyer is in possession of funds or other
26 property in which two or more persons (one of whom may be the lawyer) claim interests,
the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer
shall promptly distribute all portions of the funds or other property as to which the
interests are not in dispute. NRPC 1.15(e).

27 The crux of Simon's argument is that the money held in trust is disputed because the Edgeworths
28 filed a notice of appeal and Simon filed a notice of cross appeal—and thus, must stay in trust.

1 Simon attempts to argue *broadly* that “the money held in trust” is disputed. But this is simply not
2 the case. This argument contains a huge, unwarranted assumption and does not hold water for a
3 simple reason: *Plaintiffs’ share* of the money held in trust is not disputed. Simon’s attempt to
4 argue otherwise shows a misapprehension—or misconstruction—of the facts of this case. The
5 Court made its decision. The Court’s Order Adjudicating the Attorneys Lien in this case is clear
6 as day: “the reasonable fee due to the Law Office of Daniel Simon is \$484,982.50.” (See pg. 22,
7 lines 12-13 of Court’s November 19, 2018 Order on Motion to Adjudicate Attorneys Lien
8 attached hereto as “Exhibit 1.”). Pursuant to this Court’s Order, Plaintiffs are entitled to the
9 \$1,492,861.30 held in trust: that is the amount Simon needs to release *now*—not in months or
10 years from now after extensive litigation and appellate practice.

12 Simon attempts to distort the issues of the case by framing his wrongdoing in the context
13 of attorney safekeeping of funds. But Simon (conveniently) forgets that Nevada’s professional
14 rules provide a clear mandate: The lawyer shall *promptly* distribute all portions of the funds or
15 other property as to which the interests are not in dispute. NRPC 1.15(e) (emphasis added). And
16 this is precisely what Simon failed to do. He has held—and continues to hold—Plaintiffs’ funds
17 even after this Court ruled directly on the issue. The truth is that Simon had an obligation under
18 NRPC 1.15(e) to release Plaintiff’s \$1,492,861.30 *immediately*—“promptly”—after this Court’s
19 November 19, 2018 Order on Motion to Adjudicate Attorneys Lien was issued. Simon did not do
20 so—which is what necessitated Plaintiff’s current Motion for Release of Funds. The bottom line
21 is that on November 19, 2018, the \$1,492,861.30 became Plaintiff’s money, Simon’s lien rights
22 had been exhausted, and Simon was required to hand over the money promptly. NRPC 1.15(e)
23 cannot and does not justify Simon’s behavior: in fact NRPC 1.15(e) goes *against* Simon’s
24 position.

27 Even if the Court gives credence to Simon’s argument (which it should not) that the notice
28 of appeal and cross appeal make the “ownership of the money held in trust” disputed for NRPC

1 1.15(e) purposes (See Simon's Opposition, p. 4. Line 10), Simon should not be *rewarded* for
2 violating the Court's November 19, 2018 Order. Even *before the appeals were filed*—during the
3 snapshot in time—between issuance of the Court's November 19, 2018 Order and December 7,
4 2018, when the Edgeworths' filed their of notice of appeal—Simon was disrespecting this Court
5 and violating this Court's Order. It would be a travesty of justice, not to mention patently absurd,
6 to allow Simon's unclean hands during this time period to effectively shelter him from his
7 obligation to release the funds to Plaintiffs.
8

9 Further, as discussed in Plaintiffs' Motion, if this Court allows Simon to hold onto
10 Plaintiffs' funds while this appeal is processed, it would be tantamount to an unconstitutional pre-
11 judgment garnishment: a principle *un-rebutted* by Simon in his Opposition. (see above). Just as
12 the Supreme Court in *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969) struck
13 down a statute for allowing a garnishee to be deprived of money *during the interim*—between
14 service of the action and a trial on the suit, this Court should strike down Simon's attempt to
15 deprive Plaintiff of his money during the interim—between the issuance of the Court's November
16 19, 2018 Order and the final resolution of this matter on appeal.
17

18 Simon's gall is hardly subtle. He is attempting keep the full \$1,977,843.80 in trust: an
19 amount which *under no circumstances* he would ever be entitled. The Court explained in her
20 Order "[i]t is undisputed that no express written fee agreement was formed [between Edgeworths
21 and Simon]." (See Exhibit 1, pg. 7, line 15), "[i]t is undisputed that when the flood issue arose, all
22 parties were under the impression that Simon would be helping out the Edgeworths, as a favor"
23 (See *Id.* at p. 8, lines 11-12), and there was an *implied* agreement fee of \$550 an hour. (See
24 Exhibit 1, pg. 22, lines 1-8). In no world and under no circumstances is Simon entitled to keep
25 \$1,977,843.80. But that is what he has done here. The Court must put an end to it and Order
26 Simon to release Plaintiffs' funds immediately.
27
28

1 **C. THIS COURT HAS JURISDICTION TO ORDER RELEASE OF**
2 **\$1,492,861.30 TO PLAINTIFFS BECAUSE THE COURT HAS**
3 **DISTRETION TO ENFORCE ITS ADJUDICATION ORDER AND**
4 **ALLOWING SIMON TO RETAIN THE FUNDS IS TANTAMOUNT TO**
5 **ALLOWING SIMON TO USE PLAINTIFFS' MONEY AS A**
6 **SUPERSEDEAS BOND**

7 Simon attempts to argue that the filing of notices of appeal strip this Court of jurisdiction.
8 (See Simon's Opposition, p. 5 Lines 14-25.). As discussed above, the Edgeworths' and Simon's
9 Notices of Appeal and Cross Appeal do not strip this Court of jurisdiction because Simon was
10 obligated to release Plaintiffs' funds *before* the Notices of Appeal and Cross Appeal were filed.

11 The truth is that Simon should have released Plaintiff's \$1,492,861.30 immediately after
12 this Court's November 19, 2018 Order on Motion to Adjudicate Attorneys Lien was issued.
13 Simon did not do so, which is what necessitated Plaintiffs' current Motion for Release of Funds.
14 Simon now attempts to argue this Court has no jurisdiction to enforce its substantive ruling—
15 when it is *his own actions*—delaying the release of Plaintiffs' money in contravention of that very
16 ruling—which have led to the appeal in the first place! Simon cannot have it both ways: his
17 argument is disingenuous.

18 A notice of appeal does not, and never will, change the simple truth the Court decided this
19 issue by adjudicating the attorney lien—entitling Plaintiffs to \$1,492,861.30 immediately, and
20 Simon violated the Court's November 19, 2018 Order by failing to release Plaintiff's portion of
21 the funds. How could Simon file his Motion to Adjudicate Attorneys Lien on January 24, 2018,
22 *defy* the Court's November 19, 2018 Order adjudicating the same attorney lien—leading to the
23 present Motion—then argue that this Court has not jurisdiction to enforce the lien and recovery
24 rights it had *already determined*? He can't. This Court has discretion grant Plaintiff's Motion to
25 Disburse Funds.

26 Simon filed his notice of cross-appeal on December 17, 2018. Simon cannot now hold
27 onto Plaintiff's money during and throughout the entire appellate process. Allowing Simon to do
28

1 so would be tantamount to using *Plaintiff's money*—which he has inappropriately withheld— as
2 his own supersedeas bond! The level of absurdity and unfairness with such a result is
3 overwhelming.

4 **III.**

5 **CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that this Court GRANT Plaintiffs'
7 Motion for Release of Funds, as indicated in this Motion.

8 DATED this 28th day of January, 2019.

10 **VANNAH & VANNAH**

11  Bar
12 No: 19530
13 ROBERT D. VANNAH, ESQ.

CERTIFICATE OF SERVICE

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

Electronically:

James R. Christensen, Esq.
JAMES R. CHRISTENSEN, PC
601 S. Third Street
Las Vegas, Nevada 89101

Peter S. Christiansen, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
Las Vegas, Nevada 89101

Traditional Manner:
None

DATED this 28th day of January, 2019.

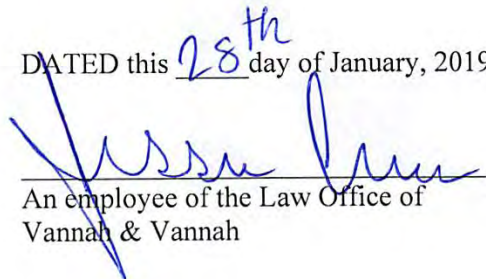

An employee of the Law Office of
Vannah & Vannah

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
28

Hon. Tierra Jones
DISTRICT COURT JUDGE

DEPARTMENT TEN
LAS VEGAS, NEVADA 89155

P000101

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

19 **Court**

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

- 1 • Suing an attorney creates constructive discharge. See Tao v. Probate Court for the Northeast
2 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also Maples v.
3 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
4 2017 Nev. Unpubl. LEXIS 472.
- 5 • Taking actions that preventing effective representation creates constructive discharge.
6 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

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

- 22 a) ...
23 b) ...
24 c) Client agrees that his attorneys will work to consummate a settlement of
25 \$6,000,000 from the Viking entities and any settlement amount agreed to be
26 paid by the Lange entity. Client also agrees that attorneys will work to reach
27 an agreement amongst the parties to resolve all claims in the Lange and
28 Viking litigation.

29 Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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.

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

27 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.

28 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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

19 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
20 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
21 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
22 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
23 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
24 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
25 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
26 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
27 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
28

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

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

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

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

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

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

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

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

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

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

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

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

18 (b) The scope of the representation and the basis or rate of the fee and
19 expenses for which the client will be responsible shall be communicated to the
20 client, preferably in writing, before or within a reasonable time after
commencing the representation, except when the lawyer will charge a
21 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.

22 (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
23 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
24 the largest type used in the contingent fee agreement:

25 (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;

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

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

11 NRCP 1.5.

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

23 CONCLUSION

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

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

9
10 **ORDER**

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

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


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16 
17 _____
18 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

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



Tess Driver
Judicial Executive Assistant
Department 10

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 05, 2019

A-16-738444-C Edgeworth Family Trust, Plaintiff(s)
vs.
Lange Plumbing, L.L.C., Defendant(s)

February 05, 2019 9:30 AM Motion

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Christensen, James R. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Peter Christiansen Esq., present on behalf of Daniel Simon, Robert Vannah Esq., and Brandonn Grossman Esq., on behalf of Edgeworth Family Trust.

Following arguments by counsel. COURT ORDERED, Motion DENIED. This Court does not have Jurisdiction as this case has been appealed to the Supreme Court, and the a main issue is the funds. Plaintiff's counsel to prepare the order and submit to opposing counsel for review before submission to the Court.



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3 601 S. 6th Street
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5 (702) 272-0406
6 jim@jchristensenlaw.com
7 Attorney for Daniel S. Simon

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 EDGEWORTH FAMILY TRUST, and
11 AMERICAN GRATING, LLC
12 Plaintiffs,

13 vs.

14 LANGE PLUMBING, LLC; THE
15 VIKING CORPORATION, a Michigan
16 corporation; SUPPLY NETWORK,
17 INC., dba VIKING SUPPLYNET, a
18 Michigan Corporation; and DOES 1
19 through 5 and ROE entities 6 through
20 10;

21 Defendants.

22 EDGEWORTH FAMILY TRUST;
23 AMERICAN GRATING, LLC

24 Plaintiffs,

25 vs.

26 DANIEL S. SIMON; THE LAW
27 OFFICE OF DANIEL S. SIMON, A
28 PROFESSIONAL CORPORATION;
DOES 1 through 10; and, ROE
entities 1 through 10;

Defendants.

Case No.: A-16-738444-C
Dept. No.: 10

**OPPOSITION TO MOTION TO
RECONSIDER and REQUEST FOR
SANCTIONS; COUNTER MOTION
TO ADJUDICATE LIEN ON
REMAND**

Hearing date: 4.15.21
Hearing time: n/a

CONSOLIDATED WITH

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

(ORAL ARGUMENT REQUESTED)

1 A Because I needed to learn my options, because I haven't had any
2 communication with them, verbally, since November 25th, and they're
3 promising to meet with me, and they were being cagey about it, and,
4 you know, so I needed to figure out what my options were.

5 (Italics added.) (Ex. 1 at 168.)

6 The Edgeworths wasted this Court's time smearing Simon and his
7 lawyer with false allegations and innuendo by omitting portions of the
8 record and misstating the findings when date of retention is meaningless
9 because the Court reviewed the billings for related charges. Sanctions are
10 warranted.

11
12 **C. David Clark**

13 Simon's counsel knows David Clark personally and respects his
14 expertise and knowledge on legal ethics. Counsel first called Clark to
15 confirm he could serve as an expert if needed; and to prevent his hire by
16 the Edgeworths. Later in December, counsel called Clark on a topic of
17 interest in the dispute. Clark's time spent in December was *gratis*. Clark's
18 first billing date on the file was January 11, 2018. (Ex. 14.)

19 As it turns out, the retainer was not exhausted. The appropriate
20 amount for Clark fees as costs should be \$2,520.00.

1 Mr. Kemp has provided a declaration in which he reviewed his
2 un rebutted opinion in the light of the Supreme Court orders. (Ex. 17) Mr.
3 Kemp responded to the Supreme Court's instructions and explained how
4 his opinion is in agreement. Mr. Kemp then reviews the *Brunzell* factors
5 and states that a reasonable fee under the prevailing market rate of the
6 community for product liability trial counsel from September 19, 2017,
7 through February of 2018, is \$2,072,393.75. (Ex. 17.)
8

9
10 **C. Brunzell issues raised by the Edgeworths**
11

12 The Edgeworth motion for reconsideration skips between the
13 sanction fee and the prevailing market rate for Simon which makes
14 addressing the claims challenging. Rebuttals below are not presented in
15 the order raised.
16

17 **1. The Edgeworths have the file.**
18

19 The Edgeworths rely upon the false claim that they do not have the
20 file. As demonstrated above, the file was delivered in 2020.
21

22 The Edgeworths build on their false statement of fact to make the
23 false assertion that the entire file is needed for an adjudication. That is
24 untrue. Under the lien statute adjudication occurs in five days' time by the
25 trial court - when the "attorney's performance is fresh in its (trial court's)
26 mind." NRS 18.015(6); and *Leventhal v. Black & Lobello*, 305 P.3d 907,
27
28

1 911 (Nev. 2013); *superseded by statute on other grounds as stated in*,
2 *Fredianelli v. Pine Carman Price*, 402 P.3d 1254 (Nev. 2017). (timely
3 adjudication allows the court to determine the fee while “the attorney’s
4 performance is fresh in its mind”, and before “proceeds are distributed”).
5 The statute relies on the knowledge of the trial court to adjudicate a lien,
6 not review of a file, which might not be available due to a retaining lien.
7

8
9 Lastly, if the file were really needed, the Edgeworths would have
10 requested the file in 2017/2018.
11

12 **2. Ashley Ferrel and other counsel**

13 The Edgeworths falsely claim, “no evidence was presented
14 regarding the quality of the advocate with respect to any other attorneys
15 other than Simon whose work was billed during this time.” (Mot., at
16 19:23-25.) The claim is false for several reasons.
17
18

19 First, as discussed in *Leventhal*, the trial court is a witness to the
20 work done by the lawyers on cases before it. Far from “no evidence” the
21 Court saw firsthand the ability and competency of the lawyers on the
22 Simon team (including the lien adjudication process).
23

24 While direct evidence is enough, testimony at the evidentiary
25 hearing hit this issue as well. For example, on Day 3, Ms. Ferrel testified
26 to over 7 years of experience as a trial lawyer working for the nationally
27
28

The CV for Christensen is attached at ex. 13. The Court saw counsel's work, and the rate has been previously approved many times in State court, most recently by Judge Denton following trial in *LVNS v. Gandalf*, A-18-773329-C.

