

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DANIEL S. SIMON;
DOES 1 through 10; and ROE entities 1
– 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,

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Real Parties in Interest.

Electronically Filed
May 12 2022 05:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 84367

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

**APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWER TO
SIMON'S WRIT PETITION**

**VOLUME I of III
EAB0001 – EAB0070**

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

SUPREME COURT CASE NO. 84367

APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWERING BRIEF

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-08-29	Excerpt of Transcript of Evidentiary Hearing – Day 3	I	EAB0001- EAB0007
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	EAB0008- EAB0030
2019-10-17	Petition for Writ of Prohibition or Mandamus in Case No. 79821	I	EAB0031- EAB0070
2020-12-30	Order Denying Petition in Case No. 79821	II	EAB0071- EAB0072
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	EAB0073- EAB0089
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0090- EAB0114
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0115- EAB0220
2021-05-20	Reply ISO Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	III	EAB0221- EAB0261

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CHRONOLOGICAL INDEX

2021-05-24	Notice of Entry of 2 nd Amended Decision and Order Granting in Part, and Denying in Part, Simon's Motion for Attorney Fees and Costs	III	EAB0262- EAB0270
2021-05-27	Recorder's Transcript of Pending Motions	III	EAB0271- EAB0299
2021-06-18	Notice of Entry of Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand	III	EAB0300- EAB0307

***THE LAW OFFICE OF DANIEL S. SIMON vs. EDGEWORTH FAMILY
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SUPREME COURT CASE NO. 84367

REAL PARTIES IN INTEREST RESPONSIVE APPENDIX

ALPHABETICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	EAB0008- EAB0030
2018-08-29	Excerpt of Transcript of Evidentiary Hearing – Day 3	I	EAB0001- EAB0007
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	EAB0073- EAB0089
2021-05-24	Notice of Entry of 2 nd Amended Decision and Order Granting in Part, and Denying in Part, Simon's Motion for Attorney Fees and Costs	III	EAB0262- EAB0270
2021-06-18	Notice of Entry of Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand	III	EAB0300- EAB0307
2020-12-30	Order Denying Petition in Case No. 79821	II	EAB0071- EAB0072
2019-10-17	Petition for Writ of Prohibition or Mandamus in Case No. 79821	I	EAB0031- EAB0070
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0115- EAB0220

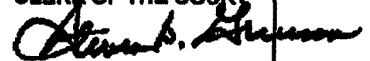
***THE LAW OFFICE OF DANIEL S. SIMON vs. EDGEWORTH FAMILY
TRUST, ET AL.***

SUPREME COURT CASE NO. 84367

REAL PARTIES IN INTEREST RESPONSIVE APPENDIX

ALPHABETICAL INDEX

2021-05-27	Recorder's Transcript of Pending Motions	III	EAB0271- EAB0299
2021-05-20	Reply ISO Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	III	EAB0221- EAB0261
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0090- EAB0114



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 WEDNESDAY, AUGUST 29, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

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 A I did not.

2 Q Did you ever threaten that bad things would happen to the
3 case if the Edgeworths didn't sign the fee agreement that day?

4 A No.

5 Q Did you ever threaten with withdraw?

6 A No.

7 Q What is your memory of what was done and said at that
8 meeting of November 17, 2017?

9 A I specifically remember that day. I had a lot going on. I had
10 a lot on the calendar. I had motions on calendar. There was so much
11 going on in the case that the mediator proposal came in on a
12 Wednesday. This was, I believe the next day, that -- well, the mediator
13 proposal came in earlier. We kind of ignored it for a few days, and then I
14 got a call from Mr. Hill saying, hey, you going to accept that?

15 And I kind of knew what that meant, so I called up Brian and said is
16 this something you want to do and, you know, he says in theory, the
17 number, yeah.

18 And so, what ends up happening is I have all this stuff on calendar.
19 I call him in the morning. I talk to him. I say, hey, can you come on
20 down? And he says, well, is it for court or something? That -- he knew
21 we had court. And I said, no, you don't need to do the court thing unless
22 you want to, but, you know, come on down, we have a lot to talk about,
23 you know, the Viking sale, right, and the case status. And so, he said, all
24 right, I'll meet you at your office before court.

25 Q Let's talk a little bit about that mediator proposal. As I

1 understand it, it had some additional clauses or contingencies in it; is
2 that correct?

3 A Correct. It wasn't just \$6 million, hey, the case is over. They
4 had stipulations attached to the \$6 million. They wanted a confidentiality
5 clause. They wanted a motion for good faith settlement, and there was a
6 lot to talk about in regard to the settlement itself because it wasn't a
7 done deal just because they said \$6 million. And Brian didn't want a
8 confidentiality. I mean, that was a deal breaker for him the whole way
9 through this case. And every mediation, I'm not signing a
10 confidentiality. So, when that came in with that requirement, it's kind of
11 a problem.

12 Q It's something you had to talk to him about?

13 A Yeah, he wanted to understand how it would affect him, why
14 he would want to do it, why he wouldn't want to do it, and that was just
15 one of the many things that we talked about on November 17th in my
16 office.

17 Q I mean, the \$6 million offer, that's not peanuts.
18 Confidentiality seems like a small thing.

19 A I don't know if it's a small thing or not. I know I don't like
20 confidentiality. I know that as a routine basis, I don't sign off on
21 releases with confidentiality, because with confidentiality comes a lot of
22 invitations for lawsuits. It can create exposure to clients beyond that
23 particular deal.

24 Q Did the settlement agreement with Viking have a
25 confidentiality provision in it in the -- in its final form when it was

1 signed?

2 A It did not.

3 Q Why not?

4 A Because I negotiated that out of there.

5 Q And that was at Brian's request? As well as being your
6 opinion of what should happen?

7 A Yeah.

8 Q So, we talked about the mediator proposal. Was that
9 discussed at the meeting of November 17th?

10 A Yes.

11 THE COURT: And, I'm sorry, Mr. Christensen, but I am the
12 finder of facts, so I have some questions.

13 Mr. Simon, you said that you basically negotiated the
14 removal of the confidentiality agreement you all agreed with because
15 normally you don't do it and Mr. Edgeworth didn't want it, so together
16 you guys agreed to do this. Do you remember when Viking agreed to
17 remove that?

18 THE WITNESS: I do not.

19 THE COURT: Okay.

20 THE WITNESS: But I think it was prior to the final release, so
21 I think it would have been --

22 THE COURT: Was it prior to you going on vacation?

23 THE WITNESS: It would not have been prior. It probably
24 would have been right when I got back.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I
12 was, you know, negotiating that out, and then obviously preparing my
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone
17 call -- I had some -- I had this meeting and I had a few phone calls after
18 this meeting, and then I tried to iron this out a few times over my
19 vacation with him.

20 I think the last full communication ever with -- verbally with
21 either one of them was the 25th when I was boarding a plane, because I
22 never had a lot of time to be available because I was always -- you know,
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I
25 think the last time was when I was boarding the plane to come home.

1 THE COURT: And I think that's what he testified to is that it
2 was the 25th.

3 THE WITNESS: 25th, sounds right.

4 THE COURT: But when you are negotiating the removal of
5 this confidentiality agreement in the Viking settlement, you have no --
6 had you been made aware at that point that they had spoken with Mr.
7 Vannah's office?

8 THE WITNESS: No.

9 THE COURT: Okay. And, I'm sorry, Mr. Christensen, that
10 was just my question.

11 MR. CHRISTENSEN: It's your courtroom, Your Honor. You
12 have a question, you ask it.

13 THE COURT: I think it's just a little different than a jury trial,
14 because if I have a question then --

15 MR. CHRISTENSEN: Absolutely, Judge.

16 BY MR. CHRISTENSEN:

17 Q What else did you talk about, if anything, at the November 17
18 meeting?

19 A We talked about quite a bit. We talked about the motions
20 that were on the calendar. We had a motion to compel. There was a
21 motion to de-designate all of these documents that they were trying to
22 make confidential in the case. We talked about the pending evidentiary
23 hearing, how that would be affected. We had all these notices of
24 depositions. We had depositions in Chicago of this United Laboratories
25 already set. We had depositions that were noticed by the defense that

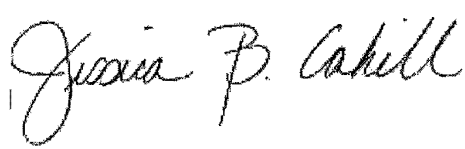
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MR. VANNAH: Thank you, Your Honor.

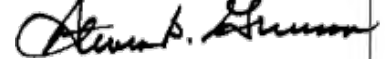
THE COURT: Thank you.

[Proceedings concluded at 4:29 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



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
10;

14 Defendants.

Consolidated with

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

7 8 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

22 I doubt we will get Kinsale to settle for enough to really finance this since I
23 would have to pay the first \$750,000 or so back to Colin and Margaret and
24 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

25 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

13 14 *Fee Agreement*

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

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

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

14 (Def. Exhibit 27).

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

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

26 *Constructive Discharge*

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

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

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

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

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

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

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

29 Id.

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

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

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

18 Id.

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

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

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

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

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

27 //

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

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

5 NRS 18.015 states:

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

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

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

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

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

21 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

9
10 *Implied Contract*

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

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

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

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

9
10 ***Amount of Fees Owed Under Implied Contract***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 NRPC 1.5. However, the Court must also consider the fact
16 that the evidence suggests that the basis or rate of the fee and expenses for which the client will be
17 responsible were never communicated to the client, within a reasonable time after commencing the
18 representation. Further, this is not a contingent fee case, and the Court is not awarding a
19 contingency fee. Instead, the Court must determine the amount of a reasonable fee. The Court has
20 considered the services of the Law Office of Daniel Simon, under the Brunzell factors, and the Court
21 finds that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of \$200,000,
22 from November 30, 2017 to the conclusion of this case.

23 CONCLUSION

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

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

9
10 **ORDER**

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

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

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17 _____
18 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

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

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Tess Driver
Judicial Executive Assistant
Department 10

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
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Clerk of Supreme Court

PETITION FOR WRIT OF PROHIBITION or MANDAMUS

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NRAP 26.1 DISCLOSURE

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

No such corporations involved.

Peter S. Christiansen, Esq., Nevada Bar No. 5254, has also appeared in the Eighth Judicial District Court for the Petitioner.



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ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding under NRAP 17(a)(10) and (11) because the Edgeworths filed a direct appeal (No. 77678 consolidated with No. 78176) challenging the attorney lien adjudication. Thus, this petition is needed for the dispute to be fully heard; and, the petition should be consolidated with the appeal, which is currently pending before the Supreme Court.

I. Introduction

Attorney Daniel Simon (Simon) seeks relief from an order adjudicating an attorney lien. This petition for extraordinary relief is filed following the clients' (Edgeworths) direct appeal of the same order.

In April 2016, a premature fire sprinkler activation caused about \$500,000 in property damage to a speculation home being built by the Edgeworths.¹ The Edgeworths turned to their family friend Simon for help. In May 2016, Simon agreed to help his friends without an express fee agreement.²

The seemingly straight forward property damage claim grew into a complex product liability and contract case. In December 2017/January 2018, because of an enormous amount of work by Simon, the case settled for \$6,100,000.00. Renowned trial lawyer Will Kemp called the result "amazing", "phenomenal" and "fantastic".³ The Court found that Simon's work led to an "impressive" and "phenomenal" result for the Edgeworths.⁴ Brian Edgeworth agreed that Simon did an outstanding job.⁵

¹ Plaintiffs are entities which are controlled by Angela and Brian Edgeworth. VII-WA01737

² III-WA00734:5-25; III-WA00802:20-WA00803:7

³ VII-WA01508:24-WA01509:17

⁴ IX-WA02052:19-20; IX-WA02054:9-11

⁵ IV-WA00952

Historically, Simon does contingency fee work. During the 19-month long case, Simon advanced tens of thousands of dollars in costs. Simon also sent four incomplete hourly bills, at \$550 an hour, to demonstrate damages under the attorney fees provision of the contract with the installer of the defective fire sprinkler. Brian Edgeworth knew the bills were incomplete, because the bills did not include entries for his hundreds of emails and phone calls. Brian Edgeworth was happy receiving lower bills.⁶

As the case progressed, there were unsuccessful efforts to reach an express fee agreement. Then, in late November 2017, when a potential \$6,000,000.00 settlement with the manufacturer was being hammered out, the Edgeworths stopped speaking with Simon, then hired other counsel.

On November 29, 2017, the Edgeworths signed a fee agreement with Vannah & Vannah (Vannah) to represent them in the fire sprinkler case.⁷

On November 30, Simon was informed of Vannah's hiring.⁸

On December 1, 2017, the Edgeworths, advised by Vannah, signed a release with the manufacturer for \$6,000,000.00.⁹

⁶ V-WA01075

⁷ IX-WA02038:9-11; IX- WA02043:17-22

⁸ IX-WA02038:12-20

⁹ IX-WA02042:25-WA02043:16

On December 1, 2017, Simon served an attorney lien.

On December 28, 2017, Simon and Vannah agreed to open and deposit settlement checks into a separate interest-bearing trust account that required both Vannah and Simon's signatures for a transaction, and with all interest going to the Edgeworths.¹⁰

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

On January 8, 2018, settlement checks were endorsed and deposited into the joint Vannah/Simon trust account.

On January 9, 2018, the conversion complaint was served; and, Vannah sent an email threatening increased damage claims against Simon if Simon withdrew after being sued.¹¹

On January 18, 2018, the Edgeworths received **\$3,950,561.27** in undisputed funds.¹² The Edgeworths admit the 4-million-dollar recovery made them more than whole on their half million-dollar loss.¹³

Beginning on August 27, 2018, the District Court held a five-day evidentiary hearing to adjudicate the Simon lien. Simon asked for a reasonable fee under quantum meruit, based on the market rate.

¹⁰ IX-WA02064:6-19

¹¹ IX-WA02044:12-14

¹² I-WA00062

¹³ VII-WA01739:15-24

Will Kemp testified as an expert on the reasonable fee of an attorney in a product case. Mr. Kemp opined the reasonable fee for Simon was \$2,440,000.00.¹⁴ Simon also submitted time sheets (called a superbill) documenting the hours worked. The superbill was not contemporaneous, instead each entry was based on a verifiable tangible event. The superbill listed hours worked not found on the four prior bills.

The Edgeworths' testified Simon expressly agreed to work for \$550 an hour from the outset and that Simon was owed nothing, they later retreated from their owed nothing stance, but did not offer a number.

On October 11, 2018, the District Court issued its decision & order adjudicating the lien (Lien D&O).¹⁵ The Court found there was no express fee contract, contrary to the Edgeworths' direct testimony. The Court found the four bills formed an implied hourly rate contract, which was then terminated by the Edgeworths on November 29, 2017. The Court denied fees through the last day covered by the prior bills, September 19, 2017, because it found the superbill to be inaccurate, the Court then impliedly found the superbill as accurate when the Court used the superbill to find hours worked from September 19 to November 29 and then applied the

¹⁴ VII-WA01506:25-WA01507:4

¹⁵ VIII-WA01866-WA01891

payment term of the terminated contract to grant hourly fees; and, used the *Brunzell* factors to reach the reasonable fee for the hours worked after November 29.

On October 31, 2018, Simon moved for relief under Rule 52. Two issues remain and are raised in this petition. First, Simon argued that, as a matter of law, because the Edgeworths terminated the implied contract on November 29, the Simon fee could not be set by enforcing the terminated/repudiated payment term. Second, if the Court decided to calculate the reasonable fee due under quantum meruit using an hourly rate, then the proper course was to pay Simon for all the hours worked on the superbill or to provide a valid reason why the Court did not.

On November 19, 2018, the Court issued an amended Lien D&O (Lien D&O (Nov.)). The Court made minor corrections but declined to provide the relief requested by Simon on the two points above.¹⁶

II. Relief Sought

Simon respectfully requests that this Court: (1) issue a writ of prohibition or mandamus; (2) vacate in part the November 11, 2018, Lien D&O; (3) instruct the District Court to calculate the fee due Simon under quantum meruit, instead of enforcing the payment term of the

¹⁶ IX-WA002034-WA02056; IX-WA02023:5-14

terminated/repudiated contract; and, (4) instruct the District Court to treat the superbill as accurate or to articulate a reason why it did not.

III. Issues Presented

1. Having properly found that the Edgeworths terminated the implied fee contract on November 29, 2017, did the District Court err by enforcing the payment terms of the terminated contract to adjudicate fees due under the lien for hours worked before November 29?

2. Did the District Court err by finding the superbill was not accurate for hours worked before September 19 without providing a valid rational, when the superbill is based on verifiable tangible events, and when the Court treated the superbill as accurate for hours worked after September 19?

IV. Relevant Facts

Angela and Brian Edgeworth are both sophisticated international business owners and managers.¹⁷ The Edgeworths are not lay clients.

Angela Edgeworth majored in Business Administration and Actuarial Science.¹⁸ Angela has been an entrepreneur for more than 20 years. Angela founded, built up and sold a cosmetics company; Angela is the

¹⁷ *E.g.*, VII-WA01731

¹⁸ VII-WA01572:11-14

co-founder and President of Pediped Footwear, a successful children's footwear company with an international footprint; and, Angela is active with the family business, American Grating.¹⁹

Brian Edgeworth has a business degree and an MBA from Harvard.²⁰ Brian Edgeworth traded commodity derivatives for Enron and was a floor trader on Wallstreet.²¹ Brian Edgeworth helps run Pediped, manages American Grating, which is a fiberglass reinforced plastic manufacturer with an international footprint, and works in a crypto currency operation.²²

Both Edgeworths have experience hiring and paying lawyers.²³

Angela Edgeworth met Eleya Simon when their children attended school together 15 years ago.²⁴ The families were close, they vacationed together, they helped each other through family crisis, and Angela thought of Eleya as one of her closest friends.²⁵

In April 2016, a premature fire sprinkler activation caused about \$500,000 in property damage to a speculation home being built by the

¹⁹ VII-WA01572:15-WA01573:5

²⁰ VII-WA01641:8-18

²¹ VII-WA01641:13-18

²² IV-WA00998:16-21

²³ *E.g.*, V-WA01007:12-WA01009:18

²⁴ VII-WA01583:11-16; VII-WA02035:9-14

²⁵ *Ibid.*

Edgeworths.²⁶ The fire sprinkler was manufactured by Viking and was installed by Lange Plumbing.²⁷ The Edgeworths did not carry insurance for the loss, and Viking and Lange initially denied responsibility.²⁸

The Edgeworths turned to their family friend, Daniel Simon, for help. On May 27, 2016, Simon agreed to help his friends as a favor without an express written or oral fee agreement.²⁹

Simon's early efforts were not fruitful.³⁰ On June 14, 2016, Simon filed a complaint against Viking and Lange Plumbing.³¹ The case was complex,³² with multiple parties, with negligence, contract and product liability claims, and construction, manufacturing, and fraud issues.³³

The Edgeworths' contract with Lange Plumbing obligated Lange to pursue claims against the manufacturer of a defective product which Lange installed.³⁴ Thus, the contract provided for attorney fees if Lange did not pursue a claim against Viking.³⁵ As a result, attorney fees incurred by the

²⁶ IX-WA02035:16-22; IX-WA02035:27-WA02036:4

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ IX-WA02035:9-14; IX-WA02039:7; IX-WA02040:15-16;
IX-WA02041:11-12

³⁰ IX-WA02035:23-26

³¹ IX-WA02035:27-WA02035:4

³² IX-WA02035:15

³³ IX-WA02051:27-WA02052:8

³⁴ IX-WA02048:11-12

³⁵ *Ibid.*

Edgeworths was an element of damage in the case against Lange and would not be certain until the case against the manufacturer resolved.³⁶

In October of 2016, an early case conference (ECC) was set for December. In preparation for the ECC Simon wanted to produce a bill in support of the case against Lange.³⁷ On December 2, 2016, the first Simon bill was sent to the Edgeworths, seven (7) months after retention.³⁸ Over the next 12 months of the 19-month litigation, Simon sent three more incomplete bills.³⁹ Simon advanced substantial costs throughout the case.

Simon aggressively pursued the case.⁴⁰ The District Court found that Simon did a “tremendous amount of work”⁴¹, which was impressive in quality and quantity.⁴² Michael Nunez, a defense attorney in the case, testified Simon’s work was extremely impressive.⁴³ Mr. Kemp testified that Simon’s work and results were exceptional.⁴⁴ Mr. Kemp also testified he

³⁶ IX-WA02035:27-WA02036:4

³⁷ VI-WA01304:12-WA01306:23

³⁸ IX-WA02036:21-25

³⁹ IX-WA02036:26-WA02037:14

⁴⁰ IX-WA02052:7-10

⁴¹ IX-WA02037:19-21

⁴² IX-WA02052:3-5

⁴³ IX-WA02051:19-25

⁴⁴ *Ibid.*

would not have taken the case and the Edgeworths were lucky they had a friend like Simon.⁴⁵

On August 9, 2017, Simon and Brian Edgeworth discussed a fee. On August 22, 2017, Brian Edgeworth sent an email in which Brian stated an express fee agreement was never formed.⁴⁶ Brian testified that as part of any fee negotiation, Brian wanted Simon *to pay the Edgeworths* enough money to pay off a \$300,000.00 loan taken from Angela's mother.⁴⁷ Brian also believed the more work Simon did, the less Simon should get paid.⁴⁸ A fee agreement was not reached.⁴⁹

In November/December of 2017 an evidentiary hearing to strike Defendants answer, several motions and a host of depositions were calendared, and a mediation took place.⁵⁰ The mediator, Floyd Hale, Esq., issued a mediator's proposal for Viking to settle for \$6,000,000.00. Mr. Hale confirmed to Mr. Kemp that about \$2,400,000.00 of the proposed settlement was intended for attorney fees.⁵¹

⁴⁵ VII-WA01508:24-WA01509:17

⁴⁶ IX-WA02036:5-18; IX-WA02040:15-WA02041:21

⁴⁷ V-WA01074:17-WA01082:20; V-WA01150:15-WA01151:25

⁴⁸ V-WA01078

⁴⁹ IX-WA02036:5-18

⁵⁰ See, e.g., VI-WA01316:19-WA01321:17

⁵¹ VII-WA01521-WA01522

On November 15, 2017, Viking made a counter offer to the mediator's proposal which required confidentiality and a dismissal of Lange.⁵²

On November 17, 2017, Simon met with the Edgeworths. Simon discussed the case including the counter offer, the claim against Lange, upcoming hearings, preparation for trial, and a reasonable fee.⁵³ The Edgeworths testified to a radically different meeting, which included physical intimidation by Simon (who is dwarfed in size by Brian) and a threat to harm the case. The District Court *did not find* the Edgeworth version of the meeting had occurred.⁵⁴ Quite the opposite, the Court found that Simon consistently and competently represented the Edgeworths; noting that "recognition is due to Mr. Simon" for promoting Edgeworth interests even after Vannah was hired.⁵⁵

On November 25, 2017, the Edgeworths last spoke with Simon.⁵⁶ The Edgeworths asked Simon for a written fee proposal.⁵⁷

⁵² IX-WA02037:19-21

⁵³ IX-WA02038:4-5

⁵⁴ IX-WA02034-WA02056; IX-WA02038:4-5

⁵⁵ IX-WA02052:19-WA02053:1

⁵⁶ IX-WA02038:9-11; IX-WA02043:17-22

⁵⁷ IX-WA02038:6-8

On November 27, 2017, Simon sent a written fee proposal.⁵⁸ Simon told the Edgeworths to talk to other attorneys about the fee proposal.⁵⁹

On November 29, 2017, the Edgeworths hired Vannah “for representation on the Viking settlement agreement and the Lange claims.”⁶⁰

On November 30, 2017, Vannah faxed to Simon a letter signed by Edgeworth stating that Vannah had been hired to work on the Viking case.⁶¹ On reading the letter, Simon believed that he had been fired.⁶²

On November 30, 2017, Vannah sent Simon a written consent signed by the Edgeworths to settle with Lange.

Prior to December 1, 2017, Simon convinced Viking to drop confidentiality and a Lange release as settlement terms.⁶³ On December 1, 2017, the Edgeworths, based on advice from Vannah, signed a release with Viking for a promised payment of \$6,000,000.00.⁶⁴

⁵⁸ IX-WA02038:6-8;IV-WA00879:2-5

⁵⁹ IX-WA02044:23-24

⁶⁰ IX-WA02038:9-11;IX-WA02042:10-24

⁶¹ IX-WA02038:12-19

⁶² VI-WA01339:10-15

⁶³ IX-WA02042:25-WA02043:16

⁶⁴ *Ibid.*

On December 1, 2017, Simon served an attorney lien.⁶⁵ Mr. Simon was owed for substantial work and about \$68,000.00 in advanced costs.

On December 7, 2017, on advice from Vannah, the Edgeworths signed a consent to settle with Lange for \$100,000.00.⁶⁶ Vannah's advice and the Edgeworths decision to settle at \$100,000 ran against the advice of Simon, because Simon felt the case was worth substantially more.⁶⁷

On December 23, 2017, while trying to arrange endorsement and deposit of Viking settlement checks, Vannah sent an email accusing Simon of an intent to steal the settlement.⁶⁸ Vannah later clarified that the accusation came only from the Edgeworths.

