

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 JONES,
DISTRICT JUDGE, DEPT. 10,

Respondents,

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

Real Parties in Interest.

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Case Number: 84159

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

**PETITION FOR REHEARING RE SEPTEMBER 16, 2022 ORDER
DENYING IN PART WRIT OF MANDAMUS TO RELEASE CLIENT
FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO
RELEASE THE COMPLETE CLIENT FILE**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioners Edgeworth Family Trust is a trust formed under the laws of the State of Nevada. American Grating, LLC, is a Limited Liability Company formed under the laws of the State of the Nevada. American Grating, LLC is wholly owned by Brian Edgeworth and Angela Edgeworth, who are also the Trustees of the Edgeworth Family Trust. These Petitioners were represented below by Vannah & Vannah, Messner Reeves, LLP and Morris Law Group. Petitioners are represented in this proceeding by Morris Law Group.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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TABLE OF CONTENTS

	Page No.
RULE 26.1 DISCLOSURE.....	ii
TABLE OF AUTHORITIES.....	iv
I. INTRODUCTION	1
II. STANDARD FOR REHEARING.....	2
III. REASONS THAT SUPPORT REHEARING IS APPROPRIATE IN THIS CASE.....	3
A. The Edgeworths Do Not Have an Adequate Remedy at Law.	3
B. The Court Appears to Have Misapprehended the Scope of the Agreement for the Special Trust Account.....	8
C. The Lawfulness of the District Court's Order Warrants Review	9
IV. CONCLUSION.....	10
CERTIFICATE OF COMPLIANCE	11
VERIFICATION.....	12
CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Bahena v. Goodyear Tire & Rubber Co.</i> , 126 Nev. 606, 245 P.3d 1182 (2010)	2
<i>Brunzell v. Golden Gate Nat. Bank</i> , 85 Nev. 345, 455 P.2d 31 (1969).....	5
<i>In re Dunleavy</i> , 104 Nev. 784, 769 P.2d 1271 (1988).....	2
<i>Edgeworth Fam. Tr. v. Simon</i> , Nos. 83258-83260 (Nev. Dec. 13, 2021) (Order Consolidating and Partially Dismissing Appeals)	3
<i>Edgeworth Fam. Tr. v. Simon</i> , Nos. 83258-83260 (Nev. Sept. 16, 2022) (Order Vacating Judgment and Remanding)	5

STATUTES

NRS 18.015.....	<i>passim</i>
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RULES

Nevada Rule of Civil Procedure 62	2, 4, 7
Nevada Rule of Appellate Procedure 40	2

I. INTRODUCTION

On September 16, 2022, this Court issued an order granting in part, and denying in part the Edgeworth's Petition for a Writ of Mandamus to Release Client Funds in Excess of Adjudicated Lien Amount and to Release the Complete Client File. The Court ordered the client file released, but denied the request to order the release of the Edgeworths' funds in excess of the adjudicated lien amount.

This Court previously determined that the order refusing to release the \$1.5+ million of the Edgeworths' excess funds was not a final determination that could be appealed. Tying up this money in court for years is exactly what the lien-claiming attorney threatened the Edgeworths he would do if they did not accede to his demand for more money. The Edgeworths agreed to put a portion of the settlement funds aside *pending lien adjudication* which was done nearly four years ago. The Edgeworths (Simon's former client) ***did not*** agree to tie up these funds through all appellate proceedings as the Court misapprehended. Furthermore, the dispute regarding the final amount due under the lien, exclusive of the excess funds, does not appear to have an end in sight, through no fault of the Edgeworths. There is no plain, adequate, and speedy remedy at law in this case.

The Court's order denying the excess funds portion of the writ does not recognize the boundaries of NRS 18.015. It also overlooked the need to clarify important legal questions raised by the writ petition: When is lien

adjudication complete for purpose of the attorney-lien statute; and with respect to post-adjudication proceedings, are attorneys a special class of litigants entitled to secure the full amount of a charging lien, even if outrageous, as opposed to only the adjudicated amount as NRCP 62 provides?

This case is a perfect example where justice delayed *has already accomplished* justice denied.

II. STANDARD FOR REHEARING

Pursuant to Nevada Rule of Appellate Procedure 40, a request for rehearing is appropriate where the "petitioner believes the court has overlooked or misapprehended" a "material fact" or a "material question of law," or "overlooked, misapplied or failed to consider controlling authority." Rehearing is appropriate "[w]hen the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case." NRAP 40(c)(2)(B). Rehearing is also appropriate "in such other circumstances as will promote substantial justice." *In re Dunleavy*, 104 Nev. 784, 786, 769 P.2d 1271, 1272 (1988); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 609, 245 P.3d 1182, 1184 (2010) (rehearing is appropriate when necessary to promote substantial justice).

III. REASONS THAT SUPPORT REHEARING IS APPROPRIATE IN THIS CASE.

Rehearing in this matter is appropriate because there is no reasonable legal justification for withholding the more than \$1.5 million of funds sitting in the Morris Law Group Trust Account over which Simon cannot reasonably assert any claim. The Court's decision not to entertain the writ does not give effect to the lien law and is based on misapprehended facts.