III. Conclusion

There is no excuse for the wholesale misstatements of fact and of the record by the Edgeworths, as well as the defiance of the Supreme Court orders. These arguments are not made in good faith and given their pattern of abusive conduct, sanctions are clearly warranted.

Simon respectfully suggests the Court make a reasonable fee award based on the market rate under quantum meruit for the work performed following September 19, 2017, through February of 2018, in accord with the unrefuted opinion of Will Kemp, which is consistent with the Supreme Court's order of remand.

DATED this 13th day of April 2021.

/s/ James R. Christensen
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Attorney for Daniel S. Simon

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants/Cross-Respondents,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION,
Respondents/Cross-Appellants.

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

Supreme Court No. 77678
District Court Case No. A738444

FILED

APR 13 2021

Elizabeth A. Brown
CLERK OF COURT

Supreme Court No. 78176
District Court Case No. A738444

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgement of the district court AFFIRMED in part and VACATED in part AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 30 day of December, 2020.

A-16-738444-C
CCJR
NV Supreme Court Clerk's Certificate/Judgment
4851019



JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 18 day of March, 2021.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
April 12, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
Respondents/Cross-Appellants.

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

vs.

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

No. 77678

FILED

DEC 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 78176

***ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING***

These consolidated matters include two appeals and a cross-appeal that challenge district court orders dismissing a complaint under NRCP 12(b)(5), adjudicating an attorney lien, and granting in part and denying in part a motion for attorney fees and costs.¹ Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.²

Brian and Angela Edgeworth are business owners and managers. A fire sprinkler malfunctioned and flooded a home they were constructing, causing \$500,000 in damages. Both the fire-sprinkler

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²The Honorable Abbi Silver, Justice, did not participate in the decision of this matter.

manufacturer and plumbing company refused to pay for the damage. Daniel Simon, a Las Vegas attorney and close friend of the Edgeworths, offered to help. There was no written fee agreement, as Simon only planned to send a few letters. However, Simon eventually sued the responsible parties on the Edgeworths' behalf, billing the Edgeworths a "reduced" rate of \$550 per hour through four invoices totaling \$367,606, which the Edgeworths paid in full. Eventually, Simon helped secure a \$6 million settlement agreement, and when the Edgeworths asked Simon to provide any unpaid invoices, Simon sent them a letter with a retainer agreement for \$1.5 million beyond what they had already paid him for his services. The Edgeworths refused to pay and retained new counsel. Simon then filed an attorney lien. The Edgeworths responded by suing him for breach of contract and conversion.

Simon moved to dismiss the Edgeworths' complaint under both NRCP 12(b)(5) and Nevada's anti-SLAPP statutes and he moved for adjudication of the lien. The district court consolidated the cases. The district court first addressed Simon's attorney lien and held an extensive evidentiary hearing. After the hearing, the district court found that Simon and the Edgeworths did not have an express oral contract. Although the district court found that Simon and the Edgeworths had an implied contract for the hourly rate of \$550 per hour for Simon and \$275 per hour for Simon's associates, it also determined that the Edgeworths constructively discharged Simon when they retained new counsel. Therefore, the district court awarded Simon roughly \$285,000 for attorney services rendered from September 19 to November 29, 2017, and \$200,000 in quantum meruit for the services he rendered after November 29, the date of the constructive

discharge.³ Relying on the evidence presented at the hearing adjudicating the attorney lien, the district court dismissed the Edgeworths' complaint and awarded Simon \$55,000 in attorney fees and costs for defending the breach of contract action. It then denied Simon's anti-SLAPP motion as moot.

The constructive discharge for purposes of adjudicating attorney lien and \$200,000 quantum meruit award

We review a "district court's findings of fact for an abuse of discretion" and "will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence." *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004) (internal quotation marks omitted). The Edgeworths argue that substantial evidence does not support the district court's constructive discharge finding because Simon never withdrew from the case, continued working on it through its conclusion, and billed them after the date of the constructive discharge. We disagree.

A constructive discharge occurs when a party's conduct "dissolves the essential mutual confidence between attorney and client," *Brown v. Johnstone*, 450 N.E.2d 693, 695 (Ohio Ct. App. 1982) (holding that a client terminated the attorney-client relationship when he initiated grievance proceedings against and stopped contacting his attorney), or the client takes action that prevents the attorney from effective representation, *McNair v. Commonwealth*, 561 S.E.2d 26, 31 (Va. Ct. App. 2002) (explaining that in the criminal context, constructive discharge can occur where "the defendant place[s] his counsel in a position that precluded effective

³On appeal, the Edgeworths challenge only the \$200,000 award in quantum meruit.

representation"). Substantial evidence in the record demonstrates that the Edgeworths hired new counsel; stopped directly communicating with Simon; empowered their new counsel to resolve the litigation; and settled claims against Simon's advice at the urging of new counsel. Accordingly, we conclude that the district court acted within its sound discretion by finding that the Edgeworths constructively discharged Simon on November 29, 2017.

Although we conclude that the district court correctly found that Simon was entitled to quantum meruit for work done after the constructive discharge, *see Gordon v. Stewart*, 74 Nev. 115, 119, 324 P.2d 234, 236 (1958) (upholding an award in quantum meruit to an attorney after breach of contract), *rejected on other grounds by Argentina Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 537-38, 216 P.3d 779, 786 (2009), we agree with the Edgeworths that the district court abused its discretion by awarding \$200,000 in quantum meruit⁴ without making findings regarding the work Simon performed after the constructive discharge. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014) (reviewing district court's attorney fee decision for an abuse of discretion).

A district court abuses its discretion when it bases its decision on an erroneous view of the law or clearly disregards guiding legal principles. *See Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017). "[T]he proper measure of damages under a *quantum meruit* theory

⁴The Edgeworths do not contest the validity of the attorney lien or the district court's jurisdiction to adjudicate it.

of recovery is the reasonable value of [the] services." *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (alteration in original) (internal quotation marks omitted). A district court must consider the *Brunzell* factors when determining a reasonable amount of attorney fees. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Those factors are: (1) the quality of the advocate; (2) the character of the work, e.g., its difficulty, importance, etc.; (3) the work actually performed by the advocate; and (4) the result. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Edgeworths challenge the third factor, arguing that the district court's order did not describe the work Simon performed after the constructive discharge. While the district court stated that it was applying the *Brunzell* factors for work performed only after the constructive discharge, much of its analysis focused on Simon's work throughout the entire litigation. Those findings, referencing work performed before the constructive discharge, for which Simon had already been compensated under the terms of the implied contract, cannot form the basis of a quantum meruit award. Although there is evidence in the record that Simon and his associates performed work after the constructive discharge, the district court did not explain how it used that evidence to calculate its award. Thus, it is unclear whether \$200,000 is a reasonable amount to award for the work done after the constructive discharge. Accordingly, we vacate the district court's grant of \$200,000 in quantum meruit and remand for the district court to make findings regarding the basis of its award.

The NRCP 12(b)(5) motion to dismiss

Following the evidentiary hearing regarding the attorney lien, the district court dismissed the Edgeworths' complaint. In doing so, the district court relied on the evidence presented at the evidentiary hearing to

find that there was no express contract and thus dismissed the breach of contract, declaratory relief, and breach of covenant of good faith and fair dealing claims. It further found that Simon complied with the statutory requirements for an attorney lien and therefore dismissed the conversion and breach of fiduciary duty claims, as well as the request for punitive damages.

The Edgeworths argue that the district court failed to construe the allegations in the amended complaint as true and instead considered matters outside the pleadings—facts from the evidentiary hearing. In effect, the Edgeworths argue that, under the NRCP 12(b)(5) standard, the district court was required to accept the facts in their complaint as true regardless of its contrary factual findings from the evidentiary hearing. Under the circumstances here, we are not persuaded that the district court erred by dismissing the complaint.

While the district court should have given proper notice under NRCP 12(d) that it was converting the NRCP 12(b)(5) motion to one for summary judgment, it did not err by applying its findings from the evidentiary hearing when ruling on the NRCP 12(b)(5) motion, as it had told the parties it was waiting to rule on this motion until after the lien adjudication hearing. Under the law-of-the-case doctrine, a district court generally should not reconsider questions that it has already decided. See *Reconstrust Co., N.A. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (“The law-of-the-case doctrine ‘refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.’”) (quoting *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995)); see also *United States v. Jingles*, 702 F.3d 494, 499 (9th Cir. 2012) (“Under the law of the case doctrine, a court is

ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.") (internal quotation marks omitted). The doctrine applies where "the issue in question [was] 'decided explicitly . . . in [the] previous disposition.'" *Jingles*, 702 F.3d at 499 (second alteration in original) (quoting *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000)).

Because it was necessary for the district court to determine if there was an express contract when adjudicating the attorney lien, its finding that there was no express oral contract between Simon and the Edgeworths became the law of the case in the consolidated action. See NRS 18.015(6) (requiring the court where an attorney lien is filed to "adjudicate the rights of the attorney, client or other parties and enforce the lien"); NRCP 42(a) (allowing consolidation where actions "involve a common question of law or fact"). As it was the law of the case, that finding bound the district court in its adjudication of the NRCP 12(b)(5) motion.⁵ See *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 623, 173 P.3d 707, 714 (2007) (upholding a district court's decision where the district court held a bench trial to resolve equitable claims and then applied those findings to dismiss the remaining legal claims). Similarly, the district court's finding that Simon properly perfected the attorney lien became the law of the case and thus bound the district court during its adjudication of the NRCP 12(b)(5) motion. Accordingly, because the district court properly applied its past

⁵The Edgeworths do not argue that the district court's finding of an implied contract could have formed the basis of their breach of contract and good faith and fair dealing claims.

findings to the present motion, it did not err in granting the NRCP 12(b)(5) motion.⁶

The \$50,000 attorney fee award under NRS 18.010(2)(b)

The Edgeworths argue that the district court abused its discretion by awarding attorney fees to Simon in the context of dismissing their conversion claim because their claim was neither groundless nor brought in bad faith and the district court failed to consider the *Brunzell* factors.

The district court awarded attorney fees under NRS 18.010(2)(b) for the Edgeworths' conversion claim alone because it found that the Edgeworths' conversion claim was not maintained upon reasonable grounds. Once Simon filed the attorney lien, the Edgeworths were not in exclusive possession of the disputed fees, see NRS 18.015(1), and, accordingly, it was legally impossible for Simon to commit conversion, see *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 911, 193 P.3d 536, 543 (2008) (holding that to prevail on a conversion claim, the plaintiff must have an exclusive right to possess the property). We perceive no abuse of discretion in this portion of the district court's decision. See NRS 18.010(2)(b) (authorizing courts to award attorney fees for claims "maintained without reasonable ground or to harass the prevailing party"). As to the amount of the award, however, we conclude that the district court's order lacks support. The district court need not explicitly mention each

⁶In his cross-appeal in Docket No. 77678, Simon argues that the district court erred by denying his anti-SLAPP special motion to dismiss as moot. However, Simon failed to present cogent arguments and relevant authority in his opening brief. Accordingly, we do not consider his argument. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 817, 830 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

Brunzell factor in its order so long as the district court "demonstrate[s] that it considered the required factors, and the award [is] supported by substantial evidence." *Logan*, 131 Nev. at 266, 350 P.3d at 1143 (mandating that a district court consider the *Brunzell* factors, but explaining that "express findings on each factor are not necessary for a district court to properly exercise its discretion").

While the district court did not make explicit *Brunzell* findings, it satisfied the first prong under *Logan* by noting that it "[had] considered all of the factors pertinent to attorney's fees." However, the district court did not provide sufficient reasoning explaining how it arrived at \$50,000, and it is not obvious by our review of the record. Accordingly, we vacate the district court's order awarding attorney fees and remand for further findings.

The costs award

The Edgeworths challenge the award of costs, arguing that the district court failed to explain or justify the amount. Having considered the record and the parties' arguments, we conclude that the district court acted within its sound discretion in awarding Simon \$5,000 in costs. *Logan*, 131 Nev. at 267, 350 P.3d at 1144 (explaining that this court reviews an award of costs for an abuse of discretion). Here, the district court explained that it awarded \$5,000 of the requested \$18,434.74 because Simon only requested an award for work performed on the motion to dismiss, not the adjudication of the attorney lien. As Simon's counsel acknowledged, only \$5,000 of the requested costs related to the motion to dismiss and thus only that \$5,000 is recoverable. Because the cost award is supported by an invoice and memorandum of costs, we conclude that the district court acted within its sound discretion when it awarded \$5,000 in costs to Simon.

In sum, as to the Edgeworths' appeal in Docket No. 77678, we affirm the district court's order granting Simon's motion to dismiss as well as the order awarding \$5,000 in costs. However, we vacate the district court's order awarding \$50,000 in attorney fees and \$200,000 in quantum meruit and remand for further findings regarding the basis of the awards. As to Simon's cross-appeal in Docket No. 78176, we affirm the district court's order denying Simon's anti-SLAPP motion as moot.

For the reasons set forth above, we

ORDER the judgment of the district court **AFFIRMED** in part and **VACATED** in part AND **REMAND** this matter to the district court for proceedings consistent with this order.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

cc: Hon. Tierra Danielle Jones, District Judge
Dana Jonathon Nitz, Settlement Judge
James R. Christensen
Vannah & Vannah
Christiansen Law Offices
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

(0) 1947A 

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants/Cross-Respondents,
vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
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Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST; AND
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Appellants,
vs.

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

No. 77678

FILED

MAR 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 78176

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

[Signature] C.J.
Hardesty

[Signature] J.
Parraguirre

[Signature] J.
Cadish

[Signature] J.
Pickering

[Signature] J.
Stiglich

[Signature] J.
Silver

[Signature] J.
Herndon

Supreme Court
of
Nevada

JS 1947A

21-07874

P000138

cc: Hon. Tierra Danielle Jones, District Judge
Vannah & Vannah
James R. Christensen
Christiansen Law Offices
Eighth District Court Clerk

Supreme Court
of
Nevada

20167A

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Appellants/Cross-Respondents,
vs.
DANIEL S. SIMON; AND THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIONAL
CORPORATION,
Respondents/Cross-Appellants.

