

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC,

PETITIONERS

VS.

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

Respondents,

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

Real Parties in Interest.

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Elizabeth A. Brown  
Clerk of Supreme Court

Case No. \_\_\_\_\_

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

**APPENDIX IN SUPPORT OF EDGEWORTHS'  
PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT  
COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE  
PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE  
DISTRICT COURT**

**VOLUME I  
P00001 – P000215**

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

**PETITIONERS' APPENDIX**

**CHRONOLOGICAL INDEX**

<b>DATE</b>	<b>DOCUMENT TITLE</b>	<b>VOL</b>	<b>BATES NOS.</b>
2018-01-02	Amended Lien	I	P00001 – 04
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	P00005 – 27
2020-12-30	Order Affirming in Part, Vacating in Part and Remanding	I	P00028 – 42
2021-03-16	Second Amended Decision and Order on Motion to Adjudicate Lien	I	P00043 – 67
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	I	P00068 – 84
2021-04-19	Third Amended Decision and Order on Motion to Adjudicate Lien	I	P00085 - 109
2021-05-03	Plaintiffs' Renewed Motion for Reconsideration of Third-Amended Decision and Order Granting in Part and Denying in Part Simon's Motion for Attorney's Fees and Costs, and Motion for Reconsideration of Third Amended Decision and Order on Motion to Adjudicate Lien	I	P00110 – 215
2021-05-13	Edgeworths' Motion For Order Releasing Client Funds And Requiring Production Of File	II	P00216 - 290
2021-05-20	Opposition to Edgeworths' Motion For Order Releasing Client Funds And Requiring Production Of File	II	P00291 – 339
2021-05-21	Reply ISO Edgeworths' Motion For Order Releasing Client Funds And Requiring Production Of File	II	P00340 - 359
2022-09-16	Order on Edgeworths' Writ Petition (Case No. 84159)	II	P00360 -365

**EDGEWORTH FAMILY TRUST, ET AL. vs.  
DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON  
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<b>DATE</b>	<b>DOCUMENT TITLE</b>	<b>VOL</b>	<b>BATES NOS.</b>
2022-09-16	Order Vacating Judgment and Remanding (Case No. 83258-83260)	III	P00366 - 370
2022-09-27	Fourth Amended Decision & Order to Adjudicate Lien	III	P00371 - 396
2022-09-27	Order to Release Edgeworth File	III	P00397 - 400
2022-12-15	Remittitur (signed and filed)	III	P00401 - 404
2023-02-09	Simon's Motion for Adjudication Following Remand	III	P00405 - 429
2023-02-23	Edgeworths' Response to Motion for Adjudication Following Remand	IV	P00430 - 702
2023-03-14	Reply ISO Motion for Adjudication Following Remand	V	P00703 - 770
2023-03-28	Fifth Amended Decision and Order on Motion to Adjudicate Lien	V	P00771 - 801
2023-04-24	Notice of Entry of Fifth Amended Decision and Order on Motion to Adjudicate Lien	V	P00802 - 834

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

<b>DATE</b>	<b>DOCUMENT TITLE</b>	<b>VOL.</b>	<b>BATES NOS.</b>
2018-01-02	Amended Lien	I	P00001 – 04
2018-11-19	Decision and Order on Motion to Adjudicate Lien	I	P00005 – 27
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2021-05-13	Edgeworths' Motion For Order Releasing Client Funds And Requiring Production Of File	II	P00216 - 290
2023-03-28	Fifth Amended Decision and Order on Motion to Adjudicate Lien	V	P00771 - 801
2022-09-27	Fourth Amended Decision & Order to Adjudicate Lien	III	P00371 - 396
2021-04-13	Nevada Supreme Court Clerk's Certificate Judgment Affirmed	I	P00068 – 84
2023-04-24	Notice of Entry of Fifth Amended Decision and Order on Motion to Adjudicate Lien	V	P00802 - 834
2021-05-20	Opposition to Edgeworths' Motion For Order Releasing Client Funds And Requiring Production Of File	II	P00291 – 339
2020-12-30	Order Affirming in Part, Vacating in Part and Remanding	I	P00028 – 42
2022-09-16	Order on Edgeworths' Writ Petition (Case No. 84159)	II	P00360 -365
2022-09-27	Order to Release Edgeworth File	III	P00397 - 400
2022-09-16	Order Vacating Judgment and Remanding (Case No. 83258-83260)	III	P00366 - 370

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

1 ATLN  
DANIEL S. SIMON, ESQ.  
2 Nevada Bar No. 4750  
ASHLEY M. FERREL, ESQ.  
3 Nevada Bar No. 12207  
810 S. Casino Center Blvd.  
4 Las Vegas, Nevada 89101  
Telephone (702) 364-1650  
5 lawyers@simonlawlv.com  
Attorneys for Plaintiffs  
6

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

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

11 Plaintiffs, )

12 vs. )

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

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

17 Defendants. )

18 **NOTICE OF AMENDED ATTORNEY'S LIEN**

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

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

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

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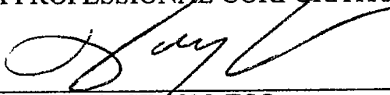
1 rendered for the client, along with court costs and out-of-pocket costs advanced by the Law Office  
2 of Daniel S. Simon in the sum of \$76,535.93, which remains outstanding.

