

**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

Electronically Filed  
Mar 11 2022 03:54 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS**

**VOLUME IX OF X**

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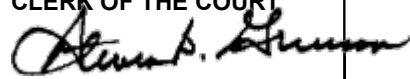
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<p><b>tied [2]</b> 10/4 16/15</p> <p><b>TIERRA [1]</b> 1/11</p> <p><b>time [21]</b> 1/13 6/11</p> <p>6/17 7/6 8/24 9/7 9/7</p> <p>10/11 10/19 10/19</p> <p>15/22 15/23 16/5 16/22</p> <p>17/13 17/14 18/2 24/21</p> <p>25/8 25/23 25/24</p> <p><b>timeline [1]</b> 25/22</p> <p><b>tiny [1]</b> 9/1</p> <p><b>today [6]</b> 10/3 19/3</p> <p>26/4 28/23 29/24 30/5</p> <p><b>told [3]</b> 7/5 12/11 12/24</p> <p><b>tons [1]</b> 15/19</p> <p><b>too [3]</b> 2/23 14/7 21/11</p> <p><b>took [1]</b> 16/20</p> <p><b>toss [1]</b> 13/8</p> <p><b>tossed [1]</b> 7/13</p> <p><b>total [1]</b> 8/21</p> <p><b>TRAN [1]</b> 1/1</p> <p><b>transcribed [2]</b> 1/25</p> <p>30/13</p> <p><b>Transcriber [1]</b> 30/17</p> <p><b>TRANSCRIPT [1]</b> 1/7</p> <p><b>trial [4]</b> 15/9 24/7 24/10</p> <p>24/14</p> <p><b>trier [1]</b> 20/21</p> <p><b>true [3]</b> 10/2 10/2 11/24</p> <p><b>truly [1]</b> 30/12</p> <p><b>trust [10]</b> 1/4 1/22 2/7</p> <p>3/5 7/15 7/16 14/16</p> <p>21/23 22/7 22/11</p> <p><b>truth [1]</b> 17/5</p> <p><b>try [5]</b> 7/12 8/6 8/20 9/4</p> <p>25/7</p> <p><b>trying [2]</b> 13/1 25/25</p> <p><b>two [5]</b> 2/9 2/10 6/6</p> <p>11/12 20/18</p> <p><b>typo [2]</b> 26/9 26/17</p>
<p><b>S</b></p> <p><b>said [15]</b> 5/12 9/18</p> <p>12/22 12/23 17/7 18/3</p> <p>18/8 20/13 21/11 21/17</p> <p>21/17 21/19 22/12</p> <p>26/24 30/4</p> <p><b>save [1]</b> 25/8</p> <p><b>saw [3]</b> 2/15 14/17</p> <p>15/8</p> <p><b>say [19]</b> 3/14 6/16 7/4</p> <p>8/7 8/17 10/25 11/23</p> <p>12/13 15/3 18/19 18/22</p> <p>19/1 19/5 19/11 20/16</p> <p>20/24 21/16 24/22</p> <p>28/21</p> <p><b>saying [12]</b> 7/10 7/17</p> <p>7/20 15/10 19/18 19/21</p>	<p><b>table [4]</b> 7/25 8/3 16/8</p> <p>16/8</p> <p><b>take [1]</b> 4/19</p>	<p><b>T</b></p>	<p><b>take [1]</b> 4/19</p>	<p><b>U</b></p> <p><b>ultimately [3]</b> 5/1 7/12</p> <p>11/6</p> <p><b>unclear [1]</b> 3/21</p> <p><b>under [14]</b> 1/13 4/22</p> <p>WA02001</p>

<p><b>U</b></p> <p><b>under... [12]</b> 10/6 12/13 15/23 16/16 18/12 18/12 24/5 24/11 24/19 24/22 25/22 26/16</p> <p><b>underbilling [1]</b> 10/23</p> <p><b>underestimated [1]</b> 15/17</p> <p><b>undermining [1]</b> 16/18</p> <p><b>understand [6]</b> 5/14 19/14 20/20 23/1 23/15 25/11</p> <p><b>undisputed [4]</b> 3/14 3/15 5/23 6/1</p> <p><b>undoubtedly [1]</b> 15/18</p> <p><b>unjust [1]</b> 11/7</p> <p><b>unjustly [2]</b> 15/25 17/1</p> <p><b>unreasonable [2]</b> 21/17 21/19</p> <p><b>unrefuted [2]</b> 8/9 8/13</p> <p><b>until [2]</b> 12/1 12/10</p> <p><b>up [14]</b> 2/15 4/21 9/17 12/10 14/23 19/17 19/21 21/18 25/1 26/13 29/5 29/16 30/2 30/6</p> <p><b>upheld [1]</b> 10/20</p> <p><b>upon [1]</b> 23/10</p> <p><b>us [8]</b> 7/11 14/8 17/15 18/2 18/3 19/25 20/25 26/23</p> <p><b>use [2]</b> 8/3 20/1</p> <p><b>useful [1]</b> 26/25</p> <p><b>usual [1]</b> 2/16</p>	<p><b>was [75]</b></p> <p><b>wasn't [8]</b> 7/6 7/18 7/19 18/13 20/5 21/25 22/1 28/19</p> <p><b>watch [1]</b> 9/13</p> <p><b>way [9]</b> 2/12 2/23 4/24 9/11 17/2 20/4 21/22 21/25 22/8</p> <p><b>we [74]</b></p> <p><b>we'd [3]</b> 17/16 24/11 25/21</p> <p><b>we'll [1]</b> 5/3</p> <p><b>we're [9]</b> 19/14 22/17 22/18 22/21 23/6 24/1 25/17 27/5 28/15</p> <p><b>we've [2]</b> 7/10 15/24</p> <p><b>week [2]</b> 30/7 30/8</p> <p><b>weekend [1]</b> 14/11</p> <p><b>well [24]</b> 2/4 2/17 6/16 7/4 7/5 7/7 8/7 8/8 8/17 9/19 10/9 17/20 18/8 19/18 20/16 21/10 21/11 23/2 23/7 23/11 27/10 27/17 28/18 30/4</p> <p><b>went [8]</b> 6/14 10/22 12/16 18/2 18/4 18/5 24/11 24/16</p> <p><b>were [18]</b> 2/10 2/10 3/20 6/25 9/11 10/18 11/10 11/20 15/9 15/16 15/19 15/21 16/15 17/5 17/15 19/2 22/4 25/23</p> <p><b>weren't [2]</b> 9/24 9/24</p> <p><b>what [57]</b></p> <p><b>what's [4]</b> 7/23 7/23 8/15 13/17</p> <p><b>whatever [2]</b> 5/24 19/13</p> <p><b>when [31]</b></p> <p><b>where [10]</b> 6/17 9/11 9/17 12/13 19/10 20/25 22/20 22/22 22/24 23/2</p> <p><b>whether [3]</b> 10/1 12/15 12/16</p> <p><b>which [17]</b> 4/13 5/3 5/11 6/11 6/20 7/3 7/13 8/16 10/7 11/22 15/17 21/9 22/13 24/6 24/17 24/18 26/16</p> <p><b>while [1]</b> 26/4</p> <p><b>who [8]</b> 9/16 13/12 13/21 14/10 17/19 17/19 20/19 23/13</p> <p><b>who's [1]</b> 5/9</p> <p><b>whoever [1]</b> 5/13</p> <p><b>whole [9]</b> 9/13 11/9 13/14 13/20 16/1 19/17 19/22 22/23 24/5</p> <p><b>why [7]</b> 19/14 23/6 24/17 24/18 25/9 25/10 29/24</p> <p><b>will [4]</b> 3/1 8/3 8/8 8/13</p> <p><b>willing [1]</b> 22/5</p> <p><b>windfall [3]</b> 11/9 11/10 17/1</p> <p><b>withholding [1]</b> 22/1</p> <p><b>within [1]</b> 30/7</p> <p><b>without [2]</b> 10/3 13/20</p> <p><b>won't [1]</b> 17/12</p>	<p><b>word [3]</b> 5/8 5/25 20/1</p> <p><b>words [2]</b> 15/22 27/4</p> <p><b>work [7]</b> 9/21 10/24 11/14 12/14 13/12 15/16 17/2</p> <p><b>worked [2]</b> 9/20 14/17</p> <p><b>working [3]</b> 12/3 16/25 19/8</p> <p><b>world [1]</b> 17/9</p> <p><b>worried [3]</b> 9/11 10/8 11/12</p> <p><b>worth [2]</b> 21/12 21/13</p> <p><b>would [22]</b> 3/15 5/13 5/14 7/21 9/25 11/11 12/8 15/8 15/10 16/17 19/6 20/3 22/2 22/2 26/4 26/21 26/21 26/22 26/23 26/25 27/16 28/8</p> <p><b>would've [2]</b> 13/5 22/13</p> <p><b>wouldn't [1]</b> 18/20</p> <p><b>wrap [1]</b> 29/16</p> <p><b>write [2]</b> 19/22 20/16</p> <p><b>written [3]</b> 22/13 23/17 30/6</p> <p><b>wrong [10]</b> 18/18 18/19 18/21 18/23 19/12 19/18 20/8 20/11 20/14 22/18</p> <p><b>wrote [9]</b> 8/20 17/18 17/19 17/19 20/4 20/19 20/20 22/10 24/18</p> <p><b>Y</b></p> <p><b>yeah [3]</b> 12/23 20/8 27/14</p> <p><b>year [1]</b> 7/19</p> <p><b>years [2]</b> 19/5 19/8</p> <p><b>Yep [1]</b> 28/7</p> <p><b>Yes [1]</b> 4/8</p> <p><b>you [139]</b></p> <p><b>You'll [1]</b> 23/24</p> <p><b>you're [15]</b> 4/25 11/12 13/17 15/13 16/18 16/22 18/18 18/21 20/14 20/20 22/18 22/24 22/25 28/9 28/14</p> <p><b>you've [10]</b> 6/19 7/13 12/12 13/12 22/19 22/19 22/21 24/14 24/14 25/6</p> <p><b>your [36]</b></p> <p><b>yourself [1]</b> 19/22</p> <p><b>Z</b></p> <p><b>zero [1]</b> 7/25</p>	<p>WA02002</p>
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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

--o0o--

10 EDGEWORTH FAMILY TRUST; AMERICAN  
11 GRATING, LLC,

12 Plaintiffs,

13 vs.

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

18 Defendants.

CASE NO.: A-16-738444-C

DEPT. NO.: X

**NOTICE OF ENTRY OF ORDERS**

19 EDGEWORTH FAMILY TRUST; AMERICAN  
20 GRATING, LLC,

21 Plaintiffs,

22 vs.

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

26 Defendants.

CASE NO.: A-18-767242-C

DEPT. NO.: XXIX

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

PLEASE TAKE NOTICE that the following orders were entered on the dates listed below and attached as indicated:

1. November 19, 2018 Decision and Order Regarding Motion to Adjudicate Lien attached hereto (Exhibit 1)
2. November 19, 2018 Decision and Order Regarding Motion to Dismiss NRCP 12(B)(5) attached hereto as (Exhibit 2)

DATED this 27 day of December, 2018.

VANNAH & VANNAH

  
ROBERT D. VANNAH, ESQ.

**CERTIFICATE OF SERVICE**

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

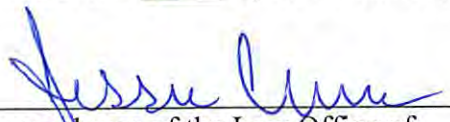
Electronically:

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

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

Traditional Manner:  
*None*

DATED this 27 day of December, 2018.

  
An employee of the Law Office of  
Vannah & Vannah

# Exhibit 1

# Exhibit 1

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

### 7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

24 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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



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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

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

13 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9  
10 *Implied Contract*

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

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

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



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

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
8 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

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

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
16 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
21 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

25  
26 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

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

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

<sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.

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

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

### 5 6 *Costs Owed*

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

### 14 15 *Quantum Meruit*

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

3. The Work Actually Performed

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

4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) Whether litigation and other expenses are to be deducted from the  
recovery, and whether such expenses are to be deducted before or after the  
27 contingent fee is calculated;  
28

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

11 NRCP 1.5.

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

## 23 CONCLUSION

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



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

9  
10 **ORDER**

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


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

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18 DISTRICT COURT JUDGE  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on or about the date e-filed, this document was copied through  
3  
4 e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the  
5 proper person as follows:

6 Electronically served on all parties as noted in the Court's Master Service List  
7 and/or mailed to any party in proper person.  
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# Exhibit 2

# Exhibit 2

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

6  
7 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

23 (Def. Exhibit 27).

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

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

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

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

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

14 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
15 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
16 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
17 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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



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

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

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

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

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

## 14 15 **CONCLUSION OF LAW**

### 16 ***Breach of Contract***

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

### 22 23 ***Declaratory Relief***

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

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

#### 4 5 *Conversion*

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

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

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

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

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

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***Breach of Fiduciary Duty***

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

***Punitive Damages***

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

**CONCLUSION**

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

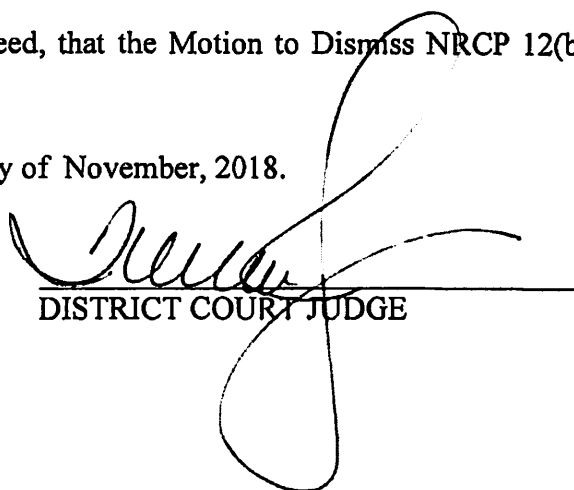
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**ORDER**

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

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



DISTRICT COURT JUDGE

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

WA02039

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

### 7 8 **FINDINGS OF FACT**

9 1. The Court finds that the Law Office of Daniel S. Simon represented the Plaintiffs,  
10 Edgeworth Family Trust and American Grating in the case entitled Edgeworth Family Trust and  
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13 originally began as a favor between friends and there was no discussion of fees, at this point. Mr.  
14 Simon and his wife were close family friends with Brian and Angela Edgeworth.

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

16 3. On April 10, 2016, a house the Edgeworths were building as a speculation home  
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20 within the plumber’s scope of work, caused the flood; however, the plumber asserted the fire  
21 sprinkler was defective and refused to repair or to pay for repairs. The manufacturer of the sprinkler,  
22 Viking, et al., also denied any wrongdoing.

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

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1 American Grating LLC vs. Lange Plumbing, LLC; the Viking Corporation; Supply Network Inc.,  
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4 in the litigation was for reimbursement of the fees and costs that were paid by the Edgeworths.

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

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11 We never really had a structured discussion about how this might be done.  
12 I am more than happy to keep paying hourly but if we are going for punitive  
13 we should probably explore a hybrid of hourly on the claim and then some  
14 other structure that incents both of us to win and go after the appeal that these  
15 scumbags will file etc.  
16 Obviously that could not have been done earlier since who would have  
17 thought this case would meet the hurdle of punitive at the start.  
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20 and 200 increments and then either I could use one of the house sales for cash  
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25 (Def. Exhibit 27).

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Exhibit 8). The total of this invoice was \$42,564.95 and was billed at a "reduced" rate of \$550 per  
hour. Id. The invoice was paid by the Edgeworths on December 16, 2016.

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



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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

27 Nev. Rev. Stat. 18.015.  
28

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

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

#### 13 14 ***Fee Agreement***

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

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

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

16 (Def. Exhibit 27).

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

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

### 28 *Constructive Discharge*

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

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

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

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

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

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

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

*Id.*

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

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

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

18       Id.

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

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

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

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

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



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

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

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

### 10 *Implied Contract*

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

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

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

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

10  
11 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

1 amount has already been paid by the Edgeworths on December 16, 2016.<sup>2</sup>

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

5 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
6 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
7 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
8 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
9 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

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

16 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
17 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
18 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
19 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
20 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
21 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
22 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
23 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
24

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25 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.

26 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

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

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

1 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

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

### 7 8 *Costs Owed*

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

### 16 17 *Quantum Meruit*

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

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

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

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

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

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

21 *Quality of the Advocate*

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

1 work product and results are exceptional.

2 2. The Character of the Work to be Done

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

12 3. The Work Actually Performed

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

21 4. The Result Obtained

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NRCP 1.5.

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

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

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

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

## 10 11 **CONCLUSION**

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

27 //

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5 **ORDER**

6 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien  
7 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law  
8 Office of Daniel Simon is \$556,577.43, which includes outstanding costs.  
Dated this 16th day of March, 2021

9 IT IS SO ORDERED this 16<sup>th</sup> day of March, 2021.

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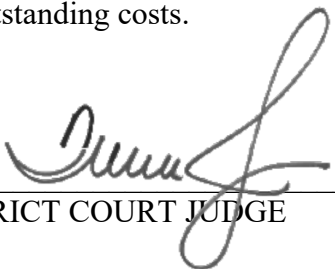
24

25

26

27

28

  
DISTRICT COURT JUDGE

B7B 840 B8A7 FF62  
Tierra Jones  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Edgeworth Family Trust,  
Plaintiff(s)

CASE NO: A-16-738444-C

7 vs.

DEPT. NO. Department 10

8  
9 Lange Plumbing, L.L.C.,  
Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

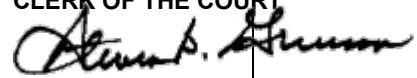
16 Daniel Simon .	lawyers@simonlawlv.com
17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 Bridget Salazar	bsalazar@vannahlaw.com
23 John Greene	jgreene@vannahlaw.com
24 James Christensen	jim@jchristensenlaw.com
25 Daniel Simon	dan@danielsimonlaw.com

26  
27  
28

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Jessie Church	jchurch@vannahlaw.com

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

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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*Attorney for Daniel S. Simon*

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

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC  
Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

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

**OPPOSITION TO THE SECOND  
MOTION TO RECONSIDER;  
COUNTER MOTION TO  
ADJUDICATE LIEN ON REMAND**

Hearing date: 5.27.21  
Hearing time: 9:30 a.m.

CONSOLIDATED WITH

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

## **OPPOSITION TO THE SECOND MOTION FOR RECONSIDERATION**

### **I. Relevant Procedural Overview**

Over two years ago, this Court adjudicated the Simon lien and sanctioned the Edgeworths for bringing and maintaining their conversion complaint without reasonable grounds. The Supreme Court affirmed in most respects with instructions to revisit the quantum meruit fee award to Simon and the amount of the sanction levied upon the Edgeworths. The high court then denied the Edgeworths' bid for rehearing. Procedure relevant to the subject motions follows.