Supreme Court No. 77678
District Court Case No. A738444

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

Supreme Court No. 78176
District Court Case No. A738444

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

Hon. Tierra Danielle Jones, District Judge
Vannah & Vannah
James R. Christensen
Christiansen Law Offices \ Peter S. Christiansen

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 13 2021.

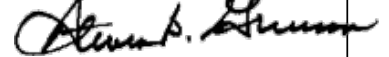
HEATHER UNGERMANN
Deputy District Court Clerk

**RECEIVED
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MORRIS LAW GROUP

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Edgeworth Family Trust and
American Grating, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

EDGEWORTH FAMILY TRUST;) Case No: A-16-738444-C
AMERICAN GRATING, LLC,) Dept. No: X

Plaintiffs,

v.

LANGE PLUMBING, LLC
ET AL.,

Defendants.

EDGEWORTH FAMILY TRUST;) Case No: A-18-767242-C
AMERICAN GRATING, LLC,) Dept. No. X

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

PLAINTIFFS' RENEWED
MOTION FOR
RECONSIDERATION OF
THIRD-AMENDED DECISION
AND ORDER GRANTING IN
PART AND DENYING IN PART
SIMON'S MOTION FOR
ATTORNEYS FEES AND

) COSTS, and MOTION FOR
) RECONSIDERATION OF
) THIRD AMENDED DECISION
) AND ORDER ON MOTION TO
) ADJUDICATE LIEN
)
) HEARING REQUESTED
)

Plaintiffs Edgeworth Family Trust and American Grating, LLC (hereafter collectively referred to as "Edgeworths") respectfully move for reconsideration of this Court's Third Amended Decision and Order on Motion to Adjudicate Lien (hereafter "Third Lien Order"), which does not adhere to the instructions on remand, as more fully described below. The Edgeworths also renew their motion to reconsider the Court's Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs (the "Fees Order") to conform to the actual cost amount.

This matter returns to the Court on remand for a limited purpose. The Supreme Court vacated this Court's prior order "awarding [Simon] \$50,000 in attorney's fees and \$200,000 in *quantum meruit* and remand[ed] for further findings regarding the basis for the awards." The Supreme Court's remittitur that returned this matter to the Court for further proceedings issued on April 13, 2021. However, the Court *sua sponte*, and without explanation (or jurisdiction), entered a Second Amended Decision and Order on Motion to Adjudicate Lien (hereafter "Second Lien Order") on March 16, 2021. At the same time, the Court also entered an Amended Order on Simon's motion for attorney's fees and costs. These Orders prompted the Edgeworths to file a Motion for Reconsideration on March 30, 2021.

The following day, the clerk of the Court issued a notice of hearing, for April 15, 2021, which deprived the Edgeworths of the right to reply to

1 Simon's opposition to reconsideration filed on April 13. Scheduling the
2 hearing was altogether unnecessary and inappropriate because jurisdiction
3 had not been returned to the Court when the incomplete briefing on
4 reconsideration was in progress and the minute order issued from the
5 Court's chambers. Nonetheless, on April 19, 2021, the Court issued a Third
6 Lien Order; the Court has not issued an updated Order on the attorney fee
7 issue since regaining jurisdiction.

8 For the reasons set out in detail below, reconsideration of both of April
9 19, 2021 Third Lien Order and the March 16, 2021 Amended Decision and
10 Order Granting in Part and Denying in Part Simon's Motion for Attorney's
11 Fees and Costs (hereafter the "Attorney Fee Order") is appropriate.

12 This Motion is based on the papers and pleadings on file, the
13 declaration of Rosa Solis-Rainey and exhibits submitted therewith, and any
14 argument the Court may consider, which the Edgeworths respectfully
15 request.

16 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
17 **RENEWED MOTION FOR RECONSIDERATION**

18 This case has a long and tortured history that will not be reiterated
19 except as necessary to address the narrow issues presented in this motion.
20 The time and effort expended to obtain a full and fair accounting of the fees
21 and costs claimed by Simon, in whom the Edgeworths misplaced their trust,
22 has been unnecessarily increased due to his failure to keep adequate
23 accurate billing records, and promptly bill the Edgeworths. His omission to
24 keep and produce proper billing records has allowed him to overreach for
25 much more in fees than were agreed to by the Edgeworths.

26 ***A. RELEVANT FACTS***

27 The underlying litigation brought by the Edgeworths against Lange
28 Plumbing, LLC, the Viking Corporation, Supply Network Inc., dba Viking

1 Supplynet. Daniel Simon represented the Edgeworths. From April 10, 2016
2 to September 18, 2017, his firm billed the Edgeworths \$368,588.70 in
3 attorney's fees, and \$114,864.39 in costs. The bills were based on *Simon's*
4 requested hourly rate of \$550 and \$275 for his associates.

5 Through mediation, the Edgeworths on November 15, 2017 agreed to
6 settle their claims against the Viking parties for \$6 million in exchange for
7 full dismissals. With these principal terms agreed-upon, all that remained
8 as to this portion of the case was to memorialize the settlement. Two days
9 later, however, Simon pressed the Edgeworths to renegotiate the basis of his
10 compensation structure from the hourly rates that had been confirmed and
11 paid under the parties' course of conduct, to one with contingent fee features
12 that would yield him more than a \$1M bonus. To coerce them into
13 acquiescing to his demands for more money, Simon threatened that the
14 settlement with Viking would fall apart because he claimed there remained
15 *many terms to still be negotiated*. Simon left for vacation in Peru shortly
16 thereafter, but made numerous calls to the Edgeworths from Peru to
17 pressure them into paying his desired but unagreed fees.

18 On November 27, 2017, Simon sent the Edgeworths a letter proposing
19 an agreement that would essentially provide him a bonus of over \$1M. Ex.
20 HH. Angela Edgeworth responded and asked Simon to provide her a copy
21 of the draft settlement document so that she could have her long-time
22 business lawyer review it. Ex. AA. Simon responded that he had not
23 received it, which was not true. *Id.* at 3:50 p.m. Since the principal terms for
24 settlement had been agreed to at the November 15 mediation and there
25 appeared to be urgency on all sides in finalizing the agreement, Mrs.
26 Edgeworth pressed Simon for the draft agreement. He responded that "Due
27 to the holiday they were probably not able to start on it. I will reach out to
28 lawyers tomorrow and get a status." *Id.* at 4:58 p.m. In his earlier letter, he

1 claimed that "*there [wa]s a lot of work left to be done* [to finalize the
2 settlement] and even hinted he might derail the agreement by not signing
3 off on "confidentiality provisions," likely required by Viking, which he
4 suggested "could expose [Simon] to future litigation." Ex HH at 0049. Mrs.
5 Edgeworth *again* pressed for settlement details, but Simon did not respond.
6 Ex. AA at 5:32 p.m.

7 Notwithstanding his denials to the contrary, the record suggests that
8 Simon had a draft of the settlement agreement by November 21, 2017. Ex.
9 BB (email exchange between counsel for Viking suggesting issues had arisen
10 regarding confidentiality and disparagement provisions; because these are
11 provisions Simon said Viking wanted, such issues could have been raised
12 only by Simon). Because of Simon's coercive tactics with respect to revising
13 his compensation structure and his refusal to provide the draft agreement to
14 Mrs. Edgeworth and his hourly bill, the Edgeworths retained other counsel
15 on November 29, Robert Vannah, to work with Simon to finalize the
16 agreements.¹ Ex. CC.

17 Simon provided the Edgeworth's with a draft of the settlement
18 agreement, *for the first time*, at 8:39 a.m. on November 30. Ex. DD.
19 Approximately an hour later, Vannah sent Simon a fax notifying him that
20 the Edgeworths had retained him to assist in finalizing the settlement. Ex.
21 CC. About eight hours later (at 5:31 pm) Simon sent a "final" version of the
22 settlement agreement with terms he claimed to have negotiated that day. Ex.
23 EE. In that same email, he also reported that he had re-negotiated the Lange
24
25

26 ¹ Without waiver of any rights, the Edgeworths accept that the Court
27 has found that the circumstances leading up to and retaining other counsel
28 were a constructive discharge of Simon, notwithstanding that he remained
counsel of record.

1 Plumbing settlement amount, and acknowledged receipt of instructions to
2 settle the Lange claim. *Id.*

3 On November 30, 2017, Simon also filed a Notice of Attorney Lien
4 against the Viking settlement claiming \$80,326.86 in outstanding costs. *See*
5 Ex. L to 3/30/21 Mot. for Recon. He filed an Amended Lien on January 2,
6 claiming costs of \$76,535.93² and attorney fees totaling \$2,345,450 less
7 payments received, for a net of \$1,977,843.80 due in fees, presumably based
8 on a contingent fee agreement that the Edgeworths had rejected. *See* Ex. M
9 to 3/30/21 Mot. for Recon. The Viking settlement was signed the next day,
10 December 1. Ex. N to 3/30/21 Mot. for Recon. The Edgeworths asked
11 Simon to agree to the Lange terms at the same time. Ex. EE.

12 On December 12, 2017, Viking notified Simon that it had inadvertently
13 overlooked the *certified check* provision in the settlement agreement, but
14 provided they could obtain the stipulation to dismiss, they had *regular*
15 *checks* cut and available for exchange that day in order to allow time for the
16 payment to clear by the agreed-upon date. Ex. FF. Simon ***did not*** notify the
17 Edgeworths of this option. On December 18, 2017, Simon notified Vannah,
18 the Edgeworths other counsel, that he had received the checks, but did not
19 disclose the checks were not certified, as required by the settlement
20 agreement. The parties disagreed on how the checks should be handled and
21 ultimately deposited them in an account that required the signatures of both
22 Vannah and Simon. The portion of the Viking money in excess of Simon's
23 claimed lien was paid to the Edgeworths. The settlement agreement with
24

25
26 _____
27 ² The Court acknowledged that the Edgeworths promptly paid the
28 outstanding costs claimed by Simon as soon as he provided invoices
substantiating costs. *See* Nov. 19, 2018 Decision and Order on Motion to
Adjudicate Lien at 17:12-13 ("there are no outstanding costs remaining
owed").

1 Lange Plumbing was slow-played until February 5, 2018, when it was
2 signed. *See* Ex. O to 3/30/21 Mot. for Recon.

3 Due to the manner in which the settlement was handled, and the
4 attempted extortion of additional fees from them, the Edgeworths initiated
5 litigation against Simon on January 4, 2018. The Court ultimately dismissed
6 their claim for conversion and awarded fees and costs under NRS
7 18.010(2)(b) to Simon in the amount of \$5,000 for the claimed expert fee to
8 David Clark; and \$50,000 in fees for Simon's lawyer for defending the
9 conversion action. In his opposition to the Motion for Reconsideration,
10 Simon acknowledges that David Clark's expert fee was only \$2,520. *See*
11 April 13, 2021 Opp'n to Mot to Reconsider at 19:24.

12 Despite repeatedly claiming to the Edgeworths that a bill for actual
13 time spent would exceed the amount fees claimed in his lien, Simon refused
14 to provide billing records for fees he claimed were outstanding. Instead, he
15 moved to adjudicate the lien, and in support offered a "super bill" alleging
16 that between May 27, 2016 and January 8, 2018, his firm provided a total of
17 1,650.60 hours in legal services (866.20 hours Simon; 762.60 for Farrell; and
18 21.80 for Miller) for a grand total of \$692,120 in fees. Ex. II Excerpts of
19 "super bill." Included among Simon's hours is a single undated entry for
20 137.80 hours (or \$75,790 in fees) with the line entry explanation of "Review
21 all Emails concerning service of all pleadings (679 emails)." *See* Ex. II at
22 SIMONEH0000240 (last entry before totals).

23 The Court held an evidentiary hearing with respect to the lien and
24 concluded that the accuracy of the "super bill" provided by Simon could *not*
25 be established. *See* Nov. 19, 2018 Decision and Order on Motion to
26 Adjudicate Lien at 14:19-27 (pointing to testimony that the "'super bill' was
27 not necessarily accurate" because it was created after the fact); at 15:5 – 9
28 ("The court reviewed the billings of the 'super bill' in comparison to the

1 previous bills and determined that it was necessary to discount the items
2 that has not been previously billed for; such as text messages, reviews with
3 the court reporter, and reviewing, downloading, and saving documents
4 because the Court is uncertain of the accuracy of the 'super bill'); at 15:19
5 ("This argument does not persuade the court of the accuracy of the 'super
6 bill.")). The Court determined that for the period from September 19 to
7 November 29, 2017 (which Simon had not billed despite requests from the
8 Edgeworths to do so), Simon was owed \$284,982.50. *Id.* at 17:3-4.
9 Notwithstanding that this amount did **not** reflect the "discounting" that the
10 Court said was required, or the fact the work was not well substantiated in
11 the invoices, the Edgeworths accepted this finding.

12 With respect to services performed from after the date the Court
13 determined Simon was constructively discharged, the Court awarded Simon
14 \$200,000, without providing any detail to show how that amount was
15 determined. Nov. 19, 2018 Decision and Order on Motion to Adjudicate
16 Lien at 21:18. The Court confirmed that the case was "not a contingent fee
17 case, and the Court is not awarding a contingency fee." *Id.* at 21. In
18 justifying the amount, the basis of which is never explained, the Court
19 discusses the *Brunzell* factors, but does so only in the context of *pre-*
20 *constructive discharge work*.

21 The Edgeworths appealed the amount awarded Simon in *quantum*
22 *meruit*, as well as the fees and costs awarded under NRS 18.010. Although
23 the Supreme Court affirmed the \$5,000 cost award, it did so because it
24 believed that 'the cost award [was] supported by an invoice and
25 memorandum of costs,' (Dec. 30, 2020 Nev. Sup. Ct. Order at 9, last
26 sentence) which Simon's recent briefing confirms was inaccurate. David
27 Clark's charged only \$2,520 for his work as an expert.
28

1 With respect to the fees awarded, both under NRS and under
2 *quantum meruit*, the Nevada Supreme Court held that the \$50,000 attorney
3 fee award "lacks support" because the Order awarding the fees did not
4 demonstrate that the *Brunzell* factors were even considered. *Id.* at 8-9. With
5 respect to the \$200,000 award, the Supreme Court held that the Court erred
6 in making the award "without making findings regarding the work Simon
7 performed after the constructive discharge." *Id.* at 4. The Supreme Court
8 emphasized that the proper measure of recovery is the "reasonable value of
9 [the] services." *Id.* at 5 (citations omitted). And the Court went on to say
10 that in determining the reasonable value, the Court must consider the
11 *Brunzell* factors. *Id.* The Supreme Court said:

12 While the district court stated that it was applying the *Brunzell*
13 factors for work performed only after the constructive discharge, much of
14 its analysis focused on Simon's work throughout the litigation. Those
15 findings, referencing *work performed before the constructive discharge*,
16 for which Simon had already been compensated under the terms of the
17 implied contract, *cannot form the basis of a quantum meruit award*. . . .
Accordingly, we vacate the district court's grant of \$200,000 in *quantum*
meruit and remand for the district court to make findings regarding the
basis of its award.