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

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

12 Dated this 2<sup>nd</sup> day of January, 2018.

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

15 

16 DANIEL S. SIMON, ESQ.  
17 Nevada Bar No. 4750  
18 ASHLEY M. FERREL, ESQ.  
19 Nevada Bar No. 12207  
20 810 South Casino Center Blvd.  
21 Las Vegas, Nevada 89101  
22  
23  
24  
25  
26  
27  
28

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

**CERTIFICATE OF E-SERVICE & U.S. MAIL**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 2<sup>nd</sup> day of January, 2018, I served the foregoing **NOTICE OF AMENDED ATTORNEY'S LIEN** on the following parties by electronic transmission through the Wiznet system and also via Certified Mail- Return

Receipt Requested:


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

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

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

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

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

  
An Employee of SIMON LAW



SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
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**CERTIFICATE OF U.S. MAIL**

I hereby certify that on this 2<sup>nd</sup> day of January, 2018, I served a copy, via Certified Mail, Return Receipt Requested, of the foregoing **NOTICE OF AMENDED ATTORNEY'S LIEN** on all interested parties by placing same in a sealed envelope, with first class postage fully prepaid thereon, and depositing in the U. S. Mail, addressed as follows:

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


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

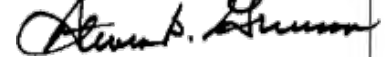
Edgeworth Family Trust  
645 Saint Croix Street  
Henderson, Nevada 89012

Robert Vannah, Esq.  
VANNAH & VANNAH  
400 South Seventh Street, Ste. 400  
Las Vegas, NV 89101

Bob Paine  
Zurich North American Insurance Company  
10 S. Riverside Plz.  
Chicago, IL 60606  
*Claims Adjustor for*  
*Zurich North American Insurance Company*

Joel Henriod, Esq.  
Lewis Roca Rothgerber Christie  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, NV 89169  
*The Viking Corporation and*  
*Supply Network, Inc. dba Viking Supplynet*

  
An Employee of SIMON LAW



1 **ORD**

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

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

8 Plaintiffs,

9 vs.

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

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

14 Defendants.

**Consolidated with**

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

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

17 Plaintiffs,

18 vs.

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

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

21 Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

16 Obviously that could not have been doen earlier snce who would have 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.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

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

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

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



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

14 (Def. Exhibit 27).

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

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

### 26 *Constructive Discharge*

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

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

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

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

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

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

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

Id.

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

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

5  
6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.  
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the  
8 effect of this AGREEMENT and their release of any and all claims, known or  
9 unknown and, based upon that explanation and their independent judgment by  
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the  
11 legal significance and the consequences of the claims being released by this  
12 Agreement. PLAINTIFFS further represent that they understand and  
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 NRC  
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.<sup>2</sup>

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



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

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

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

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

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

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

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

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

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

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

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

5  
6 ***Costs Owed***

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

14  
15 ***Quantum Meruit***

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

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

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

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

18 *1. Quality of the Advocate*

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

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

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

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

9 3. The Work Actually Performed

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

18 4. The Result Obtained

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NRCP 1.5.

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

## 23 CONCLUSION

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

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

9  
10 **ORDER**

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

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

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18 DISTRICT COURT JUDGE  
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**CERTIFICATE OF SERVICE**

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

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



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Tess Driver  
Judicial Executive Assistant  
Department 10



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.<sup>1</sup> Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.<sup>2</sup>

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

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

<sup>2</sup>The 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 NRCPP 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.<sup>3</sup> 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

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<sup>3</sup>On 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 meruit<sup>4</sup> 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

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<sup>4</sup>The 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 *Reconstruct 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.<sup>5</sup> 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

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<sup>5</sup>The 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.<sup>6</sup>

*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

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<sup>6</sup>In 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, 380 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

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 *[Signature]*  
DEPUTY CLERK

No. 78176

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.

*[Signature]* C.J.  
Hardesty

*[Signature]* J.  
Parraguirre

*[Signature]* J.  
Cadish

*[Signature]* J.  
Pickering

*[Signature]* J.  
Stiglich

*[Signature]* J.  
Silver

*[Signature]* J.  
Herndon

Supreme Court  
of  
Nevada

(07) 1947A

21-07874

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**

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

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

8 Plaintiffs,

9 vs.