A. The Edgeworths Do Not Have an Adequate and Speedy Remedy at Law.

The Edgeworths recognize writ relief is discretionary, but given the attorney overreach in this case, and the Court's prior conclusion that an appeal from the order denying the release of their funds is not available, *Edgeworth Fam. Tr. v. Simon*, Nos. 83258-83260 (Nev. Dec. 13, 2021) (Order Consolidating and Partially Dismissing Appeals), the Court's decision not to entertain the Edgeworths' petition with respect to the release of the funds is unfair and denies speedy justice to the Edgeworths. The Court said:

we are unpersuaded that no adequate legal remedy exists to address the district court's decision. Instead, we conclude the opposite is true in that pending a final decision regarding the fee

dispute matter, and, after all appellate remedies are exhausted, any funds not awarded to Simon will be disbursed to the Edgeworths. Because the issue of Simon's appropriate fee is still being litigated, and because the Edgeworths have not proffered any compelling reason that access to those funds is presently needed, extraordinary intervention is unwarranted.

The Court's disposition sidesteps the important policy questions raised by Simon's refusal to release funds that he has no legitimate claim on. Simon's lien has been adjudicated for – at most – less than 25% of the fees he claimed. The only remaining issue with respect to fees due is the \$200,000 quantum meruit portion of the award, which the district court has refused to explain despite two mandates from this Court. Requiring the Edgeworths to secure the full amount awarded by the district court – even if wrong – is consistent with appellate practice. *See* NRCP 62. But requiring over four times the amount the district court determined the lien was worth is not justified under the attorney lien statute or by the Rules of Civil Procedure. Confirming these important points is critical to other unwary litigants who may be caught in a circle of litigation with lawyers like Simon who know (and threaten) that they can tie clients up in court for years because of the inequity in the cost of litigation between a client and a lawyer.

In point of fact, on the same day that this Court issued its order regarding the Edgeworths' writ petition, it also entered an order in Case Nos. 83258-83260 again vacating and remanding the district court's order with respect to the quantum meruit award. *See Edgeworth Fam. Tr. v. Simon*, Nos. 83258-83260 (Nev. Sept. 16, 2022) (Order Vacating Judgment and Remanding). Before jurisdiction was returned to the district court, the district court *again* cut and pasted its prior order, and *again* failed to follow the Court's mandate, which will likely result in yet another appeal.¹ *See* District Court Order attached as Exhibit A hereto. Four years and two appeals from the lien adjudication and there is *still* no end in sight for the

¹ Following the first appeal, the district court also entered a cut-and-pasted order before she regained jurisdiction. Ex. B, March 16, 2021 Order. That order was later reissued on April 28 and is included as Exhibit C hereto. Both versions of the 2021 orders repeated the erroneous conclusion that Simon was owed costs. *See* Ex. B at 22:26 and Ex. C at 23:16 (awarding Simon \$71,594.93 in costs) and Ex. B at 17:15 and Ex. C at 18:2 (confirming no costs are due); *compare* these errors *with* identical errors in Ex. A at 24:5 and 18:2). The jurisdictional error and the error regarding costs were fully addressed in the 2021 post-mandate briefing yet were repeated in the most recent rogue order. While the district court made slight variations in the wording, it is clear the *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), analysis for the quantum meruit award is still based on pre-discharge services, despite two orders from this Court requiring to explain and justify the *post-termination* quantum meruit award under the *Brunzell* factors. This strongly suggests that the district court cannot explain and justify its quantum meruit award of \$200,000 for Simon's minimal post-termination work under the *Brunzell* factors, as this Court ordered it to do.

Edgeworths to get their money. While they have been fortunate to have had the resources to seek justice, most litigants would not be so fortunate and would have to acquiesce to unreasonable demands by their lawyers. The Edgeworths, like individuals and businesses throughout the world, have suffered severe financial setbacks because of the global pandemic. At page 2 of the Order, the Court states that the "Edgeworths have not proffered any compelling reason that access to those funds is presently needed." Why the Edgeworths need control of money that belongs to them, or how they intend to use it to address their changing business needs, should be irrelevant to whether or not Simon is wrongfully withholding it. There is no legal requirement that a litigant demonstrate why access to their own funds is needed.

The Edgeworths in good faith agreed to place the unreasonable amount Simon claimed as a lien in a trust account "pending lien adjudication" because they expected prompt adjudication as expressed in the lien statute. NRS 18.015(6). If the statute will not be interpreted according to the plain meaning of the words used, guidance is needed from this Court

not only for this case but also for the benefit of the public as to when lien adjudication is complete.

By refusing to entertain this portion of the writ, this Court is disturbing the balance that the Legislature built into the charging lien statute. The right of an attorney to protect agreed-upon (or reasonable) fees came with the right of the client to have a prompt adjudication and the rest (the excess) of their funds released. Allowing an attorney to hold settlement funds that he threatened the client he would tie up in court for years unless the client shared more of the settlement – as Simon has now done for over nearly five years since the settlement checks issued on December 8, 2017 (and four years after lien adjudication) – is inconsistent with that balance.

As addressed in the writ petition, once a district court adjudicates a charging lien, the only amount an attorney should be able to withhold pending appellate procedures (by either side) is the amount determined by the district court as NRCP 62 provides. If this Court interprets NRS 18.015 to confer special status on attorneys such that unscrupulous lawyers can abuse

the statute to effectively extort clients as Simon has here, it should address the issue to allow the Legislature, if it chooses, to address that inequity.