On December 28, 2017, Simon and Vannah agreed to deposit settlement checks into a joint interest-bearing trust account, which required both Vannah and Simon's signatures for a transaction, and with all interest going to the Edgeworths.⁶⁹

On January 4, 2018, an amended attorney lien was served.⁷⁰

⁶⁵ IX-WA02038:24-WA02039:1

⁶⁶ IX-WA02039:8-9

⁶⁷ IX-WA02043:17-WA02044:5

⁶⁸ IX-WA02044:6-9

⁶⁹ IX-WA02064:6-19

⁷⁰ I-WA00044-WA00050

On January 4, 2018, the Edgeworths sued Simon alleging Simon converted the settlement by filing an attorney lien.⁷¹

On January 8, 2018, the settlement checks were endorsed and deposited into the joint trust account.⁷²

On January 9, 2018, the conversion complaint was served; and, Vannah threatened Simon not to withdraw.⁷³

On January 18, 2018, the Edgeworths received **\$3,950,561.27** in undisputed funds, which they agree made them more than whole.⁷⁴

On January 24, 2018, Simon moved to adjudicate the attorney lien. The Edgeworths opposed adjudication claiming the conversion complaint blocked adjudication under NRS 18.015. The District Court granted the motion and held a five-day evidentiary hearing to adjudicate the lien.

Simon sought a reasonable fee based on the market rate under quantum meruit.⁷⁵ Will Kemp was recognized by the Court as an expert in determining a reasonable attorney fee in a product case. Mr. Kemp opined the reasonable fee due Simon was \$2,440,000.00. Simon also introduced

⁷¹ IX-WA02039:10-12

⁷² IX-WA02065:7-11

⁷³ IX-WA02044:6-14

⁷⁴ I-WA00062; and, VII-WA01739:15-24

⁷⁵ NRS 18.015(2) ("In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client.")

the superbill which documented the hours worked on the case. The Edgeworths had a changing position, they went from denying money was owed, to agreeing money was owed but declining to provide the amount.

On October 11, 2018, the District Court issued its own decision and order on the motion to adjudicate lien.⁷⁶ The Court found there was no express fee contract, contrary to the Edgeworths' direct testimony. The Court found an implied hourly rate contract for \$550/hour, which was terminated by the Edgeworths on November 29, 2017. The Court did not grant fees for hours worked listed on the superbill prior to September 19, 2017, granted fees for hours worked listed on the superbill for September 19 to November 29, and used the Brunzell factors to reach a reasonable fee for the work done after November 29.

Simon moved for relief under Rule 52. On November 19, 2018, the Court issued an amended Lien D&O (Lien D&O (Nov.)). The Court made corrections but declined to provide the relief requested by Simon on the two issues presented in this petition.⁷⁷

⁷⁶ VIII-WA01866-WA01891

⁷⁷ IX-WA02034-WA02056

A. The November Lien D&O in Detail

Examination in detail of the Lien D&O (Nov.) supports the petition. Also, it is impossible to ignore the Edgeworths' personal attacks against Simon, made throughout the lien proceeding, and in the Edgeworth opening brief in No. 77678 consolidated with No. 78176. In 1690, John Locke recognized that the tactic of personal insult, *argumentum ad hominem*, did not advance an argument toward finding truth.⁷⁸ The District Court's findings and conclusions expose the Edgeworths' personal attacks as nothing more than flawed argument.

1. Contract formation

In three different affidavits, Brian Edgeworth claimed that on May 27, 2016, an express oral agreement was formed with Simon to work for \$550.00 an hour.⁷⁹ The avowal is repeated and is central to the conversion complaint against Simon.⁸⁰ When confronted at the evidentiary hearing with emails stating otherwise⁸¹, Brian Edgeworth changed his testimony to claim the express oral agreement was later formed in June of 2016.⁸² The District Court rejected Brian's stories and found that an express oral

⁷⁸ John Locke, *An Essay Concerning Human Understanding* (1690)

⁷⁹ II-WA00491-WA00496; III-WA00624-WA00632; III-WA00667-WA00676

⁸⁰ I-WA00051-WA00060

⁸¹ I-WA00001-WA00002; V-WA01009:1-14

⁸² IV-WA00770:3-10; V-WA01059:3-10

agreement was *never* reached.⁸³ Thus, the attack on Simon is based on a set of facts rejected by the District Court.

2. The charging lien

The Edgeworths label the Simon charging lien as inflated or otherwise improper. However, *the District Court concluded that the Simon lien complied with the law.*⁸⁴ Further, Mr. Kemp testified that the value of services provided by Simon was greater than the amount claimed in the lien.⁸⁵ The Edgeworth narrative was rejected by the District Court.

3. Edgeworth claims of assistance

The Edgeworths claimed that no additional money was owed to Simon, in part, because Brian Edgeworth's work alone made the case valuable. The claim was flatly rejected by the District Court.⁸⁶

4. Retention of Vannah

On November 27, 2017, Simon sent a proposed fee agreement to the Edgeworths, and advised them to consult with other counsel regarding the fee agreement. The District Court found that on November 29, 2017, Edgeworth retained Vannah for representation on the underlying case, and

⁸³ IX-WA02040:15-16

⁸⁴ IX-WA02040:1-2

⁸⁵ VII-WA01550:19-WA01552:1

⁸⁶ IX-WA02052:10-17

not for consultation regarding the fee agreement.⁸⁷ The finding was based on substantial evidence, including the Vannah fee agreement, the release with Viking, Vannah correspondence and emails, and the conduct of those involved.⁸⁸ While the Edgeworths argue that hiring Vannah was incidental to Simon's representation, the District Court found otherwise.

5. Constructive discharge

The District Court found that the Edgeworths constructively discharged Simon when the Edgeworths hired Vannah, stopped communication with Simon, accused Simon of theft, then sued Simon for conversion.⁸⁹ The Edgeworths claim they did not fire Simon was rejected by the District Court.

6. The District Court recognized that a client discharge terminates a fee contract.

The District Court correctly concluded:

When a lawyer is discharged by the client, the lawyer is no longer compensated under the discharged/breached/repudiated contract, but is paid based on quantum meruit. (Citations omitted.)⁹⁰

The conclusion of law comports with NRS 18.015(2) and Nevada case law. Simon requests relief because having stated the law, the District

⁸⁷ IX-WA02041:24-WA02046:8

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ IX-WA02050:16-27

Court did not follow the law when it enforced the terminated payment term in setting the fee due. Simon respectfully submits that the District Court should have acted in accord with the law and set the fee due under quantum meruit, without enforcing the terminated contract.

7. The accuracy of the superbill

Historically, Simon does not bill by the hour. Simon documented the hours worked on the superbill for consideration by the District Court. The hours worked on the superbill were based on tangible events only. The superbill did not capture any hours worked that were not tied to a tangible and verifiable event.⁹¹ This means hundreds of hours were lost and not included in the superbill.

The District Court erred when it found that the entire superbill was not accurate for every entry prior to September 19, 2017. The hours worked on the superbill were entered by reviewing the file for the date of a tangible event, and then using the tangible event date to landmark the date for the hours worked for the tangible event, even if all hours worked may not have occurred on the landmark date. As an example, the filing date of a motion was used, although work on the motion may have been spread out over several days prior to the filing date. The District Court incorrectly found that

⁹¹ V-WA01117:21-WA01119:23

because the billing date was not “exact” for some hours worked, the superbill was inaccurate and would not be considered.⁹²

The District Court also found the superbill to be inaccurate for all hours worked prior to September 19, due to the lapse of time between the date of the tangible event and the submission of the superbill.⁹³ The District Court erred because the facts found do not support the conclusion that the superbill is not accurate. The unrefuted testimony was that the hours worked in the superbill were based on verifiable tangible events. Hours worked which were not based on a tangible verifiable event were not billed for (and hundreds of hours worked were lost as a result).⁹⁴ Therefore, use of the verifiable date of a tangible event to landmark the hours worked in the superbill does not reasonably support the conclusion that all hours worked in the superbill are inaccurate. Likewise, because the tangible event date used in the superbill is verifiable (using the register of actions, the date of a letter, or email, etc.), the lapse of time between the date of the tangible event and the date of submission of the superbill does not reasonably support the conclusion that the superbill is not accurate. The opposite is true, because every entry is verifiable.

⁹² IX-WA02047:19-WA02048:2

⁹³ IX-WA02048:3-9

⁹⁴ V-WA01117:21-WA01119:23

Lastly, the District Court accepted the superbill as accurate when reaching the fee due for the hours worked after September 19 through termination on November 29, 2017.⁹⁵ If tangible event billing can be trusted for hours worked after September 19, then it may be trusted for hours worked prior to September 19.

8. Unrebutted expert testimony.

Will Kemp is, rightly, predominately mentioned in the Lien D&O (Nov.). Mr. Kemp has a wealth of experience and knowledge determining attorney fees, which he has done many times for major national class actions, including the tobacco litigation.⁹⁶ The testimony of Mr. Kemp was unrebutted. The testimony of Mr. David Clark, former Bar Counsel, on the propriety of Simon's actions was also unrebutted.

V. Simon Satisfies the Burden for Consideration of the Petition for Extraordinary Writ

Consideration of a petition for extraordinary relief and issuance of a writ is solely within the discretion of the Court. *Mountainview Hospital v. Eighth Jud., Dist., Ct., --Nev--*, 273 P.3d 861, 864 (2012). The petitioner bears the burden to establish that issuance of an extraordinary writ is warranted. *Pan v. Dist. Ct.* 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁹⁵ IX-WA02049:15-WA02050:4

⁹⁶ VII-WA1504-WA1552

Usually, an extraordinary writ will only issue when there is no “plain, speedy and adequate remedy at law”. *Ibid.* (quoting NRS 34.170 and NRS 34.330).

An attorney seeking appellate review of an attorney lien adjudication is usually not a party and likely does not have a right of direct appeal.

Albert D. Massi LTD., v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995).

Thus, an attorney seeking review of an adjudication must do so by a petition for extraordinary writ. *Ibid.*; and, *A.W. Albany v. Arcata Associates, Inc.*, 106 Nev. 688, 799 P.2d 566 at n. 1 (1990). Simon is an attorney seeking review of an adjudication; so, an extraordinary writ is appropriate.

In addition, the Edgeworths filed a direct appeal (No. 77678 consolidated with No. 78176) challenging the attorney lien adjudication. Thus, this petition is needed for the dispute to be fully heard.

VI. Standards of Review

A ruling on attorney fees is generally reviewed under the abuse of discretion standard. *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 127-28 (2006).

Questions of law, or questions of law mixed with questions of fact, are subject to *de novo* review. *Pressler v. City of Reno*, 118 Nev. 506, 609, 50 P.3d 1096, 1098 (2002).

VII. Summary of Arguments

The District Court properly found that the Edgeworths terminated the implied fee contract on November 29, 2017. It is well-settled law that when a client terminates a fee contract, the contract payment terms end and the attorney is due a reasonable fee under quantum meruit. Thus, the Court erred when it then applied the payment term of the terminated contract to set the fee due to Simon for work done before November 29, 2017.

Simon respectfully submits that the proper course to determine the reasonable fee due under the attorney lien for all hours worked is via quantum meruit by application of the *Brunzell* factors with due consideration of the expert opinion of Will Kemp regarding the going market rate for the legal services provided by Simon.

Time sheets do not have to be made at the time that the work is done. An attorney can base a bill on file review. The hours worked on the superbill were entered using only tangible verifiable events. As such, a minor difference between the date billed and date the work was done is immaterial to the overall accuracy of the superbill. And, because the superbill was based on verifiable tangible events, the lapse in time in authorship could not impact accuracy and it was error for the Court to find it did.

Therefore, when the District Court applies quantum meruit to find the reasonable fee due for work performed by November 29, the Court should consider all the hours worked listed on the superbill; whether the Court decides to use the market rate to reach a reasonable fee, an hourly rate or some other method. Alternatively, if this Court finds the District Court did not err in applying the terminated payment term for hours worked before November 29, then the District Court should compensate Simon for the hours worked before September 19 as listed on the superbill.

VIII. Argument

The client terminated the implied fee contract on November 29, 2017. Therefore, the District Court erred when the Court enforced the contract.

A. When a fee contract is terminated by the client, the fee due the attorney is determined by quantum meruit.

The District Court found that the implied fee contract was terminated by the Edgeworths on November 29, 2017. The attorney lien was served on December 1, 2017. The fee contract was terminated before the lien was served and before the claim settled. Accordingly, as a matter of law, the District Court erred when it enforced the payment term of the terminated contract.

The District Court properly concluded that when a lawyer is discharged by the client, the lawyer is no longer compensated under the

discharged/breached/repudiated contract but is paid based on *quantum merit*. *Golightly v. Gassner*, 281 P.3d 1176 (Nev. 2009) (unreported) (discharged contingency attorney paid by *quantum merit* rather than by contingency); *citing*, *Gordon v. Stewart*, 324 P.3d 234 (1958) (attorney paid in *quantum merit* after client breach of agreement); and, *Cooke v. Gove*, 114 P.2d 87 (Nev. 1941)(fees awarded in *quantum merit* when there was no agreement).⁹⁷

The District Court found the Edgeworths terminated the implied contract with Simon, and the implied hourly rate, when they fired Simon and hired Vannah. Accordingly, the Court erred when it set part of the fee due under the lien as if the implied contract hourly rate was enforceable. The law calls for all of Simon's work to be compensated under quantum meruit-that is, a reasonable fee pursuant to the *Brunzell* factors.

The District Court cited *Rosenberg* in concluding the Edgeworths fired Simon. *Rosenberg v. Calderon Automation, Inc.*, 1986 Ohio App. LEXIS 5460 (1986). In *Rosenberg*, Calderon stopped all communication with his lawyer, Rosenberg, on the eve of a case settlement. Rosenberg later sought his fees in a separate action.

⁹⁷ IX-WA02052:18-25

The court found that Rosenberg was constructively discharged when Calderon stopped speaking with the lawyer. On the question of compensation, the court stated that termination of a contract by a party after part performance of the other party, entitles the performing party to elect to recover the value of the labor performed irrespective of the contract price. *Id.*, at *19. Notably, Rosenberg did not keep time records. The court found Rosenberg's testimony based on an estimate of his time provided a foundation for the fee claim. *Id.* at *20.

The Edgeworths and Vannah know the law and did not formally fire Simon even after they stopped communication, then sued Simon for conversion, in a gambit to avoid a fair reasonable fee analysis. The law is clear that because Simon was fired on November 29, 2017, Simon's fee is set by quantum meruit, the reasonable value of services rendered.

B. The superbill is sufficiently accurate.

If this Court upholds the District Court's use of the terminated payment term in setting Simon's fee; or, if the decision is overturned and the District Court must reconsider the fee due, the superbill should be treated as sufficiently accurate to serve as a foundation for a fee award.

The undisputed evidence was that every entry in the superbill was for work that was performed, even if the work was not all done on the

landmark billing date. The dates for hours worked on the superbill were based on verifiable tangible events. In fact, because every entry was based on a tangible event, many hundreds of hours worked were lost, for lack of a verifiable event. As a result, the superbill can be objectively confirmed, is not speculative, and is lower than a typical hourly bill.

1. The superbill was supported by substantial evidence.

There is no requirement for an attorney to keep a contemporaneous time record. See, e.g., *Mardirossian & Associates v. Ersoff*, 153 Cal. App. 4th 257 (2007). In *Mardirossian*, attorney Mardirossian was fired on the eve of a \$3.7 million-dollar settlement. Mardirossian then sued for a reasonable fee. Mardirossian did not keep contemporaneous time records. At trial Mardirossian and other firm lawyers gave estimates of hours worked. The estimates were not based on tangible events, they gave an estimated average per week. *Ibid*.

The jury awarded Mardirossian a large fee based, in part, on the time estimates. The foundation for the time estimates was repeatedly challenged at trial and on appeal. Mardirossian won at every turn because the testimony of a witness with knowledge, Mardirossian and the firm lawyers, constitutes substantial evidence. An attorney's testimony as to

hours worked is enough to award fee. *Id.*, at 269; *quoting, Steiny & Co., v. California Electric Supply*, 79 Cal. App. 4th 285, 293 (2000).

The law is the same in Nevada. "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006). The witnesses' testimonies alone can constitute substantial evidence. *CoruSummit Vill., Inc., v. Hilltop Duplexes Homeowners Ass'n*, 2011 Nev. Unpub. LEXIS 873, *10-11 (Nev. April 27, 2011).

The evidence of hours worked by Simon is stronger than in *Mardirossian*. Simon provided the superbill and every entry is based on a verifiable tangible event. The Edgeworths also failed when they tried to show the superbill was not accurate. The District Court exposed one such attempt by Brian Edgeworth as itself inaccurate.⁹⁸ Thus, the District Court's ruling of inaccuracy rests on speculation and/or a much higher burden for proof of damages than Nevada law imposes.

The District Court should have awarded the full attorney's fees that were supported by substantial evidence. This Court has stated the trial court should "either ... award attorney's fees or ... state the reasons for

⁹⁸ VII-WA01658:19-WA01660:9

refusing to do so.” *Pandelis Const. v. Jones-Viking Assoc.*, 103 Nev. 129, 734 P. 2d 1239 (1987); also, *Watson v. Rounds*, 358 P.3d 228 (2015)

2. Minimum billing entries are the norm.

Simon used valid minimum billing entries for e-filings. Minimum billing amounts are the norm, are accepted and are enforceable. *Manigault v. Daly & Sorenson*, 413 P.3d 1114 (Wyo. 2018) (the court found that minimum billing units benefit “both attorneys and clients” and are reasonable). The minimum billing entry of .3 for each of the 679 e-filings was reasonable considering the 120,000 pages in the filings.

3. The Edgeworths will be unjustly enriched if the all the hours worked are not considered in the fee determination.

Lien adjudication is a proceeding in equity to determine the fair value of an attorney’s services, and the lawyer should be compensated for the work performed. In *Leventhal v. Black & LoBello*, 129 Nev. 472, 475, 305 P.3d 907, 909 (2013), the Supreme Court of the state of Nevada stated:

“A charging lien “is not dependent on possession, as in the case of the general or retaining lien. It is based on natural equity—the client should not be allowed to appropriate the whole of the judgment without paying for the services of the attorney who obtained it.” 23 *Williston on Contracts* § 62:11 (4th ed. 2002).”

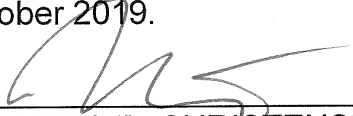
There is no rule or authority that supports a finding that work not contemporaneously billed cannot be recovered later. Excepting, of course, the statute of limitations, which does not apply in this case.

There is no evidence that the entries in the super bill were speculative or that the work was not performed. At the hearing, the Edgeworths conceded they could not contest the superbill entries. The Edgeworths also agree the four million dollars already received made them whole and that the claimed cash flow problem was caused by their own decision to use cash on hand to refurbish their brand new, 12,000 square foot, paid-for home, and finance the litigation through a high interest loan.

IX. Conclusion

Simon respectfully requests an extraordinary writ issue directing the District Court to consider compensation for Simon under the lien for all hours worked under quantum meruit, and with due regard for the going market rate for his services as testified to by Mr. Kemp.

Dated this 16th day of October 2019.




JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

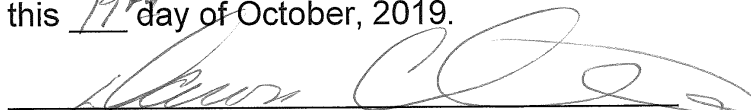
I, James R. Christensen, am an attorney for Petitioner herein. I hereby certify that I have read the foregoing Petition for Writ of Mandamus, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

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

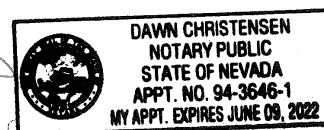


JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 17th day of October, 2019.



Notary Public in and for said County and State



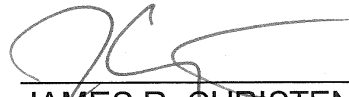
CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition for Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Arial font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parties of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 30 pages.

I hereby certify that I have read this Petition for Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition for Writ of Mandamus complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the 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 it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 16th day of October, 2019.



JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of October, 2019, I served a copy of the foregoing PETITION FOR WRIT OF MANDAMUS on the following parties by depositing a true and correct copy thereof in the United States Mail, in Las Vegas, Nevada, postage prepaid, addressed to the following:

Via Hand Delivery

Honorable Judge Tierra Jones
Department X
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Via U.S. Mail

Robert D. Vannah, Esq.
John B. Greene, Esq.
VANNAH & VANNAH
400 S. Seventh Street, 4th Floor
Las Vegas, NV 89101
Attorneys for Real Parties in Interest
Edgeworth Family Trust and
American Grating, LLC


an employee of
JAMES R. CHRISTENSEN, ESQ.

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DANIEL S. SIMON;
DOES 1 through 10; and ROE entities 1
– 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,

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Real Parties in Interest.

Supreme Court Case No. 84367

Dist. Ct. Case No. A-18-767242-C

Consolidated with A-16-738444-C

**APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWER TO
SIMON'S WRIT PETITION**

**VOLUME II of III
EAB0071 – EAB0220**

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

SUPREME COURT CASE NO. 84367

APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWERING BRIEF

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-08-29	Excerpt of Transcript of Evidentiary Hearing – Day 3	I	EAB0001- EAB0007
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	EAB0008- EAB0030
2019-10-17	Petition for Writ of Prohibition or Mandamus in Case No. 79821	I	EAB0031- EAB0070
2020-12-30	Order Denying Petition in Case No. 79821	II	EAB0071- EAB0072
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	EAB0073- EAB0089
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0090- EAB0114
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0115- EAB0220
2021-05-20	Reply ISO Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	III	EAB0221- EAB0261

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

SUPREME COURT CASE NO. 84367

APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWERING BRIEF

CHRONOLOGICAL INDEX

2021-05-24	Notice of Entry of 2 nd Amended Decision and Order Granting in Part, and Denying in Part, Simon's Motion for Attorney Fees and Costs	III	EAB0262- EAB0270
2021-05-27	Recorder's Transcript of Pending Motions	III	EAB0271- EAB0299
2021-06-18	Notice of Entry of Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand	III	EAB0300- EAB0307

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

SUPREME COURT CASE NO. 84367

REAL PARTIES IN INTEREST RESPONSIVE APPENDIX

ALPHABETICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	EAB0008- EAB0030
2018-08-29	Excerpt of Transcript of Evidentiary Hearing – Day 3	I	EAB0001- EAB0007
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	EAB0073- EAB0089
2021-05-24	Notice of Entry of 2 nd Amended Decision and Order Granting in Part, and Denying in Part, Simon's Motion for Attorney Fees and Costs	III	EAB0262- EAB0270
2021-06-18	Notice of Entry of Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand	III	EAB0300- EAB0307
2020-12-30	Order Denying Petition in Case No. 79821	II	EAB0071- EAB0072
2019-10-17	Petition for Writ of Prohibition or Mandamus in Case No. 79821	I	EAB0031- EAB0070
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0115- EAB0220

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

SUPREME COURT CASE NO. 84367

REAL PARTIES IN INTEREST RESPONSIVE APPENDIX

ALPHABETICAL INDEX

2021-05-27	Recorder's Transcript of Pending Motions	III	EAB0271- EAB0299
2021-05-20	Reply ISO Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	III	EAB0221- EAB0261
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0090- EAB0114

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAW OFFICE OF DANIEL S.
SIMON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
TIERRA DANIELLE JONES, DISTRICT
JUDGE,
Respondents,
and
EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Real Parties in Interest.

No. 79821

FILED

DEC 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

Petition for a writ of mandamus that challenges a district court order adjudicating an attorney lien. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

This original petition for a writ of mandamus challenges a district court order adjudicating an attorney lien. The petitioner, Daniel Simon, challenges the quantum meruit award of \$200,000 as insufficient for the work he performed. However, we reviewed that order in a direct appeal in Docket No. 77678, where we vacated the quantum meruit award and remanded for further findings. Accordingly, in light of the order entered in Docket No. 77678, we deny as moot Simon's writ petition.¹ *See Smith v.*

¹The Honorable Ron Parraguirre, Justice, and the Honorable Abbi Silver, Justice, did not participate in the decision of this matter.

Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991)
(holding that whether to consider a writ petition is discretionary).

Accordingly, we

ORDER the petition DENIED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Cadish, J.
Cadish

cc: James R. Christensen
Vannah & Vannah
Eglet Adams
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 77678
District Court Case No. A738444

FILED

APR 13 2021

Elizabeth A. Brown
CLERK OF COURT

Supreme Court No. 78176
District Court Case No. A738444

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

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

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

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

A-16-738444-C
CCJR
NV Supreme Court Clerks Certificate/Judgm
4951019

JUDGMENT

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

"Rehearing Denied."

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

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

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

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

vs.

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

No. 77678

FILED

DEC 30 2020

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

No. 78176

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁶In his cross-appeal in Docket No. 77678, Simon argues that the district court erred by denying his anti-SLAPP special motion to dismiss as moot. However, Simon failed to present cogent arguments and relevant authority in his opening brief. Accordingly, we do not consider his argument. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

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

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

The costs award

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

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

For the reasons set forth above, we

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

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

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

SUPREME COURT
OF
NEVADA

(0) 1947A 

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

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

vs.

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

No. 77678

FILED

MAR 18 2021

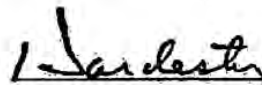
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

No. 78176

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).


It is so ORDERED.

 C.J.
Hardesty

 J.
Parraguirre

 J.
Cadish

 J.
Pickering

 J.
Stiglich

 J.
Silver

 J.
Herndon

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 77678
District Court Case No. A738444

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

Supreme Court No. 78176
District Court Case No. A738444

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

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

RECEIPT FOR REMITTITUR

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

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS
APR 13 2021
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.

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.

**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
14 scumbags will file etc.
15 Obviously that could not have been done earlier since who would have
16 thought this case would meet the hurdle of punitive at the start.
17 I could also swing hourly for the whole case (unless I am off what this is
18 going to cost). I would likely borrow another \$450K from Margaret in 250
19 and 200 increments and then either I could use one of the house sales for cash
20 or if things get really bad, I still have a couple million in bitcoin I could sell.
21 I doubt we will get Kinsale to settle for enough to really finance this since I
22 would have to pay the first \$750,000 or so back to Colin and Margaret and
23 why would Kinsale settle for \$1MM when their exposure is only \$1MM?