10 LANGE PLUMBING, LLC; THE VIKING  
11 CORPORATION, a Michigan Corporation;  
12 SUPPLY NETWORK, INC., dba VIKING  
13 SUPPLYNET, a Michigan Corporation; and  
14 DOES 1 through 5; and, ROE entities 6 through  
15 10;

16 Defendants.

17 EDGEWORTH FAMILY TRUST; and  
18 AMERICAN GRATING, LLC,

19 Plaintiffs,

20 vs.

21 DANIEL S. SIMON; THE LAW OFFICE OF  
22 DANIEL S. SIMON, a Professional Corporation  
23 d/b/a SIMON LAW; DOES 1 through 10; and,  
24 ROE entities 1 through 10;

25 Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: X

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

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

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



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 and 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.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

## 16 17 **CONCLUSION OF LAW**

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

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

23 NRS 18.015(1)(a) states:

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

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

27 Nev. Rev. Stat. 18.015.

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

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

#### 13 14 *Fee Agreement*

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

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

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

16 (Def. Exhibit 27).

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

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

### 28 *Constructive Discharge*

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

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

- 1 • Refusal to pay an attorney creates constructive discharge. *See e.g., Christian v. All Persons*  
2 *Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 3 • Suing an attorney creates constructive discharge. *See Tao v. Probate Court for the Northeast*  
4 *Dist. #26*, 2015 Conn. Super. LEXIS 3146, \*13-14, (Dec. 14, 2015). *See also Maples v.*  
5 *Thomas*, 565 U.S. 266 (2012); *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v. State*,  
6 2017 Nev. Unpubl. LEXIS 472.
- 7 • Taking actions that preventing effective representation creates constructive discharge.  
8 *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002).

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

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

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

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

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



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

6 PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq.  
7 and John Greene, Esq., of the law firm Vannah & Vannah has explained the  
8 effect of this AGREEMENT and their release of any and all claims, known or  
9 unknown and, based upon that explanation and their independent judgment by  
10 the reading of this Agreement, PLAINTIFFS understand and acknowledge the  
11 legal significance and the consequences of the claims being released by this  
12 Agreement. PLAINTIFFS further represent that they understand and  
13 acknowledge the legal significance and consequences of a release of unknown  
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.

14 Id.

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

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

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

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

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

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

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

6 NRS 18.015 states:

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

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

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

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

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

22 4. A lien pursuant to:

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

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

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

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

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

1 Nev. Rev. Stat. 18.015.

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

10  
11 ***Implied Contract***

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

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

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

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

10  
11 *Amount of Fees Owed Under Implied Contract*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Costs Owed*

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

### *Quantum Meruit*

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

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



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

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

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

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

21 *Quality of the Advocate*

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

1 work product and results are exceptional.

2 *The Character of the Work to be Done*

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

12 *The Work Actually Performed*

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

21 *The Result Obtained*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (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

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

8 Upon conclusion of a contingent fee matter, the lawyer shall provide the client  
9 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  
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.

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

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

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

### 10 11 CONCLUSION

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

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**ORDER**

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

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

  
DISTRICT COURT JUDGE

B7B 840 B8A7 FF62  
Tierra Jones  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Edgeworth Family Trust,  
Plaintiff(s)

CASE NO: A-16-738444-C

7 vs.

DEPT. NO. Department 10

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/16/2021

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

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Christopher Page	chrispage@vannahlaw.com
Jessie Church	jchurch@vannahlaw.com

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

Theodore Parker	2460 Professional CT STE 200 Las Vegas, NV, 89128
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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 Clerk's 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.<sup>2</sup>

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

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

<sup>2</sup>The 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.<sup>3</sup> 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

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<sup>3</sup>On 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 meruit<sup>4</sup> 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

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<sup>4</sup>The 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 *Reconstruct 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.<sup>5</sup> 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

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<sup>5</sup>The 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.<sup>6</sup>

*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

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<sup>6</sup>In 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

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 *[Signature]*  
DEPUTY CLERK

No. 78176

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.

*[Signature]* C.J.  
Hardesty

*[Signature]* J.  
Parraguirre

*[Signature]* J.  
Cadish

*[Signature]* J.  
Pickering

*[Signature]* J.  
Stiglich

*[Signature]* J.  
Silver

*[Signature]* J.  
Herndon

SUPREME COURT  
OF  
NEVADA

(0) 78176

21-07874

P00081

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

SUPREME COURT  
OF  
NEVADA

409 1547A

**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**

*Alanna Simon*  
CLERK OF THE COURT

1 **ORD**

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

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

8 Plaintiffs,

9 vs.