B. The Court Appears to Have Misapprehended the Scope of the Agreement for the Special Trust Account.

The Court, at page 5 of its Order, appears to have misapprehended the scope of the parties' agreement to temporarily set aside a portion of the lien funds pending lien adjudication. *See* P000468 – 70. The Edgeworths agreed to hold a portion of their settlement funds on deposit "until Mr. Simon agrees on the undisputed amount and/or a court order resolving this matter." *Id.* at P000470. Given the language in NRS 18.015(6), they expected the money would be set aside for days, not years. The agreement did not say the full amount on deposit would be held hostage to over-secure Simon for any appeals that followed, as the Court's decision seems to suggest.

Withholding that money from clients especially during the past two years where families and business are all suffering the effects of the global pandemic is punitive, exactly the effect Simon threatened in 2017

when the Edgeworths did not accept his unreasonable demand for a windfall fee.

C. The Lawfulness of the District Court's Order Warrants Review

The Court's Order declining to entertain the writ also does not address the important question raised as to the lawfulness of holding excess funds after lien adjudication under NRS 18.015.

NRS 18.015(6) states that the "court shall, after five days' notice to all interested parties, adjudicate the rights of the attorney, client, or other parties and enforce the lien." Since the lien was adjudicated, the district court should have enforced it for the amount she determined. Nothing in the statute authorizes the district court to permit a lawyer to secure more than the district court determined the attorney's lien was worth.

The district court's rationale for not releasing the money was also incorrect. The district court's acceptance of Simon's excuse that the courts have no authority to release the funds because of the "bilateral agreement" is wrong. The agreement was simply a temporary solution until the parties could go before the court for lien adjudication, and they did that in 2018.

P000468 – 70. The purpose for that trust account became moot after lien adjudication. In 2021, the funds were moved out of the temporary "special trust" account into the Morris Law Group Trust Account.

The errors in the district court order are fully vetted and should be entertained by the Court for the benefit of the Edgeworths, the public, and the bar. Clarifying that there is no legislative intent in the statute to give lawyers such as Simon such undeserved preferential status is worthy of consideration.

IV. CONCLUSION

The Edgeworths respectfully ask the Court to grant rehearing and reconsider its decision not to entertain the important public policy issues raised by the district court's refusal to release funds that cannot be reasonably disputed as belonging to the Edgeworths.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this PETITION FOR REHEARING RE SEPTEMBER 16, 2022 ORDER DENYING IN PART WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE CLIENT FILE, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Palatino 14 point font and contains 2,081 words.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

Steve Morris, Bar No. 1543

Rosa Solis-Rainey, Bar No. 7921

Attorneys for Petitioners

VERIFICATION

I, Steve Morris, declare:

1. I am one of the attorneys, one of the Petitioners herein;

2. I verify that I have read the foregoing **PETITION FOR REHEARING RE SEPTEMBER 16, 2022 ORDER DENYING IN PART WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE CLIENT FILE**; that the same is true my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

/s/ STEVE MORRIS
Steve Morris

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the PETITION FOR REHEARING RE SEPTEMBER 16, 2022 ORDER DENYING IN PART WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE CLIENT FILE to be electronically filed and served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

Judge Tierra Jones (Hand-Delivered)
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
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Real Parties in Interest*

DATED this 4th day of October, 2022.

By: /s/ CLAUDIA A. MORRILL

EXHIBIT A

(District Court's September 27, 2022 Premature Post-Mandate Order)

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.: X

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

14 Defendants.

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

FOURTH AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

22
23 **FOURTH AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

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

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

7 8 **FINDINGS OF FACT**

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

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

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

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
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 than 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 and go after the appeal that these
15 scumbags will file etc.
16 Obviously that could not have been done earlier since who would have
17 thought this case would meet the hurdle of punitive 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
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
21 them to participate without limitation in any proceeding concerning our case,
22 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 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 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.

CONCLUSION OF LAW

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

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

NRS 18.015(1)(a) states:

1. An attorney at law shall have a lien:
 - (a) Upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted.

Nev. Rev. Stat. 18.015.

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

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

1 *Fee Agreement*

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

9 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
10 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
11 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
12 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
13 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
14 22, 2017 email, titled "Contingency," he writes:

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

25 (Def. Exhibit 27).

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

1 The Court finds that an implied fee agreement was formed between the parties on December
2 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
3 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
4 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
5 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
6 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
7 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
8 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
9 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

10 11 *Constructive Discharge*

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

- 13 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
14 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 15 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons
16 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 17 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast
18 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also* Maples v.
19 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
20 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge.
21 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

26 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
27 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
28 agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was

1 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
2 things without a compromise. Id. The retainer agreement specifically states:

3
4 Client retains Attorneys to represent him as his Attorneys regarding
5 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
6 ENTITIES and all damages including, but not limited to, all claims in this
7 matter and empowers them to do all things to effect a compromise in said
8 matter, or to institute such legal action as may be advisable in their judgment,
9 and agrees to pay them for their services, on the following conditions:

- 10 a) ...
11 b) ...
12 c) Client agrees that his attorneys will work to consummate a settlement of
13 \$6,000,000 from the Viking entities and any settlement amount agreed to be
14 paid by the Lange entity. Client also agrees that attorneys will work to reach
15 an agreement amongst the parties to resolve all claims in the Lange and
16 Viking litigation.

17 Id.

18 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
19 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
20 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
21 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
22 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
23 identified as the firm that solely advised the clients about the settlement. The actual language in the
24 settlement agreement, for the Viking claims, states:

25 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
26 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
27 effect of this AGREEMENT and their release of any and all claims, known or
28 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.