On December 30, 2020, the Supreme Court issued an appeal order affirming this Court in most respects; and an order finding the Simon petition for writ moot, apparently in light of the instructions on remand to revisit the quantum meruit fee award to Simon.

On January 15, 2021, the Edgeworths filed a petition for rehearing. The Edgeworths again challenged the dismissal of the conversion complaint and the sanction order. The petition did not follow the rules and was rejected.

On January 25, 2021, the Supreme Court issued a Notice in Lieu of Remittitur.



1 On January 26, 2021, the Supreme Court granted leave to the  
2 Edgeworths to file an untimely petition for rehearing. *The order granting*  
3 *leave to file the untimely petition was not copied to this Court.*  
4

5 On March 16, 2021, per the instructions on remand, this Court issued  
6 the Amended Decision and Order Granting in Part and Denying in Part,  
7 Simon's Motion for Attorney's Fees and Costs ("Attorney Fee Order"). This  
8 Court also issued an amended order adjudicating the lien.  
9

10 On March 18, 2021, rehearing was denied by the Supreme Court. A  
11 corrected order denying rehearing followed on March 22, 2021.  
12

13 On March 31, 2021, the Edgeworths filed a motion for reconsideration  
14 in district court.  
15

16 On April 12, 2021, remitter was issued by the Supreme Court.  
17

18 On April 28, 2021, this Court issued the Third Amended Decision and  
19 Order on Motion to Adjudicate Lien ("Third Lien Order").  
20

21 On May 3, 2021, the Edgeworths filed their second motion for  
22 reconsideration.  
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## **II. Summary of Arguments**

The second Edgeworth motion for reconsideration addresses the Third Lien Order and the Attorney Fee Order. Simon opposes the motion to reconsider the Third Lien Order, acknowledges the Attorney Fee Order must be refiled; and brings a counter motion to adjudicate the lien and/or reconsider the Third Lien Order regarding the quantum meruit fee award to Simon per the remand instructions.

### **A. The Third Lien Order**

The Edgeworths' second motion to reconsider the Third Lien Order is without merit. The Edgeworths do not present adequate grounds for reconsideration.

First, the Edgeworths assert they are due reconsideration because they were deprived of "the right to reply" in support of their first motion for reconsideration. The Edgeworths are incorrect. The Edgeworths do not provide a citation to support the claim that the opportunity to reply is a fundamental right. The Edgeworths did not make an offer of proof regarding the reply, and thus did not establish they suffered undue prejudice. Nor did the Edgeworths provide authority that motion practice is required before the Court acts on the remand instructions. In any event,

1 the Edgeworths have had ample notice and many opportunities to be heard  
2 on lien adjudication. Process does not provide a basis for reconsideration.

3         Second, the Edgeworths argue for reconsideration by making the  
4 claim that a disagreement over the facts underlying the quantum meruit  
5 decision amounts to a clear error of law. The argument is poor. A  
6 disagreement over facts is not a clear error of law meriting reconsideration.  
7  
8 The determination of attorney fees under quantum meruit is within the  
9 discretion of the district court. As such, the Edgeworths are effectively  
10 foreclosed from relief via promotion of their own factual narrative under the  
11 abuse of discretion standard. Further, the Edgeworths' frivolous  
12 conversion narrative, which they have morphed into an equally frivolous  
13 extortion narrative in the current motion, was solidly rejected by this Court  
14 and the Supreme Court. The Edgeworths did not provide the substantially  
15 different evidence required for reconsideration, they have merely served up  
16 different spin.  
17  
18  
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21

22         Finally, the Edgeworths complain about a scrivener's error regarding  
23 costs owed. In doing so, the Edgeworths note but fail to take to heart the  
24 "Costs Owed" section of the Third Lien Order which specifically states that  
25 costs were paid, and no costs are currently owed. Specific language  
26  
27  
28

1 controls over general language. Thus, there is no possibility of undue  
2 prejudice and no basis to reconsider the Third Lien Order is presented.

### 3 **B. The Attorney Fee Order**

4  
5 The Attorney Fee Order was issued before remittitur. Accordingly,  
6 the order must be refiled. The Edgeworths appear to have abandoned their  
7 challenge to the conservative amount of fees awarded. As to Clark's costs,  
8 Simon has already informed the Edgeworths that only the amount of the bill  
9 (\$2,520.00) will be sought. Accordingly, while Simon does not oppose  
10 changing the cost number for Clark's fees in the Attorney Fee Order, no  
11 prejudice will result to the Edgeworths regardless.  
12  
13  
14

### 15 **C. Simon's Counter Motion**

16 Whether the counter motion is more properly presented as a motion  
17 to adjudicate the lien on remand or as a motion to reconsider, Simon  
18 respectfully requests this Court to revisit its quantum meruit decision  
19 expressed in the Third Lien Order. Simon requests that the Court abide by  
20 the finding affirmed on appeal that the implied contract was discharged and  
21 therefore, not enforce the implied payment term for work performed after  
22 September 19, 2017. Re-adjudication and/or reconsideration on this point  
23 may be had because the use of an implied payment term of a discharged  
24 contract as controlling in a fee adjudication is a clear error of law.  
25  
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1 Simon's counter motion is well-supported by the uncontested  
2 declaration of Will Kemp, whom this Court has already recognized as an  
3 expert.  
4

5 **IV. Rebuttal to the Edgeworths' statement of facts and related**  
6 **argument**  
7

8 The Edgeworths' factual arguments are inaccurate and contrary to  
9 the Court's affirmed findings. Because the facts are well known, only a  
10 brief response follows.  
11

12 **A. The Edgeworths have the case file.**  
13

14 The Edgeworths continue their false argument regarding the case file.  
15 During lien adjudication, everything Vannah requested was provided, but  
16 Vannah did not request the file. (Ex. 1, Day 4 at 26.)  
17

18 In 2020, a different Edgeworth lawyer asked for the file and the file  
19 was given directly to Brian Edgeworth as requested. (Ex. 2, Ex. 3, & Ex. 4.)  
20 As can be seen from the attached correspondence, there were certain  
21 matters that were not produced because they were covered by non-  
22 disclosure agreements, etc. The privileged items withheld did not present a  
23 problem until the Edgeworths filed their second motion for reconsideration  
24 when they apparently felt the need for an additional argument.  
25  
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28

1 After the Edgeworths filed their second motion for reconsideration,  
2 counsel spoke about the file. Letters were exchanged and are attached.  
3 (Ex. 5 & 6.) As can be seen from the Simon response, the allegations of  
4 stripping emails, etc., are farfetched. (Ex. 6.)

5  
6 In addition, NRS 7.055 applies to a “discharged attorney”. Before  
7 admitting to discharge at a point when the Edgeworths thought the change  
8 of course might benefit them, the Edgeworths had consistently denied they  
9 had discharged Simon, for example at the evidentiary hearing:  
10  
11

12 MR. VANNAH: Of course, he’s never been fired. He’s still counsel of  
13 record. He’s never been fired.

14 (Ex. 1, Day 4 at 22:1-2.) And before the Supreme Court:

15 Neither the facts nor the law supports a finding of any sort of  
16 discharge of Simon by Appellants, constructive or otherwise.

17 (Ex. 7, opening brief excerpt, at 10.)  
18

19 The Edgeworths wasted time and resources on their frivolous no  
20 discharge stance; therefore, new sanctions are warranted based on their  
21 recent admission that Simon really was discharged. *Capanna v. Orth*, 134  
22 Nev. 888, 432 P.3d 726 (2018) (sanctions are appropriate when a claim or  
23 defense is maintained without reasonable grounds). Rebutting the  
24 Edgeworths’ frivolous no discharge position wasted at least a day of the  
25  
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1 evidentiary hearing, and many hours spent briefing the issue at the district  
2 court and appellate levels.

3 **B. The November 17 meeting**

4  
5 The Edgeworths' description of the November 17 meeting is fanciful  
6 and rehashes claims made at the evidentiary hearing which the Court  
7 found wanting. The latest version contains factual claims that are not in the  
8 findings and are not supported by citation to the record.  
9

10 The Edgeworths admitted six times in their opening appeal brief that  
11 they were not found to be credible. (Ex. 7 at 11,12,15,18, & 28.) The latest  
12 factual claims corroborate the many Edgeworth admissions that they are  
13 not credible.  
14  
15

16 **C. The privileged Viking email of November 21**

17 The November 21 email was sent between two different lawyers  
18 representing Viking; accordingly, Simon did not know its contents. The  
19 Edgeworths did not disclose how they obtained a privileged email sent  
20 between Viking's lawyers. Further, the Edgeworths did not address how  
21 they propose the Court could consider this new proffer of evidence years  
22 after the evidentiary hearing ended.  
23  
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1           Nevertheless, the email supports Simon. Simon agrees that Viking  
2 was aware confidentiality was an issue and that the confidentiality term was  
3 removed after November 21.  
4

5           **D. The date of the Viking settlement and release terms**

6           Continuing the lack of credibility theme, the Edgeworths argue: “***all***  
7 ***negotiations were complete by November 27***”. (Bold and italics in  
8 original.) (2<sup>nd</sup> Mot., at 12:21-22.) Putting aside that the bolded factual  
9 assertion is not supported by what the cited record states, there is a larger  
10 problem in that the factual claim is contrary to the findings of this Court.  
11

12           On November 19, 2018, the Court made finding of fact #13:  
13

14           13. On the evening of November 15, 2017, the Edgeworths  
15 received the first settlement offer for their claims against the Viking  
16 Corporation (“Viking”). However, the claims were not settled until on  
17 or after December 1, 2017.

18           (Ex. 8 at 4:22-24, & Third Lien Order at F.F. #13 at 4:22-24.) A good  
19 portion of the second motion for reconsideration dwells on factual claims  
20 contrary to the finding (see, e.g., 2<sup>nd</sup> Mot., at 4:5-6:11), while never  
21 mentioning or contrasting finding of fact #13 - which is now the law of the  
22 case.  
23

24           The Edgeworths have taken so many bites at the evidentiary apple  
25 that it is down to the core. They do not get another. This issue is over.  
26  
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28



1                   **E.     The Lange settlement**

2                   In a new brand-new factual claim, raised years after the evidentiary  
3 hearing, the Edgeworths accuse Simon of slow walking the Lange  
4 settlement. The accusation is untimely and unfair, resolution of a complex  
5 case takes time. Further, Simon had been fired by the clients, was being  
6 frivolously sued by his former clients, and was working via replacement  
7 counsel who acknowledged in open court he did not know what was going  
8 on:  
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12                  MR. VANNAH: If you take out the form and content, I don't know  
13 anything about the case, and I want – I don't know anything about the  
14 case – I mean, we're not involved in a case. You understand that,  
15 Teddy?

16                  MR.PARKER: I do.

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

19 (Ex. 9, February 20, 2018 Transcript at 3:22-4:3.)

20                  In the November 19, 2018, Lien Order this Court found that Simon  
21 was due recognition for improving the position of his former clients. (See,  
22 e.g., Ex. 8 at 19:19-20:1.) This aspect of the Lien Order was not  
23 challenged on appeal and is now the law of the case. The finding was  
24 repeated in the Third Lien Order. (Third Lien Order at 20:8-17.) The  
25 Edgeworth assertions are wholly without merit.  
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1           **F.     This Court took testimony regarding the work performed at**  
2           **the evidentiary hearing.**

3           The Edgeworths proclaim that the “only evidence in the record of  
4 work Simon claims to have performed post-discharge is set forth in the  
5 “super bill”. (2<sup>nd</sup> Mot., at 9:24-25.) The claim is not true. The Court took  
6 days of testimony at the evidentiary hearing regarding work that was done,  
7 some of which is cited by the Court in the Third Lien Order. (See, e.g.,  
8 Third Lien Order at 18-22.)  
9

10           Finally, the assertion that only simple acts remained to be addressed  
11 is belied by Vannah’s statements, acts, and emails. Vannah openly  
12 admitted he was in deep water and needed Simon to close the case. If  
13 Vannah, at \$925 dollars an hour, does not feel competent to close out the  
14 case, then the work that remained is more than ministerial, just as this  
15 Court found.  
16  
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19           **G.     The Viking settlement drafts**

20           The Edgeworths first raised a complaint over the Viking tender of  
21 settlement drafts, instead of a certified check, in their first motion for  
22 reconsideration, years after the evidentiary hearing. The grievance is  
23 repeated in the second motion. (2<sup>nd</sup> Mot., at 6:12-2.) The picayune  
24 criticism would have been better left unraised because it underscores the  
25 weakness of the Edgeworths’ overall position.  
26  
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1 In addition to being untimely, the complaint is nonsensical. Viking  
2 tendered settlement drafts in the proper amount which were deposited and  
3 cleared. At worst, the Viking drafts can be seen as falling within the ambit  
4 of substitute performance - which is normally not a problem at least when  
5 the Edgeworths are not involved. The Edgeworths and Vannah did not  
6 raise the settlement drafts as an issue years ago, and the settlement drafts  
7 should not be an issue to the Edgeworths and their latest counsel today.  
8  
9

#### 10 **IV. Argument**

11  
12 The Edgeworths did not provide an adequate basis for this Court to  
13 grant reconsideration of the Third Lien Order. Reconsideration is rarely  
14 granted and only when there is considerably different evidence or a clear  
15 error. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga &*  
16 *Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.3d 486, 489 (1997) (reconsideration  
17 may be granted on rare occasion when there is “substantially different  
18 evidence ... or the decision is clearly erroneous”).  
19  
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21

22 The Edgeworths’ argument they received inadequate process is  
23 unsupported and incorrect. The Edgeworths merely rehash old factual  
24 arguments about the inferences to be had from the evidence, they do not  
25 present substantially different evidence. Finally, the Edgeworths do not  
26  
27  
28

1 present a clear error of law in the Third Lien Order. Reconsideration is not  
2 warranted.

3 **A. The Edgeworths received due process.**  
4

5 The Edgeworths claim they did not receive due process and are due  
6 reconsideration on that basis, because they only had a short time in which  
7 to file a reply. (2<sup>nd</sup> Mot., at 2:27-3:7 & 10:18-19.) The claim is  
8 unsupported, and the Edgeworths do not present cogent argument or  
9 relevant authority. Hence, the argument can be ignored. *See, Edwards v.*  
10 *Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288  
11 n.38 (2006). Similarly, the Edgeworths do not provide argument or  
12 authority that additional briefing was contemplated or required on remand.  
13  
14  
15  
16 (*Ibid.*)

17  
18 Importantly, the Edgeworths do not present an offer of the reply  
19 arguments they were deprived of or explain how a reply would have  
20 changed the outcome.  
21

22 In this case, there were multiple filings and hearings regarding  
23 adjudication of the lien. There was a five-day evidentiary hearing and post  
24 hearing arguments and motion practice. There was an appeal. The  
25 Edgeworths have had more than sufficient notice and a generous  
26 opportunity to be heard. *See, e.g., Callie v. Bowling*, 123 Nev. 181, 160  
27  
28

1 P.3d 878 (2007) (procedural due process is afforded when a party has  
2 notice and an opportunity to be heard).

3 The Edgeworths request for reconsideration based on a lack of due  
4 process is without merit.

6 **B. The Edgeworths' latest quantum meruit arguments merely**  
7 **rehash or spin prior arguments and evidence.**

8 The Edgeworths argue they are due reconsideration because the  
9 Court made a poor factual decision. The argument does not raise to the  
10 level required for a district court to grant reconsideration. *Masonry & Tile*  
11 *Contractors Ass'n of S. Nevada*, 113 Nev. 737, 741, 941 P.3d 486, 489  
12 (reconsideration may be granted on rare occasion when there is  
13 "substantially different evidence ... or the decision is clearly erroneous").  
14

15 In support of their request for reconsideration, the Edgeworths argue  
16 their latest factual narrative. However, the latest narrative is not based on  
17 substantially different evidence, it is based on the latest spin. The  
18 Edgeworths do not explain how this Court can ignore its own factual  
19 findings which are now law of the case and now find, for example, that  
20 Simon "slow walked" the Lange settlement.<sup>1</sup>  
21  
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28 <sup>1</sup> At the hearing of 2/20/2018, attorney Teddy Parker explained how adding Vannah to the mix caused some extra steps and delay. (Ex. 9.)

1           The Edgeworths' arguments are exposed by their return yet again to  
2 the use of *ad hominin* attacks against Simon. Just as the claim of  
3 conversion against Simon was frivolous, so too is the claim of extortion. An  
4 attorney is due a reasonable fee. NRS 18.015. An attorney may file a lien  
5 when there is a fee dispute. NRS 18.015. The use of a lien is not an  
6 ethical violation. NRS 18.015(5). An attorney can take steps to protect  
7 themselves and/or to secure a reasonable fee for their work. NRS 18.015  
8 & NRPC 1.16(b)(6). The only limit is an attorney cannot seek an  
9 unreasonable fee. NRCP 1.5. The expert testimony of Will Kemp stands  
10 un rebutted, the fee sought by Simon is reasonable under the market  
11 approach. The latest frivolous accusation is simply a continuation of the  
12 Edgeworths desire to "punish" Simon.  
13  
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16

17           Here, this Court already found that Simon legitimately used a  
18 statutory attorney lien to seek a reasonable fee. This Court already found  
19 that Simon's work was exceptional, and the result obtained was impressive.  
20 Yet, the Edgeworths frivolously sued Simon for conversion claiming Simon  
21 was owed nothing - even though they admitted to already receiving more  
22 money than the claim was worth, and that Simon was in fact owed fees and  
23 costs. The ill placed trust argument is Simons to use, not the Edgeworths.  
24  
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1 The Edgeworths did not present substantially different facts, nor did  
2 they demonstrate clear error. There is no basis for reconsideration.