10 LANGE PLUMBING, LLC; THE VIKING  
11 CORPORATION, a Michigan Corporation;  
12 SUPPLY NETWORK, INC., dba VIKING  
13 SUPPLYNET, a Michigan Corporation; and  
14 DOES 1 through 5; and, ROE entities 6 through  
15 10;

16 Defendants.

17 EDGEWORTH FAMILY TRUST; and  
18 AMERICAN GRATING, LLC,

19 Plaintiffs,

20 vs.

21 DANIEL S. SIMON; THE LAW OFFICE OF  
22 DANIEL S. SIMON, a Professional Corporation  
23 d/b/a SIMON LAW; DOES 1 through 10; and,  
24 ROE entities 1 through 10;

25 Defendants.

CASE NO.: A-18-767242-C

DEPT NO.: X

**Consolidated with**

CASE NO.: A-16-738444-C

DEPT NO.: X

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

26 **THIRD AMENDED DECISION AND ORDER ON MOTION TO**  
27 **ADJUDICATE LIEN**

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

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.<sup>1</sup> These monies were paid to Daniel Simon Esq. and  
17 never returned to the Edgeworths. The Edgeworths secured very high interest loans to pay fees and  
18 costs to Simon. They made Simon aware of this fact.

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

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

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

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

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

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

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

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

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

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

21 (Def. Exhibit 43).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2  
3  
4 **CONCLUSION OF LAW**

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

6 **Court**

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

10 NRS 18.015(1)(a) states:

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

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

14 Nev. Rev. Stat. 18.015.

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

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



1 *Fee Agreement*

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

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

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

25 (Def. Exhibit 27).

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

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

### 10 11 *Constructive Discharge*

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

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

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

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

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

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

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

17 Id.

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

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

1 Id.

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

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

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

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

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

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

20 NRS 18.015 states:

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

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

5           4. A lien pursuant to:

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

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

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

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

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

25 Nev. Rev. Stat. 18.015.

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

### ***Implied Contract***

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

4 From September 19, 2017 to November 29, 2017, the Court must determine the amount of  
5 attorney fees owed to the Law Office of Daniel Simon.<sup>4</sup> For the services of Daniel Simon Esq., the  
6 total amount of hours billed are 340.05. At a rate of \$550 per hour, the total attorney's fees owed to  
7 the Law Office for the work of Daniel Simon Esq. is \$187,027.50. For the services of Ashley Ferrel  
8 Esq., the total amount of hours billed are 337.15. At a rate of \$275 per hour, the total attorney's fees  
9 owed to the Law Office for the work of Ashley Ferrel Esq. from September 19, 2017 to November  
10 29, 2017 is \$92,716.25.<sup>5</sup> For the services of Benjamin Miller Esq., the total amount of hours billed  
11 are 19.05. At a rate of \$275 per hour, the total attorney's fees owed to the Law Office for the work  
12 of Benjamin Miller Esq. from September 19, 2017 to November 29, 2017 is \$5,238.75.<sup>6</sup>

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

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

### 18 *Costs Owed*

19  
20 The Court finds that the Law Office of Daniel Simon is not owed any monies for outstanding  
21 costs of the litigation in Edgeworth Family Trust; and American Grating, LLC vs. Lange Plumbing,  
22 LLC; The Viking Corporation; Supply Network, Inc. dba Viking Supplynet in case number A-16-  
23 738444-C. The attorney lien asserted by Simon, in January of 2018, originally sought  
24 reimbursement for advances costs of \$71,594.93. The amount sought for advanced costs was later  
25

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

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

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

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

### 3 4 *Quantum Meruit*

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

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

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

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

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

7 1. Quality of the Advocate

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

15 2. The Character of the Work to be Done

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

25 3. The Work Actually Performed

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

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

7 4. The Result Obtained

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

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

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

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

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

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

(4) The amount involved and the results obtained;

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

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

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

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

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

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

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

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

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

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

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

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

20 Upon conclusion of a contingent fee matter, the lawyer shall provide the client  
21 with a written statement stating the outcome of the matter and, if there is a  
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  
28

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

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

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

23 //

24 //

25 //

26 //

27 //

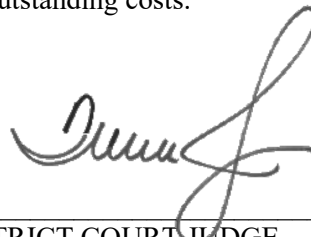
1 **CONCLUSION**

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

17  
18 **ORDER**

19 It is hereby ordered, adjudged, and decreed, that the Motion to Adjudicate the Attorneys Lien  
20 of the Law Office of Daniel S. Simon is hereby granted and that the reasonable fee due to the Law  
21 Office of Daniel Simon is \$556,577.43, which includes outstanding costs. **Dated this 19th day of April, 2021**

22 IT IS SO ORDERED.

23  
24  
25 

26 DISTRICT COURT JUDGE

27 **DEB 12B 0D66 116F**  
28 **Tierra Jones**  
**District Court Judge**



1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Edgeworth Family Trust,  
7 Plaintiff(s)

CASE NO: A-18-767242-C

8 vs.

