IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DANIEL S. SIMON; DOES 1 through 10; and, ROE entities 1 through 10; Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; THE HONORABLE TIERRA JONES Respondents, and EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Real Parties in Interest.	**SUPREME COURT CASE NO.** DISTRICT COURT CASE NO.: A-16-738444-C *Consolidated with:* DISTRICT COURT CASE NO.: A-18-767242-C

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS

VOLUME III OF X

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been nearly extinguished and the appearance of a large gain from a settlement offer had suddenly been recognized. SIMON put on a full court press for PLAINTIFFS to agree to his proposed modifications to the CONTRACT. In essence, PLAINTIFFS felt that they were being blackmailed by SIMON, who was basically saying "agree to this or else." (Id.)

On November 27, 2017, SIMON sent a letter to PLAINTIFFS setting forth additional fees in the amount of $1,114,000.00, and costs in the amount of that $80,000.00, that he wanted to be paid in light of a favorable settlement that was reached with the defendants in the LITIGATION. (Id.) At that time, these additional "fees" were not based upon invoices submitted to PLAINTIFFS or detailed work performed by SIMON. The proposed fees and costs were in addition to the $486,453.09 that PLAINTIFFS had already paid to SIMON pursuant to the CONTRACT, the invoices that SIMON had presented to PLAINTIFFS, the evidence produced to defendants in the LITIGATION, and the amounts set forth in the computation of damages disclosed by SIMON in the LITIGATION.

One reason given by SIMON to modify the CONTACT was he claimed he was losing money on the LITIGATION. Another reason given by SIMON to modify the CONTRACT was that he purportedly under billed PLAINTIFFS on the four invoices previously sent and paid, and that he wanted to go through his invoices and create, or submit, additional billing entries. (Id.) According to SIMON, he under billed in the LITIGATION in an amount in excess of $1,000,000.00.

We've now learned through SIMON'S latest invoices (attached to his Motion as Exhibit 19) that he actually allegedly under-billed by $692,120. On the one hand, it's odd for SIMON to assert that he's losing money then, on the other hand, have SIMON admit that he under-billed PLAINTIFFS to the tune of hundreds of thousands to over a million dollars. But, that's the essence of the oddity to SIMON'S conduct with PLAINTIFFS since the settlement offers in the LITIGATION began to roll in.

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Yet an additional reason given then by SIMON was that he felt his work now had greater value than the $550.00 per hour that was agreed to and paid for pursuant to the CONTRACT. SIMON prepared a proposed settlement breakdown with his new numbers and presented it to PLAINTIFFS for their signatures. They refused to bow to SIMON'S pressure or demands. (Please see Exhibit 1.)

Some of PLAINTIFFS' claims in the LITIGATION were for breach of contract and indemnity, and a material part of the claim for indemnity against Defendant Lange was the fees and costs PLAINTIFFS were compelled to pay to SIMON to litigate and be made whole following the flooding event. In support of PLAINTIFFS' claims in the LITIGATION, and pursuant to NRCP 16.1, SIMON was required to present prior to trial a computation of damages that PLAINTIFFS suffered and incurred, which included the amount of SIMON'S fees and costs that PLAINTIFFS paid.

There is nothing in the computation of damages signed by and served by SIMON to reflect fees and costs other than those contained in his invoices that were presented to and paid in full by PLAINTIFFS. Additionally, there is nothing in the evidence or the mandatory pretrial disclosures in the LITIGATION to support any additional attorneys' fees generated by or billed by SIMON, let alone those in excess of $692,120, or $1,000,000.00, or the exorbitant figure set forth in SIMON'S amended lien.

Brian Edgeworth, the representative of PLAINTIFFS in the LITIGATION, sat for a deposition on September 27, 2017. Defendants' attorneys asked specific questions of Mr. Edgeworth regarding the amount of damages that PLAINTIFFS had sustained, including the amount of attorneys fees and costs that had been paid to SIMON. At page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further

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stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." (Excerpts of the Deposition are attached as Exhibit 2.)

Despite SIMON'S requests and demands for the payment of more in fees, PLAINTIFFS refused to alter or amend the terms of the CONTRACT. (Please see Exhibit 1.) When PLAINTIFFS refused to alter or amend the terms of the CONTRACT, SIMON refused to agree to release the full amount of the settlement proceeds to PLAINTIFFS. (Id.) Instead, he served two attorneys liens and reformulated his billings to add entries and time that never saw the light of day in the LITIGATION. (Id.)

When SIMON refused to release the full amount of the settlement proceeds to PLAINTIFFS, litigation was filed and served. A copy of PLAINTIFFS' Complaint is attached as Exhibit 17 to SIMON'S Motion to Adjudicate (the COMPLAINT). Thereafter, the parties agreed to create a separate account, deposit the settlement proceeds, and release the undisputed settlement funds to PLAINTIFFS. The claims of PLAINTIFFS against SIMON for Breach of Contract, Declaratory Relief, and Conversion are pending before Judge Gloria Sturman.

SIMON makes light of the facts that PLAINTIFFS haven't fired him, or that they are allowing him to continue working to wrap up the LITIGATION. Yet, to fire SIMON would be to give some measure of validity to his need to claim a lien, where none presently exists. As stated in NRS 18.015(2), and supporting case law, the charging lien that SIMON desires so badly here is only applicable "in the absence of an agreement." See *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958)(Attorney withdrew, invalidating the agreement and triggering an analysis of the reasonableness of the fee based on quantum meruit.)

SIMON'S Motions are without merit. The Motion to Adjudicate Attorney Lien must fail pursuant to NRS 18.015(2), as the parties did agree upon a fee of $550 per hour for SIMON'S

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services, and PLAINTIFFS paid all of SIMON'S invoices in full that were presented to them. (See Exhibit 1 to this Opposition and Exhibit 20 to SIMON'S Motion.) SIMON never presented any of the additional invoices to PLAINTIFFS. (Id.) Rather, it was only on January 24, 2018, with the filing of the Motion to Adjudicate, that SIMON'S "new" invoices made their public debut. PLAINTIFFS were never given a chance to receive them, review them, and/or pay what could be deemed reasonable before SIMON'S liens were served or his Motion was filed. Therefore, for these and all of the other reasons listed above, SIMON'S attorneys' liens are meaningless fugitive documents that have no basis in fact or law.

Additionally, the Motion to Consolidate should be denied pursuant to NRCP 42(a), as the questions of law and fact in these two actions are not common, the parties are not common or affiliated, and the underlying LITIGATION has reached the point weeks ago that all claims and parties could be dismissed with prejudice. Furthermore, since SIMON'S liens are completely improper under Nevada law, and since SIMON has refused to release the full amount of the settlement proceeds to PLAINTIFFS, and is instead converted them to his own use through his failure to agree to release them without the payment of a bonus to him, PLAINTIFFS claims against SIMON need to proceed before a jury as a matter of right.

II.

ARGUMENTS

A. THERE IS NO BASIS IN FACT OR LAW FOR SIMON'S FUGITIVE ATTORNEYS' LIENS OR TO HIS MOTION TO ADJUDICATE ATTORNEYS LIEN.

NRS 18.015(2) discusses the amount of a permissible attorney's lien. It states in part that: "A lien pursuant to subsection 1 is for the amount of any fee which has been agreed upon by the attorney and the client." The evidence is overwhelming that the terms of the CONTRACT contain the agreement between PLAINTIFFS and SIMON on the amount of SIMON'S fee. First,

there's the affidavit of Brian Edgeworth, where he states that he and SIMON agreed that SIMON'S fee would be $550 per hour for his services.

That's a lot of money to most people and ranks higher on the pay scale than SIMON'S depiction of merely agreeing, "to lend a hand." (See SIMON'S Motion at page 11, line 7.) That alleged "helping hand" to "draft a few letters" cost PLAINTIFFS approximately $7,000 in fees from SIMON. (Id.) Additionally, the discussion was structured enough for the parties to agree that SIMON would be retained as PLAINTIFFS attorney and be paid $550 per hour for his services, and reimbursed for his costs. That's the essence of a fee agreement. It's not a complicated business relationship that requires anything more for the contracting parties to know to clearly understand where they stand with the agreement.

Second, all of the invoices presented by SIMON and paid in full by PLAINTIFFS in the LITIGATION are for an hourly rate of $550 per hour for SIMON'S services. (See Exhibit 20 to SIMON'S Motion.) There are hundreds of entries for hundreds of thousands of dollars, all billed by SIMON at his agreed to hourly rate. (His associate is billed at a lesser rate of $275 per hour.) Even SIMON'S new invoices, which contain thousands of entries and many more hundreds of thousands of dollars in billings, are billed by SIMON at $550 per hour. (Please see Exhibit 19 to SIMON'S Motion.)

Third, there are the admissions by SIMON in the deposition of Mr. Edgeworth. Again, at page 271 of that deposition, a question was asked of Mr. Edgeworth as to the amount of attorneys' fees that PLAINTIFFS had paid to SIMON in the LITIGATION prior to May of 2017. At lines 18-19, SIMON interjected: "They've all been disclosed to you." At lines 23-25, SIMON further stated: "The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago." Finally, at page 272, lines 2-3, SIMON further admitted concerning his fees and costs: "And they've been updated as of last week." (See Exhibit 2.) These are the same invoices that contain the agreed to hourly rate of $550 per hour, which were

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all paid in full by PLAINTIFFS. The $550 question is: how much more consistent performance by the parties to the terms of an agreement does it take to convince even the most intransient litigant that there is a CONTRACT that he has to abide by?

On that note, based on the totality of SIMON'S admissions and actions, how can he reasonably assert that there was no CONTRACT and that instead he was "waiting until the end to be paid in full?" No one agreed to that arrangement. If they had, SIMON was required by Nevada law to reduce his contingency fee dream to writing. Rather, the evidence shows that SIMON didn't present any such concept to PLAINTIFFS until the LITIGATION was nearly over and substantial settlement offers were in. Then, and only then, did SIMON demand a bonus. Plus, SIMON'S conduct clearly runs counter to that assertion. From the beginning to nearly the end, SIMON billed, and was paid, nearly $500,000. That's nearly the full amount of PLAINTIFFS initial property damage claim! Is billing a client an amount that equals her total loss be deemed a reasonable fee, let alone waiting to be paid more? Hardly can be or should be.

Fourth, there are the calculations of damages in the LITIGATION that SIMON was obligated to submit and serve on PLAINTIFFS behalf and in accordance with NRCP 11(b) and NRCP 16.1. The calculations of damages submitted by and signed by SIMON set forth damages, including attorneys' fees, based on his hourly rate of $550 and paid in full by PLAINTIFFS. Thus we see that all of the conduct by SIMON in the LITIGATION refutes his newfound position and instead supports a finding that the terms of the CONTRACT contain the agreement of the parties on the amount of the fee between SIMON and PLAINTIFFS, which is as hourly rate of $550.

The only pathway for SIMON to prevail on his Motion is to convince a trier of fact that the CONTRACT isn't a contract and that it didn't contain the agreement of the parties on the amount of SIMON'S fee. The CONTRACT contains every element of a valid and enforceable contract. PLAINTIFFS asked SIMON to represent them in the LITIGATION in exchange for an

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hourly fee of $550, plus the reimbursement of costs incurred (the offer). SIMON agreed to serve as PLAINTIFFS attorney and to be paid the hourly rate of $550 for his services (the acceptance). PLAINTIFFS agreed to pay, and SIMON agreed to receive, $550 per hour for SIMON'S time, plus the reimbursement of costs (the consideration). Thereafter, SIMON billed PLAINTIFFS for his time at a rate of $550 per hour, plus incurred costs, and PLAINTIFFS paid each invoice presented by SIMON in full (the performance). There isn't a question of capacity or intent. Therefore, that's a contract, which is the CONTRACT.

SIMON now seems to want a contingency fee from PLAINTIFFS without a written contingency fee agreement, ironically one that he never wanted or would have agreed to in the first place. SIMON attempts this impossible task by taking a creative, though impermissible, approach to the facts and the law.

First, despite his belated denials, all of SIMON'S conduct to date supports a finding that be knows without any measure of doubt that he agreed from day one to accept $550 per hour from PLAINTIFFS in exchange for his services in the LITIGATION. It shows in his billings/invoices, in his cashing of PLAINTIFFS checks to the tune of **$486,453.09**, and in his representations to, and filings with, the parties and this Court. Every reasonable sign points to SIMON'S clear understanding and agreement that his fees were his fees (i.e.$550 per hour). For SIMON to now argue against the agreement that he has profited so handsomely and instead demand an additional bonus of well over one million dollars of PLAINTIFFS property is belied by any measure of common or factual sense.

Second, SIMON remarkably misstates Nevada law at page 8 of his Motion by asserting that NRS 18.015(2) and *Gordon v. Stewart*, 324 P.2d 234 (Nev. 1958) stand for the proposition that: "If there is no express contract, the charging lien is for a reasonable fee." (See SIMON'S Motion at page 8, lines 3-6.) Of course, there is nothing in the Nevada Revised Statutes, in NRS 18.015(2), or in Nevada law in general, including those cited by SIMON, that says anything of the

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sort. Perhaps it was merely an oversight by SIMON to assert something so misleading and wrong. Rather, NRS 18.015(2) states that "in the absence of an agreement, the lien is for a reasonable fee...." *Gordon* dealt with an attorney who had withdrawn, thus negating the contract as a matter of law that had purportedly existed. Nonetheless, it doesn't say what SIMON says and hopes it says.

SIMON also relies on other case law to support his novel theory, and that case law generally involves attorneys who've either withdrawn or been fired, of attorneys who've sought liens when they've failed to recover anything of monetary value, or an unfortunate case where the attorneys failed to perfect their lien before settlement proceeds were received and deposited. In most of the cases, a fee agreement (contract) no longer existed because it was terminated as a matter of right when the attorney-client relationship was severed. None of these cases has any application to the cases at hand, as an agreement was reached—the CONTRACT—and SIMON remains as counsel of record for PLAINTIFFS in the LITIGATION.

Not only is SIMON wrong to assert that there was no agreement—CONTRACT—for fees despite the avalanche of evidence to the contrary, and wrong for him to suggest that the law requires agreements for attorney's fees to be in writing for the terms to be enforceable, his singular view runs amuck with the direction from the State Bar of Nevada. Attached as Exhibit 3 is an Informational Brochure from the State Bar entitled "How Lawyers Charge." While not controlling per se, it always makes sense to look from time to time to the organization that governs us lawyers. The first bullet point suggests that the client ask the lawyer in person and at the outset about the fee. That's exactly what Mr. Edgeworth did, and SIMON told him that his fee would be $550 per hour, and that's what SIMON charged, time and time again.

The second bullet point tells the public how lawyers charge their fees. Three types are discussed. There are hourly fees charged for cases, "particularly civil litigation" just like we had in the LITIGATION. Contingency fees are mentioned, "where the lawyer is paid only if the

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client wins the case." (Emphasis added.) That didn't happen here, as SIMON was paid nearly a half million dollars by PLAINTIFFS at $550 per hour from the beginning of the case through the last invoice that SIMON submitted. Last, it mentions a flat fee, though no one is claiming it applies.

Of additional importance is bullet point 6, where the question is asked: "Must the lawyer-client fee agreement be in writing?" Much of the answer focuses on contingency fee agreements, which clearly must be in writing. A portion of the last sentence states that: "Obtaining a written fee agreement in advance is in the best interests of the client...." Even though SIMON owed a fiduciary duty to act in the best interests of PLAINTIFFS (his clients), which included presenting a written fee agreement to them as the clients, there is nothing in this Exhibit, or pursuant to Nevada law, that states that fee agreements for an hourly rate must be in writing. Rather, the law supports the existence of, and the terms of, the CONTRACT.

SIMON'S tenuous and new position also runs amuck with the Nevada Rules of Professional Responsibility. Rule 1.5(b) speaks on fee agreements and states: "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...." (Emphasis Added.) That was SIMON'S responsibility to present a written fee agreement to PLAINTIFFS. It is inherently wrong to allow him to now profit from his failure to look after the best interests of his clients, PLAINTIFFS, as he is clearly attempting to do with his lien and his Motion.

The law clearly demonstrates that the terms of an oral contract are enforceable, through the testimony of the parties, together with their conduct. Here, Mr. Edgeworth's affidavit sets forth the terms of the fee agreement, or CONTRACT, of the parties. SIMON'S conduct does, too. His multiple invoices for services bill at $550 per hour, cashing the checks that mirror the amounts of the invoices, and making numerous representations to lawyers and to this Court in the

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LITIGATION that his fees are set forth in documents produced to date, both in pleadings and in discovery, paint a very clear picture of his agreement to the terms of the CONTRACT.

There is simply no factual or legal basis for SIMON'S attorneys' lien or his Motion. There are no practical reasons, either. To the contrary—to entertain SIMON'S Motion or the foundation for his liens sends a very troubling message to the community who looks to lawyers for help. For the purposes of this Opposition, SIMON'S conduct here will be referred to as The SIMON Rule. If The SIMON Rule is adopted, attorneys will be emboldened by the following in the handing of their client's interests: 1.) Agree to represent a client for an hourly fee of $550, but fail to represent their best interests by reducing the fee agreement to writing; 2.) Bill the client $550 per hour for an extended period of time and collect thousands or hundreds of thousands of dollars from the client, who pays on time when the invoices are presented; 3.) Express a desire to change the terms of the fee agreement when it becomes clear that a much higher fee, or bonus, can be had if the client will agree to do so; 4.) When the client won't agree to pay more than the agreed to fee of $550 per hour, lien the file for the additional proceeds, or bonus, that you had you eyes on late in the game; and, 5.) Use your failure to reduce your fee agreement in writing as a basis to get more money on the back of a "charging lien."

How would The SIMON Rule sell if it were widely known that this is the way that we attorneys can operate? Not well. Thankfully, neither the facts, nor the law, nor practical or common sense supports The SIMON Rule. Instead, PLAINTIFFS respectfully request that this court deny SIMON'S Motion to Adjudicate Attorneys Lien and refuse to acknowledge the validity of SIMON'S liens. Instead, allow PLAINTIFFS claims against SIMON to proceed before a jury, as provided for in Nevada law. See *Cheung v. Eighth Judicial District Court*, 124 P.3d 550 (Nev. 2005); Nev. Const. art. 1, section 3.

PLAINTIFFS right to a jury trial and to present their claims against SIMON, as set forth in their COMPLAINT, is the fair and reasonable remedy here. PLAINTIFFS claims have nothing

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nothing to do with adjudicating an attorneys lien. To the contrary, they're suing SIMON for the conversion of PLAINTIFFS property that SIMON has no factual or legal basis to make a claim upon. The essential elements of conversion are present here, as PLAINTIFFS have exclusive rights to the ownership and possession of the settlement proceeds, SIMON has converted PLAINTIFFS property by wrongfully claiming a lien and refusing to release the full amount of the settlement proceeds to PLAINTIFFS, and PLAINTIFFS have been damaged by nearly $2,000,000 by SIMON'S baseless lien. *Bader v. Cerri*, 609 P.2d 314 (Nev. 1980), overruled on other grounds by *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1050-51 (Nev. 2000); *Gebhardt v. D.A. Davidson*, 661 P.2d 855 (Mont. 1983).

Furthermore, PLAINTIFFS COMPLAINT is far more than a mere summary adjudication that can be resolved over a couple of hours of argument. We're dealing with well $692,120 in "new" billings that PLAINTIFFS saw for the first time with the filing of SIMON'S Motion and a huge lien. Think of that for a moment: from May 27, 2016, through September 19, 2017, SIMON produced thirty-one (31) pages of invoices and was paid **$486,453.09** in fees and costs. Then, on January 24, 2018, SIMON stuffed in one hundred and eighty-three (183) pages of "new" invoices as Exhibit 19 to his Motion, totaling an additional **$692,120** in additional fees and costs.

In addition to the obvious question of "why now?", multiple other questions surround these documents and the motives behind them. Why weren't these new invoices prepared contemporaneously with the work that was being done? SIMON certainly had pen and paper, if not the billing software he mentioned in his Motion, to jot things down and they were done. Why weren't these invoices produced to the defendants in the LITIGATION and set forth in PLAINTIFFS computation of damages? Or presented to PLAINTIFFS months ago for review and/or payment?

SIMON'S expert seems to embrace SIMON'S conduct, at least on paper. How will he fare in a deposition on cross-examination with Mr. Vannah? What will his response be when

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asked how SIMON possibly met his standard of care and abided by his fiduciary duty to PLAINTIFFS when these 183 pages of documents and $692,120 in damages were never produced to the defendants or set froth in a computation of damages in the LITIGATION, let alone while discovery was still open? Trial was scheduled for January 8, 2018, and these weren't produced until after the trial date? Will he still hold true to his opinions? Whatever he says in response, a wise justice of the Nevada Supreme Court once said: "Experts are like bananas—you can buy them by the bunch."

What will SIMON and his associate testify to in deposition as to why they did what they did, and how they came up with these new billings for old tasks? And the list goes on. PLAINTIFFS didn't ask for any of this. They are the only victims here. They suffered the flood. They suffered the property damage. They are the ones who the subcontractors and insurers ignored and were left out to dry. They're the ones that have paid nearly $500,000 in fees and costs to SIMON pursuant to the CONTRACT. They are the ones who are being denied full access to their property (the settlement proceeds) by SIMON.

PLAINTIFFS have a right to a jury trial (and all the usual tools) of their dispute to recover their property from SIMON, just as "Nevada attorneys have all of the usual tools available to creditors to recover the payment of their fees." *Leventhal v. Black & Lobello*, 305 P.3d 907, 909 (Nev. 2013). Is SIMON to suggest that attorneys are afforded more options, and entitled to better treatment, than their clients?

In conclusion, a fair remedy in a jury trial before their peers is exactly what PLAINTFFS request. In order to prepare their case, PLAINTIFFS require discovery, including a complete copy of SIMONS'S file, which is also PLAINTIFFS file. PLAINTIFFS believe that when a jury sees and hears the full effect of The SIMON Rule, justice for them will finally be found. As a result, PLAINTIFFS respectfully request that this Court deny SIMON'S Motion to Adjudicate his baseless lien.

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B. THERE IS NO COMMONALITY OF ISSUES, PARTIES, FACTS, LAW, OR INTERESTS BETWEEN THE LITIGATION BEFORE THIS COURT AND THE MATTER PENDING BEFORE JUDGE STURMAN.

NRCP 42(a) allows consolidation only when multiple actions involve "a common question of fact or law...." There is no such commonality here. The LITIGATION involved claims for different damages against different defendants following a flooding event at a home owned by PLAINTIFFS. All of the claims against the parties to the LITIGATION have been resolved and dismissal with prejudice is imminent.

The claims of PLAINTIFFS against SIMON stem from his unwillingness to honor the CONTRACT and his refusal to release the full amount of PLAINTIFFS property—the settlement proceeds—to PLAINTIFFS. As set forth above, despite agreeing to receive $550 per hour for his services, and accepting nearly $500,000 for his time and expenses, SIMON demands more. When PLAINTIFFS weren't willing to agree to SIMON'S new, proposed terms, SIMON responded by making a claim to PLAINTIFFS property through baseless attorneys' liens.

While PLAINTIFFS did agree to place the "disputed" funds in a common account, it wasn't their desire to do so. Rather, they want their proceeds and are entitled to them, as they've honored every aspect of the CONTRACT. Yet, since SIMON made his baseless claim to the proceeds and wouldn't agree to release them until his issue was resolved, PLAINTIFFS agreed to the common account. However, that's not genuine "consent" or the kind of consent that anyone should be proud of.

Contrary to SIMON'S assertions in his Motion at page 5, PLAINTIFFS did not file case A-18-767242-C to adjudicate an attorneys lien. Or to merely forum shop. Far from it. As has been made clear throughout this Opposition, PLAINTIFFS dispute that SIMON'S lien has any basis in fact or law, as PLAINTIFFS have paid every dime of every invoice presented to them to date. Furthermore, the LITIGATION has resolved with only ministerial tasks to complete. It was

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senseless to move this Court to appear in that action to address PLAINTIFFS claims against SIMON for breach of contract, declaratory relief, and conversion.

PLAINTIFFS also expressed a willingness to pay the invoice that SIMON presented then withdrew last fall. Since PLAINTIFFS dispute the validity of SIMON'S liens, and since SIMON wouldn't release the full amount of PLAINTIFFS settlement proceeds, filing of a separate action was the only reasonable route they could take to be made whole. Unlike in *Verner v. Nevada Power Co.*, 706 P.2d 147 (Nev. 1985), since the issues of liability and damages in these two separate actions are not inextricably linked, and since SIMON'S claimed attorneys' lien is baseless in fact and in law, there is no need for this court to retain jurisdiction and consolidate these cases.

III.

CONCLUSION

Based on the foregoing, PLAINTIFFS respectfully request the Court deny SIMON'S Motions and instead allow PLAINTIFFS to present their claims for damages against SIMON before a jury in case No. A-18-767242-C, as provided by Nevada Constitutional and case law.

DATED this 2 day of February, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ.

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CERTIFICATE OF SERVICE

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

Electronically:

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

Traditional Manner:
None

DATED this 2 day of February, 2018.

An employee of the Law Office of
Vannah & Vannah

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Exhibit 1

Exhibit 1

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

10. Plus, SIMON didn't express an interest in taking what amounted to a property damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted

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what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

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

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

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

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

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

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

16. Another reason why we were so surprised by SIMON'S demands is because of the nature of the claims that were presented in the LITIGATION. Some of the claims were for breach of contract and indemnity, and a part of the claim for indemnity against Defendant Lange was the fees and costs we were compelled to pay to SIMON to litigate and be made whole following the flooding event. Since SIMON hadn't presented these "new" damages to defendants in the

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LITIGATION in a timely fashion, we were savvy enough to know that they would not be able to be presented at trial.

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Kostadinka Boneva
Notary Public in and for said County and State

KOSTADINKA BONEVA
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 13-11787-1
My Appt. Expires Oct. 11, 2021

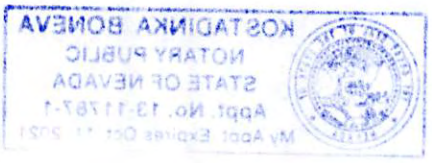
KOSTADINKA BONEVA
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 13-11787-1
My Appt. Expires Oct. 11, 2021

Exhibit 2

Exhibit 2

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC,

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED CLAIMS.

Case No. A738444

DEPOSITION OF BRIAN J. EDGEWORTH

INDIVIDUALLY AND AS NRCP 30(b)(6) DESIGNEE OF EDGEWORTH FAMILY TRUST AND AMERICAN GRATING LLC

Taken on Friday, September 29, 2017

By a Certified Court Reporter

At 9:35 a.m.

At 1160 North Town Center Drive, Suite 130

Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 23999

A. At the end of the tax year when we reconcile all -- all the different expenses, it would be on there.

Q. Okay. And is it your testimony that you haven't reconciled the 2016 taxes yet?

A. No.

Q. Okay. So -- and obviously you haven't done the 2017 taxes yet?

A. No.

Q. Okay. So there's noplace that you could look for that information and tell me a number of attorneys' fees that American Grating LLC has actually incurred prior to May of 2017?

A. Yes, I could.

Q. You could?

A. Yes.

Q. Okay.

MR. SIMON: They've all been disclosed to you.

MS. DALACAS: The reconciliations?

MR. SIMON: No.

MS. DALACAS: The attorney --

MR. SIMON: The attorneys' fees and costs for both of these plaintiffs as a result of this claim have been disclosed to you long ago.

MS. DALACAS: I'm --

MR. SIMON: And they've been updated as of last week.

MS. DALACAS: I understand that.

BY MS. DALACAS:

Q. I'm just wondering or trying to determine whether or not -- since we've talked about these different entities, Edgeworth Family Trust and American Grating, is there a separation as between the attorneys' fees between the two entities?

A. No. American Grating owes the attorneys' fees.

Q. American Grating owes the attorneys' fees?

A. Correct.

Q. Is that your testimony as to attorneys' fees and costs incurred prior to May of 2017 when they became a plaintiff in this case as well?

A. Yes, they would owe that.

Q. Okay. And why is that?

A. Because obviously it's their case.

Q. American Grating's case?

A. Yes.

Q. Okay. So why weren't they included as a plaintiff from the filing of the original complaint

Exhibit 3

Exhibit 3

Informational Brochure

How Lawyers Charge

HOW LAWYERS CHARGE

Many people who need legal help are reluctant to see a lawyer because they are afraid that legal services are expensive. Actually, in many cases, fees are moderate in comparison with the benefits gained or the losses avoided. It often turns out to be more expensive in the long run not to see a lawyer.

$ How can I find out what it will cost for the legal services I need?

When you first contact a lawyer's office to make an appointment, ask what the lawyer charges for an initial consultation. When you consult the lawyer in person, ask at the outset about fees. It is in the best interests of both the lawyer and the client to have a clear understanding of the fee for the lawyer's services in advance so there will be no misunderstanding later.

$ How do lawyers charge?

There are three basic types of fees for legal services. In some cases, particularly civil litigation and contested domestic matters, the lawyer will charge an hourly fee. The lawyer will keep accurate time sheets describing the time spent on your case.

In certain other cases, lawyers charge a contingency fee, in which an agreement is made with the client in advance that the lawyer will get, as a fee, a percentage of the amount recovered after certain expenses are deducted. In this case, the lawyer is paid only if the client wins the case. In most cases, the client will be responsible for the costs regardless of the court decision. This is most commonly seen in personal injury cases.

Finally, there is a flat fee in which the lawyer has a set fee for the service to be provided, regardless of the time involved. Flat fees are commonly used in defense of criminal charges, some civil cases and routine matters such as uncontested domestic matters, and preparation of simple wills, deeds and other similar documents.

$ How does a lawyer set a fee?

No two situations are alike. A lawyer will consider many of the following factors in arriving at a fair fee:

- Time - A lawyer's main stock in trade is time and advice.
- Office overhead - When you hire a lawyer, you are hiring the lawyer's entire law office.
- Ability, skill and reputation - A lawyer often charges based upon his or her skill and reputation acquired in the professional community.
- The relationship between lawyer and client - In an on-going relationship, in which the client uses the lawyer's services regularly with a continual history of payment, the charge for a particular matter may be less than if the employment of the lawyer is on a one-time or casual basis.

Other issues may be considered in setting fees: novelty and difficulty of the problem; amount of responsibility assumed by the attorney; custom in the geographical area; or preclusion of other employment during a particular case.

$ Does any court set rules on legal fees?

Yes. Nevada Rule of Professional Conduct 1.5 defines the factors to be considered in determining the reasonableness of a lawyer's fees:

1. the time and labor involved, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the dollar amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

Over for more ➔

How Lawyers Charge - *(continued from other side)*

$ *Are there any restrictions on a contingency fee?*

Yes. A lawyer may not charge a contingency fee in a criminal case where the fee depends upon the outcome. Likewise, a lawyer may not charge a contingency fee in a contested domestic relations matter. Public policy dictates that a lawyer's fee not be dependent upon securing a divorce, or the amount of alimony or child support or property settlement ultimately awarded.

$ *Must the lawyer-client fee agreement be in writing?*

In Nevada, a contingent fee agreement must be in writing and signed by the client. Further, the contingent fee agreement must state the method by which the fee is to be determined, including the percentage of the recovery and whether expenses are to be deducted before or after the contingent fee is calculated, and whether the client is liable for expenses, regardless of the outcome. Ask your lawyer to explain what expenses will be charged and when the client costs are to be paid. Obtaining a written fee agreement in advance is in the best interests of the client, so that there will be a written record in the event that there is a dispute later about the lawyer/client relationship.