3 **C. The cost award**  
4

5 The Edgeworths protest the cost language in the conclusion of the  
6 Third Lien Order as grounds for reconsideration. Yet, the Edgeworths  
7 acknowledge that the costs are correctly found as paid on page 18 of the  
8 same order. In so doing the Edgeworths establish that there is no undue  
9 prejudice. The order's specific and detailed language on page 18 controls  
10 over the general language in the conclusion.  
11  
12

13 **D. The Attorney Fee Order**  
14

15 The Attorney Fee Order needs to be re-filed. Although Simon will  
16 only seek the amount Clark billed in any event, Simon has no objection to  
17 the correction of the amount of costs related to Clark's fees, \$2,520.00.  
18

19 **VI. Conclusion**  
20

21 The motion for reconsideration is without merit. Simon requests the  
22 motion be denied and the Edgeworths sanctioned for needlessly extending  
23 this case.  
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1                                   **COUNTER MOTION TO ADJUDICATE LIEN ON**  
2                                   **REMAND/RECONSIDERATION**

3                   **I.       Introduction to the Counter Motion**  
4

5               On December 30, 2020, the Supreme Court issued two orders  
6 addressing the Edgeworth appeal and the Simon writ petition. The appeal  
7 order affirmed this Court in all but two respects. The appeal order  
8 remanded the case with instructions to re-address the quantum meruit  
9 award of fees to Simon and to re-address the amount of fees assessed as  
10 a sanction against the Edgeworths for pursuit of their frivolous conversion  
11 complaint. In the writ order, the Simon petition on the manner of  
12 calculation of quantum meruit for outstanding fees due at the time of  
13 discharge was denied as moot, apparently in consideration of the  
14 instructions on remand contained in the appeal order.  
15  
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19               Simon moves for adjudication of the lien/reconsideration regarding  
20 the calculation of the quantum meruit fee award per the remand  
21 instructions and the *Brunzell* factors as stated in the attached declaration of  
22 Will Kemp.  
23  
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1 **II. The Court may Reconsider the Quantum Meruit Award on a**  
2 **Claim of Clear Legal Error.**

3 The Court found that Simon worked for the Edgeworths on the  
4 sprinkler case on an implied in fact contract; and, that Simon was  
5 discharged from the contract on November 29, 2017. (Third Lien Order at  
6 9:1-9 & 12:16-17.)  
7

8  
9 The Court found that Simon was paid under the implied contract  
10 through September 19, 2017, and was not paid for considerable work that  
11 came after September 19. (Third Lien Order at 14:26-15:3.)  
12

13 This Court also concluded that:  
14

15 When a lawyer is discharged by the client, the lawyer is no longer  
16 compensated under the discharged/breached/repudiated contract,  
17 but is paid based on quantum meruit. (Citations omitted.)

18 (Third Lien Order at 18:5-6.) The conclusion coincides with NRS 18.015(2)  
19 and case law. The conclusion and the findings were affirmed on appeal.  
20 *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800.  
21

22 However, the payment term of the repudiated implied contract was  
23 enforced for the time worked from September 19 through November 29,  
24 2017. Retroactive enforcement of the payment term of a discharged or  
25 repudiated contract is not consistent with the finding quoted above, NRS  
26 18.015(2) or case law. The conflict with established law creates clear error  
27  
28

1 needed under *Masonry & Tile Contractors Ass'n of S. Nevada*, 113 Nev.  
2 737, 741, 941 P.3d 486, 489, for reconsideration. Simon respectfully  
3 submits that the correct path is to use quantum meruit as the measure to  
4 compensate Simon for work performed from the date of September 19,  
5 2017 forward.  
6

7  
8 **A. When a fee contract is terminated by the client, the amount of**  
9 **the outstanding fee due the attorney is determined by quantum**  
10 **meruit.**

11 The Edgeworths discharged Simon on November 29, 2017. Thus,  
12 the fee contract was repudiated as of that date. The Edgeworths  
13 terminated the fee contract before the lien was served, before funds were  
14 paid and before Simon was paid for work dating from September 19, 2017.  
15 Therefore, the implied fee contract had been repudiated and was not  
16 enforceable when the lien was adjudicated, and the amount Simon should  
17 be paid from September 19 is not controlled by the repudiated implied  
18 contract.  
19  
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21

22 When a lawyer is discharged by the client, the lawyer is no longer  
23 compensated under the discharged contract but is paid based on *quantum*  
24 *merit*. *Edgeworth Family Trust*, 477 P.3d 1129 (table) 2020 WL 7828800;  
25 *Golightly v. Gassner*, 281 P.3d 1176 (Nev. 2009) (unreported) (discharged  
26 attorney paid by *quantum merit* rather than by contingency); *citing, Gordon*  
27  
28

1 v. *Stewart*, 324 P.3d 234 (1958) (attorney paid in *quantum merit* after client  
2 breach of agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees  
3 awarded in *quantum merit* when there was no agreement).  
4

5 This Court cited *Rosenberg* in concluding the Edgeworths fired  
6 Simon. *Rosenberg v. Calderon Automation, Inc.*, 1986 Ohio App. LEXIS  
7 5460 (1986). In *Rosenberg*, Calderon stopped all communication with his  
8 lawyer, Rosenberg, on the eve of a settlement. Rosenberg sought his fees.  
9

10 The *Rosenberg* court found that Rosenberg was constructively  
11 discharged when Calderon stopped speaking with the lawyer. On the  
12 question of compensation, the court found that termination of a contract by  
13 a party after part performance of the other party *entitles the performing*  
14 *party to elect to recover the value of the labor performed irrespective of the*  
15 *contract price. Id.*, at \*19. In other words, the lawyer is not held to the  
16 payment term of the repudiated contract, but rather receives a reasonable  
17 fee under quantum meruit.  
18  
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22 The Edgeworths did not admit to firing Simon even after they stopped  
23 communication and then frivolously sued for conversion. Even as late as  
24 the appeal, the Edgeworths denied firing Simon in a transparent gambit to  
25 avoid a reasonable fee under quantum meruit. The law is clear that  
26 because Simon was fired, Simon's outstanding fee for the work performed  
27  
28

1 on the sprinkler case after September 19, 2017, is set by quantum meruit,  
2 the reasonable value of services rendered as per NRS 18.015(1). Simon  
3 respectfully requests this Court use quantum meruit to reach the attorney  
4 fee due Simon for work performed after September 19, instead of  
5 retroactively applying the payment term of the discharged fee contract.  
6

7  
8 **B. The quantum meruit award**

9 Will Kemp testified as an expert on product defect litigation, the  
10 prevailing market rate for such litigation in the community<sup>2</sup>, and the method  
11 of determination of a reasonable fee for work performed on a product case  
12 in Las Vegas. Mr. Kemp's credentials are well known, and his opinion was  
13 beyond question.  
14

15  
16 The Edgeworths have gone to ridiculous lengths to punish Simon and  
17 extend this dispute, such as hiring counsel at \$925 an hour and filing a  
18 frivolous complaint. Yet even the Edgeworths did not attempt an attack on  
19 Mr. Kemp; his opinion was so solid, it stood unrebutted.  
20

21  
22 Mr. Kemp has provided a declaration in which he reviewed his  
23 unrebutted opinion in the light of the Supreme Court orders. (Ex. 10) Mr.  
24 Kemp responded to the Supreme Court's instructions and explained how  
25

26  
27 

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<sup>2</sup> The Edgeworths also rely upon the prevailing market rate as a metric for  
28 quantum meruit, although they misapply the standard. 1<sup>st</sup> Mot., at 21:10-21.

1 his opinion is in agreement. Mr. Kemp also reviewed the *Brunzell* factors  
2 and concluded that a reasonable fee under the prevailing market rate of the  
3 community for product liability trial counsel from September 19, 2017,  
4 through February of 2018, is \$2,072,393.75.  
5

### 6 **III. Conclusion**

7  
8 Simon respectfully suggests the Court make a reasonable fee award  
9 based on the market rate under quantum meruit for the work performed  
10 following September 19, 2017, through February of 2018, in accord with  
11 the unrefuted opinion of Will Kemp, which is consistent with the Supreme  
12 Court's order of remand.  
13

14  
15 DATED this 13<sup>th</sup> day of May 2021.

16 /s/ James R. Christensen  
17 JAMES CHRISTENSEN, ESQ.  
18 Nevada Bar No. 003861  
19 601 S. 6<sup>th</sup> Street  
20 Las Vegas, NV 89101  
21 (702) 272-0406  
22 (702) 272-0415  
23 jim@jchristensenlaw.com  
24 Attorney for Daniel S. Simon  
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## CERTIFICATE OF SERVICE

I CERTIFY SERVICE of the foregoing Opposition and Request for Sanctions; Countermotion was made by electronic service (via Odyssey) this 13<sup>th</sup> day of May 2021, to all parties currently shown on the Court's E-Service List.

*/s/ Dawn Christensen*  
an employee of  
JAMES R. CHRISTENSEN

# **EXHIBIT 1**

1 RTRAN

2  
3  
4  
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-16-738444-C

DEPT. X

CASE#: A-18-767242-C

DEPT. X

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

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

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER



1 MR. VANNAH: Of course, he's never been fired. He's still  
2 counsel of record. He's never been fired. There's no -- in fact, there's an  
3 email telling him that you are still on the case, do a good job.

4 THE COURT: And I've seen that email, Mr. Vannah. So, I  
5 mean, we're going to -- I know Mr. Simon's characterization of what  
6 happened is he believed he was fired and that is the reason -- based on  
7 the reasons that he's already testified to here this morning. But the  
8 constructive discharge issue is still an issue that's before this Court that I  
9 have yet to decide on.

10 MR. CHRISTENSEN: Correct, Your Honor. And perhaps it  
11 was inartful phrasing of the question, but Mr. Simon has already testified  
12 that he felt he had been fired --

13 THE COURT: I understand. He testified to the --

14 MR. CHRISTENSEN: -- so that was the gist in which the  
15 question was -- was made.

16 THE COURT: Right. And he testified the reasons for which  
17 he felt that way.

18 MR. CHRISTENSEN: However, I just for the record I do  
19 disagree with Mr. Vannah's characterization.

20 THE COURT: And I know. I mean that's an issue that I'm  
21 going to decide as part of what we're having this hearing about, but I  
22 understand Mr. Simon believed he was fired, he testified to it, as well as  
23 he testified to the reasons for which he was fired. So that's based on Mr.  
24 Simon's understanding.

25 BY MR. CHRISTENSEN:

1 pending motions for summary judgment and counter summary  
2 judgment. I mean there was just so much going on it was crazy.

3 Q What kind of contact did you receive from Vannah and  
4 Vannah to become involved in that process to effect a compromise?

5 MR. VANNAH: Your Honor, let me object again as leading. I  
6 never called him to effect a compromise. It's leading. He's testifying as  
7 to his theory of the case. He's leading every single question.

8 THE COURT: Well, I mean, I think the -- I mean if he gets to  
9 change the first word of that to did, did you receive any communication  
10 from Vannah and Vannah?

11 BY MR. CHRISTENSEN:

12 Q Did Vannah and Vannah call?

13 A No.

14 Q Did you receive requests for the file?

15 A Didn't receive a request for the file. I think we had our first  
16 meaningful discussion on a conference call with Mr. Vannah, Mr.  
17 Greene, yourself, and myself, on December 7th.

18 Q Okay.

19 A I'm sure I had prior conversations, I think you did, too, with  
20 Mr. Greene, but they weren't too meaningful because he always had to  
21 check with Mr. Vannah.

22 Q What were you doing during that period with regard to the  
23 underlying case?

24 A What I was expected to do.

25 MR. VANNAH; I'm sorry --

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[Counsel confer]

MR. VANNAH: Okay. So sounds great.

So, let me be kind to your staff. So now we're looking to at 11:00, so from 11:00 a.m. to 5:00, which I don't have a problem with. But --

THE COURT: At some point we're going to have to break in there, I mean, I understand Mr. Christensen is going to schedule, we'll work it out with Judge. Herndon. But yeah, at some we're going to have to a break and eat, we all need to eat.

MR. CHRISTIANSEN: As soon as I am done with the witness I will go back to my murder trial and let --

THE COURT: Oh, okay, okay. Yeah. Well we're still going to take a little recess.

[Counsel confer]

THE COURT: Yeah. We'll get Mr. Christiansen out of here then we will break for lunch, and then you guys --

MR. CHRISTIANSEN: And then come back.

THE COURT: Yeah. So, I'll keep that whole afternoon open for you guys. So, yeah, that's what we'll do. We'll get Mr. Christiansen, so will get Mrs. Edgeworth on, Mr. Christiansen out of here, and then we'll break for lunch, and then you guys will come back and close.

MR. CHRISTIANSEN: Thank you very much.

MR. VANNAH: Thank you, Judge.

THE COURT: Thank you.

MR. CHRISTIANSEN: Judge, thanks for you accommodations.

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MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



---

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

## **EXHIBIT 2**

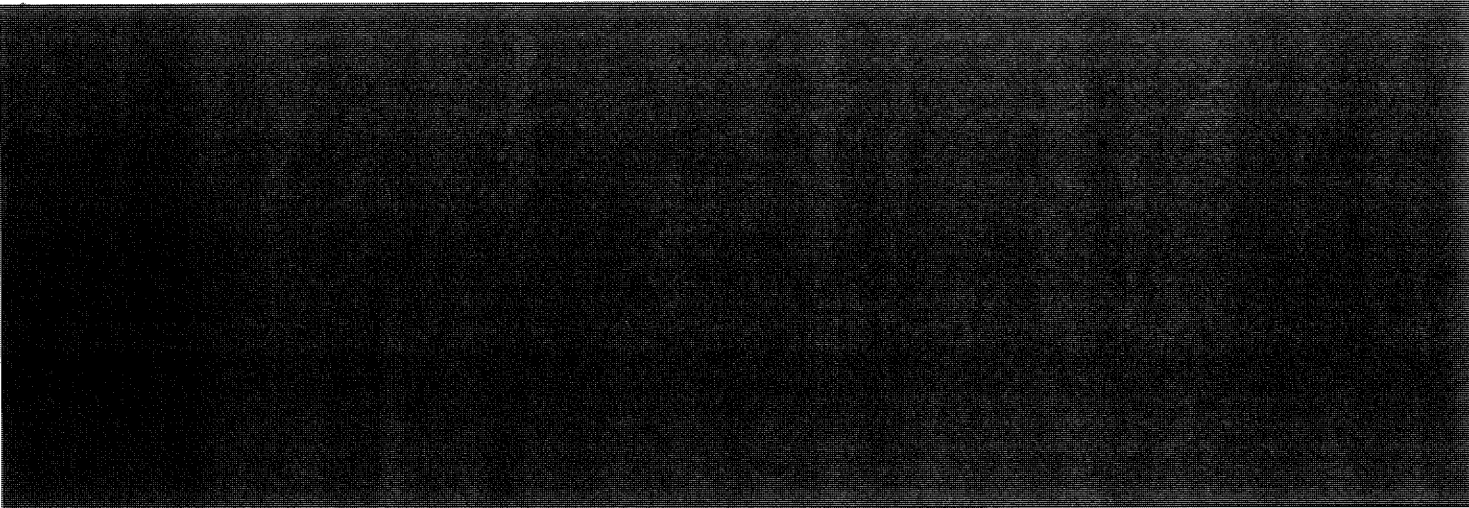
## Ashley Ferrel

---

**From:** Kendelee Works <kworks@christiansenlaw.com>  
**Sent:** Sunday, May 17, 2020 4:24 PM  
**To:** Patricia Lee  
**Cc:** Peter S. Christiansen; Jonathan Crain  
**Subject:** Simon v. Edgeworth et al: underlying client file  
**Attachments:** Edgeworth Stipulated Protective Order.pdf; ATT00001.txt

Patricia,

We are in receipt of your Notice of Intent to Bring Motion to Compel Production of Legal File Per NRS 7.055(2). Please note that because the client has not paid for the services rendered, a retaining lien exists under the law. Additionally, the 16.1 conference in this case has not taken place (to date, no Defendant has filed an answer) and thus, Plaintiffs are not yet obligated to produce any documents in the instant litigation. That aside, we are nevertheless willing to work with you and produce the file. Simon Law has expended substantial time getting the file ready and because it is so large, they had to purchase an external hard drive. However, it has come to our attention there exists information in the file that is subject to a protective order that must be addressed prior to disclosure. Please find attached the protective order for the underlying litigation with Viking and Lange. Specifically, please review the notice provision requiring that we notify the underlying defendants of any production of these materials prior to releasing the subject documents. The fact that you are not bound by the protective order, of course, raises concerns. If you have any input on addressing these matters in a professional manner, please let us know at your earliest convenience.



**From:** Patricia Lee <plee@hutchlegal.com>  
**Date:** May 19, 2020 at 12:01:58 AM PDT  
**To:** Kendelea Works <kworks@christiansenlaw.com>  
**Cc:** "Peter S. Christiansen" <pete@christiansenlaw.com>, Jonathan Crain <jcrain@christiansenlaw.com>  
**Subject:** RE: Simon v. Edgeworth et al: underlying client file

Kendelea: With respect to the Edgeworth defendants, they are presumably bound by the protective order and are absolutely entitled to receive all of the information that makes up their legal file per NRS 7.055. As they are parties to the Protective Order, which does not prevent them from being in possession of this information, we once again maintain that the entirety of the file must be produced prior to the expiration of the 5-day notice. As counsel for the Edgeworths, we will analyze the information produced (once it's finally produced) to determine which portions are arguably within the scope of the executed Protective Order and will conduct ourselves accordingly. In short, the Protective Order cannot be an excuse for withholding the entirety of the file. In closing, we will expect the entirety of the file prior to the expiration of the 5-day notice. Thank you.

Best regards,

-----Original Message-----

**From:** Kendelea Works [mailto:kworks@christiansenlaw.com]  
**Sent:** Sunday, May 17, 2020 4:24 PM  
**To:** Patricia Lee <PLee@hutchlegal.com>  
**Cc:** Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>  
**Subject:** Simon v. Edgeworth et al: underlying client file

Patricia,

We are in receipt of your Notice of Intent to Bring Motion to Compel Production of Legal File Per NRS 7.055(2). Please note that because the client has not paid for the services rendered, a retaining lien exists under the law. Additionally, the 16.1 conference in this case has not taken place (to date, no Defendant has filed an answer) and thus, Plaintiffs are not yet obligated to produce any documents in the instant litigation. That aside, we are nevertheless willing to work with you and produce the file. Simon Law has expended substantial time getting the file ready and because it is so large, they had to purchase an external hard drive. However, it has come to our attention there exists information in the file that is subject to a protective order that must be addressed prior to disclosure. Please find attached the protective order for the underlying litigation with Viking and Lange. Specifically, please review the notice provision requiring that we notify the underlying defendants of any production of these materials prior to releasing the subject documents. The fact that you are not bound by the protective order, of

course, raises concerns. If you have any input on addressing these matters in a professional manner, please let us know at your earliest convenience.