DEPT. NO. Department 10

9 Daniel Simon, Defendant(s)

10  
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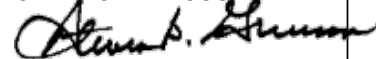
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12 Edgeworth Family Trust and  
13 American Grating, LLC

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

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

18 **Plaintiffs,** )

19 **v.** )

20 **LANGE PLUMBING, LLC** )  
21 **ET AL.,** )

22 **Defendants.** )

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

25 **Plaintiffs,** )

26 **v.** )

27 **DANIEL S. SIMON, AT AL.,** )

28 **Defendants.** )

) 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.<sup>1</sup> 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

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26 <sup>1</sup> 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 \$76,535.93<sup>2</sup> and attorney fees totaling \$2,345,450 less  
7 payments received, for a net of \$1,977,843.80 due in fees, presumably based  
8 on a contingent fee agreement that the Edgeworths had rejected. *See* Ex. M  
9 to 3/30/21 Mot. for Recon. The Viking settlement was signed the next day,  
10 December 1. Ex. N to 3/30/21 Mot. for Recon. The Edgeworths asked  
11 Simon to agree to the Lange terms at the same time. Ex. EE.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

***B. STANDARD FOR RECONSIDERATION***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22       Furthermore, much of the claimed work was not justified as having  
23 been done for the benefit of the Edgeworths. It is also not work requiring  
24 ...  
25 ...  
26 ...  
27 ...  
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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.<sup>4</sup> 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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<sup>4</sup> 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  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
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28

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 3<sup>rd</sup> 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**

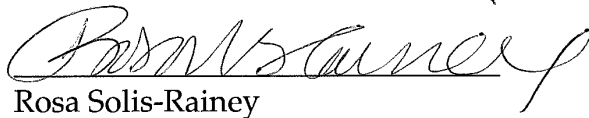
I, Rosa Solis-Rainey, declare as follows:

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 3<sup>th</sup> 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.

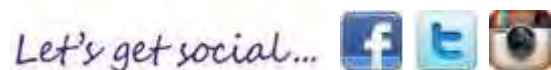
We would need to have our attorney look at this agreement before we sign.

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](mailto:angela.edgeworth@pediped.com) | [www.pediped.com](http://www.pediped.com)



On Mon, Nov 27, 2017 at 2:26 PM, Daniel Simon <[dan@simonlawlv.com](mailto: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

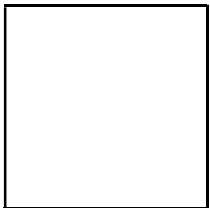
**From:** Angela Edgeworth [mailto:angela.edgeworth@pediped.com]  
**Sent:** Monday, November 27, 2017 3:20 PM  
**To:** Daniel Simon <dan@simonlawlv.com>  
**Cc:** Brian Edgeworth (brian@pediped.com) <brian@pediped.com>  
**Subject:** Re: Edgeworth v. Viking, et al

Danny,

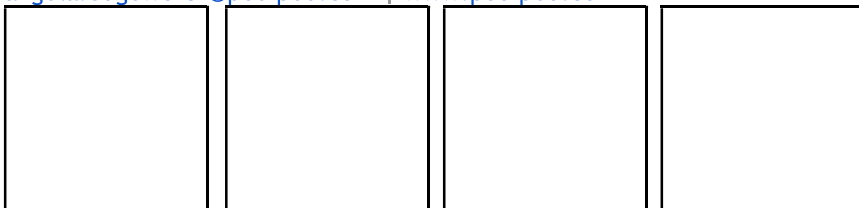
As you know, Brian is out of town and in China at the moment. I will need a couple of days to discuss this with him. We will be glad to meet once he is back.  
We would need to have our attorney look at this agreement before we sign.

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](mailto:angela.edgeworth@pediped.com) | [www.pediped.com](http://www.pediped.com)



On Mon, Nov 27, 2017 at 2:26 PM, Daniel Simon <[dan@simonlawlv.com](mailto: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](mailto: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](mailto: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](mailto: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](mailto:dpolsenberg@lrrc.com)  
**Cc:** [Jessica Rogers](mailto:Jessica.Rogers@mmrs-law.com); [robinson \(robinson@mmrs-law.com\)](mailto:robinson@mmrs-law.com)  
**Subject:** Edgeworth - REL DRAFT Edgeworth Draft Release to DP  
**Date:** Tuesday, November 21, 2017 10:53:56 AM  
**Attachments:** [REL DRAFT Edgeworth Draft Release to DP.docx](#)

---

Dan –

Attached is the draft Release. I highlighted the “Confidentiality” and “No Disparagment” clauses on pages 4 and 5.