18 *Id.* at 5 (emphasis added). The Court's latest Order does not satisfy the
19 Supreme Court mandate. It merely repeats the same inadequate *Brunzell*
20 analysis. *See* Third Lien Order at 19-20; and compare it with the identical
21 analysis on pages 18-19 of the November 19, 2018 Order that was the subject
22 of the appeal.

23 The only evidence in the record of work Simon claims to have
24 performed post-discharge is set forth in the "super bill"; the accuracy of
25 which the Court has acknowledged is questionable, at best. *See* Excerpts
26 Showing Post-Discharge Portions of "super bill" Ex. JJ and KK. The work
27
28

described in these billings includes one hearing³ and several administrative tasks, including over seven hours of Mr. Simon's time post discharge to open the bank account for deposit of the Viking settlement checks. Ex. LL at 3 (entries in green on Jan 2, 3 4, 5 and 8, 2018). Even crediting the time outlined in his "super bill," applying the *Brunzell* factors to that work does not justify the bonus payment the Court awarded him.

B. STANDARD FOR RECONSIDERATION

A party may seek reconsideration within 14 days after service of written notice of the order. E.D.C.R. 2.24. Reconsideration is appropriate when the Court has misapprehended or overlooked important facts when making its decision, *Matter of Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983), when new evidence is presented, or when the decision is "clearly erroneous." *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Here, this motion for reconsideration of the Court's Third Lien Order, entered on April 19, 2021, is timely brought. The Order is clearly erroneous because it does not comply with the mandate returned from the Nevada Supreme Court. The Order also followed briefing that was cut short due to the early hearing setting when the Court lacked jurisdiction.

The Amended Order on the attorney fee issue, was entered on March 16, 2021, nearly one month before the Nevada Supreme Court returned jurisdiction of this case to the district court. It is thus *void ab initio* because it was entered without jurisdiction, but it also warrants reconsideration because the cost award was entered based on an incorrect amount

³ A hearing on Viking's Motion for Good Faith Settlement is listed on the "super bill" for December 12, 2017. See Ex. JJ at 77. The hearing was necessary only because the Lange settlement was not promptly finalized. See Ex. N to 3/30/21 Mot. for Recon. at 2, Section III.D.

1 presented, which Defendants now acknowledge in their April 13 opposition
2 to the earlier motion for reconsideration.

3
4 ***C. RECONSIDERATION OF THE COSTS AWARDED IN THE***
5 ***AMENDED ATTORNEY FEES AND COSTS MOTION IS***
6 ***WARRANTED.***

7 This Court entered its Amended Order attorney's fees and costs on
8 March 16, 2021. Jurisdiction was not returned to the district court until April
9 13, 2021. The Amended Order awarded Simon's counsel some of the
10 attorney fees and costs in claimed to have been incurred in defense of the
11 conversion cause of action. The claimed costs of \$5,000 were for expert fees
12 paid to David Clark. The Edgeworths appealed this award on the basis that
13 the costs were not necessarily incurred. Although the Nevada Supreme
14 affirmed the \$5,000 cost award, it did so because it believed that "the cost
15 award [was] supported by an invoice and memorandum of costs." Dec. 30,
16 2020 Nev. Sup. Ct. Order at 9, last sentence. Given the confirmation by
17 Simon that the \$5,000 was actually the retainer amount, which was not
18 exhausted, it is appropriate to remit the amount of the cost award to the
19 actual cost (\$2,520) incurred.

20 ***D. THE BASIS FOR THE QUANTUM MERUIT ALLOWED BY THE***
21 ***COURT REMAINS UNSUPPORTED, AND, IN FACT, CANNOT BE***
22 ***SUPPORTED.***

23 The Third Amended Decision on the lien matter suffers from the same
24 defects as those in the prior amended order considered by the Nevada
25 Supreme Court. The Supreme Court found that the district court had not
26 provided an adequate basis to support how it came up with a \$200,000
27 award for Simon's post-constructive termination services, and pointed out
28 that to the extent the *Brunzell* analysis was done, it relied on pre-termination
work, *which has been compensated* under the contract.

1 According to the record and Simon's own testimony, the settlement
2 terms in the underlying dispute with Viking were agreed on by November
3 15, 2017. By Simon's unequivocal testimony in response to questions from
4 the Court, the Viking Settlement Agreement was finished *before* November
5 30. Ex. GG at 15-17.

6 Notwithstanding that he finished the settlement agreement
7 negotiations on November, 27, 2017, when Mrs. Edgeworth requested drafts
8 of the agreement that same day, Simon claimed he had not yet seen any
9 drafts of the settlement agreement. And despite his later testimony that he
10 was completely done hammering out the agreement on November 27, 2017,
11 he did not share any versions of the settlement agreement with the
12 Edgeworths until November 30th, ignoring their request for all drafts. The
13 draft he initially presented them (with terms he unequivocally testified he
14 had negotiated out) was sent shortly before he was notified the Edgeworths
15 had hired Vannah to help finalize the agreement. At the close of day on
16 November 30, he sent Vannah the final draft, which he acknowledged to the
17 Court he finished negotiating three days prior yet misrepresented to Vannah
18 and the Edgeworths that he had negotiated it that day. Ex. EE.

19 Notwithstanding the gamesmanship in sharing the settlement
20 agreement while seeking a new fee arrangement, it is reasonable to conclude
21 that Simon's testimony to the Court is accurate: *all negotiations were*
22 *complete by November 27*, and little, if anything, of substance remained to
23 be done *after* the claimed notice of termination to obtain the payment and
24 dismiss the Viking claims. This conclusion is supported by the fact the
25 Viking Settlement Agreement was in fact executed the next day, December
26 1. A review of the billing entries offered by Simon for the post-discharge
27 period confirm that negligible substantive work was performed by him with
28 regard to the Viking claims.

1 Likewise, according to Simon's own evidence, the negotiation of the
2 Lange Plumbing settlement terms were done by November 30, 2017,
3 although the agreement memorializing these terms was inexplicably not
4 presented to the Edgeworths for signature until February 5, 2018. The actual
5 agreement eventually signed demonstrates that it was final by early
6 December 2017. *See* Ex O at 1 (on line 2 of page 1, Mr. Edgeworth had to
7 interlineate the earlier date contemplated when he signed the agreement; it
8 said ". . . Agreement . . . is entered on December __, 2017"); (on page 2, at
9 subsections "a." to "c." agreement called for document exchanges by end of
10 December, payment by end of January, and dismissal within 10 days of
11 payment, demonstrating the agreement it was prepared in December). To
12 the extent this agreement was slow-played by Simon to support his
13 contention that much work remained, the fact is that the basic terms were
14 agreed on or before November 30 and *no substantive work remained* to
15 finalize it.

16 Little else of substance remained. And although Simon claims *never*
17 to work on an hourly basis, he billed the Edgeworths on an hourly basis,
18 and they paid him as they had agreed. The Court found that they had no
19 reason to believe that was not the fee agreement since Simon had not
20 memorialized the terms of the engagement, as he should have if it were
21 otherwise. He also billed them for the substantial costs, which the Court
22 found they promptly paid. Having so determined the basis for payment to
23 Simon, the best evidence before the Court of the "reasonable value" of the
24 *quantum meruit* services is Simon's own billings, which outline the work
25 performed, albeit inadequately. This would be consistent with the
26 compensation structure confirmed by the parties' course of conduct.
27 Although the Court has consistently called into question the accuracy of the
28 "super bill" Simon created to justify his exorbitant lien, the Court

1 nonetheless accepted the "super bill" for purpose of establishing the hours
2 Simon claimed for work between September 19, 2017 through November 29,
3 2017, and for which she awarded Simon over \$284K, without the
4 discounting the Court itself recognized was required. The Edgeworths
5 accepted this determination, and intend to pay that amount from the
6 moneys being held.

7 There is no reason for the Court to now reject the "super bill" for
8 evaluating the work performed post-discharge. For the period starting
9 November 30 to the end of his lien, Simon's "super bill" lists a total of 71.10
10 hours (51.85 hours for Simon; and 19.25 for his associate). Using the hourly
11 rates established Simon himself and confirmed by the parties' course of
12 conduct, that number of hours translates to \$33,811.25 in fees at his agreed
13 rates. If the work on that listing were justifiable, it would be reasonable
14 under a *Brunzell* analysis, but the Court's award of \$200,000 is *more than six*
15 *times* that amount. No reason is given in the Third Lien Order as to how
16 that amount was computed or supported under a *Brunzell* analysis. The
17 Court's decision, in fact, does not specifically discuss the nature of the post-
18 termination work. The Court's *entire discussion* of the *Brunzell* factors is
19 based on pre-termination work covered by the prior invoices and the Court's
20 pre-termination computation. This is the same deficiency the Nevada
21 Supreme Court found with the appealed order.

22 Furthermore, much of the claimed work was not justified as having
23 been done for the benefit of the Edgeworths. It is also not work requiring
24 ...
25 ...
26 ...
27 ...
28

special skill. A rough summary of the post-discharge work "billed" is depicted in the table below:

SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW	
Admin tasks re Lange Settlement	21.55
Admin tasks re Viking Settlement, including one hearing	26.65
Preparation of Attorney Lien	4.85
Opening Bank Account & Depositing Settlement Checks	7.25
Undetermined - not sufficient description	10.80

None of this work justifies the bonus awarded. A consolidated listing of the hours Simon's firm billed post-termination is attached hereto as Exhibit LL. The descriptions and information in Exhibit LL were taken directly from the "super bill" produced by Simon, the relevant excerpts of which are attached hereto as Exhibits JJ and KK. A substantial portion of Simon's bill for post-termination work does not provide adequate descriptions to enable informed evaluations of work performed. Furthermore, the Edgeworths' ability to challenge the validity of the work Simon claims to have performed is also limited because Simon has refused repeated demands to turn over their entire file to them.⁴ While the Court is free to determine the reasonable value of the services provided, it needs to identify the bases on which it is valuing it to show that the amount is reasonable under *Brunzell*. Billing over seven hours to set up a simple local

⁴ Simon claims to have turned over the file to the Edgeworths. However, the file he produced does not include drafts of the settlement agreements; is stripped of all email attachments, all emails discussing the Edgeworths settlements with third-parties, expert reports, and email and other communications with experts, opposing counsel. In view of this Court's finding that Simon was discharged, and the affirmance of that determination, it cannot be reasonably disputed that the Edgeworths are fully entitled to their full client file, as set forth in NRS 7.055, and demand is hereby made again for the Edgeworths' *complete* file.

1 bank account with two signers and deposit two checks, for example, is not
2 facially reasonable under *Brunzell*. See Ex. LL, entries coded in green.
3 Likewise, billing the Edgeworths 4.60 hours for the preparation of Simon's
4 own attorney lien was of no benefit to the Edgeworths and therefore not
5 facially reasonable. *Id.*, entries coded in pink. And even if the Court
6 determined the hours were justified, a reasonable rate for that work must be
7 explained.

8 The Court's basis for the *quantum meruit* award remains deficient, for
9 the same reasons the Supreme Court found it lacking in the first instance. It
10 should be corrected consistent with the mandate. On the basis of the record
11 before the Court, the Court's \$200,000 *quantum meruit* award would not be
12 correct.

13 ***E. THE COURT INADVERTENTLY INCLUDED PAID COSTS IN THE***
14 ***OUTSTANDING AMOUNT DUE.***

15 The Court's Third Lien Order also contains a scrivener's error to the
16 tune of \$71,594.93. Consistent with its prior Orders recognizing that the
17 Edgeworths had paid all outstanding costs, the Court on page 18 of the
18 Third Lien Order acknowledged all costs have been paid. However, on
19 page 23 of the Third Lien Order, the Court inadvertently added the
20 \$71,594.93 to the amount due. That error should be corrected, and any
21 judgment entered on the lien claim should exclude any amount for costs
22 because the costs have been paid.

23 ***F. CONCLUSION***

24 Because the Court's latest order does not comply with the mandate
25 returned by the Nevada Supreme Court, it should be reconsidered. The
26 basis for the *quantum meruit* award should be fully disclosed, and its
27 reasonableness under the *Brunzell* analysis should be examined in light only
28 of the post-termination work. Taking Simon's own "super bill" for guidance,
that would come out to \$33,811.25.

1 The \$71,594.93 scrivener error resulting from the inadvertent inclusion
2 of costs already paid should be corrected, and the prior \$5,000 awarded on
3 the attorney's fees and costs motion, which was upheld only because it was
4 believed to be the amount incurred, should be remitted to the amount of
5 actual costs incurred, \$2,520.

6 MORRIS LAW GROUP

7
8 By: /s/ STEVE MORRIS

9 Steve Morris, Bar No. 1543
10 Rosa Solis-Rainey, Bar No. 7921
11 801 S. Rancho Dr., Ste. B4
12 Las Vegas, Nevada 89106

13 Attorneys for Plaintiffs
14 Edgeworth Family Trust and
15 American Grating, LLC
16
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of MORRIS LAW GROUP, and that I caused the following to be served via the Court's mandatory e-filing and service system to those persons designated by the parties in the E-Service Master list for the above-referenced matter: PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD-AMENDED DECISION AND ORDER GRANTING IN PART AND DENYING IN PART SIMON'S MOTION FOR ATTORNEYS FEES AND COSTS, and MOTION FOR RECONSIDERATION OF THIRD AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN

DATED this 3rd day of May, 2021.