Patricia Lee

Partner

[HS

logo]<[https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fhutchlegal.com%2f&c=E,1,yo2Rwml8Co8OZcSA6Sulkkv0Wcp3NX8qM2vvdHr914XRvvN5gUPB4NDjVTJbgdx\\_ITTyccrjyJeRQ8zPppho6bgVPkExU2ddXmAN8jih6\\_tzrWu&typo=1](https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fhutchlegal.com%2f&c=E,1,yo2Rwml8Co8OZcSA6Sulkkv0Wcp3NX8qM2vvdHr914XRvvN5gUPB4NDjVTJbgdx_ITTyccrjyJeRQ8zPppho6bgVPkExU2ddXmAN8jih6_tzrWu&typo=1)>

HUTCHISON & STEFFEN, PLLC

(702) 385-2500

[https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fhutchlegal.com&c=E,1,cRiERkp9asyMf9da1Eez-TkgyK9xpnev6jW1kBUxNGSQ7cJZAAf0EKBhFMNQHsKhI6rX-](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fhutchlegal.com&c=E,1,cRiERkp9asyMf9da1Eez-TkgyK9xpnev6jW1kBUxNGSQ7cJZAAf0EKBhFMNQHsKhI6rX-ptGKeMd8xfV4NB0UYGVvmSmzkNNxc3HE4osCK4r3D8u&typo=1)

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[3GheG5gB\\_gVQouOExbzZEBZUwcxggb6A5D0blhHeBbegA6OhVIIJ09SNGOku5B6neVVHI1h2LorQQw9YpG](https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fwww.hutchlegal.com&c=E,1,3TXgyyYy7g-PD4-eUB1t_oi-3GheG5gB_gVQouOExbzZEBZUwcxggb6A5D0blhHeBbegA6OhVIIJ09SNGOku5B6neVVHI1h2LorQQw9YpGSHF3Vgh2U1VxiNee8,&typo=1)

[SHF3Vgh2U1VxiNee8,&typo=1](https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fwww.hutchlegal.com&c=E,1,3TXgyyYy7g-PD4-eUB1t_oi-3GheG5gB_gVQouOExbzZEBZUwcxggb6A5D0blhHeBbegA6OhVIIJ09SNGOku5B6neVVHI1h2LorQQw9YpGSHF3Vgh2U1VxiNee8,&typo=1)>

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## Ashley Ferrel

---

**From:** Kendelee Works <kworks@christiansenlaw.com>  
**Sent:** Friday, May 22, 2020 9:40 AM  
**To:** Patricia Lee  
**Cc:** Peter S. Christiansen; Jonathan Crain  
**Subject:** Re: Simon v. Edgeworth et al: underlying client file  
**Attachments:** Exhibit A.pdf; ATT00001.htm

Patricia,

We understand that the Edgeworths are a party to the Protective Order and thus, bound by its terms. However, section 7.1 makes clear that a party in receipt of protected materials may only use such documents for prosecuting, defending or attempting to settle the underlying litigation. Confidential protected material may only be disclosed to a party's counsel of record in the underlying litigation. See Section 7.2. Accordingly, despite that we have not received any formal subpoena or document request, we nevertheless contacted the underlying defendants with notice of your request for the protected material. Mr. Parker for Lange Plumbing requested that we not disclose the non-construction documents in the production. Mr. Henriod is contacting his client for further direction prior to disclosure. We anticipate they will require at a minimum, that you and Ms. Carteen execute the Acknowledgment and Agreement to be Bound, which is attached hereto for your reference. Please promptly let us know whether you are willing to sign the Acknowledgment and if so, sign and return executed copies as soon as possible.

We would prefer to resolve this issue amicably and in compliance with the parties' respective obligations under the underlying protective order. However, if you insist upon motion practice, pursuant to NRS 7.055(3), we will deposit the file with the clerk so the Court may adjudicate the Edgeworth's rights to the file, a significant portion of which constitutes confidential, protected material. Please let us know how you wish to proceed.

Thank you,  
KLW



**From:** Patricia Lee <plee@hutchlegal.com>  
**Date:** May 22, 2020 at 4:40:31 PM PDT  
**To:** Kendelea Works <kworks@christiansenlaw.com>  
**Cc:** "Peter S. Christiansen" <pete@christiansenlaw.com>, Jonathan Crain  
<jcrain@christiansenlaw.com>  
**Subject:** RE: Simon v. Edgeworth et al: underlying client file

Kendelea: Please arrange to have the file mailed directly to Mr. Edgeworth at the following address:

Brian Edgeowrth  
American Grating  
1191 Center Point Drive  
Henderson, Nevada 89074

You may send the bill for the carrier or postage to my attention for payment, or, alternatively, we can arrange for Fed Ex to pick it up for delivery directly to Mr. Edgeworth, whichever you prefer. As we will not be receiving any portion of the file, my firm does not need to execute a wholesale agreement with respect to the Protective Order. In any event, the terms of the Protective Order itself mandates that Mr. Simon's office return or destroy all CONFIDENTIAL information produced within 60 days of the conclusion of the dispute. My understanding is that the underlying dispute has been concluded for some time. It is therefore unclear what documents you would even still have in your possession that would be deemed "Protected."

In any event, we will not be dispatching anyone to your office as we are carefully minimizing our staff's exposure to third party situations in light of COVID. Please let me know if you would like us to arrange Fed Ex pick up for delivery to Mr.

Edgeworth. Otherwise, please have it mailed via carrier to Mr. Edgeworth and send us the bill for such delivery. Thank you.

Best regards,

**From:** Kendelea Works [mailto:kworks@christiansenlaw.com]  
**Sent:** Friday, May 22, 2020 3:40 PM  
**To:** Patricia Lee <PLee@hutchlegal.com>  
**Cc:** Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>  
**Subject:** Re: Simon v. Edgeworth et al: underlying client file

The file is ready for pick-up by the Edgeworth's. Please sign and return the Acknowledgment sent this morning prior to having the file picked up so that we may release it without any concerns for our respective clients. The file can be picked up any time before 5:00 p.m. at 810 S. Casino Center Blvd, Las Vegas, Nevada 89101.

Please note that Simon Law has retained internal emails based on relevancy, work product privilege and proportionality. Additionally, at the request of Mr. Parker, the Lange Plumbing Tax Returns are not being produced. If you have additional concerns, you may reach me on my cell anytime: (702) 672-8756.

On May 22, 2020, at 10:28 AM, Patricia Lee <PLee@hutchlegal.com> wrote:

I'm not refusing anything. I'm asking you to please produce my clients' file to them as requested over a month ago. Also, as you know, Lisa is not yet counsel of record on this matter so I'm not sure why you need her signature.

So, to be clear, you will produce the entirety of my clients' legal file today, if I sign the protective order? Alternatively, I would expect that you could produce the non-"confidential" portions of their file without any issues, either way. Thanks!

Best regards,

**From:** Kendelea Works [mailto:kworks@christiansenlaw.com]  
**Sent:** Friday, May 22, 2020 10:15 AM  
**To:** Patricia Lee <PLee@hutchlegal.com>  
**Cc:** Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>  
**Subject:** Re: Simon v. Edgeworth et al: underlying client file

To be clear, are you refusing to sign off on the Acknowledgment and be bound by the protective order?

On May 22, 2020, at 9:51 AM, Patricia Lee  
<PLee@hutchlegal.com> wrote:

Kendele: You may produce the protected portions of the Edgeworth's file (which, based on the definitions set forth in the Protective Order are likely limited) directly to them as they are under the protective order. We will expect full production of the Edgeworth's legal file today. Thank you.

Best regards,

**From:** Kendele Works [mailto:kworks@christiansenlaw.com]  
**Sent:** Friday, May 22, 2020 9:40 AM  
**To:** Patricia Lee <PLee@hutchlegal.com>  
**Cc:** Peter S. Christiansen <pete@christiansenlaw.com>; Jonathan Crain <jcrain@christiansenlaw.com>  
**Subject:** Re: Simon v. Edgeworth et al: underlying client file

Patricia,

We understand that the Edgeworths are a party to the Protective Order and thus, bound by its terms. However, section 7.1 makes clear that a party in receipt of protected materials may only use such documents for prosecuting, defending or attempting to settle the underlying litigation. Confidential protected material may only be disclosed to a party's counsel of record in the underlying litigation. See Section 7.2. Accordingly, despite that we have not received any formal subpoena or document request, we nevertheless contacted the underlying defendants with notice of your request for the protected material. Mr. Parker for Lange Plumbing requested that we not disclose the non-construction documents in the production. Mr. Henriod is contacting his client for further direction prior to disclosure. We anticipate they will require at a minimum, that you and Ms. Carteen execute the Acknowledgment and Agreement to be Bound, which is attached hereto for your reference. Please promptly let us know whether you are willing to sign the Acknowledgment and if so, sign and return executed copies as soon as possible.

We would prefer to resolve this issue amicably and in compliance with the parties' respective obligations under the underlying protective order. However, if you insist upon motion practice, pursuant to NRS 7.055(3), we will deposit the file with the clerk so the Court may adjudicate the Edgeworth's rights to the file, a significant portion of which constitutes confidential, protected material. Please let us know how you wish to proceed.

Thank you,  
KLW

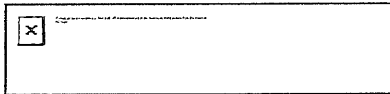
Patricia Lee  
Partner



HUTCHISON & STEFFEN, PLLC  
(702) 385-2500  
[hutchlegal.com](http://hutchlegal.com)

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Patricia Lee  
Partner



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Patricia Lee  
Partner



HUTCHISON & STEFFEN, PLLC  
(702) 385-2500  
[hutchlegal.com](http://hutchlegal.com)



**From:** Patricia Lee <[PLee@hutchlegal.com](mailto:PLee@hutchlegal.com)>  
**Subject:** RE: **Simon v. Edgeworth et al: underlying client file**  
**Date:** May 27, 2020 at 2:37:51 PM PDT  
**To:** "Peter S. Christiansen" <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>  
**Cc:** Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>, Kendelee Works  
<[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>

Mr. Christiansen: We will inform our client that their attorney file, sans documents clearly marked "Confidential," should be received by them shortly. It is my understanding that the "action" to which the Protective Order pertains is the underlying products defect action, not the unrelated attorneys' lien matter which involves different parties and different issues. It is therefore perplexing that you still consider the litigation to which the Protective Order clearly applies, to still be "ongoing." In any event, I appreciate your office finally agreeing to turn over those parts of the file that are not deemed "Confidential," (which is what I suggested at the outset when initially confronted with the "Protective Order") and depositing the balance

with the Court. As for my comment, "I'm not refusing anything," it was not an agreement that I would sign a blanket protective order with language subjecting my firm to liability. If you read the rest of my email, it was actually me that was trying to seek clarification about your firm's position with respect to the Edgeworths' legal file (which was to be produced by the 14<sup>th</sup> per the agreement of the parties).

As for my demands and threats, they are neither baseless nor "threatening." It is your firm's actions that have triggered the need for repeated extra-judicial intervention by my firm. Indeed, right out of the gate your firm, after waiting 3 months to serve a complaint, ran to court with your "hair on fire" demanding that my clients turn over all of their personal electronic devices for full imaging by a third party, with absolutely zero explanation as to the "emergency" or any explanation as to why extraordinary protocols were even warranted. When I asked about it during our call, you retorted that "this was not the time nor place to discuss these issues." When presented with a different preservation protocol, that still contemplated full imaging of "all" electronic devices, I followed up with a series of clarifying questions, which have gone unanswered by your firm to date.

Next, your firm files a completely untenable opposition to Ms. Carteen's routine *pro hac vice* application, which I tried to resolve with your associate outside of the need for further motion practice, which attempts were solidly rebuffed by your office.

Finally, the simple act of providing a former client with his or her file has somehow become unnecessarily complicated by the introduction of a "Protective Order" which your office insisted that my firm execute prior to the production of the same. The Edgeworths are absolutely entitled to their legal file without the need to propound discovery. Thank you for finally agreeing to send it.

It is clear that your office is taking a scorched earth approach to this litigation in an attempt to inflate costs and wage a war of attrition. Mr. Simon, who is likely the author of many if not all of the pleadings and papers being generated on your end, has the luxury of being an attorney and can therefore better manage and control costs

on his end, and use his abilities to vexatiously multiply the proceedings to the material detriment of my clients.

As I have stated from the first time that you and I spoke on the phone, it is always my goal to work cooperatively with opposing counsel so long as doing so does not prejudice my client. Reciprocally, I would expect the same professionalism on the other end. Thanks Peter.

Best regards,

**From:** Peter S. Christiansen [<mailto:pete@christiansenlaw.com>]  
**Sent:** Wednesday, May 27, 2020 12:57 PM  
**To:** Patricia Lee <[PLee@hutchlegal.com](mailto:PLee@hutchlegal.com)>  
**Cc:** Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>; Kendelee Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>  
**Subject:** Re: Simon v. Edgeworth et al: underlying client file

Ms. Lee:

Your erratic and inconsistent emails make responding rationally difficult. You first demanded we turn the Edgeworth file over to you ASAP and followed with a series of threats. When we agreed to turn over the file but noted there was a protective order in place you responded that because your client is bound by the order there should be no issue providing you with the entire file, including the confidential protected material. We then pointed out that use of the confidential material was limited to the underlying litigation and counsel of record in that particular case, which you were not. You then stated you were not refusing to "sign anything," seemingly indicating you would sign the Acknowledgement and agreement to be bound. When we sent the Stip for you to sign you then pivoted and DEMANDED we send the entire file to the Edgeworths via mail b/c your office is observing covid protocol (which is funny in light of your ridiculous timed demands for the file forcing my office to work).

While we are willing to provide the Edgeworth's with their file (despite that discovery has not yet begun and there remains a charging lien in place), my client is bound by a protective order which it has become apparent you are attempting to circumvent (perhaps in an attempt to conjure up another baseless counterclaim or frivolous accusations against my client). Further, you stated that it was your understanding that the underlying dispute has been concluded for some time and you are unclear what documents we would have in our possession that would be deemed "protected." Your understanding is incorrect. Pursuant to the protective order, these documents are only supposed to be destroyed within 60 days of the final



disposition of the "action." Since the fee dispute litigation is ongoing, these documents have not been destroyed.

As a result, we will mail the Edgeworths the file without the protected confidential material. If you want to sign the Acknowledgment and agree to be bound, we will produce the entire file. Short of that, we intend to deposit the balance of the file with the clerk and seek the court's guidance as to how to proceed. That will of course require input from counsel for both Lange and Viking (Mr. Parker and Mr. Henriod).

Lastly, please refrain from any further baseless demands, threats and personal attacks in this matter. We prefer to proceed professionally so that we may all litigate this case on the merits.

Thanks,

PSC

Peter S. Christiansen, Esq.  
Christiansen Law Offices  
810 S. Casino Center Boulevard  
Las Vegas, NV 89101  
Phone (702) 240-7979  
Fax (866) 412-6992

This email is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this email is not the intended recipient, or the employee or agent responsible for delivering the email to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

---

**From:** Patricia Lee <PLee@hutchlegal.com>  
**Sent:** Wednesday, May 27, 2020 8:52 AM  
**To:** Kendelee Works  
**Cc:** Peter S. Christiansen; Jonathan Crain  
**Subject:** Re: Simon v. Edgeworth et al: underlying client file

Please confirm that you have mailed the Edgeworth's legal file.

Best regards,

Sent from my iPhone

On May 22, 2020, at 3:40 PM, Kendelea Works  
<[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)> wrote:

The file is ready for pick-up by the Edgeworth's. Please sign and return the Acknowledgment sent this morning prior to having the file picked up so that we may release it without any concerns for our respective clients. The file can be picked up any time before 5:00 p.m. at 810 S. Casino Center Blvd, Las Vegas, Nevada 89101.

Please note that Simon Law has retained internal emails based on relevancy, work product privilege and proportionality. Additionally, at the request of Mr. Parker, the Lange Plumbing Tax Returns are not being produced. If you have additional concerns, you may reach me on my cell anytime: (702) 672-8756.

On May 22, 2020, at 10:28 AM, Patricia Lee  
<[PLee@hutchlegal.com](mailto:PLee@hutchlegal.com)> wrote:

I'm not refusing anything. I'm asking you to please produce my clients' file to them as requested over a month ago. Also, as you know, Lisa is not yet counsel of record on this matter so I'm not sure why you need her signature.

So, to be clear, you will produce the entirety of my clients' legal file today, if I sign the protective order? Alternatively, I would expect that you could produce the non-"confidential" portions of their file without any issues, either way. Thanks!

Best regards,

**From:** Kendelea Works  
[<mailto:kworks@christiansenlaw.com>]  
**Sent:** Friday, May 22, 2020 10:15 AM  
**To:** Patricia Lee <[PLee@hutchlegal.com](mailto:PLee@hutchlegal.com)>

Cc: Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>;  
Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>  
Subject: Re: Simon v. Edgeworth et al: underlying client  
file

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Acknowledgment and be bound by the protective  
order?

On May 22, 2020, at 9:51 AM,  
Patricia Lee  
<[PLee@hutchlegal.com](mailto:PLee@hutchlegal.com)> wrote:

Kendelelee: You may produce  
the protected portions of the  
Edgeworth's file (which, based  
on the definitions set forth in  
the Protective Order are likely  
limited) directly to them as  
they are under the protective  
order. We will expect full  
production of the Edgeworth's  
legal file today. Thank you.

Best regards,

From: Kendelelee Works  
[mailto:[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)]  
Sent: Friday, May 22, 2020 9:40 AM  
To: Patricia Lee  
<[PLee@hutchlegal.com](mailto:PLee@hutchlegal.com)>  
Cc: Peter S. Christiansen  
<[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Jonathan  
Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>  
Subject: Re: Simon v. Edgeworth et al:  
underlying client file

Patricia,

We understand that the Edgeworths  
are a party to the Protective Order  
and thus, bound by its  
terms. However, section 7.1 makes  
clear that a party in receipt of  
protected materials may only use

such documents for prosecuting, defending or attempting to settle the underlying litigation. Confidential protected material may only be disclosed to a party's counsel of record in the underlying litigation. See Section 7.2. Accordingly, despite that we have not received any formal subpoena or document request, we nevertheless contacted the underlying defendants with notice of your request for the protected material. Mr. Parker for Lange Plumbing requested that we not disclose the non-construction documents in the production. Mr. Henriod is contacting his client for further direction prior to disclosure. We anticipate they will require at a minimum, that you and Ms. Carteen execute the Acknowledgment and Agreement to be Bound, which is attached hereto for your reference. Please promptly let us know whether you are willing to sign the Acknowledgment and if so, sign and return executed copies as soon as possible.