1 Id.

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

5 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
6 Though there were email communications between the Edgeworths and Simon, they did not verbally
7 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
8 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
9 responds to the email saying, “please give John Greene at Vannah and Vannah a call if you need
10 anything done on the case. I am sure they can handle it.” (Def. Exhibit 80). At this time, the claim
11 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
12 working on this claim, but he had no communication with the Edgeworths and was not advising
13 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
14 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
15 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
16 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
17 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
18 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
19 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
20 Simon never signed off on any of the releases for the Lange settlement.

21 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
22 Esq. to James Christensen Esq. dated December 26, 2017, which states: “They have lost all faith and
23 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
24 Quite frankly, they are fearful that he will steal the money.” (Def. Exhibit 48). Then on January 4,
25 2018, the Edgeworth’s filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
26 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
27 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
28

1 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
2 doesn't seem in his best interests." (Def. Exhibit 53).

3 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
4 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
5 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
6 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
7 was attached to the letter), and that Simon continued to work on the case after the November 29,
8 2017 date. The court further recognizes that it is always a client's decision of whether or not to
9 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
10 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
11 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
12 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
13 with him, making it impossible to advise them on pending legal issues, such as the settlements with
14 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
15
16 Simon from effectively representing the clients. The Court finds that Danny Simon was
17 constructively discharged by the Edgeworths on November 29, 2017.

18
19 **Adjudication of the Lien and Determination of the Law Office Fee**

20 NRS 18.015 states:

- 21 1. An attorney at law shall have a lien:
22 (a) Upon any claim, demand or cause of action, including any claim for
23 unliquidated damages, which has been placed in the attorney's hands by a
24 client for suit or collection, or upon which a suit or other action has been
25 instituted.
26 (b) In any civil action, upon any file or other property properly left in the
27 possession of the attorney by a client.
28 2. A lien pursuant to subsection 1 is for the amount of any fee which has
been agreed upon by the attorney and client. In the absence of an agreement,
the lien is for a reasonable fee for the services which the attorney has rendered
for the client.

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

4. A lien pursuant to:

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

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

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

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

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

Nev. Rev. Stat. 18.015.

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

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was \$550 an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

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

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
14 paid in full and there was never any indication given that anything less than all the fees had been
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
21 Office retained the payments, indicating an implied contract was formed between the parties. The
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
23 date they were constructively discharged, November 29, 2017.

24
25 ***Amount of Fees Owed Under Implied Contract***

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is
27 some testimony that an invoice was requested for services after that date, but there is no evidence
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
8 that was prepared with the lien “super bill,” are not necessarily accurate as the Law Office went back
9 and attempted to create a bill for work that had been done over a year before. She testified that they
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
11 email that was read and responded to. She testified that the dates were not exact, they just used the
12 dates for which the documents were filed, and not necessarily the dates in which the work was
13 performed. Further, there are billed items included in the “super bill” that was not previously billed
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
16 indicated that there were no phone calls included in the billings that were submitted to the
17 Edgeworths.

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

25 Simon argues that he has no billing software in his office and that he has never billed a client
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
27 in this case, were billed hourly because the Lange contract had a provision for attorney’s fees;
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
5 emails or calls, understanding that those items may be billed separately; but again the evidence does
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
7 This argument does not persuade the court of the accuracy of the “super bill”.

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

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

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

22 The amount of attorney’s fees for the period of July 31, 2017 to September 19, 2017, for the
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney’s fees for this period for
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney’s fees for this period for Benjamin Miller
25

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

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

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

13 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
14 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
15 by the Edgeworths, so the implied fee agreement applies to their work as well.

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

18 19 *Costs Owed*

20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
25

26 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 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

3 4 *Quantum Meruit*

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

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

27 The *Brunzell* factors are: (1) the qualities of the advocate; (2) the character of the work to be
28

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

5 In considering the Brunzell factors, the Court looks at all of the evidence presented in the
6 case, the testimony at the evidentiary hearing, and the litigation involved in the case. In this case, the
7 evidence presented indicates that, after the constructive discharge, Simon received consent from the
8 Edgeworths, through the Vannah Law Firm, to settle their claims against Lange Plumbing LLC for
9 \$25,000. Simon continued to work with the attorneys for Lange Plumbing LLC to settle the claims
10 for more than \$25,000, and ultimately ended up settling the claims for \$100,000. The record
11 indicates that on December 5, 2017, Simon attempted an email to contact Brian Edgeworth
12 regarding settling of the Lange case, as he was continuing to have discussions with Lange's counsel,
13 regarding settling of the claims. However, Simon was told to contact Vannah's office as the
14 Edgeworths were refusing his attempts to communicate. He then, reached out to Vannah's office and
15 continued to work with Vannah's office to settle the Viking and the Lange claims. On December 7,
16 2017, Sion sent a letter advising Mr. Vannah regarding the Lange claim. Simon had advised the
17 Edgeworths on settling of the Lange claim, but they ignored his advice and followed the advice of
18 the Vannah & Vannah. Upon settlement of all the claims, the Edgeworths made the unusual request
19 to open a new trust account with Mr. Vannah as the signer to deposit the Viking settlement proceeds.
20 Mr. Simon complied with the request. Further, there were continued representations from the
21 Edgeworths and the Vannah Law Firm that Simon had not been terminated from representation of
22 the Edgeworths, and no motion to withdraw was filed in this case.