By: /s/ TRACI K. BAEZ

An employee of Morris Law Group

**DECLARATION OF ROSA SOLIS-RAINEY IN SUPPORT OF PLAINTIFFS'
RENEWED MOTION FOR RECONSIDERATION OF THIRD-AMENDED
DECISION AND ORDER GRANTING IN PART AND DENYING IN PART
SIMON'S MOTION FOR ATTORNEYS FEES AND COSTS, and MOTION FOR
RECONSIDERATION OF THIRD AMENDED DECISION AND ORDER ON
MOTION TO ADJUDICATE LIEN**

I, Rosa Solis-Rainey, declare as follows:

1. I am an attorney and counsel of record in this matter in this matter and competent to testify as to the following matters.
2. I have reviewed documents on file with the Court and state the following based on this review.
3. Attached as Exhibit AA is a November 27, 2017 email thread between Angela Edgeworth and Daniel Simon. I was informed and believe the email thread begun at 2:26 p.m. when Simon sent an email with a letter and proposed retainer agreement setting forth his desired compensation.
4. Attached as Exhibit BB is a November 21, 2017 email exchange between counsel for Viking, suggesting there are issues with some of the proposed terms.
5. Attached as Exhibit CC is a November 30, 2017 facsimile from Vannah to Simon transmitting a November 29, 2017 Letter of Direction from the Edgeworths.
6. Attached as Exhibit DD is a November 30, 2017 8:39 a.m. email from Simon to the Edgeworths with the Viking Settlement Agreement.
7. Attached as Exhibit EE is a November 30, 2017 5:31 p.m. email from Simon to the Edgeworths and counsel with the final Viking Settlement Agreement.
8. Attached as Exhibit FF is a December 12, 2017 a.m. email from Viking's counsel to Simon offering to exchange the checks for the stipulation to dismiss.

9. Attached as Exhibit GG are excerpts from Day 4 of the Evidentiary Hearing conducted in this matter on 8/30/18.
10. Attached as Exhibit HH is a November 27, 2017 letter sent by Simon to the Edgeworths outlining his desired compensation, and including a proposed retainer agreement.
11. Attached as Exhibit II are excerpts of Simon's "super bill" – it was broken into parts based on the billing attorney, thus the totals were added to determine the total attorneys fees billed, which came to \$692,120.00.
12. Attached as Exhibit JJ are the portions of the "super bill" showing "post-discharge" entries for Daniel Simon, who billed a total of 51.85 hours at \$550 per hour, or \$28,517.50 in attorney fees.
13. Attached as Exhibit KK are the portions of the "super bill" showing "post-discharge" entries for Ashley Ferrel, who billed a total of 19.25 hours at \$275 per hour, or \$5,293.75 in attorney fees. The third biller on the file, Mr. Miller, had no "post-discharge" entries. Mr. Simon and Ms. Ferrell collectively billed 71.10 hours for \$33,811.25 in fees.
14. Attached as Exhibit LL is a demonstrative I compiled taking the entries from Exhibits JJ and KK into one spreadsheet so that I could add them, and compile a breakdown by the estimated purpose, as set forth in the document.

I declare the foregoing under penalty of perjury under the laws of the State of Nevada.

Dated his 3th day of May, 2021.

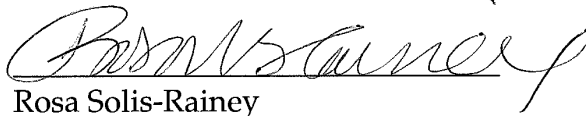

Rosa Solis-Rainey

EXHIBIT AA

11/27/17 EMAIL THREAD BETWEEN
ANGELA EDGEWORTH & DANIEL
SIMON

From: Angela Edgeworth <angela.edgeworth@pediped.com>
Sent: Monday, November 27, 2017 3:20 PM
To: Daniel Simon
Cc: Brian Edgeworth (brian@pediped.com)
Subject: Re: Edgeworth v. Viking, et al

Danny,

As you know, Brian is out of town and in China at the moment. I will need a couple of days to discuss this with him. We will be glad to meet once he is back.

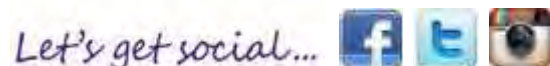
We would need to have our attorney look at this agreement before we sign.

In the meantime, please send us the Viking Agreement immediately, so we review it.

Angela Edgeworth



Angela Edgeworth
D 702.352.2585 | T 702.567.0311 | F 702.567.0319
1191 Center Point Drive | Henderson, NV 89074
angela.edgeworth@pediped.com | www.pediped.com



On Mon, Nov 27, 2017 at 2:26 PM, Daniel Simon <dan@simonlawlv.com> wrote:

Please review and advise me of your position at your earliest possible convenience. If you would like to discuss, please call me anytime. Thanks

From: Daniel Simon <dan@simonlawlv.com>
Sent: Monday, November 27, 2017 3:50 PM
To: Angela Edgeworth
Cc: Brian Edgeworth (brian@pediped.com)
Subject: RE: Edgeworth v. Viking, et al

I have not received the Viking agreement. When I receive I will forward. Let me know as soon as you can. Thanks

From: Angela Edgeworth [mailto:angela.edgeworth@pediped.com]
Sent: Monday, November 27, 2017 3:20 PM
To: Daniel Simon <dan@simonlawlv.com>
Cc: Brian Edgeworth (brian@pediped.com) <brian@pediped.com>
Subject: Re: Edgeworth v. Viking, et al

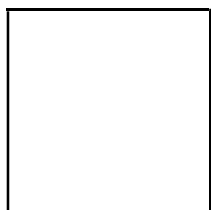
Danny,

As you know, Brian is out of town and in China at the moment. I will need a couple of days to discuss this with him. We will be glad to meet once he is back.

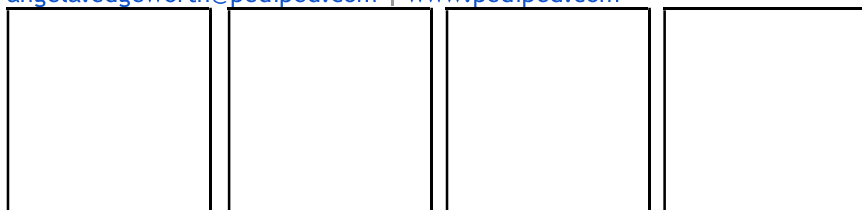
We would need to have our attorney look at this agreement before we sign.

In the meantime, please send us the Viking Agreement immediately, so we review it.

Angela Edgeworth



Angela Edgeworth
D 702.352.2585 | T 702.567.0311 | F 702.567.0319
1191 Center Point Drive | Henderson, NV 89074
angela.edgeworth@pediped.com | www.pediped.com



On Mon, Nov 27, 2017 at 2:26 PM, Daniel Simon <dan@simonlawlv.com> wrote:

Please review and advise me of your position at your earliest possible convenience. If you would like to discuss, please call me anytime. Thanks

From: Angela Edgeworth <angela.edgeworth@pediped.com>
Sent: Monday, November 27, 2017 4:14 PM
To: Daniel Simon
Cc: Brian Edgeworth (brian@pediped.com)
Subject: Re: Edgeworth v. Viking, et al

Did you agree to the settlement? Why have they not sent it yet and when is it coming? Please clarify.

From: Daniel Simon <dan@simonlawlv.com>
Sent: Monday, November 27, 2017 4:58 PM
To: Angela Edgeworth
Cc: Brian Edgeworth (brian@pediped.com)
Subject: Re: Edgeworth v. Viking, et al

It appears that you have a lot of questions about the process which is one reason I wanted to meet with you. If you would like to come to the office or call me tomorrow I will be happy to explain everything in detail. My Letter also explains the status of the settlement and what needs to be done. Due to the holiday they probably were not able to start on it. I will reach out to lawyers tomorrow and get a status. I am also happy to speak to your attorney as well. Let me know. Thx

On Nov 27, 2017, at 4:14 PM, Angela Edgeworth <angela.edgeworth@pediped.com> wrote:

Did you agree to the settlement? Why have they not sent it yet and when is it coming? Please clarify.

From: Angela Edgeworth <angela.edgeworth@pediped.com>
Sent: Monday, November 27, 2017 5:32 PM
To: Daniel Simon
Cc: Brian Edgeworth (brian@pediped.com)
Subject: Re: Edgeworth v. Viking, et al

I do have questions about the process, and am quite confused. I had no idea we were on anything but an hourly contract with you until our last meeting.

I am glad to meet once Brian gets back unless you think it's urgent and we meet right away.

If the contract is not drawn yet, we still have some time to hash things out.

I want a complete understanding of what has transpired so I can consult my attorney. I do not believe I need to have her involved at this time.

Please let me know what the terms of the settlement are to your knowledge at this point if they are not detailed in your letter. Please send over whatever documentation you have or tell us what they verbally committed to. Otherwise, I will review the letter in detail and get back to you in a couple days.

In the meantime, I trust we are still progressing with Lange et al and any other immediate concerns that should be addressed.

As I mentioned at our last meeting, we should still be progressing as originally planned. I would hate to see a delay for any reason. Until we see an agreement, no agreement exists. Please let me know if there are any upcoming delays that you can foresee.

I think everyone has been busy over the holidays and has not had a lot of time to process everything.

To confirm, you have not yet agreed to the settlement. Is this correct?

Angela

On Mon, Nov 27, 2017 at 4:58 PM Daniel Simon <dan@simonlawlv.com> wrote:

It appears that you have a lot of questions about the process which is one reason I wanted to meet with you. If you would like to come to the office or call me tomorrow I will be happy to explain everything in detail. My Letter also explains the status of the settlement and what needs to be done. Due to the holiday they probably were not able to start on it. I will reach out to lawyers tomorrow and get a status. I am also happy to speak to your attorney as well. Let me know. Thx

On Nov 27, 2017, at 4:14 PM, Angela Edgeworth <angela.edgeworth@pediped.com> wrote:

Did you agree to the settlement? Why have they not sent it yet and when is it coming? Please clarify.

--

Angela

EXHIBIT BB

11/21/17 EMAIL BETWEEN VIKING
COUNSEL RE ISSUES ON DRAFT
SETTLEMENT AGREEMENT

From: Janet Pancoast
To: dpolsenberg@lrrc.com
Cc: [Jessica Rogers; robinson \(robinson@mmrs-law.com\)](mailto:jessica.rogers@mmrs-law.com)
Subject: Edgeworth - REL DRAFT Edgeworth Draft Release to DP
Date: Tuesday, November 21, 2017 10:53:56 AM
Attachments: [REL DRAFT Edgeworth Draft Release to DP.docx](#)

Dan --

Attached is the draft Release. I highlighted the "Confidentiality" and "No Disparagement" clauses on pages 4 and 5.

As we discussed, at this time, I'll ignore the letter regarding the Motions in Limine.

Please send me a copy of anything you get confirming this settlement in writing.

Thanks,

Janet C. Pancoast, Esq.
Dir: 702.562.7616
Cell: 702.325.7876

***** PLEASE NOTE *****

This message, along with any attachments, is for the designated recipient(s) only and may contain privileged, proprietary, or otherwise confidential information. If this message has reached you in error, kindly destroy it without review and notify the sender immediately. Any other use of such misdirected e-mail by you is prohibited. Where allowed by local law, electronic communications with Zurich and its affiliates, including e-mail and instant messaging (including content), may be scanned for the purposes of information security and assessment of internal compliance with company policy.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth (hereinafter "PLAINTIFFS"), Defendants THE VIKING CORPORATION, SUPPLYNETWORK, INC. & VIKING GROUP, INC. (hereinafter "VIKING") for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLYNETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLYNETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES, after extensive, arms-length negotiations, have reached a complete and final settlement of the PLAINTIFFS claims against VIKING, and warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein; and

C. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

//

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING" shall mean THE VIKING CORPORATION, SUPPLYNETWORK, INC. & VIKING GROUP, INC., and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners, employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES in the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENTTERMS

A. The total settlement amount for PLAINTFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC is Six Million Dollars and Zero-Cents (\$6,000,000).

B. This Settlement is contingent upon Court approving a Motion for Good Faith Settlement pursuant to Nevada Revised Statute 17.245, and dismissing any claims being asserted against the Viking by Lange Plumbing, LLC.

D. The settlement funds will be held in trust until completion of all necessary paperwork, including a Voluntary Dismissal of the SUBJECT ACTION with Prejudice.

E. The SETTLING PARTIES agree to bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against VIKING, by way of PLAINTIFFS Complaint and any amendments thereto.

V. RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, heirs and assigns do hereby release and forever discharge VIKING and any of VIKING's affiliates, as well as its insurers, all respective officers, employees and assigns, agents, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. It is the intention of the SETTLING PARTIES hereto that this AGREEMENT shall be effective as a bar to all claims, with respect to the INCIDENT that PLAINTIFFS may have against DEFENDANTS, their affiliates, and any other entity that was involved in the INCIDENT, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT at the time of executing this AGREEMENT.

C. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and VIKING and their related persons and entities.

D. PLAINTIFFS represent their counsel of record has explained the effect of a release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement. PLAINTIFFS further represents that they understand and acknowledges 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.

E. PLAINTIFF hereby agrees to indemnify and hold harmless VIKING and their insurers to include from, against and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and VIKING agree and stipulate that the settlement herein is made in good faith pursuant to the provisions of Nevada Revised Statute 17.245.

VII. DISMISSAL

The SETTLING PARTIES agree to execute any and all necessary papers to effectuate dismissal of the claims in the SUBJECT ACTION. Each party shall bear its own attorneys' fees and costs associated with prosecuting and/or defending this matter. Concurrently with the execution of this Settlement Agreement, and receipt of the settlement funds, counsel for PLAINTIFF shall provide a copy to VIKING and file a fully executed Dismissal with Prejudice of the Complaints.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. CONFIDENTIALITY:

This Agreement, and all terms and conditions set forth therein, shall remain confidential and the SETTLING PARTIES and their counsel agree not to make any statement to anyone, including the press, regarding the terms of their settlement except to the extent that it may be disclosed to their respective attorneys, consultants, auditors, accountants or insurance carriers, or as any Party may hereafter be required to by law or in response to a properly issued subpoena for other court process or order, or as necessary to enforce the terms of this

Agreement or in connection with the proceedings in the Action as either Party may deem appropriate.

C. SATISFACTION OF LIENS:

PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify VIKING and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against all said liens, claims and subrogation rights of any construction or repair services and material providers.

D. NO DISPARAGEMENT:

The SETTLING PARTIES agree that they shall make no disparaging or defamatory statements, either verbally or in writing, and shall not otherwise make, endorse, publicize or circulate to any person or entity, any statements or remarks that can reasonably be construed as disparaging or defamatory, regarding PLAINTIFF or VIKING.

E. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

F. TERMS OF SETTLEMENT AGREEMENT AND RELEASE INTERDEPENDENT:

It is further agreed by the SETTLING PARTIES that all portions and sections of this Settlement Agreement and Release are interdependent and necessary to the voluntary settlement of the aforementioned litigation.

G. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

H. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

I. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

J. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel.

K. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

L. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

M. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this ____ day of _____, 2017 DATED this ____ day of _____, 2017

BRIAN EDGEWORTH as Trustee of
The Edgeworth Family Trust &
Manager of American Grating, LLC

ANGELA EDGEWORTH as Trustee of
The Edgeworth Family Trust &
Manager of American Grating, LLC

APPROVED AS TO FORM AND CONTENT:

Dated this ____ day of _____, 2017.