$ *What is a retainer?*

A retainer is the initial fee paid by the client to begin representation on a particular matter. The lawyer and client should have a firm understanding of exactly what is contemplated and covered by that initial retainer. Your lawyer is required to place these retainers in a special account called a trust account, against which the fees for your legal matter will be billed until it is completed. If the retainer is insufficient, the attorney may ask for additional funds to be used in the same manner. Likewise, unused funds at the end of the legal matter remain the property of the client and should be reimbursed to the client after all expenses are paid.

$ *What are "costs?"*

A lawyer must spend money to file papers with the court and to hire other persons such as court reporters or investigators. These expenses are knows as "costs" and are normally paid by the client in addition to the lawyer's fees. Costs are in addition to the attorney's bill for his or her time and effort.

$ *What is the State Bar's role in how lawyers charge?*

You should know that lawyers as a group are concerned that their clients are satisfied with their work, and with any fees charged for services rendered. Your attorney should discuss fees with you and respond to your reasonable questions on this subject during the course of your professional relationship.

$ *How do I find an attorney ?*

You can contact the State Bar of Nevada's ***Lawyer Referral & Information Service*** at **702-382-0504** (toll-free in Nevada at **1-800-789-5747**) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The State Bar's main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

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Eighth Judicial District Court
District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5 and ROE entities 6 through 10; Defendants.	Case No.: A738444 Dept. No.: 10 **REPLY IN SUPPORT OF MOTION TO ADJUDICATE ATTORNEY LIEN AND MOTION FOR CONSOLIDATION** Date of Hearing: 2.6.18 Time of Hearing: 9:30
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC Plaintiffs, vs. DANIEL S. SIMON d/b/a SIMON LAW; DOES 1 through 10; and, ROE entities 1 through 10; Defendants.	Case No.: A-18-767242-C Dept. No.: 26 Date of Hearing: N/A Time of Hearing: N/A

I. INTRODUCTION

Plaintiffs' opposition misses the point, and misstates the meaning of a basic contract law term. The fact that the client disputes the amount of the lien does not divest this Court of jurisdiction. This Court has jurisdiction to hear the motion for adjudication; and, the Opposition does not cite contrary authority.

As to the facts, the e-mails between Mr. Simon and Mr. Edgeworth contradict the story told in the Opposition. On May 27, 2016, Mr. Simon agreed to "send a few letters" in response to the stated desire of Mr. Edgeworth that he did "not want to waste your time". Exhibit A. There are no writings that support the story of the Opposition of contract formation in May of 2016; instead, the documents support the conclusion that Mr. Simon took the case without a formal agreement.

Likewise, the story of the Opposition that an express contract was reached on attorney fees is contradicted by Mr. Edgeworth's own words. On August 22, 2017, Mr. Edgeworth wrote in response to continued fee discussions:

"We never really had a structured discussion about how this might be done"

. . .

. . .

. . .

And, in acknowledgment that the case was not handled on a strict hourly basis:

> I could also swing hourly for the whole case (unless I am off what this is going to cost). I would likely borrow another $450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell."

Exhibit B. Obviously, if the case was on strict hourly, the above statements would not have been made by Mr. Edgeworth, as he was already on the hook for the fee. Instead, Mr. Edgeworth's own words confirm that his friend was not fully billing the case to ease the strain on Mr. Edgeworth, and because of an expectation of a fee based on results and not time.

II. ARGUMENT

When there is no express contract, an attorney is due a reasonable fee under the Nevada attorney lien statute, NRS 18.015(2).[1] The court has wide discretion on the method of calculation of the attorney fee. *Albios v. Horizon Communities, Inc.*, 132 P.3d 1022, 1034 (Nev. 2006). Whatever method of calculation is used by the court, the amount of the attorney fee must be reasonable under the *Brunzell* factors. *Id*. The court should enter written findings of the reasonableness of the fee under the *Brunzell* factors. *Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, at fn2 (Nev. 2009).

---

[1] There are two types of attorney liens in Nevada. A "charging" lien, which attaches to a fund of money obtained by the efforts of the attorney; and, a "retaining" lien, which allows an attorney to withhold client documents until paid. The law office asserted a charging lien.

The *Brunzell* factors are:

1. The qualities of the advocate;

2. The character of the work to be done;

3. The work actually performed; and,

4. The result obtained.

Brunzell v. Golden Gate National Bank, 455 P.2d 31 (Nev. 1969).

The Declaration of William Kemp is attached at Exhibit C. Mr. Kemp is one of the top product liability attorneys in the United States. Mr. Kemp is also very experienced in the determination of the reasonable fee of an attorney in a product liability case. In his Declaration, Mr. Kemp describes his experience in detail, including his work on the determination of a reasonable attorney fee. Mr. Kemp then reviews and applies the Brunzell factors to find a reasonable fee for The Law Office of Daniel Simon P.C. for the amazing work performed on behalf of the Edgeworths. Mr. Kemp reaches a reasonable attorney fee value of $2,440,000.00.

. . .

. . .

. . .

A. There was no express contract.

The Opposition misstates basic contract law. In *Golightly v. Gassner*, 281 P.3d 1176 (table) (Nev. 2009) the Supreme Court stated:

> In the absence of a fee agreement, NRS 18.015(a) allows an attorney's lien to be "for a reasonable fee." **When an express fee agreement exists**, NRS 18.015 does not specify whether the district court must similarly examine an attorney fees award for reasonableness. (Emphasis added.)

An *express* contract can be oral or written; an *implied* contract is inferred by conduct. This is basic contract law. Black's Law Dictionary states:

> *Express and implied*. An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.
>
> An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. (Italics in original.)

Black's Law Dictionary, Fifth Edition, at 292-93.

The Opposition does not explain away the client's written admission that Mr. Simon and Mr. Edgeworth never had a structed discussion regarding payment. It does not matter that certain billings were paid in an express contract analysis. For any contract to exist, all details and terms must be agreed upon, as a matter of law. *Loma Linda University v. Eckenweiler*, 469 P.2d 54, 56 (1970).

B. This Court has jurisdiction to adjudicate the lien.

The clients did not support their challenge to the jurisdiction of this Court to adjudicate the lien. The clients submit rhetorical questions, but do not supply any legal authority for the proposition that this Court cannot adjudicate the attorney lien. On the other side of the issue, the law office provided extensive Nevada authority, statutory and case law, that this Court has jurisdiction to adjudicate the lien.

Contentions of law within motions and oppositions must be supported by authority. EDCR 2.20. If a legal contention is not supported by authority, then the court may find that the contention is not meritorious. EDCR 2.20. The motion to adjudicate lien set out in detail the applicable Nevada law that provides this Court has jurisdiction over the attorney lien. The client did not provide contrary authority. Simply calling a lien "fugitive" without explaining how or why, and with no supporting legal authority, is not sufficient. Accordingly, this Court has jurisdiction to adjudicate the lien.

To be clear, this Court has jurisdiction to adjudicate the charging lien regardless of the existence of the alleged contract. The court's resolution of the contract issue may impact the method of calculation of fee, but it does not impact jurisdiction.

C. A client does not divest a court of jurisdiction over a charging lien by creating a fee dispute.

The clients did not make a supported argument that this Court is divested of jurisdiction to adjudicate the lien by the alleged contract dispute, nor did the clients support the inferred argument that the lien adjudication and their contract action are mutually exclusive remedies. (They are not. *See, e.g.*, NRS 18.015.)

This Court may address the impact on fees by the alleged contract through motion practice and/or an evidentiary hearing. In, *Hallmark v. Christensen Law Offices*, 381 P.3d 618 (Nev. 2012), the Nevada Supreme Court directed the district court to hold an evidentiary hearing to answer the question of "what is the amount of the lien to be determined by the Court?" In *Hallmark*, the Supreme Court directed the district court to deal with allegations of billing fraud at an evidentiary hearing.

The Supreme Court in *Golightly*, 281 P.3d 1176 upheld a district court lien adjudication when fees were disputed. In, *T.I.P. Holding Corporation v. Bowers*, 2013 WL 782543, the Supreme Court upheld an adjudication of a retaining lien that involved claims of excessive billing. The amount of fees was impliedly disputed in *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 373 P.3d 103 (Nev. 2016), although the decision focused on the failure of the law firm to perfect its lien under NRS 18.015.

In *Ecomares Inc., v. Ovcharik*, 2007 WL 1933573 (D. Nev. 2007), Magistrate Cooke recommended that a motion to adjudicate lien when fees are in dispute be delayed until "resolution of this proceeding", then the law firm could proceed with a

lien adjudication. That thinking was followed by Magistrate Leavitt in *Selimaj v. Henderson Police Department*, 2010 WL 1688763 (D. Nev. 2010), when a dispute over costs was resolved by lien adjudication after settlement of the proceeding.

The statute, NRS 18.015, does not have any exceptions (contract dispute or otherwise) to jurisdiction over a charging lien. The only possible exception that could be argued is when legal malpractice is alleged, based on dicta from *Argentena Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish*, 216 P.3d 779, 782 (Nev. 2009). The legal malpractice comment is dicta because it was not a part of the holding of the case. The *Argentena* opinion recognized that dicta is not controlling at HN 8 when the Court states:

> "Dicta is not controlling. A statement in a case is dictum when it is unnecessary to a determination of the questions involved..."

The *Argentena* case addressed whether a court could adjudicate a retaining lien. The Court concluded that a district court could not adjudicate a retaining lien, because a retaining lien was based on common law and was not mentioned in NRS 18.015. The case did not involve a charging lien and any ruling surrounding a charging lien is merely dictum.

The *Hallmark* opinion concurs. In *Hallmark*, the Supreme Court cited to *Argentena* when it directed the district court to hold an evidentiary hearing to address the allegations of billing fraud:

> "...Accordingly, we reverse the district court's judgment and remand this matter for further proceedings consistent with *Brunzell* or *Argentina Consol. Min. Co*. Upon remand, the district court is directed to conduct an evidentiary hearing to determine the issue of quantum meruit and other allegations, including the allegations of billing fraud. The district court is also instructed to make detailed findings of fact to support its award or denial of attorney fees."

In 2013, the Legislature added a retaining lien to NRS 18.015. Now a district court has unfettered jurisdiction to adjudicate a retaining lien. *Fredianelli v. Fine Carmen Price*, 402 P.3d 1254 (Nev. 2017). In *Fredianelli*, the Nevada Supreme Court found that because the Legislature added a retaining lien to NRS 18.015, a court in a paternity action could determine the amount of attorney fees owed and reduce the retaining lien to a judgment.

D. There was no conversion, and no duties were breached.

There is agreement between the parties that labels (and bananas) are cheap. What matters is the merit of a position.

The clients obliquely dismiss the opinion of Mr. Clark, without once addressing the merits of his opinion. Mr. Clark's opinion is well grounded in the law. Mr. Clark confirms that a law firm is not just within its legal rights to pursue an attorney's lien, but encouraged to do so by the rules of ethics. The clients provide no contrary authority.

Mr. Clark also confirms that placement of money into a trust account is not conversion. The clients' case authority confirms the opinion. *Bader v. Cerri*, 609 P.2d 314 (Nev. 1980), addressed a refusal to release a cattle brand after a dispute over a contract to sell land and the cattle. The refusal to release a cattle brand in *Bader* was not allowed by statute (NRS 18.015). The decision in *Gebhardt v. D.A. Davidson & Co.*, 661 P.2d 855 (Mont. 1983) was based on a procedural error by the district court, and does not apply.

1. Plaintiffs do not have a right to possession sufficient to allege conversion.

In *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536, 543 (2008), citing California law, the Nevada Supreme Court recognized the need to establish the right to "exclusivity" of the chattel or property alleged to be converted (*M.C. Multi-Family* addressed alleged conversion of intangible property). Plaintiffs claim they are due money via a settlement agreement, a contract. Thus, Plaintiffs have plead a right to payment based upon contract. However, an alleged contract right to possession is not exclusive enough, without more, to support a conversion claim:

> "A mere contractual right of payment, without more, will not suffice" to bring a conversion claim."

Plummer v. Day/Eisenberg, 184 Cal.App.4th 38, 45 (Cal. CA, 4th Dist. 2010). See, Restatement (Second) of Torts §237 (1965), comment d.

Nevada law expressly allows an attorney to recover fees via a charging lien, and expressly states such an effort is not a breach of duty. NRS 18.015(5). Thus, as a matter of law, asserting a charging lien, or expressing a desire to be paid cannot serve to change a lien claim into conversion.

A lien claim is not conversion. In *Morfeld v. Andrews*, 579 P.2d 426 (Wyo. 1978), the court granted summary judgment in favor of the defendant attorney when a client alleged a lien claim was conversion. More recently in *Behesthi v. Bartley*, 2009 WL 5149862, (Calif. 2009), the court granted a motion to dismiss a similar client claim, and granted the defendant attorney relief under the California Anti-SLAPP statute - which is akin to Nevada's.

2. A charging lien is allowed by statute.

NRS 18.015 allows an attorney to file a charging lien. The Law Office of Daniel S. Simon, A Professional Corporation acted in compliance with the statute. Thus, as a matter of law, Plaintiffs cannot satisfy the wrongful dominion element.

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3. The money was placed into a trust account, per agreement of the parties.

The Law Office of Daniel S. Simon, A Professional Corporation acted properly pursuant to Nevada Rule of Professional Conduct 1.15 "Safekeeping Property". The Rule states in relevant part:

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

The law office followed the exact course mandated by the Rules of Professional Conduct. The money was placed into a trust account per agreement of the parties. See Bank of Nevada letter establishing joint trust account for settlement proceeds, attached as Exhibit D. The law office does not have control over the funds and interest on the money inures 100% to Brian Edgeworth. Mr. Vannah is a signer on the account, thus the law office did not convert any funds.

It is axiomatic that a person not in possession cannot convert. Restatement (Second) of Torts §237 (1965), comment f.

Deposit of funds into a trust account is not an act of dominion contrary to any stakeholder interest. In fact, it is the opposite. The Nevada Supreme Court has ruled that holding disputed funds in an attorney trust account is the same as the Court

holding the funds in an interpleader action. *Golightly & Vannah, PLLC v. TJ Allen LLC*, 373 P.3d 103 (Nev. 2016).

An attorney is allowed by statute and the rules of ethics to resolve a fee dispute via a charging lien. Assertion of a lien right provided by statute is not conversion. *See*, Restatement (Second) of Torts §240 (1965). Likewise, undisputed money was provided to the client promptly upon funds becoming available. Thus, no conversion.

E. The contract argument is moot, because the clients constructively discharged the law firm.

The settlement funds were received when the funds cleared the bank on January 18, 2018. The clients signed the checks on January 8, 2018. When the Edgeworth's filed suit on January 4, 2018 they constructively discharged Mr. Simon's firm allowing for adjudication of the lien pursuant to quantum meruit.

In a similar case the Ohio Appellate Court confirmed that the Edgeworths constructively discharged their attorney and quantum meruit can be used as the method to calculate a reasonable attorneys fee by the trial judge. The Court also confirmed that the trial judge can make findings and conclusions through an evidentiary hearing on the allegations of an alleged contract.

In *Rosenberg v. Calderon Automation, Inc.,* 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986), a lawyer provided services to the client without a contract. As the case was ready to be resolved the client did not want to pay the lawyer because there was no contract. The client stopped all communication with the lawyer. The Ohio Appellate Court determined that the reasonable value of the lawyer's services were due under quantum meruit. See case attached hereto as Exhibit "E". The Court in Rosenberg held an evidentiary hearing to determine the contract issues and the amount of the services due to the lawyer. As here, the client alleged a contract for past performance and raised other claims including breach of the lawyer's fiduciary duty.

In Rosenberg, the court held an evidentiary hearing and found there was a constructive termination of the lawyer's services when the client refused to speak to the lawyer any longer. The Court also made findings that the lawyer did not breach any of his fiduciary duties.

The Ohio Court of Appeals in *Rosenberg* analyzed the attorney-client relationship, finding that:

> "...As Calderon had no further communications with Rosenberg after he suggested entering into settlement negotiations, the Rosenberg court determined that these events constituted constructive termination: The general rule provides that the "attorney-client relationship is consensual in nature and that the actions of either party can affect its continuance."

Brown v. Johnstone (1982), 5 Ohio App. 3d 165, 167. As the Brown court noted, the termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client. Id., at 166; *Bucaro v. Keegan, Keegan, Hecker & Tully* (1984), 483 N.Y.S. 2d 564. The termination of the principal-agency relationship may occur at the expiration of a reasonable time, Restatement of the Law, Agency (2d Edition 1958) 275, Section 105, or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority. Restatement of the Law, Agency (2d Edition 1958) 283, Section 108.

Id. at *13-14 (emphasis added). Calderon's refusal to communicate with Rosenberg, along with ignoring Rosenberg's letters requesting payment, confirmed that the attorney-client relationship was terminated. Id. at *14-15...."

The Rosenberg court noted that an attorney that is discharged without just cause is entitled to compensation based upon a stated agreement or upon the theory of quantum meruit. Id. at *15. Interestingly, the Rosenberg court cited an unreported case in Ohio, *Wilcox v. Rich*, noting that:

"Where a contract for the performance of labor is wrongfully terminated by one-party, after part performance by the other, the right of the party performing, to recover the value of the labor performed, irrespective of the contract price, depends on whether, having regard to the contract, the party wrongfully terminating it, would thereby enrich himself at the expense of the other." *Wilcox v. Rich* (Dec. 22, 1981), Franklin App. No. 81AP-269, unreported.

Id. at *15-16 (emphasis added.)..."

Thus, the final consideration was how Rosenberg should be compensated – either by a percentage of the contingency fee or by the basis of quantum meruit. The client argued that there was a contract under the prior lawyer's contingency fee

agreement, yet there was no signed agreement between the client and Rosenberg. The Rosenberg court indicated that termination of a contract after part performance of the other entitles allowed the performing party to recover the value of the labor performed irrespective of the contract price. The Rosenberg court did not outright state that the contract or contingency agreement could be refuted but instead, the court adopted Rosenberg's election to be compensated via quantum meruit:

> "Consequently, the reasonable value of Rosenberg's services must be based either on a percentage of the contingency fee or on the basis of quantum meruit. Rosenberg has elected, by his testimony and by his letters to Calderon, to be paid based upon the theory of quantum meruit." Id. at *19.

Notably, Rosenberg did not keep time records, but Rosenberg attempted to estimate the total number of hours on the case. The Rosenberg court found that Rosenberg's testimony on the work he performed was corroborated by Calderon and Brenner and, therefore, upheld the lower court's award to Rosenberg:

> "Upon a review of the record, we find that the trial court exercised its discretion in arriving at a fair and equitable determination of fees for services rendered by Rosenberg. The trial court's award, in our opinion, accomplishes the same and we accordingly affirm." Id. at *20.

In this case, like Calderon, the Edgeworth's constructively terminated Mr. Simon's firm without just cause after receiving a good result on the case but prior to its conclusion. While the "just cause" determination is not necessarily considered in Nevada for determining whether an attorney should be compensated, the facts in Edgeworth support the obvious conclusion that the client constructively terminated

Mr. Simon's firm without just cause. Obtaining a 6.1 million dollar settlement in a property damage case and then being sued before the settlement funds are received is without just cause. Further, as discussed above – both the refusal to pay and the filing of a lawsuit constitute constructive termination. Additionally, when the Edgeworth's made the unfounded comments that Mr. Simon would steal the money, it was evident that the Edgeworth's conduct dissolved the mutual confidence between Edgeworth and Mr. Simon. Additionally, the Edgeworth's ignored Mr. Simons' request for payment of fees and costs provided to them in November of 2017, prior to the conclusion of the settlement. These acts constituted constructive termination.

The Edgeworths may contend that Mr. Simon still represents the Edgeworths and there cannot be a termination. This is not true, as the only reason Mr. Simon continues on the case is to fulfill his ethical obligations and heed the continued threats by the Edgeworths. Mr. Vannah confirmed that the law office had not been fired, despite being sued by the clients. Mr. Vannah stated if Mr. Simon withdrew, the damages sought from him would go up.[2] It is well established that even when there is a contract, contingency or otherwise, once the attorney is discharged, the attorneys can recover for the reasonable value of his services. *Law Offices of*

[2] On January 9, 2018, at 10:24 a.m., Mr. Greene from the Vannah office wrote, "He settled the case, but we're just waiting on the release and the check." The same day at 3:32 p.m., Mr. Vannah wrote, "I'm pretty sure that you see what would happen if our client has to spend lots more money to bring someone else up to speed."

Lawrence J. Stockler, P.C. v. Semaan, 355 N.W.2d 271 (1984). Here, the Edgeworth's clearly discharged Mr. Simon's firm when they refused to speak with him, hired new counsel, falsely alleged he would steal the settlement money and then surreptitiously sued him. Since Mr. Simon's firm was discharged, he is entitled to the reasonable value of his firm's services under quantum meruit. In doing so, the Court merely looks at the Brunzell factors and adjudicates the lien accordingly.

Constructive termination has also been found by other courts. For example, in *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002), the court stated that evidence of constructive termination by a client is evidenced by placing "counsel in a position that precluded effective representation and thereby constructively discharged his counsel or (2) through his obstructionist behavior, dilatory conduct, or bad faith, the defendant de facto waived counsel."

A client's failure to pay attorney's fees also is constructive termination. See e.g., *Christian v. All Persons Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997) ("Further, the court considers Sewer's failure to pay attorneys' fees as a constructive termination of the attorney-client relationship between Sewer and D'Anna.").

Here, the Edgeworths refused to pay any attorney's fees, even though requested in November, 2017, and have refused to pay the outstanding costs of more than $70,000.00, even though the detailed costs were provided to the clients in

November, 2017. Rather than making any attempts to pay, they sued Mr. Simon suggesting no money is due. Therefore, the Edgeworths have constructively terminated Mr. Simon in many ways, and have no basis to assert a contract when the court determines attorney's fees.

Even more compelling is that multiple jurisdictions conclude that the attorney-client relationship is a principal-agent relationship. More so, while it did not concern an attorney and client directly, but an agent acting on behalf of a principal through a power of attorney, the Superior Court of Connecticut held that a lawsuit is a fundamental breach of the principal-agent relationship:

> "Perhaps no more fundamental breach of such a relationship can be imagined than that an agent use the power of attorney to sue the principal, who may even lack the capacity to understand what is going on."

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.

Since Mr. Simon was constructively discharged by the filing of the complaint, among other things, the Law Office of Daniel Simon is entitled to the reasonable value of its services via quantum meruit, irrespective of the prior alleged agreement.

The reasonable value of the services by the Law Office of Daniel Simon is analyzed by Mr. Kemp in his detailed declaration and he opines that the value of the services is in the sum of $2,440,000 for attorney's fees.

F. The Motion to Consolidate is well grounded in law and fact.

Nevada law recognizes that the trial court is best suited to analyze issues relating to lien claims and attorney client fee disputes. *Leventhal v. Black & Lobello*, 305 P.3d 907, 909 (Nev. 2013); superseded by statute on other grounds as stated in, *Fredianelli v. Pine Carman Price*, 402 P.3d 1254 (Nev. 2017); and, Restatement (Third) Law Governing Lawyers §43(3).

Courts are provided with discretion to consolidate cases when there are similar issues which arise from the same set of facts. This is such a case. Further, consolidation will prevent an obvious case of forum shopping by the clients.

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III. CONCLUSION

This Court has clear, and admitted, jurisdiction to hear the lien dispute. The Court is respectfully requested to set an evidentiary hearing to determine the amount of fees and costs due the law firm.

DATED this 5th day of February, 2018.

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

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing REPLY IN SUPPORT OF MOTION TO ADJUDICATE ATTORNEY'S LIEN AND MOTION TO CONSOLIDATE was made by electronic service (via Odyssey) this 5th day of February, 2018, to all parties currently shown on the Court's E-Service List.

/s/ Dawn Christensen
an employee of
JAMES R. CHRISTENSEN, ESQ.

EXHIBIT A

Daniel Simon

From: Brian Edgeworth <brian@pediped.com>
Sent: Friday, May 27, 2016 3:30 PM
To: Daniel Simon
Subject: RE: Insurance Claim

Dude, when/how can it get this to you? Even typing up the summary is taking me all day organizing the papers. There is at least 600-1000 pages of crap.

-----Original Message-----
From: Daniel Simon [mailto:dan@simonlawlv.com]
Sent: Friday, May 27, 2016 12:58 PM
To: Brian Edgeworth <brian@pediped.com>
Subject: Re: Insurance Claim

I know Craig. Let me review file and send a few letters to set them up.
Maybe a few letters will encourage a smart decision from them. If not, I can introduce you to Craig if you want to use him. Btw He lives in your neighborhood. Not sure if that is good or bad?

> On May 27, 2016, at 9:30 AM, Brian Edgeworth <brian@pediped.com> wrote:
>
> Hey Danny;
>
> I do not want to waste your time with this hassle (other than to force
> you
to listen me bitch about it constantly) and the insurance broker says I should hire Craig Marquiz and start moving the process forward.
> Should I just do that and not bother you with this?
> My only concern is that some goes nuclear (with billing and time) when
just a bullet to the head was all that was needed to end this nightmare (and I do not know this person from Adam).
>
> --
>
>
> Brian Edgeworth
> pediped Footwear
> 1191 Center Point Drive
> Henderson, NV
> 89074
>
> 702 352-2580

EXHIBIT B

FW: Contingency

Daniel Simon <dan@simonlawlv.com>

Fri 12/1/2017 10:22 AM

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

From: Brian Edgeworth [mailto:brian@pediped.com]
Sent: Tuesday, August 22, 2017 5:44 PM
To: Daniel Simon <dan@simonlawlv.com>
Subject: Contingency

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

EXHIBIT C

JAMES R. CHRISTENSEN, ESQ.
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Attorney for Simon

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION; a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES I through 5 and ROE entities 6 through 10; Defendants.	CASE NO.: A738444 DEPT NO.: X **DECLARATION OF WILL KEMP, ESQ.**

1. I have been a licensed attorney in the State of Nevada since September, 1978. I have litigated high profile products liability cases in Nevada and around the country. I have presented arguments before all the courts in the state of Nevada, as well as the First, Third and Ninth Circuit Court of Appeals and the United States Supreme Court. I have been an AV Preeminent Lawyer by Martindale Hubbell since the 1980's, which is the highest AV rating for competency and ethics. I have also been named as a Super Lawyer, named in the Mountain States Top 10, selected in the Legal Elite of Nevada Business Magazine and selected as Nevada Trial Lawyer of the year in 2012.

I have served on multiple steering committees, including but not limited to Plaintiffs' Legal Committee, MGM Multi-District Fire Litigation, 1980-1987, (the seminal mass tort case in Nevada) Plaintiffs' Steering Committee and Plaintiffs' Trial Counsel, San Juan Dupont Plaza Multi-District Fire Litigation, 1987-98, Plaintiffs' Steering Committee, Peachtree 25th Fire Litigation, 1991-94, Plaintiffs' Steering Committee and Executive Committee in Castano Tobacco Litigation, 1993-2010, Orthopedic Bone Screw Products Liability Litigation, 1994-1998, Plaintiff's Management Committee, Fen/Phen

Diet Drug Litigation, 1998-2003 (the largest pharmaceutical settlement in history--$25 Billion plus), Plaintiffs' Steering Committee, Baycol Products Liability Litigation, 2002-07, Minnesota Syngenta Litigation State Court Committee (2016-____) ($1.3 Billion settlement pending). I was the Liaison Counsel for Plaintiffs and lead attorney on the product liability committee of Plaintiffs' Legal Committee in the MGM Fire Litigation. I have tried numerous complex product liability cases, including the San Juan Dupont Plaza Multi-District Fire Litigation (15 ½ month product liability case against 200 Defendants resulting in plaintiffs' verdict). I was also lead counsel on the largest product liability verdict in the history of Nevada: $505 Million verdict in Chanin v. Teva in 2010 (defective propofol packaging theory).

2. In connection with many of the foregoing cases, I have presented the work effort of our firm to multiple state and federal courts in fee presentations. In addition, I was on the Fee Committee in the Castano Tobacco Litigation and decided on the allocation of a $1.3 Billion fee among 57 law firms based upon their relative efforts in that landmark litigation.

3. In my practice, I have represented both plaintiffs and defendants in all types of litigation, including negligence cases and product liability. I am personally familiar with the efforts required to both prosecute and defend serious cases in general, including hotly contested product liability litigation against a worldwide manufacturer.

4. I have been retained by the Law Office of Daniel Simon (hereinafter LODS) to review the case of Edgeworth Family Trust and American Grating v. Lange Plumbing and the Viking entities, hereinafter "The Edgeworth Matter." In preparing my opinion, I have reviewed the register of actions; the e-service filings, pleadings, motions, the relevant court orders; voluminous e-mails, the list of depositions taken, notices of depositions, extensions of discovery in other LODS cases and expert reports. I have a qualified understanding of the work performed on this case and the results achieved.

5. I am also aware of the billing statements produced to the client in this case and the payments that were made for these billing statements.

6. Before the mediation that occurred on November 10, 2017, LODS filed numerous motions that effectively forced the Viking entities to settle this matter prior to any rulings on the pending motions. At the time of mediation, the Trial Judge, the Honorable Tierra Jones had already set

an evidentiary hearing to occur in December 2017 in order to determine whether Viking's answer should be stricken for discovery abuses or other sanctions. Notably, the motion for to Strike Answer was filed on September 29, 2017, after Mr. Edgeworth commented in the August 22, 2017 email set forth below that no one expected "this case would meet the hurdle of punitives" and proposed a hybrid "that incents" LODS to vigorously pursue punitives. The Trial was set for February 5, 2018. The Motion to Strike Answer was obviously one of the key threats that coerced the settlement.

7. At the same time, LODS also had pending motions for summary judgment against Lange Plumbing. Lange Plumbing had cross-claims against the Viking entities.

8. The case was worked up with many experts consisting of several engineering experts, an appraiser to establish damages, litigation loan experts to justify non-recourse interest on loans and a fraud expert. The defense hired many experts that needed to be rebutted.

9. The document production was voluminous and consisted of more that 100,000 pages, there was substantial motion work and the emails with the client show continuous communication to an extent that is relatively unusual. This close communication with the client on a daily (if not more) basis obviously took much attention from LODS but appears to have been productive in multiple ways.

10. I have reviewed the email dated November 21, 2017, that Mr. Edgeworth sent to Mr. Simon setting forth damage elements. The amounts discussed in that email that I would consider to be "hard" damages were $512,636 paid for repairs to the damaged house, $24,117 (repairs owed) and $194,489 (still to repair). This totals $731,242 of "hard" damages. The other damages items such as "stigma" for $1,520,000 and the interest of $285,104 are what I would consider "soft" damages. In evaluating the value of a case, many attorneys give more credence to "hard" damages.

11. I have also reviewed the email dated August 22, 2017 from Mr. Edgeworth to Mr Simon wherein Mr. Edgeworth states as follows:

> **We never really had a structured discussion about how this might be done.** I am more that happy to keep paying hourly but **if we are going for punitive we should probably explore a hybrid** of hourly on the claim and then **some other structure that incents both of us** to win an[d] go after the appeal that these scumbags will file etc.
>
> **Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.**
>
> I could also swing hourly for the whole case (unless I am off what this is going to cost).

> I would likely borrow another $450k from Margaret in 250 and 200 increments and then either I could use one of the house sales for cash or if things get really bad, I still have a couple million in bitcoin I could sell.
>
> I doubt we will get Kinsale [the insurer for Lange Plumbing] 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?

(Bold added) The August 22, 2017 email is significant for several reasons. First, as discussed in more detail, the settlement had to have included at least $3.3 Million of punitive damages and more likely $4 or $5 Million of punitive damages because the $6.1 Million settlement is $5,368,580 above the "hard" damages of $731,420.00 and $2,272,855 above the total damages of $3,827,147 (as set forth in the November 21, 2017 email). It should be noted that the $3,827,147 figure includes $1,520,000 for "stigma" to the house damages (of which there is not strong legal support). Under any view, the settlement included millions of dollars of punitive damages. It is unprecedented to get that much in punitive damages in a case of this nature where only property damage is involved. Indeed, some courts would hold that a 5 to 1 ratio ($5 Million punitive to $1M compensatory) is unconstitutionally excessive.