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Thank you,  
KLW

Patricia Lee  
Partner



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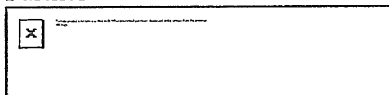
Patricia Lee  
Partner



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Patricia Lee  
Partner

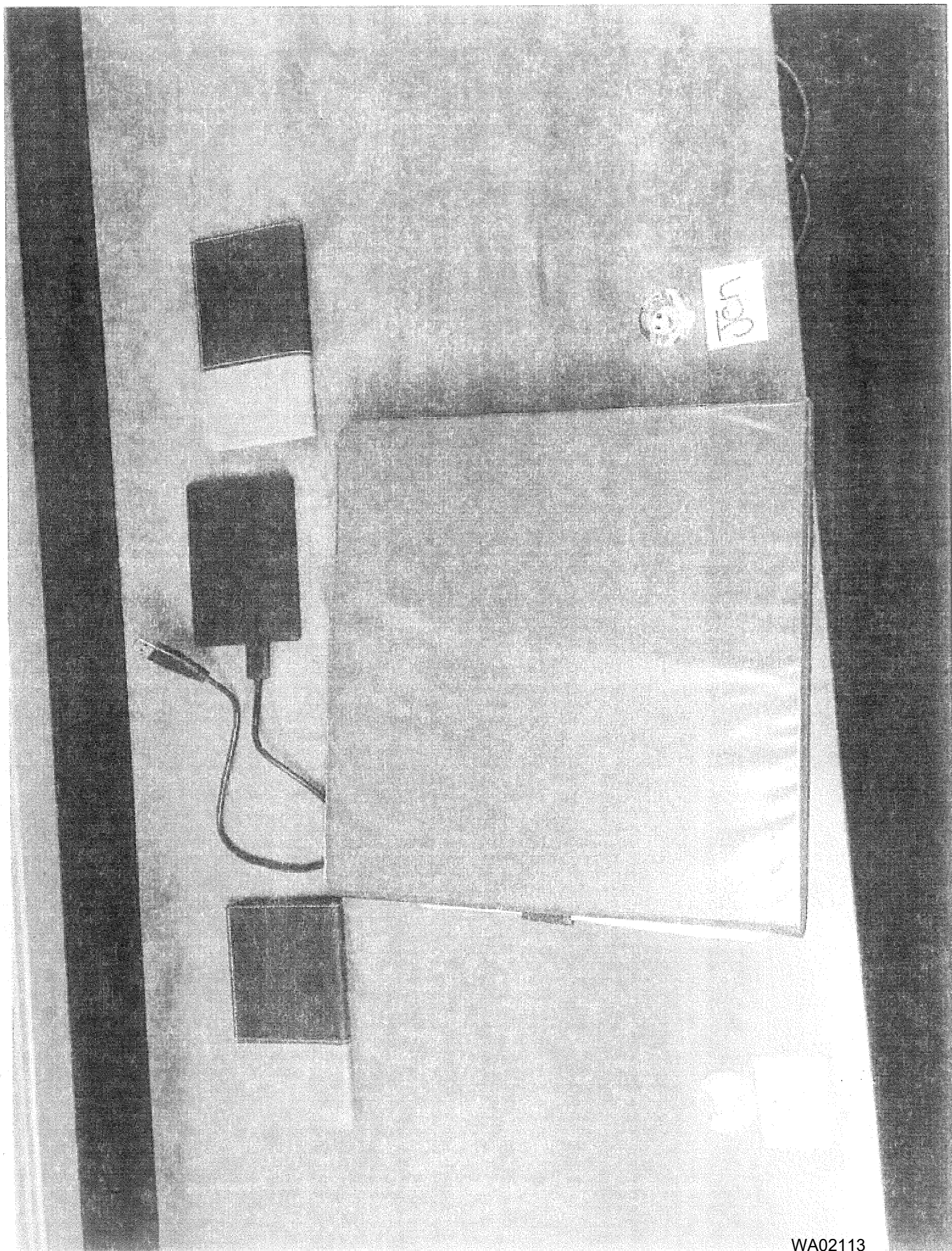


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Patricia Lee  
Partner

## **EXHIBIT 3**



## **EXHIBIT 4**





Dear Customer,

The following is the proof-of-delivery for tracking number: 393277379817

---

**Delivery Information:**

---

<b>Status:</b>	Delivered	<b>Delivered To:</b>	
<b>Signed for by:</b>	M.BRIAN	<b>Delivery Location:</b>	
<b>Service type:</b>	FedEx Priority Overnight		
<b>Special Handling:</b>	Deliver Weekday; No Signature Required		HENDERSON, NV,
		<b>Delivery date:</b>	May 28, 2020 10:16

---

**Shipping Information:**

---

<b>Tracking number:</b>	393277379817	<b>Ship Date:</b>	May 27, 2020
		<b>Weight:</b>	
<b>Recipient:</b>		<b>Shipper:</b>	
HENDERSON, NV, US,		LAS VEGAS, NV, US,	

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

WA02115



TRACK ANOTHER SHIPMENT

393277379817

ADD NICKNAME



Delivered  
Thursday, May 28, 2020 at 10:16 am



DELIVERED

Signed for by: M.BRIAN

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM

LAS VEGAS, NV US

TO

HENDERSON, NV US

Travel History

TIME ZONE

Local Scan Time



Thursday, May 28, 2020

10:16 AM

HENDERSON, NV

Delivered

Shipment Facts

TRACKING NUMBER

393277379817

SERVICE

FedEx Priority Overnight

SPECIAL HANDLING SECTION

Deliver Weekday, No Signature Required

SHIP DATE

5/27/20 ?

ACTUAL DELIVERY

5/28/20 at 10:16 am

## **EXHIBIT 5**

WA02117

# MORRIS LAW GROUP

ATTORNEYS AT LAW

801 S. RANCHO DR., STE. B4  
LAS VEGAS, NV 89106  
TELEPHONE: 702/474-9400  
FACSIMILE: 702/474-9422  
WEBSITE: WWW.MORRISLAWGROUP.COM

May 4, 2021

VIA EMAIL: [jim@jchristensenlaw.com](mailto:jim@jchristensenlaw.com)

James R. Christensen

601 S. 6<sup>th</sup> Street

Las Vegas, NV 89101

Re: *Eighth Judicial District Court Case No. A-16-738444-C*

Dear Jim:

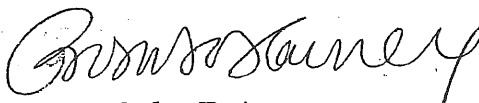
As discussed in our call, please consider this formal demand, pursuant to NRS 7.055, that your client provide mine with the complete client file in the above-referenced case. I understand Mr. Simon (or someone on his behalf) previously provided portions of the file to Mr. Edgeworth, however, the file provided is incomplete.

Among the items missing are all attachments to emails included in the production, all correspondence, including email, with third-parties regarding the settlement of the Viking and Lange Plumbing claims, other drafts of the settlement agreements, communications regarding experts, including the expert reports themselves, all research conducted and/or research memos prepared on behalf of and paid by my clients.

NRS 7.055 is unambiguous that an attorney must, "upon demand and payment of the fee due from the client, deliver to the client all papers, documents, pleadings, and ~~items~~ of tangible personal property which belong to *or were prepared for that client.*"

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Rosa Solis-Rainey

## **EXHIBIT 6**

James R. Christensen Esq.  
601 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
Ph: (702)272-0406 Fax: (702)272-0415  
E-mail: jim@jchristensenlaw.com

May 7, 2021

*Via E-Mail*

Rosa Solis-Rainey  
Morris Law Group  
801 S. Rancho Drive Suite B4  
Las Vegas, NV 89106  
rsr@morrislawgroup.com

Re: Edgeworth v. Viking and related matters

Dear Ms. Solis-Rainey:

Thank you for your letter of May 4, 2021, concerning the case file. At the outset, it is doubtful that NRS 7.055 applies because the full fee has not yet been paid, and recent motion practice may further delay payment of the fee. That said, as discussed last year, my client is willing to reasonably comply within the bounds of the law, which has been done.

There was a good deal of discussion last year regarding the impact of a non-disclosure agreement (NDA) on providing discovery information and expert reports which relied upon, cited to, and incorporated discovery subject to the NDA. I was not involved in the file production last year, but I have reviewed the correspondence. A fair reading seems to be that the NDA counterparties reaffirmed their position, the Edgeworths and their counsel declined to be bound by the NDA, and as a result it was agreed that items subject to an NDA would not be provided. If there has been a change in position on being bound by an NDA, or if you want to discuss the prior agreement, please let me know.

I need some clarification on the email attachment request. There are thousands of emails. Many emails repeat the same attachment in a forward or a reply. Further, it is believed that all the attachments have been provided, although multiple copies have not been provided each as a specific attachment to a particular email. For example, please review the first motion for reconsideration filed this year and the opposition. Your client argued that a stipulation and order attached to an email had been intentionally withheld. Of course, the argument was groundless. The stipulation and order had been signed by the court and was a matter of public record and is in the file produced. At some point, reasonableness and proportionality must be considered. Perhaps if you could provide some specificity.

I will confer with my client on the research and draft settlement agreements and get back to you.

Lastly, the file is quite large, I would be surprised if no gaps existed.

I will speak with my client and provide a further response per above next week. Please clarify your NDA position and provide some specificity to the attachment request.

I believe that covers all the areas raised. If not, please let me know.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

*/s/ James R. Christensen*

**JAMES R. CHRISTENSEN**

JRC/dmc  
cc: Client(s)

## **EXHIBIT 7**



IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

Electronically Filed  
Aug 08 2019 11:42 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST;  
AND AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

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,

Respondents/Cross-Appellants.

**Supreme Court Case**

**No. 77678 consolidated with No.  
78176**

---

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

Appellants,

vs.

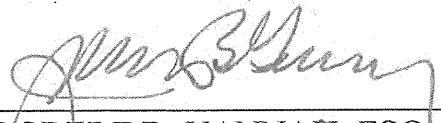
DANIEL S. SIMON; THE LAW  
OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION;  
DOES I through X, inclusive, and ROE  
CORPORATIONS I through X,  
inclusive,

Respondents.

APPEAL FROM FINAL JUDGMENTS ENTERED FOLLOWING  
EVIDENTIARY HEARING  
THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA  
THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

\*\*\*\*\*

**APPELLANTS' OPENING BRIEF**



---

ROBERT D. VANNAH, ESQ.  
Nevada State Bar No. 2503  
JOHN B. GREENE, ESQ.  
Nevada Bar No. 004279  
VANNAH & VANNAH  
400 South Seventh Street, 4<sup>th</sup> Floor  
Las Vegas, Nevada 89101  
*Attorneys for Appellants/Cross  
Respondents*  
EDGEWORTH FAMILY TRUST;  
AND, AMERICAN GRATING, LLC

The District Court further decided Simon was “entitled to a reasonable fee in the amount of \$200,000.” *AA, Vol. 2, 000370-000373*. Appellants contest the District Court’s constructive discharge determination and appeal the its determination of the \$200,000 amount. Why?

Neither the facts nor the law supports a finding of any sort of discharge of Simon by Appellants, constructive or otherwise. Appellants needed him to complete his work on their settlements, and he continued to work and to bill. *AA, Vols. 1 & 2 000301:4-11; 000159-163, 000263-000265*. Plus, the amount of the awarded fees doesn’t have a nexus to reality or the facts. Could there be a better barometer of truth of the reasonable value of Simon’s work in wrapping up the ministerial tasks of the Viking and Lange cases for those five weeks than the work he actually performed? No.

When it became clear to him that his Plan A of a contingency fee wasn’t allowed per NRPC 1.5(c), Simon adopted Plan Zombie (“Z”) by creating a “super bill” that he spent weeks preparing that contains every entry for every item of work that he allegedly performed from May 27, 2016 (plus do-overs; add-ons; mistakes; etc.), through January 8, 2018. *AA, Vols 1 & 2 000053-000267*. It also contains some doozies, like a 23-hour day billing marathon, etc. *Id., Vols 1 & 2 000159-000163; 000263-000265* All of the itemized tasks billed by Simon and Ms. Ferrel (at \$550/\$275 per hour, respectively) for that slim slot of time total **\$33,811.25**. *Id.*

How is it less than an abuse of discretion to morph \$33,811.25 into \$200,000 for five weeks of nothing more than mop up work on these facts?

**E. The District Court's Dismissal of Appellants' Amended Complaint**

Settlements in favor of Appellants for substantial amounts of money were reached with the two flood defendants on November 30 and December 7, 2017. *AA, Vol 3 000518-3:22-25, 000518-4:1-6*. But Simon wrongfully continued to lay claim to nearly \$1,977,843 of Appellants' property, and he refused to release the full amount of the settlement proceeds to Appellants. *AA, Vols. 1 & 2 000006; 000300*. When Simon refused to release the full amount of the settlement proceeds to Appellants, litigation was filed and served. *AA, Vols. 1 & 2 000014; 000358:10-12*.

Appellants filed an Amended Complaint on March 15, 2018, asserting Breach of Contract, Declaratory Relief, Conversion, and for Breach of the Implied Covenant of Good Faith and Fair Dealing. *AA, Vol. 2 000305*. Eight months later, the District Court dismissed Appellants' Amended Complaint. *Id.*, *000384:1-4*. In doing so, the District Court ignored the standard of reviewing such motions by disbelieving Appellants and adopting the arguments of Simon. Therefore, Appellants appeal the District Court's decision to dismiss their Amended Complaint. *AA, Vol. 2 000425-000426*.

**F. The District Court's Award of \$50,000 in Attorney's Fees  
and \$5,000 in Costs**

After Simon filed a Motion for Attorney's Fees and Costs, the District Court awarded Simon \$50,000 in attorney's fees and \$5,000 in costs. *AA, Vol. 2 000484:1-2*. The District Court again ignored the standard of review, believed Simon over Appellants, and held that the conversion claims brought against Simon were maintained in bad faith. *AA, Vol 2 000482:16-23*. The District Court awarded these fees and costs without providing any justification or rationale as to the amounts awarded. *Id., at 000484*. Appellants appealed the District Court's decision to award \$50,000 attorney's fees and \$5,000 costs. *AA, Vol 2 000485-000486*.

**G. The Amounts in Controversy**

Appellants have no disagreement with the District Court's review of all of Simon's invoices from May 27, 2016, through January 8, 2018. Specifically, it reviewed Simon's bills and determined that the reasonable value of his services from May 27, 2016, through September 19, 2017, was \$367,606.25. *AA, Vol 2000353-000374*. Appellants paid this sum in full. *Id., 000356*. It also determined that the reasonable value of Simon's services from September 20, 2017, through November 29, 2017, was \$284,982.50. *Id., 000366-000369*. Appellants do not dispute this award, either. In reaching that conclusion and award, the District Court

reviewed all, and rejected many, of Simon's billing entries on his "super bill" for a variety of excellent reasons. *Id.*, 000366-000369; 000374.

Appellants do, however, dispute the award of a bonus in the guise of fees of \$200,000 to Simon from November 30, 2017, through January 8, 2018. In using the same fee analysis the District Court applied above, Simon would be entitled to an additional \$33,811.25, which reflects the work he actually admits he performed, for a difference of \$166,188.75. *AA Vols. 1 & 2* 000373-000374; 000159-163; 000263-000265. Appellants also dispute the \$50,000 in fees and \$5,000 in costs awarded to Simon when the District Court wrongfully dismissed Appellants' Amended Complaint, etc.

Finally, Appellants assert that once Simon's lien was adjudicated in the amount of \$484,982.50, with Simon still holding claim to \$1,492,861.30, he is wrongfully retaining an interest in \$1,007,878.80 of Appellants funds. *AA, Vol. 2* 000415-000424. That's an unconstitutional pre-judgment writ of attachment. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969).

#### **IV. PROCEDURAL OVERVIEW:**

Simon filed a Motion to Adjudicate his \$1,977,843.80 lien on January 24, 2018. *AA, Vols. 1 & 2* 000025-000276. Appellants opposed that Motion. *AA, Vol. 2* 000277-000304. The District Court set an evidentiary hearing over five days on this lien adjudication issue. *AA, Vol. 3* 000488. Appellants argued there was no

basis in fact or law for Simon's fugitive attorney's liens, or his Motion to Adjudicate Attorney's Lien, and that the amount of Simon's lien was unjustified under NRS 18.015(2). *AA, Vol. 2 000284: 21-27*. Appellants further argued that there was in fact an oral contract for fees between Simon and Appellants consisting of \$550/hr for Simon's services that was proved through the testimony of Brian Edgeworth and through the course of consistent performance between the parties from the first billing entry to the last. *Id., 000284-000292*.

The District Court found that Simon asserted a valid charging lien under NRS 18.015. *AA, Vol. 2 000358: 18-28*. The District Court also determined that November 29, 2017, was the date Appellants constructively discharged Simon. *Id.* As a result, the District Court found that Simon was entitled to quantum meruit compensation from November 30, 2017, to January 8, 2018, in the amount of \$200,000. *Id., 000373-000374*.

**A. Simon's Motion to Dismiss Amended Complaint Under  
NRS 12(B)(5)**

Simon filed a Motion to Dismiss Appellants' Amended Complaint pursuant to NRCP 12(b)(5). Appellants opposed Simon's Motion and argued that the claims against Simon were soundly based in fact and law. *AA, Vol. 2 000344-000351*. Appellants also stressed that Nevada is a notice-pleading jurisdiction, which the Amended Complaint had clearly met the procedural requirement of asserting "a

short and plain statement of the claim showing that the pleader is entitled to relief....” *NRCP 8(a)(1)*. *AA, Vol. 2 000343*.

However, the District Court chose to believe Simon and dismissed Appellants’ Amended Complaint in its entirety. *AA, Vol. 2 000384*. The District Court noted that after the Evidentiary Hearing and in its Order Adjudicating Attorney’s Lien, no express contract was formed, only an implied contract existed, and Appellants were not entitled to the full amount of their settlement proceeds. *Id.* Yet, whose responsibility was it to prepare and present the fee agreement to the clients—Appellants—for signature? Simon’s. Whose fault—invited error—was it that it wasn’t? Simon’s, of course, as he’s the lawyer in the relationship. *NRPC 1.5(b)*. Regardless, the District Court dismissed Appellants’ Amended Complaint. *AA, Vol. 2 000384*. It did so without allowing any discovery and barely eight months after it was filed. *AA, Vol. 2 000381, 000384*.

#### **B. Simon’s Motion for Attorney’s Fees and Costs**

Simon filed a Motion for Attorney’s Fees and Costs on December 7, 2018. Appellants opposed Simon’s Motion, arguing their claims against Simon were maintained in good faith. *AA, Vol. 2 000437-000438*. They further argued it would be an abuse of discretion for the District Court to award Simon attorney’s fees when such fees were substantially incurred as a result of the evidentiary hearing to adjudicate Simon’s own lien and conduct, namely his exorbitant \$1,977,843.80



attorney's lien. *AA*, Vol. 2 000432-000435. The District Court awarded Simon \$50,000 in fees under NRS 18.010 (2)(b), and \$5,000 in costs, but providing no explanation in its Order as to the amount of the award. *Id.*

**V. STANDARD OF REVIEW:**

**A. Adjudicating Attorney's Liens - Abuse of Discretion:**

A district court's decision on attorney's lien adjudications is reviewed for abuse of discretion standard. *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215 (2008). An abuse of discretion occurs when the court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

**B. Motions to Dismiss – de novo Review**

An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). De novo review requires a matter be considered anew, as if it had not been heard before and as if no decision had been rendered previously. *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir.1988).