23
24 *1. Quality of the Advocate*

25 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
26 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
27 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
28

1 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
2 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
3 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
4 work product and results are exceptional.

5
6 2. The Character of the Work to be Done

7 The character of the work done in this case is complex. This case was a very complex
8 products liability case, from the beginning. After the constructive discharge of Simon, the
9 complications in the case continued. The continued aggressive representation of Mr. Simon, in
10 prosecuting the case was a substantial factor in achieving the exceptional results. Even after the
11 constructive termination, Simon continued to work on the case. At one point, Simon said that he was
12 not going to abandon the case, and he didn't abandon the case. The lack of communication with the
13 Edgeworths made continuation of the case difficult, but Simon continued to work on the case and
14 ended up reaching a resolution beneficial to the Edgeworths.

15
16 3. The Work Actually Performed

17 Mr. Simon was aggressive in litigating this case. Since Mr. Edgeworth is not a lawyer, it is
18 impossible that it was his work alone that led to the settlement of the Viking and Lange claims, for a
19 substantial sum, in the instant case. The Lange claims were settled for four times the original offer,
20 because Simon continued to work on the case. He continued to make efforts to communicate with
21 the Edgeworths and even followed their requests to communicate with Vannah's office. He also
22 agreed to their request of opening a trust account, though in an unusual fashion. All of the work by
23 the Law Office of Daniel Simon led to the ultimate result in this case, and a substantial result for the
24 Edgeworths.

25
26 4. The Result Obtained

27 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
28

1 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
2 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
3 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
4 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
5 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
6 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
7 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
8 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
9 were made more than whole with the settlement with the Viking entities.

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

13
14 (a) A lawyer shall not make an agreement for, charge, or collect an
15 unreasonable fee or an unreasonable amount for expenses. The factors to be
16 considered in determining the reasonableness of a fee include the following:

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

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

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

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

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

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

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

(8) Whether the fee is fixed or contingent.

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

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

1 commencing the representation, except when the lawyer will charge a
2 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.

3 (c) A fee may be contingent on the outcome of the matter for which the
4 service is rendered, except in a matter in which a contingent fee is prohibited
5 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:

6 (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
7 settlement, trial or appeal;

8 (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;

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

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

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

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

16 NRCP 1.5.

17 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
18 the Edgeworths, the character of the work was complex, the work actually performed was extremely
19 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
20 factors justify a reasonable fee under NRPC 1.5.

21 However, the Court must also consider the fact that the evidence suggests that the basis or
22 rate of the fee and expenses for which the client will be responsible were never communicated to the
23 client, within a reasonable time after commencing the representation. Further, this is not a
24 contingent fee case, and the Court is not awarding a contingency fee.

25 Instead, the Court must determine the amount of a reasonable fee. In determining this
26 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
27 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
28

1 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
2 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
3 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
4 continued to work on the Viking settlement until it was finalized in December of 2017, and the
5 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
6 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
7 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
8 himself were continuing, even after the constructive discharge. Though the previous agreement
9 between Simon and the Edgeworths was for \$550 per hour, the Court must take into consideration
10 that the Edgeworths' fee agreement with Vannah & Vannah was for \$925 per hour.

11 In considering the reasonable value of these services, under quantum meruit, the Court is
12 considering the previous \$550 per hour fee from the implied fee agreement, the fee for the Vannah
13 & Vannah Law Firm, the Brunzell factors, and additional work performed after the constructive
14 discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a
15 reasonable fee in the amount of \$200,000, from November 29, 2017 to the conclusion of this case.

17 CONCLUSION

18 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
19 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
20 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
21 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
22 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
23 Simon as their attorney, when they ceased following his advice and refused to communicate with
24 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
25 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
26 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
27 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
28

1 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
2 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
3 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
4 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
5 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.
6

7 **ORDER**

8 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien
9 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law
10 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

11 IT IS SO ORDERED.

Dated this 27th day of September, 2022

12
13 
14 _____
DISTRICT COURT JUDGE

15
16 **4AA 825 C06C AB5C**
Tierra Jones
District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 9/27/2022

16 Daniel Simon . lawyers@simonlawlv.com

17 Rhonda Onorato . ronorato@rlattorneys.com

18 Mariella Dumbrique mdumbrique@blacklobello.law

19 Michael Nunez mnunez@murchisonlaw.com

20 Tyler Ure ngarcia@murchisonlaw.com

21 Nicole Garcia ngarcia@murchisonlaw.com

22 James Christensen jim@jchristensenlaw.com

23 John Greene jgreene@vannahlaw.com

24 James Christensen jim@jchristensenlaw.com

25 Michael Nunez mnunez@murchisonlaw.com

26
27
28

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Zeairah Marable	zmarable@vannahlaw.com
Laysha Guerrero	lguerrero@vannahlaw.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 9/28/2022

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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EXHIBIT B

(District Court's 3/16/21 Premature Post-Mandate Order)

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.: X

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

14 Defendants.

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

Consolidated with

CASE NO.: A-16-738444-C

DEPT NO.: X

SECOND AMENDED DECISION AND
ORDER ON MOTION TO ADJUDICATE
LIEN

22
23 **SECOND AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

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

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

7 8 **FINDINGS OF FACT**

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

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

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

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
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 than 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 and go after the appeal that these
15 scumbags will file etc.
16 Obviously that could not have been done earlier since who would have
17 thought this case would meet the hurdle of punitive 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
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
21 them to participate without limitation in any proceeding concerning our case,
22 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 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.
28

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

16 (Def. Exhibit 27).