12. The second reason that the August 22, 2017 email is significant is that, Mr. Edgeworth acknowledges that he does not believe that the parties have a fee agreement ("We never really had a structured discussion about how this might be done.") and then proposed "a hybrid" fee arrangement "if we are going for punitive." Not only did Mr. Edgewroth and LODS "go for punitive" after August 22, 2017, they got millions of dollars in punitives. Mr. Edgeworth also explains why a fee agreement to pursue the punitives could not be made earlier ("Obviously that could not have been done earlier since who would have thought this case would meet the hurdle of punitives at the start.") Given the volume of the emails between Mr. Edgeworth and LODS between this August 22, 2017 and the mediation, it appears that a herculean (and successful) effort was made to "go for punitive."

13. The third reason that the August 22, 2017 email is significant is that Mr. Edgeworth expresses the firm opinion therein that the only way to obtain satisfactory resolution of his claim is to succeed at trial and then succeed on appeal: "some other structure that incents both of us to win [at trial] and go after the appeal that these scumbag [Defendants] will file..." Mr. Edgeworth is obviously a very sophisticated client (based on a review of his emails to LODS) and his general

expectation that the usual course to an adequate recovery would be years of litigation and success at trial and appeal is consistent with what could typically occur. This will be referred to later as "Edgeworth's expected result."

14. I have been informed and believe that, at the mediation on November 10th, 2017, the parties could not reach a settlement. Viking offered $2.5 Million. The Mediator, Floyd Hale, requested to send a mediator proposal for $5 million. LODS only agreed to a mediator proposal of $6 million. Subsequently, on November 15, 2017, Viking accepted the $6 million proposal, subject to a determination of a good faith settlement extinguishing the claims Lange Plumbing has against Viking and a confidentiality provision. Later, LODS was able to negotiate better terms, including a mutual release and omitting the confidentiality provision.

15. I am familiar with NRPC 1.5, and the Brunzell Factors that control Nevada law. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 455 P.2d 31, 33 (Nev. 1969) ("From a study of the authorities it would appear such factors may be classified under four general headings (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.") I am also familiar with the detailed analysis of the Lodestar approach for determining a reasonable attorney fee in the absence of a contract with the client. I have also argued fee dispute issues at the First Circuit Court of Appeals. See In re Thirteen Appeals Arising Out of the San Juan Dupont Hotel Fire Litigation, 56 F.3d 295, 307 (1st Cir. 1995) (approving the percentage of fund method for mass tort cases instead of the lodestar technique); In re Nineteen Appeals Arising Out of The San Juan Dupont Plaza Hotel Fire Litigation (1st Cir. 1992).

16. An attorney who does not have a signed contract with a client is entitled to receive a reasonable attorneys fee for the value of his/her services. There are many factors to consider in determining the value of an attorneys services. To determine reasonableness, Nevada state courts rely heavily on the "Brunzell factors." The state court decisions applying the Brunzell factors suggest that

the analysis focuses primarily on the quantity, quality of work and advocacy rather than the hourly rate. NRCP 1.5 lists eight non-exclusive factors to consider. One of the primary factors is the fees "customarily charged in the locality for similar legal services."

17. The Edgeworth matter involved one house that was heavily damaged by flooding due to a defective sprinkler. This type of case, i.e., one client with property damage, is not attractive to most experienced product liability litigators for several reasons. First, the amount of energy involved in litigating a complex product case usually requires multiple clients (or at a minimum serious personal injury) to justify the time expended to obtain an award. Second, product liability is a legal concept that is not familiar to many jurors (and even some judges). This creates an element of uncertainty in predicting liability outcomes that is greater than most garden variety negligence cases. Third, property damage typically does not invoke sympathy with jurors needed to drive a punitive award. Fourth, no experienced litigator will take a case wherein punitive damages are the primary damages element because punitive damages are rarely awarded and paid even less often.

18. For these reasons, despite expertise in both product liability and construction defect litigation, our office probably would have not have taken this case for the reasons outlined above. If we had taken the case, the minimum contingent fee would have been 40% and more likely 45%. A settlement of $6.1 Million in a complex product liability case with no personal injury or death and only $731,242 in "hard costs" is truly remarkable.

19. When reviewing the Edgeworth matter to determine a reasonable fee, the analysis must start with the fourth Brunzell factor; the result achieved. As set forth in Paragraph 13 above, Mr. Edgeworth, a sophisticated client, expressed the opinion on August 2, 2017, that it would take a trial and appeal to get "Edgeworth's expected result." Given how involved Mr. Edgeworth was with the case (including minute details) and that he is a very sophisticated client, his belief in this regard would normally be correct. Indeed, most lawyers would agree that it would take years to even get the "hard costs." But instead of getting "Edgeworth's expected result" after years of litigation, LODS got a truly extraordinary result in less than 3 months after the date of the August 2, 2017 email. LODS secured a six million, one hundred thousand dollar ($6,100,000) settlement for a complex products liability case where the "hard" damages were only $791,242.00. The total claimed past "hard" and "soft" damages

involved, excluding attorney's fees, experts fees and costs were approximately $1.5 million dollars. Getting millions of dollars of punitives in a settlement in a case of this nature is remarkable. For these reasons, the fourth Brunzell factor (result) overwhelmingly favors a large fee.

20. The quality and quantity of the work (the third Brunzell factors) were exceptional for a products liability case against a worldwide manufacturer that is very experienced in litigating cases. LODS had to advocate against several highly experienced law firms for Viking, including local and out of state counsel. In this regard, the Motion to Strike Answer filed on September 29, 2017 is of utmost significance.

21. LODS retained multiple experts to secure the necessary opinions to prove the case. It also creatively advocated to pursue unique damages claims (e.g., the "stigma" damages) and to prosecute a fraud claim and file many motions that most lawyers would not have done. LODS also secured rulings that most firms handling this case would not have achieved. The continued aggressive representation prosecuting the case was a substantial factor in achieving the exceptional results. This (especially the Motion to Strike Answer and impending evidentiary hearing) is the second Brunzell factor.

22. I am familiar with the size of the LODS firm and the amount of work performed would have significantly impaired LODS from simultaneously working on other cases. Our firm has over a dozen litigators and a long track record of successful litigation and we often find it difficult to support a "hot" products case (i.e., one requiring the full time attention of several lawyers). It is very impressive that a small firm made the sacrifice to do so.

23. LODS does not represent clients on an hourly basis and the fee customarily charged in the locality for similar legal services should be substantial in light of the work actually performed, the LODS lost opportunities to work on other cases and the ultimate amazing result achieved. Absent a contract, LODS is entitled to a reasonable fee customarily charged in the community based on the services performed.

24. When evaluating the novelty and difficulty of the questions presented; the adversarial nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved

given the total amount of the settlement compared to the "hard" damages involved, the reasonable value of the services performed in the Edgeworth matter by LODS, in my opinion, would be in the sum of $2,440,000. This evaluation is reasonable under the Brunzell factors.

25. I make this Declaration under penalty of perjury.

Dated this 31st day of January, 2018.

Will Kemp, Esq.

EXHIBIT D

Daniel Simon

From: Sarah Guindy <SGuindy@BankofNevada.com>
Sent: Thursday, January 04, 2018 2:29 PM
To: Robert Vannah; John Greene (jgreene@vannahlaw.com); Daniel Simon; James R. Christensen
Subject: New Account

Good Afternoon all

Mr. Simon came by my office to sign the signature card and the address to forward statements was incorrect. The address should be Mr. Simon firm address. We will revise the signature card and everyone will need to resign our documents. Also in order to open the account the bank will need to receive the requested signed statement from Mr. Vannah and Mr. Simon. Mr. Edgeworth will also be required to sign the W-9 form and endorse the checks. We were advised Mr. Edgeworth is out of town and unavailable until next week.

Thank you

Sarah Guindy
EXECUTIVE VICE PRESIDENT, CORPORATE BANKING MANAGER
BANK OF NEVADA, A DIVISION OF WESTERN ALLIANCE BANK. MEMBER FDIC.
T (702) 252-6452 | C (702) 523-2699 | SGUINDY@BANKOFNEVADA.COM
2700 WEST SAHARA AVENUE | LAS VEGAS, NEVADA 89102

EXHIBIT E

User Name: Benjamin Miller
Date and Time: Monday, January 22, 2018 3:07:00 PM PST
Job Number: 59932242

Document (1)

1. *Rosenberg v. Calderon Automation, Inc., 1986 Ohio App. LEXIS 5460*

Client/Matter: -None-
Search Terms: attorney /s "constructive termination"
Search Type: Terms and Connectors
Narrowed by:

Content Type	Narrowed by
Cases	-None-

Rosenberg v. Calderon Automation, Inc.

Court of Appeals, Sixth Appellate District of Ohio, Lucas County, Ohio

January 31, 1986

C.A. No. L-84-290

Reporter
1986 Ohio App. LEXIS 5460 *; 1986 WL 1290

Samuel L. Rosenberg, APPELLEE -VS- Calderon Automation, Inc., Albert Calderon, APPELLANTS

Prior History: [*1] APPEAL FROM LUCAS COUNTY COMMON PLEAS COURT, NO. CV 82-1194.

Disposition: On consideration whereof, this court finds that substantial justice has been done the parties complaining, and judgment of the Lucas County Court of Common Pleas is affirmed. This cause is remanded to said court for execution of judgment and assessment of costs. Costs assessed against appellants.

Core Terms

termination, patent, hired, discharged, attorney-client, partnership, patent case, just cause, settlement, trial court, contingency, settle, federal district court, trial court's judgment, special interrogatory, attorney's fees, assigned error, preparation, indicates, services rendered, joint venture, negotiations, unfavorable, couldn't, services, parties, jury's

Case Summary

Procedural Posture
Appellant clients sought review of the judgment of the Lucas County Common Pleas Court (Ohio), which awarded appellee attorney compensation for his services that he rendered for the clients in their patent infringement litigation before the clients terminated the attorney-client relationship.

Overview
The clients hired a lawyer, who involved the appellee attorney in the patent infringement case. When the attorney and the clients refused to negotiate a settlement, the clients had no further contact with the attorney, who believed that he had been discharged from the case. The attorney filed an action to seek compensation for his services. On appeal the court affirmed the trial court's award of compensation. The clients authorized the lawyer to consult the attorney, and the relationship between the two attorneys plus the clients' act of working with the attorney established the attorney-client relationship, which terminated after the conclusion of the jury's favorable answers to the special interrogatories but before the clients received an unfavorable judgment. The attorney's discussion with the opposing party was not an attempt to settle the case and did not constitute a breach of his fiduciary duties. At the time of termination, the clients had not suffered any damage or lost their case. Accordingly, the termination of the attorney's employment was without just cause.

Outcome
The court affirmed the judgment that awarded the attorney compensation for the services he rendered on behalf of the clients in their patent infringement litigation.

LexisNexis® Headnotes

Business & Corporate Law > ... > Actual Authority > Implied Authority > Conduct of Parties

Legal Ethics > Client Relations > Representation > Acceptance

Business & Corporate Law > Agency Relationships > Agents Distinguished > Special Agents

Business & Corporate Law > ... > Authority to Act > Actual Authority > General Overview

Business & Corporate Law > ... > Actual Authority > Implied Authority > General Overview

Business & Corporate Law > ... > Establishment > Elements > General Overview

HN1 **Implied Authority, Conduct of Parties**

The relationship between an attorney and a client is considered to be one of limited agency with respect to the particular suit for which the attorney is hired. The attorney has no implied power to do more than relates to the proper conduct of the suit, and cannot, without specific authority, bind the client by contract. The client will only be liable for the acts of the attorney performed within scope of his authority, but not for illegal acts, unless it can be shown that the client participated therein or had knowledge thereof.

Business & Corporate Law > ... > Authority to Act > Contracts & Conveyances > Formation & Negotiation

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Business & Corporate Law > ... > Authority to Act > Actual Authority > Inherent Authority

Business & Corporate Law > ... > Authority to Act > Business Transactions > Management

Business & Corporate Law > ... > Authority to Act > Contracts & Conveyances > General Overview

HN2 **Contracts & Conveyances, Formation & Negotiation**

An agent's authority to make a contract is inferred from the authority to conduct a transaction, if the making of such a contract is incidental to the transaction or is reasonably necessary to accomplish it. An agent's authority to appoint an agent is inferred when the parties agree to the appointment, the authority is customary within the normal business operations, the authority exercised is within the proper conduct of the principal business and/or the authority is derived out of unforeseen circumstances.

Business & Corporate Law > Agency Relationships > Fiduciaries > Fiduciary Duties

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Agents Distinguished > General Overview

Business & Corporate Law > Agency Relationships > Fiduciaries > General Overview

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Business & Corporate Law > ... > Authority to Act > Apparent Authority > General Overview

Business & Corporate Law > ... > Authority to Act > Contracts & Conveyances > Formation & Negotiation

Business & Corporate Law > Agency Relationships > Duties & Liabilities > General Overview

Business & Corporate Law > Agency Relationships > Ratification > General Overview

Governments > Fiduciaries

HN3 **Fiduciaries, Fiduciary Duties**

The relation of principal and agent is always regarded by the court as a fiduciary one, implying trust and confidence. All acts and contracts of an agent done or made within the discharge of his duties, and within the scope of his authority, whether that authority is express, implied, or apparent, are obligatory upon the principal, and no ratification or assent on the latter's part is necessary to give them validity.

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN4 **Duties to Client, Effective Representation**

Where the case involves litigation outside the attorney's field of expertise, the attorney, in order to retain the case, may consult a second attorney.

WA00570

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN5 **Client Relations, Attorney Fees**

An attorney is not entitled to compensation where he is discharged for just cause, but if the attorney is discharged without just cause, he is entitled to a fee based on the reasonable value of his services rendered.

Legal Ethics > Client Relations > General Overview

HN6 **Legal Ethics, Client Relations**

The attorney-client relationship is consensual in nature and that the actions of either party can affect its continuance. The termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client.

Business & Corporate Law > Agency Relationships > Termination > Consent

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Duties & Liabilities > General Overview

Business & Corporate Law > Agency Relationships > Termination > General Overview

Business & Corporate Law > Agency Relationships > Termination > Expiration of Time

HN7 **Termination, Consent**

The termination of the principal-agency relationship may occur at the expiration of a reasonable time or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority.

Business & Corporate Compliance > ... > Contracts Law > Standards of Performance > Discharge & Termination

Labor & Employment Law > Wrongful Termination > Remedies > General Overview

HN8 **Standards of Performance, Discharge & Termination**

Where a contract for the performance of labor is wrongfully terminated by one-party, after part performance by the other, the right of the party performing, to recover the value of the labor performed, irrespective of the contract price, depends on whether, having regard to the contract, the party wrongfully terminating it, would thereby enrich himself at the expense of the other.

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN9 **Agency Relationships, Authority to Act**

Unless an attorney has been expressly authorized to do so, he has no implied or apparent authority, solely because he was retained to represent the client, to negotiate or settle the client's case.

Counsel: Michael Briley, Richard Scheich, 1000 National Bank Building, Toledo, OH 43604 for Appellee.

Daniel T. Spitler, Spitler, Vogtsberger & Huffman, 131 E. Court Street, Bowling Green, OH 43402-2495 for Appellant.

Judges: Frank W. Wiley, and Bruce C. Huffman, JJ., JUDGE CONCUR.Judges Frank W. Wiley and Bruce C. Huffman, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

Opinion by: WILKOWSKI

Opinion

DECISION AND JOURNAL ENTRY

WILKOWSKI, P.J.

This cause came on to be heard upon the record in the trial court. Each assignment of error was reviewed by the court and upon review the following disposition

made:

This case comes before the court from a judgment of the Lucas County Court of Common Pleas, wherein judgment was rendered for plaintiff-appellee, Samuel Rosenberg, for attorney fees in the sum **[*2]** of $ 27,000.

This action originates out of a patent infringement case filed in the Federal District Court by defendant-appellants, Albert Calderon and Calderon Automation, Inc. Appellants hired Lawrence Brenner to handle the patent infringement case. Mr. Brenner was to be paid on a simple contingency fee basis. Subsequently, a second attorney, appellee Rosenberg, became involved with the case. Rosenberg's participation in the case began in February 1979. At that time, Rosenberg began reviewing the case files and the relevant patent laws. From February 1979 through the trial in June 1979, Rosenberg's sole duties related to the preparation of the patent case. Mr. Brenner and Mr. Calderon also were responsible for the preparation of the material for the trial. At trial, Rosenberg's responsibilities were limited to the direct examination of Calderon and a portion of the closing arguments directly related to the special interrogatories presented to the jury.

After the jury returned favorable findings on the special interrogatories, Rosenberg suggested that settlement negotiations with the adversary, General Motors, Inc., be initiated. Calderon vehemently opposed any attempt to negotiate **[*3]** a settlement with General Motors. Due to Rosenberg's and Calderon's difference of opinion as to the appropriateness of settlement negotiations, Calderon had no further contact with Rosenberg. Rosenberg, believing that he had been discharged from the case, sent letters to Calderon requesting fees for his services.

Subsequently, after the alleged constructive discharge of Rosenberg from the case, the (Federal District Court) judge reversed the jury's findings and entered a judgment unfavorable to the establishment of Calderon's patent rights.

Calderon obtained new representation for the appeal and he eventually obtained a settlement with General Motors restoring a portion of his patent rights; however, no monetary award was obtained.

Rosenberg, claiming that he had been discharged from the case prior to the judge's refusal of the jury findings, sought recompense for his services rendered from February through July. The trial court, after hearing testimony of Rosenberg, Calderon and Brenner, plus reviewing over twenty exhibits, rendered judgment for Rosenberg in the sum of $ 27,000.

In the judgment entry, the trial court made several findings of fact. Upon review of the record, including **[*4]** 386 pages of transcript and over twenty exhibits, we find that the findings of fact were supported by competent, credible evidence and therefore, we incorporate them herein:

> "1. In June, 1973, attorney Lawrence Brenner entered into an attorney-client relationship with Albert Calderon and Calderon Automation, Inc. for representation in patent litigation.
>
> "2. Cladero[n] [*sic*] subsequently authorized Brenner to employ additional counsel to represent him in connection with the patent litigation.
>
> "3. Pursuant to this authorization, and for the dominant if not sole purpose of providing additional counsel for the representation, Lawrence Brenner entered into a joint venture or partnership with attorney Samuel L. Rosenberg with the full consent and agreement of Calderon. Rosenberg was thereby employed by Calderon as additional counsel for the patent litigation.
>
> "4. The *General Motors* case was tried before Judge Kennedy of the Eastern District of Michigan, Southern Division, from May 21, 1979 through July 5, 1979.
>
> "5. With respect to the formation and conduct of the joint venture
>
> both Brenner and Calderon failed to disclose to Rosenberg **[*5]** the existence of a certain written fee agreement dated May 23, 1977, to which Brenner and Calderon were mutually parties.
>
> "6. Rosenberg entered into the joint venture or partnership with Brenner for the principal purpose of acting as attorney in the patent litigation. In doing so he relied upon the representations of Brenner

and Calderon to the effect that the litigation had a potential
recovery or value of $ 16,000,000.00 and that the attorneys were
representing Calderon on a simple, unqualified one-third contingent
fee arrangement.
"7. Subsequent to the trial and the performance of the substantial
legal services, Calderon discharged Rosenberg as counsel in the patent
litigation by Calderon's refusal to cooperate or communicate with
Rosenberg, his employment of additional counsel without Rosenberg's
consent, and the contemporaneous termination of the joint venture or
partnership by Brenner.
"8. Calderon additionally failed to cooperate with Rosenberg as one of
his attorneys, by refusing to consider any settlement no matter what
its terms, and by refusing to permit his attorney to discuss even the

subject of settlement with opposing counsel. **[*6]**
"9. All of said acts by which Rosenberg was discharged as counsel
occurred prior to the entry of the court's unfavorable judgment in the
patent litigation.

"10. Rosenberg performed services having a value on a *quantum meruit*
theory of $ 27,000.00.
"11. Brenner has assigned to Rosenberg any interest he might claim in
Rosenberg's fee."

Appellants appealed setting forth seven assignments of error. [1] **[*21]** The assignments of error were not individually briefed, but instead were segregated into several issues concerning Rosenberg's right to compensation. Since all the issues contest Rosenberg's right to receive compensation, the issues will be addressed together.

Appellants contest the trial court's award of attorney fees based on the following: (1) Calderon, neither personally nor through his attorney, authorized the hiring of Rosenberg and, therefore, Calderon was not responsible for the payment of services rendered by Rosenberg; (2) assuming Rosenberg was hired by Calderon, Rosenberg was never discharged as an attorney and, consequently, his fees must be based on the contingency fee arrangement between Calderon and Brenner; (3) if Rosenberg was ostensibly hired as **[*7]** Calderon's attorney and the court determines that he was discharged from the attorney-client relationship, his discharge was based on just cause and, therefore, Rosenberg was not entitled to compensation for his services rendered.

The record indicates that Calderon had hired Brenner to handle his patent infringement case. The question which arises from that relationship is whether Brenner had the

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[1] The seven assignments of error are as follows:

"1. The trial court erred in overruling Calderon's Motion for an Involuntary Dismissal at the close of Plaintiff's case because Rosenberg failed to prove a direct contractual relationship with either Defendant that would provide a basis for recovery.

"2. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Brenner acted as an agent for Calderon and intended, as that agent, to create a new contract between Calderon and Rosenberg.

"3. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Brenner, Calderon's attorney, had actual authority from Calderon to create a new contract between Calderon and Rosenberg or any other attorney.

"4. The trial court's judgment for Rosenberg was erroneous because Rosenberg failed to prove that Calderon had actual knowledge that Rosenberg had been hired by Brenner in his capacity as agent for Calderon, if that was the case, as opposed to having been hired by Brenner as associate counsel.

"5. The trial court's judgment for Rosenberg was erroneous because, as a matter of agency law, an attorney has no implied or inherent authority to bind his client directly to another attorney absent actual or express authority granted by the client to do so.

"6. The trial court's judgment for Rosenberg was erroneous because, as a matter of agency law, Calderon could not have ratified any direct contract between himself and Rosenberg without actual knowledge that Rosenberg had been hired by Brenner acting solely as an agent for Calderon, and without actual knowledge of the terms of the contract allegedly created thereby.

"7. The trial court's judgment for Rosenberg was erroneous because Rosenberg, by violating a direct instruction from Calderon, first breached any agreement that may have existed between himself and Calderon, and thereby excused Calderon from further performance."

authority to facilitate the preparation of the patent case.

HN1[] The relationship between an attorney and a client is considered to be one of limited agency with respect to the particular suit for which the attorney is hired. The attorney has no implied power to do more than relates to the proper conduct of the suit, and cannot, without specific authority, bind the client by contract. Harrison v. Kickbride (1905), 16 Ohio Dec. 389. The client will only be liable for the acts of the attorney performed within scope of his authority, but not for illegal acts, unless it can be shown that the client participated therein or had knowledge thereof. Stewart v. Elias (App. 1935), 21 Ohio Law Abs. 199, error dismissed, *130 Ohio St. 589*; Prate v. Freedham (C.A. 4, 1978), 583 F. 2d **[*8]** 42; Lloyd v. Carnation Co. (D.C.N.C. 1984), 101 F.R.D. 346.

As this court has previously noted, the relationship between the attorney and client is, in a broad sense, that of an agent and principal. Gaines Reporting Service v. Mack (1982), 4 Ohio App. 3d 234; *Blanton v. Womancare Clinic Inc. (Cal. 1985), 696 P. 2d 645*.

With respect to the principal agency relationship, unless otherwise agreed, HN2[] an agent's authority to make a contract is inferred from the authority to conduct a transaction, if the making of such a contract is incidental to the transaction or is reasonably necessary to accomplish it. Restatement of the Law, Agency (2d Edition, 1958), 151-153, Sections 50, 51. An agent's authority to appoint an agent is inferred when the parties agree to the appointment, the authority is customary within the normal business operations, the authority exercised is within the proper conduct of the principal business and/or the authority is derived out of unforeseen circumstances.

As this court said in Foust v. Valley Brook Realty Co. (1981), 4 Ohio App. 3d 164, at paragraph three of the syllabus:

> HN3[] "The relation of principal and agent is always regarded **[*9]** by the court as a fiduciary one, implying trust and confidence. All acts and
>
> contracts of an agent done or made within the discharge of his duties,
>
> and within the scope of his authority, whether that authority is
>
> express, implied, or apparent, are obligatory upon the principal, and
>
> no ratification or assent on the latter's part is necessary to give
>
> them validity."

In this case, Calderon was aware that Brenner was a recent law school graduate and a new member of the state bar. Having recently entered the practice of law, Brenner, pursuant to Canon Six and Seven of the Code of Professional Responsibility and the relevant ethical considerations, had an obligation to Calderon to act competently in handling the legal matter in question. HN4[] Where the case involves litigation outside the attorney's field of expertise, the attorney, in order to retain the case, may consult a second attorney. Calderon was aware of Brenner's lack of experience and in fact was aware that Brenner had obtained advice from another attorney on this particular case. Although Calderon did not want to associate himself personally with the second attorney, he, in fact, conferred upon Brenner the authority **[*10]** to consult with a second attorney.

Mr. Calderon testified as follows:

> "Q. Did you discuss at that time the possibility that Mr. Rosenberg
> might become involved in presenting your case?
> "A. I had some problems before with another lawyer, a patent lawyer
> that Mr. Brenner appointed or he wanted to bring into the case, and
> the idea was that -- and I had this problem having an agreement with
>
> more than one lawyer, so I just -- we had an agreement, and *Larry*
>
> *Brenner had the right to appoint anybody he wanted to help him on the*
>
> *case*, and the reason I had a problem with another lawyer is because he
> wanted to -- you had pre-conditions, irrespective of this agreement.
> "In other words, he wanted Calderon Automation to give him other
> business, and if I don't give him other business he's not interested.
> In other words, he put some conditions which were outside the

agreement." (Emphasis added.)

Based on the foregoing admission and the remaining testimony of Calderon and Brenner, it is evident that Brenner had the authority to hire a second attorney to aid in the preparation of the patent case. The. only restriction on the second attorney was that his **[*11]** fee was to be based upon a share of Brenner's contingency fee. In lieu of Brenner's partnership with Rosenberg on this case, an attorney-client relationship was established between Calderon and Rosenberg. This conclusion is buttressed by the parties' testimony which clearly indicates that Calderon had spent a substantial amount of time and energy with Rosenberg during pretrial preparation. Calderon's conduct is indicia of his ratification of the role of Rosenberg as attorney on the patent case.

Important to the outcome of this case, however, is the relationship between Brenner and Rosenberg. An exhibit admitted into evidence, signed July, 1979, several days after the jury verdict, indicates that Brenner and Rosenberg had formed a partnership. The document was entitled a partnership agreement. The testimony of Brenner and Rosenberg, however, indicates that the partnership was limited only to the Calderon case. Both attorneys framed their relationship as a "one-case partnership." Although there is some evidence to the contrary, the trial court found, and we too conclude, that Brenner and Rosenberg were engaged in a joint venture with its sole objective being the favorable outcome of **[*12]** the Calderon patent case. This conclusion is supported by the fact that the partnership apparently dissolved at the conclusion of the jury's favorable answers to the special interrogatories, and did not continue in any respect past that point in time. Further, Rosenberg had only minimal contact with other cases during their association.

Having determined that Brenner had the authority to hire a second attorney and that Rosenberg was hired to assist in Calderon's patent case, we must determine whether Rosenberg's attorney-client relationship with Calderon was terminated. If the relationship was not terminated, then Rosenberg was entitled to a fee based upon a percentage of the contingency fee agreed upon between Calderon and Brenner. If the relationship was terminated, our inquiry necessitates a determination of whether the termination was with just cause or without just cause. The latter inquiry is based upon the general rule that ***HN5***[⬆] an attorney is not entitled to compensation where he is discharged for just cause, but if the attorney is discharged without just cause, he is entitled to a fee based on the reasonable value of his services rendered.

At the conclusion of the jury's answers **[*13]** of the special interrogatories, Rosenberg approached Calderon with the suggestion that General Motors might be willing to settle the case for a total of $ 3,000,000 in damages. Calderon refused and informed Rosenberg that no negotiations were to be permitted. After this point in time, which was after the special interrogatories, but prior to the subsequent ruling of the Federal District Court reversing the jury's findings, Calderon and Rosenberg had no further contact. Rosenberg argued, and the trial court adopted, the position that the ensuing sequence of events between the two individuals constituted a ***constructive termination*** of the ***attorney***-client relationship.

The general rule provides that ***HN6***[⬆] the "***attorney***-client relationship is consensual in nature and that the actions of either party can affect its continuance." *Brown v. Johnstone (1982), 5 Ohio App. 3d 165, 167*. As the *Brown* court noted, the termination of this relationship occurs when it is evident that the party's conduct dissolves the essential mutual confidence between the attorney and the client. *Id., at 166*; *Bucaro v. Keegan, Keegan, Hecker & Tully (1984), 483 N.Y.S. 2d 564*.

HN7[⬆] The termination of **[*14]** the principal-agency relationship may occur at the expiration of a reasonable time, Restatement of the Law, Agency (2d Edition 1958) 275, Section 105, or when the agent has notice of a change of circumstances from which he should reasonably infer that the principal does not consent to the exercise of authority. Restatement of the Law, Agency (2d Edition 1958) 283, Section 108.

Rosenberg testified that after he approached Calderon concerning his suggestion to attempt to settle the case, Calderon would no longer communicate with Rosenberg. Rosenberg attempted to communicate with Calderon by mail, but received no response. Contemporaneously, the Rosenberg-Brenner partnership dissolved. During the period of time from the jury's answers to the special interrogatories until the district court judge's judgment, Rosenberg was not asked to participate in the preparation of any post-trial briefs. Rosenberg further testified that he was not informed about the decision of the federal district court judge until nearly six weeks after the judgment had been rendered.

In rebuttal, Calderon testified that he did not consider Rosenberg his attorney at any point in time. Further,

that while he did **[*15]** receive and read Rosenberg's letters, he threw them into the waste basket. These letters apparently requested payment of fees for services rendered. Having already determined that Rosenberg and Calderon did have an attorney-client relationship, we find that there is sufficient evidence to indicate that any trust which had developed between the two parties had dissolved and, therefore, the attorney-client relationship had terminated.

In view of the foregoing conclusion that the attorney-client relationship had terminated, we must address the cause of the termination of the relationship.

The general rule provides that where an attorney is discharged with cause he is not entitled to compensation; where the attorney is discharged without cause the attorney is entitled to compensation based either on the stated agreement or upon the theory of quantum meruit. See *Law Offices Of Lawrence J. Stoekler v. Semaan (Mich. App. 1984), 355 N.W. 2d 271, 273-274*; *Teichner by Teichner v. W. & J. Holsteins Inc. (1985), 489 N.Y.S. 2d 36*.

With respect to attorney fees, the Franklin County Court of Appeals stated the proposition in the following manner:

> ***HN8***[↑]
>
> "Where a contract for the performance **[*16]** of labor is *wrongfully*
>
> *terminated* by one-party, after part performance by the other, the
> right of the party performing, to recover the value of the labor
> performed, irrespective of the contract price, depends on whether,
> having regard to the contract, the party wrongfully terminating it,
> would thereby enrich himself at the expense of the other." [Citation
>
> omitted.] *Wilcox* v. *Rich* (Dec. 22, 1981), Franklin App. No. 81AP-269,
> unreported. (Emphasis added.)

Appellants contend that Rosenberg was discharged with just cause. Appellants' sole argument is that Rosenberg acted in direct contradiction of appellant's orders concerning the prohibition to settle the patent case. Appellants argue that Rosenberg breached his contractual obligations when he purportedly contacted General Motors in order to attempt to settle the case, despite Calderon's express orders prohibiting such contact.