### C. Motions for Attorney's Fees and Costs – *Abuse of Discretion*

A district court's decision on an award of fees and costs is reviewed for an abuse of discretion. *Gunderson v. D.R. Norton, Inc.*, 130 Nev. 67, 319 P.3d 606, 615 (2014); *LVMPD v. Yeghiazarian*, 129 Nev. 760, 766, 312 P.3d 503, 508 (2013). An abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are “clearly erroneous or not supported by substantial evidence” can be an abuse of discretion (internal quotations omitted)). *MB Am., Inc. v. Alaska Pac. Leasing*, 367 P.3d 1286, 1292 (2016).

### VI. SUMMARY OF ARGUMENTS:

There was no basis in fact or law for the content of Simon's fugitive lien, as its amount was never *agreed upon* by the attorney and the client under NRS 18.015(2). *Id.* In fact, there was a clear fee agreement between Appellants and Simon whereby Simon was to represent Appellants in the flood lawsuit in exchange for an hourly fee of \$550. *Id.* Upon settlement of the underlying case, when Simon refused to hand over Appellants' settlement funds post lien-adjudication, effectively retaining \$1,492,861.30 of Appellants' undisputed funds, a conversion of Appellants' settlement funds had taken place. And still does today.

Reviewing the District Court's Order Dismissing Appellants' Amended Complaint *de novo*, it is clear the District Court committed reversible legal error when it: 1.) Used the wrong legal standard when analyzing the Amended Complaint; 2.) Failed to accept all of Appellants' factual allegations in the complaint as true; and, 3.) Failed to draw all inferences in favor of Appellants. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Rather than follow the law, the District Court did just the opposite here by ignoring the law, believing Simon's story, and drawing all inference in favor of Simon. That can't be allowed to stand.

To make the abuse of discretionary matters worse, when Simon moved for attorney's fees and costs on December 7, 2018, the District Court wrongfully awarded Simon another \$50,000 pursuant to NRS 18.010(2)(b), and \$5,000 in costs. *AA, Vol. 2 000484:1-2*. The \$50,000 award was a manifest abuse of discretion, as it was predicated on the District Court's: 1.) Abuse of discretion by dismissing Appellants' Amended Complaint in the first place by applying the exact opposite standard of ignoring Appellants' allegations and inferences and believing Simon; 2.) Inaccurately finding that Appellants' conversion claim was maintained in bad faith; and, 3.) Failure to consider the *Brunzell* factors. *Hornwood v. Smith's Food King No. 1*, 807 P2d 209 (1991) And in its Order awarding \$50,000 in fees

### VIII. CONCLUSION/ RELIEF SOUGHT:

The District Court committed clear and reversible error when it applied the wrong standard in considering Simon's Motion to Dismiss. When it should have considered all of Appellants' allegations and inferences as true, the District Court did just the opposite and believed Simon.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional \$50,000 in fees and \$5,000 in costs while dismissing Appellants' Amended Complaint, a pleading that never should have been dismissed to begin with. Even so, these fees were awarded without the requisite analysis that Nevada law requires.

The District Court also committed clear and reversible error and abused its discretion in awarding Simon an additional \$200,000 in fees under the guise of the equitable remedy of quantum meruit and its plus one, an attorney's "charging" lien. The facts are clear that Simon was never discharged and never acted as such, at least through the conclusion of the flood litigation. Instead, he continued to work the case through January 8, 2018, continued to represent Appellants, completed the ministerial work to close out the flood case, and billed for all his efforts.

Plus, quantum meruit is an equitable remedy and equity requires clean hands. *In re De Laurentis Entertainment Group*, 983 F.3d 1269, 1272 (1992);

requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the reporter's transcript or appendix, where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8<sup>th</sup> day of August, 2019.

VANNAH & VANNAH



ROBERT D. VANNAH, ESQ.

Nevada Bar No. 002503

JOHN GREENE, ESQ.

Nevada Bar No. 004279

400 South Seventh Street, Fourth Floor

Las Vegas, Nevada 89101

(702) 369-4161

**CERTIFICATE OF SERVICE**

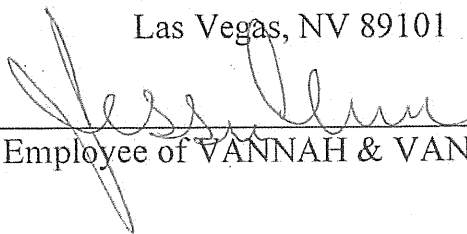
Pursuant to the provisions of NRAP, I certify that on the 8<sup>th</sup> day of August, 2019, I served **APPELLANTS' OPENING BRIEF** on all parties to this action, electronically, as follows:

James R. Christensen, Esq.

**JAMES R. CHRISTENSEN, P.C.**

601 S. 6<sup>th</sup> Street

Las Vegas, NV 89101



An Employee of VANNAH & VANNAH

## **EXHIBIT 8**

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: XXVI

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

14 Defendants.

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

### 7 8 FINDINGS OF FACT

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

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

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

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

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



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

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

10 We never really had a structured discussion about how this might be done.  
11 I am more that happy to keep paying hourly but if we are going for punitive  
12 we should probably explore a hybrid of hourly on the claim and then some  
13 other structure that incents both of us to win an go after the appeal that these  
scumbags will file etc.

14 Obviously that could not have been doen earlier snce who would have though  
15 this case would meet the hurdle of punitives at the start.

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

19 I doubt we will get Kinsale to settle for enough to really finance this since I  
20 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?

21 (Def. Exhibit 27).

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

26 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and  
27 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per  
28

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

---

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 CONCLUSION OF LAW

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

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

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

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

- 16 Client retains Attorneys to represent him as his Attorneys regarding  
17 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING  
18 ENTITIES and all damages including, but not limited to, all claims in this  
19 matter and empowers them to do all things to effect a compromise in said  
20 matter, or to institute such legal action as may be advisable in their judgment,  
21 and agrees to pay them for their services, on the following conditions:
- 22 a) ...
  - 23 b) ...
  - 24 c) Client agrees that his attorneys will work to consummate a settlement of  
25 \$6,000,000 from the Viking entities and any settlement amount agreed to be  
26 paid by the Lange entity. Client also agrees that attorneys will work to reach  
27 an agreement amongst the parties to resolve all claims in the Lange and  
28 Viking litigation.

29 Id.

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

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

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

13 Id.

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

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



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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9  
10 *Implied Contract*

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

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

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

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

9  
10 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

---

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

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

4 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
5 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
6 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
7 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
8 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

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

15 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
16 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
17 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
18 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
19 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
20 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
21 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
22 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
23 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

25  
26 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

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

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

28 <sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.

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

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

5  
6 ***Costs Owed***

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

14  
15 ***Quantum Meruit***

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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



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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

23 CONCLUSION

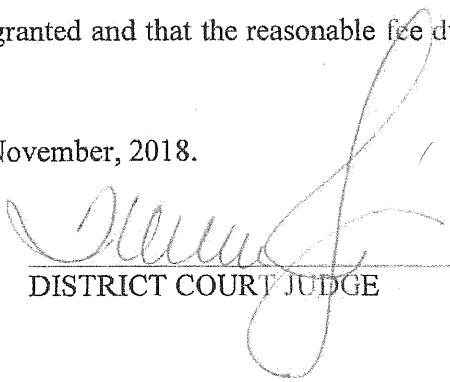
24 The Court finds that the Law Office of Daniel Simon properly filed and perfected the  
25 charging lien pursuant to NRS 18.015(3) and the Court must adjudicate the lien. The Court further  
26 finds that there was an implied agreement for a fee of \$550 per hour between Mr. Simon and the  
27 Edgeworths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

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

9  
10 **ORDER**

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


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

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18 DISTRICT COURT JUDGE  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on or about the date e-filed, this document was copied through  
3 e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the  
4 proper person as follows:  
5

6 Electronically served on all parties as noted in the Court's Master Service List  
7 and/or mailed to any party in proper person.  
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## **EXHIBIT 9**

WA02160

1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 EDGEWORTH FAMILY TRUST,

6 Plaintiff,

7 vs.

8 LANGE PLUMBING, LLC,

9 Defendant.

CASE NO. A-16-738444-C

DEPT. X

10 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

11 TUESDAY, FEBRUARY 20, 2018

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

17 APPEARANCES:

18 For the Plaintiff:

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

19 For the Defendant:

THEODORE PARKER, ESQ.

20 For Daniel Simon:

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

21 For the Viking Entities:

JANET C. PANCOAST, ESQ.

22 Also Present:

DANIEL SIMON, ESQ.

23  
24  
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 THE COURT: Okay.

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

4 THE COURT: Okay.

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

7 THE COURT: Okay.

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

15 THE COURT: Mr. Vannah?

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

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

19 MR. SIMON: Then if --

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

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

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



1 MR. PARKER: I do.

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

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

10 THE COURT: Right.

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

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

24 MR. PARKER: Exactly. And --

25 THE COURT: And that was my understanding from the last

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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

## **EXHIBIT 10**

1  
2                                    **DECLARATION OF WILL KEMP, ESO.**

3            I have been asked to clarify my earlier opinion as to the amount and period of time that quantum  
4    meruit should apply. I have reviewed the Supreme Court orders dated December 30, 2020. I further  
5    understand the relief sought by each party leading to the orders. Edgeworth challenged the amount of  
6    quantum meruit in the sum of \$200,000 after the date of discharge on November 29, 2017. Simon  
7    sought relief that the period of time that quantum meruit applies is for the period of time that  
8    outstanding fees are due and owing at the time of discharge.

9            It seems clear that the Supreme Court is asking the District Court to analyze the value of  
10   quantum meruit for the period of time that outstanding fees for services were due when Mr. Simon was  
11   discharged forward. The Supreme Court adopted the same basic analysis I used and made clear that the  
12   period of time that work was performed and paid by Edgeworth prior to discharge should not be  
13   considered in the quantum meruit analysis. (See Order in Docket No. 77678, P. 5). The Supreme Court  
14   affirmed the finding of the District Court that Mr. Simon was discharged on November 29, 2017. At the  
15   time Mr. Simon was discharged, the last bill paid by Edgeworth was for work performed through  
16   September 19, 2017. Therefore, the period of time that outstanding fees were due and owing was from  
17   September 19, 2017 thru the end of the case. Simon and his office was working on the case into  
18   February, 2018. In my opinion, the quantum meruit value of the services from September 19, 2017 thru  
19   the end of the case equals \$2,072,393.75. The last bill paid by Edgeworth covered the period of time  
20   thru September 19, 2017. Edgeworth paid the total sum of 367,606.25 for the work performed prior to  
21   September 19, 2017 and pursuant to the Supreme Court orders, these payments cover the period of time  
22   prior September 19, 2017. The work performed during this time is not factored into my present  
23   quantum meruit analysis. My opinion only considers the time after September 19, 2017.

24            In my previous Declaration I opined the total value of quantum meruit was the sum of \$2.44M.  
25   The basis for my opinion was analyzing all of the Brunzell factors. When analyzing the Brunzell  
26   factors, it is clear that the most significant and substantive work leading to the amazing outcome was  
27   performed during the period after September 19, 2017 thru the end of the case. The analysis is as  
28   follows:

1 At paragraph 19 of my previous declaration I discussed the 4th Brunzell factor: Result  
2 Achieved- no one involved in the case can dispute it is an amazing result. This case involved a single  
3 house under construction. Nobody was living there and repairs were completed very quickly. This case  
4 did not involve personal injury or death. It concerned property damage to a house nobody was living in  
5 and repairs made quickly. I would not have taken this case unless it was a friends and family situation  
6 and they would need to be very special friends. The Edgeworth's were lucky that Mr. Simon was  
7 willing to get involved. This was a very hard products case and the damages are between 500k to 750k  
8 and the result of \$6.1 million is phenomenal.

9 Edgeworth is sophisticated and understood that it would take a trial and an appeal to g, et  
10 "Edgeworth's expected result." Instead of taking years of litigation, Simon got an extraordinary result 3  
11 months after the 8/22/17 contingency email sent by Mr. Edgeworth, and Simon's firm secured \$6.1M for  
12 this complex product liability case where "hard damages" were only 500-750k. Getting millions of  
13 dollars in punitive damages in this case is remarkable and therefore, this factor favors a large fee. The  
14 bulk of this work was primarily done from September, 2017 thru December, 2017. For example, serious  
15 settlement negotiations did not start until after September, 2017: 1) the first mediation was on October  
16 10, 2017; the first significant offer was \$1.5 million on October 26, 2017, (3) there was a second  
17 mediation on November 10, 2017; and 4) the \$6 million was offered on November 15, 2017. This is also  
18 supported by the register of actions and the multiple hearings and filings. Mr. Simon was discharged  
19 November 29, 2017 and continued to negotiate very valuable terms favoring the Edgeworth's, including  
20 the preservation of the valuable Lange Plumbing claim and omitting a confidentiality and non-  
21 disparagement clauses. The serious threat of punitive damages did not occur until September 29, 2017,  
22 when the motion to strike Vikings Answer was filed by the Simon firm. This serious threat also led to  
23 the amazing outcome.

24 At paragraphs 20-23 of my testimony, I addressed the 2nd & 3rd Brunzell factors: Quality &  
25 Quantity of Work- The quality and quantity of the work was exceptional for a Products case against a  
26 worldwide manufacturer with highly experienced local and out of state counsel. Simon retained  
27 multiple experts, creatively advocated for unique damages, brought a fraud claim and filed a lot of  
28 motions other lawyers would not have filed. Simon filed a motion to strike Defendants answer seeking

1 case terminating sanctions and exclusion of key defense experts. Simon's aggressive representation was  
2 a substantial factor in achieving the exceptional results. The amount of work Simon's office performed  
3 was impressive given the size of his firm. Simon's office does not typically represent clients on an  
4 hourly basis and the fee customarily charged in Vegas for similar legal services is substantial when also  
5 considering the work actually performed. Simon's office lost opportunities to work on other cases to get  
6 this amazing result. There were a lot of emails, which I went through and substantial pleadings and  
7 multiple expert reports for a property damage case. The house stigma damage claim was extremely  
8 creative and Mr. Simon secured all evidence to support this claim. The mediator also recommended the  
9 6M settlement based on the expected attorney's fees of 2.4M. In an email to Simon in November, 2017  
10 Mr. Edgeworth suggested 5M as the appropriate value for the proposal by the mediator, yet Simon  
11 advocated for 6M and go \$6.1 Million (including Lange Plumbing). Negotiating a large claim in a  
12 complex case also takes great skill and experience that Mr. Simon exhibited to achieve the great result,  
13 as well as the very favorable terms for the benefit of the Edgeworth's.

14 I also analyzed the novelty and difficulty of the questions presented in the case; the adversarial  
15 nature of this case, the skill necessary to perform the legal service, the lost opportunities to work on  
16 other cases, the quality, quantity and the advocacy involved, as well as the exceptional result achieved  
17 given the total amount of the settlement compared to the "hard" damages involved. The reasonable value  
18 of the services performed in the Edgeworth matter by the Simon firm, in my opinion, would be in the  
19 sum of \$2,072,393.75 for the period of after September 19, 2017. This evaluation is reasonable under  
20 the Brunzell factors. I also considered the Lodestar factors, as well as the NRCP 1.5(a) factors for a  
21 reasonable fee. Absent a contract, Simon is entitled to a reasonable fee customarily charged in the  
22 community based on services performed. NRS 18.015. The extraordinary and impressive work occurred  
23 primarily during the period of September 19, 2017 thru the end of the case. Mr. Simon actually  
24 performed the work and achieved a great result.

25 ///

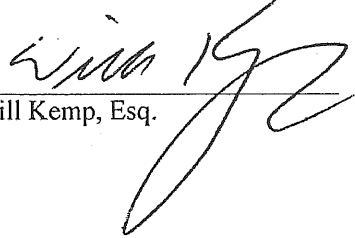
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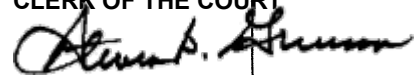
27 ///

1 The value of quantum meruit is easily supported in the amount of \$2,072,393.75 for the period  
2 of outstanding services due and owing at the time of discharge.

3 I make this declaration under the penalty of perjury.

4 Dated this 12<sup>th</sup> day of April, 2021.

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

Eighth Judicial District Court  
District of Nevada

EDGEWORTH FAMILY TRUST, and  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-738444-C

Dept. No.: 10

**NOTICE OF ENTRY OF ORDERS**

Date of Hearing: N/A

Time of Hearing: N/A

Case No.: A-18-767242-C

Dept. No.: 26

Date of Hearing: N/A

Time of Hearing: N/A



1  
2 PLEASE TAKE NOTICE, the following Orders were entered on the  
3 docket:

4 1. March 16, 2021 – Amended Decision and Order Granting in  
5 Part and Denying in Part, Simon’s Motion for Attorney’s Fees and Costs;  
6

7 2. March 16, 2021 – Second Amended Decision and Order on  
8 Motion to Adjudicate Lien;

9 3. April 19, 2021 – Third Amended Decision and Order on Motion  
10 to Adjudicate Lien; and,  
11

12 4. April 28, 2021 – Third Amended Decision and Order on Motion  
13 to Adjudicate Lien.

14 A true and correct copy of each file-stamped order is attached hereto.  
15

16 DATED this 16<sup>th</sup> day of May 2021.

17  
18 /s/ James R. Christensen

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

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**CERTIFICATE OF SERVICE**

I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF  
ORDERS was made by electronic service (via Odyssey) this 16<sup>th</sup> day of  
May 2021, to all parties currently shown on the Court's E-Service List.