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

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

28 *Constructive Discharge*

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

- Refusal to communicate with an attorney creates constructive discharge. Rosenberg v. Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).

- Refusal to pay an attorney creates constructive discharge. *See e.g., Christian v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- Suing an attorney creates constructive discharge. *See Tao v. Probate Court for the Northeast Dist. #26*, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also Maples v. Thomas*, 565 U.S. 266 (2012); *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge. *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

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

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

Id.

This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr. Simon had already begun negotiating the terms of the settlement agreement with Viking during the

1 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
2 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
3 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
4 identified as the firm that solely advised the clients about the settlement. The actual language in the
5 settlement agreement, for the Viking claims, states:

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
29 working on this claim, but he had no communication with the Edgeworths and was not advising
30 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
31 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law

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

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

16 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
17 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
18 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
19 letter indicating that the Edgeworth’s could consult with other attorneys on the fee agreement (that
20 was attached to the letter), and that Simon continued to work on the case after the November 29,
21 2017 date. The court further recognizes that it is always a client’s decision of whether or not to
22 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
23 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
24 discharged. His November 27, 2017 letter invited the Edgeworth’s to consult with other attorneys
25 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
26 with him, making it impossible to advise them on pending legal issues, such as the settlements with
27 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
28

1
2 Simon from effectively representing the clients. The Court finds that Danny Simon was
3 constructively discharged by the Edgeworths on November 29, 2017.
4

5 **Adjudication of the Lien and Determination of the Law Office Fee**

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

10 *Implied Contract*

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

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

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

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

11 *Amount of Fees Owed Under Implied Contract*

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

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

1 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
2 indicated that there were no phone calls included in the billings that were submitted to the
3 Edgeworths.

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

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

21 The amount of attorney’s fees and costs for the period beginning in June of 2016 to
22 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016
23 which appears to indicate that it began with the initial meeting with the client, leading the court to
24 determine that this is the beginning of the relationship. This invoice also states it is for attorney’s
25 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This
26
27
28

1 amount has already been paid by the Edgeworths on December 16, 2016.²

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

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

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

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

24
25 ²There are no billing amounts from December 2 to December 4, 2016.

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

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

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

1 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

2 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
3 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
4 by the Edgeworths, so the implied fee agreement applies to their work as well.

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

8 *Costs Owed*

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

17 *Quantum Meruit*

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

27
28 ⁶ There is no billing from September 19, 2017 to November 5, 2017.

1 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees
2 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion
3 of the Law Office's work on this case.

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

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

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

21 1. Quality of the Advocate

22 Brunzell expands on the "qualities of the advocate" factor and mentions such items as
23 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for
24 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig
25 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.
26 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.
27 Simon's work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon's
28

1 work product and results are exceptional.

2 2. The Character of the Work to be Done

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

12 3. The Work Actually Performed

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

21 4. The Result Obtained

22 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
23 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
24 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle
25 the Lange Claim for \$25,000 but Simon kept working on the case and making changes to the
26 settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is
27 due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from
28

1 Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible.
2 Mr. Kemp also testified that he has never heard of a \$6 million settlement with a \$500,000 damage
3 case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's acknowledge that they
4 were made more than whole with the settlement with the Viking entities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NRCP 1.5.

18 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
19 the Edgeworths, the character of the work was complex, the work actually performed was extremely
20 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
21 factors justify a reasonable fee under NRPC 1.5.

22 However, the Court must also consider the fact that the evidence suggests that the basis or
23 rate of the fee and expenses for which the client will be responsible were never communicated to the
24 client, within a reasonable time after commencing the representation. Further, this is not a
25 contingent fee case, and the Court is not awarding a contingency fee.

26 Instead, the Court must determine the amount of a reasonable fee. In determining this
27 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
28 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
the case and making changes to the settlement agreement. This resulted in the Edgeworth's
recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
continued to work on the Viking settlement until it was finalized in December of 2017, and the

1 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
2 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
3 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
4 himself were continuing, even after the constructive discharge. In considering the reasonable value
5 of these services, under quantum meruit, the Court is considering the previous \$550 per hour fee
6 from the implied fee agreement, the Brunzell factors, and additional work performed after the
7 constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is
8 entitled to a reasonable fee in the amount of \$200,000, from November 30, 2017 to the conclusion of
9 this case.

10 CONCLUSION

11
12 The Court finds that the Law Office of Daniel Simon properly filed and perfected the
13 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further
14 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the
15 Edgeworths once Simon started billing Edgeworth for this amount, and the bills were paid. The
16 Court further finds that on November 29, 2017, the Edgeworth's constructively discharged Mr.
17 Simon as their attorney, when they ceased following his advice and refused to communicate with
18 him about their litigation. The Court further finds that Mr. Simon was compensated at the implied
19 agreement rate of \$550 per hour for his services, and \$275 per hour for his associates; up and until
20 the last billing of September 19, 2017. For the period from September 19, 2017 to November 29,
21 2017, the Court finds that Mr. Simon is entitled to his implied agreement fee of \$550 an hour, and
22 \$275 an hour for his associates, for a total amount of \$284,982.50. For the period after November
23 29, 2017, the Court finds that the Law Office of Daniel Simon properly perfected their lien and is
24 entitled to a reasonable fee for the services the office rendered for the Edgeworths, after being
25 constructively discharged, under quantum meruit, in an amount of \$200,000. The Court further
26 finds that the Law Office of Daniel Simon is entitled to costs in the amount of \$71,594.93.