This court's decision in *Ottawa County Commissioners* v. *Mitchell* (Oct. 12, 1984), Ottawa App. No. OT-84-9, unreported, reiterates the position of the Ohio Supreme Court in *Moor v. Crouch (1969), 19 Ohio St. 2d 24*, which provides that: ***HN9***[↑] "Unless an attorney has **[*17]** been expressly authorized to do so, he has no implied or apparent authority, solely because he [*sic*] retained to represent the client, to negotiate or settle the client's case." See also, *Paxton* v. *Dietz* (May 28, 1985), Franklin App No. 84AP-972, unreported.

In this case, Calderon, while testifying, speculates that Rosenberg attempted to settle the case with General Motors. Rosenberg, however, while admitting that he telephoned General Motors, described the telephone discussion in the following manner:

> "Q. Now, how did -- what had to be done, Mr. Rosenberg, that lack of
> communication prevented?
> "What did you have to do that you couldn't do because Mr. Calderon
> wouldn't talk to you?
> "A. I couldn't do anything. I couldn't go over the briefs with Larry
> and Mr. Calderon when he would come in, because he wouldn't talk to
> me. I couldn't talk to the other side, because he forbid me to talk to
>
> them about settlement, *but I did call up the other side and speak to*
>
> *the attorney for General Motors just to discuss with him at the end of*
>
> *the trial what his views were and so forth of the case, just to see*
>
> *if I could feel out where they were* **[*18]** *the kind of assess what the*
>
> *situation was, but never discussed settlement with them.* I couldn't do
> a thing on the case."

Absent evidence to the contrary, we cannot conclude that Rosenberg's discussion with General Motors was an attempt to settle the case and, therefore, Rosenberg's conduct, while inadvisable, did not constitute a breach of his fiduciary duties. Accordingly,

the termination of Rosenberg's employment was without just cause.

In summary of the early portions of this opinion, we have found that Mr. Rosenberg was hired and did establish an attorney-client relationship with Calderon; that Mr. Rosenberg was discharged from the relationship, and that Mr. Rosenberg's discharge/termination was without just cause. We must now determine the appropriate measure of damages.

It is axiomatic that had Mr. Rosenberg continued to represent Mr. Calderon in the patent case, he would have been entitled to his share of the contingency fee arrangement between Calderon and Rosenberg. However, as previously noted, Calderon terminated the relationship without just cause prior to the Federal Court's ruling. Due to this factual setting, the issue remains concerning the method or **[*19]** the measure of damages that Rosenberg has incurred.

Calderon argues that Rosenberg's measure of attorney fees should be based upon the result of the patent case. Calderon further argues that since the federal district court judge entered a finding unfavorable to his patent rights, and since upon settlement of the case, Mr. Calderon did not receive any substantial gain in patent rights or in monetary gain, Rosenberg is not entitled to fees. We disagree.

Mr. Rosenberg's award of attorney fees cannot be based upon the unfavorable outcome of the case. Mr. Rosenberg was constructively terminated from his position as an attorney for Mr. Calderon after the favorable findings of the jury, but prior to the unfavorable findings of the federal district court. At the time of his termination, Mr. Calderon had not suffered any damage or lost his case. Consequently, the reasonable value of Rosenberg's services must be based either on a percentage of the contingency fee or on the basis of quantum meruit. Rosenberg has elected, by his testimony and by his letters to Calderon, to be paid based upon the theory of quantum meruit. Cf. *Gross v. Lamb (1980), 1 Ohio App. 3d 1*; *G. Douglass* v. **[*20]** *Downend* (1908), 20 O.C.D. 649.

The record indicates that no time records were kept by Mr. Rosenberg. Mr. Rosenberg did, however, attempt to estimate the total number of hours spent on this case. His testimony was corroborated, at least in part, by the testimony of Calderon and Brenner. Based upon this testimony, the trial court awarded Rosenberg damages [for attorney fees] in the sum of $ 27,000.

Upon a review of the record, we find that the trial court exercised its discretion in arriving at a fair and equitable determination of fees for services rendered by Rosenberg. The trial court's award, in our opinion, accomplishes the same and we accordingly affirm.

In view of the foregoing, we find appellants' seven assignments of error to be not well-taken. [2]

A certified copy of this entry shall constitute the mandate pursuant to *Rule 27 of the Rules of Appellate Procedure.* See also Supp. R. 4, amended 1/1/80.

End of Document

[2] The record indicates that appellee filed a cross appeal; however, no briefs or assignments of error were filed. Therefore, appellee's cross-appeal is, hereby, dismissed.

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

Las Vegas, Nevada, Tuesday, February 06, 2018

[Case called at 9:47 a.m.]

THE COURT: We're going to go on the record in Edgeworth Family Trust versus Lange Plumbing, LLC.

We have Mr. Parker present here on behalf of Lange plumping. He's present on court call.

[THEODORE PARKER, APPEARING TELEPHONICALLY]

THE COURT: If we could have the other parties' appearances for the record.

MR. VANNAH: Robert Vannah and John Greene on behalf of the Edgeworth Family.

MR. CHRISTENSEN: Jim Christensen on behalf of the law firm.

MR. CHRISTIANSEN: Pete Christiansen on behalf of the law firm.

MS. PANCOAST: Janet Pancoast on behalf of the Viking entities.

THE COURT: Okay. Ms. Pancoast, we're going to do the stuff that involves you and Mr. Parker first and then -- since -- so we can get Mr. Parker off the court call. So Mr. Parker has a Motion on for a Determination of a Good Faith Settlement. There has been no Opposition to this Motion. I'm assuming there's no Opposition since the checks have already been issued and this case has already been settled.

So, based upon that the Motion for Good Faith Settlement is going to be granted under the *MGM Fire* factors have been met, as well as NRS 16.245.

And in regards to the settlement documents, I believe we have those because I believe the checks have been issued, is that correct?

MS. PANCOAST: Your Honor, the checks were issued long ago from the Viking entities and frankly, I've got a stipulation that I've brought today hoping to get Mr. Simon's signature and Mr. Parker is the final signature as to -- so to get Viking out.

I mean, Mr. Simon did sign a dismissal to get Viking out, but we're trying to sort of wrap up the entire case and now we've had, as you are aware, a bit of a snafu. And so I'm not sure how we deal with that. But I mean, I'd like to get this stip filed, so at least --

MR. CHRISTENSEN: I can do it.

MS. PANCOAST: -- you know, Mr. Parker and I and our clients are sort of harm's way.

MR. SIMON: We don't have the checks yet.

THE COURT: And --

MR. CHRISTENSEN: Your Honor, just to let the Court know, the closing documents for Lange took a little bit of time. They have finally been -- they were signed by the client where needed yesterday and then been provided to Mr. Simon who's got to get some signatures and get them on over back to Mr. Parker.

THE COURT: Okay. So that's where you are. Counsel, what is --

MR. CHRISTENSEN: It's in the works.

THE COURT: -- you and Mr. Simon's position in regards to this stip?

MR. CHRISTENSEN: I think it's appropriate.

MR. SIMON: Yeah, there's -- unless Mr. Vannah has an issue with it.

MR. VANNAH: No.

THE COURT: Okay.

MR. VANNAH: No, we're -- my understanding of the whole case is -- the underlying case is -- we signed everything yesterday we -- and we want Mr. Simon to finish it off and it's almost done.

THE COURT: Okay.

MR. VANNAH: The whole case is just about to be dismissed, it's just a matter of a few days, I imagine.

THE COURT: Okay. So Mr. Panco -- Ms. Pancoast, you can get Mr. Simon to sign that. Mr. Parker is not here today, you'll have to get him as soon as he's back in the jurisdiction.

MR. PARKER: And I'll be back -- Your Honor, this is Mr. Parker. I'll be back in jurisdiction tonight and --

THE COURT: Okay.

MR. PARKER: -- certainly I can find time to go by Ms. Pancoast's office if necessary to sign the stipulation tomorrow. Or if she had it delivered to my office, I will sign it tomorrow morning.

I wanted to make sure that it was clear on the record that the Good Faith Settlement determination, as well as the stipulation that

we've -- we will be signing involves and determines that not only were the settlements in good faith, you know, reached at arm's length negotiations, but they include the resolution of all claims between the Defendant and cross-claims and any additional shared obligations the Defendants may have had amongst each other, as well the, of course, the Plaintiff's claims.

THE COURT: Well did --

MR. PARKER: I think that's all but agreed, but since I'm not there I figured I'd say it one more time so it's on the record clearly.

THE COURT: Okay. And does anyone have an objection to that?

MS. PANCOAST: No, that's agreed. That's correct.

THE COURT: Okay. There being no objections to that that'll be part of the record. And then in the regard to the settlement documents, as soon as those things are signed, we'll get those. Do you guys think we need another status check to get those done or do you guys --

MR. SIMON: You might as well set it. We still don't have the settlement checks from Mr. Parker, but --

MR. PARKER: Yeah.

THE COURT: Okay.

MR. PARKER: I'm sorry, I couldn't hear --

MR. SIMON: So I mean, there's a --

MR. PARKER: -- what someone just --

MR. SIMON: -- little bit left to do.

MR. PARKER: -- said, but let me just put on the record, Your Honor, this is again Teddy Parker on behalf of Lange. We do have our settlement check. It has arrived. So tomorrow I'm more than happy to have it sent over to Mr. Simon's office in exchange for the settlement documents.

THE COURT: Okay. So what we will do then is we'll set a status check on that issue in two weeks just to make sure all of that stuff has been resolved.

MS. PANCOAST: Yes, Your Honor, that would be great. And what I am doing is I'm giving the stipulation to Mr. Simon because he doesn't have the check yet and I can understand he doesn't want to sign it before the check, so he's got it then he will get it to Teddy or exchange it when they exchange the check, so --

THE COURT: Okay.

MS. PANCOAST: -- Mr. Simon's facilitating wrapping this up.

THE COURT: Okay. Mr. Parker, could you hear that? Based on when you and Mr. Simon exchange the check, then the stipulation can be signed after that.

MR. PARKER: Sounds great.

THE COURT: Okay. So we'll set a status check on the settlement documents in two weeks. That date is?

THE CLERK: February 20th at 9:30.

THE COURT: Okay.

And so then in regards to the other motion, I mean, Mr. Parker, you're not involved in the other motions, would you like to stay

on the court call or would you like to -- it's up to you.

MR. PARKER: Your Honor, I am -- I'm -- I think tangentially I'm involved --

THE COURT: Okay.

MR. PARKER: -- and the only reason I say that is because I think we all as a party to this case would like to have this whole thing wrapped up at once so that there's nothing hanging over any of our hands any further -- any longer.

THE COURT: Okay.

MR. PARKER: So I'd like to stay on in the event my comments may prove beneficial to the Court's consideration of the motion.

THE COURT: Okay. And I appreciate that, Mr. Parker, I just didn't know if you had something else to do or --

Okay. So, we're going to start with Danny Simon's Motion to Consolidate that was done on an Order Shortening Time. I have read the motion, I've also read the Opposition, and I did read the Reply that did come in yesterday.

Mr. Vannah, have you had an opportunity to review the Reply?

MR. VANNAH: I have, Your Honor.

THE COURT: Okay. So based upon that, Mr. Christensen.

MR. CHRISTENSEN: Yes, Your Honor.

So Rule 42 addresses consolidation; essentially if there is a common issue of fact or of law the cases can be consolidated under the discretion of the Court.

In this situation we have common issues of fact. The common issues of fact are the litigation of the case against Viking and Lange and the facts of that underlying litigation, the house flood, et cetera. Common issues of fact are the work of the law office. Common issues of fact are the reasonable fees due the law office.

Common issues of law are the relationship between the law office and Plaintiffs, whether there's an express contract or not, and those types of related issues to the existence of the contract; whether there was a constructive discharge of the contract, things of that type.

I don't want to go through all the facts of the consolidation, Your Honor, is quite familiar with the underlying case.

THE COURT: And I've read it, but I will tell you one of the concerns that I have is the issue with this contract because as you know from where you guys are standing your position is there was some discussions, but there was never anything put in writing, but from where -- and Mr. Vannah's Opposition basically what Mr. Vannah is saying is everything indicates that there was a contract that this would be done on an hourly basis. And I do have a couple questions for Mr. Vannah in regards to that. So I do want to hear your position about that.

MR. CHRISTENSEN: Okay. Jumping the gun a little bit on the Motion to Adjudicate, but that's --

THE COURT: Sorry.

MR. CHRISTENSEN: -- fair enough. It's all right.

So, first of all, in the big picture the existence of the contract does not affect the jurisdiction of the Court over the Motion to Adjudicate

and only affects the manner of calculation of the fee due.

THE COURT: Right.

MR. CHRISTENSEN: On the issue of the existence of the contract, we're talking about whether there's an express contract or not. There seems to be a little bit of confusion, so let me see if I can clear it up. An express contract can be writing or oral, there just has to be a meeting of the minds. So, whether I have a piece of paper that says I'll cut your lawn for $20 and it's signed or whether I say I will cut your lawn for $20 and the homeowner agrees and I cut the lawn and I then get $20, that's an express contract.

You can also have contract implied by the facts or conduct. That's an implied contract and that's not an express contract. So, it may be a little nuanced here, this distinction and as a practical matter when we get into the weeds on that, it may cut different ways, but as we go to the existence of the contract, the allegations of the underlying Complaint filed in the other case argue that an express contract was formed in May of 2000 -- in May of 2016. And that doesn't jive with the e-mail that was sent May 27th. It seems like -- you know, if you read that e-mail and take reasonable inferences from it, you say hey, I got this problem --

THE COURT: This is the e-mail between Mr. Edgeworth that was sent to Danny Simon.

MR. CHRISTENSEN: Correct.

THE COURT: Yes.

MR. CHRISTENSEN: It's attached as Exhibit A to the Reply --

THE COURT: No, I've read it. I just want to make sure--

MR. CHRISTENSEN: -- and it's also --

THE COURT: -- we were talking about the same one.

MR. CHRISTENSEN: Right.

THE COURT: Yes.

MR. CHRISTENSEN: Exactly.

And so that raises this reasonable inference that they didn't have an express oral contract at that time.

So, the case moves forward and suddenly becomes more than just a simple claims process claim. There's a lot more involved. And the first billing isn't sent up by Mr. Simon's office until something like seven months later in December.

THE COURT: Was there an understanding between Mr. Edgeworth and Mr. Simon as regards to when the billing would actually occur?

MR. CHRISTENSEN: I don't believe that was -- well, on the part of the law office, no --

THE COURT: Okay.

MR. CHRISTENSEN: -- and I don't believe that that was asserted on the part of Mr. Edgeworth.

THE COURT: Okay. And I mean, he didn't assert that, that's a question that I have --

MR. CHRISTENSEN: Right.

THE COURT: -- because as we talk about like how long it took for the billings to begin and stuff like that, that was just a question that I had.

MR. CHRISTENSEN: Well -- and it's a good question, Your Honor, because when you do hourly work that's typically a material term. I mean, usually when doing hourly work you're getting billed within 30 to 60 days --

THE COURT: Right.

MR. CHRISTENSEN: -- if events are occurring and you know, then there's language in there about how quickly it's going to get paid, et cetera, et cetera.

In the alleged oral contract that the Edgeworths say existed, the only term they talk about is $550 an hour. I cited the *Loma Linda* case, that's been law in Nevada for a long, long time. Even if you're asserting an oral contract and you've got one term that seemingly there's an agreement upon, if there's not agreement upon all the other terms, there's no contract. It's all or nothing. So, that's the position of the law firm that there was no contract.

As you move forward in time to August of 2017, when the case was obviously getting very hot and heavy in this courtroom --

THE COURT: Uh-huh.

MR. CHRISTENSEN: -- you can see that Mr. Simon, again, raised that issue because there was a lot more money being spent on the case, there was a lot more time being devoted to the case. He wanted to tie up that lose issue because, you know, he agreed to take the case and send some letters, you know, for a long family friend and didn't think it was going to be that big of a deal and now suddenly it is.

And it's dominating time at the law office, he's not working on

other files, it's become an issue. So he tries to address it. There's not that much documentation of his attempts to --

THE COURT: Well, that's --

MR. CHRISTENSEN: -- address it.

THE COURT: -- was going to be my next question because I have --

MR. CHRISTENSEN: There are --

THE COURT: -- the e-mail here from Brian Edgeworth, but did Danny Simon respond to this e-mail or what did he do to address this issue?

MR. CHRISTENSEN: My understanding of that e-mail is that it's a standalone e-mail. In other words, it wasn't pulled out of a string of e-mails --

THE COURT: Okay.

MR. CHRISTENSEN: -- back and forth. I can't answer the question concerning whether there were other e-mails that addressed that. The e-mails literally are a stack -- how high? This high?

MR. SIMON: Higher.

MR. CHRISTENSEN: Higher. I did not go through them. At least not yet. Hopefully I won't have to.

But this one e-mail that we pulled out appears to address that issue on the head and that's why we attached it. It's Exhibit B to the Reply.

THE COURT: Yes.

MR. CHRISTENSEN: It's in the other -- attached to the other

documents.

And a reasonable inference that you can draw from that e-mail is that there really wasn't a firm agreement. It's stated right out that we never had a structured discussion and that seems to match the conduct of the parties. So, even if we're going to go down the road to an implied contract, that matches the conduct of the parties. Not all things were getting billed, there were costs being fronted.

That's very rare for an hourly lawyer to do. And there were large amounts of costs being fronted. As a matter of fact, there are still some $71,000 in costs outstanding. That's not typical behavior of an hourly lawyer and that's because Mr. Simon does not take hourly cases as a rule. You know, he takes cases where there -- where you address the fee at the end of the case and that's what we have here.

So and all of those facts -- to kind of segway back to the Motion to Consolidate, all of those issues are at play on the Motion for Adjudication. So there are common issues of fact and law that relate to that contract.

And there's another issue here that I wanted to bring up and that is the basic legal premise and the public policy against multiplicity of suits. It's enshrined in Rule 13, it's expressed in other ways through the law, and it's actually dug into by Leaventhal where Leventhal cited the *Gee* case out of Colorado. And it talked about the problem of creating multiple suits when there is a lien adjudication.

And it addresses it from the standpoint of judicial economy and it says -- the *Gee* case quotation that was cited by Leventhal, our

Supreme Court case says: To restrict the means of enforcement of an attorney's liens solely to independent civil actions would be a waste of judicial time, as well as contrary to the legislative intent reflected by the statutory language.

And it goes on to say: The trial judge heard the proceedings -- Your Honor -- which gave rise to the lien is in a position to determine whether the amount asserted as a lien is proper and can determine the means for the enforcement of the lien.

And that dovetails exactly with our statutory language. The statute says the Court -- the statute says that the Court shall adjudicate the lien. There's no discretion in the word shall. Certainly there's discretion in the question of consolidation, that's a maybe question. But the question of adjudication I shall. So, this Court is going to have to address those issues.

Under the *Verner* case, which was cited by the Edgeworths, it's very interesting that was kind of an opposite fact scenario where a case was split up and the Supreme Court said no, you shouldn't have done that. And one of the reasons why is they said that there must be a demonstration that a bifurcated trial is clearly necessary to lessen costs and expedite litigation. That's not going to happen.

That's why all of this should be consolidated in one court because the case law is clear that Your Honor is the most knowledgeable that will promote judicial economy and we shouldn't lose on that. If we have two cases running on parallel tracks, there's going to be a lot of duplicity of effort, we're going to lose judicial economy.

Now, the most natural reply for the Edgeworths is to say well, wait a second, under the Constitution we have a right to jury trial and that's true. There's nothing in consolidation that would prevent the proceeding of their action. That would have to be done by something else; by say a Motion to Dismiss. And there is nothing in the statute that prevents the proceeding of their contract claim, if they decide to do so after adjudication of the lien.

In fact, the statute, subsection 7, although it's looking at it from the attorney's point of view says this is not an exclusive remedy, you can file an independent action. There's nothing in the law that says that a lien cannot be adjudicated and then there can't be an independent action that addresses those same facts and law.

As a practical matter, obviously it may have an impact on the damages in the breach of contract case, depending upon how far we go in determination of facts and law in the adjudication process that could have fact or issue preclusion in the contract case, depending how it all works out; how the findings come out.

But that doesn't mean that both of these things can't operate at the same time. That doesn't create mutual exclusivity. Both of these remedies are available at the same time. By consolidating it, we can save a lot of time and effort. We don't have to go over tilled ground again. So, that's the argument on consolidation.

I -- if you'd like me to I can address some of the other factors that maybe lead to why we should either adjudicate today or set it for an evidentiary hearing to adjudicate in the near future.

THE COURT: Yeah. And if you could do that because when Mr. Vannah responded he responded to both, so I'm going to give him an opportunity to respond to both, based on the Opposition that he filed.

MR. CHRISTENSEN: Okay. Very good, Your Honor.

So, I'm going to dip back into the well-known facts, just because I think it's necessary for a brief review so that we have a common ground of understanding.

So, Plaintiffs were building a house as an investment. Lange, the plumber installed Viking fire sprinklers, it was within the contracted work of the plumber and one of those sprinklers experienced a malfunction, flooded the house, damaged the house. All -- there is a contract between Lange and American Grating. Some of the terms of the contract same things like Lange has to assert warranty rights if there is a malfunction in an item installed in the home, things of that type and there's also an attorney fee provision and that becomes important as the case progresses.

At the early stage Lange said we're not going to do anything, it's Viking's fault. Mr. Edgeworth had not purchased any course of construction coverage or anything else that would have covered an incident like this. So, because of that decision he was obligated to go through this claims process against Viking and/or Lange. He was bumping his head up against the wall, started reaching out for legal assistance. Reached out to his friend. We saw the e-mail from Blake May.

The case obviously grew into a major litigation, contentious,

even. Lots of motion practice, lots of things going on. Around the middle of 2017, Mr. Simon approached Mr. Edgeworth and tried to get a resolution on this fee issue. He had a lot of costs fronted, he was eating up a lot of time at the office. They are not hourly billers, they do not have the standard hourly billing programs. It was a problem.

Mr. Edgeworth is a principal of two companies with an international footprint. He has another revenue stream from investment homes. He apparently has another revenue stream from various investments. He's experienced hiring and paying lawyers. I know that they done work in the IP, the intellectual property area, with copyrights for some of those companies, et cetera. He's not a typical lay person. He has dealt with lots of attorneys in the past.

And his response of August of 2017 has to be looked at in that light. This is not some guy who's getting bullied into something, here's a guy who's looking at it from a business perspective and sending out options. Well, we could do this. I could take out a loan and pay hourly on the whole case, which implies that he was not or else he wouldn't have brought it up. Discusses a hybrid, discusses a contingency, makes it clear that there's an open question on fees.

As the case moved on in November, after more motion practice, Mr. Simon has positioned the case well for success at trial. Mr. Simon has a meeting with Mr. Edgeworth prior to the mediation and shows him the amount of costs outstanding, which at the time were in the neighborhood of 76,000. I believe Mr. Edgeworth receive a copy of that, although that is portrayed by the Plaintiffs in their Opposition.

Discussion was also raised about the fees, it was impressed that that's -- that issue, there was this mediation to take care of. After, as a result of the mediation a settlement is reached with Viking, for six million dollars. The total cost of the build was 3.3, including land acquisition, HOA fees and taxes. So that is an amazing recovery on a case where the property damage loss, depending upon how you look at it, between the hard and soft damages as Mr. Kemp went through that analysis in his declaration, you know, range from three quarters of a million to a million and a half or thereabouts, in that range. That's an amazing result.

As a result of that amazing result, Mr. Simon again returned to that fee discussion and at that time client communication started to break down.

THE COURT: This is November of 2017, right?

MR. CHRISTENSEN: Correct, Your Honor.

The culminated in -- at the end of November there was a fax sent from Mr. Vannah's office signed by Mr. Edgeworth saying -- in essence, talk to Mr. Vannah, he's now in power to do whatever on the case. The following day in response to that letter the law firm filed its first attorney's lien and soon perfected it under the statute.

We then come to an issue that's been raised because of a factual argument made by the Plaintiffs and it has to deal with the attorney fee claim that existed under contract against Lange. By its very nature that claim was not set until the Viking resolution was made because arguably under that contract, if Lange is supposed to pursue

remedy against Viking for the Edgeworths and Lange says we're not going to do that, Mr. Homeowner, you have to do that and the homeowner expends fees and costs to do that job, then under that contract he -- the homeowner is due those fees and costs because Lange said I know we have this contract term, we're not going to abide by it.

So, it doesn't really matter if a December billing is incomplete because the story is -- isn't ended, the story's still ongoing. There was an argument that because Mr. Simon didn't do complete billings as the case went along that somehow he had damaged the case -- the value of the case. Hard to imagine with the result, but that argument is made. And that's simply not true because of that underlying contract.

There was a potential for a claim against Lange to recover every penny spent. Now, Lange would have argued, well, some of that is not reasonable or it's due to a different claim or whatever, but there was a potential for a great case against Lange under that contract and that was not ripe and that number was not certain until the settlement with Viking occurred.

So as a result those -- if those attorney's fees had been settled in a timely manner, as requested by Mr. Simon, then they would have had that number as a sum certain to pursue against Lange.

To understand that little bit further you have to go back into this whole thing about how you get attorney's fees, so, you know, we got the English rule that loser pays. Well, we don't follow that, we follow the American rule that everybody bears their own fees and costs. That's

changed by certain things. For example, if you have an offer of judgment and you're able to go through all the *Batey* factors and all that stuff, that's a tough road to go for fees. It's rarely granted.

The other one is if you have a right for fees under a contract and in a claim against Lange, because those would be damages under the contract, you've got a direct claim. That's not something that's, you know, handled by the Court at the end of the case under a fee-shifting statute, like you might have a consumer protection statute or a civil rights statute or something of that type. That's a direct claim and it's not ripe until the case against Viking is settled.

So as a practical matter what would have happened in the case in this court is there would have been the resolution with Viking and then if they decided to pursue that contract claim there would have had to been disclosure of the sum certain that would have had to been added to damages. Undoubtedly that would have been bumped the trial date because Lange would have said wait a second, we need to respond to this, we want to explore these damages and then that case would have progressed.

That's important because, one, either because of a misunderstanding or a misstatement that takes away this whole Edgeworth argument that Mr. Simon somehow prejudiced the client. But secondly, that was all explained via new Counsel, Mr. Vannah, to the clients. And on December 7th, there's a writing from the clients directing Mr. Simon to settle the case against Lange for 100,000 minus an offset.

So, they made the decision to knowingly abandon that

contract claim that would have encompassed those fees against Lange. Having made that based upon the advice of Counsel, Mr. Vannah, they can't now bring it up as a shield to either adjudication or to the existence of contract.

What started then was kind of a cat and mouse game by the Edgeworths. For example, on December 18th, when the Viking checks were available, that same day the law office picked up the checks, Mr. Simon got on the phone, sent an e-mail, checks are ready, come on over, endorse them. Sent that to Mr. Greene of Mr. Vannah's office.

Mr. Greene called him back promptly and what the conversation was, was Mr. Simon said come on over and sign them because Friday, we're heading out of town for the holidays and we won't be back until after the New Year. Mr. Greene said well, the Edgeworths are out of town and won't be back until after the New Year. Okay. Everybody leaves town.

The day after Mr. Simon left town for Christmas a new e-mail comes in Saturday of the Christmas weekend and says, you know, we're not putting up with any more delay, get these checks signed. Well, they already knew he was out of town and he gave them an opportunity. Then we go into the back and forth and they accuse Mr. Simon that he's going to steal the money, put it in his pocket, and run off somewhere.

Seemingly we work through that, an agreement is made to open up an interest-bearing trust account at the bank with the interest inuring to benefit of the clients. On January 2nd, 2018, an amended attorney lien was filed. On January 4, the contract claim was filed

against Mr. Simon. On January 8th, the checks were endorsed and deposited. The following day the law firm was signed -- served. And on January 18th, which is soon as the funds cleared, the clients received their undisputed amount, which is the total amount in the Trust account, minus the amount of the lien of January 2nd.

So, at the current time there's money sitting in a Trust account that can't go anywhere unless they are co-signed by Mr. Simon and Mr. Vannah and the client is getting the benefit of the interest on that account. At the current time the costs outstanding are $71,794.93. A Memorandum of Costs was filed and that number is reflected in the two liens. It's actually slightly lower than the number in the two liens because subsequently a rebate was obtained from one --

THE COURT: Right.

MR. CHRISTENSEN: -- of the experts.

The total fee claim outstanding is under the market approach to calculation of fees, which is allowed under quantum meruit, which you can do clearly in absence of contract. The claim is for $1,977,843.80.

The Declaration of Mr. Kemp is attached. Mr. Kemp is obviously one of the top attorneys in the country. One of the top product defect attorneys in the country. He went through the *Brunzell* factors in the case and found the value -- the market value of the fee to be $2,444,000 before offset for money already paid, which is a little bit higher than the second lien amount.

We then get into lien law. So, the issue presented under the Motion to Adjudicate Lien, it's just that. And the statute says the Court

shall adjudicate the lien. The statute does not have any exception to jurisdiction of this Court or the obligation of this Court to adjudicate that lien, it says shall. The case law lays out and we laid it out in the motion, all the cases that say the Court has adjudi -- has jurisdiction over this fee dispute.

And by the way, that jurisdiction continues even if the Defendants are dismissed. There's absolutely no case law anywhere that indicates that somehow that would magically end the jurisdiction of the Court. And in fact, that would cut against the public policy behind that statute because then you'd be playing a game of keeping Defendants who have walked their peace in a case while you're trying to adjudicate a lien.

So that would go against the public policy of settlement and allowing these folks out and would allow just another whole level forum shopping and game playing on the part of client, who may be wanting to avoid paying an attorney their just fees. There's also no case law anywhere that says that and it's certainly not stated in the statute.

So we have a lien that's been served, it's been perfected, there's no argument that it hasn't. Money has been paid, it's sitting in trusts, so adjudication is ripe. There are some cases that say well, wait, we're not going to adjudicate a lien before money has been paid, that's been -- that's happened. It's sitting in Trust. If that is the proper procedure to be followed under the rules of ethics, that's the proper procedure to be followed under the statute, the statute has been followed each and every point, exactly.

There's some claim that adjudication of the lien at this point would be unproper[*sic*]. I think that addressed that through the Declaration of David Clark, who is State Bar Counsel in the state for many years. His opinion addresses two things, one, does an attorney break and ethical rule by asserting an attorney lien? And the answer is no. In fact, that's what you're supposed to do.

And the second thing is does an attorney commit conversion when settlement money is placed in a trust account, interest inuring to the benefit of the client and there's then a Motion to Adjudicate over the disputed amount in that Trust account. And again, the answer is no.

We address some of the other conversion law in the motion practice. They can't establish exclusive dominion and a right to possess that money in the Trust account because that claim is based on contract. We cited a California case directly on point. And the Restatement 237, that addresses that. The contract isn't enough. A lien would be enough, but a contract is not a sufficient basis in which to bring a conversion claim.

Even if it was, we cited Restatement Section 240 and the other cases. It has to be wrongful dominions in order to serve as a basis for our contract. So they fail on two parts. One, it's not wrongful, in fact, it's encouraged under the law. And two, it's not dominion because it's in a Trust account, Mr. Vannah has signing authority on that account.

It's not like they took a cow and put the wrong brand on it and wouldn't release it, it's different. It's in a Trust account with the interest inuring to the benefit of the clients. The reason I raise that is because

it's seemingly brought forth by the clients that because they have this claim in another case or another case until the Court addresses the Motion to Consolidate that that divests the Court of jurisdiction.