SIMON LAW

Daniel S. Simon, Esq.
810 South Casino Center Blvd.
Las Vegas, NV 89101
Attorney for Plaintiffs

EXHIBIT CC

11/30/17 FAX FROM VANNAH TO
SIMON RE EDGEWORTHS' 11/29/17
LETTER OF DIRECTION

November 29, 2017

VIA FACSIMILE: (702) 364-1655

Daniel S. Simon, Esq.
LAW OFFICE OF DANIEL S. SIMON
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101

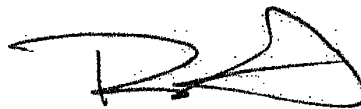
RE: Letter of Direction

Dear Mr. Simon:

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

Thank you for your understanding and compliance with the terms of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Edgeworth', with a stylized, sweeping flourish at the end.

Brian Edgeworth

FAX**Date:** 11/30/2017**Pages including cover sheet:** 2

To:	
Phone	
Fax Number	(702) 364-1655

From:	Jessie Romero
	Vannah & Vannah
	400 S. 7th Street
	Las Vegas
	NV 89101
Phone	(702) 369-4161 * 302
Fax Number	(702) 369-0104

NOTE:

L0DS000865

P000178

EXHIBIT DD

11/30/17 8:39 A.M. EMAIL FROM SIMON
TO EDGEWORTHS WITH VIKING
SETTLEMENT AGREEMENT

brian@pediped.com

From: Daniel Simon <dan@simonlawlv.com>
Sent: Thursday, November 30, 2017 8:39 AM
To: Brian Edgeworth; angela.edgeworth@pediped.com
Subject: Settlement
Attachments: Edgeworth -- Settlement Agreement (redline v. 2).docx; ATT00001.txt

Attached is the proposed settlement release. Please review and advise when you can come in to discuss. I am available today anytime from 11-1pm to meet with you at my office. Thx

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth (hereinafter "PLAINTIFFS"), Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. (hereinafter "VIKING") for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

B. "VIKING" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners, employers, employees, predecessors, successors, heirs,

assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

C. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

D. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. VIKING will pay PLAINTIFFS Six Million Dollars and Zero-Cents (\$6,000,000) by December 21, 2017. The \$6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; and AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING entities with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to VIKING upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING entities (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the \$6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the Viking entities by Lange Plumbing, LLC.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against VIKING, by way of PLAINTIFFS Complaint and any amendments thereto.

V. RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, heirs and assigns do hereby release and forever discharge VIKING and any of VIKING's affiliates, as well as its insurers, all respective officers, employees and assigns, agents, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. It is the intention of the SETTLING PARTIES hereto that this AGREEMENT shall be effective as a bar to all claims, with respect to the INCIDENT that PLAINTIFFS may have against DEFENDANTS, their affiliates, and any other entity that was involved in the INCIDENT, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT at the time of executing this AGREEMENT.

C. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and VIKING and their related persons and entities.

D. PLAINTIFFS represent their counsel of record has explained the effect of a release of any and all claims, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, PLAINTIFFS understand and acknowledge the legal significance and the consequences of the claims being released by this Agreement.

PLAINTIFFS further represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against the SETTLING PARTIES set forth in, or arising from, the INCIDENT and hereby assume full responsibility for any injuries, damages, losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and VIKING each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. CONFIDENTIALITY:

The amount of this Agreement shall remain confidential and the SETTLING PARTIES and their counsel (Daniel Simon) agree not to make any statement to anyone, including the press, regarding the amount of this settlement except to the extent that it may be disclosed to their respective attorneys, consultants, auditors, accountants or insurance carriers, or as any Party may hereafter be required to by law or in response to a properly issued subpoena for other court process or order, or as necessary to enforce the terms of this Agreement or in connection with the proceedings in the Action as either Party may deem appropriate.

C. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify VIKING and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

D. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

F. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

G. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

H. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel.

I. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

J. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

K. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTLING PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edge worth Family Trust & American Grating, LLC

DATED this ____ day of _____, 2017 DATED this ____ day of _____, 2017

BRIAN EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

ANGELA EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

Agreeing to bind himself to the confidentiality obligation set forth in Section VIII.B..

Dated this ____ day of _____, 2017.

SIMON LAW

Daniel S. Simon, Esq.
810 South Casino Center Blvd.
Las Vegas, NV 89101
Attorney for Plaintiffs

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

EXHIBIT EE

11/30/17 5:31 P.M. EMAIL FROM SIMON
TO EDGEWORTHS AND COUNSEL
WITH FINAL VIKING SETTLEMENT
AGREEMENT

brian@pediped.com

From: Daniel Simon <dan@simonlawlv.com>
Sent: Thursday, November 30, 2017 5:31 PM
To: jgreene@vannahlaw.com
Cc: Brian Edgeworth; angela.edgeworth@pediped.com; Daniel Simon
Subject: Edgeworth -- Settlement Agreement
Attachments: Settlement Release Final.pdf

Please find attached the final settlement agreement. Please have clients sign as soon as possible to avoid any delay in processing payment. This shall also confirm that your office is advising them about the effects of the release and representing them to finalize settlement through my office.

Also, I first received a call from you this morning advising the clients wanted to sign the initial draft of the settlement agreement "as is." Since this time, I spent substantial time negotiating more beneficial terms to protect the clients. Specifically, I was able to get the Defendants to agree to omit the Confidentiality provision, provide a mutual release and allow the opportunity to avoid a good faith determination from the court if the clients resolve the Lange claims, providing Lange will dismiss its claims against Viking. Just so we are clear, your office did not ask for these substantial additional beneficial terms to protect the clients.

Additionally, this morning you asked me to approach Lange to accept the \$25,000 offer from the mediation. Since this time, I was able to secure a \$100,000 offer less all money Lange is claiming they are owed. Lange would then dismiss their Claims against Viking allowing the client to avoid the motion for determination of good faith settlement as part of the settlement. Please advise if the clients want me to move forward to finalize the settlement with Lange pursuant to these terms.

Please have the clients sign the release and return originals to my office to avoid delays in payment and finalizing this matter.

Thank You!

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement"), by and between Plaintiffs EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, Defendants THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC. for damages sustained by PLAINTIFFS arising from an incident that occurred on or about April 10, 2016, at a residential property located at 645 Saint Croix Street, Henderson, Nevada (Clark County), wherein Plaintiff alleges damages were sustained due to an unanticipated activation of a sprinkler head (hereinafter "INCIDENT"). The foregoing parties are hereinafter collectively referred to as "SETTLING PARTIES."

I. RECITALS

A. On June 14, 2016, a Complaint was filed by Plaintiff Edgeworth Family Trust, in the State of Nevada, County of Clark, Case Number A-16-738444-C against Defendants LANGE PLUMBING, LLC and VIKING AUTOMATIC SPRINKLER CO. On August 24, 2016, an amended Complaint was filed against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On March 7, 2017, a Second Amended Complaint was filed adding Plaintiff AMERICAN GRATING, LLC as a Plaintiff against Defendants LANGE PLUMBING, LLC, THE VIKING CORPORATION, SUPPLY NETWORK, INC. On November 1, 2017, an Order was entered permitting PLAINTIFFS to VIKING GROUP, INC. as a Defendant (hereinafter "SUBJECT ACTION").

B. The SETTLING PARTIES now wish to settle any and all claims, known and unknown, and dismiss with prejudice the entire SUBJECT ACTION as between the SETTLING PARTIES. The SETTLING PARTIES to this Agreement have settled and compromised their disputes and differences, based upon, and subject to, the terms and conditions which are further set forth herein.

II. DEFINITIONS

A. "SETTLING PARTIES" shall mean, collectively, all of the following individuals and entities, and each of them:

B. "PLAINTIFFS" shall mean EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth, AMERICAN GRATING, LLC, and its managers Brian Edgeworth & Angela Edgeworth, as Trustees, Managers, individually, and their past, present and future agents, partners, associates, joint venturers, creditors, predecessors, successors, heirs, assigns, insurers, representatives and attorneys, and all persons acting by or in concert with each other.

C. "VIKING ENTITIES" shall mean THE VIKING CORPORATION, SUPPLY NETWORK, INC. & VIKING GROUP, INC., and VIKING GROUP, INC. (the "VIKING ENTITIES") and all their respective related legal entities, employees, affiliates, agents, partners, associates, joint venturers, parents, subsidiaries, sister corporations, directors, officers, stockholders, owners,

employers, employees, predecessors, successors, heirs, assigns, insurers, bonding companies, representatives and attorneys, and all persons acting in concert with them, or any of them.

D. "CLAIM" or "CLAIMS" shall refer to any and all claims, demands, liabilities, damages, complaints, causes of action, intentional or negligent acts, intentional or negligent omissions, misrepresentations, distress, attorneys' fees, investigative costs and any other actionable omissions, conduct or damage of every kind in nature whatsoever, whether seen or unforeseen, whether known or unknown, alleged or which could have at any time been alleged or asserted between the SETTLING PARTIES relating in any way to the SUBJECT ACTION.

E. The "SUBJECT ACTION" refers to the litigation arising from the Complaints filed by PLAINTIFFS in the Eighth Judicial District Court, County of Clark, Case Number A-16-738444-C, State of Nevada, with respect to and between PLAINTIFFS and DEFENDANTS.

III. SETTLEMENT TERMS

A. The VIKING ENTITIES will pay PLAINTIFFS Six Million Dollars and Zero-Cents (\$6,000,000) within 20 days of PLAINTIFFS' execution of this AGREEMENT, assuming resolution of the condition set out in § III.D below. The \$6,000,000 settlement proceeds shall be delivered via a certified check made payable to the "EDGEWORTH FAMILY TRUST and its Trustees Brian Edgeworth & Angela Edgeworth; AMERICAN GRATING, LLC; and Law Office of Daniel S. Simon."

B. PLAINTIFFS will execute a stipulation to dismiss all of their claims against the VIKING ENTITIES with prejudice, which will state that each party is to bear its own fees and costs. PLAINTIFFS will provide an executed copy of the stipulation to the VIKING ENTITIES upon receipt of a certified check.

C. PLAINTIFFS agree to fully release any and all claims against the VIKING ENTITIES (as defined below § IV.C). The RELEASE included in this document (§ V) shall become effective and binding on PLAINTIFFS upon their receipt of the \$6,000,000 settlement funds.

D. This settlement is based upon a mutual acceptance of a Mediator's proposal which makes this settlement subject to the District Court approving a Motion for Good Faith Settlement pursuant to NRS 17.245, dismissing any claims against the VIKING ENTITIES by Lange Plumbing, LLC. Alternatively, this condition would be satisfied in the event that Lange Plumbing, LLC voluntarily dismisses all claims with prejudice against the VIKING ENTITIES and executes a full release of all claims, known or unknown.

E. The SETTLING PARTIES will bear their own attorneys' fees and costs.

IV. AGREEMENT

A. In consideration of the mutual assurances, warranties, covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the SETTLING PARTIES agree with every other SETTLING PARTY

hereto to perform each of the terms and conditions stated herein, and to abide by the terms of this Agreement.

B. Each of the SETTLING PARTIES warrant to each other the truth and correctness of the foregoing recitals, which are incorporated in this paragraph by reference.

C. As a material part of this Agreement, except as otherwise provided herein, all claims held by and between the SETTLING PARTIES relating to the SUBJECT ACTION, including, but not limited to, those for property damage, stigma damages, remediation costs, repair costs, diminution in value, punitive damages, shall be dismissed, with prejudice, including any and all claims for attorneys' fees and costs of litigation. This shall include, but is not limited to, any and all claims asserted by PLAINTIFFS or which could have at any time been alleged or asserted against the VIKING ENTITIES, by way of PLAINTIFFS Complaint and any amendments thereto.

V. MUTUAL RELEASE

A. In consideration of the settlement payment and promises described herein, PLAINTIFFS, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge the VIKING ENTITIES and any of its affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION.

B. Reciprocally, in consideration of the settlement payment and promises described herein, the VIKING ENTITIES, on behalf of their insurers, agents, successors, administrators, personal representatives, attorneys, heirs and assigns do hereby release and forever discharge PLAINTIFFS and any of PLAINTIFFS' affiliates, as well as its insurers, all respective officers, employees and assigns, agents, attorneys, successors, administrators, heirs and assigns, predecessors, subsidiaries, attorneys and representatives as to any and all demands, claims, assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and nature, at equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist, or which hereafter can, shall, or may exist between the SETTLING PARTIES with respect to the SUBJECT ACTION, including, but not limited to, the generality of the foregoing, any and all claims which were or might have been, or which could have been, alleged in the litigation with regard to the SUBJECT ACTION. C. This AGREEMENT shall be effective as a bar to all claims, relating to or arising from the INCIDENT or the SUBJECT ACTION, which PLAINTIFFS may

have against the VIKING ENTITIES, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, PLAINTIFFS and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

C. Reciprocally, this AGREEMENT shall be effective as a bar to all claims, relating to or arising from the INCIDENT or the SUBJECT ACTION, which the VIKING ENTITIES may have against PLAINTIFFS, their affiliates, insurers, attorneys, or any other entity that was involved in the INCIDENT or SUBJECT ACTION, of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, herein above specified to be so barred; and in furtherance of this intention, the VIKING ENTITIES and their related persons and entities expressly, knowingly and voluntarily waive any and all rights which they do not know or suspect to exist in their favor with regard to the INCIDENT or the SUBJECT ACTION at the time of executing this AGREEMENT.

D. SETTLING PARTIES hereto expressly agree that this AGREEMENT shall be given full force and effect in accordance with each and all of its expressed terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, between PLAINTIFF and DEFENDANTS, with respect to the INCIDENT, to the same effect as those terms and provisions relating to any other claims, demands and causes of action herein above specified. This AGREEMENT applies as between PLAINTIFFS and the VIKING ENTITIES and their related persons and entities.

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

VI. GOOD FAITH SETTLEMENT

PLAINTIFFS and the VIKING ENTITIES each warrant that they enter this settlement in good faith, pursuant to the provisions of NRS 17.245.

VIII. MISCELLANEOUS

A. COMPROMISE:

This AGREEMENT is the compromise of doubtful and disputed claims and nothing contained herein is to be construed as an admission of liability on the part of the SETTLING PARTIES, or any of them, by whom liability is expressly denied, or as an admission of any absence of liability on the part of the SETTLING PARTIES, or any of them.

B. SATISFACTION OF LIENS:

1. PLAINTIFFS warrant that they are presently the sole and exclusive owners of their respective claims, demands, causes of action, controversies, obligations or liabilities as set forth in the SUBJECT ACTION and that no other party has any right, title, or interest whatsoever in said causes of action and other matters referred to therein, and that there has been no assignment, transfer, conveyance, or other disposition by them of any said causes of action and other matters referred to therein.