24 (Def. Exhibit 27).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 and 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, 2016.²

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

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

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

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

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

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

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

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

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

18 19 *Costs Owed*

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

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

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

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

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

3 4 *Quantum Meruit*

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

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

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

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

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

7 1. Quality of the Advocate

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

15 2. The Character of the Work to be Done

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

25 3. The Work Actually Performed

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

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

7 4. The Result Obtained

8 The result was impressive. This began as a \$500,000 insurance claim and ended up settling
9 for over \$6,000,000. Mr. Simon was also able to recover an additional \$100,000 from Lange
10 Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready 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
recovery, showing the remittance to the client and the method of its
22 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
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1 significant, and the work yielded a phenomenal result for the Edgeworths. All of the Brunzell
2 factors justify a reasonable fee under NRPC 1.5.

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

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

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Edgeworth Family Trust,
Plaintiff(s)

CASE NO: A-18-767242-C

7 vs.

DEPT. NO. Department 10

8
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
recipients registered for e-Service on the above entitled case as listed below:

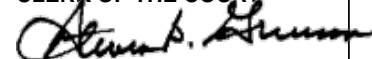
14 Service Date: 4/19/2021

15 Peter Christiansen	pete@christiansenlaw.com
16 Whitney Barrett	wbarrett@christiansenlaw.com
17 Kendele Leascher Works	kworks@christiansenlaw.com
18 R. Todd Terry	tterry@christiansenlaw.com
19 Keely Perdue	keely@christiansenlaw.com
20 Jonathan Crain	jcrain@christiansenlaw.com
21 David Clark	dclark@lipsonneilson.com
22 Susana Nutt	snutt@lipsonneilson.com
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24 Chandi Melton	chandi@christiansenlaw.com
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2	James Christensen	jim@jchristensenlaw.com
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5	Daniel Simon	lawyers@simonlawlv.com
6	Esther Barrios Sandoval	esther@christiansenlaw.com
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Attorneys for Plaintiffs
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

LANGE PLUMBING, LLC
ET AL.,

Defendants.

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

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

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

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

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

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

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

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

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

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

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

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

26 ***A. RELEVANT FACTS***

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

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

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

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

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

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

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

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

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

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

12 On December 12, 2017, Viking notified Simon that it had inadvertently
13 overlooked the *certified check* provision in the settlement agreement, but
14 provided they could obtain the stipulation to dismiss, they had *regular*
15 *checks* cut and available for exchange that day in order to allow time for the
16 payment to clear by the agreed-upon date. Ex. FF. Simon *did not* notify the
17 Edgeworths of this option. On December 18, 2017, Simon notified Vannah,
18 the Edgeworths other counsel, that he had received the checks, but did not
19 disclose the checks were not certified, as required by the settlement
20 agreement. The parties disagreed on how the checks should be handled and
21 ultimately deposited them in an account that required the signatures of both
22 Vannah and Simon. The portion of the Viking money in excess of Simon's
23 claimed lien was paid to the Edgeworths. The settlement agreement with
24
25

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ***B. STANDARD FOR RECONSIDERATION***

8 A party may seek reconsideration within 14 days after service of
9 written notice of the order. E.D.C.R. 2.24. Reconsideration is appropriate
10 when the Court has misapprehended or overlooked important facts when
11 making its decision, *Matter of Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091
12 (1983), when new evidence is presented, or when the decision is "clearly
13 erroneous." *Masonry and Tile Contractors Ass'n of Southern Nevada v.*
14 *Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Here,
15 this motion for reconsideration of the Court's Third Lien Order, entered on
16 April 19, 2021, is timely brought. The Order is clearly erroneous because it
17 does not comply with the mandate returned from the Nevada Supreme
18 Court. The Order also followed briefing that was cut short due to the early
19 hearing setting when the Court lacked jurisdiction.

20 The Amended Order on the attorney fee issue, was entered on March
21 16, 2021, nearly one month before the Nevada Supreme Court returned
22 jurisdiction of this case to the district court. It is thus *void ab initio* because
23 it was entered without jurisdiction, but it also warrants reconsideration
24 because the cost award was entered based on an incorrect amount
25

26
27 ³ A hearing on Viking's Motion for Good Faith Settlement is listed on
28 the "super bill" for December 12, 2017. See Ex. JJ at 77. The hearing was
necessary only because the Lange settlement was not promptly finalized.
See Ex. N to 3/30/21 Mot. for Recon. at 2, Section III.D.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ...

25 ...

26 ...

27 ...

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

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

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

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

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

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

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

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

23 ***F. CONCLUSION***

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

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

6
7 MORRIS LAW GROUP

8 By: /s/ STEVE MORRIS

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

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

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

DATED this 3rd day of May, 2021.

By: /s/ TRACI K. BAEZ

An employee of Morris Law Group

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

I, Rosa Solis-Rainey, declare as follows:

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

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

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

Dated his 3th day of May, 2021.

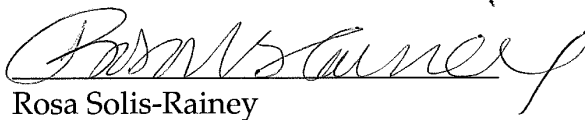

Rosa Solis-Rainey

EXHIBIT AA

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

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

Danny,

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

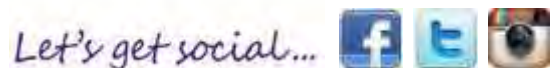
We would need to have our attorney look at this agreement before we sign.

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

Angela Edgeworth



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



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

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

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

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

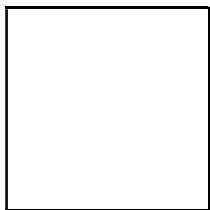
From: Angela Edgeworth [mailto:angela.edgeworth@pediped.com]
Sent: Monday, November 27, 2017 3:20 PM
To: Daniel Simon <dan@simonlawlv.com>
Cc: Brian Edgeworth (brian@pediped.com) <brian@pediped.com>
Subject: Re: Edgeworth v. Viking, et al

Danny,

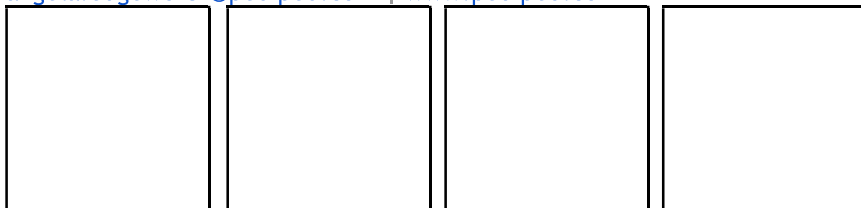
As you know, Brian is out of town and in China at the moment. I will need a couple of days to discuss this with him. We will be glad to meet once he is back.
We would need to have our attorney look at this agreement before we sign.

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

Angela Edgeworth



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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Angela

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

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

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

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

--
Angela

EXHIBIT BB

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

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

Dan --

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

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

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

Thanks,

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

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

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

SETTLEMENT AGREEMENT AND RELEASE

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

I. RECITALS

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

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

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

II. DEFINITIONS

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

//

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

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

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

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

III. SETTLEMENTTERMS

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

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

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

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

IV. AGREEMENT

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

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

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

V. RELEASE

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

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

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

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

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

VI. GOOD FAITH SETTLEMENT

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

VII. DISMISSAL

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

VIII. MISCELLANEOUS

A. COMPROMISE:

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

B. CONFIDENTIALITY:

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

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

C. SATISFACTION OF LIENS:

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

D. NO DISPARAGEMENT:

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

E. GOVERNING LAW:

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

F. TERMS OF SETTLEMENT AGREEMENT AND RELEASE INTERDEPENDENT:

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

G. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

H. GENDER AND TENSE:

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

I. ENTIRE AGREEMENT:

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

J. INDEPENDENT ADVICE OF COUNSEL:

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

K. VOLUNTARY AGREEMENT:

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

L. ADMISSIBILITY OF AGREEMENT:

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

M. COUNTERPARTS:

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

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

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

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

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

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

APPROVED AS TO FORM AND CONTENT:

Dated this ____ day of _____, 2017.

SIMON LAW

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

EXHIBIT CC

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

November 29, 2017

VIA FACSIMILE: (702) 364-1655

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

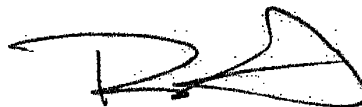
RE: Letter of Direction

Dear Mr. Simon:

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

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

Sincerely,

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

Brian Edgeworth

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

To:	
Phone	
Fax Number	(702) 364-1655

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

NOTE:

L0DS000865

EAB0151

EXHIBIT DD

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

brian@pediped.com

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

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

SETTLEMENT AGREEMENT AND RELEASE

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

I. RECITALS

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

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

II. DEFINITIONS

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

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

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

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

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

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

III. SETTLEMENT TERMS

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

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

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

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

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

IV. AGREEMENT

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

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

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

V. RELEASE

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

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

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

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

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

VI. GOOD FAITH SETTLEMENT

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

VIII. MISCELLANEOUS

A. COMPROMISE:

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

B. CONFIDENTIALITY:

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

C. SATISFACTION OF LIENS:

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

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

D. GOVERNING LAW:

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

E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

F. GENDER AND TENSE:

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

G. ENTIRE AGREEMENT:

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

H. INDEPENDENT ADVICE OF COUNSEL:

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

I. VOLUNTARY AGREEMENT:

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

J. ADMISSIBILITY OF AGREEMENT:

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

K. COUNTERPARTS:

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

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

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

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

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

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

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

Dated this ____ day of _____, 2017.

SIMON LAW

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

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

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Management

EXHIBIT EE

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

brian@pediped.com

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

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

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

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

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

Thank You!

SETTLEMENT AGREEMENT AND RELEASE

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

I. RECITALS

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

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

II. DEFINITIONS

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

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

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

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

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

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

III. SETTLEMENT TERMS

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

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

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

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

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

IV. AGREEMENT

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

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

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

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

V. MUTUAL RELEASE

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

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

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

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

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

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

VI. GOOD FAITH SETTLEMENT

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

VIII. MISCELLANEOUS

A. COMPROMISE:

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

B. SATISFACTION OF LIENS:

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

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

C. GOVERNING LAW:

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

D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

E. GENDER AND TENSE:

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

F. ENTIRE AGREEMENT:

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

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

G. INDEPENDENT ADVICE OF COUNSEL:

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

H. VOLUNTARY AGREEMENT:

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

I. ADMISSIBILITY OF AGREEMENT:

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

J. COUNTERPARTS:

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

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

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

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

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

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

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

Dated this ____ day of _____, 2017.

SCOTT MARTORANO
Vice President-Warranty Managment

EXHIBIT FF

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

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

Danny –

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

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

Janet C. Pancoast, Esq.

CISNEROS & MARIAS

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

1160 No. Town Center Dr., Suite 130

Las Vegas, NV 89144

Off: 702.233.9660

Dir: 702.562.7616

Cell: 702.325.7876

Fax: 702.233.9665

janet.pancoast@zurichna.com

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

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

EAB0170

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

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 EDGEWORTH FAMILY TRUST, and)	CASE NO.: A-16-738444-C
19 AMERICAN GRATING, LLC)	
20 Plaintiffs,)	DEPT. NO.: X
21 vs.)	
22 LANGE PLUMBING, LLC; THE VIKING)	
23 CORPORATION, a Michigan corporation;)	STIPULATION FOR DISMISSAL
24 SUPPLY NETWORK, INC. d/b/a VIKING)	WITH PREJUDICE OF PLAINTIFFS
25 SUPPLYNET, a Michigan corporation; and)	CLAIMS AGAINST VIKING
DOES I through V and ROE CORPORATIONS)	ENTITIES
VI through X, inclusive,)	
Defendants.)	

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

1	LANGE PLUMBING, LLC,)
	Cross-Claimant,)
2)
	vs.)
3)
4	THE VIKING CORPORATION, a Michigan)
	corporation; SUPPLY NETWORK, INC. d/b/a)
5	VIKING SUPPLYNET, a Michigan corporation;)
	and DOES I through V and ROE)
6	CORPORATIONS VI through X, inclusive.)
	Cross-Defendants)
7	<hr/>	
8	THE VIKING CORPORATION, a Michigan)
	corporation; SUPPLY NETWORK, INC. d/b/a)
9	VIKING SUPPLYNET, a Michigan corporation)
	LANGE PLUMBING, LLC,)
10	Counter-Claimant,)
)
11	vs.)
)
12	LANGE PLUMBING, LLC, and DOES I through)
	V and ROE CORPORATIONS VI through X,)
13	inclusive.)
	Counter-Defendant)
14	<hr/>	
15	THE VIKING CORPORATION, a Michigan)
	corporation; SUPPLY NETWORK, INC. d/b/a)
16	VIKING SUPPLYNET, a Michigan corporation,)
	Defendants/Third Party Plaintiffs,)
17)
	v.)
18)
19	GIBERTI CONSTRUCTION, LLC, a Nevada)
	Limited Liability Company and DOES I through)
20	V and ROE CORPORATIONS VI through X,)
	inclusive,)
21	Third Party Defendant.)

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

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

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

22
23 All claims asserted in any and all Complaints filed herein by PLAINTIFFS EDGEWORTH
24 FAMILY TRUST & AMERICAN GRATING, LLC and each and every cause of action alleged

25
26 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al.* Case No. A-16-738444-
27 Stipulation and Order for Dismissal of Viking Entities by Plaintiffs

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

3 Each party shall bear their own fees and costs.

4 Dated this ____ day of December, 2017.

Dated this ____ day of December, 2017.

5 SIMON LAW

CISNEROS & MARIAS

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

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

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

13 **ORDER**

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

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

21 Dated this ____ day of _____, 2017

24 _____
DISTRICT COURT JUDGE

25 //

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

Submitted by:
CISNEROS & MARIAS

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

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

EXHIBIT GG

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



1 RTRAN

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3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

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

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

21 APPEARANCES:

22 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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1 A Correct.

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

4 A Yes.

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

7 A Yes.

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

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

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

16 A Yes.

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

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

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

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

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

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

9 BY MR. CHRISTENSEN:

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

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

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

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

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

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

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

24 THE COURT: Okay.

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

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

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

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

13 THE WITNESS: Before I was fired, yeah.

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

15 THE WITNESS: Yes.

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

18 THE WITNESS: Nope.

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

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

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

23 THE WITNESS: Correct.

24 THE COURT: Okay.

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

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MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



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

EXHIBIT HH

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

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

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

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

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

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

As you are aware, we asked John to get involved in this case to help you. The loss of value report was sought to try and get a favorable negotiation position. His report was created based on my lawyering and Johns willingness to look at the information I secured to support his position. As you know, no other appraiser was willing to go above and beyond as they believed the cost of repairs did not create a loss. As you know, John's opinion greatly increased the value of this case. Please do not think that he was paid a fee so he had to give us the report. His fee was very nominal in light of the value of his report and he stepped up to help you because of us and our close relationship. Securing all of the other experts and working with them to finalize their opinions were damaging to the defense was a tremendous factor in securing the proposed settlement amount. These experts were involved because of my contacts. When I was able to retain Mr. Pomerantz and work with him to finalize his opinions, his report was also a major factor. There are very few lawyer's in town that would approach the case the way I did to get the results I did for you. Feel free to call Mr. Hale or any other lawyer or judge in town to verify this. Every time I went to court I argued for you as if you were a family member taking the arguments against you personal. I made every effort to protect you and your family during the process. I

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was an exceptional advocate for you. It is my reputation with the judiciary who know my integrity, as well as my history of big verdicts that persuaded the defense to pay such a big number. It is also because my office stopped working on other cases and devoted the office to your case filing numerous emergency motions that resulted in very successful rulings. My office was available virtually all of the time responding to you immediately. No other lawyer would give you this attention. I have already been complimented by many lawyers in this case as to how amazing the lawyering was including Marks lawyer who told me it was a pleasure watching me work the way I set up the case and secured the court rulings. Feel free to call him. The defense lawyers in this case have complimented me as well, which says a lot. My work in my motions and the rulings as an exceptional advocate and the relationships I have and my reputation is why they are paying this much. The settlement offer is more than you ever anticipated as you were willing to take 4-4.5 at the first mediation and you wanted the mediator's proposal to be 5 million when I advised for the 6 million. One major reason they are likely willing to pay the exceptional result of six million is that the insurance company factored in my standard fee of 40% (2.4 million) because both the mediator and the defense have to presume the attorney's fees so it could get settled. Mr. Hale and Zurich both know my usual attorney's fees. This was not a typical contract case your other hourly Lawyers would handle. This was a major fight with a world-wide corporation and you did not get billed as your other hourly lawyers would have billed you. This would have forced you to lay out substantially more money throughout the entire process. Simply, we went above and beyond for you.

I have lost money working on your case.

As you know, when I was working on your case I was not working on many other cases at my standard fee and I told you many times that I can't work hourly because I would be losing too much money. I felt it was always our understanding that my fee would be fair in light of the work performed and how the case turned out. I do not represent clients on an hourly basis and I have told this to you many times.

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Value of my Services

The attached agreement reflects a greatly reduced sum for the value of my services that I normally charge in every case. I always expected to be compensated for the value of my services and not lose money to help you. I was troubled at your statements that you paid me hourly and you now want to just pay me hourly when you always knew this was not the situation. When I brought this to your attention you acknowledged you understood this was not just an hourly fee case and you were just playing devil's advocate. As you know, if I really treated your case as only an hourly case, I would have included all of the work my staff performed and billed you at a full hourly fee in 30 day increments and not advance so much money in costs. I would have had you sign just an hourly contract retainer just as Mr. Pomerantz had you sign. I never did this because I trusted you would fairly compensate me for the value of my services depending on the outcome. In the few statements I did send you I did not include all of the time for my staff time or my time, and did not bill you as any other firm would have. The reason is that this was not just an hourly billing situation. We have had many discussions about this as I helped you through a very difficult case that evolved and changed to a hotly contested case demanding full attention. I am a trial attorney that did tremendous work, and I expect as you would, to be paid for the value of my service. I did not have you sign my initial standard retainer as I treated you like family to help you with your situation.

Billing Statements

I did produce billing statements, but these statements were never to be considered full payment as these statements do not remotely contain the full time myself or my office has actually spent. You have acknowledged many times that you know these statements do not represent all of my time as I do not represent clients on an hourly basis. In case you do not recall, when we were at the San Diego Airport, you told me that a regular firm billing you would likely be 3x my bills at the time. This was in August. When I started filing my motions to compel and received the rulings for Viking to produce the information, the case then got substantially more demanding. We have had many discussions that I was losing money but instead of us figuring out a fair fee arrangement, I did continue with the case in good faith because of our relationship focusing on winning and trusted that you would fairly compensate me at the end. I gave you several examples of why I was losing money hourly because my standard fee of 40% on all of my other cases produced hourly rates 3-10 times the hourly rates you were provided. Additionally, just some of the time not included in the billing statement is many phone calls to you at all hours of the day, review and responses of endless emails with attachments from you and others, discussions with experts, substantial review the filings in this case and much more are not contained in the bills. I also spent substantial time securing representation for Mark Giberti when he was sued. My office continued to spend an exorbitant amount of time since March and have diligently litigated this case having my office virtually focus solely on your case. The hourly fees in the billing statements are much lower than my true hourly billing. These bills were generated for several reasons. A few reasons for the billing statements is that you wanted to justify your loans and use the bills to establish damages against Lange under the contract, and this is the why all of my time was not included and why I expected to be paid fairly as we worked through the case.

I am sure you will acknowledge the exceptional work, the quality of my advocacy, and services performed were above and beyond. My services in every case I handle are valued based on results not an hourly fee. I realize that I didn't have you sign a contingency fee agreement and am not asserting a contingency fee, but always expected the value of my services would be paid so I would not lose money. If you are going to hold me to an hourly arrangement then I will have to review the entire file for my time spent from the beginning to include all time for me and my staff at my full hourly rates to avoid an unjust outcome.

How I handle cases

I want you to have a full understanding as to how my office works in every other case I am handling so you can understand my position and the value of my services and the favorable outcome to you.

My standard fee is 40% for a litigated case. I have told you this many times. That is what I get in every case, especially when achieving an outcome like this. When the outcome is successful and the client gets more and I will take my full fee. I reduce if the outcome is not as expected to make sure the client shares fairly. In this case, you received more than you ever anticipated from the outset of this case. I realize I do not have a contract in place for percentages and I am not trying to enforce one, but this merely shows you what I lost by taking your case and given the outcome of your case, and what a value you are receiving. Again, I have over 5 other big cases that have been put on the back burner to handle your case. The discovery period in these cases were continued several times for me to focus on your case. If I knew you were going to try and treat me unfairly by merely asserting we had an hourly agreement after doing a exceptional work with and exceptional result, I wouldn't have continued. The reason is I would lose too much money. I would hope it was never your intention to cause me hardship and lose money when helping you achieve such an exceptional result. I realize I did not have you sign a fee agreement because I trusted you, but I did not have you sign an hourly agreement either.

Finalizing the settlement

There is also a lot of work left to be done. As you know, the language to the settlement must be very specific to protect everyone. This will need to be negotiated. If this cannot be achieved, there is no settlement. The Defendant will require I sign the confidentiality provisions, which could expose me to future litigation. Depending on the language, I may not be comfortable doing this as I never agreed to sign off on releases. Even if the language in the settlement agreement is worked out, there are motions to approve the settlement, which will be strongly opposed by Lange. If the Court does not grant to the motion, then there is no settlement. If there is an approved settlement and Viking does not pay timely, then further motions to enforce must be filed.

Presently, there are many things on calendar that I need to address. We have the following depositions: Mr. Carnahan, Mr. Garelli, Crane Pomerantz, Kevin Hastings, Gerald Zamiski, and the UL deposition in Chicago. We have the Court hearings for Zurich's motions for protective order, our motion to de-designate the documents as confidential, our motion to make Mr. Pomerantz an initial expert, as well as the summary judgment motions involving Lange, who has

recently filed a counter motion and responses need to be filed. Simply, there is a substantial amount of work that still needs to be addressed. Since you knew of all of the pending matters on calendar, it is unfortunate that you were obligated to go to China during a very crucial week to attempt to finalize the case. When I asked if you would be available to speak if necessary, you told me that you are unavailable to discuss matters over the phone. This week was very important to make decisions to try and finalize a settlement.

I understand that the way I am looking at it may be different than the way your business mind looks at things. However, I explained my standard fees and how I work many times to you and the amount in the attached agreement is beyond fair to you in light of the exceptional results. It is much less than the reasonable value of my services. I realize that because you did not sign my retainer that you may be in a position to take advantage of the situation. However, I believe I will be able to justify the attorney fee in the attached agreement in any later proceeding as any court will look to ensure I was fairly compensated for the work performed and the exceptional result achieved.

I really want us to get this breakdown right because I want you to feel like this is remarkable outcome while at the same time I don't want to feel I didn't lose out too much. Given what we have been through and what I have done, I would hope you would not want me to lose money, especially in light of the fact that I have achieved a result much greater than your expectations ever were in this case. The attached agreement should certainly achieve this objective for you, which is an incredible reduction from the true value of my services.

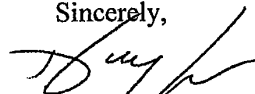
Conclusion

If you are agreeable to the attached agreement, please sign both so I can proceed to attempt to finalize the agreement. I know you both have thought a lot about your position and likely consulted other lawyers and can make this decision fairly quick. We have had several conversations regarding this issue. I have thought about it a lot and this the lowest amount I can accept. I have always felt that it was our understanding that that this was not a typical contract lawyer case, and that I was not a typical contract lawyer. In light of the substantial work performed and the exceptional results achieved, the fee is extremely fair and reasonable.

If you are not agreeable, then I cannot continue to lose money to help you. I will need to consider all options available to me.

Please let me know your decisions as to how to proceed as soon as possible.

Sincerely,



Daniel S. Simon

0050

EAB0188

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

RETAINER AGREEMENT

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THAT Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating have retained and does by this instrument retain the Law Offices of Daniel S. Simon, as his/her attorneys; said attorneys to handle on his/her behalf, all claims for damages arising out of and resulting from an incident on or about April 9, 2016 involving the flood caused by a failed sprinkler head, which clients now have, and which might hereafter accrue against Viking Corporation, Viking Group and Viking Supply Net, for damages arising out of said incident to Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust and American Grating that the parties have respectively agreed as follows:

1. THE FEE FOR LEGAL SERVICES SHALL BE IN THE SUM OF 1,500,000 for services rendered to date. This sum includes all past billing statements, the substantial time that is not included in past billing statements, the current outstanding billing statements and any further billing statements that may accrue to finalize and secure the settlement with the Viking Entities only. Any future services performed prosecuting Lange Plumbing will be determined by a separate agreement. However, all past services performed prosecuting Lange Plumbing will be included in the above fee. The above sum will be reduced by all payments already made toward the attorneys fees. If for some reason, the settlement cannot be finalized with the Viking Entities, this agreement shall be void as it only contemplates a reasonable fee for services performed and to finalize the settlement agreement.

2. ALL COSTS, INCLUDING ARBITRATION COSTS, COSTS OF OBTAINING EXPERTS TO ANALYZE AND EVALUATE THE CAUSE OF THE ACCIDENT, COSTS OF EXPERT TESTIMONY, COSTS OF WITNESS FEES, TRAVEL COSTS, DEPOSITION COSTS, COURT COSTS, AND ALL COSTS OF LITIGATION, INCLUDING LONG DISTANCE PHONE CALLS, COPYING EXPENSES, REGARDLESS OF THE OUTCOME, ARE TO BE PAID BY THE CLIENT, AND IF ANY OF THEM SHALL HAVE BEEN ADVANCED BY THE ATTORNEY, HE SHALL BE REIMBURSED FOR THE

The Law Office of Daniel S. Simon
810 S. Casino Center Blvd.
Las Vegas, Nevada 89101
702-364-1650 Fax: 702-364-1655

1 SAME. THE ATTORNEY IS AUTHORIZED TO PAY ANY OF SAID
2 EXPENSES OUT OF THE SHARE OF THE SETTLEMENT ACCRUING TO
3 THE CLIENT.