Now, they don't put it in those terms, but that's the gist of it and that's incorrect. There's nothing in the statute provides an exception to jurisdiction. This Court shall adjudicate that lien. The only possible exception is mentioned in dicta, in an Argentina case, which they don't even address. They don't even raise that in their Opposition. They raise some rhetorical questions, they raise cases that don't apply, but they don't address that core question of whether it's appropriate for this Court to adjudicate the lien. Clearly, it is.

When we get into adjudication, then we're going to get into the impact of the contract, whether it's best to go under the market rule, an hourly basis, a hybrid, somewhere in the middle, that's up to the discretion of the Court, the method of calculation. The only requirement is that whatever fee is arrived at is fair and reasonable under the *Brunzell* factors and of course there have to be findings applying *Brunzell* to the fee awarded.

That's how the case should proceed. That's an orderly presentation and that's the process of the case that's called for under the statute and cases. And frankly, the Edgeworths haven't provided anything that says different. Certainly they're going to come up and argue and they're going to make an equity argument and that's fine, but that has to fail in the face of the statute and case law. The Court doesn't have discretion to go beyond the confines of that statute. Thank you,

Your Honor.

THE COURT: Okay. Thank you.

MR. CHRISTENSEN: Unless you have any questions, I'll --

THE COURT: No, I do not.

Mr. Vannah?

MR. VANNAH: Thank you, Your Honor.

The procedural history is fairly accurate so -- but here's what -- here's how we perceive what actually happened. They were friends, the client and Mr. Simon and naturally went to him and said hey, I've got this situation going on, I have a flooded house, I'd like you to represent me. Whatever reason, Mr. Simon never does what a good lawyer should do is prepare a written fee agreement.

So for a year and a half they have an oral under -- not an oral understanding, they actually have an oral agreement. Mr. Simon says I will work for you and I will bill you $550 per hour and my associate will bill at a lower rate, I think it was $275 an hour.

THE COURT: And I do have a question about that because --

MR. VANNAH: Yes.

THE COURT: -- you put that in your Opposition, but in your Opposition you keep referring to -- you referred to Mr. Simon's Exhibit 19 and Exhibit 20 that's attached to their motion. And every -- and unless I had -- the copies that I have and that's why I hold them in here and I brought them just to make sure I wasn't wrong, but -- well, Exhibit 19 and Exhibit 20 in the motion -- the original motion that was filed says it's $275 an hour.

MR. VANNAH: For his associate.

THE COURT: Okay. So these are for the associate.

MR. VANNAH: Right. And he --

THE COURT: Okay.

MR. VANNAH: And Mr. Simon billed 550 an hour.

THE COURT: Okay, but where is that because in your -- when you motion you keep referring to Exhibit 19 and Exhibit 20 at the 550 an hour. Where is that --

MR. VANNAH: It's in the --

THE COURT: -- because they both say 275.

MR. GREENE: Your Honor, it's been undisputed Mr. Simon billed 550 per hour. We just put it as simple math and it was up to Mr. Simon to put the amounts in the invoices and bill them to the clients. That's what they paid Mr. Simon, no one's contested that --

MR. VANNAH: So for --

MR. GREENE: -- at 550 an hour.

MR. VANNAH: Yeah, for a year and a half we put all -- for one and half years --

THE COURT: Right. And I was just wondering how you did math because you know we're all lawyers and --

MR. VANNAH: That's what Mr. Simon --

THE COURT: -- none of our math is as good as we would like it to be. But I was just wondering because you were referring to Exhibit 19 and Exhibit 20 in those amounts you estimate at being at 550 an hour and that's how we come to those amounts and I just saw it as 275 and

when I did the math it was 275, so I didn't understand where the 550 came from.

MR. VANNAH: It's 275 for her.

THE COURT: Right. And that's just what's in 19 and 20 and that is what you referenced in your motion as to how they got to the 550 figure.

MR. GREENE: It's our understanding in the first portion of the exhibits show Mr. Simon's billings at 550 an hour and then as we dive deeper it's 275. Maybe the copies weren't made in the order that they should have been, but Mr. Simon's time was billed at 550 per hour.

MR. CHRISTENSEN: Your Honor, If I can clear this up. I apologize, Mr. Vannah, but --

MR. VANNAH: Sure.

MR. CHRISTENSEN: So that you can move forward.

MR. VANNAH: Sure.

MR. CHRISTENSEN: Mr. Simon's billing appears first in Exhibit 19.

THE COURT: 19, okay.

MR. CHRISTENSEN: And if you look at the bottom it's paginated.

THE COURT: Uh-huh.

MR. CHRISTENSEN: If you go to page 79 --

THE COURT: Okay.

MR. CHRISTENSEN: -- that has the total and his fees. Perhaps we should have broken it up into 19A and 19B.

THE COURT: I'm sorry. I just thought it was tabulated at the end.

MR. CHRISTENSEN: Yeah. If you go to the --

THE COURT: Okay. Okay, I see it.

MR. CHRISTENSEN: Okay.

THE COURT: I see it. Okay, thank you, Counsel.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you.

MR. VANNAH: But -- no, thanks, Counsel, I appreciate it.

THE COURT: And I'm sorry, I just thought it was all tabulated at the end when I read it so I was looking at the 275 and I just wanted to make sure my math was right.

MR. VANNAH: No, no, that's fine. And I don't think anybody disagrees.

THE COURT: Okay.

MR. VANNAH: So for a year and a half, Mr. Simon billed his time in detail at $550 an hour for his time and then 275 for his associate for one and a half years. And on each and every billing -- and also included all the costs and my client paid each and every invoice within five to seven days, including the costs.

So, when they're talking about Mr. Simon advanced all these costs, you may have paid the costs just like you would if you're working for an insurance company, which I used to do you'd pay the costs out of your general account, you'd send the insurance company a bill and say this is what I spent for court reporters and this is how much my time's

worth and they send you a check.

And for a year and a half he paid my -- the Edgeworths paid almost $500,000, almost half a million dollars for a year and a half. So what happened was in May about two -- nobody's saying anything about any contingency fee. Now, what they want to get is a contingency fee, that's what they really want, that's what Mister -- Mr. Kemp is excellent and I love him to death, he's a good friend of mine.

Mr. Kemp said well, if our firm had done it on a contingency fee we would have charged 40 percent. Certainly they could have done that, but the rule -- Supreme Court Rule 1.5 makes it abundantly clear that you can't have a contingency fee unless you have it in writing and a client signs it and it also has to have various paragraphs in it that are required by the State Bar in order to even have a contingency fee.

There is no contingency fee in this case, nobody disagrees with that. The agreement was to pay 550 an hour and 275 for the associate. The bills came over and over and over again, including the costs and my client paid each and every bill as they came, no discussion.

Then in May of last year or so, in a bar -- they were sitting in a bar, I think it's down in San Diego and they started talking about how this case is getting a little larger, the -- you know, a little bigger. You know -- and the thoughts -- the discussion came about maybe a hybrid, maybe finishing off the case in some sort of a hybrid and maybe that might be something they would consider a contingency fee, which would still require a written contingency fee. You can't have a contingency fee

oral -- orally.

After that conversation, Your Honor -- and in that e-mail what my client said is I would be -- I would like at something like that if you propose it, but you know what, bottom line is, I can certainly go ahead and keep paying you hourly, I'll have to borrow the money, sell some Bitcoin, do whatever I have to do. After that, another bill came, this was after this conversation --

THE COURT: The e-mail from August?

MR. VANNAH: Right. This e-mail I'm looking at is -- yes, August 22nd --

THE COURT: Okay.

MR. VANNAH: -- 2017.

THE COURT: Okay.

MR. VANNAH: After that e-mail, another bill came in September, hourly, a substantial bill and my client paid that bill and that was the end of the discussion until when the case obviously was settling, Mr. Simon said hey, I want you to come into my office, we need to talk about the case.

My client goes into the office, brings his wife, and when he goes in there there's -- Mr. Simon's visibly -- and uses the F word a little bit saying why did you bring her? Why did you effing bring her? Why are you bringing her making this complicated? And he's saying well, my wife's part of this whole thing.

And then Mr. Simon says well, you know what, I deserve a bonus. I deserve a bonus in this case, I did a great job, don't you want

to -- I don't really work at 550 an hour, I'm much greater than that. $550 an hour to me is dog food. It's dog crap. It's nothing. So why don't you give me a big bonus. You ought to pay me a percentage of what I've done in the case because I did a great job.

Now, nobody's going to quarrel that it wasn't a great result. There's certainly some quall as to why the result was done, my client was very, very involved in this case, but I don't want to get into all of that and I'm certainly not criticizing Mr. Simon for anything he did, other than on the billing situation.

At that time Mr. Simon said well, I don't know if I can even continue in this case and wrap this case up unless we reach an agreement that you're going to pay me some sort of percentage, you know, I want a contingency fee and I want you guys to agree to sign that. My client said no, we're not doing that. You didn't take the risk. I've paid you hourly, I've paid you over a half a million dollars. I'm willing to continue finishing up paying you hourly.

So, Mr. Simon said well, that's not going to work, I want a contingency fee. They came to us, we got involved, we had a conversation with all of us, and at that point in time everybody agreed, he cannot have a contingency fee in this case because there's nothing in writing. You don't even have an oral agreement, much less in writing.

So what happened is -- and this is an amazing part, Judge -- and not at the time that Mr. Simon goes to one of the depositions, we quoted that, the other side said to him how much are fees in this case, have they actually been paid. And Mr. -- and that's the point of that. Mr.

Simon then pipes up and says listen, I've given that to you over and over and over again, you guys know what our fees are.

I have supplied that to you over and over and over again and you know what the fees are and those were the fees that he gave them were the amount that my clients had paid over the year and a half. And he said these are the fees that have been generated and paid. So he's admitting right there that, you know, this is the fee, you guys have got it.

As the case got better and better and better, Mr. Simon had buyer's remorse, you know, I probably could have taken this on a contingency fee. Gee, that would have been great because 40 percent of six million dollars is 2.4 million and I only got half a million dollars by billing at $550 an hour and I'm worth more than that; I'm a better lawyer than that. That's what he's saying.

So he said to -- so you guys need to pay me a contingency fee until that didn't work out so he then said well, you know, I didn't really bill all my time. All that time I billed that you paid -- by the way that's an accord and satisfaction, I sent you a bill, you pay the bill. And this happened like five or six invoices. Here's the bill, bill's paid. Here's the bill, bill's paid. Detailed time.

So Mr. Simon has actually gone back all that time and he has actually now added time. Added other tasks that he did and increased the amount of the time to the tune of what, almost a half a million dollars or so. An additional over hourly over that period of time. And then he went and he got Mr. Kemp, who is a great lawyer, who said well, you know what, a reasonable fee in this case, if there is no contract would be

40 percent, that's 2.4 million dollars, it doesn't take a genius to make that calculation.

So really, under this market value what should happen is Mr. Simon should get 2.4 million dollars, a contingency fee, even though he didn't have one and even though that would violate the State Bar rules, he actually should in essence get a contingency fee and give my client credit for the half million dollars he's already paid. That's what this is about.

When we realized that this wasn't going to resolve, I mean, we're not doing that -- we're not agreeably going to do that because there's an agreement already in place, we filed a simple lawsuit in saying that we want a declaratory relief action; somebody to hear the facts, let us do discovery, have a jury, and have a determination made as to what was the agreement. That's number one.

And number two, it's our position that by and is fact intensive, we believe that the jury is going to see and Trier of Fact would see that Mr. Simon used this opportunity to tie up the money to try to put pressure on the clients to agree to something that he hadn't agreed to and there never had been an agreement to.

So based on that we argue that that's a conversion and we think that's a factually intensive issue. None -- we don't expect -- it's not a summary judgment motion on that today, just that's the thinking that we use when we came up with that theory and we think it's a good theory.

So what I don't -- and, Your Honor, I have no problem with you

being the judge and I have no problem with the other judge being the judge, that's never been an issue in the case. What we do have a problem with is -- and I don't understand and maybe Mr. Christensen can clear that up. He's saying well, we can go ahead and have you take this case and make a ruling without a jury; that you can go through here and have a hearing and make a decision on what the fee should be. And then we can have the jury make a decision as to what the fee should be, but the problem is if you make a decision on what the fee should be that's issue preclusion on the whole thing and it ends up with being a preclusion.

So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts, we'd like to hear the jury hear Mr. Simon get up and say to him $550 an hour is dog meat, you know, he can't make a living on that and I would never bill at such a cheap rate and he's much greater than that. And I'd like to hear the jury hear that, people making $12 an hour hear that kind of a conversation that Mr. Simon is apparently going to testify to.

So there -- so bottom line, we get right down -- I -- so what we're asking, it's -- what we'd like you to do -- this case over. The underlying case with the sprinkler system and the flooding of the house, it's over. In re has nothing to do with determining what the fee should be. The fee -- whole issue is based on what was the agreement. I don't know much about the underlying case and I'm not having a problem understanding the fee dispute. This is a fee dispute.

We're just -- and if you want to hear it -- I don't think there's

anything to preclude you, but I don't think that there's commonality of all this -- all this commonality that they're talking about. The underlying case about a broken sprinkler head, flooding, what's the value of the house, all those disputes they had going on. That's got nothing to do with the fee dispute. And --

THE COURT: But you would agree, Mr. Vannah, that's it's the underlying case with the sprinkler flooding the house, who's responsible, the defective parts, that's how you get to the settlement that leads us to the fee dispute.

MR. VANNAH: You did that, but the settlement's over.

THE COURT: Right, but it --

MR. VANNAH: It's a done deal.

THE COURT: But the fee dispute --

MR. VANNAH: I mean, we're not --

THE COURT: -- is about the settlement.

MR. VANNAH: That's going to be a ten-minute discussion with the jury. Hey, this is what happened; it was a settlement.

So the question is, is what -- were the fee reasonable -- I mean, there was an agreement on the fee. I don't think -- it boggles my mind that we've even gotten -- we're even discussing this because when a lawyer sends for a year and a half a detailed billings at a detailed rate and the client pays it for a year and a half and suddenly say well, we never had a fee agreement, that's really difficult at best. That's almost summary judgment for us.

I mean, here's the bill, here's the check, and there's no

discussion and he even gets up and tells the other side, I've been paid for all my fees. So what I don't want to happen is I don't want -- I want my client to just have the right to have this case heard by a jury, that's all.

THE COURT: And you believe that there would be an issue -- preclusion issue if that -- the new case was consolidated into this case when you go to jury trial on the new case?

MR. VANNAH: No. Here's where I think the issue preclusion is -- and -- no, if you want to keep the case and, you know -- if it was me, I was judge, I would say I already did one case, I don't need to do another one. I don't have a problem if you want to keep the case, all I'm asking if you keep the case is that you don't -- the money's tied up.

THE COURT: The money's in a Trust account, right?

MR. VANNAH: Nobody's taking the money, nobody's -- and I don't -- I've never accused Mr. Simon of going to steal -- my client's got -- my client's more concerned because they thought it was dishonest what he did and I said my client's don't want the money in your Trust account, you don't want it in my Trust account, I -- no problem --

THE COURT: Right, but the e-mail --

MR. VANNAH: -- let's set up a --

THE COURT: -- said they didn't want it in Mr. Simon's Trust account. Isn't that what the e-mail said?

MR. VANNAH: Right. So we set up a Trust account elsewhere and Mr. Simon and I have -- so the money is tied up, neither one of us are going to try to take the money. The money's going to sit

there. Mr. Simon's lien, whatever it's worth, is totally protected.

What I don't want you to do is have you do an adjudication on some kind of a summary proceeding where we don't get to do discovery and everything else and we -- you hear the case without a jury and make a determination because I do think that that is the issue preclusion. That precludes -- and so if you want the case, I mean, we'd love have you. We don't have a problem with that.

All I ask, if you're going to have the case is, let's have the case, let's have a jury trial on this matter, let's discovery done on a normal course. The money's tied up, it's there and then at the end of the trial let the jury decide and we get a judgment. If you want to keep it.

On the other hand, I mean, if you don't want to keep it, you simply say I don't want to consolidate it and the other judge does it. So either one's fine, I mean, we don't have any -- we do want a jury trial though. We don't want it to be heard without a jury.

THE COURT: Right.

MR. VANNAH: It's two million dollars.

THE COURT: Right. But what you're saying -- so just so I'm clear as to what you're saying is if the case consol -- because I don't think it's a matter of do I want it, do I not want it, I think I got to follow Rule 42.

MR. VANNAH: Then --

THE COURT: I think I got to go along with what Rule 42 says. It doesn't -- nobody cares what I want Mister -- sir, nobody cares. I mean, I think I have to follow Rule 42, but what -- just so I'm clear on

what you're saying, what you're saying is if the case were to stay here you would want the lien not to be adjudicated until after the jury trial is heard on the second portion.

MR. VANNAH: Exactly right. So that the jury --

THE COURT: Okay.

MR. VANNAH: -- makes the findings of facts of whether there was a contract; if so, how much was it and what's due.

THE COURT: Okay.

MR. VANNAH: And they can have -- and we can all do discovery because they've got two excellent experts. I mean, so we need to get experts. It means we need to sit down and I need to take Mr. Simon's deposition, I need to take his associate's --

THE COURT: Let me ask you this, Mr. Vannah, because you've been doing this for a long time, you have a lot of experience. Hypothetically, if there were to happen, I haven't ruled on anything, but if that were to happen, how long do you think it would take for your jury trial to go forward on the second portion?

MR. VANNAH: Oh, we're -- we would -- we could expedite the discovery and get that done. I mean, that's not a problem if for some reason you want to expedite it. On the other hand, it can go forward on the normal course, you know, a year from now or so, have a jury.

THE COURT: Okay. Okay. And I just wanted to make sure I was clear on what your point was so that if I had any questions, I could ask you while you were standing here and not later on, oh, I should have asked him this, you know?

MR. VANNAH: Well, you know, you asked some good questions of which I didn't -- there's nobody disputing the 550 and the 275 --

THE COURT: Right.

MR. VANNAH: -- an hour and nobody's disputing that the bills were sent and nobody is disputing the bills were paid.

And by the way we do owe -- we just got the bill last week, we definitely clearly owe a cost bill that came in and that can be paid out of the Trust account and we're ready to release that funds and both Mr. Simon and I can sign the check and pay that expert. That's never been an issue.

THE COURT: So the money's going to an expert?

MR. VANNAH: That's the -- there's some money -- there's -- we just got a bill, we --

THE COURT: But it's for an expert?

MR. VANNAH: Yeah, there's an expert that needs to be paid.

THE COURT: Oh, okay.

MR. VANNAH: I don't have problems paying -- and I don't have problems paying Mr. Simon any costs that he's incurred either, but at this point -- what would have normally happened, we would have gotten the last bill and we would have paid it. Nobody's ever questioned a single bill that came in and that's what would have normally -- if he'd sent the last bill saying here you go.

So they had a mediation or something and Mr. Simon had some kind of a bill there, but he took it with him out of the mediation for

whatever reason. I don't -- nothing nefarious, it just didn't -- my client didn't have bill and has requested it several times. It came last week.

THE COURT: Okay.

MR. VANNAH: No question we owed a cost and we're willing to pay. We've always paid the costs. So one thing when Mr. Christensen said all this time Mr. Simon's been paying all the costs, that is -- I don't know what he means by that. He might have advanced the costs, but my client has reimbursed him for every dime of costs, other than this last bill. And certainly that's not going to be an issue, we're ready to do that.

THE COURT: Okay. Thank you, Mr. Vannah.

Mr. Christensen, your response.

MR. CHRISTENSEN: Your Honor, I warned the Court that Mr. Vannah was going to come up and make an equity argument against the legal enforcement of the statute and the word shall and he did that, but he didn't state any basis for it. The statute says you shall do it and you're supposed to do it within five days.

Now, there is some apparent discretion that the Supreme Court provides, for example, in the *Hallmark* case that we cited. The case went up and was sent back down and the Supreme Court said hey, there's an issue of alleged billing fraud, you need to address that at the adjudication hearing.

I cited to all of the other cases from Nevada State Court in the recent time period and from Federal Court where the Court has addressed the issues of billing fraud, disputed costs, disputed fees all at

an adjudication hearing pursuant to the law. That's the obligation of this Court is to enforce the law.

When Mr. Vannah comes up with his equity position, it's certainly enticing on a certain level, but it's not legally permissible. It'd be a violation of the statute. And it was interesting in his equity position how the facts kind of changed. It was he paid less than a half a million in fees and by the end of it he was above a half million dollars.

You saw the deposition transcript, Mr. Simon never said that all the bills were paid, he said this is what's been paid. You know, the bills that come in and Mr. Edgeworth pays them, that's kind of a two-edged sword. Mr. Edgeworth knows that there are items that haven't paid, he knows that he's been calling Mr. Simon and sending e-mails and getting responses, they know the work's being done.

He's so heavily involved in the case he can't not know. He knows because he was on the other end of the phone, he knows because he was on the other end of the e-mail. He knows that there are items that aren't being paid. And by the way, there's nothing in the law that says that someone can't correct the bill. It's not an accord and satisfaction if you pay a bill, that's completely different.

An accord and satisfaction is a separate agreement that's reached when it is over a dispute and typically accord and satisfactions are written. So tomorrow if they reach a deal, maybe that's an accord and satisfaction, but it's not accord and satisfaction when you pay a bill, especially when you know it's not a complete bill and it's not an accurate bill.

So, at the current time adjudication is proper because that's what the statute is, that's what the law says. We know that there's still 71,000 in costs outstanding and the Edgeworths have been aware of that since November and that number was contained in the two liens. One was filed in December, one was filed in January, and now we're in February and that has not been paid.

We know that there are, at a minimum, applying the contract rate of 550 an hour, assuming that's the way the Court decides to go at the adjudication hearing. There's fees outstanding on that. So even taking their best case scenario, there are fees and costs outstanding that need to be reached by the Court in an adjudication.

To address this whole market value issue, that's getting into the manner of calculation of a fee that the Court makes at the adjudication hearing. That's an accepted manner of a calculation of a fee. It's endorsed by the restatement of the law governing lawyers, which our Nevada Supreme Court cites to repeatedly. In fact, they just did it back in December on a fee issue. That's an accepted manner of determining a fee.

Now, the Court doesn't have to accept that. There's the *Marquis Aurbach Tompkins* line of cases, which I don't know if that was cited --

THE COURT: It was not.

MR. CHRISTENSEN: -- but in that case Marquis Aurbach did some good work for a client, the client passed away, and then there was an estate. Marquis Aurbach had a written contingency fee agreement.

The estate and the law firm agreed to put the matter before a fee dispute committee, even though the amount was in excess of the agreed amount, but they stip'd around it.

And without going through the whole tortuous procedural history because it went up to Judge Denton a couple of times, it went to the Supreme Court, et cetera, at various times the fee was found to be either the hourly, which was some $28,000, the contingency of 200,000 or a hybrid, the quantum meruit, which was in the middle at about 75. That's just kind of an illustration of the options that are available to the Court.

In *Tompkins*, the Supreme Court eventually said that's a contingency fee in a domestic case, you can't do that so you get quantum meruit and sent it back down for them to determine whether quantum meruit was the 75 number or the 28 number and that's where the case law ends. We don't know the ultimate resolution. But that's an example of what the Court does.

So under the law, and the Edgeworths have not cited an authority contrary, this Court adjudicates the lien, states a basis in its findings, puts the numbers in there, and then after that point, if the Edgeworths or maybe Mr. Simon wants to, there's some sort of a counterclaim or whatever, then they can fight over the remains. But Mr. Vannah was correct that this is a fee dispute.

We have a statute specifically designed with a public policy of resolving fee disputes quickly, with judicial economy. This Court has jurisdiction to do it, this Court has a mandate, the law telling the Court to

do it. Let's do it, let's hold an evidentiary hearing, let's flush this out, let's get a number, and then these folks can decide if they want to continue banging their heads against that wall.

Thank you.

THE COURT: Thank you, Mr. Christensen. And thank you guys very much for the argument on this and I know this I not what you guys want to hear, but I'm going to continue this to Thursday and make a decision on this in chambers. If I choose to consolidate this case, then we can address anything after that at the hearing that's going to be held in two weeks in regards to the status check on the settlement documents.

If I do not consolidate this case, then we will still address everything involving this particular case at that hearing and then the other case would be addressed in front of Judge Sturman.

MR. CHRISTENSEN: Yes, Your Honor.

THE COURT: So I'll have a written decision for you guys Thursday from chambers.

THE CLERK: February 8th at no appearance.

THE COURT: Thank you.

MR. VANNAH: Thank you, Your Honor.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you.

MS. PANCOAST: Your Honor, is there any reason I need to come to that Thursday hearing?

THE COURT: No, it's not a hearing, I'm going to of it from

chambers.

MS. PANCOAST: Okay, great.

THE COURT: Yeah, I'll do it from chambers.

And thank you, Mr. Parker.

MR. CHRISTENSEN: Teddy's gone.

THE COURT: Teddy's been gone.

[Hearing concluded at 10:55 a.m.]

* * * * * * *

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

Brittany Mangelson
Independent Transcriber

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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accusations about us, insinuating we were a danger to children, to Ruben Herrera the Club Director at a non-profit for children we founded and funded. In an email string, SIMON chooses his words quite carefully and Mr. Herrera found the first email to contain words and phrases as if it was part of a legal action. When Mr. Herrera responded, reiterating the clubs rules on whom is responsible for making contact about absences (that had already been outlined at the mandatory start of season meeting a week earlier) to explain why Mr. Herrera did not return SIMON'S calls, SIMON sent the follow-up email, again carefully worded, with the clear accusation that SIMON'S daughter cannot come to gym because she must be protected from the Edgeworths. His insinuation was clear and severe enough that Mr. Herrera was forced into the uncomfortable position of confronting me about it. I read the email, and was forced to have a phone conversation followed up by a face-to-face meeting with Mr. Herrera where I was forced to tell Herrera everything about the lawsuit and SIMON'S attempt at trying to extort millions of dollars from me. I emphasized that SIMON'S accusation was without substance and there was nothing in my past to justify SIMON stating I was a danger to children. I also said I will fill in the paperwork for another background check by USA Volleyball even though I have no coaching or any contact with any of the athletes for the club. My involvement is limited to sitting on the board of the non-profit, providing a $2.5 million facility for the non-profit to use and my two daughters play on teams there. Neither of them was even on the team SIMON'S daughter joined. Mr. Herrera states that he did not believe the accusation but since all of the children that benefit from the charity are minors, an accusation of this severity, from someone he assumed I was friends with and further from my own attorney could not be ignored. While I was embarrassed and furious that someone who was actively retained as my attorney and was billing me would attempt to damage my reputation at a charity my wife and I founded and have poured millions of dollars into, I politely sent SIMON an email on December 5, 2017, telling him that I had not received his voicemail he referenced in an email and directed SIMON to call John Greene if he

needed anything done on the case. Mr. Vannah informing SIMON to have no contact was a reiteration of this request I made. Mr. Simon is well aware of this, as the email, which he denied ever sending, was read to him by Mr. Vannah during the teleconference and his own attorney told him to not send anything like that again. Simon claimed he did not intend the meaning interpreted. I think it speaks volumes to Simon's character that after being caught trying to damage our reputation and trying to smear our names with accusations that are impossible to disprove—such as trying to un-ring a bell that has been rung—he has never written to Mr. Herrera to clarify that the Edgeworths are NOT a danger to children. In his latest court filing Simon further attempts to bill us hundreds of thousands of dollars for "representing" us during this period. In short, we never fired SIMON, though we asked him to communicate to us through an intermediary. Rather, we wanted and want him to finish the work that he started and billed us hundreds of thousands of dollars for, which is to resolve the claims against the parties in the LITIGATION.

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

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Notary Public in and for said County and State

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

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Eighth Judicial District Court

District of Nevada

EDGEWORTH FAMILY TRUST, and AMERICAN GRATING, LLC Plaintiffs, vs. LANGE PLUMBING, LLC; THE VIKING CORPORATION, a Michigan corporation; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET, a Michigan Corporation; and DOES 1 through 5 and ROE entities 6 through 10; Defendants.	Case No.: A738444 Dept. No.: 10 **SUPPLEMENT TO MOTION TO ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL SIMON PC**

The LAW OFFICE OF DANIEL S. SIMON, P.C. hereby supplements the

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motion for an Order adjudicating its attorney lien.

DATED this 16th day of February 2018.

/s/ James R. Christensen

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POINTS AND AUTHORITIES

Adjudication of the lien is ripe. Adjudication means that the trial judge determines the amount of the lien pursuant to NRS 18.015. A jury does not decide the amount of the lien pursuant to the statute, only the trial judge.

The public policy confirmed by the Nevada Supreme Court many times is that the trial judge is charged with the duty to resolve the lien as expeditiously as possible. The reason is that the trial judge is the one that knows the case best, it promotes judicial economy and resolves the matter expeditiously. NRS 18.015 has been the law in the state of Nevada for a long time and the statute requires prompt adjudication.

If a factual dispute surrounding the lien exists, then the proper procedure is to conduct an evidentiary hearing so that the trial judge can make findings of fact, conclusions of law and determine the amount of the lien. *Hallmark v. Christensen Law Office LLC.*, 381 P.3d 618 (Nev. 2012) (unpublished)(on remand the Supreme Court directed the district court to hold an evidentiary hearing for an attorney lien adjudication to resolve an issue of alleged billing fraud and the amount of the lien). There is nothing in the statute or other law that holds that a factual dispute overrules the statute.

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A. Attorney fees are properly decided by the court, not a jury.

The Nevada Supreme Court has consistently approved taking evidence pursuant to NRCP 43(c) to resolve a factual issue surrounding the determination of attorney fees. *See, e.g., James Hardie Gypsum (Nevada) Inc., v. Inquipco*, 929 P.2d 903 (Nev. 1996); disapproved of on other grounds by, *Sandy Valley Associates v. Sky Ranch Estates owners Ass'n*, 35 P.3d 964 (Nev. 2001). In *James Hardie Gypsum,* Hardie argued:

> "under the due process clause[s] of the United States and Nevada Constitution[s], due process requires that Hardie be entitled to confront witnesses and cross examine them on the issue of damages."

Id., at 908-909. Hardie lost the argument. The Supreme Court held that due process was served by submission of evidence via affidavit or an evidentiary hearing pursuant to NRCP 43(c).

In this case, Mr. Vannah forthrightly admitted:

> "This is a fee dispute."

(Ex. A; Transcript of 2.6.18 hearing at page 35, line 24.) Mr. Vannah also made clear that he wanted the fee to be determined by a jury:

> "So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts…"

(Ex. A; page 35 at lines 11-12.)

Mr. Vannah confirmed there are no malpractice claims or other complaints about Mr. Simon, "other than on the billing situation". (Ex. A; page 32 at lines 5-9.) Thus, Mr. Simon was sued solely as a legal tactic to try to stop adjudication of the lien by this Court. Filing a lawsuit solely as a litigation tactic is more than questionable. Regardless, the tactic must fail, because this Court cannot re-write the statute to suit the clients' litigation strategy.

The law in Nevada is clear, when a charging lien is perfected and adjudication is ripe, the court "shall" adjudicate the lien. NRS 18.015(6). There is no discretion allowed the court under the statute, adjudication must be done. This Court is allowed discretion regarding the taking of evidence under NRCP 43(c) and the case law. This Court may rule based upon affidavits and other submissions, or the Court may take additional evidence via an evidentiary hearing.

This honorable Court is not the Legislature. The statute mandates this Court "shall" adjudicate the lien.

B. Consolidation does not prevent prompt lien adjudication.

NRS 18.015 requires prompt adjudication of the lien. It is of no consequence that a separate action was filed. The separate action does not stop adjudication, the statute says "shall" and there are no exceptions. If the separate action was not filed, the court would proceed with adjudication. If the separate action is dismissed, the court proceeds with adjudication.

This Court should address each matter before it separately as required by the law. There are pending motions to dismiss the complaint. If the Court dismisses the complaint, then the unsupported argument that the complaint stops adjudication fails. If the motions to dismiss are denied in part, the court still "shall" adjudicate the lien. The court should consider each motion and/or claim separately on the merits of the law.