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ORDER

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is \$556,577.43, which includes outstanding costs.

Dated this 16th day of March, 2021

IT IS SO ORDERED this 16th day of March, 2021.



DISTRICT COURT JUDGE

B7B 840 B8A7 FF62
Tierra Jones
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 3/16/2021

16 Daniel Simon . lawyers@simonlawlv.com

17 Rhonda Onorato . ronorato@rlattorneys.com

18 Mariella Dumbrique mdumbrique@blacklobello.law

19 Michael Nunez mnunez@murchisonlaw.com

20 Tyler Ure ngarcia@murchisonlaw.com

21 Nicole Garcia ngarcia@murchisonlaw.com

22 Bridget Salazar bsalazar@vannahlaw.com

23 John Greene jgreene@vannahlaw.com

24 James Christensen jim@jchristensenlaw.com

25 Daniel Simon dan@danielsimonlaw.com

26
27
28

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/17/2021

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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EXHIBIT C

(District Court's Reissued 2021 Post-Mandate Order

Dated April 28, 2021)

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.: X

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.

THIRD AMENDED 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 **THIRD AMENDED DECISION AND ORDER ON MOTION TO**
24 **ADJUDICATE LIEN**

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

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

7
8 **FINDINGS OF FACT**

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

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

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

23 4. In May of 2016, Mr. Simon agreed to help his friend with the flood claim and to send
24 a few letters. The parties initially hoped that Simon drafting a few letters to the responsible parties
25 could resolve the matter. Simon wrote the letters to the responsible parties, but the matter did not
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 than 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 done earlier since who would have
17 thought this case would meet the hurdle of punitive 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
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
21 them to participate without limitation in any proceeding concerning our case,
22 whether it be at depositions, court hearings, discussions, etc."

23 (Def. Exhibit 43).

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

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

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 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 26. On November 19, 2018, the Court entered a Decision and Order on Motion to
17 Adjudicate Lien.

18 27. On December 7, 2018, the Edgeworths filed a Notice of Appeal.

19 28. On February 8, 2019, the Court entered a Decision and Order Granting in Part and
20 Denying in Part, Simon's Motion for Attorney's Fees and Costs.

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on
27 Motion to Adjudicate Lien.

1 33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.

2
3
4 **CONCLUSION OF LAW**

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

7 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the
8 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-
9 738444-C under NRS 18.015.

10 NRS 18.015(1)(a) states:

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

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

14 Nev. Rev. Stat. 18.015.

15 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,
16 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS
17 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was
18 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,
19 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &
20 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien
21 is enforceable in form.

22 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.
23 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at
24 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's
25 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication
26 under NRS 18.015, thus the Court must adjudicate the lien.

1 *Fee Agreement*

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

9 Here, the testimony from the evidentiary hearing does not indicate, with any degree of
10 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite
11 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,
12 regarding punitive damages and a possible contingency fee, indicate that no express oral fee
13 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August
14 22, 2017 email, titled "Contingency," he writes:

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

(Def. Exhibit 27).

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

1 The Court finds that an implied fee agreement was formed between the parties on December
2 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,
3 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was
4 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the
5 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger
6 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and
7 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied
8 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour
9 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

10 11 *Constructive Discharge*

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

- 13 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.
14 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 15 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons
16 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 17 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast
18 Dist. #26, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). *See also* Maples v.
19 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,
20 2017 Nev. Unpubl. LEXIS 472.
- 21 • Taking actions that preventing effective representation creates constructive discharge.
22 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

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

27 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and
28 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement
agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was

1 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all
2 things without a compromise. Id. The retainer agreement specifically states:

3
4 Client retains Attorneys to represent him as his Attorneys regarding
5 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING
6 ENTITIES and all damages including, but not limited to, all claims in this
7 matter and empowers them to do all things to effect a compromise in said
8 matter, or to institute such legal action as may be advisable in their judgment,
9 and agrees to pay them for their services, on the following conditions:

10 a) ...

11 b) ...

12 c) Client agrees that his attorneys will work to consummate a settlement of
13 \$6,000,000 from the Viking entities and any settlement amount agreed to be
14 paid by the Lange entity. Client also agrees that attorneys will work to reach
15 an agreement amongst the parties to resolve all claims in the Lange and
16 Viking litigation.

17 Id.

18 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.
19 Simon had already begun negotiating the terms of the settlement agreement with Viking during the
20 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put
21 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.
22 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly
23 identified as the firm that solely advised the clients about the settlement. The actual language in the
24 settlement agreement, for the Viking claims, states:

25 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.
26 and John Greene, Esq., of the law firm Vannah & Vannah has explained the
27 effect of this AGREEMENT and their release of any and all claims, known or
28 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.

1 Id.

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

5 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.
6 Though there were email communications between the Edgeworths and Simon, they did not verbally
7 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,
8 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth
9 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need
10 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim
11 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively
12 working on this claim, but he had no communication with the Edgeworths and was not advising
13 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert
14 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law
15 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon
16 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the
17 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.
18 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange
19 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.
20 Simon never signed off on any of the releases for the Lange settlement.