4 SIGNED this ____ day of _____, 2017.

6 LAW OFFICES OF DANIEL S. SIMON Brian Edgeworth on behalf of Edgeworth Family
7 Trust and American Grating

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9 Angela Edgeworth on behalf of Edgeworth Family
10 Trust and American Grating
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LAW OFFICE OF
DANIEL S. SIMON
A PROFESSIONAL CORPORATION
810 SOUTH CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA 89101

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

SETTLEMENT BREAKDOWN

Date: November 27, 2017

Re: EFT AND AMERICAN GRATING v. ALL VIKING ENTITIES

Settlement	\$ 6,000,000.00
Attorney's Fees	1,114,000.00 (1,500,000 Less payments made of 367,606.25)
Costs	80,000.00 (200,000 Less payments made of 118,846.84)

Balance to Clients **\$ 4,806,000.00**

Clients hereby agree to the above distribution from the settlement proceeds if a settlement is finally reached and finalized. The costs may be adjusted depending on the actual costs incurred and paid. A final accounting will be made at the time of final distribution.

Dated this ____ day of November, 2017.

**Brian Edgeworth on behalf of Edgeworth Family
Trust and American Grating**

**Angela Edgeworth on behalf of Edgeworth Family
Trust and American Grating**

0053

EAB0191

EXHIBIT II

EXCERPTS FROM SIMON "SUPER BILL"

Bates SIMONEH0000240 (Daniel Simon - 866.20 hrs. @ \$550/hr)	\$476,410.00
Bates SIMONEH0000342 (Ashley Ferrel – 762.60 hrs. @ \$275/hr)	209,715.00
Bates SIMONEH0000344 (Benjamin Miller- 21.80 hrs. @ \$275/hr)	5,995.00
TOTAL FEES BILLED	\$692,120.00

INVOICE FOR DANIEL S. SIMON
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

DATE	DESCRIPTION	TIME
12.20.16	Review, Download & Save Defendants the Viking Corporation and Supply Network, Inc.'s Substitution of Counsel	0.30
1.4.17	Review, Download & Save Joint Case Conference Report	0.30
1.6.17	Email to DSS re Lange K inserts added to MSJ	0.15
1.9.17	Review email from DSS re phone call to Pancoast	0.15
1.9.17	Review, Download & Save Defendant The Viking Corporation and Supply Network , Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.10.17	Review, Download & Save Plaintiffs Response to Defendants The Viking Corporation and Supply Network Inc.'s Demand for Prior Pleadings and Discovery	0.30
1.11.17	Review email from DSS re making small changes to MSJ	0.15
1.13.17	Review, Download & Save Plaintiffs Motion for Summary Judgment	0.30
1.17.17	Review email from DSS re preparing written discovery and depo notices	0.15
1.17.17	Review email from DSS to Pancoast re moving MSJ hearing and Opp date	0.15
1.18.17	Review, Download & Save Defendant The Viking Corporation and Supply Network, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment	0.30
1.19.17	Email chain with DSS re Viking's Opposition to MSJ	0.50
1.20.17	Email chain with DSS re Stackiewicz case	0.15
1.20.17	Review, Download & Save Notice of Video Deposition of Shelli Lange	0.30
1.20.17	Review, Download & Save Subpoena for Shelli Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition Bernie Lange	0.30
1.20.17	Review, Download & Save Subpoena for Bernie Lange	0.30
1.20.17	Review, Download & Save Notice of Video Deposition of Tracey Garvey	0.30
1.20.17	Review, Download & Save Subpoena for Tracy Garvey	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

INVOICE FOR BENJAMIN J. MILLER
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
8/16/17	Research and review prior cases and brief bank for written discovery on punitive damages	0.75
8/16/17	Send interoffice email regarding punitive damage discovery from other cases	0.25
8/17/17	Research and review licensing standards and regulations from California Board of Professional Engineers, Land Surveyors and Geologists for possible use in upcoming expert depositions	1.5
8/30/17	Send interoffice email regarding punitive damages written discovery from other cases	0.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35
11/13/17	Draft interoffice email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/6/17	Research Nevada case law regarding cost of repair damages and diminution in value damages	0.75
11/6/17	Research case law of surrounding jurisdictions regarding cost of repair damages and diminution in value damages	1.5
11/6/17	Research various law review articles, restatements of law, jury instructions and other legal authorities regarding cost of repair damages and diminution in value damages	1.25
11/6/17	Draft email regarding case research for diminution in value damages to include in additional research for memoranda on admissibility	0.35

11/8/17	Prepare memo regarding cost of repair damages and diminution in value damages	2.0
11/9/17	Discussion with DSS re: Memo	0.5
11/13/17	Research Nevada law regarding admissibility of litigation conduct for bad faith	0.5
11/13/17	Research case law of surrounding jurisdictions regarding admissibility of litigation conduct for bad faith	3.25
11/13/17	Research various law review articles and other legal authorities regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Prepare memo regarding admissibility of litigation conduct for bad faith	1.75
11/13/17	Draft email regarding summary of memo on admissibility of litigation conduct as bad faith at trial	0.30
11/14/17	Research Contract Validity within NRS Chapter 624 and Nevada case law for summary judgment briefing	2.75
11/16/17	Confer regarding recoverable damages within breach of contract vs. products liability	0.75
11/16/17	Receipt and read interoffice email regarding instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
11/16/17	Send response interoffice email confirming instruction to prepare draft response regarding admissibility of litigation conduct as bad faith	0.25
	Total Hours x's \$275 per hour (reduced)	21.8
	Total Fees	\$5,995.00

EXHIBIT JJ

EXCERPTS FROM "SUPER BILL" WITH
SIMON POST-DISCHARGE ENTRIES

INVOICE FOR DANIEL S. SIMON
EDGEWORTH v. LANGE, ET AL.

Date	Description	Time
5/27/16	Email Chain with Client Re: Representation	.25
5/28/16	Email Chain with Client Re: Client Meeting	.40
5/31/16	Receive, Review and Analyze Email From Client	.40
6/1/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Receive, Review and Analyze Email From Client	.40
6/2/16	Email Chain with Client	.40
6/3/16	Email Chain with Client with Attachment	.50
6/3/16	Email Chain From Client with Website Attachment	.40
6/3/16	Receive, Review and Analyze Email from Viking and to Client	.40
6/5/16	Email Chain with Client	.40
6/10/16	Email Chain with Client	.75
6/13/16	Draft and Send Email to Client	.25
6/14/16	Receive, Review and Analyze Email from Client	.25
6/22/16	Email Chain with Client	.40
7/11/16	Email Chain with AD, SC, SR; Re: Representation of Lange	.25
7/12/16 - 7/13/16	Email Chain with Client	1.25
7/14/16	Receive, Review and Analyze Email from Client	.25
7/14/16	Receive, Review and Analyze Email from Viking, Forward to Client with Attachments; Receive, Review and Analyze Response from Client; Review File; Email Chain with Client	1.75
7/18/16	Receive, Review and Analyze Email from Client with Attachment	.75
7/19/16	Email Chain with Client	.50
7/19/16	Draft and Send Email to AD; Re: SAO Amend Complaint	.25

11/11/17	Email Chain with Client with Attachment; Review and Analyze Mediator Proposal	.50
11/13/17	Draft and send email with attachments to AF	.15
11/13/17	Review Viking Motion for MSC and Stay all Rulings; Discussion with AF; Review Letter to DC Bulla; Telephone Conference with Floyd Hale; Telephone Conference with J. Olivas Re: Deposition	2.25
11/13/17	Email chain with AF re complaint filed against Harold Rodgers	.25
11/13/17	Draft and send email to AF re research re privilege log and confidentiality issues and review AF response	.75
11/13/17	Draft and send email to AF re supplementing Pomerantz opinion letter	.15
11/13/17	Email chain with AF re expert depositions noticed by Viking	.15
11/13/17	Prepare for 11/14/17 Hearings	2.25
11/13/17	Review Pomerantz Report and Produce; Discussion with Pomerantz; Discussion with Charles Rego from UL and Client	2.75
11/13/17	Receive, Review and Analyze Email From JO; Re: Additional Emails	.25
11/13/17	Email Chain with AF/CP with Attachments Re: Henderson	.15
11/13/17	Email from CP with Opinion letter	.75
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Receive, Review and Analyze Email from Client; Discussion with Client	.25
11/13/17	Email Chain with Client with Attachment	.50
11/13/17	Draft and Send Email to Client	.15
11/13/17	Email Chain with Client	.15
11/13/17	Email Chain with Client	.50
11/13/17	Receive, Review and Analyze Email from Client	.15
11/13/17	Draft and Send Email to Client with Attachment	.15

11/13/17	Receive, Review and Analyze Email from Client	.25
11/13/17	Call with Client	.50
11/13/17	Call with Client	.25
11/14/17	Call with AMF	.10
11/14/17	Call with Client	.15
11/14/17	Call with Client	.10
11/14/17	Call with Client	.10
11/13/17	Email Chain with Client	.40
11/14/17	Email Chain with JP, AF, TP; Re: Inspection of Documents	.25
11/14/17	Email Chain with D. Holloman, JP, KR, JM; Re: Hale Settlement Matters	.25
11/14/17	Attend Hearings on MSJ; Review File with Client; Review Research; Prepare Emails to Pancoast Re: Depositions and Discovery Responses; Discussion with Attorney Olgvie Re: Retention; Email to Parker; Discussion with AF; Review Plaintiffs' 14 th ECC Supplement; Review files	7.5
11/14/17	Draft and Send Email to Ogilvie with Attachments	.75
11/14/17	Telephone Call with Ogilvie Regarding Retention	.50
11/15/17	Review cases re: validity of contract under NRS 624; discussion with AF and BM	2.75
11/15/17	Review research re: admissibility of litigation conduct; discussion with BJM	.75
11/15/17	Discussion with BJM re: recoverable damages w/ breach of contract vs. product liability	.75
11/15/17	Receive, Review and Analyze Email from Client	.15
11/15/17	Receive, Review and Analyze Email from Client	.25
11/15/17	Receive, Review and Analyze Email from Client with Link	.40
11/15/17	Call with Client	.25
11/15/17	Call with Client	.50

11/15/17	Call with Client	.25
11/15/17	Call with Client	.10
11/15/17	Call with Client	.10
11/15/17	Call with Client	.75
11/16/17	Call with Client	.25
11/16/17	Call with Client	.25
11/16/17	Call with AMF	.15
11/16/17	Call with Client	.15
11/16/17	Call with Client	.10
11/17/17	Call with Client	.15
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Client	.50
11/17/17	Call with Client	.25
11/17/17	Call with Teddy Parker	.10
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Teddy Parker	.15
11/17/17	Call with Client	.65
11/17/17	Call with Client	.15
11/17/17	Email Chain with EC, JP, AF, MN, TP, KR; Re: Olivas Deposition	.15
11/17/17	Draft and Send Email to Ogilvie with Links	.25
11/17/17	Prepare and Attend Hearings	4.5
11/17/17	Several discussions with clients from office	.50
11/17/17	Receive, Review and Analyze Email from Client with Link	.40
11/17/17	Receive, Review and Analyze Email from L. Rotert; Pomerantz Bill	.15
11/18/17	Draft and Send Email to Client with Links	.15

11/18/17	Email Chain with JP, AF, TP, BP, JH, KR; Re: MIL Meeting. Discovery with AF.	.50
11/20/17	Email chain with AF re outstanding expert bills	.25
11/20/17	Email chain with AF re meet and confer for MILS and hearing for Giberti's MGFS	.25
11/20/17	Email chain with AF re Knez letter and threat of motion to file protective order in CA for Rodgers and Rene Stone depositions	.25
11/20/17	Email Chain with Ogilvie and AF; Re: Permit App	.25
11/20/17	Receive, Review and Analyze Email from Client; Forward to AF	.15
11/21/17	Receive, Review and Analyze Email from Client	.25
11/21/17	Call with Client	.10
11/22/17	Draft and send email to AF re recent list of damages and review AF response	.15
11/22/17	Email Chain with Ogilvie, AF with Attachments; Re: Lange Supp Brief	.15
11/22/17	Draft and send email to AF re sending Lange responses brief to Ogilvie and review AF response	.15
11/22/17	Review notices of vacating deposition of Rene Stone and Harold Rodgers	.50
11/22/17	Review Lange's 12 th ECC Supplement	.25
11/24/17	Review correspondence from Dalacas	.25
11/24/17	Review email filings and depo emails	1.50
11/25/17	Call with Client	.10
11/25/17	Call with Client	.10
11/25/17	Call with Client	.15
11/26/17	Review Lange Discovery responses and attachments	1.50
11/27/17	T/C with J. Olivas re deposition	.35
11/27/17	Review hearing transcript from 11/14/17 hearing	1.50

11/27/17	T/C with T. Parker and Henriod (x3)	.75
11/27/17	Conference call with T. Parker, J. Pancoast and JEA to continue hearings; Emails	1.0
11/27/17	Receive, Review and Analyze Email From JO; Re: Final Invoice	.25
11/27/17	T/C's with Teddy Parker	.65
11/27/17	Email Chain with JP, TP, AF, KR, DP, JH; Re: MIL / Expert Depositions	.50
11/27/17	Email Chain with Bess White, TP, JP; Re: Edgeworth MOT for Summary Judgement	.35
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.15
11/27/17	Receive, Review and Analyze Email from Client	.15
11/27/17	Draft and Send Email to Client	.25
11/27/17	Receive, Review and Analyze Email from Client	.25
11/27/17	Draft and send email to AF re Carnahan depo and review AF response	.15
11/28/17	Email Chain with JP, AF, KR, JH; Re: Outstanding Discovery	.15
11/28/17	Email Chain with EN, JP, KR, DP; Re: Letter from Parker	.50
11/28/17	Review Lange letter (11/28/17), analyze; discussion with AF	1.25
11/28/17	Review Amended Notice of Carnahan Depo	.25
11/28/17	Conference call with Judge Bulla chambers w/ Pancoast to reset December 1 st hearings to December 20 th and call with Pancoast separately	.50
11/28/17	Review notices of vacating depositions	.50
11/28/17	Email Chain with Ogilvie to Discuss Case	.15
11/29/17	Receive and analyze email from Ogilvie	1.50
11/29/17	Email Chain with EN, JP, TP; Re: Letter from Parker	.50
11/29/17	Email Chain with JP, AF; Re: Discovery Motions	.15

11/29/17	Draft and send email to AF re drafting reply to Lange's supplemental Opposition	1.50
11/29/17	Draft and send email to AF re drafting notice of attorney lien	.15
11/29/17	Draft and send email to AF re letter from Pancoast to Simon	.15
11/29/17	Review and analyze Lange's supplemental brief	2.50
11/29/17	Email from client Angela Edgeworth	.15
11/29/17	Email response to client Angela Edgeworth	.25
11/29/17	Review and analyze email from Oligilvie re: contractors license legal arguments and response email to Oligilvie; Discussion with AF	1.50
11/29/17	Draft reply to Lange's Supplemental Opposition to Plaintiffs' MSJ	2.75
11/29/17	Discussions w/ J. Henriod re moving hearings and settlement	.65
11/29/17	T/C with T. Parker	.50
11/29/17	Draft letter to Parker	.50
11/30/17	Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with Teddy Parker	.10
11/30/17	Call with AMF	.25
11/30/17	Call with Teddy Parker	.15
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.10
11/30/17	Call with AMF	.20
11/30/17	Call with AMF	.10
11/30/17	Review file for Lange bills, T/C to Parker re: settlement	.75
11/30/17	Negotiate release w/ Henriod (his office)	3.50
11/30/17	Conversation w/ Green; draft email, send release	.75
11/30/17	Receive and review letter dated 11-30-17	.25

11/30/17	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	.75
11/30/17 & 12/2/17	Email chain with AF re attorney lien	.15
12/1/17	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	.15
12/1/17	Receive and review release email to Defendant	.75
12/1/17	Receive and review release email from Pancoast & discussion with AF	.50
12/1/17	Review Viking's 19 th ECC Supplement	.25
12/4/17	Received and reviewed DCRR; L/M for Green/Vannah	.75
12/4/17	Review notice vacating UL Depos	.25
12/4/17	Discussion with AF	.40
12/5/17	T/c with John Green; Email from John Green; Discussion with staff	.40
12/5/17	Review subpoena to Dalacas	.25
12/5/17	Emails to client and John Greene messages	.50
12/5/17	Draft and Send Email to Client and Response	.15
12/6/17	Draft and send email to AF re notice to vacate Caranahan depo	.15
12/6/17	Review file and gather materials requested by Vannah; email from John Greene	2.25
12/6/17	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	.50
12/6/17	Review notice of vacating depo of Carnahan	.35
12/6/17	Receive and review email from Janet Pancoast; discussion with AF; response; forward to Vannah	.35
12/6/17	Received and reviewed Lange's 13 th ECC Supplement	.50
12/6/17	Email Chain with JP, AF; Re: Carnahan Deposition	.15
12/7/17	Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	.35
12/7/17	T/C with Vannah	.50

12/7/17	Draft and revise letter; Review of file to Vannah w/ attachment	1.75
12/8/17	Received and reviewed Lange 14 th ECC Supplement	1.25
12/8/17	Review Motion for Good faith settlement; discussion with AF	.75
12/8/17	Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	.50
12/8/17	Email chain with AF re Order Granting Giberti MGFS	.15
12/11/17	Email from Zamiski; Response email	.15
12/11/17	Review/ Analyze Lange 15 th ECC Supplement	.50
12/11/17	T/C Parker & Pancoast; Email from T. Parker; Email from Crt	.75
12/11/17	Review client's release of claims; emails to J. Greene; Discussions with AF	.50
12/11/17	Draft and send email to AF re Lange's 15 th ECC Supplement and review AF response	.25
12/12/17	Draft and send email to AF re Stip to Dismiss and review AF response	.15
12/12/17	Attend hearing on Viking Motion for Good Faith Settlement	1.75
12/6/17- 12/12/17	Messages; Returned messages; discussions with Floyd Hale	.50
12/12/17	Email from J. Pancoast; Received/Reviewed/Analyze stip to dismiss; order on Good faith settlement; discussion with AF	1.25
12/12/17	Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	.50
12/14/17	Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review email from J. Pancoast	.50
12/15/17	Review email from T.Ure; T/C to J. Pancoast re 2 nd stip to dismiss and arrange pick up of settlement checks	.50
12/18/17	Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
12/18/17	T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.0

12/18/17	Received, reviewed and analyze email from B. Vannah	.50
12/19/17	Emails to B. Vannah and J. Greene re checks	.25
12/19/17	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and response from B. Vannah	.25
12/20/17	Request return of sprinklers from Volmer Grey	.25
12/20/17	Receive and review draft Motion for Good Faith Settlement; Lange release for \$100k and release for \$22k	1.50
12/21/17	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	.75
12/21/17	Receive, review and analyze email from B. Vannah (3:21pm)	.50
12/23/17	Received, reviewed and analyzed email from B. Vannah (10:45pm)	.50
12/26/17	Receive, review and analyze email from J. Christensen to B. Vannah (10:46am)	.25
12/26/17	Receive, review and analyze email from B. Vannah (12:18pm)	.75
12/26/17	Receive, review and analyze email from J. Christensen	.25
12/27/17	Receive, review and analyze email from JC w/e letter attached	.75
12/28/17	Receive, review and analyze email from B. Vannah (3:07pm)	.75
12/28/17	Receive, review and analyze email from B. Vannah (2:03pm)	.25
12/28/17	Receive, review and analyze email from B. Vannah (4:17am)	.75
12/29/17	Received and reviewed email re joint motion and revised joint motion	.40
1/2/18	Revise Lange release and send back to T. Parker	.75
1/2/18	Received/reviewed Viking stip to dismiss	.35
1/2/18	Received/reviewed email from J. Pancoast and T. Parker	.35
1/2/18	Received/reviewed and analyzed letters from Zurich re settlement checks	.25
1/2/18	Received, reviewed and analyzed email from J. Greene (3:45pm)	.25
1/2/18	T/C with S. Guidy at Bank of Nevada	.50

1/3/18	T/C w/ S. Guindy at Bank of Nevada; Received, reviewed and analyzed email with attachments	.75
1/3/18	Analyze , review schedule and additional emails from S. Guindy	.50
1/4/18	Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review Emails from J. Christensen and Bank , J. Greene	.75
1/4/18	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	.50
1/4/18	Email to T. Parker and E. Nunez regarding revisions to release	.50
1/4/18	Travel to Bank of Nevada for bank account requested by client	1.50
1/4/18	Email E. Nunez releases again per her request	.25
1/5/18	Email from S. Guindy and response	.25
1/5/18	Email from Nunez	.15
1/5/18	Review Court filing of MGFS Lange	.25
1/8/18	T/C with S. Guindy; receive, review and analyze letter from Vannah	.50
1/8/18	Travel to Bank of Nevada 2x re Trust deposit	2.5
	Review all Emails concerning service of all pleadings (679 emails)	135.80
	Total Hours	866.20
	Total Fees at \$550 per hour	\$476,410.00

EXHIBIT KK

EXCERPTS FROM "SUPER BILL" WITH
FERREL POST-DISCHARGE ENTRIES

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

11/27/17	Draft and serve notice to vacate deposition of Anthasia Dalacas	0.25
11/28/17	Draft and serve amended deposition notice and subpoena for Robert Carnahan	0.25
11/28/17	Review Letter from Lange and discussion with DSS	0.75
11.28.17	Review, Download & Save Subpoena Duces Tecum for Robert Carnahan PE	0.30
11.28.17	Review, Download & Save Amended Notice of Continued Video Deposition of Robert Carnahan P.E. Duces Tecum	0.30
11.29.17	Review, Download & Save Defendants The Viking Corporation and Supply Network, Inc.'s 19 th Supplemental NRCP 16.1 Disclosure	0.30
11.29.17	Review, Download & Save Correspondence to Counsel, dated November 29, 2017	0.30
11/29/17	Review Olgilvie response to Lange's Supplement to MSJ; Discussion with DSS re Reply	0.50
11.29.17	Review email from DSS re drafting reply to Lange's supplemental Opposition	1.50
11.29.17	Review email from DSS re drafting notice of attorney lien	0.15
11.29.17	Review email from DSS re letter from Pancoast to Simon	0.15
11.29.17	Email to Pancoast re hearing dates I front of DC Bulla in light of negotiations	0.15
11.30.17	Email to George Olgilvie instructing him to stop working on the case	0.15
11.30.17	Review, Download & Save Letter to Counsel	0.30
11.30.17	Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
11/30/17	Review Viking's 19 th ECC Supplement	1.0
11/30/17	Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
11.30.17 & 12.2.17	Email chain with DSS re attorney lien	0.15
12/1/17	Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.5
12.1.17	Review, Download & Save Lange Plumbing Verification to Rogs	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.1.17	Review, Download & Save Notice of Attorney Lien	0.30
12/1/17	Review Release from Viking and discussion with DSS re release	0.50
12/4/17	Draft and serve notice to vacate deposition of UL Laboratories	0.25
12/4/17	Review Lange written discovery responses	1.5
12/4/17	Discussion with DSS re scheduling and status of case	0.40
12.4.17	Review, Download & Save Notice Vacating the 2 nd Amended Video Depo of NRCP30(b) (6) Designees of Underwriters Laboratories	0.30
12.4.17	Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
12.5.17	Email chain with UL re vacating depo	0.15
12/6/17	Review Lange's 13 th ECC Disclosure	2.5
12.6.17	Review email from DSS re notice to vacate Caranahan depo	0.15
12/6/17	Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
12/6/17	TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
12.6.17	Review, Download & Save Service Only – Lange Plumbing 13 th Supp to NRCP 16.1 ECC	0.30
12.6.17	Review, Download & Save Service Only – Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
12.7.17	Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
12/8/17	Review Viking Motion for Good Faith Settlement, Analyze and discussion with DSS	0.75
12/8/17	Review Lange's 14 th and 15 th ECC Disclosure	0.50
12.8.17	Email chain with DSS re Order Granting Giberti MGFS	0.15
12/8/17	Review Stipulation to Dismiss from Viking and discussion with DSS	0.50
12.8.17	Review, Download & Save Lange Plumbing 15 th Supplement to 16.1 ECC List Witnesses and Docs	0.30

INVOICE FOR ASHLEY M. FERREL
EDGEWORTH v. LANGE PLUMBING, ET AL.