C. NRS 18.015 does not allow discovery.

NRS 18.015 does not permit discovery. Quite the opposite, the statute provides for adjudication on five days' notice.

NRCP 43(c) and case law allow this Court discretion to hold an evidentiary hearing to take evidence; but, there is no statute, code or case that permits lengthy and expensive discovery. NRCP 43 satisfies any legitimate due process concern.

In this case, the conduct of the Edgeworth's cuts against the legitimacy of a due process argument. The clients were first unavailable to endorse checks until after the New Year. The day after Mr. Simon left on Christmas break, the clients became available and complained of continued delay and costs. Now, as it serves them, the clients want delay and increased costs from discovery. However, the changing positions do not change the statute. Pursuant to the statute, this Court shall adjudicate the lien.

CONCLUSION

The Law Office of Daniel Simon respectfully requests that this court set this matter for an evidentiary hearing at the earliest possible convenience of the Court.

Dated this _16th___ day of February, 2018.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing SUPPLEMENT TO MOTION TO ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE OF DANIEL S. SIMON, P.C.; ORDER SHORTENING TIME was made by electronic service (via Odyssey) this ___16th___ day of February, 2018, to all parties currently shown on the Court's E-Service List.

an employee of
CHRISTIANSEN LAW OFFICES

Exhibit A

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-116-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ. (Via telephone)
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

to -- I don't really work at 550 an hour, I'm much greater than that. $550 an hour to me is dog food. It's dog crap. It's nothing. So why don't you give me a big bonus. You ought to pay me a percentage of what I've done in the case because I did a great job.

Now, nobody's going to quarrel that it wasn't a great result. There's certainly some quall as to why the result was done, my client was very, very involved in this case, but I don't want to get into all of that and I'm certainly not criticizing Mr. Simon for anything he did, other than on the billing situation.

At that time Mr. Simon said well, I don't know if I can even continue in this case and wrap this case up unless we reach an agreement that you're going to pay me some sort of percentage, you know, I want a contingency fee and I want you guys to agree to sign that. My client said no, we're not doing that. You didn't take the risk. I've paid you hourly, I've paid you over a half a million dollars. I'm willing to continue finishing up paying you hourly.

So, Mr. Simon said well, that's not going to work, I want a contingency fee. They came to us, we got involved, we had a conversation with all of us, and at that point in time everybody agreed, he cannot have a contingency fee in this case because there's nothing in writing. You don't even have an oral agreement, much less in writing.

So what happened is -- and this is an amazing part, Judge -- and not at the time that Mr. Simon goes to one of the depositions, we quoted that, the other side said to him how much are fees in this case, have they actually been paid. And Mr. -- and that's the point of that. Mr.

being the judge and I have no problem with the other judge being the judge, that's never been an issue in the case. What we do have a problem with is -- and I don't understand and maybe Mr. Christensen can clear that up. He's saying well, we can go ahead and have you take this case and make a ruling without a jury; that you can go through here and have a hearing and make a decision on what the fee should be. And then we can have the jury make a decision as to what the fee should be, but the problem is if you make a decision on what the fee should be that's issue preclusion on the whole thing and it ends up with being a preclusion.

So, we want this heard by a jury and no disrespect to the judge, but we'd like a jury to hear the facts, we'd like to hear the jury hear Mr. Simon get up and say to him $550 an hour is dog meat, you know, he can't make a living on that and I would never bill at such a cheap rate and he's much greater than that. And I'd like to hear the jury hear that, people making $12 an hour hear that kind of a conversation that Mr. Simon is apparently going to testify to.

So there -- so bottom line, we get right down -- I -- so what we're asking, it's -- what we'd like you to do -- this case over. The underlying case with the sprinkler system and the flooding of the house, it's over. In re has nothing to do with determining what the fee should be. The fee -- whole issue is based on what was the agreement. I don't know much about the underlying case and I'm not having a problem understanding the fee dispute. This is a fee dispute.

We're just -- and if you want to hear it -- I don't think there's

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DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-16-738444-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 20, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
STATUS CHECK: SETTLEMENT DOCUMENTS
DEFENDANT DANIEL S. SIMON D/B/A SIMON LAW'S MOTION TO ADJUDICATE ATTORNEY LIEN OF THE LAW OFFICE DANIEL SIMON PC; ORDER SHORTENING TIME

APPEARANCES:

For the Plaintiff:	ROBERT D. VANNAH, ESQ. JOHN B. GREENE, ESQ.
For the Defendant:	THEODORE PARKER, ESQ.
For Daniel Simon:	JAMES R. CHRISTENSEN, ESQ. PETER S. CHRISTIANSEN, ESQ.
For the Viking Entities:	JANET C. PANCOAST, ESQ.
Also Present:	DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Las Vegas, Nevada, Tuesday, February 20, 2018

[Case called at 9:28 a.m.]

THE COURT: Okay, let me just call the case. Let me get to my notes. A7384444, Edgeworth Family Trust versus Lange Plumbing, LLC.

MR. CHRISTENSEN: Good morning, Your Honor. Jim Christensen on behalf of the Daniel Simon Law firm.

THE COURT: Okay.

MR. CHRISTIANSEN: Pete Christiansen on behalf of the same, Your Honor.

MS. PANCOAST: Janet Pancoast in behalf of the Viking Entities.

THE COURT: Okay.

MR. PARKER: Good morning. Theodore Parker on behalf of Lange Plumbing.

THE COURT: Okay.

MR. GREENE: And John Greene and Bob Vannah for the Edgeworth Entities.

THE COURT: Okay. So, the first thing up is the status check on the settlement documents. Have we done all the necessary dismissals, settlement agreements?

MR. SIMON: I have two --

THE COURT: Mr. Simon?

MR. SIMON: Yes and no, Your Honor.

THE COURT: Okay.

MR. SIMON: I have two issues. The Edgeworth's have signed the releases.

THE COURT: Okay.

MR. SIMON: Mr. Vannah and Mr. Greene did not, even though -- there wasn't -- their name wasn't as to the form of content.

THE COURT: Okay.

MR. SIMON: But I didn't sign it because I didn't go over the release with them, so I think they need to sign as to form of content. That's what they did, I think with the Viking release. So if they want to sign in that spot, I think that release will be complete. Mr. Parker's client still has not signed the release, it's a mutual release. So, depending on whether you guys have any issues waiting on that, on Mr. Parker's word --

THE COURT: Mr. Vannah?

MR. SIMON: -- that they'll sign that.

MR. VANNAH: Why do we have to have anything on form and content? That is not required, it's for the lawyers to sign.

MR. SIMON: Then if --

MR. VANNAH: -- I'm asking that question.

MR. SIMON: -- he's ok with that, then I'm fine with that.

MR. VANNAH: If you take out the form and content, I don't know anything about the case, and I want -- I don't know anything about the case -- I mean, we're not involved in a case. You understand that, Teddy?

MR. PARKER: I do.

MR. VANNAH: We -- we're not involved a case in any way, shape, or form.

MR. PARKER: This is my concern, Bob, the -- when we sent over the settlement agreement that we prepared -- our office prepared the -- prepared it, we worked back and forth trying to get everything right and getting the numbers right. Once we did that, I learned that Mr. Vannah's office was involved in the advising and counseling the Plaintiffs.

THE COURT: Right.

MR. PARKER: So then, I was informed by Mr. Simon that Mr. Vannah was going to talk to the Plaintiff directly, and then once that's done, we'd eventually get the release back, if everything was fine. I got notice that it was signed, but I did not see approved as the form of content, and so Mr. Simon explained to me that because the discussion went between the Plaintiffs and Mr. Vannah, that he thought it was appropriate for Mr. Vannah to sign as form and content. Which I don't disagree since he would have counseled the client on the appropriateness of the documents.

THE COURT: Well I don't necessarily disagree with that either because based on everything that's happened up to this point, it's my understanding that, basically anything that's being resolved between Mr. Simon and the Edgeworths is running through Mr. Vannah.

MR. PARKER: Exactly. And --

THE COURT: And that was my understanding from the last

hearing that we had, so I don't --

MR. VANNAH: I don't have a big deal with it.

THE COURT: Okay.

MR. VANNAH: It's not -- I just don't understand why, but I don't care, I'll sign it.

THE COURT: Well now, Mr. Vannah, I'm just saying, based on everything that's happened up to this point, and now that --

MR. VANNAH: It's trivial --

THE COURT: Yes.

MR. VANNAH: -- I don't care. It's not worth --

THE COURT: Okay.

MR. VANNAH: -- debating over it, so I'll just sign it.

MR. PARKER: Your Honor, while Mr. Vannah is signing both those documents, there's two releases, and I'm sure he's aware of them. I actually brought the check for $100,000 and I wanted to do it in open court provided to Mr. Simon, Mr. Vannah, Mr. Greene, whoever wants it. Whoever wants the $100,000, I'm here to provide it.

THE COURT: Well, Mr. Parker --

MR. PARKER: I'll just put it on --

THE COURT: -- if you just giving --

MR. PARKER: -- the --

THE COURT: -- out a $100,000, I want it.

MR. PARKER: -- I'll put it on the podium. It seems to be the Swiss neutral area. Whoever wants it can pick it up, but I am providing it in open court.

THE COURT: Okay. And so is everyone acknowledging --

MR. PARKER: And here's the --

THE COURT: -- that Mr. Parker is --

MR. PARKER: -- receipt of check.

THE COURT: -- providing the check?

MR. VANNAH: The only problem I have with it Teddy, is it says, Simon Law, I don't think --

MR. PARKER: You can --

MR. VANNAH: -- I should --

MR. PARKER: -- scratch that out.

MR. VANNAH: Okay.

MR. PARKER: And this -- certainly I know you very well --

MR. VANNAH: You do, you do.

MR. PARKER: -- and your firm very well.

MR. VANNAH: No problem.

MR. PARKER: I got the acknowledgement of the receipt of check. You guys can just sign one for you and one for me.

MR. VANNAH: No problem, I can do that.

MR. PARKER: The other thing, Your Honor, is as soon as we get this back, I'll get it signed by Lange Plumbing and then provided full copies to everyone. And then, I think we have the stipulation order for dismissal that we have to do.

THE COURT: And there was a sign -- an order that was sent by Ms. Pancoast to chambers, but Mr. Parker it was not signed by you.

MR. PARKER: No, it was not. I was out of town, I --

THE COURT: Okay.

MR. PARKER: -- believe.

THE COURT: Okay. And I believed that you needed to sign.

MR. PARKER: And I have no problems signing it. But I think I spoke with Ms. Pancoast and --

THE COURT: Okay.

MR. PARKER: -- said I was fine with it.

MS. PANCOAST: Yes.

MR. PARKER: So, she may of sent it because if that.

THE COURT: Okay. And I think it was sent while Mr. Parker was out of town--

MS. PANCOAST: Yes --

MR. PARKER: That's correct.

THE COURT: -- and I believe my law clerk --

MS. PANCOAST: -- and it was delayed --

THE COURT: -- contacted you.

MS. PANCOAST: -- it was on route so I just --

MR. PARKER: Is that the same one Janet? Same one I just signed?

MS. PANCOAST: No, this is the stipulation for dismissal.

MR. PARKER: Is it the order for good faith settlement? Is that --

THE COURT: Yes.

MR. PARKER: -- the one you are speaking of?

MS. PANCOAST: Yes, that's the one.

THE COURT: Yes.

MR. PARKER: Yes. I think I told Ms. Pancoast that is was fine with me. I -- especially since we were able to discuss it on the record, thanks.

THE COURT: Okay. Okay. So, Ms. Pancoast have you -- so Mr. Parker, do you think you need to sign or are you comfortable with the record that was made in open court?

MR. PARKER: I think that's it for me, Your Honor.

THE COURT: Okay. Okay, so Ms. Pancoast if you could submit that order, did you get it back or do we still have it?

MS. PANCOAST: I haven't been in my office for three days. I will check --

THE COURT: Okay.

MS. PANCOAST: -- Your Honor.

THE COURT: Okay.

MS. PANCOAST: And just call your chambers --

THE COURT: Okay.

MS. PANCOAST: -- and say hey, either we have --

THE COURT: Can you just follow up with my law clerk because I think she is the one that reached out to you about that.

MS. PANCOAST: Yes. Sorry about that, I just -- we now have a dismissal that's signed for dismissals prejudice of all claims of the entire action. I would like to get Your Honor's signature on that if I can.

MR. SIMON: I just want to --

MS. PANCOAST: Does anybody have objection to that?

MR. SIMON: I just want to make sure that Mr. Vannah does not have an objection to --

MS. PANCOAST: Okay.

MR. SIMON: -- the stip. --

THE COURT: Okay.

MR. SIMON: -- and it's ok.

THE COURT: Mr. Vannah are you comfortable reviewing that right now or do you need more time?

MR. VANNAH: No. That's fine. It's just a straight dismissal right, Janet?

MS. PANCOAST: Yes. It's just dismissal, but there's all sorts of cross claims and it's got all the cross claims and everything --

MR. VANNAH: Everything's fine?

MS. PANCOAST: -- it just --

MR. VANNAH: Fine, I'm fine with it.

MR. SIMON: The entire action now --

MR. VANNAH: Yes. I'm happy with it --

MR. SIMON: -- is what this is.

THE COURT: Okay.

MR. VANNAH: -- that's great.

THE COURT: Okay, so you're ok with that Mr. Vannah?

MR. VANNAH: Sure. Sure.

THE COURT: Okay, so --

MR. PARKER: May I approach?

THE COURT: -- Ms. Pancoast if you could approach, then I will sign that.

So, Mr. Parker do you want a status check for the Lange Plumbing to sign off on the --

MR. PARKER: No, no I'm --

THE COURT: Okay.

MR. PARKER: -- more than happy with this being the last time, hopefully that we have to get together regarding the settlement documents. I will --

THE COURT: Okay.

MR. PARKER: -- certainly have Mr. Lange of Lange Plumbing sign them and I will get them copies to Mr. Simon as well as to Mr. Vannah's office.

THE COURT: Okay, so is everybody comfortable that we have all the necessary dismissals and settlement of documents signed, except Langue Plumbing signing off on the last document, which Mr. Parker will get and distribute to everyone?

MR. VANNAH: Yes.

THE COURT: Okay.

MS. PANCOAST: Your Honor, one clarification, since Mr. Parker said in open court he has no objection to that Order on the Motion for a Good Faith Settlement, do I need to track down his signature? Or is this --

THE COURT: No, if Mister --

MR. PARKER: If you --

THE COURT: -- Parker's --

MR. PARKER: -- have it -- if you have it with you, I will sign it right now. If the Court has it, I will sign it right now.

THE COURT: And let me see if I can -- can you email Sarah and ask her? We'll get --

MR. PARKER: I'll sign it right here.

THE COURT: -- my law clerk to bring that in here, --

MR. PARKER: No problem.

THE COURT: -- and then we'll get you to sign it while you are here --

MR. PARKER: Sounds great --

THE COURT: -- Mr. Parker.

MR. PARKER: -- Your Honor.

THE COURT: Okay. The next thing is Mister -- Defendant Daniel -- as Simon doing business as Simon Law's Motion to Adjudicate the Attorney Lien of the Law Office of Daniel Simon PC on the Order Shorting Time. I did receive a supplement, Mr. Christensen that you filed. Mr. Vannah, have you had an opportunity to review that? Mine is not file stamped, I believe this was my courtesy copy, but I read it.

MR. VANNAH: Mr. Greene reviewed it, and can --

THE COURT: Okay, so you guys have had an opportunity to review that?

MR. GREENE: Correct, Judge.

MR. CHRISTENSEN: It was electronically filed February 16th, 11:51 in the a.m. --

THE COURT: Okay.

MR. CHRISTENSEN: -- and served via the --

THE COURT: Okay. And I think it because --

MR. CHRISTENSEN: -- it was served.

THE COURT: -- it was Friday. I appreciate the courtesy copy just to make sure that I got it because sometimes there's a little bit of a delay in Odyssey. So, I appreciate it and I have read it.

MR. VANNAH: Did you want us to respond to it at all?

THE COURT: Well, I mean, this is -- that's up to you Mr. Vannah did you want to respond to the supplement?

MR. VANNAH: We could as quickly, orally.

THE COURT: Okay.

MR. VANNAH: Mr. Greene would -- because he --

THE COURT: Okay, Mr. Greene.

MR. VANNAH: -- right? Explain why it's --

MR. GREENE: We just believe it's -- of course it's a rehash, it's a -- it's just repainting the same car, Your Honor. We believe the arguments have been adequately set forth. But even with the case law seminar, it's different. This is a motion to seek attorney's fees for a prevailing party, following litigation in which the parties decided to have a bench trial.

Ours is different. Ours is a independent case seeking damages from Mr. Simon and his law firm, for the breech of contract for conversion, and it's based upon a Constitutional right to a trial by jury. Article I, Section 3. Different apples and oranges, distinguishable case,

distinguishable facts. Be happy to brief it if you'd like. Simply wasn't enough time this weekend to do that. But that's the thumbnail sketch.

THE COURT: Okay. Mr. Christensen, do you have any response to that?

MR. CHRISTENSEN: Sure, Judge. We move for adjudication under a statute. The statute is clear. The case law is clear. A couple of times we've heard the right to jury trial, but they never established that the statute is unconstitutional. They've never established that these are exclusive remedies. And in fact, the statute implies that they are not exclusive remedies. You can do both.

The citation of the *Hardy Jipson* case, is illustrated. If you look through literally every single case in which there's a lien adjudication in the state of Nevada, in which there is some sort of dispute, you -- the Court can take evidence, via statements, affidavits, declarations under Rule 43; or set an evidentiary hearing under Rule 43.

That's the method that you take to adjudicate any sort of a disputed issue on an attorney lien. That's the route you take. The fact that the *Hardy* case is a slightly different procedural setting doesn't argue against or impact the effect of Rule 43. In fact, it reinforces it. Just shows that's the route to take.

So, you know their -- they've taken this rather novel tact in filing an independent action to try to thwart the adjudication of the lien and try to impede the statute and they've supplied absolutely no authority, no case law, no statute, no other law that says that that actually works. They're just throwing it up on the wall and seeing if it'll

stick. And Judge, it won't stick. This is the way you resolve a fee dispute under the lien.

Whatever happens next, if they want to continue on with the suit, if they survive the Motion to Dismiss -- the anti-SLAPP Motion to Dismiss, we'll see. That's a question for another day. But the question of the lien adjudication is ripe, this Court has jurisdiction, and they don't have a legal argument to stop it. So, we should do that.

If the Court wants to set a date for an evidentiary hearing, we would like it within 30 days. Let's get this done. And then they can sit back and take a look and see what their options are and decide on what they want to do. But, there's nothing to stop that lien adjudication at this time.

THE COURT: Okay. Well, I mean, basically this is what I'm going to do in this case. I mean, it was represented last time we were here, that this is something that both parties eagerly want to get this resolved -- they want to get this issue resolved. So I'm ordering you guys to go to a mandatory settlement conference in regards to the issue on the lien. Tim Williams has agreed to do a settlement conference for you guys, as well as Jerry Wiese has also agreed to do a settlement conference.

So if you guys can get in touch with either of those two and set up the settlement conference and then you can proceed through that, and if it's not settled then we'll be back here.

Mister --

MR. PARKER: Your Honor, my own selfish concern here, my

client's -- my client believed that we were buying peace and completeness of this whole situation, this case. The thought of having to go through discovery in an unrelated or related matter is not appealing. And in fact, I thought under Rule 18.015 that there is no additional discovery that's actually undertaken.

I mean, I just got finished with a case that we tried, and we had a very large attorney's fees, not as big as this one, but a large attorney's fees award and the Court made a decision based upon what was in front of the Court, not additional discovery and not additional hearings, other than a hearing on the motion itself for attorney's fees.

The prospect of my client being subjected to discovery to determine the reasonableness of a fees, when typically that's within the providence of the Court, it does not -- is certainly not appealing to my client and I don't see where it's required under the statute.

Perha -- I haven't read all of the briefing, so maybe there's some case that Mr. Vannah and Mr. Greene is -- are aware of, but I've never seen it done, other than the Court -- especially the Court having being -- been familiar with the underlining -- on the underpinnings of the case making that final decision without the benefit of additional discovery. So hopefully the NSC works out for them, but I think that the rule is fairly clear. I've not seen it done a different way.

THE COURT: Okay.

MR. PARKER: I don't know if that's beneficial to the Court or not.

MS. PANCOAST: And --

MR. VANNAH: I'm not sure I understand the argument because they're not involved in this fee dispute.

MS. PANCOAST: I certainly hope so. I'm -- It's been a --

MR. VANNAH: They're out of the case.

MS. PANCOAST: -- pleasure folks, but --

THE COURT: Yes. No, I mean, they're not --

MS. PANCOAST: -- I'm done.

THE COURT: -- involved in the fee dispute, but if it's my understanding -- Mr. Parker correct me -- my understanding is what Mr. Parker is saying is, if this fee dispute were to go to trial, which is what you are requesting is a jury trial on that issue, that there's going -- and you want to do discovery, you want to do all the trial stuff that comes along with going to trial that is going to somehow going to somehow involve his client, as his client was involved in the underlying litigation that is the source of the fee dispute. Now Mr. Parker, correct me if that wasn't what --

MR. PARKER: That's exactly

THE COURT: -- you were saying.

MR. PARKER: -- exactly right.

THE COURT: And that's what he was saying is that's not appealing to him. And Mr. Parker is not saying he's a party to the fee dispute, what he's saying is that would involve his client, so he's putting that on the record while he is still in the case in regards to his client.

MR. PARKER: And my thought is an adjudication on the merits of the fee dispute, by necessity may involve the work of Mr.

Simon in terms of my client's contribution to this overall settlement; whether or not the value of that case was what it was or what -- if it wasn't. That would involve my client to potentially taking the stand and looking at the contract and the work that was performed. I don't want to subject my client to that.

I was trying to buy my peace and I was hoping this would resolve everything all at one time, including the adjudication of the lien in front of Your Honor without the obligations of going through anymore discovery. Because I don't want my client looking over his shoulder at -- potentially coming in for a deposition on that issue or taking the stand. It's just not what I believe is appropriate under the rule, Your Honor.

MR. VANNAH: Let me -- regardless of whether or not this is going to be adjudicated as a lien, we're -- who clearly going to be entitled -- it's a two million dollar argument. I assume we're not going to have a two-hour hearing and nobody's going to do any discovery in this case. I mean for example, there's one billing -- I'm looking at one billing where somebody wrote down 130 hours, block billing, worked on file basically. Were not going to have discovery on that? I mean, what does all that mean? That's --

THE COURT: Well --

MR. VANNAH: -- an additional billing? I mean --

THE COURT: Well, I think at this point we have the cart before the horse. Okay? We're going to go to the mandatory settlement conference. If that doesn't work, then we're going to have to readdress all these issues.

MR. VANNAH: Agreed.

THE COURT: But for today, I want -- I'm going to order you guys to a mandatory settlement conference. I want you to get in touch with those two judges. One of them will accommodate you, they have already agreed to do that. And if that doesn't happen then we're going to have to come back here and readdress the adjudication of the lien, whether or not we're going to go to trial or what we're going to do. But for today, we're going to go to the mandatory settlement conference.

MR. VANNAH: That's fine.

THE COURT: Okay.

MR. CHRISTENSEN: Your Honor, I --

THE COURT: Thank you.

MR. CHRISTIANSEN: -- a couple of practical questions. Number one, do you have an understanding of the time frame that Judge Williams or Judge Wiese or -- looking at this end. Because we'd like to get this done --

THE COURT: No, I understand. And it's my --

MR. CHRISTENSEN: -- as quickly as possible.

THE COURT: -- understanding that Judge Williams is trial this week --

MR. CHRISTENSEN: Okay.

THE COURT: -- but after that he should be available.

MR. CHRISTENSEN: Okay.

THE COURT: And Judge Wiese will accommodate anything.

MR. CHRISTENSEN: Well --

THE COURT: That man -- I mean, he is very accommodating. Judge Wiese has had to overcome several obstacles recently, and that man has not missed a day of work. So, he's very accommodating.

MR. CHRISTENSEN: Often things move a lot quicker where there are time limits.

THE COURT: Right.

MR. CHRISTENSEN: Could we at least have a status check in 45 days to check on the status of the --

THE COURT: Sure.

MR. CHRISTENSEN: -- NSC?

THE COURT: Yes. And so we'll have a status check in 45 days to check on the status of the settlement conference. That date is on a Tuesday.

THE CLERK: April 3rd at 9:30. And Counsel, I have a handout on -- regarding settlement conferences.

THE COURT: And Ms. Pancoast, if you could approach -- Mr. Parker, this is the order for your signature.

MR. PARKER: Yes.

THE COURT: And the lines crossed out, but you can just sign on one of these pages.

MR. CHRISTIANSEN: Your Honor, just to add my two cents in the --

THE COURT: Yes, Mr. Christiansen.

MR. CHRISTIANSEN: The statute doesn't say you can have a hearing within five days if it contemplates discovery. So I mean, that's

what the statutes says, hearing in five days. We're all happy. We'll all go participate in a settlement conference, but this notion that there's discovery and adjudication, unless somebody knows how to do discovery in five days, which I don't, that's not contemplated. You have a hearing you take evidence, whether it takes us a day or three days to do the hearing, that's how it works.

THE COURT: Okay.

MR. VANNAH: Well, that's not how it works, because I have done this before, and it was discovery ordered by another Judge saying yeah, you're going to have discovery. Judge Israel ordered discovery. But we're looking at two million dollars here.

THE COURT: And I understand that, Mr. Vannah.

MR. VANNAH: This is not some old fight over a fee of $15,000, which I agree would --

MR. CHRISTENSEN: Your Honor, I'm sorry, but I've been doing lien work for a quarter century now --

MR. VANNAH: Me too.

MR. CHRISTENSEN: And --

MR. VANNAH: About 40 years.

MR. CHRISTENSEN: -- you don't get discovery to adjudicate a lien. It's not contemplated in the statute. If you have a problem with the statute, appear in front of the legislature and argue against it.

THE COURT: Okay --

MR. VANNAH: No, there's nothing --

THE COURT: -- well today, we're going to go to the

settlement conference, we will hash out all of these issues if that case does not settle and if this case -- this portion does not settle at the settlement conference.

MR. VANNAH: I understand.

THE COURT: Okay?

MR. CHRISTENSEN: Thank you, Your Honor.

MR. PARKER: Thank you, Your Honor.

THE COURT: Ms. Pancoast?

MR. CHRISTIANSEN: Thank you, Your Honor.

MR. PARKER: Yes, I signed it. I think --

THE COURT: Yes, Mr. Parker signed it --

MR. PARKER: -- just the Court has to sign it.

THE COURT: -- as well as so did I. I believe we had everybody else --

MR. PARKER: Oh --

THE COURT: -- we were just waiting for Mr. Parker.

MR. PARKER: -- okay, perfect.

THE COURT: So do you want to take this down and file it or --

MS. PANCOAST: No, you guys can do it.

THE COURT: Okay, so we'll do it, just so -- because we keep a log of what comes in and what goes out. So we'll file it in the order.

MS. PANCOAST: Just for the record, Your Honor, I -- for the same -- I want -- Viking wants to echo what Mr. Parker said --

THE COURT: Okay.

MS. PANCOAST: -- because this is attorney client communications, what was said in Court is, you know -- we're out of it.

THE COURT: No, and I understand, and so we will have the same objections from Mr. Parker logged in on behalf of your client.

MS. PANCOAST: Thank you, Your Honor.

THE COURT: You're welcome.

Okay.

MR. SIMON: Hold on a second.

THE COURT: Uh-oh.

MR. SIMON: Your Honor, just while --

THE COURT: Yes, Mr. Simon.

MR. SIMON: While we're still on the record, I'm giving Mr. Vannah the settlement check from Mr. Parker. He's going to have his clients endorse it and then return it to my office, where I can endorse it and put it in the Trust account.

THE COURT: In the --

MR. VANNAH: Yes.

THE COURT: -- Trust account that's already been established.

MR. SIMON: Yes.

MR. VANNAH: That will be just fine, sure. --

THE COURT: Okay. That --

MR. VANNAH: -- that will work.

THE COURT: -- record will be made, thank you.

MR. SIMON: Thank you, Thank you Your Honor.

MR. PARKER: Thank you, Your Honor.

MR. VANNAH: Thank you.

THE COURT: Thank you.

[Hearing concluded at 9:47 a.m.]

* * * * * * *

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

Brittany Mangelson
Independent Transcriber

AFFIDAVIT OF BRIAN EDGEWORTH

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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was ever brought up at that time, let alone ever agreed to.

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

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

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

10. Plus, SIMON didn't express an interest in taking what amounted to a property

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damage claim with a value of $500,000 on a contingency basis. Easy math shows that 40% of $500,000 is $200,000. SIMON billed over twice that in fees in the invoices that he disclosed in the LITIGATION. I believe that in my conversations and dealings with SIMON, he only wanted what amounts to a bonus after he'd received $500,000 in fees and costs from me and after the risk of loss in the LITIGATION was gone.

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

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

13. Thereafter, I sent an email labeled "Contingency." The main purpose of that email

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was to make it clear to SIMON that we'd never had a structured conversion about modifying the existing fee agreement from an hourly agreement to a contingency agreement. I also told him that if we couldn't reach an agreement to modify the terms of our fee agreement that I'd continue to borrow money to pay his hourly fees and the costs.

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

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

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

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

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

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

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

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

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

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nothing short of stealing what was ours.

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

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

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

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

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

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

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

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

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

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

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present our claims against SIMON before a jury.

FURTHER AFFIANT SAYETH NAUGHT.

BRIAN EDGEWORTH

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

Notary Public in and for said County and State

DANA FARSTAD
Notary Public State of Nevada
No. 13-10367-1
My Appt. Exp. March 21, 2021

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO.: A-18-767242-C DEPT NO.: XIV Consolidated with CASE NO.: A-16-738444-C DEPT. NO.: X **AMENDED COMPLAINT**

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

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

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

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

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

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

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

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

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

FACTS COMMON TO ALL CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

(Conversion)

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

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

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

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

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

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

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

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

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FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

DATED this 15 day of March, 2018.

VANNAH & VANNAH

ROBERT D. VANNAH, ESQ. (4279)

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

EDGEWORTH FAMILY TRUST, Plaintiff, vs. LANGE PLUMBING, LLC, Defendant.	CASE NO. A-16-738444-C DEPT. NO. X (CONSOLIDATED WITH: CASE NO. A-18-767242-C)

And related matter/cases.

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, APRIL 3, 2018

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

FOR THE PLAINTIFF: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

FOR THE DEFENDANT: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018

[Case called at 9:38 A.M.]

THE COURT: -- in the consolidated case of Edgeworth Family Trust versus Daniel S. Simon, doing business as Simon Law. Good morning, counsel. If we could have everyone's appearance.

MR. VANNAH: Yes. Robert Vannah and John Greene on behalf of the Edgeworth parties.

THE COURT: Okay.

MR. CHRISTENSEN: Jim Christensen on behalf of the Law Office.

THE COURT: Okay. So this is on for several things. And what I did notice, counsel, is Mr. Simon had filed a Motion to Adjudicate the Lien. And I believe when we were here last time, I ordered you guys to a mandatory settlement conference. So, it was my fault that we did not recalendar the motion to adjudicate the lien, so it did not appear on the calendar today.

However, I believe that the Motion to Adjudicate the Lien is very, very important in making the decisions on the other motions that are on calendar today. You guys have already argued that motion, so I'm prepared to deal with all of those issues today, if you guys are prepared to go forward on that.

MR. VANNAH: We -- we are, Your Honor.

THE COURT: Okay. I just wanted to let you guys know, it did not make the calendar, but I think that was a calendaring error on my part. I just sent you guys for a Settlement Conference and then the other motions were filed afterwards, so they made the calendar, and then today is the Status Check on the Settlement Conference.