*/s/ Dawn Christensen*

an employee of  
JAMES R. CHRISTENSEN, ESQ

# **EXHIBIT 1**

1 **ORD**

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

4  
5 **EDGEWORTH FAMILY TRUST; and**  
6 **AMERICAN GRATING, LLC,**

7 **Plaintiffs,**

8 **vs.**

9 **LANGE PLUMBING, LLC; THE VIKING**  
10 **CORPORATION, a Michigan Corporation;**  
11 **SUPPLY NETWORK, INC., dba VIKING**  
12 **SUPPLYNET, a Michigan Corporation; and**  
13 **DOES 1 through 5; and, ROE entities 6 through**  
14 **10;**

15 **Defendants.**

16 **EDGEWORTH FAMILY TRUST; and**  
17 **AMERICAN GRATING, LLC,**

18 **Plaintiffs,**

19 **vs.**

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

24 **Defendants.**

CASE NO.: A-18-767242-C

DEPT NO.: X

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

**AMENDED DECISION AND ORDER**  
**GRANTING IN PART AND DENYING IN**  
**PART, SIMON'S MOTION FOR**  
**ATTORNEY'S FEES AND COSTS**

25 **AMENDED DECISION AND ORDER ON ATTORNEY'S FEES**

26 This case came on for a hearing on January 15, 2019, in the Eighth Judicial District Court,  
27 Clark County, Nevada, the Honorable Tierra Jones presiding. Defendants and movant, Daniel  
28 Simon and Law Office of Daniel S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or  
"Simon" or "Mr. Simon") having appeared in person and by and through their attorneys of record,  
Peter S. Christiansen, Esq. and James Christensen, Esq. and Plaintiff Edgeworth Family Trust and  
American Grating, ("Plaintiff" or "Edgeworths") having appeared through Brian and Angela

1 Edgeworth, and by and through their attorneys of record, the law firm of Vannah and Vannah, Chtd.  
2 The Court having considered the evidence, arguments of counsel and being fully advised of the  
3 matters herein, the **COURT FINDS after review:**

4 The Motion for Attorney's Fees is GRANTED in part, DENIED in part.

5 1. The Court finds that the claim for conversion was not maintained on reasonable grounds, as  
6 the Court previously found that when the complaint was filed on January 4, 2018, Mr. Simon was  
7 not in possession of the settlement proceeds as the checks were not endorsed or deposited in the trust  
8 account. (*Amended Decision and Order on Motion to Dismiss NRCP 12(b)(5)*). As such, Mr.  
9 Simon could not have converted the Edgeworth's property. As such, the Motion for Attorney's Fees  
10 is GRANTED under 18.010(2)(b) as to the Conversion claim as it was not maintained upon  
11 reasonable grounds, since it was an impossibility for Mr. Simon to have converted the Edgeworth's  
12 property, at the time the lawsuit was filed.

13 2. Further, The Court finds that the purpose of the evidentiary hearing was primarily on the  
14 Motion to Adjudicate Lien. The Motion for Attorney's Fees is DENIED as it relates to other claims.  
15 In considering the amount of attorney's fees and costs, the Court finds that the services of Mr. James  
16 Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained after the filing of the lawsuit  
17 against Mr. Simon, on January 4, 2018. However, they were also the attorneys in the evidentiary  
18 hearing on the Motion to Adjudicate Lien, which this Court has found was primarily for the purpose  
19 of adjudicating the lien by Mr. Simon. The Court further finds that the costs of Mr. Will Kemp,  
20 Esq. were solely for the purpose of the Motion to Adjudicate Lien filed by Mr. Simon, but the costs  
21 of Mr. David Clark, Esq. were solely for the purposes of defending the lawsuit filed against Mr.  
22 Simon by the Edgeworths.

23 3. The court has considered all of the *Brunzell* factors pertinent to attorney's fees and attorney's  
24 fees are GRANTED. In determining the reasonable value of services provided for the defense of the  
25 conversion claim, the COURT FINDS that 64 hours was reasonably spent by Mr. Christensen in  
26 preparation and defense of the conversion claim, for a total amount of \$25,600.00. The COURT  
27 FURTHER FINDS that 30.5 hours was reasonably spent by Mr. Christiansen in preparation of the  
28

1 defense of the conversion claim, for a total of \$24,400.00. As such, the award of attorney's fees is  
2 **Dated this 16th day of March, 2021**  
3 GRANTED in the amount of \$50,000.00 and costs are GRANTED in the amount of \$5,000.00.

4 IT IS SO ORDERED this 16<sup>th</sup> day of March, 2021.

5   
6 DISTRICT COURT JUDGE

7 4DA 7C0 B8B6 9D67  
8 Tierra Jones  
9 District Court Judge  
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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Edgeworth Family Trust,  
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

16 Daniel Simon .	lawyers@simonlawlv.com
17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 Bridget Salazar	bsalazar@vannahlaw.com
23 John Greene	jgreene@vannahlaw.com
24 James Christensen	jim@jchristensenlaw.com
25 Daniel Simon	dan@danielsimonlaw.com

26  
27  
28

1 Michael Nunez mnunez@murchisonlaw.com

2 Gary Call gcall@rlattorneys.com

3 J. Graf Rgraf@blacklobello.law

4 Robert Vannah rvannah@vannahlaw.com

5 Christopher Page chrispage@vannahlaw.com

6 Jessie Church jchurch@vannahlaw.com

7  
8  
9 If indicated below, a copy of the above mentioned filings were also served by mail  
10 via United States Postal Service, postage prepaid, to the parties listed below at their last  
11 known addresses on 3/17/2021

12 Theodore Parker 2460 Professional CT STE 200  
13 Las Vegas, NV, 89128  
14  
15  
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## **EXHIBIT 2**

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

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

14 Defendants.

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

### 7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

23 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

### 16 17 CONCLUSION OF LAW

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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



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

16 (Def. Exhibit 27).

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

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

### 28 *Constructive Discharge*

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

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

- 1 • Refusal to pay an attorney creates constructive discharge. *See e.g., Christian v. All Persons*  
2 *Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 3 • Suing an attorney creates constructive discharge. *See Tao v. Probate Court for the Northeast*  
4 *Dist. #26*, 2015 Conn. Super. LEXIS 3146, \*13-14, (Dec. 14, 2015). *See also Maples v.*  
5 *Thomas*, 565 U.S. 266 (2012); *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*,  
6 2017 Nev. Unpubl. LEXIS 472.
- 7 • Taking actions that preventing effective representation creates constructive discharge.  
8 *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

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

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

*Id.*

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

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

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

18 Id.

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

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

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

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

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

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

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

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

### 10 *Implied Contract*

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

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

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

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

10  
11 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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



1 amount has already been paid by the Edgeworths on December 16, 2016.<sup>2</sup>

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

5 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
6 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
7 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
8 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
9 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

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

16 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
17 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
18 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
19 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
20 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
21 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
22 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
23 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
24

---

25 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.

26 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

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

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

1 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

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

#### 7 8 *Costs Owed*

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

#### 16 17 *Quantum Meruit*

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

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

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

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

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

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

21 1. Quality of the Advocate

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

1 work product and results are exceptional.

2 2 The Character of the Work to be Done

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

12 3 The Work Actually Performed

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

21 4 The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NRCP 1.5.

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

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

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

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

### 10 11 CONCLUSION

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

27 //

1 //  
2 //  
3 //  
4 //

**ORDER**

It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law Office of Daniel Simon is \$556,577.43, which includes outstanding costs.  
**Dated this 16th day of March, 2021**

IT IS SO ORDERED this 16<sup>th</sup> day of March, 2021.

  
DISTRICT COURT JUDGE

B7B 840 B8A7 FF62  
Tierra Jones  
District Court Judge



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Edgeworth Family Trust,  
7 Plaintiff(s)

CASE NO: A-16-738444-C

8 vs.

DEPT. NO. Department 10

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

16 Daniel Simon .	lawyers@simonlawlv.com
17 Rhonda Onorato .	ronorato@rlattorneys.com
18 Mariella Dumbrique	mdumbrique@blacklobello.law
19 Michael Nunez	mnunez@murchisonlaw.com
20 Tyler Ure	ngarcia@murchisonlaw.com
21 Nicole Garcia	ngarcia@murchisonlaw.com
22 Bridget Salazar	bsalazar@vannahlaw.com
23 John Greene	jgreene@vannahlaw.com
24 James Christensen	jim@jchristensenlaw.com
25 Daniel Simon	dan@danielsimonlaw.com
26	
27	
28	

Michael Nunez	mnunez@murchisonlaw.com
Gary Call	gcall@rlattorneys.com
J. Graf	Rgraf@blacklobello.law
Robert Vannah	rvannah@vannahlaw.com
Christopher Page	chrispage@vannahlaw.com
Jessie Church	jchurch@vannahlaw.com

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

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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## **EXHIBIT 3**

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

CASE NO.: A-18-767242-C

DEPT NO.: X

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

14 Defendants.

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

### 7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

10 We never really had a structured discussion about how this might be done.  
11 I am more than happy to keep paying hourly but if we are going for punitive  
12 we should probably explore a hybrid of hourly on the claim and then some  
13 other structure that incents both of us to win an go after the appeal that these  
scumbags will file etc.

14 Obviously that could not have been done earlier since who would have  
thought this case would meet the hurdle of punitive at the start.

15 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  
16 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.

17 I doubt we will get Kinsale to settle for enough to really finance this since I  
18 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?

19  
20 (Def. Exhibit 27).

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

26 8. On April 7, 2017 a second invoice was sent to the Edgeworths for attorney's fees and  
27 costs through April 4, 2017 for a total of \$46,620.69, and was billed at a "reduced" rate of \$550 per  
28

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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

23 (Def. Exhibit 43).

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

2  
3  
4                                   **CONCLUSION OF LAW**

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

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

10          NRS 18.015(1)(a) states:

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

14          Nev. Rev. Stat. 18.015.

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

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

1 *Fee Agreement*

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

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

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

(Def. Exhibit 27).

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

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

### 10 11 *Constructive Discharge*

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

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

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

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

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

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

10 a) ...

11 b) ...

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

17 Id.

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

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

1 Id.

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

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

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

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

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

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

20 NRS 18.015 states:

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

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

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

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

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

5           4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

### *Implied Contract*

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



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

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

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

24  
25 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

17 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
18 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
19 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
20 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
21 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

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

---

26  
27 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.

28 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

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

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
5 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
10 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

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

#### 18 19 *Costs Owed*

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

26 <sup>4</sup> There are no billings for October 8<sup>th</sup>, October 28-29, and November 5<sup>th</sup>.

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

28 <sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.

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

### 3 4 *Quantum Meruit*

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

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

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

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

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

7 1. Quality of the Advocate

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

15 2. The Character of the Work to be Done

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

25 3. The Work Actually Performed

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

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

7 4. The Result Obtained

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

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

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

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

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

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

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

23  
24 NRCP 1.5.

25 The Court finds that under the Brunzell factors, Mr. Simon was an exceptional advocate for  
26 the Edgeworths, the character of the work was complex, the work actually performed was extremely  
27  
28



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

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

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

23 //

24 //

25 //

26 //

27 //

1 CONCLUSION

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

17  
18 ORDER

19 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien  
20 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law  
21 Office of Daniel Simon is \$556,577.43, which includes outstanding costs. **Dated this 19th day of April, 2021**

22 IT IS SO ORDERED.

23  
24  
25   
DISTRICT COURT JUDGE

26 **DEB 12B 0D66 116F**  
27 **Tierra Jones**  
28 **District Court Judge**

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Edgeworth Family Trust,  
7 Plaintiff(s)

CASE NO: A-18-767242-C

8 vs.

DEPT. NO. Department 10

9 Daniel Simon, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 4/19/2021

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## **EXHIBIT 4**

*Thomas S. Simon*  
CLERK OF THE COURT

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

14 Defendants.

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

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

**Consolidated with**

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

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

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

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

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

### 7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

25 (Def. Exhibit 27).

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

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



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

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

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

15 11. The amount of attorney's fees in the four (4) invoices was \$367,606.25, and  
16 \$118,846.84 in costs; for a total of \$486,453.09.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

23 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

21 29. On February 15, 2019, the Edgeworths filed a second Notice of Appeal and Simon  
22 filed a cross appeal, and Simon filed a writ petition on October 17, 2019.

23 30. On December 30, 2020, the Supreme Court issued an order affirming this Court's  
24 findings in most respects.

25 31. On January 15, 2021, the Edgeworths filed a Petition for Rehearing.

26 32. On March 16, 2021, this Court issued a Second Amended Decision and Order on  
27 Motion to Adjudicate Lien.

1 33. On March 18, 2021, the Nevada Supreme Court denied the Motion for Rehearing.  
2  
3

#### 4 CONCLUSION OF LAW

#### 5 The Law Office Appropriately Asserted A Charging Lien Which Must Be Adjudicated By The 6 Court

7 An attorney may obtain payment for work on a case by use of an attorney lien. Here, the  
8 Law Office of Daniel Simon may use a charging lien to obtain payment for work on case A-16-  
9 738444-C under NRS 18.015.

10 NRS 18.015(1)(a) states:

11 1. An attorney at law shall have a lien:

12 (a) Upon any claim, demand or cause of action, including any claim for unliquidated  
13 damages, which has been placed in the attorney's hands by a client for suit or  
collection, or upon which a suit or other action has been instituted.

14 Nev. Rev. Stat. 18.015.

15 The Court finds that the lien filed by the Law Office of Daniel Simon, in case A-16-738444-C,  
16 complies with NRS 18.015(1)(a). The Law Office perfected the charging lien pursuant to NRS  
17 18.015(3), by serving the Edgeworths as set forth in the statute. The Law Office charging lien was  
18 perfected before settlement funds generated from A-16-738444-C of \$6,100,000.00 were deposited,  
19 thus the charging lien attached to the settlement funds. Nev. Rev. Stat. 18.015(4)(a); Golightly &  
20 Vannah, PLLC v. TJ Allen LLC, 373 P.3d 103, at 105 (Nev. 2016). The Law Office's charging lien  
21 is enforceable in form.

22 The Court has personal jurisdiction over the Law Office and the Plaintiffs in A-16-738444-C.  
23 Argentina Consolidated Mining Co., v. Jolley, Urga, Wirth, Woodbury & Standish, 216 P.3d 779 at  
24 782-83 (Nev. 2009). The Court has subject matter jurisdiction over adjudication of the Law Office's  
25 charging lien. Argentina, 216 P.3d at 783. The Law Office filed a motion requesting adjudication  
26 under NRS 18.015, thus the Court must adjudicate the lien.

1 *Fee Agreement*

2 It is undisputed that no express written fee agreement was formed. The Court finds that there  
3 was no express oral fee agreement formed between the parties. An express oral agreement is  
4 formed when all important terms are agreed upon. *See, Loma Linda University v. Eckenweiler*, 469  
5 P.2d 54 (Nev. 1970) (*no oral contract was formed, despite negotiation, when important terms were*  
6 *not agreed upon and when the parties contemplated a written agreement*). The Court finds that the  
7 payment terms are essential to the formation of an express oral contract to provide legal services on  
8 an hourly basis.

9 Here, the testimony from the evidentiary hearing does not indicate, with any degree of  
10 certainty, that there was an express oral fee agreement formed on or about June of 2016. Despite  
11 Brian Edgeworth's affidavits and testimony; the emails between himself and Danny Simon,  
12 regarding punitive damages and a possible contingency fee, indicate that no express oral fee  
13 agreement was formed at the meeting on June 10, 2016. Specifically in Brian Edgeworth's August  
14 22, 2017 email, titled "Contingency," he writes:

15  
16 "We never really had a structured discussion about how this might be done. I  
17 am more than happy to keep paying hourly but if we are going for punitive we  
18 should probably explore a hybrid of hourly on the claim and then some other  
19 structure that incents both of us to win an go after the appeal that these  
20 scumbags will file etc. Obviously that could not have been done earlier since  
21 who would have thought this case would meet the hurdle of punitive at the  
22 start. I could also swing hourly for the whole case (unless I am off what this  
23 is going to cost). I would likely borrow another \$450K from Margaret in 250  
24 and 200 increments and then either I could use one of the house sales for cash  
25 or if things get really bad, I still have a couple million in bitcoin I could sell. I  
26 doubt we will get Kinsale to settle for enough to really finance this since I  
27 would have to pay the first \$750,000 or so back to Colin and Margaret and  
28 why would Kinsale settle for \$1MM when their exposure is only \$1MM?"

(Def. Exhibit 27).

26 It is undisputed that when the flood issue arose, all parties were under the impression that Simon  
27 would be helping out the Edgeworths, as a favor.

1 The Court finds that an implied fee agreement was formed between the parties on December  
2 2, 2016, when Simon sent the first invoice to the Edgeworths, billing his services at \$550 per hour,  
3 and the Edgeworths paid the invoice. On July 28, 2017 an addition to the implied contract was  
4 created with a fee of \$275 per hour for Simon's associates. Simon testified that he never told the  
5 Edgeworths not to pay the bills, though he testified that from the outset he only wanted to "trigger  
6 coverage". When Simon repeatedly billed the Edgeworths at \$550 per hour for his services, and  
7 \$275 an hour for the services of his associates; and the Edgeworths paid those invoices, an implied  
8 fee agreement was formed between the parties. The implied fee agreement was for \$550 per hour  
9 for the services of Daniel Simon Esq. and \$275 per hour for the services of his associates.

### 10 11 *Constructive Discharge*

12 Constructive discharge of an attorney may occur under several circumstances, such as:

- 13 • Refusal to communicate with an attorney creates constructive discharge. Rosenberg v.  
14 Calderon Automation, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 15 • Refusal to pay an attorney creates constructive discharge. *See e.g.*, Christian v. All Persons  
16 Claiming Any Right, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 17 • Suing an attorney creates constructive discharge. *See* Tao v. Probate Court for the Northeast  
18 Dist. #26, 2015 Conn. Super. LEXIS 3146, \*13-14, (Dec. 14, 2015). *See also* Maples v.  
19 Thomas, 565 U.S. 266 (2012); Harris v. State, 2017 Nev. LEXIS 111; and Guerrero v. State,  
20 2017 Nev. Unpubl. LEXIS 472.
- 21 • Taking actions that preventing effective representation creates constructive discharge.  
22 McNair v. Commonwealth, 37 Va. App. 687, 697-98 (Va. 2002).

23 Here, the Court finds that the Edgeworths constructively discharged Simon as their lawyer on  
24 November 29, 2017. The Edgeworths assert that because Simon has not been expressly terminated,  
25 has not withdrawn, and is still technically their attorney of record; there cannot be a termination.  
26 The Court disagrees.

27 On November 29, 2017, the Edgeworths met with the Law Firm of Vannah and Vannah and  
28 signed a retainer agreement. The retainer agreement was for representation on the Viking settlement  
agreement and the Lange claims. (Def. Exhibit 90). This is the exact litigation that Simon was

1 representing the Edgeworths on. This fee agreement also allowed Vannah and Vannah to do all  
2 things without a compromise. Id. The retainer agreement specifically states:

3  
4 Client retains Attorneys to represent him as his Attorneys regarding  
5 Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING  
6 ENTITIES and all damages including, but not limited to, all claims in this  
7 matter and empowers them to do all things to effect a compromise in said  
8 matter, or to institute such legal action as may be advisable in their judgment,  
9 and agrees to pay them for their services, on the following conditions:

- 10 a) ...  
11 b) ...  
12 c) Client agrees that his attorneys will work to consummate a settlement of  
13 \$6,000,000 from the Viking entities and any settlement amount agreed to be  
14 paid by the Lange entity. Client also agrees that attorneys will work to reach  
15 an agreement amongst the parties to resolve all claims in the Lange and  
16 Viking litigation.