12.8.17	Review, Download & Save Lange Plumbing 14 th Supp to 16.1ECC List of Witnesses and Docs	0.30
12/11/17	Discussion with DSS re client's release of claims	0.20
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 th ECC Supplement and response	0.25
12/12/17	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
12.12.17	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
12.13.17	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
1/2/18	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.5
TOTAL HOURS x \$275 per hour (reduced)		762.6
TOTAL FEES		\$209,715.00

EXHIBIT LL

DEMONSTRATIVE OF POST-
DISCHARGE BILLING BY SIMON AND
FERREL, WITH BREAKDOWN OF HOURS
BY ESTIMATED PURPOSE

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)

DSS	11/30/2017	Review release; T/C J. Greene; T/C T. Parker; revise release	1.25
DSS	11/30/2017	Call with Teddy Parker	0.15
DSS	11/30/2017	Call with Teddy Parker	0.15
DSS	11/30/2017	Call with Teddy Parker	0.10
DSS	11/30/2017	Call with AMF	0.25
DSS	11/30/2017	Call with Teddy Parker	0.15
DSS	11/30/2017	Call with AMF	0.10
DSS	11/30/2017	Call with AMF	0.10
DSS	11/30/2017	Call with AMF	0.20
DSS	11/30/2017	Call with AMF	0.10
DSS	11/30/2017	Review file for Lange bills, T/C to Parker re: settlement	0.75
DSS	11/30/2017	Negotiate release w/Henriod (his office)	3.50
DSS	11/30/2017	Conversation w/Green; draft email, send release	0.75
DSS	11/30/2017	Receive and review letter dated 11-30-17	0.25
DSS	11/30/2017	Received and reviewed Lange letter (11-29-17) regarding scheduling discovery; Discussion with AF	0.75
11/30/2017 &			
DSS	12/2/2017	Email chain with AF re attorney lien	0.15
DSS	12/1/2017	Email Chain with JP, AF, DP, JH, MB, KR; Re: Discovery Motions	0.15
DSS	12/1/2017	Receive and review release email to Defendant	0.75
DSS	12/1/2017	Receive and review release email from Pancoast & discussion with AF	0.50
DSS	12/1/2017	Review Viking's 19th ECC Supplement	0.25
DSS	12/4/2017	Received and reviewed DCRR; L/M for Green/Vannah	0.75
DSS	12/4/2017	Review notice vacating UL Depos	0.25
DSS	12/4/2017	Discussion with AF	0.40
DSS	12/5/2017	T/c with John Green; Email from John Green; Discussion with staff	0.40
DSS	12/5/2017	Review subpoena to Dalacas	0.25
DSS	12/5/2017	Emails to client and John Greene messages	0.50
DSS	12/5/2017	Draft and Send Email to Client and Response	0.15
DSS	12/5/2017	Draft and send email to AF re notice to vacate Caranahan depo	0.15
DSS	12/6/2017	Review file and gather materials requested by Vannah; email from John Greene	2.25
DSS	12/6/2017	Email from AF re evidentiary hearing from Judge Jones law clerk and discussion with AF	0.50
DSS	12/6/2017	Review notice of vacating depo of Carnahan	0.35
DSS	12/6/2017	Receive and review email from Janet Pancoast; discussion with AF; response, forward to Vannah	0.35

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
DSS	12/6/2017 Received and reviewed Lange's 13th ECC Supplement	0.50
DSS	12/6/2017 Email Chain with JP, AF; Re: Carnahan Deposition	0.15
DSS	12/7/2017 Email Chain with JP, AF, TP, KR, JM, JH, DP, SM; Re: Evidentiary Hearing	0.35
DSS	12/7/2017 T/C with Vannah	0.50
DSS	12/7/2017 Draft and revise letter; Review of file to Vannah w/ attachment	1.75
DSS	12/8/2017 Received and reviewed Lange 14th ECC Supplement	1.25
DSS	12/8/2017 Review Motion for Good faith settlement; discussion with AF	0.75
DSS	12/8/2017 Received and review order granting Giberti Motion for Good Faith Settlement; T/C with Parker	0.50
DSS	12/8/2017 Email chain with AF re Order Granting Giberti MGFS	0.15
DSS	12/11/2017 Email from Zamiski; Response email	0.15
DSS	12/11/2017 Review/ Analyze Lange 15th ECC Supplement	0.50
DSS	12/11/2017 T/C Parker & Pancoast; Email from T Parker; Email from Crt	0.75
DSS	12/11/2017 Review client's release of claims; email to J. Green Discussion with AF	0.50
DSS	12/11/2017 Draft and send email to AF re Lange's 15th ECC Supplement and review AF response	0.25
DSS	12/12/2017 Draft and send email to AF re Stip to Dismiss and review AF response	0.15
DSS	12/12/2017 Attend hearing on Viking Motion for Good Faith Settlement	1.75
DSS	12/6/2017 -	
DSS	12/12/2017 Messages; Returned messages; discussions with Floyd Hale	0.50
DSS	Email from J. Pancoast; Received/Reviewed/ Analyze stip to dismiss order on Good faith settlement; discussion with	
DSS	12/12/2017 AF	1.25
DSS	12/12/2017 Received letter from Pancoast to DC Bulla; Pancoast email re checks and signing stips	0.50
DSS	12/14/2017 Review both stips to dismiss; send to J. Pancoast; T/C to M. Nunez; Review mail from J. Pancoast	0.50
DSS	12/15/2017 Review email from T.Ure; T/C to J. Pancoast re 2nd stip to dismiss and arrange pick up of settlement checks	0.50
DSS	12/18/2017 Pick up settlement checks; exchange for stip; contact Vannah's office re signature	1.50
DSS	12/18/2017 T/C and emails to J. Greene re checks; T/C to Pomerantz office re bill; emails; review bills from Pomerantz	1.00
DSS	12/18/2017 Received, reviewed and analyze email from B. Vannah	0.50
DSS	12/19/2017 Emails to B. Vannah and J. Greene re checks	0.25
DSS	Received and review email from B. Vannah to J. Christensen; Received and review email from J. Christensen and	
DSS	12/19/2017 response from B. Vannah	0.25
DSS	12/20/2017 12/20/17 Request return of sprinklers from Volmer Grey .25	0.25

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)

DSS	12/20/2017	Receive and review draft Motion for Good Faith Settlement; Lange release for 100k and release for \$22k	1.50
DSS	12/21/2017	Review emails from Pancoast and Parker; revise joint motion for good faith settlement and send back to Parker	0.75
DSS	12/21/2017	Receive, review and analyze email from B. Vannah (3:21pm)	0.50
DSS	12/21/2017	Received, reviewed and analyzed email from B. Vannah (10:45pm)	0.50
DSS	12/26/2017	Receive, review and analyze email from J. Christensen to B. Vannah (10:45am)	0.25
DSS	12/26/2017	Receive, review and analyze email from B. Vannah (12:18pm)	0.75
DSS	12/26/2017	Receive, review and analyze email from J. Christensen	0.25
DSS	12/27/2017	Receive, review and analyze email from JC w/e letter attached	0.75
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (3:07pm)	0.75
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (2:03pm)	0.25
DSS	12/28/2017	Receive, review and analyze email from B. Vannah (4: 17am)	0.75
DSS	12/29/2017	Received and reviewed email re joint motion and revised joint motion	0.40
DSS	1/2/2018	Revise Lange release and send back to T. Parker	0.75
DSS	1/2/2018	Received/reviewed Viking stip to dismiss	0.35
DSS	1/2/2018	Received/reviewed email from J. Pancoast and T. Parker	0.35
DSS	1/2/2018	Received/reviewed and analyzed letters from Zurich re settlement checks	0.25
DSS	1/2/2018	Received, reviewed and analyzed email from J. Greene (3:45pm)	0.25
DSS	1/2/2018	T/C with S. Guidy at Bank of Nevada	0.50
DSS	1/3/2018	T/C w/ S. Guidy at Bank of Nevada; Received, reviewed and analyzed email with attachments	0.75
DSS	1/3/2018	Analyze, review schedule and additional emails from S. Guidy Analyze, receive and send emails to S. Guidy at Bank of Nevada; Review emails from J. Christensen and bank, J.	0.50
DSS	1/4/2018	Greene	0.75
DSS	1/4/2018	Email from T. Parker (E Nunez) re Joint MGFS, sign and return to T. Parker	0.50
DSS	1/4/2018	Email to T. Parker and E. Nunez regarding revisions to release	0.50
DSS	1/4/2018	Travel to Bank of Nevada for bank account requested by client	1.50
DSS	1/4/2018	Email E. Nunez releases again per her request	0.25
DSS	1/5/2018	Email from S. Guidy and response	0.25
DSS	1/5/2018	Email from Nunez	0.15
DSS	1/5/2018	Review Court filing of MGFS Lange	0.25
DSS	1/8/2018	T/C with S. Guidy; receive, review and analyze letter from Vannah	0.50
DSS	1/8/2018	Travel to Bank of Nevada 2x re Trust deposit	2.50

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)		
AMF	11/30/2017 Email to George Ogilvie instructing him to stop working on the case	0.15
AMF	11/30/2017 Review, Download & Save Letter to Counsel	0.30
AMF	11/30/2017 Review, Download & Save Correspondence to Discovery Commissioner Bulla regarding Hearings	0.30
AMF	11/30/2017 Review Viking's 19th ECC Supplement	1.00
AMF	11/30/2017 Review Letter from Lange regarding discovery scheduling and discussion with DSS	0.75
	11/30/2017-	
AMF	12/2/2017 Email chain with DSS re attorney lien	0.15
AMF	12/1/2017 Draft Notice of Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	2.50
AMF	12/1/2017 Review, Download & Save Lange Plumbing Verification to Rogs	0.30
AMF	12/1/2017 Review, Download & Save notice of Attorney Lien	0.30
AMF	12/1/2017 Review Release from Viking and discussion with DSS re release	0.50
AMF	12/4/2017 Draft and serve notice to vacate deposition of UL Laboratories	0.25
AMF	12/4/2017 Review Lange written discovery responses	1.50
AMF	12/4/2017 Discussion with DSS re scheduling and status of case	0.40
	Review, Download & Save Notice Vacating the 2nd Amended Video Depo of NRCP30(b) (6) Designees of	
AMF	12/4/2017 Underwriters Laboratories	0.30
AMF	12/4/2017 Review, Download & Save Discovery Commissioners Report and Recommendations	0.30
AMF	12/5/2017 Email chain with UL re vacating depo	0.15
AMF	12/6/2017 Review Lange's 13th ECC Disclosure	2.50
AMF	12/6/2017 Review email from DSS re notice to vacate Caranahan depo	0.15
AMF	12/6/2017 Draft and serve Notice to Vacate Robert Carnahan Deposition	0.50
AMF	12/6/2017 TC with Judge Jones law clerk rehearing scheduling; Discussion with DSS	0.50
AMF	12/6/2017 Review, Download & Save Service Only -- Lange Plumbing 13th Supp to NRCP 16.1 ECC	0.30
AMF	12/6/2017 Review, Download & Save Service Only -- Notice of Vacating the Continued Video Depo of Robert Carnahan	0.30
AMF	12/7/2017 Review, Download & Save MDGF- Def The Viking Corporation & Supply Network MGF Settlement & Request for OST	0.30
AMF	12/8/2017 Review Viking Motion for Good Faith Settlement, Analyz and discussion with DSS	0.75
AMF	12/8/2017 Review Lange's 14th and 15th ECC Disclosure	0.50
AMF	12/8/2017 Email Chain with DSS re Order Granting Giberti MGFS	0.15
AMF	12/8/2017 Review Stipulation to Dismiss from Viking and Discussion with DSS	0.50
AMF	12/8/2017 Review, Download & Save Lange Plumbing 15th Supplement to 16.1 ECC List Witnesses and Docs	0.30

POST-DISCHARGE BILLING FROM SIMON LAW (billing information taken from Ex. JJ and KK)			
AMF	12/8/2017	Review, Download & Save Lange Plumbing 14th Supp to 16,1 ECC List of Witnesses and Docs	0.30
AMF	12/11/2017	Discussion with DSS re client's release of claims	0.20
AMF	12/11/2017	Review email from DSS re Lange's 15th ECC Supplement and response	0.25
AMF	12/11/2017	Review email from DSS re Lange's 15th ECC Supplement and response	0.25
AMF	12/12/2017	Review Order granting Giberti Motion for Good Faith Settlement and discussion with DSS	0.25
AMF	12/12/2017	Review, Download & Save Ltr. To Discovery Commissioner Bulla Re. Settlement	0.30
AMF	12/13/2017	Review, Download & Save NEO Granting Third Party Def. Giberti Construction LLC Motion for Good Faith Settlement	0.30
AMF	1/8/2018	Draft Notice of Amended Attorney Lien, serve and prepare & send all liens certified mail return receipt requested	1.50
DSS		HOURS BILLED FOR DANIEL S. SIMON @ \$550 RATE	51.85
AMF		HOURS BILLED FOR ASHLEY M. FERRELL @ \$275 RATE	19.25
		TOTAL HOURS BILLED	71.10
		SIMON FEES	28517.50
		FERRELL FEES	5293.75
		TOTAL POST-DISCHARGE FEES	33811.25
		SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW	
		Admin tasks re Lange Settlement	21.55
		Admin tasks re Viking Settlement, including one hearing (1)	26.65
		Preparation of Attorney Lien	4.85
		Opening Bank Account & Depositing Settlement Checks	7.25
		Undetermined - not sufficient description	10.80
		(1) For purpose of estimating category, all T/C with Vannah were added to this category.	71.10

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DANIEL S. SIMON;
DOES 1 through 10; and ROE entities 1
– 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,

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Real Parties in Interest.

Supreme Court Case No. 84367

Dist. Ct. Case No. A-18-767242-C

Consolidated with A-16-738444-C

**APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWER TO
SIMON'S WRIT PETITION**

**VOLUME III of III
EAB0221 – EAB0307**

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
MORRIS LAW GROUP
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***THE LAW OFFICE OF DANIEL S. SIMON vs. EDGEWORTH FAMILY
TRUST, ET AL.***

SUPREME COURT CASE NO. 84367

APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWERING BRIEF

CHRONOLOGICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
2018-08-29	Excerpt of Transcript of Evidentiary Hearing – Day 3	I	EAB0001- EAB0007
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	EAB0008- EAB0030
2019-10-17	Petition for Writ of Prohibition or Mandamus in Case No. 79821	I	EAB0031- EAB0070
2020-12-30	Order Denying Petition in Case No. 79821	II	EAB0071- EAB0072
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	EAB0073- EAB0089
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0090- EAB0114
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0115- EAB0220
2021-05-20	Reply ISO Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	III	EAB0221- EAB0261

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

SUPREME COURT CASE NO. 84367

APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWERING BRIEF

CHRONOLOGICAL INDEX

2021-05-24	Notice of Entry of 2 nd Amended Decision and Order Granting in Part, and Denying in Part, Simon's Motion for Attorney Fees and Costs	III	EAB0262- EAB0270
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***THE LAW OFFICE OF DANIEL S. SIMON vs. EDGEWORTH FAMILY
TRUST, ET AL.***

SUPREME COURT CASE NO. 84367

REAL PARTIES IN INTEREST RESPONSIVE APPENDIX

ALPHABETICAL INDEX

DATE	DOCUMENT TITLE	VOL.	BATES NOS.
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2018-08-29	Excerpt of Transcript of Evidentiary Hearing – Day 3	I	EAB0001- EAB0007
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	II	EAB0073- EAB0089
2021-05-24	Notice of Entry of 2 nd Amended Decision and Order Granting in Part, and Denying in Part, Simon's Motion for Attorney Fees and Costs	III	EAB0262- EAB0270
2021-06-18	Notice of Entry of Decision and Order Denying Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and Denying Simon's Countermotion to Adjudicate Lien on Remand	III	EAB0300- EAB0307
2020-12-30	Order Denying Petition in Case No. 79821	II	EAB0071- EAB0072
2019-10-17	Petition for Writ of Prohibition or Mandamus in Case No. 79821	I	EAB0031- EAB0070
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0115- EAB0220

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

SUPREME COURT CASE NO. 84367

REAL PARTIES IN INTEREST RESPONSIVE APPENDIX

ALPHABETICAL INDEX

2021-05-27	Recorder's Transcript of Pending Motions	III	EAB0271- EAB0299
2021-05-20	Reply ISO Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	III	EAB0221- EAB0261
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	II	EAB0090- EAB0114

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX IN SUPPORT OF EDGEWORTHS' ANSWER TO SIMON'S WRIT PETITION (VOLUME I THROUGH III)** to be served by mail and electronically filed and served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

Judge Tierra Jones
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

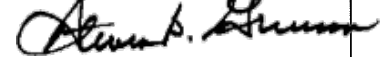
Respondents

James R. Christensen
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*Attorneys for Petitioners
Office of Daniel S. Simon, A
Professional Corporation; and Daniel S.
Simon*

Dated this 12th day of May, 2022.

By: /s/ GABRIELA MERCADO



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Edgeworth Family Trust and
American Grating, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

LANGE PLUMBING, LLC ET AL.,) Hearing Date: 5/27/21
Hearing Time: 9:30 A.M.

Defendants.

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

Plaintiffs,

v.

DANIEL S. SIMON, AT AL.,

Defendants.

) **REPLY ISO PLAINTIFFS' RENEWED
) MOTION FOR RECONSIDERATION
) OF AMENDED DECISION AND
) ORDER GRANTING IN PART AND
) DENYING IN PART SIMON'S
) MOTION FOR ATTORNEYS FEES
) AND COSTS, and MOTION FOR
) RECONSIDERATION OF THIRD
) AMENDED DECISION AND ORDER
) ON MOTION TO ADJUDICATE
) LIEN**

INTRODUCTION

Reconsideration is Appropriate Because the Court did not Follow the Supreme Court's Mandate in Issuing its Third Lien Order.

The Third Lien Order does not adhere to the Supreme Court's mandate on remand and therefore is clearly erroneous. *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). This case was remanded to this Court for the sole purpose of entering "further findings regarding the basis of the [quantum meruit] award." Sup. Ct. Order at 10. This limited purpose is explained on pages 3 - 5 of the Supreme Court's decision. The Supreme Court *affirmed* this Court's finding that "the Edgeworths *constructively discharged Simon on November 29.*" *Id.* at 4 (emphasis added). The Supreme Court also affirmed that Simon "was entitled to *quantum meruit for work done after the constructive discharge.*" *id.* (emphasis added), but declared that the Court "failed to make findings" regarding the post-discharge work on or after November 30. The Supreme Court acknowledged that Simon's "super bill" was evidence "that Simon and his associates performed work after the constructive discharge," *id.* at 5, but said the Court erred by not describing how that work was used to come up with a quantum meruit fee of \$200,000 or how the fee would be reasonable for work done post-discharge, which at Simon's "court-approved" rate of \$550 per hour that he used to bill the Edgeworths *pre-discharge* would amount to less than \$34,000.

Rather than address this substantive issue raised in the Edgeworths' motion, Simon has merely cut and pasted the same arguments he previously

1 made in his April 13 Opposition and Countermotion, which the Court
2 considered and *rejected* in issuing its April 19 Third Lien Order.¹

3 Simon's discharge on November 29 is established as a matter of law,
4 irrespective of what the parties may have contended prior to the Court
5 establishing this finding, and the Supreme Court' subsequent affirmance
6 The Edgeworths' subjective intent or beliefs imagined by Simon in his
7 opposition are of no consequence and do not bear on this motion for
8 reconsideration. Simon's request for sanctions on the Edgeworths based on a
9 "change of position" that acknowledges and accepts the discharge date as
10 November 29 (Opp'n at 8-9) is therefore frivolous.

11 **Simon's Opposition is Not Faithful to the Supreme Court's Mandate and**
12 **Addresses False Issues that are Outside the Scope of Remand**

13 **A. The Supreme Court Did Not Cause the "Remittitur" Confusion.**

14 Simon mistakenly attempts to apply the "Notice in Lieu of Remittitur"
15 issued in his writ petition case (Case No. 79821), as applicable to the two
16 consolidated appeals that remained pending in the Supreme Court until
17 remittitur issued on April 12, 2021. Opp'n at 2; *compare* Ex. MM, Excerpts of
18 Docket for Writ Petition (NSC 79821) (attached hereto) *with* Ex. NN,
19 Excerpts of Docket for Appeal (NSC 77678); (attached hereto) and Ex. OO,
20 Excerpts of Docket for Appeal (NSC 77176); (attached hereto) *see also* Ex. PP,
21 Notice in Lieu of Remittitur in Writ Petition (attached hereto) in an infirm
22 attempt to reopen and enlarge the *quantum meruit* period this Court has
23 established and the Supreme Court has affirmed.
24
25
26

27 ¹ The identical order referenced as the April 19, 2001 Amended Lien
28 Order in the motion and this reply was filed in the consolidated case, A-16-
738444-C, on April 28, 2021. For the sake of clarity, this motion is directed to
the substance of that Order, entered both on April 19 and April 28, 2021.

1 He argues that meritless proposition from the irrelevant fact that the
2 Supreme Court allowed the Edgeworths to petition for rehearing without
3 informing this court that it was doing so. Opp'n at 2. But because
4 jurisdiction of this case had not yet been returned to the District Court, there
5 was no reason for the Supreme Court to inform the Court of its decision to
6 entertain the Edgeworths' petition for rehearing. NRAP 41(a)(1). Thus, this
7 makes Simon's entire timeline on page 3 of his opposition meaningless due
8 to his sleight-of-hand attempt to apply the notice in lieu of remittitur issued
9 in his writ case to the other pending cases (which includes this case) in the
10 Supreme Court. It is uncontroverted that *in this case*, remittitur issued on
11 April 12, 2021, and was received by the District Court on April 13, 2021. Ex
12 QQ, Remittitur, (attached hereto) *see also* Opp'n at 3. The District Court was
13 therefore without jurisdiction until that date.

14 **B. Simon's Opposition Does not Address the Basis for Reconsideration.**

15 Just as he is mistaken about the jurisdiction issue he argues, Simon is
16 also mistaken about the basis for reconsideration presented by the
17 Edgeworths. Simon concedes the Attorney Fee Order should be reissued
18 and corrected (Opp'n at 6). For this reason, a proposed order is attached
19 hereto as Exhibit SS and will be electronically submitted to the Court.

20 *1. Cutting Off the Edgeworths' Reply Before the Third Lien Order Was*
21 *Issued is Not the Basis for Reconsideration of the Third Order.*

22 The Edgeworths at no time have asserted that "they are due
23 reconsideration because they were deprived of 'the right to reply' in support
24 of their first motion for reconsideration." Opp'n at 4. Nor have the
25 Edgeworths suggested that "motion practice is required before the Court
26 acts on the remand instructions." *Id.* The Edgeworths merely stated a fact,
27 that since briefing was ongoing and no reason to truncate it existed, their
28 right to reply in support of their earlier motion, as the local rules allow,
should not have been denied. EDCR 2.20(g).

1 2. *This Motion for Reconsideration Does Not Seek to Correct Errors of Fact.*

2 Likewise, Simon's contention that reconsideration is being sought
3 based "on a disagreement over the facts" is also wholly mistaken. Opp'n at
4 5. The Court has discretion to determine the reasonable value of fees
5 awarded under a *quantum meruit* theory but, as the Supreme Court pointed
6 out, that discretion is not unlimited; the Court must explain the basis and
7 reasonableness of the award. The Supreme Court said:

8
9 [w]e agree with the Edgeworths that the district court abused its
10 discretion in awarding \$200,000 in quantum meruit without
11 making findings regarding the work Simon performed after the
constructive discharge.

12 Sup. Ct. Order at 4.

13 Simon does not want to be bound by the work he described in his
14 "super bill" previously submitted to the Court. He wishes to avoid
15 discussion of the work he says he performed after the constructive discharge
16 period. *See, e.g.* Sup. Ct. Order at 5 (recognizing that "[a]lthough there is
17 evidence in the record that Simon and his associates performed work after
18 the constructive discharge, the district court did not explain how it used that
19 evidence to calculate that award.").

20 3. *Scrivener Errors Are Appropriately Addressed on Reconsideration.*

21 Simon faults the Edgeworths' request that the Court correct what they
22 presumed was a clerical error in adding previously paid costs into the final
23 award. Simon acknowledges that the costs were paid, but contends that
24 having them added into a judgment is of no moment, because he *would never*
25 *seek to collect* on that portion of the judgment. Respectfully, given the nature
26 of this case and the over three years of contentious litigation the Edgeworths
27 have endured to resolve the amount Simon is owed, they cannot be faulted
28

1 for seeking clarity from the Court instead of trusting Simon's word about
2 what he will or will not attempt to collect.

3 **C. The Opposition Presents Issues Not Before the Court and Does Not**
4 **Give Effect to Simon's Testimony to this Court.**

5 Simon's cut-and-paste job in this opposition from his earlier
6 opposition for reconsideration of the Second Lien order is also evident by
7 the fact his brief includes issues not even raised in the pending motion for
8 reconsideration, such as the alleged "description of the November 17
9 meeting," Opp'n at 9, which the instant motion did not even mention. The
10 November 21 email he brings up was obtained from counsel in the
11 underlying defect litigation and was, in fact, part of the court record in the
12 March 30, 2021 motion for reconsideration. While Simon glibly contends the
13 email supports him because he "agrees that Viking was aware
14 confidentiality was an issue," he conveniently side steps addressing how
15 Viking could have been aware of confidentiality being an issue unless drafts
16 were circulated to Simon **prior to** the November 21 exchange.

17 The Court should also dismiss as disingenuous the Opposition's
18 attempt to disavow or substantially recharacterize Simon's plain testimony
19 in Court. His plain unqualified testimony establishes that all negotiations
20 with Viking **were complete** on November 27. Mot. at 12:21-22. In response
21 to direct questions from the Court, Simon testified the Viking Settlement
22 Agreement was substantively finished *before* November 30:

23 SIMON: Yeah . . . I get back on . . . 11/27.

24

25 COURT: And you got the release on 11/27?

26
27 SIMON: Right in that range, yeah. It was – it was
28 before I got the Letter of Direction, and I was out of
the case.

. . . .

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

8 THE COURT: Okay, but you hammered out the
9 terms of the release of that final agreement?

10 SIMON: Before I was fired, yeah.

11 THE COURT: Okay, so this is before 11-30?

12 SIMON: Yes.

13 Ex. GG to 5/3/21 Mot. for Recon. at 15-17.

14 Simon's testimony on day 3 also confirms beyond reasonable doubt
15 that all terms of the Viking Settlement had been negotiated and were known
16 to him **before** he sent his new fee demand to the Edgeworths on November
17 27, 2017:

18 THE COURT: Yeah, Thanksgiving would have been
19 the 23rd, so that following Monday the 27th.

20 THE WITNESS: Okay, So when I got back from that,
21 obviously I went – hard to work on all aspects of the
22 Edgeworth case. I was, you know, negotiating that
23 (Confidentiality Clause) out, and **THEN** obviously
24 preparing my letter and the proposed retainer that I
25 sent to them [Edgeworths] attached to the letter.