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

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

Thanks,

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

\*\*\*\*\* PLEASE NOTE \*\*\*\*\*

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

## **SETTLEMENT AGREEMENT AND RELEASE**

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

### **I. RECITALS**

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

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

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

### **II. DEFINITIONS**

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

//

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

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

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

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

### **III. SETTLEMENTTERMS**

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

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

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

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

### **IV. AGREEMENT**

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



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

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

## **V. RELEASE**

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

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

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

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

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

#### **VI. GOOD FAITH SETTLEMENT**

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

#### **VII. DISMISSAL**

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

#### **VIII. MISCELLANEOUS**

##### **A. COMPROMISE:**

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

##### **B. CONFIDENTIALITY:**

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

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

C. SATISFACTION OF LIENS:

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

D. NO DISPARAGEMENT:

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

E. GOVERNING LAW:

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

F. TERMS OF SETTLEMENT AGREEMENT AND RELEASE INTERDEPENDENT:

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

G. INDIVIDUAL AND PARTNERSHIP AUTHORITY:

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

H. GENDER AND TENSE:

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

I. ENTIRE AGREEMENT:

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

J. INDEPENDENT ADVICE OF COUNSEL:

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

K. VOLUNTARY AGREEMENT:

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

L. ADMISSIBILITY OF AGREEMENT:

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

M. COUNTERPARTS:

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

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017      DATED this \_\_\_\_ day of \_\_\_\_\_, 2017

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

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

APPROVED AS TO FORM AND CONTENT:

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

SIMON LAW

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

# EXHIBIT CC

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

November 29, 2017

**VIA FACSIMILE: (702) 364-1655**

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

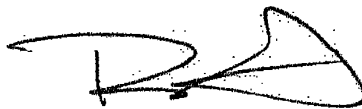
RE: Letter of Direction

Dear Mr. Simon:

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

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

Sincerely,

A handwritten signature in black ink, appearing to be "B. Edgeworth", with a stylized flourish at the end.

Brian Edgeworth

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

<b>To:</b>	
<b>Phone</b>	
<b>Fax Number</b>	(702) 364-1655

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

**NOTE:**

L0DS000865

P00146

# EXHIBIT DD

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



**brian@pediped.com**

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

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

## SETTLEMENT AGREEMENT AND RELEASE

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

### I. RECITALS

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

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

### II. DEFINITIONS

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

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

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

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

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

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

### III. SETTLEMENT TERMS

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

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

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

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

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

### IV. AGREEMENT

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

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

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

## V. RELEASE

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

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

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

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

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

## **VI. GOOD FAITH SETTLEMENT**

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

## **VIII. MISCELLANEOUS**

### **A. COMPROMISE:**

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

### **B. CONFIDENTIALITY:**

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

### **C. SATISFACTION OF LIENS:**

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

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

**D. GOVERNING LAW:**

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

**E. INDIVIDUAL AND PARTNERSHIP AUTHORITY:**

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

**F. GENDER AND TENSE:**

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

**G. ENTIRE AGREEMENT:**

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

**H. INDEPENDENT ADVICE OF COUNSEL:**

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

**I. VOLUNTARY AGREEMENT:**

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

**J. ADMISSIBILITY OF AGREEMENT:**

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

**K. COUNTERPARTS:**

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

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017    DATED this \_\_\_\_ day of \_\_\_\_\_, 2017

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

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

SIMON LAW

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
SCOTT MARTORANO  
Vice President-Warranty Managment

# EXHIBIT EE

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



**brian@pediped.com**

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

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

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

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

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

Thank You!

## SETTLEMENT AGREEMENT AND RELEASE

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

### I. RECITALS

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

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

### II. DEFINITIONS

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

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

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

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

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

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

### **III. SETTLEMENT TERMS**

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

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

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

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

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

### **IV. AGREEMENT**

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

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

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

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

#### **V. MUTUAL RELEASE**

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

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

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

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

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

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

#### **VI. GOOD FAITH SETTLEMENT**

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

## **VIII. MISCELLANEOUS**

### **A. COMPROMISE:**

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

### **B. SATISFACTION OF LIENS:**

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

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

### **C. GOVERNING LAW:**

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

### **D. INDIVIDUAL AND PARTNERSHIP AUTHORITY:**

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

### **E. GENDER AND TENSE:**

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

### **F. ENTIRE AGREEMENT:**

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

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

**G. INDEPENDENT ADVICE OF COUNSEL:**

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

**H. VOLUNTARY AGREEMENT:**

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

**I. ADMISSIBILITY OF AGREEMENT:**

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

**J. COUNTERPARTS:**

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

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

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017    DATED this \_\_\_\_ day of \_\_\_\_\_, 2017

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

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
SCOTT MARTORANO  
Vice President-Warranty Managment



# EXHIBIT FF

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

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

---

Danny --

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

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

Janet C. Pancoast, Esq.