17 Id.

18 This agreement was in place at the time of the settlement of the Viking and Lange claims. Mr.  
19 Simon had already begun negotiating the terms of the settlement agreement with Viking during the  
20 week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms were put  
21 into a final release signed by the Edgeworths and Mr. Vannah's office on December 1, 2017. (Def.  
22 Exhibit 5). Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly  
23 identified as the firm that solely advised the clients about the settlement. The actual language in the  
24 settlement agreement, for the Viking claims, states:

25 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.  
26 and John Greene, Esq., of the law firm Vannah & Vannah has explained the  
27 effect of this AGREEMENT and their release of any and all claims, known or  
28 unknown and, based upon that explanation and their independent judgment by  
the reading of this Agreement, PLAINTIFFS understand and acknowledge the  
legal significance and the consequences of the claims being released by this  
Agreement. PLAINTIFFS further represent that they understand and  
acknowledge the legal significance and consequences of a release of unknown  
claims against the SETTLING PARTIES set forth in, or arising from, the  
INCIDENT and hereby assume full responsibility for any injuries, damages,  
losses or liabilities that hereafter may occur with respect to the matters  
released by this Agreement.

1 Id.

2 Also, Simon was not present for the signing of these settlement documents and never explained any  
3 of the terms to the Edgeworths. He sent the settlement documents to the Law Office of Vannah and  
4 Vannah and received them back with the signatures of the Edgeworths.

5 Further, the Edgeworths did not personally speak with Simon after November 25, 2017.  
6 Though there were email communications between the Edgeworths and Simon, they did not verbally  
7 speak to him and were not seeking legal advice from him. In an email dated December 5, 2017,  
8 Simon is requesting Brian Edgeworth return a call to him about the case, and Brian Edgeworth  
9 responds to the email saying, "please give John Greene at Vannah and Vannah a call if you need  
10 anything done on the case. I am sure they can handle it." (Def. Exhibit 80). At this time, the claim  
11 against Lange Plumbing had not been settled. The evidence indicates that Simon was actively  
12 working on this claim, but he had no communication with the Edgeworths and was not advising  
13 them on the claim against Lange Plumbing. Specifically, Brian Edgeworth testified that Robert  
14 Vannah Esq. told them what Simon said about the Lange claims and it was established that the Law  
15 Firm of Vannah and Vannah provided advice to the Edgeworths regarding the Lange claim. Simon  
16 and the Law Firm of Vannah and Vannah gave different advice on the Lange claim, and the  
17 Edgeworths followed the advice of the Law Firm of Vannah and Vannah to settle the Lange claim.  
18 The Law Firm of Vannah and Vannah drafted the consent to settle for the claims against Lange  
19 Plumbing (Def. Exhibit 47). This consent to settle was inconsistent with the advice of Simon. Mr.  
20 Simon never signed off on any of the releases for the Lange settlement.

21 Further demonstrating a constructive discharge of Simon is the email from Robert Vannah  
22 Esq. to James Christensen Esq. dated December 26, 2017, which states: "They have lost all faith and  
23 trust in Mr. Simon. Therefore, they will not sign the checks to be deposited into his trust account.  
24 Quite frankly, they are fearful that he will steal the money." (Def. Exhibit 48). Then on January 4,  
25 2018, the Edgeworth's filed a lawsuit against Simon in Edgeworth Family Trust; American Grating,  
26 LLC vs. Daniel S. Simon; the Law Office of Daniel S. Simon, a Professional Corporation d/b/a  
27 Simon Law, case number A-18-767242-C. Then, on January 9, 2018, Robert Vannah Esq. sent an  
28



1 email to James Christensen Esq. stating, "I guess he could move to withdraw. However, that  
2 doesn't seem in his best interests." (Def. Exhibit 53).

3 The Court recognizes that Simon still has not withdrawn as counsel of record on A-16-  
4 738444-C, the Law Firm of Vannah and Vannah has never substituted in as counsel of record, the  
5 Edgeworths have never explicitly told Simon that he was fired, Simon sent the November 27, 2018  
6 letter indicating that the Edgeworth's could consult with other attorneys on the fee agreement (that  
7 was attached to the letter), and that Simon continued to work on the case after the November 29,  
8 2017 date. The court further recognizes that it is always a client's decision of whether or not to  
9 accept a settlement offer. However the issue is constructive discharge and nothing about the fact  
10 that Mr. Simon has never officially withdrawn from the case indicates that he was not constructively  
11 discharged. His November 27, 2017 letter invited the Edgeworth's to consult with other attorneys  
12 on the fee agreement, not the claims against Viking or Lange. His clients were not communicating  
13 with him, making it impossible to advise them on pending legal issues, such as the settlements with  
14 Lange and Viking. It is clear that there was a breakdown in attorney-client relationship preventing  
15  
16 Simon from effectively representing the clients. The Court finds that Danny Simon was  
17 constructively discharged by the Edgeworths on November 29, 2017.

18  
19 **Adjudication of the Lien and Determination of the Law Office Fee**

20 NRS 18.015 states:

21 1. An attorney at law shall have a lien:

22 (a) Upon any claim, demand or cause of action, including any claim for  
23 unliquidated damages, which has been placed in the attorney's hands by a  
24 client for suit or collection, or upon which a suit or other action has been  
25 instituted.

26 (b) In any civil action, upon any file or other property properly left in the  
27 possession of the attorney by a client.

28 2. A lien pursuant to subsection 1 is for the amount of any fee which has  
been agreed upon by the attorney and client. In the absence of an agreement,  
the lien is for a reasonable fee for the services which the attorney has rendered  
for the client.

1           3. An attorney perfects a lien described in subsection 1 by serving notice  
2 in writing, in person or by certified mail, return receipt requested, upon his or  
3 her client and, if applicable, upon the party against whom the client has a  
4 cause of action, claiming the lien and stating the amount of the lien.

5           4. A lien pursuant to:

6           (a) Paragraph (a) of subsection 1 attaches to any verdict, judgment or  
7 decree entered and to any money or property which is recovered on account of  
8 the suit or other action; and

9           (b) Paragraph (b) of subsection 1 attaches to any file or other property  
10 properly left in the possession of the attorney by his or her client, including,  
11 without limitation, copies of the attorney's file if the original documents  
12 received from the client have been returned to the client, and authorizes the  
13 attorney to retain any such file or property until such time as an adjudication  
14 is made pursuant to subsection 6, from the time of service of the notices  
15 required by this section.

16           5. A lien pursuant to paragraph (b) of subsection 1 must not be  
17 construed as inconsistent with the attorney's professional responsibilities to  
18 the client.

19           6. On motion filed by an attorney having a lien under this section, the  
20 attorney's client or any party who has been served with notice of the lien, the  
21 court shall, after 5 days' notice to all interested parties, adjudicate the rights of  
22 the attorney, client or other parties and enforce the lien.

23           7. Collection of attorney's fees by a lien under this section may be  
24 utilized with, after or independently of any other method of collection.

25 Nev. Rev. Stat. 18.015.

26 NRS 18.015(2) matches Nevada contract law. If there is an express contract, then the contract terms  
27 are applied. Here, there was no express contract for the fee amount, however there was an implied  
28 contract when Simon began to bill the Edgeworths for fees in the amount of \$550 per hour for his  
services, and \$275 per hour for the services of his associates. This contract was in effect until  
November 29, 2017, when he was constructively discharged from representing the Edgeworths.  
After he was constructively discharged, under NRS 18.015(2) and Nevada contract law, Simon is  
due a reasonable fee- that is, quantum meruit.

### *Implied Contract*

On December 2, 2016, an implied contract for fees was created. The implied fee was \$550  
an hour for the services of Mr. Simon. On July 28, 2017 an addition to the implied contract was

1 created with a fee of \$275 per hour for the services of Simon's associates. This implied contract was  
2 created when invoices were sent to the Edgeworths, and they paid the invoices.

3 The invoices that were sent to the Edgeworths indicate that they were for costs and attorney's  
4 fees, and these invoices were paid by the Edgeworths. Though the invoice says that the fees were  
5 reduced, there is no evidence that establishes that there was any discussion with the Edgeworths as  
6 to how much of a reduction was being taken, and that the invoices did not need to be paid. There is  
7 no indication that the Edgeworths knew about the amount of the reduction and acknowledged that  
8 the full amount would be due at a later date. Simon testified that Brian Edgeworth chose to pay the  
9 bills to give credibility to his actual damages, above his property damage loss. However, as the  
10 lawyer/counselor, Simon did not prevent Brian Edgeworth from paying the bill or in any way refund  
11 the money, or memorialize this or any understanding in writing.

12 Simon produced evidence of the claims for damages for his fees and costs pursuant to NRCP  
13 16.1 disclosures and computation of damages; and these amounts include the four invoices that were  
14 paid in full and there was never any indication given that anything less than all the fees had been  
15 produced. During the deposition of Brian Edgeworth it was suggested, by Simon, that all of the fees  
16 had been disclosed. Further, Simon argues that the delay in the billing coincides with the timing of  
17 the NRCP 16.1 disclosures, however the billing does not distinguish or in any way indicate that the  
18 sole purpose was for the Lange Plumbing LLC claim. Since there is no contract, the Court must  
19 look to the actions of the parties to demonstrate the parties' understanding. Here, the actions of the  
20 parties are that Simon sent invoices to the Edgeworths, they paid the invoices, and Simon Law  
21 Office retained the payments, indicating an implied contract was formed between the parties. The  
22 Court find that the Law Office of Daniel Simon should be paid under the implied contract until the  
23 date they were constructively discharged, November 29, 2017.

#### 24 25 *Amount of Fees Owed Under Implied Contract*

26 The Edgeworths were billed, and paid for services through September 19, 2017. There is  
27 some testimony that an invoice was requested for services after that date, but there is no evidence  
28

1 that any invoice was paid by the Edgeworths. Since the Court has found that an implied contract for  
2 fees was formed, the Court must now determine what amount of fees and costs are owed from  
3 September 19, 2017 to the constructive discharge date of November 29, 2017. In doing so, the  
4 Court must consider the testimony from the witnesses at the evidentiary hearing, the submitted  
5 billings, the attached lien, and all other evidence provided regarding the services provided during  
6 this time.

7 At the evidentiary hearing, Ashley Ferrel Esq. testified that some of the items in the billing  
8 that was prepared with the lien "super bill," are not necessarily accurate as the Law Office went back  
9 and attempted to create a bill for work that had been done over a year before. She testified that they  
10 added in .3 hours for each Wiznet filing that was reviewed and emailed and .15 hours for every  
11 email that was read and responded to. She testified that the dates were not exact, they just used the  
12 dates for which the documents were filed, and not necessarily the dates in which the work was  
13 performed. Further, there are billed items included in the "super bill" that was not previously billed  
14 to the Edgeworths, though the items are alleged to have occurred prior to or during the invoice  
15 billing period previously submitted to the Edgeworths. The testimony at the evidentiary hearing  
16 indicated that there were no phone calls included in the billings that were submitted to the  
17 Edgeworths.

18 This attempt to recreate billing and supplement/increase previously billed work makes it  
19 unclear to the Court as to the accuracy of this "recreated" billing, since so much time had elapsed  
20 between the actual work and the billing. The court reviewed the billings of the "super bill" in  
21 comparison to the previous bills and determined that it was necessary to discount the items that had  
22 not been previously billed for; such as text messages, reviews with the court reporter, and reviewing,  
23 downloading, and saving documents because the Court is uncertain of the accuracy of the "super  
24 bill."

25 Simon argues that he has no billing software in his office and that he has never billed a client  
26 on an hourly basis, but his actions in this case are contrary. Also, Simon argues that the Edgeworths,  
27 in this case, were billed hourly because the Lange contract had a provision for attorney's fees;  
28

1 however, as the Court previously found, when the Edgeworths paid the invoices it was not made  
2 clear to them that the billings were only for the Lange contract and that they did not need to be paid.  
3 Also, there was no indication on the invoices that the work was only for the Lange claims, and not  
4 the Viking claims. Ms. Ferrel testified that the billings were only for substantial items, without  
5 emails or calls, understanding that those items may be billed separately; but again the evidence does  
6 not demonstrate that this information was relayed to the Edgeworths as the bills were being paid.  
7 This argument does not persuade the court of the accuracy of the "super bill".

8 The amount of attorney's fees and costs for the period beginning in June of 2016 to  
9 December 2, 2016 is \$42,564.95. This amount is based upon the invoice from December 2, 2016  
10 which appears to indicate that it began with the initial meeting with the client, leading the court to  
11 determine that this is the beginning of the relationship. This invoice also states it is for attorney's  
12 fees and costs through November 11, 2016, but the last hourly charge is December 2, 2016. This  
13 amount has already been paid by the Edgeworths on December 16, 2016.<sup>2</sup>

14 The amount of the attorney's fees and costs for the period beginning on December 5, 2016 to  
15 April 4, 2017 is \$46,620.69. This amount is based upon the invoice from April 7, 2017. This  
16 amount has already been paid by the Edgeworths on May 3, 2017.

17 The amount of attorney's fees for the period of April 5, 2017 to July 28, 2017, for the  
18 services of Daniel Simon Esq. is \$72,077.50. The amount of attorney's fees for this period for  
19 Ashley Ferrel Esq. is \$38,060.00. The amount of costs outstanding for this period is \$31,943.70.  
20 This amount totals \$142,081.20 and is based upon the invoice from July 28, 2017. This amount has  
21 been paid by the Edgeworths on August 16, 2017.<sup>3</sup>

22 The amount of attorney's fees for the period of July 31, 2017 to September 19, 2017, for the  
23 services of Daniel Simon Esq. is \$119,762.50. The amount of attorney's fees for this period for  
24 Ashley Ferrel Esq. is \$60,981.25. The amount of attorney's fees for this period for Benjamin Miller  
25

26  
27 <sup>2</sup>There are no billing amounts from December 2 to December 4, 2016.

28 <sup>3</sup> There are no billings from July 28 to July 30, 2017.

1 Esq. is \$2,887.50. The amount of costs outstanding for this period is \$71,555.00. This amount  
2 totals \$255,186.25 and is based upon the invoice from September 19, 2017. This amount has been  
3 paid by the Edgeworths on September 25, 2017.

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
5 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
10 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

13 The Court notes that though there was never a fee agreement made with Ashley Ferrel Esq.  
14 or Benjamin Miller Esq., however, their fees were included on the last two invoices that were paid  
15 by the Edgeworths, so the implied fee agreement applies to their work as well.

16 The Court finds that the total amount owed to the Law Office of Daniel Simon for the period  
17 of September 19, 2018 to November 29, 2017 is \$284,982.50.

#### 18 19 *Costs Owed*

20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding  
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,  
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-  
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought  
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later  
25

26 <sup>4</sup> There are no billings for October 8<sup>th</sup>, October 28-29, and November 5<sup>th</sup>.

27 <sup>5</sup> There is no billing for the October 7-8, October 22, October 28-29, November 4, November 11-12, November 18-19,  
November 21, and November 23-26.

28 <sup>6</sup> There is no billing from September 19, 2017 to November 5, 2017.

1 changed to \$68,844.93. In March of 2018, the Edgeworths paid the outstanding advanced costs, so  
2 the Court finds that there no outstanding costs remaining owed to the Law Office of Daniel Simon.

### 3 4 *Quantum Meruit*

5 When a lawyer is discharged by the client, the lawyer is no longer compensated under the  
6 discharged/breached/repudiated contract, but is paid based on quantum meruit. *See e.g. Golightly v.*  
7 *Gassner*, 281 P.3d 1176 (Nev. 2009) (*unreported*) (*discharged contingency attorney paid by*  
8 *quantum meruit rather than by contingency fee pursuant to agreement with client*); *citing, Gordon v.*  
9 *Stewart*, 324 P.3d 234 (1958) (*attorney paid in quantum meruit after client breach of agreement*);  
10 and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941) (*fees awarded in quantum meruit when there was no*  
11 *contingency agreement*). Here, Simon was constructively discharged by the Edgeworths on  
12 November 29, 2017. The constructive discharge terminated the implied contract for fees. William  
13 Kemp Esq. testified as an expert witness and stated that if there is no contract, then the proper award  
14 is quantum meruit. The Court finds that the Law Office of Daniel Simon is owed attorney's fees  
15 under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion  
16 of the Law Office's work on this case.

17 In determining the amount of fees to be awarded under quantum meruit, the Court has wide  
18 discretion on the method of calculation of attorney fee, to be "tempered only by reason and  
19 fairness". *Albios v. Horizon Communities, Inc.*, 132 P.3d 1022 (Nev. 2006). The law only requires  
20 that the court calculate a reasonable fee. *Shuette v. Beazer Homes Holding Corp.*, 124 P.3d 530  
21 (Nev. 2005). Whatever method of calculation is used by the Court, the amount of the attorney fee  
22 must be reasonable under the *Brunzell* factors. *Id.* The Court should enter written findings of the  
23 reasonableness of the fee under the *Brunzell* factors. *Argentina Consolidated Mining Co., v. Jolley,*  
24 *Urga, Wirth, Woodbury Standish*, 216 P.3d 779, at fn2 (Nev. 2009). *Brunzell* provides that  
25 "[w]hile hourly time schedules are helpful in establishing the value of counsel services, other factors  
26 may be equally significant. *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969).

27 The *Brunzell* factors are: (1) the qualities of the advocate; (2) the character of the work to be  
28

1 done; (3) the work actually performed; and (4) the result obtained. Id. However, in this case the  
2 Court notes that the majority of the work in this case was complete before the date of the  
3 constructive discharge, and the Court is applying the Brunzell factors for the period commencing  
4 after the constructive discharge.

5 In considering the Brunzell factors, the Court looks at all of the evidence presented in the  
6 case, the testimony at the evidentiary hearing, and the litigation involved in the case.

7 1 Quality of the Advocate

8 Brunzell expands on the “qualities of the advocate” factor and mentions such items as  
9 training, skill and education of the advocate. Mr. Simon has been an active Nevada trial attorney for  
10 over two decades. He has several 7-figure trial verdicts and settlements to his credit. Craig  
11 Drummond Esq. testified that he considers Mr. Simon a top 1% trial lawyer and he associates Mr.  
12 Simon in on cases that are complex and of significant value. Michael Nunez Esq. testified that Mr.  
13 Simon’s work on this case was extremely impressive. William Kemp Esq. testified that Mr. Simon’s  
14 work product and results are exceptional.

15 2 The Character of the Work to be Done

16 The character of the work done in this case is complex. There were multiple parties,  
17 multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the  
18 gamut from product liability to negligence. The many issues involved manufacturing, engineering,  
19 fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp  
20 testified that the quality and quantity of the work was exceptional for a products liability case against  
21 a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the  
22 Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the  
23 case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a  
24 substantial factor in achieving the exceptional results.

25 3 The Work Actually Performed

26 Mr. Simon was aggressive in litigating this case. In addition to filing several motions,  
27 numerous court appearances, and deposition; his office uncovered several other activations, that  
28