26 THE COURT: But when you are negotiating the
27 removal of the confidentiality agreement in the
28 Viking Settlement, you have no—had you been made
aware of that point that they [Edgeworths] had
spoken with Mr. Vannah's office.

WITNESS: No.

Transcript: 218: 8-13; 219: 4-8

Ex. TT (Day 3 of Evidentiary Hearing, August 29, 2018). (Attached hereto)

These excerpts of Simon's sworn testimony show that he was untruthful when he sent the Edgeworths his new-fee letter on November 27 **and** represented to them that "[t]here is also a lot of work left to be done." He was done negotiating settlement with Viking at that time.

That Simon now finds this sworn testimony inconvenient because it does not support his claim that he is due \$200,000, or more, for his non-substantive work **post** November 29, once he knew that the Edgeworths had retained Vannah, which confirms that his relationship with the Edgeworths had broken down and that Vannah would take over. This is no reason to permit Simon to rewrite history to exclude his testimony. Opp'n at 10. Furthermore, his testimony that all terms were negotiated by November 27, and that the agreement was not ultimately signed until December 1 is consistent with the Edgeworths' contention that Simon was slow-walking the final settlement agreement while he tried to coerce the Edgeworths to sign the fee agreement he prepared seeking a fee much higher than the fee he had negotiated with the Edgeworths and been paid. It is also consistent with Finding of Fact #13,² and with the statements in the motion (Mot. at 12).

1. *The Opposition Asks this Court to Disregard Established Facts for Which Simon is Responsible.*

Likewise, the fact the principal terms of the Lange Plumbing settlement were final by November 30 is established by Simon's own hand. Ex. EE to 5/3/21 Mot. for Recon. The only revisionist here is Simon. While

² Simon's opposition misquotes the Court's actual finding, which says "On the evening of November 15, 2017, the Edgeworth's received the first settlement offer for their claims against the Viking Corporation ("Viking") Finding of Fact 13. However, the claims were not settled until **on or about** December 1, 2017)" Third Am. Lien order at 4. It does not say "on or after" as Simon says. Opp'n at 10.

1 complex litigation may take time, memorializing an agreement reached does
2 not. The fact the Lange agreement signed in February still contains the
3 December dates is proof that **very little** remained to be done after
4 November 30. Furthermore, Simon's contention he "was being frivolously
5 sued by his former clients," Opp'n at 11, ignores the fact the initial suit
6 against him was not even filed until January 8, 2018, long *after* the Lange
7 settlement agreement should have been finalized.

8 Simon would also have the District Court disregard the "super bill" he
9 painstakingly created in 2018 from his own records; which demonstrate that
10 little, if any, substantive work remained for him to do, especially since he
11 acknowledges it was Vannah and not Simon that advised the clients on the
12 settlements after November 29. *See* Ex. JJ, KK, and LL to 5/3/21 Mot. for
13 Recon.; *see also* Ex. RR, (*attached hereto*) Excerpt 08-27-17 Hrg. Tr. at 75-76.

14 The Supreme Court recognized Simon submitted this evidence of
15 work performed after the discharge period, but found that valuing it at
16 \$200,000 was an abuse of discretion because the District Court "did not
17 explain how it used that evidence to calculate its [quantum meruit] award."
18 Nev. Sup. Ct. Order at 5.

19 Interestingly, though Simon now disputes that the "super bill" is the
20 only evidence in the record of the work that was done post-discharge, and
21 supports that contention by saying testimony regarding the post-discharge
22 work performed was presented at the evidentiary hearing,³ he does not
23 point to a single example of work performed beyond that outlined in his
24 "super bill." This calculated omission is likely meant to discourage focus on
25 the extremely limited nature of his post-discharge work.

26
27 ³ Simon's contention that Vannah did "not feel competent to close out
28 the case" is unsupported, and should not be considered, as is his reference to
a finding on that point that he attributes to the Court, but which is not in the
Court's order. Opp'n at 12:15-18.

1 Likewise, Simon's criticism about the certified checks issue misses the
2 point. The Edgeworths raised this issue as an example of how Simon slow-
3 walked the settlements and confirms that he was offered uncertified checks
4 by Viking on December 12 in time for the checks to clear by the agreed
5 payment date, a fact he did not share with the Edgeworths. Simon cannot
6 (legitimately) now complain that the Edgeworths did not raise this issue
7 earlier. Indeed, had Simon produced the complete case file the Edgeworths
8 requested—instead of stripping the attachments from the December 12,
9 2017, email he produced to the Edgeworths—they would have had an
10 opportunity to raise the issue earlier.

11 As to the Lange Plumbing settlement, Simon's reliance on the finding
12 that he "improv[ed] the position of his former clients" misses the point: even
13 if that were true, his work necessarily took place before November 30, when
14 he announced the result of his efforts. Ex. EE to 5/3/21 Mot. for Recon. The
15 District Court made a factual finding that the Edgeworths signed the
16 consent to settle the Lange claim for \$100,000 on December 7, 2017. Nov. 19,
17 2018 Order on NRCP 12(b)(5) Mot. to Dismiss at 5, Finding of Fact #23.

18 Against the backdrop of these facts, Simon *now* wishes to revise and
19 enlarge his role in the finalizing settlements after November 29. Opp'n at 10.
20 But remember, however, when establishing the circumstances of his
21 termination, Simon went to great lengths to show that it was Vannah, not
22 Simon, who was advising the Edgeworths on the Viking and Lange
23 settlements after November 29, 2017. *See e.g.*, Ex. RR at 75-76.

24 2. *The Record Before the Court Does Not Support Awarding Simon \$200,000*
25 *for Post-Discharge Work.*

26 Although Simon would prefer that this Court not distinguish between
27 or closely examine his *pre-* and *post-*discharge work because doing so would
28 expose the lack of substance behind his efforts to exaggerate the value of his
post-discharge work, the Supreme Court's mandate requires exactly that.

1 The Supreme Court specifically held that the value of Simon's *quantum*
2 *meruit* award has to be *reasonable based only on his post-discharge work*,
3 because he has already been compensated for pre-discharge work under the
4 implied contract found by the District Court. Nev. Sup. Ct. Order at 5
5 (recognizing the district court failed to "describe the work Simon performed
6 after the constructive discharge" and questioning the District Court's
7 application of the *Brunzell* factors because, "although it stated that it was
8 applying the *Brunzell* factors for work performed only after the constructive
9 discharge, much of the Court's analysis focused on Simon's work
10 throughout the entire litigation."). Any of Simon's negotiations or other
11 efforts that led to an improved position in settling the Lange Plumbing
12 claims necessarily took place before November 30; they cannot be
13 considered when evaluating the reasonableness of his *quantum meruit* award
14 for services **on or after November 30**. *Id.* (stating that the District Court
15 findings "referencing work performed *before* the constructive discharge, for
16 which Simon had already been compensated under the terms of the implied
17 contract, cannot form the basis of a quantum meruit award." (emphasis
18 added)).

19 Simon had ample opportunity to memorialize his efforts in his billing,
20 and he elicited exhaustive testimony as to the great lengths his office went to
21 capture all of the time expended into his "super bill," which now is the only
22 evidence in the record of his post-discharge work. Ex. L to 5/13/21 Mot. to
23 Release Funds and Produce Complete Client File. The Court should not now
24 permit Simon to modify and embellish that record with work he failed to
25 memorialize in the billing he offered to the Court. As detailed in the instant
26 motion at 13:16 – 16:12, the nature of the work performed post-discharge is
27 not complex and did not require specialized skills; **at most**, the reasonable
28 value of that work is \$34,000.

1 **D. Simon's Efforts to Enlarge the Quantum Meruit Period Are Contrary**
2 **to the Supreme Court's Mandate.**

3 Although Simon inappropriately turns to the law of the case doctrine
4 to avoid having the Court consider uncontested evidence that he now deems
5 unhelpful and wishes to jettison, including his own testimony that *all*
6 *negotiations on the Viking settlement were complete by November 27,*
7 Simon now asks the Court to *disregard* the law of the case to enlarge the
8 *quantum meruit* period back to September 19, 2017.

9 That issue, however, has been decided and affirmed by the Supreme
10 Court and is binding on Simon and this Court. Absent an extraordinary
11 showing that following the law of the case and honoring the Supreme
12 Court's mandate would result in a catastrophic manifest injustice, the issues
13 raised by Simon cannot be relitigated. *Hsu v. County of Clark*, 123 Nev. 625,
14 631, 173 P.3d 724, 729 (2007).

15 Here, Simon offers no legally sound basis for this Court to indulge him
16 to revise history to serve only himself. His argument is based only on the
17 same revised opinion of Will Kemp submitted with his April 13, 2021
18 opposition, which the Court has already considered and rejected in issuing
19 its Third Lien Order. The Supreme Court's decision conclusively sets the
20 boundaries for the *quantum meruit* period. It affirmed the District Court's
21 finding that Simon was discharged on November 29, 2017, and that he was
22 entitled to the reasonable value of his services from November 30 forward.
23 Nev. Sup. Ct. Order at 3-4. The *quantum meruit* period has been conclusively
24 decided and is now closed.

25 **E. Conclusion**

26 For the foregoing reasons, as well as those set forth in the Motion, the
27 Edgeworths respectfully ask that the Court reconsider its Third Lien Order
28 and, consistent with the Supreme Court's mandate, describe the work Simon
 performed *post-discharge* that is the basis for its award, and analyze how

1 \$200,000 could be considered reasonable under the *Brunzell* factors or
2 otherwise, given that Simon's own testimony shows he was not truthful in
3 describing when and what he did to the Edgeworths, in a self-serving effort
4 to put pressure on them for more money. Under these circumstances, the
5 Edgeworths respectfully submit that Simon's own valuation of his *quantum*
6 *meruit* time at \$34,000 would be more than generous for his minimal *post-*
7 discharge services.

8 MORRIS LAW GROUP

9 By: /s/ STEVE MORRIS
10 Steve Morris, Bar No. 1543
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14 Attorneys for Defendants
15 Edgeworth Family Trust and
16 American Grating, LLC
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CERTIFICATE OF SERVICE

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

DATED this 20th day of May, 2021.

By: /s/ TRACI K. BAEZ
An employee of Morris Law Group

EXHIBIT MM

Excerpts of Docket for Writ Petition
(NSC 79821)

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Case Information: 79821

Short Caption:	LAW OFFICE OF DANIEL S. SIMON VS. DIST. CT. (EDGEWORTH FAMILY TRUST)	Court:	Supreme Court
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444, A767242	Related Case(s):	77678, 78176, 82058
Disqualifications:	Parraguirre, Silver	Classification:	Original Proceeding - Civil - Mandamus/Prohibition
Replacement:	None for Justice Parraguirre None for Justice Silver	Case Status:	Notice in Lieu of Remittitur Issued/Case Closed
To SP/Judge:		Panel Assigned:	En Banc
Oral Argument:		SP Status:	
Submission Date:		Oral Argument Location:	
		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description	Pending?	Document
10/17/2019	Filing Fee	Filing fee paid. E-Payment \$250.00 from James R. Christensen. (SC)		
10/17/2019	Petition/Writ	Filed Petition for Writ of Mandamus or Prohibition. (SC)		19-43116
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 1 of 9. (SC)		19-43117
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 2 of 9. (SC)		19-43118
10/17/2019	Appendix	Filed Appendix to Petition for Writ - Volume 3 of 9. (SC)		19-43119

5/17/2021

79821: Case View

02/14/2020	Brief	Filed Appellant's Reply Brief, Answering Brief to Cross Appeal, Answer to Writ, and Response to Amicus Brief. Nos. 77678/78176/79821. (SC)	20-06285
03/05/2020	Motion	Filed Respondent/Cross-Appellants' Motion for Extension of Time for Filing of Reply Brief on Cross-Appeal and Reply in Support of Writ Petition. Nos. 77678/78176/79821. (SC)	20-08846
03/16/2020	Order/Procedural	Filed Order Granting Motion. The Law Office of Daniel S. Simon and Daniel S. Simon shall have until April 16, 2020, to file and serve a combined reply brief on cross-appeal and reply in support of the petition for a writ of mandamus. Nos. 77678/78176/79821. (SC).	20-10199
03/28/2020	Appendix	Filed Respondent's/Petitioner's Appendix to Reply. Nos. 77678/78176/79821 (SC)	20-11932
03/28/2020	Brief	Filed Reply Brief on Cross-Appeal and Reply in Support of Petition for Writ of Mandamus. Nos. 77678/78176/79821. (SC)	20-11933
03/30/2020	Case Status Update	Briefing Completed/To Screening. Nos. 77678/78176/79821. (SC)	
09/24/2020	Order/Procedural	Filed Order of Voluntary Recusal for Justice Silver. Pursuant to NCJC Rule 2.11(A), I recuse myself from participation in this matter based on my friendship with Daniel Simon and his family. Nos. 77678/78176/79821 (SC)	20-35146
12/28/2020	Order/Procedural	Filed Order. On April 3, 2019, this court entered an order consolidating these matters for all appellate purposes. Upon further consideration, we conclude that consolidation of No. 79821 with Nos. 77678 and 78176 is not warranted. Accordingly, we direct the clerk of this court to deconsolidate Docket No. 79821. Nos. 77678/78176/79821. (SC)	20-46675
12/30/2020	Other	Justice Abbi Silver disqualified from participation in this matter. Disqualification Reason: Voluntary Recusal. (SC)	
12/30/2020	Order/Dispositional	Filed Order Denying Petition. "ORDER the petition DENIED." fn1 [The Honorable Ron Parraguirre, Justice, and the Honorable Abbi Silver, Justice, did not participate in the decision of this matter.] EN BANC	20-46932
01/25/2021	Remittitur	Issued Notice in Lieu of Remittitur. (SC)	21-02217
01/25/2021	Case Status Update	Notice in Lieu of Remittitur Issued/Case Closed. (SC)	

Combined Case View

EXHIBIT NN

Excerpts of Docket for Appeal (NSC 77678)

Nevada
Appellate Courts

Appellate Case Management System

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Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing. For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

Case Information: 77678

Short Caption:	EDGEWORTH FAMILY TR. VS. SIMON C/W 78178	Court:	Supreme Court
Consolidated:	77678*, 78176	Related Case(s):	78176, 79821, 82058
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444	Classification:	Civil Appeal - General - Other
Disqualifications:	Silver	Case Status:	Remittitur Issued/Case Closed
Replacement:		Panel Assigned:	En Banc
To SP/Judge:	12/24/2018 / Nitz, Dana	SP Status:	Completed
Oral Argument:		Oral Argument Location:	
Submission Date:		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description	Pending?	Document
12/17/2018	Filing Fee	Filing Fee due for Appeal. (SC)		
12/17/2018	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (SC)		18-909042
12/17/2018	Notice/Outgoing	Issued Notice to Pay Supreme Court Filing Fee. No action will be taken on this matter until filing fee is paid. Due Date: 10 days. (SC)		18-909044
12/20/2018	Filing Fee	Filing Fee Paid. \$250.00 from Robert D Vannah. Check no. 4960. (SC)		
12/20/2018	Notice/Outgoing	Issued Notice of Referral to Settlement Program. This appeal may be assigned to the settlement program.		18-909760

5/17/2021

77678: Case View

		Time and for Rehearing. Nos. 77678/78176 (SC)	
		Filed Order Granting Motion. Appellants/cross-respondents shall have 7 days from the date of this order to file and serve any petition for rehearing. Any petition for rehearing must be accompanied by the required filing fee. No action will be taken on the petition for rehearing contained within the extension motion. Nos. 77678/78176. (SC)	
01/26/2021	Order/Procedural		21-02398
01/26/2021	Filing Fee	Filing Fee/Rehearing Paid. \$150.00 from Robert D Vannah Chartered. Check No. 8760. (SC)	
01/29/2021	Post-Judgment Petition	Filed Appellants' Petition for Rehearing. Nos. 77678/78176 (SC)	21-02887
01/29/2021	Filing Fee	Filing fee paid. E-Payment \$150.00 from John B. Greene. Nos. 77678/78176 (SC)	
02/08/2021	Order/Procedural	Filed Order Directing Answer to Petition for Rehearing. Respondents/Cross-Appellants' Answer due: 14 days. Nos. 77678/78176. (SC)	21-03673
02/22/2021	Brief	Filed Respondent/Cross-Appellants' Answer to Appellants' Petition for Rehearing. Nos. 77678/78176 (SC)	21-05219
03/18/2021	Post-Judgment Order	Filed Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). Nos. 77678/78176. EN BANC. (SC)	
03/22/2021	Post-Judgment Order	Filed Corrected Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). fn1 [The Honorable Abbi Silver, Justice, did not participate in the decision in this matter.] Nos. 77678/78176. (SC).	21-08081
04/12/2021	Remittitur	Issued Remittitur. (SC)	21-10361
04/12/2021	Case Status Update	Remittitur Issued/Case Closed. (SC)	
05/07/2021	Remittitur	Filed Remittitur. Received by District Court Clerk on April 13, 2021. Nos. 77678/78176. (SC)	21-10361

Combined Case View

EXHIBIT OO

Excerpts of Docket for Appeal (NSC 78176)

Nevada
Appellate Courts

Appellate Case Management System

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Case Information: 78176

Short Caption:	EDGEWORTH FAMILY TR. VS. SIMON C/W 77678	Court:	Supreme Court
Consolidated:	77678*, 78176	Related Case(s):	77678, 79821, 82058
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A738444	Classification:	Civil Appeal - General - Other
Disqualifications:		Case Status:	Remittitur Issued/Case Closed
Replacement:		Panel Assigned:	En Banc
To SP/Judge:	03/05/2019 / Nitz, Dana	SP Status:	Completed
Oral Argument:		Oral Argument Location:	
Submission Date:		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description	Pending?	Document
02/25/2019	Filing Fee	Filing Fee due for Appeal. (SC)		
02/25/2019	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (SC)		19-08460
02/25/2019	Notice/Outgoing	Issued Notice to Pay Supreme Court Filing Fee. No action will be taken on this matter until filing fee is paid. Due Date: 10 days. (SC)		19-08462
02/26/2019	Notice of Appeal Documents	Filed Copy of District Court Minutes. (SC)		19-08904
03/04/2019	Filing Fee	Filing Fee Paid. \$250.00 from Robert D Vannah Chartered. Check no. 5355. (SC)		

5/17/2021

78176: Case View

01/29/2021	Filing Fee	Filing fee paid. E-Payment \$150.00 from John B. Greene. Nos. 77678/78176 (SC)	
02/08/2021	Order/Procedural	Filed Order Directing Answer to Petition for Rehearing. Respondents/Cross-Appellants' Answer due: 14 days. Nos. 77678/78176. (SC)	21-03673
02/22/2021	Brief	Filed Respondent/Cross-Appellants' Answer to Appellants' Petition for Rehearing. Nos. 77678/78176 (SC)	21-05219
03/18/2021	Post-Judgment Order	Filed Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). Nos. 77678/78176. EN BANC. (SC)	
03/22/2021	Post-Judgment Order	Filed Corrected Order Denying Rehearing. "Rehearing Denied." NRAP 40(c). fn1 [The Honorable Abbi Silver, Justice, did not participate in the decision in this matter.] Nos. 77678/78176. (SC).	21-08081
04/12/2021	Remittitur	Issued Remittitur. (SC)	21-10361
04/12/2021	Case Status Update	Remittitur Issued/Case Closed. (SC)	
05/07/2021	Remittitur	Filed Remittitur. Received by District Court Clerk on April 13, 2021. Nos. 77678/78176. (SC)	21-10361

Combined Case View

EXHIBIT PP

Notice in Lieu of Remittitur in Case No. 79821,
Writ Petition

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAW OFFICE OF DANIEL S. SIMON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK; AND THE
HONORABLE TIERRA DANIELLE JONES,
DISTRICT JUDGE,
Respondents,
and
EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,
Real Parties in Interest.

Supreme Court No. 79821
District Court Case No. A738444;A767242

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on December 30th, 2020, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: January 25, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc: James R. Christensen
Vannah & Vannah
Eglet Adams \ Robert T. Eglet
Steven D. Grierson, Eighth District Court Clerk

EXHIBIT QQ

Remittitur in Case No. 77678, issued on April
12, 2021

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 77678
District Court Case No. A738444

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

Supreme Court No. 78176
District Court Case No. A738444

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

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

RECEIPT FOR REMITTITUR

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

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED
APPEALS**

APR 13 2021

CLERK OF THE COURT

EXHIBIT RR

Excerpts of 08-27-2018 Hearing Transcript



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

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 Q -- I just mean in time, before the settlement checks with
2 Viking had even been deposited?
3 A Correct.
4 Q All right. And you heard Mr. Vannah give an opening
5 statement today, sir?
6 A Yes.
7 Q Do you recall how he told the Court he wasn't involved in
8 any of the settlement negotiations?
9 A I don't recall that. I'm sorry. I don't recall everything he said.
10 Q We just -- you and I can agree that he was the one advising
11 you of the Lange settlement, because you signed on his letterhead to
12 consent to settle December the 7th.
13 A He advised me why to do that, yes.
14 Q And I have your settlement agreement.
15 MR. CHRISTIANSEN: Which is Exhibit 5, John. And I'm
16 looking at page 4, Mr. Greene.
17 BY MR. CHRISTIANSEN:
18 Q This is the settlement agreement with Viking?
19 A You just asked about Lange, sir. The --
20 Q I did.
21 A Okay.
22 Q Now, I'm shifting gears. I want to talk to you about Viking,
23 too, because if you see paragraph E -- do you see that, sir?
24 A Yes, I do.
25 Q Who's the lawyers that advised you? Right in the document

1 you signed about settling with Viking?

2 A It says Robert Vannah, Esquire and John Green, Esquire.

3 Q Show me where it says Danny Simon.

4 THE COURT: This is the Viking settlement?

5 MR. CHRISTIANSEN: It is.

6 THE COURT: Okay.

7 BY MR. CHRISTIANSEN:

8 Q Go ahead.

9 A On the page that I'm looking at, the fractional page, I don't

10 see it.

11 Q And is that your settlement? You and your wife's

12 settlement? Sorry, signature?

13 A On the 1st of December, correct.

14 Q All right. So as early as December 1st, according to Exhibit 5,

15 you were not relying on Danny Simon's advice, but instead relying on

16 the advice of Vannah & Vannah when settling the Viking claims, correct?

17 A When signing contracts, correct.

18 Q Okay. And I think you've already told me that was the same

19 situation about five or six days thereafter, when you signed that consent

20 to settle with Lange on the Vannah & Vannah letterhead, right?

21 A They had advised me of other things than the settlement,

22 yes.

23 Q Okay. And, sir, let's look at Exhibit 90 again. This is your

24 retainer with Vannah & Vannah. Did you sign a separate retainer

25 agreement for the lawsuit, where they sued Danny Simon for you?

EXHIBIT SS

Second Amended Decision and Order Granting
in Part and Denying in Part, Simon's Motion for
Attorney's Fees and Costs

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MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Email: sm@morrislawgroup.com
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801 S. Rancho Drive, Suite B4
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Telephone No.: (702) 474-9400
Facsimile No.: (702) 474-9422

Attorney for Plaintiff
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;)
and AMERICAN GRATING, LLC,)

Plaintiffs,)

vs.)

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

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

Defendants)

Consolidated with

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

EDGEWORTH FAMILY TRUST;)
and AMERICAN GRATING, LLC,)

Plaintiffs,)

vs.)

SECOND AMENDED DECISION
AND ORDER GRANTING IN
PART AND DENYING IN PART,
SIMON'S MOTION FOR
ATTORNEY'S FEES AND COSTS

1 DANIEL S. SIMON; THE LAW)
2 OFFICE OF DANIEL S. SIMON, a)
3 Professional Corporation d/b/a)
4 SIMON LAW; DOES 1 through 10;)
5 and, ROE entities 1 through 10,)
6 Defendants.)

7 **SECOND MENDED DECISION AND ORDER ON ATTORNEY'S FEES**

8 This case came on for a hearing on January 15, 2019, in the Eighth
9 Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones
10 presiding. Defendants and movant, Daniel Simon and Law Office of Daniel
11 S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or
12 "Mr. Simon") having appeared in person and by and through their
13 attorneys of record, Peter S. Christiansen, Esq. and James Christensen, Esq.
14 and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
15 "Edgeworths") having appeared through Brian and Angela Edgeworth, and
16 by and through their attorneys of record, the law firm of Vannah and
17 Vannah, Chtd.

18 The Court having considered the evidence, arguments of counsel and
19 being fully advised of the matters herein, the **COURT FINDS after review:**

20 The Motion for Attorney's Fees is GRANTED in part, DENIED in
21 part.

22 1. The Court finds that the claim for conversion was not
23 maintained on reasonable grounds, as the Court previously found that
24 when the complaint was filed on January 4, 2018, Mr. Simon was not in
25 possession of the settlement proceeds as the checks were not endorsed or
26 deposited in the trust account. (*Amended Decision and Order on Motion to*
27 *Dismiss NRCP 12(b)(5)*). As such, Mr. Simon could not have converted the
28 Edgeworth's property. As such, the Motion for Attorney's Fees is
GRANTED under 18.010(2)(b) as to the Conversion claim as it was not

1 maintained upon reasonable grounds, since it was an impossibility for Mr.
2 Simon to have converted the Edgeworth's property, at the time the lawsuit
3 was filed.

4 2. Further, The Court finds that the purpose of the evidentiary
5 hearing was primarily on the Motion to Adjudicate Lien. The Motion for
6 Attorney's Fees is DENIED as it relates to other claims. In considering the
7 amount of attorney's fees and costs, the Court finds that the services of Mr.
8 James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained
9 after the filing of the lawsuit against Mr. Simon, on January 4, 2018.
10 However, they were also the attorneys in the evidentiary hearing on the
11 Motion to Adjudicate Lien, which this Court has found was primarily for
12 the purpose of adjudicating the lien by Mr. Simon. The Court further finds
13 that the costs of Mr. Will Kemp, Esq. were solely for the purpose of the
14 Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David
15 Clark, Esq. were solely for the purposes of defending the lawsuit filed
16 against Mr. Simon by the Edgeworths.