21 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah
22 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and
23 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.
24 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,
25 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,
26 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a
27 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an
28

1 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that
2 doesn't seem in his best interests." (Def. Exhibit 53).

3 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-
4 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the
5 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018
6 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that
7 was attached to the letter), and that Simon continued to work on the case after the November 29,
8 2017 date. The court further recognizes that it is always a client's decision of whether or not to
9 accept a settlement offer. However the issue is constructive discharge and nothing about the fact
10 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively
11 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys
12 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating
13 with him, making it impossible to advise them on pending legal issues, such as the settlements with
14 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing
15
16 Simon from effectively representing the clients. The Court finds that Danny Simon was
17 constructively discharged by the Edgeworths on November 29, 2017.

18
19 **Adjudication of the Lien and Determination of the Law Office Fee**

20 NRS 18.015 states:

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

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

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

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

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

5 4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

Implied Contract

On December 2, 2016, an implied contract for fees was created. The implied fee was \$550
an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

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

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were
14 paid in full and there was never any indication given that anything less than all the fees had been
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law
21 Office retained the payments, indicating an implied contract was formed between the parties. The
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the
23 date they were constructively discharged, November 29, 2017.

24 25 *Amount of Fees Owed Under Implied Contract*

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is
27 some testimony that an invoice was requested for services after that date, but there is no evidence
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for
2 fees was formed, the Court must now determine what amount of fees and costs are owed from
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted
5 billings, the attached lien, and all other evidence provided regarding the services provided during
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing
8 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back
9 and attempted to create a bill for work that had been done over a year before. She testified that they
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every
11 email that was read and responded to. She testified that the dates were not exact, they just used the
12 dates for which the documents were filed, and not necessarily the dates in which the work was
13 performed. Further, there are billed items included in the "super bill" that was not previously billed
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing
16 indicated that there were no phone calls included in the billings that were submitted to the
17 Edgeworths.

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

25 Simon argues that he has no billing software in his office and that he has never billed a client
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,
27 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without
5 emails or calls, understanding that those items may be billed separately; but again the evidence does
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.
7 This argument does not persuade the court of the accuracy of the "super bill".

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

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

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

22 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller
25

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

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

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of
5 attorney fees owed to the Law Office of Daniel Simon.⁴ For the services of Daniel Simon Esq., the
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November
10 29, 2017 is \$92,716.25.⁵ For the services of Benjamin Miller Esq., the total amount of hours billed
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.⁶

13 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.
14 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid
15 by the Edgeworths, so the implied fee agreement applies to their work as well.

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

18 19 *Costs Owed*

20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later
25

26 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 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

3 4 *Quantum Meruit*

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

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

27 The Brunzell factors are: (1) the qualities of the advocate; (2) the character of the work to be
28

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

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

7 1 Quality of the Advocate

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

15 2 The Character of the Work to be Done

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

25 3 The Work Actually Performed

26 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,
27 numerous court appearances, and deposition; his office uncovered several other activations, that
28

1 caused possible other floods. While the Court finds that Mr. Edgeworth was extensively involved
2 and helpful in this aspect of the case, the Court disagrees that it was his work alone that led to the
3 other activations being uncovered and the result that was achieved in this case. Since Mr.
4 Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the filing of motions
5 and the litigation that allowed this case to develop into a \$6 million settlement. All of the work by
6 the Law Office of Daniel Simon led to the ultimate result in this case.

7 4. The Result Obtained

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

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

21
22 (a) A lawyer shall not make an agreement for, charge, or collect an
23 unreasonable fee or an unreasonable amount for expenses. The factors to be
24 considered in determining the reasonableness of a fee include the following:

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

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

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

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

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

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

NRCP 1.5.

The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for
the Edgeworths, the character of the work was complex, the work actually performed was extremely

1 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
2 factors justify a reasonable fee under NRPC 1.5.

3 However, the Court must also consider the fact that the evidence suggests that the basis or
4 rate of the fee and expenses for which the client will be responsible were never communicated to the
5 client, within a reasonable time after commencing the representation. Further, this is not a
6 contingent fee case, and the Court is not awarding a contingency fee.

7 Instead, the Court must determine the amount of a reasonable fee. In determining this
8 amount of a reasonable fee, the Court must consider the work that the Law Office continued to
9 provide on the Edgeworth's case, even after the constructive discharge. The record is clear that the
10 Edgeworths were ready to sign and settle the Lange claim for \$25,000 but Simon kept working on
11 the case and making changes to the settlement agreement. This resulted in the Edgeworth's
12 recovering an additional \$75,000 from Lange plumbing. Further, the Law Office of Daniel Simon
13 continued to work on the Viking settlement until it was finalized in December of 2017, and the
14 checks were issued on December 18, 2017. Mr. Simon continued to personally work with Mr.
15 Vannah to attempt to get the checks endorsed by the Edgeworths, and this lasted into the 2018 year.
16 The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon
17 himself were continuing, even after the constructive discharge. In considering the reasonable value
18 of these services, under quantum meruit, the Court is considering the previous \$550 per hour fee
19 from the implied fee agreement, the Brunzell factors, and additional work performed after the
20 constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is
21 entitled to a reasonable fee in the amount of \$200,000, from November 30, 2017 to the conclusion of
22 this case.

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

9 Lange Plumbing, L.L.C.,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/28/2021

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/29/2021

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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