2. PLAINTIFFS do herein specifically further agree to satisfy all liens, claims and subrogation rights of any contractor incurred as a result of the SUBJECT ACTION and to hold harmless and indemnify the VIKING ENTITIES and their affiliates, insurers, employees, agents, successors, administrators, personal representatives, heirs and assigns from and against, and in connection with, any liens of any type whatsoever pertaining to the SUBJECT ACTION including, but not necessarily limited to attorneys' liens, mechanics liens, expert liens and/or subrogation claims.

C. GOVERNING LAW:

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

Any individual signing this Agreement on behalf of another individual, a corporation, a limited liability company or partnership, represents or warrants that he/she has full authority to do so.

E. GENDER AND TENSE:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine and feminine and neuter gender shall be deemed to include the other.

F. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the SETTLING PARTIES hereto pertaining to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the SETTLING PARTIES

hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the SETTLING PARTIES hereto.

G. INDEPENDENT ADVICE OF COUNSEL:

The SETTLING PARTIES hereto, and each of them, represent and declare that in executing this AGREEMENT, they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel. For PLAINTIFFS, that independent attorney is Robert Vannah, Esq. and John Greene, Esq., of the law firm Vannah & Vannah.

H. VOLUNTARY AGREEMENT:

The SETTLING PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they have signed the same freely and voluntarily.

I. ADMISSIBILITY OF AGREEMENT:

In an action or proceeding related to this Agreement, the SETTLING PARTIES stipulate that a fully executed copy of this Agreement may be admissible to the same extent as the original Agreement.

J. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original. A facsimile or other non-original signatures shall still create a binding and enforceable agreement.

IN WITNESS WHEREOF the SETTling PARTIES agree hereto and this Agreement is executed as of the date and year noted below.

On behalf of The Edgeworth Family Trust & American Grating, LLC

DATED this ____ day of _____, 2017 DATED this ____ day of _____, 2017

BRIAN EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

ANGELA EDGEWORTH as Trustee of
The Edge worth Family Trust &
Manager of American Grating, LLC

On behalf of The Viking Corporation, Supply Network, Inc. and Viking Group, Inc.

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

EXHIBIT FF

12/12/17 EMAIL FROM VIKING
COUNSEL TO SIMON OFFERING
CHECKS FOR DISMISSAL

From: Janet Pancoast
To: Daniel Simon (dan@simonlawlv.com); Henriod, Joel D. (JHenriod@lrrc.com)
Cc: Jessica Rogers
Subject: Edgeworth - Checks -
Date: Tuesday, December 12, 2017 11:51:13 AM
Attachments: 201712121048.pdf
SPT 171212 Edgeworth SAO to Dismiss - Plaintiff.pdf

Danny –

I was using the Plaintiff's release to prepare a release for Giberti and came across the provision that required "certified checks." I was not aware of that provision and neither was the claims representative. I have the checks (attached) and am willing to give them to you in exchange for the signed stipulation for dismissal. However, there multiple parties that will delay the final entry of a joint stipulation for dismissal. Hence, to give me sufficient comfort level to release these checks, I request that you sign the attached stipulation for dismissal which is *only* for Plaintiff's claims against the Viking entities. Additionally, I ask that you sign the Stipulation for a Global Dismissal I emailed earlier. That way, I can file the dismissal with the Plaintiffs now and release the checks so that you can get the check in the bank and they can be cleared by 12/21/17. Getting the checks re-issued will take longer and the claims representative is not even sure if he can issue a certified check.

Hence, if you want to pick up these checks. Please sign **both** stipulations. Thanks.

Janet C. Pancoast, Esq.

CISNEROS & MARIAS

(Not a Partnership – Employee of Zurich American Insurance Company)

1160 No. Town Center Dr., Suite 130

Las Vegas, NV 89144

Off: 702.233.9660

Dir: 702.562.7616

Cell: 702.325.7876

Fax: 702.233.9665

janet.pancoast@zurichna.com

***** PLEASE NOTE *****

This message, along with any attachments, is for the designated recipient(s) only and may contain privileged, proprietary, or otherwise confidential information. If this message has reached you in error, kindly destroy it without review and notify the sender immediately. Any other use of such misdirected e-mail by you is prohibited. Where allowed by local law, electronic communications with Zurich and its affiliates, including e-mail and instant messaging (including content), may be scanned for the purposes of information security and assessment of internal compliance with company policy.

1 **STP**
2 JANET C. PANCOAST, ESQ.
3 Nevada Bar No. 5090
4 CISNEROS & MARIAS
5 1160 N. Town Center Dr., Suite 130
6 Las Vegas, NV 89144
7 Tel: (702) 233-9660
8 Fax: (702) 233-9665
9 janet.pancoast@zurichna.com
10 *in Association with*
11 S. Seth Kershaw, Esq.
12 State Bar No. 10639
13 MEYERS MCCONNELL REISZ SIDERMAN P.C.
14 11620 Wilshire Blvd., Suite 800
15 Los Angeles, CA 90025
16 Tel: 1-310-312-0772
17 Fax: 1-310-312-0656
18 kershaw@mmrs-law.com
19 Attorneys for Defendant/Cross-Defendant
20 Cross-Claimant/Third Party Plaintiffs
21 The Viking Corporation & Supply Network, Inc.
22 d/b/a Viking Supplynet

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 EDGEWORTH FAMILY TRUST, and)	CASE NO.: A-16-738444-C
26 AMERICAN GRATING, LLC)	
27 Plaintiffs,)	DEPT. NO.: X
28 vs.)	
29)	
30 LANGE PLUMBING, LLC; THE VIKING)	
31 CORPORATION, a Michigan corporation;)	STIPULATION FOR DISMISSAL
32 SUPPLY NETWORK, INC. d/b/a VIKING)	WITH PREJUDICE OF PLAINTIFFS
33 SUPPLYNET, a Michigan corporation; and)	CLAIMS AGAINST VIKING
34 DOES I through V and ROE CORPORATIONS)	ENTITIES
35 VI through X, inclusive,)	
36 Defendants.)	
37)	

38 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-*
39 *Stipulation and Order for Dismissal of Viking Entities by Plaintiffs*

1	LANGE PLUMBING, LLC,)
	Cross-Claimant,)
2)
	vs.)
3)
4	THE VIKING CORPORATION, a Michigan)
	corporation; SUPPLY NETWORK, INC. d/b/a)
5	VIKING SUPPLYNET, a Michigan corporation;)
	and DOES I through V and ROE)
6	CORPORATIONS VI through X, inclusive.)
	Cross-Defendants)
7	<hr/>	
8	THE VIKING CORPORATION, a Michigan)
	corporation; SUPPLY NETWORK, INC. d/b/a)
9	VIKING SUPPLYNET, a Michigan corporation)
	LANGE PLUMBING, LLC,)
10	Counter-Claimant,)
)
11	vs.)
)
12	LANGE PLUMBING, LLC, and DOES I through)
	V and ROE CORPORATIONS VI through X,)
13	inclusive.)
	Counter-Defendant)
14	<hr/>	
15	THE VIKING CORPORATION, a Michigan)
	corporation; SUPPLY NETWORK, INC. d/b/a)
16	VIKING SUPPLYNET, a Michigan corporation,)
	Defendants/Third Party Plaintiffs,)
17)
	v.)
18)
19	GIBERTI CONSTRUCTION, LLC, a Nevada)
	Limited Liability Company and DOES I through)
20	V and ROE CORPORATIONS VI through X,)
	inclusive,)
21	Third Party Defendant.)
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27	<i>Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-</i>	
	Stipulation and Order for Dismissal of Viking Entities by Plaintiffs	
28		

1	GIBERTI CONSTRUCTION, LLC, a Nevada)
	Limited Liability Company,)
2)
	Counter-Claimant)
3)
	v.)
4)
	THE VIKING CORPORATION, a Michigan)
5	corporation; SUPPLY NETWORK, INC. d/b/a)
	VIKING SUPPLYNET, a Michigan corporation,)
6)
	Counter-Defendant.)
7)
8	GIBERTI CONSTRUCTION, LLC, a Nevada)
	Limited Liability Company,)
9)
	Cross-Claimant)
10)
	v.)
11)
	LANGE PLUMBING, LLC, and DOES I through)
12	V and ROE CORPORATIONS VI through X,)
	inclusive.)
13)
	Cross-Defendant.)
14)

COMES NOW, PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC by and through their attorney of record Daniel Simon, Esq. of SIMON LAW; DEFENDANTS/CROSS-DEFENDANTS/CROSS-CLAIMANTS THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING SUPPLYNET by and through their attorney of record, Janet C. Pancoast, Esq. of the law firm of CISNEROS & MARIAS, in association with counsel of MEYERS MCCONNELL REISZ SIDERMAN P.C. and LEWIS ROCA ROTHGERBER CHRISTIE, LLP; hereby stipulate that:

All claims asserted in any and all Complaints filed herein by PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC and each and every cause of action alleged

Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-
Stipulation and Order for Dismissal of Viking Entities by Plaintiffs

1 therein against THE VIKING CORPORATION & SUPPLY NETWORK, INC. d/b/a VIKING
2 SUPPLYNET and VIKING GROUP, shall be dismissed with prejudice.

3 Each party shall bear their own fees and costs.

4 Dated this ____ day of December, 2017.

Dated this ____ day of December, 2017.

5 SIMON LAW

CISNEROS & MARIAS

6
7 Daniel S. Simon, Esq.
8 810 South Casino Center Blvd.
9 Las Vegas, NV 89101
Attorney for Plaintiff

Janet C. Pancoast, Esq.
1160 Town Center Drive, Suite 130
Las Vegas, Nevada 89144

In Association with and with the agreement of
MEYERS REISZ SIDERMAN P.C. &
LEWIS ROCA ROTHGERBER CHRISTIE,
LLP
Attorneys for Viking Defendants

13 **ORDER**

14 Based on the Stipulation of the parties and good cause appearing, it is:

15
16 HEREBY ORDERED that all claims asserted in any and all Complaints filed herein by
17 PLAINTIFFS EDGEWORTH FAMILY TRUST & AMERICAN GRATING, LLC and each and
18 every cause of action alleged therein against THE VIKING CORPORATION & SUPPLY
19 NETWORK, INC. d/b/a VIKING SUPPLYNET and VIKING GROUP, shall be dismissed with
20 prejudice. Each party shall bear their own fees and costs.

21 Dated this ____ day of _____, 2017

24 _____
DISTRICT COURT JUDGE

25 //

26 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al.* Case No. A-16-738444-
27 Stipulation and Order for Dismissal of Viking Entities by Plaintiffs

Submitted by:

CISNEROS & MARIAS


BY: _____

Janet C. Pancoast, Esq.
1160 N. Town Center Drive, Suite 130
Las Vegas, NV 89144
Attorneys for Viking Defendants

Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-
Stipulation and Order for Dismissal of Viking Entities by Plaintiffs

EXHIBIT GG

08/30/18 EXCERPTS OF TRANSCRIPT OF
DAY 4 OF EVIDENTIARY HEARING



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

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

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

20 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

21 APPEARANCES:

22 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Testimony6

WITNESSES FOR THE PLAINTIFF

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WILLIAM KEMP

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1 A Correct.

2 Q Okay. There was a Settlement Agreement between
3 Edgeworth Family Trust, American Grating, LLC, and Viking?

4 A Yes.

5 Q That's Office Exhibit Number 5. This is the lead page, which
6 is bated -- I believe the Bate is 36; do you see that?

7 A Yes.

8 Q Now, on page 4 of the release, which is bates number 39 of
9 Exhibit 5, there's a paragraph E. Obviously, that paragraph mentions
10 Vannah and Vannah as attorneys for the Edgeworth's; fair to say?

11 A Yes. Can you show me the date of this release? I think it's
12 December 1st, but I just want to confirm.

13 Q On page 42 of Exhibit 5 -- I'm sorry, bated 42 of Exhibit 5, I
14 can show you the dates that both Brian and Angela signed the release,
15 December 1 of 2017; is that correct?

16 A Yes.

17 Q So after that -- and that's after the date you felt -- after the
18 date that you felt you had been fired, correct?

19 A Yeah. So, if I can just explain briefly. I get back on 9-20 -- or
20 11-27. I am basically negotiating, not torpedoing any settlement, not
21 making any threats. I'm basically getting this release where they omitted
22 the confidentiality clause and preserved the Lange claim, and I get the
23 Edgeworths, which is a very uncommon term, as a mutual release
24 because this case was so contentious, all right?

25 And Mr. Edgeworth was I'm going to use the word scared,

1 nervous, you know, whatever you want to use, he was very nervous that
2 Viking was ultimately going to come after him if they had some type of
3 opportunity. So that's why the confidentiality clause was not a good
4 idea, and we wanted to preserve the Lange claim, as well, and I got a
5 mutual release, I think, for them, on or about 11-27.

6 THE COURT: And you got the mutual release on 11-27?

7 THE WITNESS: Right in that range, yeah. It was -- it was
8 before I got the Letter of Direction, and I was out of the case.

9 BY MR. CHRISTENSEN:

10 Q Did Mr. -- a Viking sprinkler flooded Mr. Edgeworth's house
11 that he was building as an investment, and he thought Viking was going
12 to sue him?

13 A If they had -- if they had some type of basis, they probably
14 would have.

15 Q Okay. Now, you did reach out to Mr. Edgeworth on
16 December 5?

17 THE COURT: Okay, and I'm sorry, Mr. Christensen, before
18 you move on, on December 1, when that Settlement Agreement is
19 signed, the one that's Exhibit 5, how did you -- when's the first time you
20 saw that document?

21 THE WITNESS: That was a prior one that was proposed.

22 THE COURT: That had the confidentiality and all that?

23 THE WITNESS: Yeah, it had all of that.

24 THE COURT: Okay.

25 THE WITNESS: And so, you know, the Edgeworth's were

1 pressing me, right. There's an email from -- while Brian's in -- well,
2 Brian's in China, unavailable, no phone calls, no emails with me. He now
3 has Angela stepping up, typing all these emails, saying hey, where's the
4 Viking Settlement Release, where is it, where is it, where is it, get it to us.
5 And I just got back in town from a vacation over Thanksgiving.

6 So right when I get back there was probably the, you know,
7 proposed release. And so, I went over to the office with Mr. Henriod,
8 who was Viking counsel, and I have a great relationship with him, and
9 we basically just hammered out the terms of the release right there. And
10 then I was done, I was out of it.