17 3. The court has considered all of the *Brunzell* factors pertinent to
18 attorney's fees and attorney's fees are GRANTED. In determining the
19 reasonable value of services provided for the defense of the conversion
20 claim, the COURT FINDS that 64 hours was reasonably spent by Mr.
21 Christensen in preparation and defense of the conversion claim, for a total
22 amount of \$25,600.00. The COURT FURTHER FINDS that 30.5 hours was
23 reasonably spent by Mr. Christiansen in preparation of the defense of the
24 conversion claim, for a total of \$24,400.00. As such, the award of attorney's .

25 ...

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1 fees is GRANTED in the amount of \$50,000.00 and costs are GRANTED in
2 the amount of \$2,520.00.

3 IT IS SO ORDERED this _____ day of May, 2021.

4

5

DISTRICT COURT JUDGE

6

7 Approved as to Form:

8 MORRIS LAW GROUP

9

10 By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1543
11 Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Drive, Suite B4
12 Las Vegas, NV 89106

13 Attorneys for Plaintiffs
14 Edgeworth Family Trust and
American Grating, LLC

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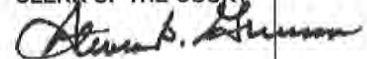
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EXHIBIT TT

Excerpts from 8/29/2018 Hearing Transcript



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 **WEDNESDAY, AUGUST 29, 2018**

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

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 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I
12 was, you know, negotiating that out, and then obviously preparing my
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone
17 call -- I had some -- I had this meeting and I had a few phone calls after
18 this meeting, and then I tried to iron this out a few times over my
19 vacation with him.

20 I think the last full communication ever with -- verbally with
21 either one of them was the 25th when I was boarding a plane, because I
22 never had a lot of time to be available because I was always -- you know,
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I
25 think the last time was when I was boarding the plane to come home.

1 THE COURT: And I think that's what he testified to is that it
2 was the 25th.

3 THE WITNESS: 25th, sounds right.

4 THE COURT: But when you are negotiating the removal of
5 this confidentiality agreement in the Viking settlement, you have no --
6 had you been made aware at that point that they had spoken with Mr.
7 Vannah's office?

8 THE WITNESS: No.

9 THE COURT: Okay. And, I'm sorry, Mr. Christensen, that
10 was just my question.

11 MR. CHRISTENSEN: It's your courtroom, Your Honor. You
12 have a question, you ask it.

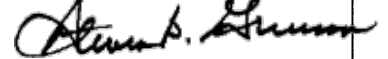
13 THE COURT: I think it's just a little different than a jury trial,
14 because if I have a question then --

15 MR. CHRISTENSEN: Absolutely, Judge.

16 BY MR. CHRISTENSEN:

17 Q What else did you talk about, if anything, at the November 17
18 meeting?

19 A We talked about quite a bit. We talked about the motions
20 that were on the calendar. We had a motion to compel. There was a
21 motion to de-designate all of these documents that they were trying to
22 make confidential in the case. We talked about the pending evidentiary
23 hearing, how that would be affected. We had all these notices of
24 depositions. We had depositions in Chicago of this United Laboratories
25 already set. We had depositions that were noticed by the defense that



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Attorney for Plaintiff
Edgeworth Family Trust and
American Grating, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST;)
and AMERICAN GRATING, LLC,)

Plaintiffs,)

vs.)

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

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

Defendants)

Consolidated with

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

EDGEWORTH FAMILY TRUST;)
and AMERICAN GRATING, LLC,)

Plaintiffs,)

vs.)

NOTICE OF ENTRY OF ORDER

1 DANIEL S. SIMON; THE LAW)
2 OFFICE OF DANIEL S. SIMON, a)
3 Professional Corporation d/b/a)
4 SIMON LAW; DOES 1 through 10;)
5 and, ROE entities 1 through 10,)
6 Defendants.)

7 PLEASE TAKE NOTICE that a Second Amended Decision and Order
8 Granting in Part and Denying in Part, Simon's Motion for Attorney's Fees
9 and Costs was entered by the Court on May 24, 2021.

10 MORRIS LAW GROUP

11 By: /s/ STEVE MORRIS
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17 Edgeworth Family Trust and
18 American Grating, LLC
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of MORRIS LAW GROUP, and that the following document was electronically filed with the Clerk of the Court and caused a true and accurate copy of the same to be served via the Odyssey File and Serve system upon all registered counsel of record:

DATED this 24th day of May, 2021.

By: /s/TRACI K. BAEZ
An Employee of Morris Law Group

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14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 **EDGEWORTH FAMILY TRUST;)**
17 **and AMERICAN GRATING, LLC,)**

18 **Plaintiffs,)**

19 **vs.)**

20 **CASE NO.: A-16-738444-C**
21 **DEPT NO.: X**

22 **LANGE PLUMBING, LLC; THE)**
23 **VIKING CORPORATION, a)**
24 **Michigan Corporation; SUPPLY)**
25 **NETWORK, INC., dba VIKING)**
26 **SUPPLYNET, a Michigan)**
27 **Corporation; and DOES 1through)**
28 **5; and ROE entities 6 through 10,)**

29 **Defendants)**

30 **EDGEWORTH FAMILY TRUST;)**
31 **and AMERICAN GRATING, LLC,)**

32 **Plaintiffs,)**

33 **vs.)**

34 **SECOND AMENDED DECISION**
35 **AND ORDER GRANTING IN**
36 **PART AND DENYING IN PART,**
37 **SIMON'S MOTION FOR**
38 **ATTORNEY'S FEES AND COSTS**

1 DANIEL S. SIMON; THE LAW)
2 OFFICE OF DANIEL S. SIMON, a)
3 Professional Corporation d/b/a)
4 SIMON LAW; DOES 1 through 10;)
5 and, ROE entities 1 through 10,)
6 Defendants.)

7 **SECOND MENDED DECISION AND ORDER ON ATTORNEY'S FEES**

8 This case came on for a hearing on January 15, 2019, in the Eighth
9 Judicial District Court, Clark County, Nevada, the Honorable Tierra Jones
10 presiding. Defendants and movant, Daniel Simon and Law Office of Daniel
11 S. Simon d/b/a Simon Law ("Defendants" or "Law Office" or "Simon" or
12 "Mr. Simon") having appeared in person and by and through their
13 attorneys of record, Peter S. Christiansen, Esq. and James Christensen, Esq.
14 and Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
15 "Edgeworths") having appeared through Brian and Angela Edgeworth, and
16 by and through their attorneys of record, the law firm of Vannah and
17 Vannah, Chtd.

18 The Court having considered the evidence, arguments of counsel and
19 being fully advised of the matters herein, the **COURT FINDS after review:**

20 The Motion for Attorney's Fees is GRANTED in part, DENIED in
21 part.

22 1. The Court finds that the claim for conversion was not
23 maintained on reasonable grounds, as the Court previously found that
24 when the complaint was filed on January 4, 2018, Mr. Simon was not in
25 possession of the settlement proceeds as the checks were not endorsed or
26 deposited in the trust account. (*Amended Decision and Order on Motion to*
27 *Dismiss NRCP 12(b)(5)*). As such, Mr. Simon could not have converted the
28 Edgeworth's property. As such, the Motion for Attorney's Fees is
GRANTED under 18.010(2)(b) as to the Conversion claim as it was not

1 maintained upon reasonable grounds, since it was an impossibility for Mr.
2 Simon to have converted the Edgeworth's property, at the time the lawsuit
3 was filed.

4 2. Further, The Court finds that the purpose of the evidentiary
5 hearing was primarily on the Motion to Adjudicate Lien. The Motion for
6 Attorney's Fees is DENIED as it relates to other claims. In considering the
7 amount of attorney's fees and costs, the Court finds that the services of Mr.
8 James Christensen, Esq. and Mr. Peter Christiansen, Esq. were obtained
9 after the filing of the lawsuit against Mr. Simon, on January 4, 2018.

10 However, they were also the attorneys in the evidentiary hearing on the
11 Motion to Adjudicate Lien, which this Court has found was primarily for
12 the purpose of adjudicating the lien by Mr. Simon. The Court further finds
13 that the costs of Mr. Will Kemp, Esq. were solely for the purpose of the
14 Motion to Adjudicate Lien filed by Mr. Simon, but the costs of Mr. David
15 Clark, Esq. were solely for the purposes of defending the lawsuit filed
16 against Mr. Simon by the Edgeworths.

17 3. The court has considered all of the *Brunzell* factors pertinent to
18 attorney's fees and attorney's fees are GRANTED. In determining the
19 reasonable value of services provided for the defense of the conversion
20 claim, the COURT FINDS that 64 hours was reasonably spent by Mr.
21 Christensen in preparation and defense of the conversion claim, for a total
22 amount of \$25,600.00. The COURT FURTHER FINDS that 30.5 hours was
23 reasonably spent by Mr. Christiansen in preparation of the defense of the
24 conversion claim, for a total of \$24,400.00. As such, the award of attorney's .

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27 ...

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1 fees is GRANTED in the amount of \$50,000.00 and costs are GRANTED in
2 the amount of \$2,520.00.
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Dated this 24th day of May, 2021

4 IT IS SO ORDERED this ____ day of May, 2021.

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DISTRICT COURT JUDGE

Approved as to Form:

5AB 94F 90B4 23DA
Tierra Jones
District Court Judge

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Drive, Suite B4
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Attorneys for Plaintiffs
Edgeworth Family Trust and
American Grating, LLC

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Edgeworth Family Trust,
7 Plaintiff(s)

CASE NO: A-16-738444-C

DEPT. NO. Department 10

8 vs.

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

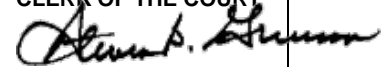
12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Decision and Order was served via the court's electronic eFile system
14 to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 5/24/2021

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST, ET
AL.,

Plaintiffs,

vs.

DANIEL SIMON, ET AL.,

Defendants.

CASE#: A-18-767242

COMBINED WITH
CASE#: A-16-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES
DISTRICT COURT JUDGE
THURSDAY, MAY 27, 2021

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES VIA BLUEJEANS:

For the Plaintiffs: STEVE L. MORRIS, ESQ.

For the Defendants: JAMES R. CHRISTENSEN, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Thursday, May 27, 2021

[Case called at 9:25 a.m.]

THE COURT: We are going to go on the record in A738444, Edgeworth Family Trust v. Lange Plumbing. This case is also consolidated -- okay, I need everybody on BlueJeans to mute. Okay. Also consolidated with the Edgeworth Family Trust v. Daniel Simon.

May the record reflect we are here for the renewed motion to reconsider, as well as there was a countermotion to adjudicate the lien on remand. I have read Plaintiff's renewed motion to reconsider the third amended decision and order. I have also read the opposition, as well as the countermotion. And I have read the reply in regards to the motion to reconsider. And there's also a motion for an order releasing the client funds, which we'll get to second.

So let's start with the renewed motion for reconsideration. Plaintiff, I have read everything that was submitted by the parties. Do you have anything you would like to add to what you previously submitted?

MR. MORRIS: Yes, Your Honor. I'm Steve Morris. I know that you just said you've read the papers. Still, however, I think it's necessary to -- for Mr. Edgeworth to make a record here of this hearing.

We point out in our papers, as you've probably recognized that the third amended order does not comply with the Supreme Court's mandate that brings this case back to your court. There isn't in the third amended -- in the third lien order, there isn't any basis or explanation for

1 -- to provide a basis for the \$200,000 in quantum merit award that you
2 awarded Mr. Simon for post discharge work, and I think that it's
3 necessary to do that. We don't have in the record -- we, of course, have
4 your decision, which says, among other things, the Court must establish
5 or determine the amount of a reasonable fee, but we don't have findings
6 from you or, as the Supreme Court said, an explanation to support the
7 \$200,000 as reasonable for work that was done post discharge.

8 The work that was done post discharge in your order is not
9 identified, and there is no statement by you or any opinion by you of the
10 value of that work that benefited the Edgeworths. So we don't have --
11 going back to the Supreme Court's words, we don't have from you, in
12 your third order, an explanation of the reasonableness of the \$200,000
13 that you ordered.

14 Now you're required to make an explanation of that, and the
15 Court also said, that in doing so -- and I know that you said in your order
16 that you considered the *Brunzell* factors, but you didn't point out, the
17 Supreme Court observed, what it is in the *Brunzell* factors that you found
18 and applied to the post-discharge work that would support your \$200,000
19 award.

20 In the opposition to this motion, which, Your Honor, you also
21 say you've read, the opposition says there's more than what Mr. Simon
22 described in his super bill as the work he did post discharge and the
23 opposition, however, doesn't cite anything. It just simply says substance
24 -- we had a five day hearing, and that five day hearing covered a lot of
25 ground and had a lot of information in it.

1 The point is, and it's illustrated by Exhibit LL to our motion
2 for reconsideration, that's the color coded chart that breaks down by
3 about a job -- it's about a job description, the time that was spent by Mr.
4 Simon and his associate, Ashley Ferrel, in wrapping up, or in my words,
5 closing out the file of his representation in this case. He's been
6 compensated for the work that he did, that you found impressive, and
7 we're not disputing that. What we're disputing and what we're asking
8 you to consider is did he work 71 -- he and his associate work 71.10
9 hours -- point 1 hours. And it describes, largely, garden variety close out
10 work to conclude his representation of the Edgeworths in this case.

11 That super bill was the only record we have of Simon's post
12 discharge work, and as you pointed out at one time, it may be -- it may
13 be even questionable at that. But at the very most, if you credit
14 everything that he says on that bill -- and, by the way, give him credit for
15 71.10 hours, you would be compensating him at almost \$3,000 an hour if
16 you were to confirm this \$200,000 quantum meruit award.

17 We say that's unreasonable, and we point to, in saying that
18 in our papers, that our belief is, and we ask you to consider it, that the
19 work he did should not be valued any more than -- and we describe it at
20 most, and it's still generous -- at the rate of which he was compensated
21 prior to post discharge, because the work that you found that justified
22 what he was claiming, and you ordered for previous charged work, is not
23 the work that he did post discharge. Post discharge is telephone calls,
24 administration, reading emails, and so on to wrap up his participation in
25 the case. It's just routine, as I say, close out administrative work.

1 In addition, the third amended order has an error in it, which
2 we describe as a scrivener's error for \$71,594.93 in costs that, as you
3 acknowledged in your order on page 18, that had already been paid. The
4 Edgeworths had paid those. Those costs should not have been added
5 back into this order adjudicating the lien.

6 So, Your Honor, to summarize this, I think we can say that at
7 the very most, considering the work that was done, the character of that
8 work, and the absence of findings to show that it had had some
9 substance as opposed to just routine clean-up work to get out of the case
10 and close his file on it, \$34,000 or just a little less than that, 33,000 nine
11 plus will be more than sufficient to compensate Mr. Simon for his post
12 discharge work, and we ask you to enter and reconsider in doing so,
13 your third order, and conclude in accordance with the directions from
14 the Supreme Court that that work that he did is worth no more than
15 \$34,000.

16 THE COURT: Okay. Thank you, counsel. Mr. Christensen,
17 your response.

18 MR. CHRISTENSEN: Yes, Your Honor. I'm going to first
19 address the Edgeworth's motion, and then I'll address the
20 counter motion.

21 THE COURT: Okay.

22 MR. CHRISTENSEN: The difficulty with the Edgeworth's
23 motion is that they haven't set forth grounds for reconsideration. The
24 claim that the Court's latest order did not comply with the mandate , for
25 example, didn't take note of the fact that there was a *Brunzell* analysis

1 that was added in, and that there were also additional findings added in
2 concerning the work that Simon did to uphold the Court's quantum
3 merit analysis.

4 There's several kind of throw up on the wall issues that are
5 raised as an attempt to gain reconsideration. One of them is that they
6 say they were not provided with an opportunity to file a reply. I pointed
7 out in the opposition that they didn't make any showing that that's
8 actually a fundamental right, that they had a due process right to file a
9 reply and, lastly, that they did not establish what their argument would
10 have been. They didn't provide it. So they did not establish undue
11 prejudice and thereby they cannot ask for reconsideration.

12 The reply is fairly telling, and it kind of goes in line with the
13 general theme of all of these recent filings. They argue that they did not
14 make a due process argument, that they were merely stating a fact that
15 they were denied their, quote, "right to reply," and that, quote, "should
16 not have been denied that right as a fact."

17 So they kind of bootstrapped themselves into their own relief
18 by ignoring the fact that they have two false premises. They just skip
19 over them. One is no right to reply; and, two, is no undue prejudice. At
20 most, it's -- if you can't say what you would have said in your reply that
21 would have changed the mind of the Court, then it's [indiscernible -
22 audio/video frozen].

23 So we never get to actually examining their arguments in the
24 first place because they haven't established a right to reconsideration.
25 But I would like to go to them anyway because, if nothing else, to

1 support the Court's quantum meruit analysis. You know, at the outset,
2 they're promoting an hourly computation of the fees to Simon. That's
3 not the only route that the Court can take. Under a quantum meruit, it's
4 within the Court's discretion to use a wide variety of metrics on how to
5 add up the fees. One of them is market rate. Another one is -- you know,
6 under -- there are arguments that are not well stated in the moving
7 papers concerning contingency fee, flat fee, all of that.

8 But we know from the very early case of *Fracasse v. Brent*,
9 which came out of California in 1972, that when a lawyer is fired on the
10 courthouse steps of either a good result, or a good trial result, or a
11 judgment, or a settlement, that the lawyer is not bound by any artificial
12 restrictions, the lawyer gets the full value of their work. And Nevada law
13 follows right along from *Fracasse*. *Fracasse* has been cited a number of
14 times.

15 So let's take a look at the actual arguments that are
16 submitted by the Edgeworths. They use terms like garden variety. They
17 had [indiscernible - audio/video frozen]

18 THE COURT: Mr. Christensen, can you hear us? Because I'm
19 having difficulty hearing you now and your video is gone.

20 MR. CHRISTENSEN: I can hear you.

21 THE COURT: Okay. We can't hear you, because now you're
22 on the screen, but you're frozen.

23 MR. CHRISTENSEN: I could hold up notes.

24 THE COURT: Can you log out and log back in?

25 MR. CHRISTENSEN: Yes, I can. I will do that.

1 THE COURT: Okay. Never mind, we can hear you now.

2 MR. CHRISTENSEN: Okay.

3 THE COURT: Yeah, we can hear you now.

4 MR. CHRISTENSEN: I'm sorry, Your Honor. You know, my
5 office is downtown and Cox it's a challenge to us all.

6 THE COURT: I get it. I get it.

7 MR. CHRISTENSEN: I want to just focus in on one area that
8 they complain about, kind of to remove the curtain from this fallacy of
9 the garden variety argument that they have.

10 So they go all around on when the Viking settlement was
11 finalized, when the release was finalized. They make very definitive
12 statements that it was all over by the 27th. As I pointed out in the
13 opposition, they ignored the Court's finding of fact number 13 on that
14 point. In the reply, they never provided a basis for how they can ignore
15 that finding of fact or get around it. They simply say more of the same.

16 So let's get into it. There was discussion, and some of it is
17 cited by the Edgeworths. For example, on page 16 of day 4 transcript,
18 the Court asked this question. "And you got the mutual release on
19 11/27." And Mr. Simon replied, "Right in that range, yeah." So he
20 doesn't say it was exactly on the 27th. In fact, he discusses that it was
21 before he got the letter of direction, which, of course, didn't come into
22 his office until the 30th, and we have a finding of fact on that as well.

23 And then on page 17 of the same transcript, Mr. Simon
24 further described that he went on over to Joel Henriod's office and
25 actually sat down with him and worked on the release and finished it up.

1 These folks put a great deal of strength in the super bill. If you take a
2 look at that, there it is, there's a November 30th entry on page 75, when
3 he was -- when Mr. Simon was negotiating the release with Mr. Henriod.
4 And there are other entries throughout that time when they were
5 negotiating the release, including the 29th, the 27th. That was an active
6 issue, and it was active all the way through the 30th, which is after the
7 time he was discharged.

8 So, you know, these are not garden variety items. If they're
9 garden variety items, Mr. Vannah would not have been so assertive in
10 the hearing before Your Honor when he said, I don't know what's going
11 on, and he didn't want to get involved with the release. He didn't want
12 to sign it. And he said in open court, that he didn't want to get involved.
13 And, in fact, he sent an email, which is also referenced in the Court's
14 findings about the number of hours that it would take him to get up to
15 speed in order to address these, what are now termed as garden variety
16 items.

17 So there was value added to the case. This is not simple
18 hourly billing or else Mr. Vannah could have handled it. He's an
19 immensely qualified attorney. If he's saying he's not able to handle it
20 without a whole lot of study, and work, and over a week's time of
21 reviewing the file and getting up to speed, then all of that needs to be
22 taken into consideration when you evaluate the value of Mr. Simon's
23 services, assuming that you start the clock on November 29th.

24 Moving on to Mr. Simon's argument. We have a legal
25 argument; we have promoted that legal argument before. As pointed

1 out in the reply, it appears to be a cut and paste. That is accurate. Very
2 astute. Mainly it is. Surprisingly, although it's a cut and paste, and
3 although the Edgeworths have seen this argument before, they still don't
4 put up an argument as to why the law cited in that argument does not
5 apply. As you know, Your Honor, our argument is that once the contract
6 was found as being discharged that then, as a matter of law, the
7 payment term of the discharged contract cannot be enforced. That's it.
8 Simply put.

9 So we say that the quantum meruit clock should start back in
10 September. There is another unrebutted declaration of Will Kemp
11 submitted, which is in line with his prior unrebutted testimony that there
12 was a tremendous amount of value added to the case from September
13 forward. And the counterargument is going to be that, well, the
14 Supreme Court didn't address that or doesn't allow that type of an
15 analysis in their mandate, and we disagree with that.

16 When you take a look -- a course grained look at the case as a
17 whole, you have to include the order where the petition for writ by Mr.
18 Simon was denied as moot. And in that petition, Simon sought relief
19 because of the argument that once the implied in fact contract was
20 discharged, that it was improper to enforce the payment term.

21 So clearly the Supreme Court is saying we're sending it back
22 down anyway, so we don't have to address this. We're going to throw it
23 back to the District Court. Now they can come up with a
24 counterargument to that, certainly, but we have two competing
25 arguments at this time, and they're both based upon the record. So that

1 question is left to this Court. And if the Court finds that, yes, we do get
2 to address that issue, then I would submit that Mr. Simon has shown the
3 legal basis for reconsideration because of the error of law argument.

4 Also, on the QM argument, there is one thing to remember,
5 that Mr. Simon also increased the value of the Lange settlement. There
6 was a rather odd argument made that because the -- in the reply, that
7 because the settlement document had a December date on it, that clearly
8 everything was done back in December. I'm not sure how that holds.
9 Even if the date is the same, every other word, other than the date, could
10 have been changed. Of course, that didn't happen. Only the numbers
11 changed. But the mere fact that the date predated the increase in value,
12 it doesn't mean that other parts of the release does not change. That's
13 another unsound argument.

14 Unless Your Honor has any questions. Thank you.

15 THE COURT: Thank you, Mr. Christensen. Mr. Morris, any
16 reply to what Mr. Christensen just argued?

17 MR. MORRIS: Yes, Your Honor. Thank you. I just want to
18 make a couple of observations -- well, more than a couple, several.

19 Once is that your latest order, the third order, which we're
20 asking you to reconsider and modify in accordance with the Supreme
21 Court's direction, is the same order that was before the Nevada Supreme
22 Court. Your order with respect to quantum meruit hasn't changed in the
23 sequence of the orders that have been entered in this case on that
24 subject.

25 So it isn't as if we are coming up at the last moment with

1 something in the way of an analysis to try to effect reconsideration.
2 We're asking you to reconsider this order on the same basis that the
3 Nevada Supreme Court directed you to do so. And we don't claim -- as
4 Mr. Christensen erroneously argues, we don't claim that there's been
5 any denial of due process. We don't claim -- and we point out in our
6 reply that we don't claim that the denial of the right to file a reply to the
7 second order was reserved by that jurisdiction and, certainly, affects us
8 here. We're just pointing out the history of this litigation and the fact
9 that we should have been -- we should have been allowed, and
10 particularly the local rule, to file a reply. We have filed a reply now. It's
11 the reply in support of reconsideration of this third order.

12 Mr. Christensen also went on to say that there are other
13 factors that you can consider, other than the hourly rate that Mr. Simon
14 was paid predischarge for the work that he did, and he referred to
15 something like the market rate. He wouldn't elaborate on that. But the
16 market rate, you know, is what Mr. Simon, in the first instance, offered
17 his super bill in support of. And I want to come back to that super bill in
18 just a moment.

19 But I would point out in making that argument, Mr.
20 Christensen is flying in the face or in the heat of the Supreme Court's
21 order that this quantum meruit finding, which has been consistent -- the
22 quantum meruit portion of your decisions, which was inconsistent from
23 the date of appeal until today, to say that you cannot consider, which is
24 largely what Mr. Christensen is arguing, you can't consider in
25 establishing quantum meruit the work that was done predischarge, and

1 that's our point.

2 We also point out, when he takes issue with us ignoring
3 finding of fact number 13, we addressed that in our reply. We pointed
4 out that Mr. Christensen miscited and misquoted finding of fact number
5 13. You didn't say in that finding that -- anything about on or after.
6 What you said was on or about, and we point that out in a footnote in
7 our reply. So it's necessary, I think, to correct the record on that.