MR. VANNAH: Right, Your Honor. The one thing we might address if we -- real -- I don't know if -- if -- if it gets to your calendar, but we filed an Amended Complaint already and served it.

THE COURT: Yes.

MR. VANNAH: We -- we didn't need leave, it turns out. There was no responsive pleading, so.

THE COURT: Okay.

MR. VANNAH: We had -- we had on calendar a Motion for Leave to --

THE COURT: Right.

MR. VANNAH: -- to Amend the Complaint, but we went ahead and just did it.

THE COURT: Yeah. And I did see that was filed.

MR. VANNAH: Okay.

THE COURT: It was March 5th, I believe. March 15th, sorry.

MR. VANNAH: And has been served, so.

THE COURT: Yes. Okay. Thank you, Mr. Vannah.

MR. VANNAH: Sure.

THE COURT: And in regard to the Status Check on the Settlement Conference, I was notified that this case did not settle, and we're all here, so I assume that that is correct, this did not settle at the Settlement Conference.

MR. VANNAH: Correct.

THE COURT: Okay. So we will go forward.

In regards to -- we'll start with Mr. Simon's Motion to Dismiss Anti-SLAPP that was filed on an Order Shortening Time. I read the motion, I read the Opposition, I read the Reply. Mr. Christensen, do you have anything to add?

MR. CHRISTENSEN: Well, only insofar as the law is crystal clear that assertion of a attorney lien under the statute is a protected communication under the law. That's a legislative scheme handed down to resolve fee disputes.

Mr. Simon followed that statute to a T. He can't be sued for following the law. That's basically what an anti-SLAPP is all about. Nevada -- the Welt case, Nevada looks to California for anti-SLAPP law, and we cited about five different cases where similar actions against attorneys for asserting liens have been dismissed by courts in California under their anti-SLAPP.

We look to California to follow that law. It seems pretty clear, the remedy here is for adjudication of the lien. That's it. They brought in all these other claims and

allegations in a Complaint in an effort to muddy the water and stop adjudication of the lien and that's not law. That's not the statutory law and that's not the case law.

It's interesting that there is not one case cited by the plaintiff that stands for the proposition that a claim against a lawyer for assertion of a lien can survive in the face of an anti-SLAPP motion. Every single case comes down and says, nope, down the row.

It's interesting, the one case that they did talk about from California, actually holds the exact opposite of their position. They trumpet the Drell v. Cohen case, which is a California appellate case out of 2014. To set the stage, California has a slightly different way of handling attorney liens. They don't have a statute passed by a legislature, signed for a government -- by the --

THE COURT: Which is --

MR. CHRISTENSEN: -- Governor.

THE COURT: -- very rare that we have something that they didn't have in California.

MR. CHRISTENSEN: Well, yeah, we -- we finally have a statute they don't have. Imagine that.

As a result of that, California does not have a fast speedy, efficient method to adjudicate a lien. In California, the practical method that attorneys file is if they can't work it out they file a motion for DEC relief to allow the Court

to, in effect, adjudicate the lien.

That's what the attorney did in Drell. There was a lien dispute, a fee dispute, and one of the lawyers filed a DEC relief action, and the other lawyer moved to dismiss it under anti-SLAPP. And the Court said, well, wait a second, you're not being sued for asserting a lien. The suit is simply DEC relief to adjudicate the lien, and that's the way we do it here in California, so your motion is -- is denied. Your anti-SLAPP motion is denied.

That's the exact opposite of what we have here. Their Amended Complaint even mentions the filing of the lien as basis for their claim for relief for their duty of breach of the covenant of good faith and fair dealing in paragraph 55. It says it right out. And it's implied under a host of other position -- paragraphs in their Amended Complaint.

They filed that Complaint because Mr. Simon followed the law and asserted a lien.

So it's pretty clear that anti-SLAPP applies. It's a protected communication. As a result of that, the burden shifts to the plaintiff. They have to show by clear and convincing evidence that they can prevail.

I know they argued over the clear and convincing evidence issue. I think I -- I cited the cases that lay that out pretty clearly, including Welt, and including Judge Mahan and the Prince case.

So it's their obligation to do that and they didn't even try to do that, instead, they attacked that standard of proof. But even more importantly, they can't, because going to court and filing something is protected by the First Amendment. It's protected by the litigation privilege.

The one exception that the plaintiff points out is under -- I forget the name of the case -- but where they found -- and that was a very complicated fact pattern. They found an exception when there was a claim for legal malpractice, which there is not in this case. So they're relying upon an exception which doesn't apply on its plain facts.

It's very interesting; we had a similar case where Dennis Prince was sued because he went to court representing a client, followed the law. That was recently heard over in Federal Court by Judge Mahan. And Judge Mahan granted the anti-SLAPP motion.

You have a real chilling effect when you start suing lawyers for following the law. I mean, there's no question that what Mr. Simon did here was appropriate under NRS 18.015. He filed the lien.

Undisputed money was promptly paid out to the client. Disputed money has been segregated into a separate account that checks can only be issued if Mr. Simon and Mr. Vannah co-sign. And the interest on all the money in that account goes to the benefit of the client.

There is -- there is -- by -- as a matter of law, there's no conversion, which they sued Mr. Simon for. There is no breach of the duty of good faith and fair dealing, because that would require an element that is against the spirit of the contract. That's one of the prima facie elements. They can't establish that as a matter of law, because Mr. Simon followed the law. The money is segregated.

He did exactly what he's supposed to do. As a matter of fact, the Edgeworths, from time to time, incorrectly cite the Nevada Rule of Professional Conduct. They cite the wrong sections and they cite it for the wrong premise.

The real one that applies here is 1.15(e), "When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claims interest, the property shall be kept separate by the lawyer until the dispute is resolved."

That's what was done. So Mr. Simon followed the law and he can't be sued for following the law. And Nevada provides a remedy for that, and that's the anti-SLAPP statute.

We filed our motion. We -- it's -- it's -- it's definitely well-merited in this case. There is a little bit of a unusual twist here, because they did file an Amended Complaint after we filed the special motion to dismiss unto the anti-SLAPP statute.

Our Reply addresses the Amended Complaint because we

don't think the filing of the Amended Complaint moots our special Motion to Dismiss. It really just makes it worse for their position, because in the new cause of action they specifically cite the lien as a basis for their new claim of breach of the covenant of good faith and fair dealing.

So we would ask that not only the initial Complaint be dismissed, but also the Amended Complaint.

THE COURT: Thank you, counsel. Mr. Vannah?

MR. VANNAH: You know, we pretty much laid everything out. I -- we're just rehashing, it seems like. But I was involved in the Dennis Prince case. I was consulted on that. The Dennis Prince case was where an insurance company sued Mr. Prince saying that he conspired with other lawyers to do something in the case. And Allstate, some other people sued. And it has nothing to do with a lien or anything else.

And the anti-SLAPP statute, as we point out in the Drell case is -- was set up so that lawyers, when they're advocating for their clients, so if a lawyer advocates for the client vigorously, they can't be sued by the other party saying, well, you shouldn't have advocated for -- for the client that much and you're advocation is somehow some kind of an unprotected privilege.

There is no privilege in a case like this. And as the Drell case pointed out, you know, there's no reason to

take a dispute over an attorney fee up to the level of some sort of Constitutional requirement and the case said you can't do that.

So the anti-SLAPP statutes, the ones they're talking about, is when the lawyer puts something in a pleading for the benefit of the client, and he's arguing something; the other side can't come in and say, well, you shouldn't have said that. That's some kind of, you know, that's what that case is all about.

Our Complaint is based on when -- when we talk about conversion; if you take somebody's money and you tie it up in a way they can't get to it, they can't use it. It wasn't like the client's got -- it wasn't like Mr. Edgeworth said, hey you know what, I would like you to take my $2 million and put it in a bank account, tie it up, and make it so that you have to sign the checks where I can use it. That's -- that's -- he took that money and he moved it over to that account.

And to make the argument that we are not likely to prevail is absurd. The course of conduct between Mr. Simon and Mr. Edgeworth and the Edgeworth entity, all along was, Mr. Simon would send them a bill. They -- and they would turn around and pay the bill within 15 days; bill/pay, bill/pay, bill/pay.

And when it became clear to Mr. Simon that he was about to have a windfall of $6 million, way beyond what he

thought would happen, suddenly he said, I don't want to do this billing anymore. I want you to pay me what I'm really worth, because I was just being your buddy at $550 an hour. And now I want to get paid a big chunk of money, a million dollar bonus, million-two bonus.

Then when he generated the bills that he's generated by adding like for example in a past bill that had already been paid and already been discussed with the defendants, he put a one-day -- 135 hours in one day, of new billing, reviewing the file.

That is something that a jury would have a right to look at and say, is that good faith and fair dealing? Is that dealing in the contract with good faith and fair dealing? Is that conversion of the clients funds when even your own bill, which -- even the bill which is exorbitant, still is less than what he asserts a lien for.

He asserts a lien for a million-two; his new billing is much less than that. That's something that the jury could look at, and they should be able to consider. And just because he's a lawyer doesn't put him beyond the pale of the law in the area of good faith and fair dealing. When you have a contract with someone you have to operate with good faith and fair dealing. It's an implied obligation in every contract.

And those are obligations that the jury can look at and consider. This case shouldn't be dismissed just because

he's a lawyer. That's the bottom line. That's what they're asking, just because he gets some sort of special treatment.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Vannah. Mr. Christensen?

MR. CHRISTENSEN: Mr. Simon didn't raise this case to a Constitutional level; Mr. Vannah and Mr. Edgeworth did. Mr. Simon filed a lien, which he's allowed to do under the law, and moved to adjudicate it. That would allow the Court to examine the one block entry which, by the way, is for the entire case and encompasses review of over 679 e-mails, and allow the Court to make a decision.

It was Mr. Vannah who tried to stop adjudication of the lien by this Court by filing a conversion claim and an unfair dealing claim that has raised this to a higher level; not Mr. Simon.

Anti-SLAPP motions are not filed by plaintiffs, they are filed by defendants when they get sued. So Edgeworth created the problem that we now face.

Going to the anti-SLAPP, you know, this exact situation was addressed in the Transamerica case out of California in 2016. That was a Federal Judge, Judge Lew, who applied California law, and granted an anti-SLAPP motion when an attorney was sued for filing a lien.

The only distinction that Mr. Vannah and Edgeworth have tried is to say, well, the Federal Judge didn't know what

he was doing. We cited Beheshti which the exact same situation happened, and their Reply, as well, you can't cite that. That was an unpublished case.

I'm not subject to the California Rules of Civil Procedure, and I was just following in the footsteps of Judge Lew who cited the exact same case in Transamerica.

Other cases are Kattuah v. Linde Law Firm, Becerra v. Jones, Bell, Abbott, Fleming & Fitzgerald, Roth v. Badener; all of these cases find that when you go to court and use legal process by asserting a lien, that's a protected communication.

The statute is clear. Our Nevada statue is clear, and the California statute is clear, and all the case law is clear. It's not good enough just to come in and say, well, that doesn't apply. Well, why doesn't it apply? Why isn't use of a lien that's allowed under statutory law, permitted by the legislature, encouraged by the Bar, why is that not use of protected process?

Just coming in and saying, I wish it wasn't so, isn't enough in the face of the law.

They talk about conversion. A person who is not in possession can't convert. That's the Restatement Second of Torts, Section 237. That's the primary Restatement section that addresses conversion. You can't convert it if you're not in possession of it.

Mr. Simon is not in possession of it. It's in a separate bank account. According to the Rules of Professional Conduct, 1.15.

To kind of flip the script here, what Mr. Vannah is saying is that anytime a lawyer asserts a lien, he's committing conversion. We can see from the cases, the published cases that Mr. Vannah has been on, that that's not so.

In the Golightly that we've cited, in fact, the Nevada Supreme Court said, retention of funds in a trust account by the lawyer is the same thing as interpleading the funds with the Court. So holding the funds separate is the same thing as giving the funds to a court.

Certainly, he wouldn't come in here and argue that if we had interpled the funds, that the Court converted the money, or that Mr. Simon converted the funds by handing it to the Court. How can he now argue that by placing it into a separate account that he has signing authority over, that Mr. Simon converted them? It's ludicrous.

There are other cases that we've cited, and other sections of the Restatement. Section 240, when funds are in dispute, it's not conversion.

The Golightly case is 373 P.3d 103, that's where Mr. Golightly and Mr. Vannah asserted a lien. They kept the money in a trust account and the Court found, well, that's the same

thing as giving it to us. You're okay.

So there's just -- there's no way to stop the anti-SLAPP motion. They haven't cited any case law; we have. They don't point to any section of the statute; we have. It applies. Their -- their initial Complaint and their Amended Complaint both have to be dismissed, because Mr. Simon was sued because, and solely because he followed the lien statute.

THE COURT: Okay.

MR. CHRISTENSEN: Thank you, Your Honor.

THE COURT: Thank you, counsel.

I've read everything, and considering the arguments today, it appears to me on the face of the regular Complaint as well as on the face of the Amended Complaint that they were not suing Mr. Simon for bringing the lien; they were suing him for conversion, breach of contract, and the other causes of action, which includes the last one that was added in the Amended Complaint.

So the Special Motion to Dismiss is going to be denied.

Moving on to -- there is a Motion to -- sorry, I'm just on the wrong page -- a Motion to Dismiss Plaintiff's Complaint pursuant to NRCP 12(b)(5), as well as the -- I want to do the Motion to Adjudicate the Attorney Lien at the same time. If you guys -- and I know you guys have made a lot of arguments, and I do recall everything that was said the last

time we were here on the Motion to Adjudicate the Attorney Lien.

But in regards to both of those motions, Mr. Christensen, do you have anything to add to those two motions?

MR. CHRISTENSEN: Well, the initial Motion to Dismiss only addressed the original first three causes of action of the original Complaint.

THE COURT: Not the new one.

MR. CHRISTENSEN: So there's a fourth cause of action floating around out there?

THE COURT: Yeah.

MR. CHRISTENSEN: As to the first three causes of action, you can't sue for conversion when someone hasn't converted money. In this case, Mr. Simon was sued for conversion before anyone even had any money. He was sued before the checks were even deposited, before the clients had even signed the backs of the checks, they had sued him for conversion.

So I would incorporate all of the arguments I made on conversion with regard to anti-SLAPP.

THE COURT: Okay.

MR. CHRISTENSEN: They just don't have conversion. There is not conversion if you haven't taken the money and put it in your pocket. This is different from a case where a lawyer has reached into their trust account and moved money

over to the business account, or put it in their pocket, or they have a debit card off their trust account or whatever. This is different.

Mr. Simon followed the rules. He can't be sued for following the rules.

THE COURT: Okay. And, Mr. Vannah, you in the Supplement to the Motion to Adjudicate that was filed by Mr. Christensen, you did not file an Opposition. Is there anything you want to add to that or anything you want to add to the Motion to Dismiss?

MR. VANNAH: No. No, Your Honor.

THE COURT: Okay.

MR. VANNAH: It's -- it's -- I think we've -- we've burned a lot of paper with the --

THE COURT: No, and I understand that. I just wanted to give you --

MR. VANNAH: Right.

THE COURT: -- guys that opportunity because you hadn't filed anything, if you wanted to.

Okay. So in regards to the Motion to Adjudicate the Lien, we're going to set an evidentiary hearing to determine what Mr. Simon's remaining fees are. Whether or not there is a contract is a question of fact that this Court needs to determine. This Court is going to determine if there is a contract in implied, in fact, between Mr. Simon and between

the Edgeworths, because there were promises exchanged and general obligations and there was services performed as well as there was payment made on those services.

During the course of that evidentiary hearing, I will also rule on the Motion to Dismiss at the end of the close of evidence, because I think that evidence is interrelated in the sense that it is my understanding from everything that has happened, that after all of this arose the end of November, the beginning of December of last year, then there was the discussion between Mr. Simon and Mr. Vannah where the money was placed into the account where Mr. Vannah and Mr. Simon are the signors on the account, and then the undisputed money, it's my understanding -- and correct me if I'm wrong -- has already been disbursed to the plaintiffs and only the disputed money remains in the account, is my understanding.

MR. CHRISTENSEN: That's correct.

THE COURT: And so I think that is the subject that needs to be addressed during the evidentiary hearing as to what the fees are in regards to that disputed amount. So after the close of evidence at the evidentiary hearing I will be able to rule on the Motion to Dismiss.

Now, when do you guys want to have this hearing?

MR. VANNAH: Well --

THE COURT: How long do you guys think it's going to

take?

MR. VANNAH: I think it's going to take all day, but let me -- let me ask this, too. We would like to be able to do at least a deposition of -- of Mr. Simon and a deposition of the principle person in his office that -- the other associate that worked on the case and ask them about the fees and how -- what -- what they did and how -- how they went back and added all these fees two years later; how they did that. Did they use a -- and I don't want you to show up and -- it'd be -- it would -- we -- we think we need a two-day deposition of Mr. Simon, one day of his associate, to be able to depose him and ask him some questions and get -- and -- and then we'll have a deposition and have a better idea.

Although -- what --

THE COURT: Well, I don't understand why we can't do that at the evidentiary hearing, because Mr. Simon -- I'm assuming there's no way this hearing is going forward without Mr. Simon testifying. So if Mr. Simon's going to testify at this hearing he's going to be under oath, and the whole subject of this hearing is what did he do, what money is he owed.

So all of that stuff will be testified to at the evidentiary hearing, so I'm not certain as to why we would need a deposition prior to that.

MR. CHRISTENSEN: Your Honor, we agree. Plus, the

statute doesn't provide for that. In fact, the statute says you're supposed to adjudicate this on five days notice. Understandably, there's been a lot of, you know, resistence to that. But the statute certainly does not allow discovery. Impliedly, it does not allow any discovery. It doesn't distinctly allow it.

And also, as we've cited the cases, indicated that the Court can take evidence through NRCP 43© which includes an evidentiary hearing or declarations. And as you pointed out, Mr. Simon will be here at the hearing.

I think it would take a full day, so -- from scheduling. We can work from that --

MR. VANNAH: Well, if we're --

MR. CHRISTENSEN: -- perspective.

MR. VANNAH: -- if we're not going to have -- if we had discovery it would -- it would limit it rightly because we would get answers to the questions. I mean, for example, a good question is, what happened after -- after all this happened, you went back two years and picked a day and put 135 hours in. Where did that come from? Did you have that contemporaneously? Was that in your computer? Did you keep these -- I don't -- I don't know the answer to all these questions.

So we're going to have to ask it at -- at court. And that's fine. But if we're going to do that it's going to

take two days to -- I mean, this is a -- we're talking about a $1.2 million that Mr. Simon --

THE COURT: Right.

MR. VANNAH: -- wants to take as a bonus from my client.

THE COURT: Well, and I don't --

MR. VANNAH: One point --

THE COURT: -- I don't know the answers to those questions either, Mr. Vannah, but those are questions that are certainly going to be needed answered for me, to determine exactly what is owed to Mr. Simon, what's already been paid, and what's outstanding, and what are we going to do with this money in this trust.

So, I don't see a reason to duplicate that information, because in order for me to make a decision and whether or not this money has been converted, which conversion is one of the claims that you have, I need to know all that stuff.

MR. VANNAH: You do.

THE COURT: So, all of that has to be testified to at the evidentiary hearing.

MR. VANNAH: You do. But I'm only -- and it looks like you've made up your mind, and that's okay. I only say that we do -- that's the same thing in a civil trial in front of a jury; when we do that, we take depositions --

THE COURT: Right.

MR. VANNAH: -- so that we can hone down the issues. I mean, maybe he's got a good explanation for that. I'd like to know. I'd like to be able to know how he came up with 135 hours on May 10th, 2014, two years later, and said, here, you owe me $100,000 for that day. I'd like to have the answers to those questions, but it would be nice if I ask him at a deposition and say, hey, can you explain that to us, Mr. Simon? What'd you do?

You're right, we could -- it's no different than a jury trial. You could -- I guess you could have cases where there's no discovery, like criminal cases, I guess there's never any discovery.

But in civil cases, generally when you're dealing with $1.2 million, you'd have a right to at least go to the person who's trying to take your money and ask them, well, what did you do? What -- how did you come up with these numbers? I mean, how did you keep the time records? Did you keep them in Time Matters, one of those programs, or is it just something you just came up with, you know, in a prayer session sitting around your table holding hands one night?

Where did all this $1.2 million largess come from; out of the blue? It's just like raining money. I'd like to be able to ask those questions. I'd love to ask those questions at a deposition to shorten the time here, and try to

get some of the answers, and know what he's going to -- you know, and be able to cross-examine him effectively. That's -- that's -- and I -- whatever Your Honor wishes.

But if we're going to -- I mean, it's going to take a couple of days to go through these line items. I mean -- I mean, we're talking $1.2 million worth of line items where he just comes up with something out of the blue. And literally, out of the blue, that he never billed before, that he now suddenly remembers two years later, well, gee, I forgot to bill for this.

THE COURT: Well, and I mean, Mr. Vannah, we're going to find out this information at the same time, because we're going to do it in the evidentiary hearing. Because --

MR. VANNAH: Okay.

THE COURT: -- I'm not going to make a decision as to what's going to happen with this $1.2 million without me having all those facts either. And a two-day deposition, plus a one-day evidentiary hearing adds up to three days in my book. If we do it all in front of me, it's two days.

MR. VANNAH: Two days. That's fine.

THE COURT: So we're going to do it here.

When are you guys available to --

MR. VANNAH: Sometime in June for -- I'm going to be in Europe most of May.

THE COURT: Okay. I just didn't know if you wanted

this done sooner rather than later, Mr. Christensen?

MR. CHRISTENSEN: We have a couple of dates in April that fit for our team; April 19 and 20.

THE COURT: I'm not here. I'm at the District Judges Conference. And I'm actually presenting on the 20th, so I actually am forced to show up that day.

MR. CHRISTENSEN: We -- well -- well, right. Understood. Understood.

THE COURT: So, I will be there that day. I mean, I could miss the 19th, but I have to be there on the 20th.

MR. CHRISTENSEN: Right. We have a couple of dates at the beginning of May which is the 1st and --

MR. VANNAH: Judge, remember --

MR. CHRISTENSEN: -- the 2nd.

MR. VANNAH: -- I'm going to be in Europe, so that's hard for me to do.

MR. CHRISTENSEN: When -- when do you go?

THE COURT: You're out the whole month of May?

MR. VANNAH: I go on the 2nd. I leave May 2nd.

THE COURT: Oh, okay.

MR. CHRISTENSEN: Well, what time? Is it a --

MR. VANNAH: Pardon me?

MR. CHRISTENSEN: You fly in during the day or is it a nighttime flight?

MR. VANNAH: Yeah, I fly -- no, I fly on May 2nd.

It's at 5:00 p.m. or something.

THE COURT: Okay. So when do you return, Mr. Vannah?

MR. VANNAH: I get back at the end of May, so --

THE COURT: Man, you should be taking me with you, to be gone for the whole month.

MR. VANNAH: Yeah, no, it's a -- it's -- it's a -- it's a long trip. It's one of those rare times I take -- I actually don't take many vacations, but this is one I actually -- I'm going to Paris and Scotland and England and other places. It's a -- it's a fun trip.

THE COURT: Okay. So you'll be back around Memorial Day?

MR. VANNAH: Yes, I am.

THE COURT: So that -- the week of the 29th?

MR. VANNAH: I am back. That's when I'm back.

THE COURT: What do you guys think about that week? Let me see. It looks like I'm here that whole week.

MR. VANNAH: Or the 1st of June would be good, too, whatever you -- whatever's your pleasure.

THE COURT: Well, the problem is, the -- well, we have to be dark the whole week of the 4th. They're redoing the JAVS, and that requires us to be dark for a whole week. And then I'm not here the 11th.

MR. VANNAH: Judge, the week -- the week of June

28th totally works for me if --

MR. CHRISTENSEN: May 28th?

THE COURT: May 28th?

MR. VANNAH: I meant May.

THE COURT: Because the 28th is a holiday. So it would be the --

MR. VANNAH: I'm looking at my calendar but it said June at the top, yeah.

THE COURT: -- 29th? Does that work for you, Mr. Christensen?

MR. CHRISTENSEN: I can make the very end of May work. We have a issue in that Mr. Christiansen -- no relation -- although I do sometimes get his mail -- is also on the team, and he may be -- is it a debt case in May?

UNIDENTIFIED MALE SPEAKER: No, he's -- it's just a trial, med mal trial.

MR. CHRISTENSEN: Okay. He's in a med mal trial currently in May. I'm not sure when it ends. There are some writs pending --

THE COURT: Okay.

MR. CHRISTENSEN: -- so the whole case may get kicked, but the Supreme Court hasn't given word back on the writs.

THE COURT: Okay.

MR. CHRISTENSEN: So we're in a -- I guess we could

tentatively --

THE COURT: So do you want to just set this so that we have a date in place, and then we can get together and change the date --

MR. VANNAH: Sure.

THE COURT: -- if something changes?

MR. CHRISTENSEN: Let's do that.

MR. VANNAH: That's a good plan, because --

THE COURT: Okay. Because that week I can -- I mean, I have calendars, but I mean like Tuesday we could start at 11:00.

MR. VANNAH: Okay.

THE COURT: Tuesday, the 29th?

MR. CHRISTENSEN: Okay.

MR. VANNAH: That sounds fine.

THE COURT: Okay. And then Wednesday the 30th, we could start at 10:30. And would you guys go -- let's just set Thursday to start at 9:00, just in case we need to go into Thursday.

MR. VANNAH: Right, because we may lose a little time there, sure.

THE COURT: Okay.

MR. VANNAH: So --

THE COURT: So Thursday, I don't have a calendar, so we can start at 9:00 o'clock.

MR. VANNAH: That sounds great, Judge. That would work --

THE COURT: Okay.

MR. VANNAH: -- out perfectly.

MR. CHRISTENSEN: Your Honor, do you want prehearing briefs or --

THE COURT: I would, actually, yes, like to have the -- your prehearing briefs on this issue.

MR. VANNAH: Well, it's hard for me to develop one when I don't know what he's going --

THE COURT: Without doing the deposition?

MR. VANNAH: -- to say. I have no idea what he did. He just out of the blue, I'm telling you, it's --

THE COURT: Well, I mean, the issue is, Mr. Vannah, I mean, you dispute that he's owed the money anyway, so you could just write your brief based on what you think he's owed.

MR. VANNAH: Well, I -- I --

MR. CHRISTENSEN: Why don't you --

MR. VANNAH: -- I think he's owed some money because I just don't --

THE COURT: Right. There is an unpaid --

MR. VANNAH: -- know how much.

THE COURT: -- bill, and you reference that in your motion that there's an unpaid bill.

MR. VANNAH: Exactly.

THE COURT: Right.

MR. VANNAH: That last bill. And we haven't gotten it yet.

THE COURT: Right. But you --

MR. VANNAH: Well, I guess we have it now.

THE COURT: So your brief would just basically say he's entitled to what's unpaid in that one last bill.

MR. VANNAH: Agreed.

THE COURT: And that's it.

MR. VANNAH: That makes some sense.

THE COURT: Yes. And, I mean, you know, there's -- that's always open for change, but that's a starting point where we're going to start. That's always open for change if the testimony comes out to be something else.

MR. VANNAH: You know, I mean, the big mystery is, and I guess that's what I wanted to ask about is, what happened after the case settled? Why would like hundreds of thousands of dollars in bills after the case is settled, what happened there?

THE COURT: Right. Well, we're going to find all that out at the evidentiary hearing.

MR. VANNAH: Okay. Well, that's going to be a good question.

MR. CHRISTENSEN: You should really take a look at the Declaration that's attached to the motion. Maybe it would

probably answer his questions instead of --

MR. VANNAH: Well, I don't believe everything people say.

MR. CHRISTENSEN: -- pleading ignorance.

MR. VANNAH: I like to do cross-examination because --

MR. CHRISTENSEN: If we could --

THE COURT: Well, we'll have three days that we'll set aside, so that we'll be able to get this done.

MR. CHRISTENSEN: Can we have a date on the briefs? That's what we were looking at before the soliloquy stuff.

THE COURT: Okay.

MR. VANNAH: Do you want to exchange briefs or just have blind briefs?

MR. CHRISTENSEN: Same time. Let's -- well, no, they exchange, but at the same time --

THE COURT: Same time. Just --

MR. CHRISTENSEN: -- simultaneous.

MR. VANNAH: Sure.

THE COURT: -- if you guys could have them to me by May 18th, that Friday, at 5:00.

MR. VANNAH: Absolutely, Your Honor.

THE COURT: Okay?

MR. CHRISTENSEN: I'm --

THE COURT: And then if you could just bring a

courtesy copy to chambers just in case there's some --

MR. CHRISTENSEN: Oh, May 18th.

THE COURT: -- mixup with Odyssey.

MR. CHRISTENSEN: Got it. Okay. Very good.

THE COURT: Okay? Thank you, counsel.

MR. CHRISTENSEN: Thank you, Your Honor.

MR. VANNAH: Thank you, Your Honor.

[Hearing concluded at 10:11 A.M.]

* * * * *

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

Julie Lord

JULIE LORD, INDEPENDENT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. LANGE PLUMBING, LLC, ET AL., Defendants.	CASE#: A-16-738444-C DEPT. X
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Plaintiffs, vs. DANIEL S. SIMON, ET AL., Defendants.	CASE#: A-18-767242-C DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
MONDAY, AUGUST 27, 2018

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1

APPEARANCES:

For the Plaintiff: ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

For the Defendant: JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Monday, August 27, 2018

[Case called at 10:44 a.m.]

THE COURT: -- Family Trust, American Grating, LLC v. Daniel Simon Law, Daniel Simon, d/b/a Simon Law. Okay.

So, this is the date and time set for an evidentiary hearing. Can we have everyone's appearances for the record?

MR. VANNAH: Yes. Robert Vannah and John Greene on behalf of the Edgeworth Trust and the Edgeworth family.

Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon and his law firm.

MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.

THE COURT: Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case, but I also have Mr. Simon's Law Office filed a trial brief regarding the admissibility of a fee agreement. Did you guys get that?

MR. VANNAH: Yes, Your Honor.

THE COURT: Okay. Are you guys prepared to respond to that or --

MR. VANNAH: We are, Your Honor.

THE COURT: Okay. And I have had an opportunity to review it while we were waiting.

Mr. Christensen, do you have anything you want to add?

Mr. CHRISTENSEN: Just a couple of thoughts, Your Honor. Last week, we requested that Mr. Vannah voluntarily produce the fee

agreement. He declined to do so. So, late last week a subpoena was served duces tecum. The trial brief lays out the reasons why that fee agreement is relevant and also lays out the law on why, in this situation, it's not privileged, and it can be introduced.

To the extent that there were any particular attorney-client communications made to Mr. Vannah, which were memorialized in some fashion in the fee agreement, like he wrote in the margins or something, those could, of course, be redacted. So, I don't think there's any true defense to the subpoena. Constructive discharge is an issue, and part of the evidence of construction discharge is the fact the clients went to a new lawyer while the underlying litigation was still pending.

THE COURT: And correct me if I'm wrong, but I remember -- and correct me because this was a few hearings ago. I remember there was a discussion in regards to -- at some point, was there a discussion between Mr. Vannah and Mr. Simon that Mr. Vannah told Mr. Simon that he was still counsel of record?

MR. VANNAH: Correct.

Mr. CHRISTENSEN: There was several --

THE COURT: Okay. I vaguely remember that, so can somebody just enlighten me as to the status of that, because I remember that about two to three hearings ago --

Mr. CHRISTENSEN: There were --

THE COURT: -- there being a discussion about that.