**CISNEROS & MARIAS**

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

1160 No. Town Center Dr., Suite 130

Las Vegas, NV 89144

Off: 702.233.9660

Dir: 702.562.7616

Cell: 702.325.7876

Fax: 702.233.9665

janet.pancoast@zurichna.com

\*\*\*\*\* PLEASE NOTE \*\*\*\*\*

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

1 **STP**  
2 JANET C. PANCOAST, ESQ.  
3 Nevada Bar No. 5090  
4 CISNEROS & MARIAS  
5 1160 N. Town Center Dr., Suite 130  
6 Las Vegas, NV 89144  
7 Tel: (702) 233-9660  
8 Fax: (702) 233-9665  
9 janet.pancoast@zurichna.com  
10 *in Association with*  
11 S. Seth Kershaw, Esq.  
12 State Bar No. 10639  
13 MEYERS MCCONNELL REISZ SIDERMAN P.C.  
14 11620 Wilshire Blvd., Suite 800  
15 Los Angeles, CA 90025  
16 Tel: 1-310-312-0772  
17 Fax: 1-310-312-0656  
18 kershaw@mmls-law.com

19 Attorneys for Defendant/Cross-Defendant  
20 Cross-Claimant/Third Party Plaintiffs  
21 The Viking Corporation & Supply Network, Inc.  
22 d/b/a Viking Supplynet

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 EDGEWORTH FAMILY TRUST, and ) **CASE NO.: A-16-738444-C**  
26 AMERICAN GRATING, LLC )  
27 Plaintiffs, ) **DEPT. NO.: X**

28 vs. )

29 LANGE PLUMBING, LLC; THE VIKING )  
30 CORPORATION, a Michigan corporation; )  
31 SUPPLY NETWORK, INC. d/b/a VIKING )  
32 SUPPLYNET, a Michigan corporation; and )  
33 DOES I through V and ROE CORPORATIONS )  
34 VI through X, inclusive, )  
35 Defendants. )

**STIPULATION FOR DISMISSAL  
WITH PREJUDICE OF PLAINTIFFS  
CLAIMS AGAINST VIKING  
ENTITIES**

36 *Edge worth Family Trust v. Lange Plumbing, LLC, et. al. Case No. A-16-738444-*  
37 *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.	)
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 All claims asserted in any and all Complaints filed herein by PLAINTIFFS EDGEWORTH  
23 FAMILY TRUST & AMERICAN GRATING, LLC and each and every cause of action alleged  
24

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

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

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

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

13 **ORDER**

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

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

21 Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

22  
23  
24 \_\_\_\_\_  
DISTRICT COURT JUDGE

25 //

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

Submitted by:

CISNEROS & MARIAS

BY:

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

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

# EXHIBIT GG

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





1 RTRAN

2  
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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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WILLIAM KEMP

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1 A Correct.

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

4 A Yes.

5 Q That's Office Exhibit Number 5. This is the lead page, which  
6 is bate -- 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, bate 42 of Exhibit 5, I  
14 can show you the dates that both Brian and Angela signed the release,  
15 December 1 of 2017; is that correct?

16 A Yes.

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

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

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

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

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

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

9 BY MR. CHRISTENSEN:

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

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

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

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

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

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

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

24 THE COURT: Okay.

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



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

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

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

13 THE WITNESS: Before I was fired, yeah.

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

15 THE WITNESS: Yes.

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

18 THE WITNESS: Nope.

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

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

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

23 THE WITNESS: Correct.

24 THE COURT: Okay.

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

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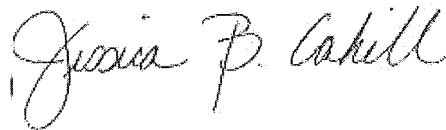
MR. VANNAH: Thank you.

THE COURT: No problem.

MR. VANNAH: That's been great.

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

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



---

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

# EXHIBIT HH

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

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

November 27, 2017

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

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

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

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

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

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P00179



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

**I have lost money working on your case.**

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

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### **Value of my Services**

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

### **Billing Statements**

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

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

### **How I handle cases**

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

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

### **Finalizing the settlement**

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

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

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

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

I really want us to get this breakdown right because I want you to feel like this is a 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.

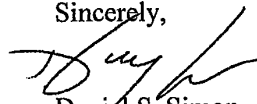
### Conclusion

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 is the lowest amount I can accept. I have always felt that it was our understanding that this was not a typical contract lawyer case, and that I was not a typical contract lawyer. In light of the substantial work performed and the exceptional results achieved, the fee is extremely fair and reasonable.