8 Mr. Christensen's argument that Mr. Simon is entitled to
9 almost \$3,000 an hour for work that he did to close up the file, which
10 [indiscernible] not I described as, but I'll adopt that description as garden
11 variety closing up the file work. That \$3,000 an hour -- or it's actually
12 \$2789 an hour for each of the 71.1 hours that are on that super bill, that
13 is just extraordinary. And consider it in this light, Your Honor. If Mr.
14 Simon had not been fired, his compensation would have been -- would
15 have been established as you did with respect to, that he was owed
16 pre-discharge -- his work post discharge, or if he hadn't been fired, his
17 work would be to the end of his time, would have been on an hourly
18 basis.

19 So to get into that hourly basis, which *Brunzell* says you can
20 consider. It doesn't say you disregard it and throw it out the window
21 when the lawyer is terminated, but had he not been fired his
22 compensation would be exactly as we ask you to award, and that is not
23 more than \$34,000, which we put in our papers.

24 I want to point out another thing that Mr. Christensen said
25 that is contrary to Mr. Simon's testimony to you, and especially in

1 response to a question you asked him. You asked him if negotiations
2 have been completed before -- before he sat down to write his
3 November 27th letter to Edgeworth -- to the Edgeworths saying that he
4 wanted several million dollars more than he had agreed to take
5 previously. And he said that negotiations on the 27th, when he wrote
6 that letter to the Edgeworths, were complete before he knew that he --
7 that Vannah had been hired.

8 So I think that is -- pardon me?

9 UNIDENTIFIED SPEAKER: And before he wrote the letter.

10 MR. MORRIS: And before he wrote the letter. Yes, before he
11 wrote the letter and he knew that Vannah had been discharged, he had
12 completed negotiations.

13 He announced the end result on November 30th, but he also
14 established that the end result had already been negotiated. And you
15 made a finding that the Edgeworth's signed the consent to settle the
16 Lange case on December the 7th. That wasn't consequence of any work
17 that Mr. Simon was doing during that time.

18 This brings us to, I think, one of the most important parts of
19 this motion practice and all of this is included in our papers as exhibits.
20 And again I would like to refer you to Exhibit LL in support of the
21 principal motion. If you look at that, that's excerpts from Mr. Simon's
22 super bill. And here is the character of the work that he said he was
23 doing on and after he was discharged. He drafted and sent an email. He
24 reviewed and analyzed Lange's supplemental brief. He got an email
25 from his client. He drafted a letter to Teddy Parker. He reviewed a

1 release. He called Teddy Parker. He called someone that he refers to as
2 ANF. He looked at a bill. He negotiated a release with Mr. Henriod on
3 November the 30th, for three-and-a-half hours. He had a conversation
4 with Mr. Green.

5 He's trying to get -- he's trying to establish that he was doing
6 substantive work on and after the date he was discharged, but the super
7 bill simply does not support it, and that's the only record, Your Honor,
8 that we have of what he did do during this time period.

9 So we would say if you look at this testimony that ties the
10 contract negotiations that he was being compensated before he wrote to
11 the Edgeworths, that trends down the contract negotiations with respect
12 to Lange and Viking as have been substantively completed as of
13 November the 27th.

14 So, in sum, what we have here is dancing between the
15 raindrops in an effort to escape what in fact Mr. Simon has testified to
16 and what his super bill shows that he actually did. He put in some non-
17 substantive garden variety hours to close out his file and his
18 representation of the Edgeworths, and that totals 71.10 hours.

19 Mr. Christensen also raised the point that just simply -- it
20 defies rational analysis, and that is the Supreme Court's denial of Mr.
21 Simon's writ petition. He seemed to overturn the Court's determination
22 that he was entitled to \$200,000 in quantum meruit compensation and
23 that order simply says, as well as the Supreme Court entered, denying
24 writ petition. We reviewed the order in a direct appeal in docket number
25 77678 where they vacated the quantum meruit award and remanded it

1 for further proceedings.

2 Your Honor, those further proceedings are this proceeding.
3 We are now addressing that and that is precisely what the Supreme
4 Court asked to be done in its decision that it entered on December the
5 30th, saying that although there is evidence in the record that Simon and
6 his associate performed work after the constructive discharge, the
7 District Court did not explain how it views that evidence to calculate its
8 award. Thus, it was unclear whether the \$200,000 was a reasonable
9 amount to award for the work done after constructive discharge. That's
10 not for the work that was done prior to, as Mr. Christensen likes to
11 analogize it, to being fired on the courthouse steps. And the case then
12 goes ahead, apparently, in court.

13 But the point is that Mr. Simon was fired after the
14 substantive negotiations and agreements for settling the Viking, in
15 particular, and the Lange claims were completed, and he was
16 compensated for that. You've compensated him for that. We didn't
17 appeal that. What we appealed was, and what the Supreme Court sent
18 this back for, was the \$200,000 in quantum meruit.

19 And our point is, and as we point out in our -- in the opening
20 page of our reply in this particular proceeding is we're here on a very
21 limited basis. We're here only for the purpose of establishing what
22 would be reasonable, if it can be justified as reasonable, the \$200,000
23 that you awarded Mr. Simon in quantum meruit. And as we point out,
24 when you examine the record of what he did, that the Supreme Court
25 referred to, we see that Mr. Christensen describes as garden variety work

1 the 71.1 hours and \$2700 -- \$2789 per hour for each one of those 71
2 hours.

3 We say that's unreasonable. We say that ignores what
4 *Brunzell* said and other cases have said since then. Hourly rates to the
5 point of discharge can be considered, but they're not exclusive. You can
6 consider other factors too. And when you consider those other factors,
7 you've got to take into consideration what it is that the advocate
8 apparently did during the post discharge period.

9 We've covered that with you in Exhibit LL that describes all
10 of the work Mr. Simon and his associate, Ms. Ferrel did, and we have
11 concluded, and we ask you to accept our conclusion that Mr. Simon is
12 entitled to, at most -- we don't think he's entitled to \$34,000, but we
13 understand that you have some discretion here, that you have to ask
14 yourself that discretion on the basis of a record before you. And we
15 show that the record before you just simply will not support as the
16 Supreme Court, asked you to [indiscernible] anything more than \$34,000
17 for the work Mr. Simon and his associate did post discharge. Thank you
18 for listening to me.

19 THE COURT: Thank you very much.

20 MR. CHRISTENSEN: Your Honor, may I have one minute in
21 reply to of motion?

22 THE COURT: No, Mr. Christensen. We have litigated this
23 case for the last four years. I have heard everything under the sun about
24 this case. I have read everything that you guys have filed for four years.
25 I am going to issue a minute order on this decision.

1 Moving on to the second motion. The second motion is the
2 motion for an order releasing the client funds and requiring the
3 production of the complete client files. I have read the motion. Mr.
4 Christensen, you did cover this in your opposition. In your one
5 document, you did cover your opposition to both of these motions. And
6 I have also read the reply.

7 Mr. Morris, I have read everything, and I am very well aware
8 of what's going on with the funds in this case. My question in regards to
9 this is, if this Court were to deny your motion to reconsider, and you
10 appeal this decision, what is your position as to what that would do to
11 the funds and why should they be released before the appeal?

12 MR. MORRIS: I think we can find the answer to that in
13 *Nelson v. Heer*, which is 121 Nev. 832, a 2005 case, which says that
14 Simon is only entitled to security for the judgment that you enter in his
15 favor that we might appeal.

16 And, Your Honor, I would say that holding \$1,970,000 to
17 secure a judgment of less than 400,000 -- \$500,000 altogether, if you
18 denied our motion, would be unreasonable. And that means, I think, that
19 7055 still applies. The Court said in *Nelson v. Heer* that -- pardon?

20 UNIDENTIFIED SPEAKER: In *Morse*.

21 MR. MORRIS: I'm sorry, *Morse*. In the *Morse* case, that all
22 that Simon is entitled to is adequate security for the judgment that is
23 being appealed. And if your judgment is the \$200,000 that you're going
24 to stick with, when you add that to what has already been adjudicated,
25 and that's the maximum amount that he is entitled to, and that satisfies

1 the requirements of 7.055 and requires him --

2 THE COURT: Mr. Morris, just one second.

3 MR. MORRIS: -- to turn over the funds.

4 THE COURT: Mr. Morris, just one second. I need everybody
5 on BlueJeans to mute your microphones. Okay. Go ahead, Mr. Morris.

6 MR. MORRIS: I'm sorry.

7 THE COURT: And I'm sorry, Mr. Morris, I had to cut you --

8 MR. MORRIS: I didn't catch your last remark.

9 THE COURT: Yeah, I had to cut you off because I was getting
10 a lot of other feedback that wasn't you.

11 MR. MORRIS: Oh, oh, okay.

12 THE COURT: So, go ahead.

13 MR. MORRIS: Well, if it was feedback from me, I hope it was
14 persuasive.

15 In any event, Your Honor, we point out that that statute,
16 together with security, that is retained for Mr. Simon, supports the
17 turnover of the complete file to the Edgeworths as they've asked.
18 Remember there is still other litigation pending here that is not before
19 you that might have relevance to, and we would be entitled to examine
20 the files to deal with that or to address the issues in the other case.

21 Your Honor, we point out, and I know Mr. Christensen toils
22 with this and says he's produced everything that we're entitled to, but
23 the file we received, as we point out on page 4 of our motion, if you take
24 a look at Exhibit I --

25 THE COURT: And, Mr. Morris.

1 MR. MORRIS: -- to substantiate this.

2 THE COURT: Mr. Morris. Mr. Morris, I hate to cut you off,
3 but I have read every single page of every single thing that you have
4 submitted.

5 MR. MORRIS: Okay.

6 THE COURT: So can we address issues that I don't know
7 about from reading all of your briefing instead of just going over
8 everything that you wrote, because I've read it. I've spent hours
9 prepping for this hearing and reading everything that you guys
10 submitted.

11 MR. MORRIS: Okay. I guess, the best we could say here is if
12 you've read everything --

13 THE COURT: I have.

14 MR. MORRIS: -- is that, you know, we're not -- we're not
15 seeking documents that are propriety to Viking and Lange. We're
16 seeking emails to and from Viking and Lange that are not proprietary to
17 them. We're seeking information with respect to communications with
18 third parties. We're seeking communications with respect to the experts,
19 and the reports that they filed, and the research memos, and the search
20 that was done by Mr. Simon, that's in his file or should be in his file, and
21 that's what we're -- that's really the substance of what we're after.

22 THE COURT: Okay.

23 MR. MORRIS: So in the motion to release funds and produce
24 the files that were also referred to, and you've already pointed out
25 you've read everything, I won't belabor it, but Mr. Simon is entitled to all

1 uncontested amounts, and he's entitled to adequate security. So that's
2 all he's entitled to. He's not entitled to keep our file. He's not entitled to
3 tie up almost \$2 million in funds to a judgment that he says that could be
4 entered -- affirmed on appeal for less than -- for about \$535,000, when
5 you put everything together. That's including the 52,520 that was
6 submitted to you in an order, and you signed the day before yesterday,
7 plus the \$284,000 that you awarded predischarge. So that's our point.

8 THE COURT: Okay. Thank you very much. Mr. Christensen,
9 your response. And I would also remind you I have read everything that
10 was submitted in this case.

11 MR. CHRISTENSEN: I understand, Your Honor. I'll try to
12 keep it short. There are three different issues that were raised, and I
13 think we've confused some of them.

14 One, the reply did not respond to the opposition on the
15 distribution of the money. I think your question at the beginning was
16 very apt, and I also think it highlighted a problem. This motion is
17 premature. When the Court issues its order, if the Court reevaluates and
18 awards a larger QM number from September, as we've asked, then
19 that's one answer. That's one set we'll have to look at. If the Court
20 drives the number down and provides reasons, that provides us with
21 something else to look at. If the Court leaves the numbers the way they
22 are, that gives us a third thing to look at.

23 All of those may lead to different answers on what's going to
24 happen with the money held in trust. You cannot prejudge that. I don't
25 know why they filed this motion prematurely. They didn't reply in

1 support of their motion to disburse fund in their reply. I had assumed
2 they had dropped that, understanding that the motion was premature.
3 Apparently not. But this issue is premature. Let's wait and see what the
4 Court does, then we address it. That's the normal way things proceed.

5 There was a request to transfer funds. We did that. We
6 didn't do it as quickly as they wanted. They filed a motion after only ten
7 days without allowing for the fact that some folks are busy, and some
8 folks are out of town, and working, and we had to look at it. We had to
9 get an okay from them. And in so doing, in filing that motion, they said
10 some pretty nasty things.

11 You know, Mr. Vannah came up with the idea of putting the
12 money in Bank of America, and we agreed, and I don't know why that's
13 such a huge problem now. You're just talking about where the money is.
14 If it's over in Bank of America, they make interest. If it's over in the Steve
15 Morris trust account, then they don't get interest. That's about the only
16 difference.

17 THE COURT: And isn't the interest -- and to my recollection
18 when this happened in 2018, isn't the interest going to the Edgeworths?

19 MR. CHRISTENSEN: Yes.

20 THE COURT: Okay.

21 MR. CHRISTENSEN: They're making interest on their money
22 and on whatever money is eventually awarded and paid to Mr. Simon.
23 So they're -- so, whatever. We've agreed to it. We didn't have a
24 problem with it. We just didn't do it at the speed that they wanted,
25 although they didn't really have a basis to ask for it, but that's another

1 issue, and I think that issue is moot.

2 So let's go to turning over the file. You know -- I'm sorry, I'm
3 going to have to go back to the distribution money. In addition to it
4 being premature, you know, this is the first time they cited *Nelson v.*
5 *Heer*. I just looked through their papers. It's not in there. I would need a
6 chance to review the case. The last time I read it was years ago. And
7 they might be right, but you know something, the time to raise that
8 argument is after this Court issues its order.

9 Turning over the file. So on its face, 7.055 does not apply.
10 Mr. Simon has not been paid yet. I understand their security argument,
11 but that's not what the statute says. So we don't have a general
12 objection to turn over parts of the file that they can have, but there is an
13 NDA, Section 13 of the NDA does state that the NDA continues to exist
14 and be enforced after settlement of the underlying case. Section 13 does
15 state that archival copies that are held in counsel's file like expert
16 reports, et cetera, et cetera, that include confidential information, which
17 these expert reports do, are confidential under the NDA and continue to
18 do so.

19 You know, here's the problem. Mr. Simon signed the NDA.
20 If something happens to that confidential information that Viking or
21 Lange disagree with, he's the one who's going to be left holding the bag.
22 And you can't just ignore it and say, oh, we don't want proprietary
23 documents, but we do want the expert reports that contain proprietary
24 documents, and comment on the proprietary documents, and
25 incorporate them into the reports. It doesn't work that way. There's --

1 the NDA has to be addressed.

2 So there's two things that have to happen. One, they've got
3 to sign Exhibit A; and, number two, they have to establish under the
4 NDA why they have a current need for the documents. Now if they have
5 a current need for the documents in the other suit, then bring this motion
6 in the other suit.

7 I want to go to the security argument. Here's the problem
8 with that. *Morse* is a 1948 case. *Figliuzzi* was in the '90s. Both of them
9 predate the change to our statute, 18.015 in 2013. In 2013, the legal
10 landscape changed. The statute changed. *Morse* dealt with a case
11 where there was an ongoing underlying case and where the client could
12 establish prejudice if they didn't have access to the file. And the
13 Supreme Court said, yeah, as long as the District Court sets some sort of
14 reasonable security, then you can turn the file over, because at that time
15 in Nevada a retaining lien was a common law remedy. It wasn't
16 statutory and the same thing in *Figliuzzi*.

17 And in *Morse*, in fact, they even distinguished the difference
18 between a statutory charging lien and a retaining lien and said, you
19 know, the Court's got a lot more discretion with a common law retaining
20 lien than it does with a statutory charging lien. So let's fast forward.

21 In 2013, they added in language about the retaining lien. It's
22 in 18.015(1)(b). And, Your Honor, I apologize, I would have raised this in
23 the opposition, but this argument was brought up in the reply, so I
24 apologize for that.

25 So now we have a statutory retaining lien. And subsection 3

1 says -- I'm sorry, hang on. Here we go. Subsection 4(b), the lien
2 attaches to any file or other property left in the possession of the
3 attorney, including, without limitation, copies of the attorney's file -- and
4 it goes on -- and authorizes the attorney to retain any such file or
5 property until such time as an adjudication is made pursuant to
6 Subsection 6. That's the lien adjudication, which we're still here fighting
7 over.

8 So, again, their motion is premature. *Morse* and *Figliuzzi* no
9 longer apply. The statute changed. You know, if they had raised that in
10 their initial pleading, I could have gone a little bit more in depth in that,
11 and we could have addressed it a little bit more thoroughly. I apologize
12 for doing it during oral argument, but they raised it in the reply.

13 So that's the situation. We have a problem here with that
14 NDA, and they're not willing to address it. Even in *Morse*, the Supreme
15 Court said that they could retain confidential correspondence in that case
16 back in 1948. Here we have a written, enforceable NDA that we have to
17 deal with.

18 We also have to deal with the practical question of -- you
19 know, these folks raise the issue, and they say all this stuff is
20 indecipherable, it's vague, but they don't tell us why. So how do we
21 address that problem? Is it a particular file? Is it a folder? Is it the
22 pleading? Is it correspondence? What is it? What do we have to
23 reproduce? They won't tell us. They allege there's a problem, but they
24 won't tell us what it is, and then they tell us to fix it. I don't know how to
25 react to that, other than producing the file again in toto, which we

1 shouldn't have to do. We already gave them the file once. How many
2 times do they need it?

3 So there's practical issues, which they're just overlooking.
4 The rule does not make an attorney produce a file more than once. The
5 rule does not make an attorney ignore a binding NDA. And the rule does
6 not make an attorney produce the same parts of a file more than once.
7 They haven't produced any law on any of those issues. So we're willing
8 to cooperate, but there are some practical issues here that have to be
9 addressed, and I don't think the Edgeworths have given this Court
10 enough information to rule on this, if in fact 7.055 applied yet, which it
11 does not as Mr. Simon has not yet been paid under the statute. Thank
12 you, Your Honor.

13 THE COURT: Thank you, Mr. Christensen. Mr. Morris, your
14 response?

15 MR. MORRIS: Your Honor, in 2013, the legislature did not
16 amend 7.055 to overrule either *Morse* or *Figliuzzi*, as Mr. Christensen
17 suggests. That's just false. They're still -- all Mr. Simon is entitled to --
18 of course, he's entitled to get paid, but we are disputing what that
19 amount is. And if we're disputing what that amount is, he is secured for
20 the amount that he thinks should be paid, that's sufficient. That's all the
21 statute requires to require him to obey 7.055 and turn over his files.

22 Mr. Christensen said a moment ago that there's an NDA
23 here, and he made quite a bit to do about that. I point out, as we have in
24 our papers, you've read them, that we're bound by that NDA also. I also
25 point out, as we also put in our papers that we thought we had agreed

1 with Simon and Mr. Christensen that any confidential documents would
2 be excluded from the production that we received and would be
3 deposited with the Court and scheduled on [indiscernible] so we can
4 appropriately challenge those.

5 He doesn't address that, and I can understand why, because
6 that's something that would require a little bit more work than what they
7 did in producing what it is that we have and that was really by hard
8 drive. It wasn't on a thumb drive, and it wasn't in a banker's box that
9 was indexed. We got a hard drive from them of documents. Whether he
10 wants to describe those as archived or not, we got a hard drive with tens
11 of thousands of documents on it, disorganized, no guide post to what's
12 in there, and many of them -- and much of what we got from them was
13 indecipherable.

14 I know he doesn't have to produce documents more than one
15 time, but he has to produce documents and turn over that file that are
16 comprehensible and that have been filed in the order in which they were
17 received or sent, and he has not done that.

18 And with respect to the point that he's just baffled by what it
19 is that we wanted to -- when we say they're short, we know from what
20 we received and what we negotiated with him that we have not received
21 what we're entitled to and that is the complete client's file of Mr. Simon
22 in a comprehensible and understandable format.

23 We also know that the -- we've asked and have been turned
24 down, or we've been ignored -- Mr. Christensen doesn't raise this point
25 about well tell us what it is that we have withheld so we can then deal

1 with it. In point of fact, we did that. We wrote an email to him earlier
2 this month, and we pointed out on May the 11th, that -- what it is that --
3 what it is -- and we put that in our reply too, what it is that is missing
4 from the files that were produced, or if they were included in the hard
5 drive, they're not decipherable to us. We just can't make that
6 determination.

7 So we've done as much with respect to telling him what
8 we're entitled to, although we shouldn't have to do that. They should
9 simply have to turn over the file, and if they believe that there are items
10 in there that rise to the level of privilege from disclosure under the NDA,
11 then they should tender those with a privilege log to the Court, so that
12 we can challenge those withholdings and address it appropriately with
13 you.

14 That's essentially what I have to say, Your Honor, and I think
15 that that will conclude our [indiscernible] on you having to read and visit
16 these issues so many times.

17 THE COURT: Okay. Well, I do need to make a decision in
18 regard to the other motion before I can address this motion, so when I
19 put out the minute order on the other motion, I will put out a minute
20 order on this motion as well.

21 Thank you, counsel.

22 ////

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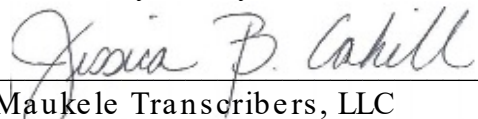
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MR. CHRISTENSEN: Thank you, Your Honor.

MR. MORRIS: Thank you.

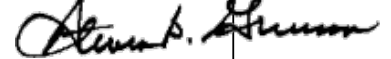
[Proceedings concluded at 10:23 a.m.]

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



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**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORTATION, 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
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

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

Consolidated with

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

**NOTICE OF ENTRY OF DECISION AND
ORDER DENYING PLAINTIFFS'
RENEWED MOTION FOR
RECONSIDERATION OF THIRD-
AMENDED DECISION AND ORDER ON
MOTION TO ADJUDICATE LIEN AND
DENYING SIMON'S COUNTERMOTION
TO ADJUDICATE LIEN ON REMAND**

1 **NOTICE OF ENTRY OF DECISION AND ORDER DENYING PLAINTIFFS'**
2 **RENEWED MOTION FOR RECONSIDERATION OF THIRD- AMENDED DECISION**
3 **AND ORDER ON MOTION TO ADJUDICATE LIEN AND DENYING SIMON'S**
4 **COUNTERMOTION TO ADJUDICATE LIEN ON REMAND**

5 PLEASE TAKE NOTICE, a Decision and Order Denying Plaintiffs' Renewed Motion
6 for Reconsideration of Third-Amended Decision and Order on Motion to Adjudicate Lien and
7 Denying Simon's Countermotion to Adjudicate Lien on Remand was entered on the 17th day of
8 June, 2021. A true and correct copy of the file-stamped Decision and Order is attached hereto.

9 DATED this 18th day of June, 2021.

10 **JAMES R. CHRISTENSEN PC**

11 /s/ James R. Christensen

12 James R. Christensen Esq.

13 Nevada Bar No. 3861

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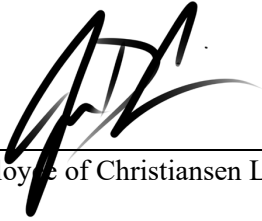
22 Las Vegas, NV 89101

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24 *Attorneys for SIMON*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN TRIAL LAWYERS, and that on this 18th day of June, 2021 I caused the foregoing document entitled ***NOTICE OF ENTRY OF DECISION AND ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR RECONSIDERATION OF THIRD- AMENDED DECISION AND ORDER ON MOTION TO ADJUDICATE LIEN AND DENYING SIMON'S COUNTERMOTION TO ADJUDICATE LIEN ON REMAND*** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.



An employee of Christiansen Law Offices

ORDR

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**Eighth Judicial District Court
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Defendants.

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

Consolidated with

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

**DECISION AND ORDER DENYING
PLAINTIFFS' RENEWED MOTION FOR
RECONSIDERATION OF THIRD-
AMENDED DECISION AND ORDER ON
MOTION TO ADJUDICATE LIEN AND
DENYING SIMON'S COUNTERMOTION
TO ADJUDICATE LIEN ON REMAND**

1 **DECISION AND ORDER DENYING PLAINTIFFS' RENEWED MOTION FOR**
2 **RECONSIDERATION OF THIRD- AMENDED DECISION AND ORDER ON MOTION**
3 **TO ADJUDICATE LIEN AND DENYING SIMON'S COUNTERMOTION TO**
4 **ADJUDICATE LIEN ON REMAND**

5 This matter came on for hearing on May 27, 2021, in the Eighth Judicial
6 District Court, Clark County, Nevada, the Honorable Tierra Jones presiding.
7 Defendants, Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law
8 (jointly the "Defendants" or "Simon") having appeared by and through their
9 attorneys of record, James Christensen, Esq. and Peter Christiansen, Esq.; and,
10 Plaintiff Edgeworth Family Trust and American Grating, ("Plaintiff" or
11 "Edgeworths") having appeared through by and through their attorneys of record,
12 the law firm of Morris Law Group, Steve Morris, Esq. and Rosa Solis-Rainey, Esq.
13 The Court having considered the evidence, arguments of counsel and being fully
14 advised of the matters herein, the **COURT FINDS** after review:
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16 The Edgeworths' Renewed Motion for Reconsideration of Third Amended
17 Decision and Order on Motion to Adjudicate Lien is DENIED.

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1 Simon's Countermotion to Adjudicate the Lien on Remand is DENIED.

Dated this 17th day of June, 2021

2 IT IS SO ORDERED.

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DISTRICT COURT JUDGE

478 B49 725D 8E26

Tierra Jones

District Court Judge

Submitted By:

Approved as to Form and Content:

JAMES R. CHRISTENSEN PC

MORRIS LAW GROUP

/s/ James R. Christensen

James R. Christensen Esq.

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Declined

Steve Morris Esq.

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Las Vegas NV 89106

Attorney for EDGEWORTHS

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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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: 6/17/2021

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