Mr. CHRISTENSEN: There were several evolving discussions, and it's important to keep the timeline in your mind. At

approximately November 30th or so, there was a communication from the clients to Mr. Simon saying Mr. Vannah is now my lawyer -- or it might have come from Mr. Vannah's office, saying Mr. Vannah is now my lawyer, do not communicate directly.

THE COURT: Okay.

Mr. CHRISTENSEN: That led to the following day. That was -- the first lien was filed to protect Mr. Simon's and his law office's interest.

Subsequent to that, there were email communications mainly between Mr. Vannah and myself, some letter communications, in which, for example, I raised the issue of constructive discharge and the fact that Mr. Simon is no longer able to talk to his clients, and we had the important issue, the pending contract claim for recovery of attorney's fees expended against Lange Plumbing.

THE COURT: Right.

Mr. CHRISTENSEN: That led to a conference call between the parties, and then we had a consent to settle provided to Mr. Simon that was signed by both clients and said, upon the advice of Mr. Vannah, you know, blah, blah, blah, we're not going to pursue this claim.

At one point, I sent an email on over there and I said, look, you know, we got to make a decision whether Mr. Simon is still going to be counsel of record here. He can't talk to the clients. They're not following his advice. He's not able to explain to them the importance and the significance of that contract claim against Lange Plumbing that's not subject to offset or any other reduction because of monies recovered

by -- from Viking. And that fell on deaf ears, and I said, well, we're going to have to think about this next step.

And then there was a back and forth on an email or two that said something to the extent of, if you withdraw, that's going to increase our damages. So, in other words, there was a constructive discharge of Mr. Simon, and then there was either a direct or indirect threat, depending on how you want to read it, that if he actually withdrew, because of the constructive discharge, that would increase the claims against him. So, that put Mr. Simon in kind of, you know, darned if you do, darned if you don't situation, where he couldn't talk to the clients, but he was being threatened that if he withdrew, bad things would happen to him.

Then, of course, they sued him for conversion before he had any funds to convert and now we're here today.

At the current day, there has not been a motion to withdraw. It would have been filed before Your Honor.

THE COURT: Right.

Mr. CHRISTENSEN: However, the underlying case has been wrapped up based upon the advice from Mr. Vannah to settle that lien claim for 100,000. So, to a certain extent, that -- there's no longer an underlying case for Mr. Simon to represent them in; however, for our purpose here today, the issue of constructive discharge is important.

We have a difference of opinion on whether there was an expressed contract and whether there was a meeting of minds on the payment term.

THE COURT: Right.

Mr. CHRISTENSEN: We also -- secondarily, we also have a difference of opinion on whether the conduct of the parties could establish an implied agreement on payment terms. We say it's clear, it's not. And we think as you hear the evidence, you're going to understand why we're saying that.

But even if a payment term is determined expressly or impliedly, it doesn't matter if there is constructive discharge, because if there's constructive discharge, then there's no contract. And under the law in the State of Nevada, Mr. Simon gets a quantum meruit recovery or a reasonable fee.

So, in fact, you could almost reverse the analysis and just take a look at whether there was constructive discharge first because if there is, it really doesn't matter if there is a meeting of the minds or not on a payment term because the contract has been blown up. So, then you go to QM, quantum meruit.

So, that's kind of why the fee agreement is important, because it shows that, while Mr. Simon was involved in active litigation in the underlying case, and although, there's a seven-figure claim against Lange pending, and when there's still details to be worked out on the $6 million Viking settlement, the clients have gone to another lawyer, hired another lawyer, taken advice from that other lawyer, and told Mr. Simon not to talk to them.

So, we think the fee agreement is going to be another piece of substantial evidence that would lead this Court to find a constructive

discharge. So, we'd like to see it and see what it says.

THE COURT: Okay. Mr. Vannah, Mr. Greene.

MR. VANNAH: Thank you, Your Honor. Sort of a revision of his history. Here's what happened. The case had settled. The big case has settled for 600,000, everybody agreed on that. Mr. Simon had a meeting in mid-November and told the clients he wanted a larger fee than what they were going to pay. He then said to the clients, you need to go out and get independent counsel to look at this for you, which is what he had to do anyway. He just wants them -- he had a new fee agreement for them to sign or a fee agreement, and then told them you need to get independent counsel to look at it and told them that. He said that's -- that was the --

THE COURT: To look at the fee agreement?

MR. VANNAH: Yeah, to look at the whole thing.

THE COURT: Okay.

MR. VANNAH: I mean, he comes up with the fee agreement and -- after the case settled and has a fee agreement prepared for them, gives it to them, said here's the fee agreement, I want you to sign in mid-November 2017, after the $600,000 settlement took place.

And the fee agreement he wanted them to sign said, basically --

THE COURT: And this is the $6 million settlement that you're talking about?

MR. VANNAH: Yes, that had already happened.

THE COURT: Right, but you keep saying 600,000, so I'm just

making sure --

MR. VANNAH: You know what? It's hard to spit the big numbers out.

THE COURT: It's all right, but you're talking about the $6 million settlement?

MR. VANNAH: I am, and I --

THE COURT: Okay.

MR. VANNAH: So, the $6 million settlement had occurred, was over with. Mr. Simon had the clients, both Mr. and Mrs. Edgeworth, come to his office, and he had prepared a fee agreement saying, look, I want to be fair about this to myself and this is what I want you guys to sign. I want you to sign this fee agreement that gives me basically a $2 million bonus. And he showed it to them, and then he said -- they said, well, you know, we're not prepared to -- for you to bring us in out of the blue and show us this. And we're not at all happy about it, but having said that, he said, well, then you need to get independent counsel. That's me. I'm the independent counsel.

So, they obviously retained me, and I did a get written fee agreement. Of all cases, this is the one I'm going to get a written fee agreement on. I have a written fee agreement. There's nothing in the margins, but in the subpoena, it said to bring everything with me, which would have included my notes that day. Those are attorney-client notes. He's, obviously -- he's not entitled to even that, but it's his fee agreement where I got retained.

I don't -- there's no constructive discharge. So, the only

thing left in the case, at that point, was to do the releases. They looked at the release and signed them, the case was settled, so I --

THE COURT: But this is prior to the Lange settlement, but this is the settlement with --

MR. VANNAH: But there was an offer --

THE COURT: -- Viking?

MR. VANNAH: -- there was an offer on the table in Lange.

THE COURT: Okay. So, the offer was still pending, but Lange had -- Lange hadn't settled?

MR. VANNAH: It hadn't settled.

THE COURT: Okay.

MR. VANNAH: It was on the table, and there was an offer. The clients asked me to look at it. Mr. Simon gave me the information. We talked. I looked at it and I concluded that the best interests in the clients, in my opinion, was -- my advice to them was, you know what, if I were you, rather than to continue with Danny on this case and bring in somebody else, just take the settlement; accept it. That was it, that was my advice, accept the settlement. They wanted me to put that in writing, I put it in writing, and I explained it to the client and, based on everything we're looking at, they wanted to accept it; please accept the settlement.

The communication had broken down really badly between the clients, you know, the client and the other lawyer. So, I said, look, you know, it doesn't seem to me a great idea for you guys to be having meetings and stuff. My clients don't want to meet with you anymore, but you are counsel of record, go ahead and finish it up, do the releases,

and sign whatever you have to do to get the Lange settlement done. Just accept it. Accept it and whatever you have to do, that's it. Do what you have to do with the Judge, and you do that.

I'm not -- I'm not substituting in as counsel. I'm not associating as counsel. I made that very clear. You guys are counsel of record. If you want to withdraw -- if that's your threat, you're going to withdraw from the case, you can withdraw, but if you withdraw from the case at the last minute, and I have to come into the case because you withdraw and spend 40, 50 hours bringing myself up to speed, you know, I -- the client is not going to be very happy about that. And I'm not even sure Your Honor would allow them to withdraw with that going on. The case was over. I mean, the $600,000 settlement had been made. It was over, signed and gone --

THE COURT: Six million, Mr. Vannah? Six million?

MR. VANNAH: Six million, I'm sorry. And the settlement for the 100- was on the table, and my sole part in that was to say my clients want to accept it, do whatever you got to do to accept it, which is his obligation. And he did, accepted it, and then we came to court because you wanted me to be in court when this thing went down to just express our opinions that we're happy with that. We had that settlement agreement with Teddy Parker who was hearing everybody, and then I wasn't going to say anything, but I asked to say that -- stand up and say that's what the client wants to do, and I said, yeah, I'm communicating, they're here too, but that's what they want to do. They want to settle the case. Now that's it.

So, my fee agreement it's -- there's no relevance to it. It's -- I'm -- it's just a fee agreement with a client, and it's a fee agreement I had that Mr. Simon suggested that they do, to go out and hire somebody to be independent counsel and to -- you know, he's trying to get them to sign some fee agreement they don't want to sign, and they want to know what their rights are. So, he said get independent counsel. They did, and here I am, and that's how they got to where they got to. So, I don't see any relevance whatsoever to this fee agreement between me and the Edgeworths. That's the bottom line.

THE COURT: Okay. Well, I mean, this issue of constructive discharge, the issue that's hanging there, and I agree with Mr. Christensen's legal analysis of, if there is constructive discharge, then we have a whole completely different discussion in regards to the contract. So, based upon this Court having to make that determination, Mr. Vannah, I believe that the fee agreement is relevant, but only the fee agreement itself. No notes, no notes you took that day, no conversations, just the fee agreement itself. So, I'm going to order you to provide a copy of that to Mr. Christensen. Can you --

MR. VANNAH: I got it right now.

THE COURT: Okay. I was going to say; I know you have people at your office who work there --

MR. VANNAH: No, no, we brought it.

THE COURT: -- you can -- okay. So --

MR. CHRISTENSEN: Have his people do it.

THE COURT: Okay. So, can you just make sure he has that

by the -- is that going to become relevant to someone's testimony today?

MR. VANNAH: I'll have it to him right now. It's just going to take a second. I have it.

THE COURT: Okay.

MR. VANNAH: So, we can get that over with and --

THE COURT: And then we'll be ready.

MR. VANNAH: I think it's one page, right?

THE COURT: Because it's just the agreement. It's no notes or anything --

MR. VANNAH: No, no, no, just a one-page agreement. So, when they hired me, they paid me so much dollars per hour, and that's it.

THE COURT: Okay.

MR. VANNAH: Simple as that.

THE COURT: Okay. So, this is the motion to -- in regards to adjudicating the lien. The motion was filed by you Mr. Christensen. Are you ready to call your first witness?

MR. CHRISTENSEN: Your Honor, if you could just -- I'm not quite as fast a reader as I used to be.

THE COURT: It's okay. Me either.

[Pause]

MR. CHRISTENSEN: Okay. We do have an opening PowerPoint --

THE COURT: Okay.

MR. CHRISTENSEN: -- that we'd like to go through --

THE COURT: Okay.

MR. CHRISTENSEN: -- if that's acceptable to the Court?

THE COURT: Sure. Any objection, Mr. Vannah?

MR. VANNAH: I don't care.

THE COURT: Okay. And I was wondering if this was a PowerPoint or if this was going to be demonstrative to like share photos.

MR. CHRISTENSEN: Right.

THE COURT: I wasn't sure.

MR. CHRISTENSEN: Okay. Okay.

DEFENDANT'S OPENING STATEMENT

BY MR. CHRISTENSEN:

Your Honor, we believe that the theme of this case is no good deed goes unpunished. What you see is, this is a --

MR. VANNAH: I'm not sure whether that's evidence, Your Honor, so are we going to have evidence like an opening statement or are we going to have argument? I mean --

THE COURT: Counsel?

MR. VANNAH: -- this is clearly argument; no good deed goes unpunished. That's -- is this going to be an opening argument or is this an opening statement, I guess?

THE COURT: Well, it's going to be an opening statement and we're going to get to what they -- what the evidence is going to show.

Mr. Christensen?

MR. CHRISTENSEN: Your Honor, we believe the evidence will show that no good deed goes unpunished. What you see here is a

street-side picture of the house where the flood occurred. This is available on the internet. This is one of those pictures that was made available when the house was being marketed for sale.

THE COURT: And this is 2017, so this is after the flood, right?

MR. CHRISTENSEN: Correct, that's a post-flood picture. That's after the certificate of occupancy has been issued. All original construction and any repair and remediation after the fire sprinkler flood has already been taken of.

That's a picture of the interior. That's essentially the area where the flood occurred. Of course, water goes where water goes, so. There was also damage in the kitchen area. The cabinets in that area are quite expensive. They're several hundred thousand dollars, and they sustained some damage in the flood. This is another picture, another angle of that same general area of the home. The costs to repair, for the flood, as you can see, it's quite a nice home with very nice finishes, was approximately in the ballpark of a half a million dollars.

So as things developed, Mr. Edgeworth tried to handle the claim on his own, didn't reach much success. He probably should have been able to, truth be told, be able to handle it on his own, but he was dealing with a plumber that was being rather recalcitrant and he -- Viking wasn't stepping up. He didn't have course of construction coverage. He didn't have any other route of recovery, so he first asked Mr. Simon to give him some suggestions as to attorneys who could help him out. Those attorneys all quoted very high numbers to him. He didn't want to lay out $50,000 for a retainer or something of that sort.

So, there was a meeting at Starbucks and in connection with that, Mr. Simon agreed to send a few letters. I think that's actually the quote from the email. And that was in May of 2016. And from then on, the case progressed until it was filed in June, and then when it became active really in late 2016 through 2017 before Your Honor.

So, we are here because, of course, there was a very large settlement. Mr. Simon got a result, and there's a dispute over the fees. So, the first question we have is whether there was an expressed contract to the fees or expressed contract regarding the retention. We all know, and we all agree, there was no expressed written contract. It started off as a friends and family matter. Mr. Simon probably wasn't even going to send them a bill if he could have triggered adjusters coming in and adjusting the loss early on, after sending a letter or two.

So, the claim of Mr. Edgeworth is that, in the -- as stated in the complaint, is that there was an expressed oral contract formed in May of 2016 to pay Mr. Simon $550 per hour. So, a meeting of the minds exist when the parties have agreed upon the contract's essential terms.

MR. VANNAH: I'm sorry, Your Honor, this isn't facts anymore. Now, we're arguing the law. We're getting beyond what -- I mean, I thought this was going to be a fact -- opening statement is supposed to be the factual presentation. This is an argument of the law. If we're going to do that, that's fine, I guess, but I don't think it's proper.

THE COURT: Mr. Christensen?

MR. CHRISTENSEN: Your Honor, the evidence is going to

show that there was no meeting of the minds in May of 2016, that the parties agree that Mr. Simon was going to work on this friends and family matter for 550 an hour.

MR. VANNAH: That's not what --

MR. CHRISTENSEN: The evidence is going to show otherwise, that there was no expressed payment term reached in May of 2016, or at any time.

MR. VANNAH: Again, here's my problem. I mean, the evidence isn't going to show citations, and this is a statement of law, citations. I mean, he wouldn't do this in front of a jury, he wouldn't do this in a bench trial. This is argument, pure and simple. Now, we're even arguing what the law is in the case. I thought this was going to be a factual presentation of what the facts were going to show. We're way beyond all that.

MR. CHRISTENSEN: Your Honor, if I could. First of all, we're not arguing what the law is. The law is the law, but I mean, we might be arguing over its application of the case, but that's a whole other issue.

Secondly, this is a lien adjudication hearing. This is not opening statement. We don't have a jury. This is being presented to the Court in order for the Court to have a full understanding of the facts as they come in. We believe this is useful and will be helpful to the Court. There's really no rules governing what you can say or can't say in an introductory statement to a court in an adjudicatory -- in a adjudication hearing. I mean, when we submitted our briefs to you, we submitted law, and we submitted facts, and we argued the application of the law to

the facts submitted. And this is an extension of that and that's what we're doing here.

I understand Mr. Vannah's objections. I understand what goes on in jury trials, when you're presenting things to the jury and when the Judge is going to present the law to them at the end of the case through the jury instructions. That ain't what we got here. This is different.

So, you know, I can get on through this, and we can move on or, you know, Mr. Vannah can --

THE COURT: Well, I mean --

MR. CHRISTENSEN: -- continue to object.

THE COURT: -- Mr. Christensen --

MR. CHRISTENSEN: This law -- you're going to get this law sooner or later anyway, so let's --

THE COURT: Right. And, I mean, that's what I'm saying. I don't --

MR. CHRISTENSEN: -- get it done now so that you understand what's going on.

THE COURT: Right, and I mean, I -- and I hate to sound frank about this, but I've been presiding over this case almost the entire time I've been on the bench, so there's not a lot of things about the law of this case that I think I'm confused about. I mean, I would hope I could at least earn that much credit, as well as I was up late last night reading all the briefs that you guys submitted in this case, and I have five binders worth of stuff.

So, if we could just get to the facts of this case and get to the evidentiary part, and I will let you argue this case until there's no tomorrow at the end, but I've already read like all the stuff because this is absolutely in the trial brief that was submitted, and I have read that.

MR. CHRISTENSEN: Okay. Well, I guess I'll abandon the PowerPoint and finish up pretty --

THE COURT: Okay. And, I mean, I --

MR. CHRISTENSEN: -- quickly.

THE COURT: -- just the legal portion of it. I mean, because I think this -- and this is a fact-finding hearing. I'm going to have to make legal determinations at the end, but I have to give everyone the credit that they're due, that you guys have spent massive amounts of times thoroughly briefing this case.

MR. CHRISTENSEN: That's true, Your Honor. So, what you're going to find, as the evidence is presented, is that the claim made in the complaint, that there was an expressed agreement in 2016, doesn't hold up. What you're going to find is that there was never a firm agreement on the payment term. That issue was always in flux. There was debate that came up at various times, including in August of 2017, which you've seen the email concerning what are the payment terms for this.

And you're -- it's also important to pay attention to the timeline of the evolution of the case, of when it moves from a friends and family matter to there being litigation, and then when the thing really blows up and things are really flying, and that's when there's more

effort to reach a term and that fails. So, at the end of the day, there's no expressed term on the payment and there's no implied term.

Now, of course, they're going to point to the bills. Bills were sent and paid, that's not the end of the story. That's more the beginning of the story on the bills. What you're going to hear is evidence concerning the reason why the bills were sent. That the bills were sent to bolster the contract claim against Lange and also to put Lange on notice of the existence of that significant claim that was later waived.

You'll hear testimony concerning how the $550 number was reached, and it certainly, from our position, wasn't reached as a result of the meeting of the minds. And then you're also going to see evidence concerning the actual content of the bills, the knowledge of Mr. Edgeworth, and then how no reasonable person in his position could -- should not be able to argue that these bills were both the beginning and the end of the story.

What you're going to hear is that there was a tremendous amount of work that was done in this file that was not billed for. That's part of the reason why we had these bills that were submitted as part of the adjudication process. That was done for several reasons. One of the reasons is that it's well-known, if you go on over the case law, my apologies to Mr. Vannah, that sometimes the courts like to see an overall listing of time because that's evidence of work. Whether or not they get paid on an hourly or on quantum meruit.

So, we provided it for that reason. We also provided it so that you have a good look of what's going on and in case the worst case

scenario, from our point, comes true.

What's important to understand about those bills is that Mr. Simon's firm is not an hourly firm. They don't have regular timekeepers. They don't have regular billing or timekeeping software. They don't even have the old books that we used to use. They don't have any of that stuff. So not only were there bills that were sent during the underlying litigation incomplete, sometimes grossly so, but when they went through and tried to do a listing of the time spent for the adjudication hearing, they made some errors. And when they'd go on in, what they do is, they would look at a landmark date. So, for example, the date that something was filed and that's what they would key the billing off of.

Now, not necessarily all the hours were done that day, but in going back, they wanted to make sure that they got the dates right. As a result of this process, they know that there is a document with a date for every single billing entry. That also means that they didn't capture a lot of their work in those bills because if they couldn't find a piece of paper with a date on it, they didn't bill for it.

And before I turn this over to Mr. Vannah, if he cares to make a statement, I do just want to impress on the Court the evidence that you're going to see about the amount of work that was done on this file, that was not reflected on those initial billings and try to give Your Honor an idea of the scale of this litigation and the fact that it dominated the time of this law firm. And what we've done is, there was an awful lot of email correspondence between Mr. Simon, his staff, and Mr. Edgeworth.

Mr. Edgeworth really dominated their time, which is fair to do if you pay for it.

What we did was, we printed out the emails between these folks during the time the underlying litigation was going, just so that you understand the scale of it. I think a standard banker's box has -- if you don't have any binders in it, it has 5,000 sheets of paper in it. This is obviously a little bit more than that -- or a little bit less than that because we've got binders in here. Just a couple more.

THE COURT: These are just the emails?

MR. CHRISTENSEN: These are just the emails, Your Honor. Normally, I would carry two at a time, but while I'm not seeking sympathy, I did kind of tweak a muscle in my back a couple days ago.

THE COURT: Tell them downstairs, we prefer safety in Department 10.

MR. CHRISTENSEN: Yeah, safety first.

[Pause]

MR. CHRISTENSEN: Now, in full disclosure, Your Honor, there are two of these binders of about this size that are attachments that were, you know, hooked to whatever it linked to the email, but of course, those were -- oh, and there's more. Those were done over and discussed in the context of many of the emails, so we included them as well. So that just gives you a little bit of scale. Later on, we're going to be demonstrating to you the size of the actually underlying file. We're, of course, not going to copy it and bring it all in because it's dozens and dozens of banker's boxes, and we wanted to save a few trees.

But at the end of the day, we think that the Court should find -- should reach a fee for Mr. -- a reasonable fee for Mr. Simon and his law firm pursuant to quantum meruit. Thank you.

THE COURT: Okay. Thank you. Mr. Vannah, would you wish to make an opening?

MR. VANNAH: Yes, Your Honor. Thank you.

THE COURT: Okay.

PLAINTIFFS' OPENING STATEMENT

BY MR. VANNAH:

A lot of things here we agree on. So, there was a bad flood, and it was a sprinkler system that was in the house. And so, in May of 2016 -- Mr. Edgeworth's wife is good friends with Mrs. Simon and said, you know, why don't you talk to Danny and see what he can do for you? So, Mr. Edgeworth met with Danny. They had a meeting and Danny said, I'll send him some letters and see what we can do. So, he sends him the letters. Didn't do any good, which is not surprising to either one of them, I'm sure.

So, what happened is Danny then says to him, look, I'll represent you. I can do your case. I'm going to bill you $550 an hour. Tells him that point blank. That's what we charge $550, and then my associate will charge $275 an hour. And they have an understanding on that. You're going to learn that Mr. Edgeworth was a little concerned about the fee, because that's about twice what he ended up paying his firm that he uses out in California.

We brought some of those bills to prove that. But he had a

large firm that he used out of California that has done some patent work for them, at a much lesser fee. But he actually ended up having a conversation with his wife and says, I'm thinking about using somebody else. Danny had written the letters and the wife said that might be a problem. Why don't you just use Danny and pay him the higher fee? And against his better judgment, he agreed to do that, but he told Dany all right, fine. I'll hire you, and I'll pay you. Send me the bills.

So, Danny does the work, does a fine job. We're not complaining about the work. He files the complaint. He goes forward, and he sends -- he starts sending bills. Now, this is the interesting part. His bills just through September 22nd, which is where the last bill ended that was paid, the bills that were sent were four invoices. They added up to almost $400,000 in attorney fees. Now this is over a case that everybody suspected had a maximum value between 500 and $750,000.

So, Mr. Kemp -- I like what Mr. Kemp said. Mr. Kemp said, I would have never, under any circumstances, taken this case under a contingency fee. I just wouldn't have done it. It doesn't pencil out. So, I mean, you know, frankly, to be honest with you, I'm looking at my client thinking you know, here's a guy with a Harvard MBA, but he's paid out -- and I'm not talking about costs. There's another $111,000 in costs.

By September the 22nd, he had paid out -- just paid out up to that date over $500,000 in attorney fees and costs on a case that probably did have a value between 500 and $750,000, so that doesn't make a lot of sense, to be honest with you, from a standpoint of just economic law.

And it's not surprising why Mr. Simon -- he apparently agrees with Mr. Kemp that this would be a bad case to take on a contingency, because if you did it at 40 percent, I mean, your -- 40 percent of $750,000 is I think 300,000, and he's already billed $387,000. So, what happened was -- is -- up through this meeting that took place in San Diego -- so what happened is they went to San Diego, because they weren't happy with the expert. The expert had done a really lousy job, billed a lot of money, and so they both agreed let's just go to San Diego, meet with the experts, talk to them and say what are you doing here? I mean, this isn't a very good job you're doing.

So, they go down. That was the purpose of their meeting. So, at this point in time -- and this is really important. This is in August of -- I wrote down the date. August 8, 2017, I believe is the date that they had the meeting in San Diego. That's the critical -- up to that point, everything is pretty clear. I mean, there's been an express understanding that the billing's going to be 550 an hour and 275 with the associate. Two bills had come in at this point in time, and they're paid.

So, on August 8th, they go to a bar. They're waiting for the plane back to Las Vegas, and they go have a couple drinks together in a bar, and they get into a discussion about you know what -- you know, this is really expensive. The client saying, well, I'm paying a lot of money out. I wonder if there's some kind of a hybrid kind of thing we could come up with maybe that I wouldn't -- I -- because this is becoming very expensive.

So, what happened -- Mr. Edgeworth was borrowing money

to pay the legal fees. Generally, I wouldn't recommend that. That's probably not a really great idea to go out and borrow money to pay legal fees, but that's what he had done. He'd gone and borrowed money from his mother-in-law, high interest loans and was paying legal fees with borrowed money. Mr. Simon understood that and realized that.

So, on August 8th, they had a discussion in the bar and the discussion was -- I mean, is there a possibility that my future billings would be a little less or maybe even give some of the money back that I've billed and do this case on a contingency, because the case -- Mr. Edgeworth thought the case had more value than Mr. Simon did at that time, but they had that discussion.

So, it ended up with Mr. Edgeworth saying to Mr. Simon -- now, keep in mind, nobody had ever reduced anything to writing. I'll get back to you about that, and I'll tell you what I'm willing to do. So, Mr. Edgeworth said all right. You make me a proposal, if you want to. Well, that's not what happened. So, what happened, Mr. Simon goes back to his office. A couple weeks go by, some time goes by, doesn't hear anything -- Mr. Edgeworth doesn't hear anything about any proposal.

What does Mr. Simon do? He prepares another hourly bill and sends another hourly bill out. My client finally writes an email -- that's the one that you read -- saying, look, I mean, if you want, I can pay you hourly, if that's what you want me to do. I'm just going to have to go out and borrow money. I might have to sell some of my Bitcoin. He was investing in Bitcoin. He thought it was a good investment. I can borrow more money. You know, whatever it's going to cost. I'll do

whatever it takes. And that email says that if you want to do it hourly, I'll just continue paying you hourly.

Mr. Simon's response to all that was to send an hourly bill, send another bill. Mr. Edgeworth borrowed the money, paid the bill in full. After that, Mr. Simon sends another hourly bill. That takes it right up to September 26th, is another hourly bill. Mr. Edgeworth goes out and borrows money. No further discussion. The way he sees it, I guess, Mr. Simon is talking with the bill, do you want to do something different? Mr. Simon just continues sending two more bills.

Those bills add up to -- those four invoices that were paid, all of them paid, added up to $387,000 in attorney fees, almost $400,000 in attorney fees and over $100,000 in costs that Mr. Simon -- Mr. Edgeworth paid, all four of those invoices. You're going to also learn in this case that when Mr. Simon -- and I don't want to denigrate Mr. Simon's efforts. I mean, it was a good result, but I want to tell you something.

Mr. Edgeworth, as you'll learn from the testimony, is a bright guy. Harvard MBA. Intelligent. He's very involved in the case. He's the one that went out -- and so essentially what had happened is Viking had been dishonest with the Court and with them about how many of these sprinkler systems had malfunctioned in the past. What you're going to learn is that my client -- he's a very -- he micromanages things, and he went on his own and started going on the internet, looking up Viking, finding out that other people had these problems.

He went and contacted originally other lawyers in California that had -- were handling these cases, other litigants, had conversations

with them, and then learned from them that they're -- a lot more about Viking and about these failures than Viking had admitted. In other words, they had just not been candid about that. And I'm sure Your Honor remembers all that stuff. So that's -- my client goes and does all that and provides all that stuff to Danny's office. Now, you know, I'm not denigrating Danny's efforts or Mr. Simon's efforts. I mean, he's a good lawyer, but my client went out a dug all that stuff up.

So, then they had this mediation. And the first mediation, didn't do it, but at the second mediation, they reached a settlement for $6 million. Right after that happened, there's a meeting -- Danny calls a meeting -- Mr. Simon calls a meeting in the office and that's November 17th, 2017, another big day. Mr. and Mrs. Edgeworth go to the meeting, and they're like wow, what's this all about? They're thinking maybe this is some really great meeting.

Well, what it's all about is Mr. Simon has now prepared this letter, prepared this fee agreement and tells them, you know what, I want you guys to do the right thing. I understand we had an hourly agreement. I understand you paid all your bills one after another after another, but, you know, nobody expected this case to do as well as it's doing. I'm losing money at $550 an hour, because my time's worth a lot more than $550 an hour and, you know, I'm losing money. I'm losing money. Now, let's do the case for 25 percent.

So, then he presents this agreement to him saying I want you to pay me 25 percent of the $6 million. I want 25 percent of that as a fee, and I will give you back credit for the money you've already paid in, the

$400,000 you've already paid in. So -- and on the Lange case, that's going to be separate. We'll work out something different on that, but I want 25 percent of that $6 million settlement we got. That's $1.5 million. I'll give you -- but I'll give you credit for what you've already paid in. That's what happened here. So, they're stunned. They're actually stunned. And the words -- conversation wasn't particular friendly.

So, Mr. Simon said you need independent counsel. You ought to do that, is what he's supposed to be doing anyway. The rules are very clear that when you start entering into an agreement with your client halfway through the litigation, you want to change the terms, you need to advise them to get an independent counsel. That's what they did. They came to my office. Came to my office and laid out the thing and that's where we are now. That's basically where we are. There was no constructive discharge. There wasn't a discharge at all.

So, you know, I -- we had a communication. It was a nice communication with Mr. Simon and Mr. Christensen. We talked on the phone. I made it clear that look, we want you to finish the case off, wrap up the -- all you gotta do is do the release. That's the only thing that was left to do on the $6 million is sign the release and get the terms down, you know, confidentiality, some things you've got to deal with. Wrap it up. Do that. But, by the way, you guys have reached a point here where the words in the last meeting were pretty bad. If you want, I'll stay in between.

You know, I'll -- tell me what you want me to tell them, and I will tell them and vice versa, or we can all have a meeting together.

What do you want to do? But I think it ought to be civil. I just didn't want it to become uncivil and -- you know, a screaming match and all that. I don't like all that kind of stuff. I didn't want that to happen, so I said you're not being fired. I'm not coming in on this case. No way I'm going to associate on the case. I'm not going to substitute in on the case. I don't want anything to do with the case. This is all about the fee. The case is over.

And he said what about the Lange case? What do you want to do about that? Well, why don't you just give me the proposal? I looked at the proposal. I looked at Mr. Simon's idea, and I ran it by the client, and they said what do you think? I said you know what, you already got $6 million. You got another 100 on the table. Take it. Just take the money and call it a day. Just wrap it up. Accept the offer as is, and they did. And that was -- that's it. So, I made it clear to Mr. Simon, you know -- I talked to Mr. Christensen, you know. I don't -- nobody needs to do anything.

Just wrap this thing up, and we'll deal with the fee issue later with the Judge. We'll deal with that, but right now, let's get the case wrapped up. I mean, you can't hold the clients up on a case, because you're -- it becomes extortion. Then here comes the money. And so, the bottom line was like what are we going to do with this money and look, I made it clear. I said I know Mr. Simon's not going to steal the money. I'm not worried about that. I know he would honor everything. The clients are concerned.

So why don't we just go open a trust account? Eventually,