11 THE COURT: Okay. But you hammered out the terms of the
12 release of that final agreement?

13 THE WITNESS: Before I was fired, yeah.

14 THE COURT: Okay. So, this is before 11-30?

15 THE WITNESS: Yes.

16 THE COURT: And then were you present when the
17 Edgeworth's signed that document?

18 THE WITNESS: Nope.

19 THE COURT: Okay. So, when did you see the signed copy?

20 THE WITNESS: When Mr. Vannah's office delivered it to me
21 to then forward it to Viking counsel.

22 THE COURT: But you received it from Vannah's office?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

25 THE WITNESS: And just one other note. I didn't explain any

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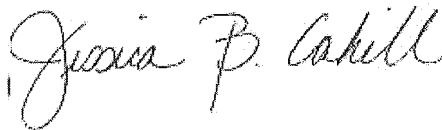
MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

[Proceedings adjourned at 4:16 p.m.]

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



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT HH

11/27/17 LETTER FROM SIMON TO
EDGEWORTHS RE DESIRED
COMPENSATION AGREEMENT

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

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

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

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

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

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and John's willingness to look at the information I secured to support his position. As you know, no other appraiser was willing to go above and beyond as they believed the cost of repairs did not create a loss. As you know, John's opinion greatly increased the value of this case. Please do not think that he was paid a fee so he had to give us the report. His fee was very nominal in light of the value of his report and he stepped up to help you because of us and our close relationship. Securing all of the other experts and working with them to finalize their opinions were damaging to the defense was a tremendous factor in securing the proposed settlement amount. These experts were involved because of my contacts. When I was able to retain Mr. Pomerantz and work with him to finalize his opinions, his report was also a major factor. There are very few lawyer's in town that would approach the case the way I did to get the results I did for you. Feel free to call Mr. Hale or any other lawyer or judge in town to verify this. Every time I went to court I argued for you as if you were a family member taking the arguments against you personal. I made every effort to protect you and your family during the process. I

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was an exceptional advocate for you. It is my reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number. It is also because my office stopped working on other cases and devoted the office to your case filing numerous emergency motions that resulted in very successful rulings. My office was available virtually all of the time responding to you immediately. No other lawyer would give you this attention. I have already been complimented by many lawyers in this case as to how amazing the lawyering was including Marks lawyer who told me it was a pleasure watching me work the way I set up the case and secured the court rulings. Feel free to call him. The defense lawyers in this case have complimented me as well, which says a lot. My work in my motions and the rulings as an exceptional advocate and the relationships I have and my reputation is why they are paying this much. The settlement offer is more than you ever anticipated as you were willing to take 4-4.5 at the first mediation and you wanted the mediator's proposal to be 5 million when I advised for the 6 million. One major reason they are likely willing to pay the exceptional result of six million is that the insurance company factored in my standard fee of 40% (2.4 million) because both the mediator and the defense have to presume the attorney's fees so it could get settled. Mr. Hale and Zurich both know my usual attorney's fees. This was not a typical contract case your other hourly Lawyers would handle. This was a major fight with a world-wide corporation and you did not get billed as your other hourly lawyers would have billed you. This would have forced you to lay out substantially more money throughout the entire process. Simply, we went above and beyond for you.

I have lost money working on your case.

As you know, when I was working on your case I was not working on many other cases at my standard fee and I told you many times that I can't work hourly because I would be losing too much money. I felt it was always our understanding that my fee would be fair in light of the work performed and how the case turned out. I do not represent clients on an hourly basis and I have told this to you many times.

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Value of my Services

The attached agreement reflects a greatly reduced sum for the value of my services that I normally charge in every case. I always expected to be compensated for the value of my services and not lose money to help you. I was troubled at your statements that you paid me hourly and you now want to just pay me hourly when you always knew this was not the situation. When I brought this to your attention you acknowledged you understood this was not just an hourly fee case and you were just playing devil's advocate. As you know, if I really treated your case as only an hourly case, I would have included all of the work my staff performed and billed you at a full hourly fee in 30 day increments and not advance so much money in costs. I would have had you sign just an hourly contract retainer just as Mr. Pomerantz had you sign. I never did this because I trusted you would fairly compensate me for the value of my services depending on the outcome. In the few statements I did send you I did not include all of the time for my staff time or my time, and did not bill you as any other firm would have. The reason is that this was not just an hourly billing situation. We have had many discussions about this as I helped you through a very difficult case that evolved and changed to a hotly contested case demanding full attention. I am a trial attorney that did tremendous work, and I expect as you would, to be paid for the value of my service. I did not have you sign my initial standard retainer as I treated you like family to help you with your situation.

Billing Statements

I did produce billing statements, but these statements were never to be considered full payment as these statements do not remotely contain the full time myself or my office has actually spent. You have acknowledged many times that you know these statements do not represent all of my time as I do not represent clients on an hourly basis. In case you do not recall, when we were at the San Diego Airport, you told me that a regular firm billing you would likely be 3x my bills at the time. This was in August. When I started filing my motions to compel and received the rulings for Viking to produce the information, the case then got substantially more demanding. We have had many discussions that I was losing money but instead of us figuring out a fair fee arrangement, I did continue with the case in good faith because of our relationship focusing on winning and trusted that you would fairly compensate me at the end. I gave you several examples of why I was losing money hourly because my standard fee of 40% on all of my other cases produced hourly rates 3-10 times the hourly rates you were provided. Additionally, just some of the time not included in the billing statement is many phone calls to you at all hours of the day, review and responses of endless emails with attachments from you and others, discussions with experts, substantial review the filings in this case and much more are not contained in the bills. I also spent substantial time securing representation for Mark Giberti when he was sued. My office continued to spend an exorbitant amount of time since March and have diligently litigated this case having my office virtually focus solely on your case. The hourly fees in the billing statements are much lower than my true hourly billing. These bills were generated for several reasons. A few reasons for the billing statements is that you wanted to justify your loans and use the bills to establish damages against Lange under the contract, and this is the why all of my time was not included and why I expected to be paid fairly as we worked through the case.

I am sure you will acknowledge the exceptional work, the quality of my advocacy, and services performed were above and beyond. My services in every case I handle are valued based on results not an hourly fee. I realize that I didn't have you sign a contingency fee agreement and am not asserting a contingency fee, but always expected the value of my services would be paid so I would not lose money. If you are going to hold me to an hourly arrangement then I will have to review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rates to avoid an unjust outcome.

How I handle cases

I want you to have a full understanding as to how my office works in every other case I am handling so you can understand my position and the value of my services and the favorable outcome to you.

My standard fee is 40% for a litigated case. I have told you this many times. That is what I get in every case, especially when achieving an outcome like this. When the outcome is successful and the client gets more and I will take my full fee. I reduce if the outcome is not as expected to make sure the client shares fairly. In this case, you received more than you ever anticipated from the outset of this case. I realize I do not have a contract in place for percentages and I am not trying to enforce one, but this merely shows you what I lost by taking your case and given the outcome of your case, and what a value you are receiving. Again, I have over 5 other big cases that have been put on the back burner to handle your case. The discovery period in these cases were continued several times for me to focus on your case. If I knew you were going to try and treat me unfairly by merely asserting we had an hourly agreement after doing an exceptional work with an exceptional result, I wouldn't have continued. The reason is I would lose too much money. I would hope it was never your intention to cause me hardship and lose money when helping you achieve such an exceptional result. I realize I did not have you sign a fee agreement because I trusted you, but I did not have you sign an hourly agreement either.

Finalizing the settlement

There is also a lot of work left to be done. As you know, the language to the settlement must be very specific to protect everyone. This will need to be negotiated. If this cannot be achieved, there is no settlement. The Defendant will require I sign the confidentiality provisions, which could expose me to future litigation. Depending on the language, I may not be comfortable doing this as I never agreed to sign off on releases. Even if the language in the settlement agreement is worked out, there are motions to approve the settlement, which will be strongly opposed by Lange. If the Court does not grant the motion, then there is no settlement. If there is an approved settlement and Viking does not pay timely, then further motions to enforce must be filed.

Presently, there are many things on calendar that I need to address. We have the following depositions: Mr. Carnahan, Mr. Garelli, Crane Pomerantz, Kevin Hastings, Gerald Zamiski, and the UL deposition in Chicago. We have the Court hearings for Zurich's motions for protective order, our motion to de-designate the documents as confidential, our motion to make Mr. Pomerantz an initial expert, as well as the summary judgment motions involving Lange, who has

recently filed a counter motion and responses need to be filed. Simply, there is a substantial amount of work that still needs to be addressed. Since you knew of all of the pending matters on calendar, it is unfortunate that you were obligated to go to China during a very crucial week to attempt to finalize the case. When I asked if you would be available to speak if necessary, you told me that you are unavailable to discuss matters over the phone. This week was very important to make decisions to try and finalize a settlement.

I understand that the way I am looking at it may be different than the way your business mind looks at things. However, I explained my standard fees and how I work many times to you and the amount in the attached agreement is beyond fair to you in light of the exceptional results. It is much less than the reasonable value of my services. I realize that because you did not sign my retainer that you may be in a position to take advantage of the situation. However, I believe I will be able to justify the attorney fee in the attached agreement in any later proceeding as any court will look to ensure I was fairly compensated for the work performed and the exceptional result achieved.

I really want us to get this breakdown right because I want you to feel like this is remarkable outcome while at the same time I don't want to feel I didn't lose out too much. Given what we have been through and what I have done, I would hope you would not want me to lose money, especially in light of the fact that I have achieved a result much greater than your expectations ever were in this case. The attached agreement should certainly achieve this objective for you, which is an incredible reduction from the true value of my services.

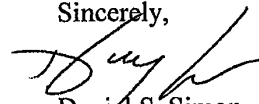
Conclusion

If you are agreeable to the attached agreement, please sign both so I can proceed to attempt to finalize the agreement. I know you both have thought a lot about your position and likely consulted other lawyers and can make this decision fairly quick. We have had several conversations regarding this issue. I have thought about it a lot and this the lowest amount I can accept. I have always felt that it was our understanding that that this was not a typical contract lawyer case, and that I was not a typical contract lawyer. In light of the substantial work performed and the exceptional results achieved, the fee is extremely fair and reasonable.

If you are not agreeable, then I cannot continue to lose money to help you. I will need to consider all options available to me.

Please let me know your decisions as to how to proceed as soon as possible.

Sincerely,



Daniel S. Simon

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

1 SAME. THE ATTORNEY IS AUTHORIZED TO PAY ANY OF SAID
2 EXPENSES OUT OF THE SHARE OF THE SETTLEMENT ACCRUING TO
3 THE CLIENT.

4 SIGNED this ____ day of _____, 2017.

6 LAW OFFICES OF DANIEL S. SIMON Brian Edgeworth on behalf of Edgeworth Family
7 Trust and American Grating

9 Angela Edgeworth on behalf of Edgeworth Family
10 Trust and American Grating

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

SETTLEMENT BREAKDOWN

Date: November 27, 2017

Re: EFT AND AMERICAN GRATING v. ALL VIKING ENTITIES

Settlement	\$ 6,000,000.00
Attorney's Fees	1,114,000.00 (1,500,000 Less payments made of 367,606.25)
Costs	80,000.00 (200,000 Less payments made of 118,846.84)

Balance to Clients **\$ 4,806,000.00**

Clients hereby agree to the above distribution from the settlement proceeds if a settlement is finally reached and finalized. The costs may be adjusted depending on the actual costs incurred and paid. A final accounting will be made at the time of final distribution.

Dated this ____ day of November, 2017.

**Brian Edgeworth on behalf of Edgeworth Family
Trust and American Grating**

**Angela Edgeworth on behalf of Edgeworth Family
Trust and American Grating**

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P000218

EXHIBIT II

EXCERPTS FROM SIMON "SUPER BILL"

Bates SIMONEH0000240 (Daniel Simon - 866.20 hrs. @ \$550/hr)	\$476,410.00
Bates SIMONEH0000342 (Ashley Ferrel – 762.60 hrs. @ \$275/hr)	209,715.00
Bates SIMONEH0000344 (Benjamin Miller- 21.80 hrs. @ \$275/hr)	5,995.00
TOTAL FEES BILLED	\$692,120.00

INVOICE FOR DANIEL S. SIMON
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

DATE	DESCRIPTION	TIME
12.20.16	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc.'s Substitution of Counsel	0.30
1.4.17	Review, Download & Save Joint Case Conference Report	0.30
1.6.17	Email to DSS re Lange K inserts added to MSJ	0.15
1.9.17	Review email from DSS re phone call to Pancoast	0.15
1.9.17	Review, Download & Save Defendant The Viking Corporation and Supply Network , Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.10.17	Review, Download & Save Plaintiffs Response to Defendants The Viking Corporation and Supply Network Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.11.17	Review email from DSS re making small changes to MSJ	0.15
1.13.17	Review, Download & Save Plaintiffs Motion for Summary Judgment	0.30
1.17.17	Review email from DSS re preparing written discovery and depo notices	0.15
1.17.17	Review email from DSS to Pancoast re moving MSJ hearing and Opp date	0.15
1.18.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment	0.30
1.19.17	Email chain with DSS re Viking's Opposition to MSJ	0.50
1.20.17	Email chain with DSS re Stackiewicz case	0.15
1.20.17	Review, Download & Save Notice of Video Deposition of Shelli Lange	0.30
1.20.17	Review, Download & Save Subpoena for Shelli Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition Bernie Lange	0.30
1.20.17	Review, Download & Save Subpoena for Bernie Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition of Tracey Garvey	0.30
1.20.17	Review, Download & Save Subpoena for Tracy Garvey	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

INVOICE FOR BENJAMIN J. MILLER
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
8/16/17	Research and review prior cases and brief bank for written discovery on punitive damages	0.75
8/16/17	Send interoffice email regarding punitive damage discovery from other cases	0.25
8/17/17	Research and review licensing standards and regulations from California Board of Professional Engineers, Land Surveyors and Geologists for possible use in upcoming expert depositions	1.5
8/30/17	Send interoffice email regarding punitive damages written discovery from other cases	0.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35
11/13/17	Draft interoffice email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/6/17	Research Nevada case law regarding cost of repair damages and diminution in value damages	0.75
11/6/17	Research case law of surrounding jurisdictions regarding cost of repair damages and diminution in value damages	1.5
11/6/17	Research various law review articles, restatements of law, jury instructions and other legal authorities regarding cost of repair damages and diminution in value damages	1.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35

11/8/17	Prepare memo regarding cost of repair damages and diminution in value damages	2.0
11/9/17	Discussion with DSS re: Memo	0.5
11/13/17	Research Nevada law regarding admissibility of litigation conduct for bad faith	0.5
11/13/17	Research case law of surrounding jurisdictions regarding admissibility of litigation conduct for bad faith	3.25
11/13/17	Research various law review articles and other legal authorities regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Prepare memo regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Draft email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/14/17	Research Contract Validity within NRS Chapter 624 and Nevada case law for summary judgment briefing	2.75
11/16/17	Confer regarding recoverable damages within breach of contract vs. products liability	0.75
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
	Total Hours x's \$275 per hour (reduced)	21.8
	Total Fees	\$5,995.00