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

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

Sincerely,



Daniel S. Simon

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

## **RETAINER AGREEMENT**

1  
2  
3 THAT Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family Trust  
4 and American Grating have retained and does by this instrument retain the Law Offices of  
5 Daniel S. Simon, as his/her attorneys; said attorneys to handle on his/her behalf, all claims for  
6 damages arising out of and resulting from an incident on or about April 9, 2016 involving the  
7 flood caused by a failed sprinkler head, which clients now have, and which might hereafter  
8 accrue against Viking Corporation, Viking Group and Viking Supply Net, for damages arising  
9 out of said incident to Brian Edgeworth and Angela Edgeworth on behalf of Edgeworth Family  
10 Trust and American Grating that the parties have respectively agreed as follows:

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

21 2. ALL COSTS, INCLUDING ARBITRATION COSTS, COSTS OF  
22 OBTAINING EXPERTS TO ANALYZE AND EVALUATE THE CAUSE OF  
23 THE ACCIDENT, COSTS OF EXPERT TESTIMONY, COSTS OF WITNESS  
24 FEES, TRAVEL COSTS, DEPOSITION COSTS, COURT COSTS, AND ALL  
25 COSTS OF LITIGATION, INCLUDING LONG DISTANCE PHONE CALLS,  
26 COPYING EXPENSES, REGARDLESS OF THE OUTCOME, ARE TO BE  
27 PAID BY THE CLIENT, AND IF ANY OF THEM SHALL HAVE BEEN  
28 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

9 Angela Edgeworth on behalf of Edgeworth Family  
10 Trust and American Grating

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

TELEPHONE (702)364-1650

FACSIMILE (702)364-1655

**SETTLEMENT BREAKDOWN**

Date: November 27, 2017

Re: EFT AND AMERICAN GRATING v. ALL VIKING ENTITIES

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

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**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

P00186

# 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.***

<b>Date</b>	<b>Description</b>	<b>Time</b>
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. Guiindy 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
	<b>Total Hours</b>	<b>866.20</b>
	<b>Total Fees at \$550 per hour</b>	<b>\$476,410.00</b>

**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 <sup>th</sup> 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 <sup>th</sup> ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 <sup>th</sup> 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
<b>TOTAL HOURS x \$275 per hour (reduced)</b>		<b>762.6</b>
<b>TOTAL FEES</b>		<b>\$209,715.00</b>

**INVOICE FOR BENJAMIN J. MILLER**  
***EDGEWORTH v. LANGE, ET AL.***

<b>Date</b>	<b>Description</b>	<b>Time</b>
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
	<b>Total Hours x's \$275 per hour (reduced)</b>	<b>21.8</b>
	<b>Total Fees</b>	<b>\$5,995.00</b>

# EXHIBIT JJ

EXCERPTS FROM "SUPER BILL" WITH  
SIMON POST-DISCHARGE ENTRIES

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

<b>Date</b>	<b>Description</b>	<b>Time</b>
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 Olgivie Re: Retention; Email to Parker; Discussion with AF; Review Plaintiffs' 14 <sup>th</sup> 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 <sup>th</sup> 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 <sup>st</sup> hearings to December 20 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> 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
	<b>Total Hours</b>	<b>866.20</b>
	<b>Total Fees at \$550 per hour</b>	<b>\$476,410.00</b>

# 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> and 15 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> ECC Supplement and response	0.25
12.11.17	Review email from DSS re Lange's 15 <sup>th</sup> 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
<b>TOTAL HOURS x \$275 per hour (reduced)</b>		<b>762.6</b>
<b>TOTAL FEES</b>		<b>\$209,715.00</b>

# 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 AMIF	0.25
DSS	11/30/2017	Call with Teddy Parker	0.15
DSS	11/30/2017	Call with AMIF	0.10
DSS	11/30/2017	Call with AMIF	0.10
DSS	11/30/2017	Call with AMIF	0.20
DSS	11/30/2017	Call with AMIF	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	<b>Attend hearing on Viking Motion for Good Faith Settlement</b>	1.75
	12/6/2017-		
DSS	12/12/2017	Messages; Returned messages; discussions with Floyd Hale	0.50
		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
		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
	12/20/2017	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
	1/2/2018	Received, reviewed and analyzed email from J. Greene (3:45pm)	0.25
DSS	1/2/2018	T/C with S. Guindy at Bank of Nevada	0.50
DSS	1/3/2018	T/C w/ S. Guindy 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. Guindy	0.50
		Analyze, receive and send emails to S. Guindy at Bank of Nevada; Review emails from J. Christensen and bank, J.	
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. Guindy 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. Guindy; 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 Underwriters Laboratories	
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
		<b>SUMMARY OF POST-DISCHARGE WORK BILLED BY SIMON LAW</b>	
		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
			71.10
		(1) For purpose of estimating category, all T/C with Vannah were added to this category.	